UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

In the Matter of:	)	
	)	
SEAONE GULFPORT, LLC	)	**Docket No. 16-22-CGL**
	)	

SEAONE GULFPORT, LLC's MOTION FOR ADDITIONAL PROCEDURES AND ORAL PRESENTATION

Pursuant to 10 CFR §§ 590.310 and 590.312, SeaOne Gulfport, LLC ("SeaOne"), through undersigned counsel, hereby requests an opportunity to make an oral presentation to the Assistant Secretary and for the conduct of such other additional procedures as may be appropriate to resolve the remaining issues in this matter, to settle the proceedings, stipulate certain issues of fact or law, and consider other relevant matters related to DOE/FE Docket No. 16-22-CGL, SeaOne's application for authority to export to non-Free Trade Agreement ("NFTA") countries under Sec. 3(a) of the Natural Gas Act ("NGA").

SeaOne requests this conference because the Department of Energy's Office of Oil and Gas (the "Office") and Office of Fossil Energy ("DOE/FE") have failed and continue to fail to fulfill their mandatory obligation under Sec. 3(a) of the NGA[1] to timely approve SeaOne's application for Sec. 3(a) export authority to NFTA countries (the "Application").

The issues that SeaOne wishes consider at conference are described in detail below.

I. Chronology and Summary of the Record

On September 18, 2015, SeaOne Gulfport, LLC ("SeaOne") filed an application with DOE/FE seeking authorization to ship a portion of the natural gas contained in Compressed Gas Liquid™ ("CGL") previously authorized for shipment to FTA countries by DOE Order 3555, to non-Free Trade Agreement ("NFTA") countries. The application under consideration here does not seek any approval for export volumes in addition to those already approved.

Not until seven months later, April 18, 2016, did DOE/FE finally publish a Federal Register Notice (the "Notice") providing the opportunity for public comment on the Application and the opportunity to intervene in the proceeding.. The Notice was erroneously listed under the misleading heading "Authorizations to Export Liquefied Natural Gas: SeaOne Gulfport, LLC." SeaOne

[1] It is important to note, as the Office of Oil and Gas has failed to understand, that DOE's jurisdiction here is only that provided by Sec. 3(a) of the NGA. Section 3(a) does not provide jurisdiction over CGL production facilities to either FERC or DOE. Sec. 3(e) of the Act applies only to LNG Terminals, and it is clear beyond argument that CGL is not LNG and thus the processing plant will not be an LNG terminal.

immediately and timely filed comments identifying the error and correctly describing the nature of the proceeding. As discussed in detail below, no comments opposing SeaOne's application were filed, and no party intervened in the proceeding.

After waiting for nearly a year for DOE/FE to act on this application for authority to ship to non-FTA countries, SeaOne filed, on August 5, 2016, a motion requesting expedited approval of the long-pending application, noting that the record in the proceeding is complete and there are no material issues outstanding – no third party has intervened in the proceeding, no comments opposing this specific project were submitted, and no request for additional procedures was filed, As the motion further notes, and as uncontroverted statements in the record show, the Gulfport Facility can and will be built and placed into operation pursuant to existing authority, and is economically sustainable under the FTA authorization (DOE Order 3555).

In DOE/FE Order No. 3905, issued October 17, 2016, DOE denied the motion for expedited approval, concluding that "SeaOne has not established that DOE/FE's approval of the proposed exports from the Gulfport Facility would be eligible for a categorical exclusion ("CATEX") under NEPA" and that, therefore, the agency is unable to decide at this time.[2] The Order did indicate that SeaOne was welcome to present additional evidence, which SeaOne subsequently provided

On December 9, 2016, SeaOne wrote the Assistant Secretary for Fossil Energy in an effort to correct the record, specifically noting that nothing in the record supported a conclusion that SeaOne's Gulfport Facility would not be built absent the issuance of the NFTA authorization, and presenting detailed evidence to the contrary, including contractual documents accounting for the full production of the Gulfport Facility based on the existing FTA Authorization. In that letter, SeaOne also discussed the extensive and ongoing environmental review that had previously been conducted by the Mississippi State Port at Gulfport and the U.S. Army Corps of Engineers, of the development plans for the Port of Gulfport, the site at which SeaOne's processing facility will be installed.

