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THE LAKE CHARLES HARBOR AND
TERMINAL DISTRICT
Claimant

VERSUS DOCKET NO. 06-02

WEST CAMERON PORT, HARBOR
AND TERMINAL DISTRICT
Respondent

****

REPLY OF RESPONDENT WEST CAMERON PORT, HARBOR AND TERMINAL DISTRICT TO THE APPEAL FROM ORDER DISMISSING COMPLAINT

Respondent West Cameron Port, Harbor and Terminal District ("West Cameron") respectfully submits this Reply pursuant to Rule 227(b)(2) to the "Appeal from Order Dismissing Complaint" filed by Complainant Lake Charles Harbor and Terminal District ("LC Port"). For the reasons set forth herein, the Ruling on Motion to Dismiss the Complaint of Judge Kenneth Krantz was correct and should be upheld by the Commission. LC Port failed to satisfy its burden of establishing the subject matter jurisdiction of the Commission.

Factual Background

West Cameron provides a complete factual background of the statutory provisions governing it and LC Port as well as a discussion of the transactions questioned in this proceeding. Briefly, West Cameron and LC Port are political subdivisions of the State of Louisiana. The territorial jurisdiction of West Cameron[1] is due south of the territorial jurisdiction of LC Port.[2]

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[1] La. R.S. § 34:2551.
[2] La. R.S. § 34:201.

Both West Cameron and LC Port were created by and are governed by Louisiana state law. The most pertinent statute in West Cameron's enabling statutes is La. R.S. § 34:2556 which provides:

> Anything in this Chapter to the contrary notwithstanding, the commission shall **not** assess, levy, or charge any fee, rate, tariff or other charge on any person, vessel, watercraft or cargo **on account of passage through the district** unless such person, vessel, watercraft or cargo makes use of the facilities or services of the commission. The commission shall not by rule, regulation or other act require the use of the facilities or services of the commission.

(emphasis added). Note that LC Port's allegations in its Complaint allege activities which would be in direct violation of La. R.S. § 34:2556 and that LC Port has never sought injunctive relief or damages for any alleged violation of La. R.S. § 34:2556.

The real background for LC Port's Complaint was to "raise the stakes" with respect to a state court action which West Cameron filed against LC Port in December 2005. The indicated background for LC Port's Complaint was West Cameron's negotiations with Cheniere LNG for the construction of two terminals to be located in Cameron Parish, namely Sabine Pass LNG and Creole Trail LNG. Neither terminal has been built and vessels that will be accessing Sabine Pass LNG facilities cannot physically access LC Port territory. With respect to the Creole Trail LNG facility, Cheniere originally optioned property owned by West Cameron to locate that facility. The West Cameron property was not large enough for the facility so Cheniere secured options to lease other contiguous property. Cheniere subsequently decided to construct the Creole Trail LNG facility on other, non-West Cameron owned property. In furtherance of its business objectives, Cheniere agreed to exercise the option and lease the property of West Cameron if in fact it proceeded with its Creole Trail project on the alternate location.

The rental for that property, which again will not be used for the Creole Trail LNG facility, was computed on a basis of $1,000 per vessel berthing at the non-West Cameron owned facility. This charge is a function of real property rental and is not assessable to any vessel bound for LC Port facilities or any vessel berthing at any other facility as those vessels/entities are not parties to the lease.

West Cameron and Cheniere could have agreed upon a different unit of rental but the fact that West Cameron and Cheniere agreed as they did does not mean that West Cameron necessarily now meets the definition of a marine terminal operator as LC Port is arguing.[3] The LNG facilities will be wholly owned and operated by Sabine Pass LNG and Creole Trail LNG.

As discussed in the original Memorandum in Support of Motion to Dismiss, West Cameron compared the terms of its agreements with Cheniere to LC Port's February 1999 agreement with Cameron LNG for the construction of a terminal in LC Port-owned property located outside of its territorial jurisdiction and within West Cameron territory. LC Port's February 1999 agreement was not filed with the Commission until January 30, 2006. By letter dated February 15, 2006, the Commission returned the lease to Michael K. Dees, general counsel for LC Port and counsel of record in this matter, wherein the Bureau of Trade Analysis stated that **LC Port** "indicated that Cameron LNG would be using the facilities exclusively to berth and discharge LNG tankers and that Cameron LNG is not, itself, a common carrier. Based upon your representations, it would appear that the referenced lease is not between two persons that fall under the Commission's

[3] At the risk of belaboring the point, the Cheniere facilities have not been built so no rental has yet been paid.

jurisdiction." (February 11, 2006, letter, Exhibit 6 to West Cameron's April 10, 2006, Supplemental Brief).

