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VIA ELECTRONIC MAIL

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U.S. Department of Energy
Office of the General Counsel
Regulatory.Review@hq.doe.gov

Re: Regulatory Burden RFI

Dear Mr. Cohen:

Cheniere Energy, Inc. ("Cheniere") submits the following comments in response to the Department of Energy's ("DOE" or "Department") request for information and comments concerning "Reducing Regulatory Burden" published in the Federal Register on February 3, 2011.¹

I. SUMMARY OF RESPONSE

Broadly speaking, and as explained in more detail below, Cheniere respectfully submits that the following DOE regulations impose unnecessary burdens, without real benefits:

- **Final Opinions and Orders²** – By neglecting to include a timeline by which the Assistant Secretary must issue a final order or outlining any specific milestones to explain the process by which the Department will come to a final decision on an application, this section burdens applicants by undermining predictability, creating uncertainty, and potentially stalling investments which in turn, reduces widespread economic benefits including job creation.
- **Interventions and Answers & Protests and Answers³** – By allowing third parties to intervene or protest at any time upon a showing of "good cause" without also requiring a showing of new or changed circumstances, these sections effectively provide third parties

¹ Department of Energy, Reducing Regulatory Burden, Request for Information 76 Fed. Reg. 23,6123 (Feb. 3, 2011).

² 10 C.F.R. § 590.404 (2010).

³ 10 C.F.R. §§ 590.303(a), 303(d), 304(e).

with the ability to intervene at any time prior to the issuance of a final order. The delay, uncertainty, and resources expended to respond to these motions and protests unnecessarily burdens applicants.

II. OVERVIEW OF CHENIERE ENERGY

Cheniere, a Delaware corporation, is a Houston-based energy company primarily engaged in the liquefied natural gas (“LNG”) business. Cheniere owns and operates the Sabine Pass LNG, L.P. (“Sabine Pass LNG”) receiving terminal in Louisiana through its ownership interest in and management agreements with Cheniere Energy Partners, a publicly traded partnership created in 2007. Cheniere also owns and operates the Cheniere Creole Trail Pipeline, which interconnects the Sabine Pass LNG receiving terminal with downstream markets. Cheniere is also currently in various stages of developing other receiving terminal and pipeline related projects.

III. CHENIERE’S RECENT DOE INTERACTIONS

Cheniere’s most recent interactions with DOE pertain to its application for authorization to export LNG under Part 590 of DOE’s regulations filed by its subsidiary, Sabine Pass Liquefaction, LLC, (“Sabine Pass Liquefaction”) and provide Cheniere the basis of knowledge with which it makes its comments/observations herein.

On September 7, 2010, Sabine Pass Liquefaction submitted an application with the DOE Office of Fossil Energy (“FE”) for long-term authorization to export LNG (“September 7 Application”). DOE FE published a notice of the September 7 Application in the Federal Register on October 12, 2010 (“NOA”). The NOA, which was not published until more than 30 days after the filing of the September 7 Application, established a 60-day public comment period closing on December 13, 2010. On December 17, 2010, DOE FE issued a procedural order accepting all timely filed letters, comments and motions to intervene and establishing a 15-day comment period to provide all parties an opportunity to respond to these pleadings. Sabine Pass Liquefaction subsequently filed a response to one timely-filed motion in opposition to the September 7 Application. On December 21, 2010, Governor Bobby Jindal of Louisiana filed a motion for an extension of time to file comments. Most recently, on March 4, 2011, yet another motion for leave to intervene out-of-time (and protest) was filed.

DOE FE has yet to approve the September 7 Application, nor has it provided a timeline for doing so.

IV. DOE REGULATIONS

DOE administrative procedures with respect to the import or export of natural gas can be found in Part 590 of DOE’s regulations, titled “Administrative Procedures with Respect to the Import and Export of Natural Gas.”⁴ Although the regulations are clear in describing the application process,⁵

⁴ 10 C.F.R. pt. 590.

⁵ 10 C.F.R. §§ 590.201–206.

the notice of application,⁶ the initial comment period,⁷ and the filing requirements of motions to intervene, protests, and answers to both,⁸ subsequent processes prior to DOE issuance of a final order are less clear.

The regulations require the Assistant Secretary to issue a final order based solely on the official record, but no timeline exists for the issuance of a final opinion or order, and no specific procedures or milestones exist to explain the process by which the DOE will come to a final decision on the application.⁹ Similarly, although the regulations provide for conditional or emergency interim orders prior to issuance of a final order, they do not clearly explain when the Assistant Secretary should utilize these procedures.¹⁰ The regulations also provide the Assistant Secretary with the authority to request additional procedures at “any time prior to the issuance of a final opinion or order,”¹¹ and allow the parties to request additional procedures at any time upon a showing of good cause.¹² Likewise, the regulations also allow third parties to intervene or protest at any time if good cause is shown.¹³

V. BURDEN IMPOSED BY DOE REGULATIONS

The current lack of clarity on the critical final stages of the application review process undermines predictability, public confidence, and the perception of procedural fairness. Moreover, the unlimited amount of time available for DOE to request additional procedures and make a final decision, and the effective ability of third parties to intervene or protest at any point prior to the DOE’s issuance of a final decision without the requirement that they show new or changed circumstances justifying such late intervention may work to unnecessarily stall strategic plans and investment, halt job creation, and generally extend the uncertainty felt by all involved.