On December 23, 2016, the Office issued a letter ("the December 23 Letter"), again refusing to take action on SeaOne's application.

[2] There is no information in the record to support the position that the facility cannot be built unless the non-FTA authorization is issued and this argument was never advanced by DOE/FE prior to the closure of the record. SeaOne has presented evidence of Heads of Agreement and other commitments supporting the conclusion that the facility does not depend on any non-FTA authorizations to support the economics of the facility (Confidential and sealed Annex A is a partial summary of the status of SeaOne's progress in advancing the Port project. Please note that this is Confidential Business Information and not for circulation or distribution.).

II. Issues to be Resolved

1. DOE/FE cannot assert jurisdiction over CGL formulations that are not for the primary purpose of directly delivering conventional natural gas and CGL shipments reformulated in CAFTA nations.

SeaOne has consistently maintained that DOE does not have jurisdiction under the Natural Gas Act ("NGA") to regulate the export of CGL from the Gulfport facility. To the extent that CGL is subject to regulation under federal law, it is a petroleum product that is regulated by the Interstate Commerce Act ("ICA"). SeaOne's engagement with the Office on this issue commenced in the summer of 2013 with an informal meeting seeking guidance regarding the scope of DOE/FE's jurisdiction over CGL and the requirements for a grant of authority to export the product to FTA and non-FTA countries in the Caribbean. At that time, SeaOne was advised to engage with the Federal Energy Regulatory Commission ("FERC") to determine the need for facility approval under Sec. 303(e) of the Natural Gas Act.

In the following months, SeaOne engaged in extensive discussions with FERC staff. Based on those discussions and careful analysis of precedents, SeaOne concluded that, under the laws and regulations administered by FERC, CGL is not LNG; and SeaOne's production facility, when producing CGL with an HHV of more than 1200 Btu/scf, is neither an LNG plant under Sec. 3(e) nor a natural gas export facility subject to either Sec. 3 or Sec. 7 of the NGA.

In September 2013, following that consultation, SeaOne again sought guidance from the Office as to which CGL exports should be considered to constitute exports of natural gas requiring DOE authorization under Sec. 3 of the NGA.

Since the Office would not provide meaningful guidance, SeaOne, out of an abundance of caution, considered the assumption that DOE had jurisdiction over use of the CGL process for the primary purpose of exporting conventional natural gas (gas with an HHV of 1100 Btu/scf or less), and, on June 3, 2014, filed an application for authority to export to FTA countries.

On December 2, 2014, some six months later, the Office, citing its obligation to issue authorizations "without condition or delay" issued an authorization to export 1.5 Bcf per day of "natural gas contained in CGL" to FTA countries in the Caribbean.

The Order granting the authorization failed to address the issue of whether the Office would assert jurisdiction over CGL exported for the primary purpose of delivering gas liquids, high Btu gas/gas liquid mixtures or non-jurisdictional vehicle fuels. Further, without the prior notice to SeaOne required by DOE's regulations, and without any basis in the record, the authorization included a prohibition on re-export to non-FTA countries which, unless narrowly construed, violates the CAFTA treaty.

SeaOne's FTA (14-83-CGL, granted in DOE Order 3555) and NFTA applications were submitted, out of an abundance of caution once again, based on concerns by DOE that certain formulations of CGL may be utilized primarily as a means of transporting methane, and that such shipments could be treated as exports of natural gas. DOE has failed to meaningfully address this

issue, and unfortunately, SeaOne's efforts at good corporate citizenship have been met with delays, lack of clarity, and efforts to shoehorn CGL and the Gulfport Facility into existing and inappropriate regulatory frameworks, e.g. those specific to LNG facilities.

DOE/FE must therefore decline to exercise jurisdiction over shipments of CGL formulations which are not for the primary purpose of delivering conventional natural gas or over CGL shipments which are be reformulated in CAFTA nations.

2. DOE/FE does not have jurisdiction over the Gulfport Facility.

The Office's effort to connect the issuance of an order granting SeaOne's application for NFTA export authorization to review of the Gulfport Facility has no basis in either fact or law. Jurisdiction over natural gas import and export issues is divided between FERC and DOE. The Secretary of Energy has delegated to DOE/FE only responsibility for approving the actual import (including place of entry) and export (including place of departure) of gas[3] – DOE/FE has no facility jurisdiction. To the extent that the federal government exercises jurisdiction over facilities associated with the import or export of natural gas, it is FERC that exercises that jurisdiction.