Procedural Background

On January 24, 2006, LC Port filed its Complaint against West Cameron with the Commission. An Amended Complaint was filed on January 30, 2006. LC Port alleged that West Cameron was in violation of Section 10(d)(1)[4] of the Shipping Act of 1984 (unjust and unreasonable practices), Section 10(d)(4)[5] (imposition of unreasonable prejudice or disadvantage), and Section 5(a)[6] (failure to file marine terminal operator agreement). Specifically, LC Port alleged that West Cameron was threatening to impose charges on its tenants, notwithstanding the clear statutory prohibition proscribing doing so, "By its threats of imposing the wharfage fees upon Lake Charles' tenants, West Cameron has threatened to disrupt operation in Lake Charles and will cause tenants of Lake Charles to incur substantial additional expenses in connection with the shipment of cargo to and from the port." (Complaint at ¶ 27). Also, and again notwithstanding the statutory impediment quoted above, LC Port further alleged:

> In view of this threat, companies with vessels calling at Lake Charles, including CITGO, Conoco, Sempra, and Trunkline, are working under the pall of the threat that the charge may—at any moment—be imposed on all of them; i.e., the existing pattern of charges shown in the Cheniere agreements is only the tip of an iceberg. The threat is real, because West Cameron is in a position to extract tribute from every vessel that passes through Cameron Parish on its way to/from the Port of Lake Charles.

(Complaint at ¶ 2).

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[4] 46 U.S.C. App. § 1709(d)(1).
[5] 46 U.S.C. App. § 1709(d)(4).
[6] 46 U.S.C. App. § 1704(a).

In response, West Cameron filed a Motion to Dismiss alleging a lack of subject matter jurisdiction on the part of the Commission on the grounds that (1) West Cameron did not fit the definition of "marine terminal operator" as defined under the Shipping Act, Commission regulations, and applicable case law, (2) Liquefied Natural Gas terminals do not fit the definition of marine terminal operator, and (3) LNG vessels carrying LNG are not "common carriers" as defined under the Shipping Act and Commission regulations. West Cameron also specifically alleged the La. R.S. 34:2556 prohibition on assessing charges on vessels for merely passing through its jurisdiction, no "wharfage" as alleged by LC Port has ever been assessed or collected, no LNG terminal has even been constructed yet in Cameron Parish, and that the agreement between West Cameron and Cheniere LNG was exempt under 46 U.S.C. § 535.310,[7] assuming that West Cameron was a marine terminal operator. In support of that Motion, West Cameron attached and referred to the following evidence:

Exhibit 1	Affidavit of Cliff Cabell, President of West Cameron Port Commission
Exhibit 2	Affidavit of Howard Romero, member of West Cameron Port Commission
Exhibit 3	Copy of the Cash Sale and Assignment of Lease whereby LC Port acquired the 215 acres in Cameron Parish
Exhibit 4	Third Amendment to Surface Lease
Exhibit 5	Second Amendment to Surface Lease

[7] 46 U.S.C. § 535.310 provides an exemption from filing for certain marine terminal facilities agreements:

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, that conveys to any of the involved parties any rights to operate any marine terminal facilities by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of the Act and this part.

(emphasis added).