For example, with respect to Cheniere’s pending application, the affected parties include:

- Cheniere Energy itself, its shareholders, investors and employees who are spending tens of millions of dollars developing this opportunity to export LNG and are prepared to spend \$6 billion to see it through.

⁶ 10 C.F.R. § 590.205.

⁷ *Id.*

⁸ 10 C.F.R. §§ 590.303–304.

⁹ 10 C.F.R. § 590.404.

¹⁰ 10 C.F.R. §§ 590.402–403.

¹¹ 10 C.F.R. §§ 590.206, 310.

¹² 10 C.F.R. § 590.310.

¹³ 10 C.F.R. §§ 590.303(a), 303(d), 304(e).

- The State of Louisiana and Cameron Parish who would receive enormous economic benefits from the investment, including the creation of 100-150 new direct long-term, skilled technical jobs and 3,000 peak construction jobs.
- Potential suppliers in the U.S., including Bechtel and GE who propose to dedicate substantial resources to this project.
- Potential customers around the globe who are all waiting to see if U.S. policy on natural gas will be consistent with its philosophical commitments to free trade.

VI. SUGGESTIONS

In light of the lack of clarity provided by the DOE regulations with respect to DOE's timeline and process for coming to a final decision on an application, Cheniere respectfully suggests that DOE amend its regulations for reviewing an application for import or export authorization. Cheniere's specific suggestions are outlined below.

Institute a Fixed Timeline¹⁴

Upon submission of an application for import or export authorization, DOE should consider instituting a date certain for issuance of a final order or opinion, or requiring the issuance of a conditional order (explaining the basis for not issuing a final order) upon the passage of a specific amount of time or the meeting of defined milestones. An official timeline would promote efficiency and predictability, thereby decreasing costs, unnecessary apprehension, and uncertainty.

Remove the Ability of Third Parties to Intervene or Protest Beyond the Date Fixed in the Notice Absent New or Changed Circumstances¹⁵

Although Cheniere remains supportive of DOE's commitment to public participation in the rulemaking process, the burdens associated with untimely motions to intervene or protest, including delay, uncertainty, and increased time and money spent by the Department and the parties responding to such motions, almost always outweigh the benefits. Thus, in order to maintain the efficiency and predictability of the application process, Cheniere respectfully recommends that DOE require a showing of new or changed circumstances as part of its requirement that "good cause" be shown in conjunction with the untimely filing of motions to intervene and protest. This change in the DOE regulations would not affect the parties' or Assistant Secretary's ability to request additional procedures, which Cheniere believes is more important than the ability of third parties to file untimely motions absent a showing of new or changed circumstances.

¹⁴ See, e.g., 10 C.F.R. §§ 590.404, 402.

¹⁵ See, e.g., 10 C.F.R. §§ 590.303(a), 303(d), 304(e).

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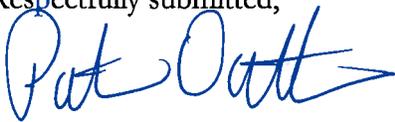
Establish Defined Milestones for the DOE FE Review and Decisionmaking Process¹⁶

To promote a greater understanding and thus enhance confidence in the system and decrease the uncertainty currently experienced by those that submit import or export applications to DOE FE, Cheniere respectfully recommends that DOE provide a more explicit explanation of the process it will follow in making a final decision on an application for authorization to import or export natural gas or LNG. DOE could accomplish this by issuing a set of guidelines that establish and define milestones in the DOE review and approval process. This would assist applicants in better understanding and gauging the status of their applications in the DOE review process. As discussed above, the establishment of a timeline for the review and approval process, including the establishment of milestones in that process, would enable an applicant and its investors to have a greater understanding of the review and approval process which, in turn, would help facilitate and encourage investment decisions.

VII. CONCLUSION

We appreciate the opportunity to submit information and comments to the Department to support its efforts to implement Executive Order 13563, "Improving Regulation and Regulatory Review." Should you wish to discuss these comments further, please contact Patricia Outtrim at 713-375-5212 or pat.outtrim@cheniere.com.

Respectfully submitted,



Patricia Outtrim
Vice President, Government & Regulatory Affairs
Cheniere Energy, Inc.

¹⁶ See, e.g., 10 C.F.R. § 590.404.