FERC does not exercise jurisdiction over processing plants, even instances where they deliver conventional natural gas into interstate pipelines, nor has it exercised jurisdiction over the design, construction and siting of natural gas export terminal facilities except where a pipeline border crossing or LNG terminal is involved.[4] It is precisely because federal law provides limited jurisdiction over facilities related to natural gas exports and imports that authority to regulate LNG terminals was provided in the Energy Policy Act of 2005. That authority is limited specifically to LNG terminals, which the Gulfport Facility is not.

Nor, as discussed in detail below, does NEPA give DOE/FE authority to consider the environmental impacts of the proposed facility. First, the record is clear that there is no relationship between the grant of authority requested by SeaOne and the construction, design, or operation of the facility. Second, DOE/FE is required to consider and adopt into its planning any relevant existing planning and decisionmaking documents, which in this case, clearly indicate that further environmental review is unnecessary.[5] Nor does NEPA, a procedural statute, confer substantive jurisdiction that allows DOE/FE to order such a review.

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[3] Delegation Order No. 0204-112, 49 Fed. Reg. 6684 (Feb. 22, 1984); Delegation Order No. 00-004.00A, effective May 16, 2006.

[4] *See also See also Distrigas Corp. v. Federal Power Commission,* 495 F.2d 1057 (D.C. Cir. 1974) (Reaffirming the Court's holdings in *Border Pipe Line Company v. F.P.C.,* 84 U.S. App. D.C. 142, 171 F.2d 149 (1948) that the importation of natural gas is not "interstate commerce" and that Congress, in passing the Natural Gas Act, had distinguished between foreign and interstate commerce, and holding that the F.P.C. could assert facility jurisdiction over Distrigas' liquefied natural gas terminal, storage, regasification, and related facilities because Distrigas intended to introduce at least part of the imported gas into interstate commerce).

[5] § 1021.200 DOE planning. (d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

DOE/FE must therefore decline to exercise jurisdiction over the Gulfport Facility and grant the requested authorization without further delay or environmental review of the facility.

3. DOE/FE must grant the authorization unless it finds that the grant "will be inconsistent with the public interest." Given the state of the record, the issuance of approval in this case is non-discretionary and mandatory.

The Dec. 23 Letter states that the Department may not grant SeaOne's application unless DOE/FE finds that such grant is "not inconsistent with the public interest." In fact, the law states just the opposite: the DOE/FE *"shall"* approve the application "*upon application"* unless DOE/FE finds, "*after an opportunity for a public hearing,"* that the grant "*will be inconsistent with the public interest."*[6]

The Office's position stands in stark contrast to what the law requires. The December 23 Letter holds that DOE/FE staff cannot approve the application absent a finding that it is "not inconsistent with the public interest." By the plain language of the law, absent some basis for a finding, after an opportunity for a hearing, that the proposed export will be inconsistent with the public interest, DOE/FE *must* approve the application.

SeaOne filed the Application on September 18, 2015. After a significant delay, the Federal Register Notice opening the comment period on the Application was finally published on April 18, 2016. The comment period closed on June 17, 2016, with no party having objected to the Application or any evidence or statement presented therein, including the statements that no new exports would be authorized by granting the application and that no new construction would result from the granting of the requested authorization. The Application did receive significant expressions of support, a fact ignored in the December 23 Letter (and elsewhere by the Department). There is no basis in the record to support a conclusion that the Application will be inconsistent with the public interest, DOE/FE raised no such concerns when SeaOne filed the Application or at any point prior to or during the comment period, and DOE/FE did not provide SeaOne with the opportunity for the hearing required by the statute.

Absent a finding that grant of the requested authorization will be inconsistent with the public interest, the Department has no discretion to deny the application, but must instead immediately comply with its mandatory obligation to issue an authorization order.

4. DOE/FE is bound by the record of this case and cannot exercise discretion based on facts and issues outside the record.

Again the Department's regulations are unambiguous, and are in stark contrast to the legal position set forth in the December 23 Letter. 10 C.F.R. § 590.404 *Final opinions and orders,* requires that

> *The Assistant Secretary shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of*

[6] 15 U.S.C. § 717b(a).

findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.(emphasis added)

The comment period for record for the Application closed over seven months ago, and the record does not include, and the December 23 Letter does not (and cannot) identify an iota of evidence that the grant of the authorization might not be in the public interest. DOE/FE's mandatory obligation to issue the SeaOne's NFTA export authorization dates from June 17, 2016, the close of the comment period. The record does not include, from DOE/FE or any party or commenter, any expressions of concern regarding the viability of the Gulfport Facility or a suggestion that environmental review is appropriate or necessary. These topics were never raised by DOE/FE until the issuance of DOE/FE Order No. 3905 on October 17, 2016, over a year after the Application was filed, in an apparent latter-day effort to rationalize further unlawful delay in approval of the Application.

DOE/FE must issue a decision based solely on the information contained in the record and grant the authorization requested in SeaOne's application.

5. SeaOne's NFTA application is not a contested proceeding.

Although the Office appears to have receded from formal assertion of its position, relayed to counsel after the close of the comment period, that the receipt of a comment submitted through Regulations.Gov made this matter a "contested proceeding" under DOE's regulations (despite the fact that the comment was irrelevant to this matter, as it was a personal opinion specific to the submitter's opposition to LNG rather than any sort of opposition to CGL),[7] the Office's failure to recognize the mandatory and non-discretionary nature of its obligations hereunder may stem, at least in part, from the mistaken position that this matter is somehow "contested."

In fact, there were no interventions and no adverse comments filed in this proceeding and, immediately upon receipt of the Office's advice that it was treating this as a contested matter, on July 26, 2016, SeaOne Counsel submitted a detailed response conclusively rebutting the assertion that the proceeding had somehow become contested and requesting a meeting with DOE Counsel to discuss that matter. No response was ever received from the Office. And, somehow, none of the filings or correspondence on this issue were ever docketed or included in the record. Though SeaOne has interpreted this non-response as a backing away from the improper assertion that this proceeding somehow became "contested," it may be that the Office continues to treat it as such and that this may be the basis for the Office's continued refusal to meet its obligations under the Act. This would, of course be a complete violation of DOE's regulations as well as the statute itself.

No protest in opposition to SeaOne's application, and no notice of intervention or motion to intervene, was timely, or indeed ever, filed in response to the Notice in this matter. SeaOne is the sole party to the proceeding, which is therefore uncontested - this determination is a matter of law,

[7] The comment opposing LNG exports was likely a result of DOE/FE's erroneously classification of the Application in the FR Notice under "Authorizations to Export Liquefied Natural Gas."

not of agency discretion. DOE/FE should formally state its concurrence that the proceeding is uncontested and immediately approve SeaOne's application.

6. DOE/FE may not delay issuing an order based on an alleged lack of evidence that the Gulfport Facility will be completed absent DOE/FE's grant of SeaOne's NFTA export authorization.

The December 23 Letter states that "While [SeaOne] assert[s] that it is clear that the Gulfport Facility will be completed regardless of our action in this proceeding, we considered and rejected that assertion in Order No. 3905 . . . . To date, no new evidence has been submitted to contradict the conclusions reached in Order No. 3905 . . . ."[8]

This conclusion is not supported by evidence in the record.

First, contrary to the Office's assertion, SeaOne did, in fact, submit new evidence in response to Order No. 3905, meeting with the Assistant Secretary of Fossil Energy on December 9, 2016 and providing a detailed progress report on the Gulfport Facility, including Heads of Agreement reflecting contractual commitments, under the existing FTA authorization, more than sufficient to construct the Gulfport Facility. SeaOne has received very significant investment, has a firm commitment with the Port of Gulfport to utilize new tenant space at the Port, Front End Engineering and Design ("FEED") for the entire project has been completed, and bidding is underway for construction of the facilities and marine transports, and has offered to provide other documentation such as the FEED and contractual obligations for materials required for the installation of the Gulfport Facility (e.g., specialty pipe).

Furthermore, in its original June 3, 2014, application to export CGL to FTA countries, SeaOne stated that its CGL facility would be constructed based solely on SeaOne's initial provision of CGL-related services to the Dominican Republic, a FTA country. Neither DOE nor any party ever questioned this assertion, and indeed, subsequent events have proven that SeaOne fully intends to carry out these plans and is legally entitled to do so without any further authorization from DOE. Yet the Department still asserts, 16 months after SeaOne filed the Application and without providing any clarity as to what is allegedly required, that the Department's failure to fulfill its statutory obligations is somehow justified by insufficiency of evidence that the SeaOne Gulfport facility will be built whether or not the Department performs its duty.[9]

DOE's concern over SeaOne's ability to finance facility construction is both misplaced and irrelevant. Unlike the Deepwater Port Act, for example, nothing in the NGA authorizes DOE to consider or rule upon questions of financial viability particularly where, as here, there is nothing in the record to support any negative finding regarding that issue

SeaOne's NFTA application, like the FTA application, again noted that NFTA authorization was not a prerequisite to construction of the Gulfport Facility. This statement was again

[8] Dec. 23 Letter at 2.

[9] Id. ("We note that fashioning meaningful and effective terms and conditions depends on the cooperation of the applicant to submit information necessary for DOE to complete its public interest and NEPA reviews.").

unchallenged by either DOE/FE or any party. Despite the lengthy delay in publishing a Federal Register Notice inviting comments on the application and an extended time period for intervention or submission of comments or questions, neither DOE staff nor any other person raised any questions or concerns or submitted any evidence concerning the question of whether the Gulfport Facility would be constructed based on non-jurisdictional and/or previously authorized volumes. It was in the Publication of Order No. 3905 - over two years after SeaOne first described its business model to DOE/FE and over a year after the NFTA application was filed -- that the Department first raised doubts about construction of the Gulfport Facility as an alleged obstacle to acting on SeaOne's NFTA application, stating

> Even assuming that a decision on a non-FTA LNG export application would be eligible for a categorical exclusion on the grounds that authorized exports to FTA countries provide a sufficient commercial basis to finance and construct the proposed export facility (an issue we need not decide in this Order), SeaOne has provided no evidence that would allow DOE/FE to make that determination here. Indeed, SeaOne's most recent semi-annual report to DOE/FE on September 30, 2016 (submitted in compliance with its existing FTA authorization, see supra note 4) indicates that SeaOne has neither entered into contracts with buyers in FTA countries, nor made a final investment decision to construct the Gulfport Facility. These facts do not provide a basis to conclude that the Gulfport Facility will be constructed regardless of whether the pending non-FTA Application is granted.[10]

It is first important to note that this issue is irrelevant to DOE/FE's obligation to act on SeaOne's application. As discussed above, DOE/FE is required to issue the requested authorization unless it finds, based solely on information in the record, that the application will be inconsistent with the public interest. Nothing in the record supports such a conclusion, and DOE/FE, on which the burden of proof for such a finding lies, has no basis in the record for any assertion that the SeaOne project, which has received wide and well documented support and no opposition, will be inconsistent with the public interest.

Second, in addition to the fact that the semi-annual reports are not included in the record of this matter, this statement from Order 3905 is factually incorrect, or at least deliberately misleading. The semiannual report referenced in the Order includes information describing exactly the progress that would be expected at this point on the project timeline, including completion of FEED, bidding for construction, contract negotiations for delivery of hydrocarbons to the Gulfport Facility, and negotiations with additional customers (beyond those already previously reflected in semiannual reporting). Finally, the assertion that SeaOne has not entered into contracts is particularly disingenuous, as SeaOne already has in place executed Heads of Agreements ("HOAs") for volumes well in excess of what is needed for the construction of the Gulfport Facility. HOAs are the appropriate form of contractual document for this stage in the project's timeline, and had DOE/FE timely raised this concern, SeaOne could have simply provided the information. Instead, SeaOne was blindsided by this unexpected allegation, which has had serious consequences for the company.

[10] DOE/FE Order No. 3905 at 7.

There is nothing in the record to support a conclusion that SeaOne's Gulfport Facility will not be built absent authorization to ship to NFTA countries, a concern that was never raised by DOE/FE, or any other party, in the 28 months since DOE/FE granted SeaOne's FTA application with no apparent concerns about the project, in year that DOE/FE examined SeaOne's application, or during the notice and comment period for the application. To the contrary, the record does support a conclusion that the facility is sustainable based on shipments to U.S. territories and FTA countries, as SeaOne has and can continue to demonstrate and, in any case, DOE has no authority to consider question of financial capability in its decision on this particular issue.

Sec. 3 of the NGA Act requires that "the DOE shall issue such order upon application." SeaOne's application, together with a number of filings since the original application date and evidence submitted in response to the Office's assertion, all advance and support the conclusion that non-FTA authorization is irrelevant to the question of whether the facility will be built. The facility is legally authorized, SeaOne has committed to build it and no party, including the Office, has submitted any evidence to the contrary. As noted above the burden of proof on this issue falls on DOE. That burden has not been carried.

DOE/FE must therefore issue the requested authorization without any further delay.

7. The National Environmental Policy Act (NEPA) is not triggered by the Application or by the DOE/FE's issuance of the requested authorization.

The Office has apparently determined that the NEPA is applicable, without exception, to all decisions under Sec. 3 of the NGA. In fact, case law and the Department's own regulations clearly establish that NEPA is inapplicable to non-discretionary decisions, such as the Department's obligation to act on the Application. There is extensive and consistent case law establishing this legal precedent, e.g.:

> *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995): An environmental organization filed suit against the DOI, seeking to enjoin a logging company's construction of a logging road on a right-of-way crossing BLM's forestland. The environmental organization alleged that BLM failed to comply with NEPA's procedural requirements before allowing the construction. The court noted that NEPA is "triggered by a discretionary federal action" and that "case law is . . . forceful in excusing nondiscretionary agency action or agency 'inaction' from the operation of NEPA."
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> *South Dakota v. Andrus*, 614 F.2d 1190, 1193-94 (8th Cir. 1980): South Dakota sought to compel the DOI to prepare an EIS before issuing a mineral patent to a company. The court held that the issuance of a mineral patent was not a major federal action requiring an EIS. Specifically, the court held: "Ministerial acts . . . have generally been held outside the ambit of NEPA's EIS requirement. Reasoning that the primary purpose of the impact statement is to aid agency decisionmaking, courts have indicated that nondiscretionary acts should be exempt from the requirement . . . [I]t is at least doubtful that the Secretary's nondiscretionary approval of a mineral patent constitutes an 'action' under 102(2)(C)."

Consistent with case law, DOE's regulations specifically provide as follows:

10 C.F.R. § 1021.102, Applicability.

(a) This part applies to all organizational elements of DOE except the Federal Energy Regulatory Commission.

(b) This part applies to ***any DOE action*** affecting the quality of the environment of the United States, its territories or possessions. (emphasis added)

10 C.F.R. § 1021.104, Definitions.

(b) In addition to the terms defined in 40 CFR Part 1508, the following definitions apply to this part:

"*Action*" [emphasis added] means a project, program, plan, or policy, as discussed at 40 CFR 1508.18, that is subject to DOE's control and responsibility. Not included within this definition are ***purely ministerial actions with regard to which DOE has no discretion.*** (emphasis added)

The Department's mandatory and nondiscretionary decision to approve SeaOne's application is not an "action" under the law or DOE's regulations. Therefore, environmental review under NEPA is neither required nor authorized, and the question of whether the Federal Energy Regulatory Commission ("FERC") or DOE would lead such a review is moot.

Further. NEPA is a procedural statute, not a substantive statute, and cannot convey substantive jurisdiction where an agency otherwise has no such jurisdiction. Where there is no evidence in the record suggesting a connection between the requested federal action --the issuance of the export authorization - and the facility (over which DOE has no jurisdiction) then NEPA is inapplicable – there is no requirement (or authority) for an environmental review, the issuance of a CATEX, or even a negative declaration regarding NEPA. For these reasons, the Assistant Secretary must issue the requested authorization.

8. DOE/FE must accept the environmental reviews previously conducted by the Mississippi State Port at Gulfport and the U.S. Army Corps of Engineers as dispositive of any environmental issues associated with the granting of SeaOne's NFTA Application.

The Department's regulations clearly contemplate reliance on prior environmental reviews conducted by other governmental agencies as the basis for any consideration required by NEPA. Specifically the regulations require, at § 1021.200, *DOE planning*, that

(d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

Although SeaOne's NFTA application does not trigger NEPA review, as discussed in detail above, existing NEPA documents are available that provide extensive and current information relevant to the Gulfport Facility. The Office's communications with SeaOne reflect a continued

fundamental misunderstanding of the nature of the CGL process and the Gulfport Facility, and a continued refusal by the Office to identify, review, and adopt relevant planning and decisionmaking documents, as it is lawfully required to do.

The Gulfport Facility consists of modular equipment to be installed on an existing industrial site, Terminal 4 at the Port of Gulfport, Mississippi. Terminal 4 has been the subject of intensive and recent environmental review, specifically the December 2010 Environmental Assessment and Environmental Review Record, Community Development Block Grant Disaster Recovery Project, 24-ACRE FILL, NEW TENANT TERMINALS AND INFRASTRUCTURE MISSISSIPPI STATE PORT AT GULFPORT, MISSISSIPPI prepared For the Mississippi Development Authority ("MDA") by the Mississippi State Port at Gulfport (the "MSPA").

A finding of no significant impact ("FONSI") was issued pursuant to this EA, and, in reviewing the status of that finding as it pertains to the Gulfport Facility, the Director of the Port, in consultation with the Port's environmental consultants and the Mississippi Development Authority, has concluded that the SeaOne facility is consistent with the types of facilities addressed in the previous reviews and that no additional action or modification of that EA or FONSI is necessary in order to address SeaOne's Terminal 4 activities.

The December 2010 EA was an update of a prior, even more extensive environmental review, covering Phase II of Department of the Army Permit No. MS96-02828-U for the 84-Acre Fill Project at the Port of Gulfport. This permit required MSPA to perform a comprehensive and ongoing Mitigation Plan including, inter alia, the implementation of a comprehensive stormwater management plan for the Port, water quality enhancement features, restoration of wetlands, and a contribution of $1,000,000to the Mississippi Department of Marine Resources (MDMR) Coastal Preserve acquisition program. The installation and operation of the Gulfport Facility has been deemed consistent with this Mitigation Plan, and will be covered by and in compliance with the Port's numerous federal permits (Stormwater Pollution Prevention Plan, Coastal Zone Management Act, etc.). Extensive review of the site has already been accomplished, including, inter alia, transportation, historic preservation, floodplain management, wetlands management, sole source aquifers, endangered or threatened species, wild and scenic rivers, air quality, farmland protection, and environmental justice. Again, the Director of the Port has concluded that SeaOne's installation and operation are consistent with these existing studies, the only possible conclusion as the Gulfport Facility consists of equipment to be installed in an existing terminal at the Port to serve a function that is within the scope of activities contemplated at the time the EA and FONSI were processed.

Additionally, in connection with the Port of Gulfport's continuous and intensive environmental review process, the Corps of Engineers, in late 2015, prepared a Draft EIS for the Port of Gulfport Expansion Project and, at that time saw no need to augment or supplement the EA or FONSI documents discussed above.

NEPA is not triggered by the Application, and even assuming, *arguendo*, that the Office's public interest review implicates environmental issues in some way, extensive and complete environmental documentation regarding the Gulfport site, which the Office is required to review

and adopt, are available. DOE/FE must therefore immediately issue an order granting the requested authorization.

Conclusion

SeaOne has demonstrated great caution, patience, and prudence in its years-long efforts to work with the Department to ensure that there were no misunderstandings or oversights regarding its innovative new CGL technology, which objectively does not fit within the Department's existing LNG-focused regulatory framework. Unfortunately, the Office has not responded with clear and timely guidance, and its continued inaction on SeaOne's NFTA application could impede timely commitments to deploy this socially, environmentally, and economically important technology. As described in detail above, the Office has, without any justification in either law or policy, attempted to treat the proceeding as contested, introduced issues and facts not in the record, and an exercised *ultra vires* powers in an effort to rationalize continued inaction.

Proper analysis and reconsideration of the issues outlined in this motion should result in the immediate issuance of the requested authorization. SeaOne requests convening of a conference to accomplish the purposes within thirty days after the incoming Secretary of Energy takes office.

Pursuant to Section 590.103(b) of the DOE regulations, SeaOne hereby certifies that the undersigned is the duly authorized representatives of SeaOne.

Respectfully submitted this 23rd day of January, 2017,

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