Exhibit 6	Petition filed in *West Cameron Port, Harbor and Terminal District v. Lake Charles Harbor and Terminal District*, Docket No. 10-17271, --38th Judicial District Court, Cameron Parish, Louisiana
Exhibit 7	Memorandum of Understanding dated October 27, 2003, between West Cameron and Sabine Pass LNG
Exhibit 8	Option to Lease
Exhibit 9	First Amendment to Option to Lease
Exhibit 10	West Cameron's position paper to Attorney General of Louisiana addressing its position regarding LC Port's purchase of property outside of its statutorily defined boundaries

On March 6, 2006, LC Port filed its Reply in Opposition of Lake Charles Harbor and Terminal District to Motion to Dismiss. Instead of attaching evidence to defeat West Cameron's factual challenge to subject matter jurisdiction,[8] LC Port instead rested on the allegations of its Complaint. *Not a single affidavit or any evidence for that matter was submitted with the reply.*

Also on March 6, 2006, LC Port filed a Motion to Compel Production of Documents and Answers to Interrogatories seeking West Cameron's response to the initial discovery served with the Complaint. West Cameron resisted that motion, filing a Motion for Protective Order to Stay Discovery Pending Resolution of Motion to Dismiss on March 9, 2006, and citing the general federal standard allowing courts to restrict or limit discovery while a dispositive motion is pending. By ruling dated March 16, 2006, Judge Krantz ordered West Cameron to respond to LC Port's discovery requests. Judge Krantz also deferred ruling on West Cameron's Motion to Dismiss and allowed supplemental briefing on the Motion to Dismiss. In response to Judge Krantz's order, West Cameron produced 1,011 pages of documents in response to LC Port's requests.

[8] West Cameron stated the respective burdens of parties moving for and responding to motions to dismiss on grounds of lack of subject matter jurisdiction. *See* Memorandum in Support of Motion to Dismiss at 14-15 n. 10.

However, **after** Judge Krantz denied West Cameron's Motion for Protective Order, LC Port filed its reply thereto four days later "in order to assist in creating a complete record on this issue." (Reply at 1 n. 1). In that reply, LC Port characterized West Cameron as "a frantic, cornered rat scurrying hither and yon filing meritless papers, rather than addressing the substance of the Lake Charles claim" as well as filing "a light-weight motion." (Reply at 2).

That same day, LC Port filed a Motion for Partial Summary Judgment seeking an order that West Cameron "does not provide wharfage, dock, or warehouse facilities." (Motion for Partial Summary Judgment at 1). Also filed therewith, for reasons known only to LC Port, was a Motion for Reduction of Time seeking an order reducing the 15 day period for replies to five calendar days.

West Cameron replied to LC Port's Motion for Reduction of Time on March 21, 2006. West Cameron brought to Judge Krantz's attention the discourteous and highly offensive language used by LC Port in its **moot** reply to West Cameron's Motion for Protective Order and that such language flew in the face of any proper sense of decorum. As for the merits of the Motion, West Cameron argued that LC Port failed to provide any overriding or compelling reason to deviate from Commission procedural rules. By ruling dated March 22, 2006, Judge Krantz denied LC Port's Motion for Reduction of Time.

West Cameron filed its Reply to LC Port's Motion for Partial Summary Judgment on April 5, 2006. West Cameron argued that the Motion was premature and defective in that summary judgment was inappropriate to single out limited factual issues but rather was only proper for the disposal of claims or defenses. Judge Krantz agreed in an April

6, 2006, ruling wherein he denied LC Port's Motion for Partial Summary Judgment and referred this matter to mediation.[9]

West Cameron filed its supplemental brief as permitted by Judge Krantz's March 16, 2006, order on April 10, 2006, and attached thereto the following exhibits:

Exhibit 1	Timeline chronicling, *inter alia,* LC Port's conduct and activities subsequent to the filing of West Cameron's state court action
Exhibit 2	Affidavit of Mr. A.W. Prebula, plant manager of the CITGO Petroleum Corporation Lake Charles Manufacturing Complex attesting that West Cameron had never attempted to impose a charge or fee on CITGO, a LC Port tenant
Exhibit 3	Affidavit of Mr. E. Darron Granger attesting to the characteristics of LNG vessels
Exhibit 4	Letter of Mr. Charif Souki, Chairman of Cheniere LNG wherein Cheniere readily consented to the $1,000 per vessel rental arrangement
Exhibit 5	LC Port's Motion to Intervene in the Cheniere LNG Federal Energy Regulatory Commission proceeding
Exhibit 6	February 15, 2006, Commission letter to Michael K. Dees, general counsel for LC Port, returning LC Port's lease with Sempra as "Not Subject" to Commission jurisdiction

What is most noteworthy about West Cameron's supplemental brief was that it again set forth LC Port's burden on jurisdiction.[10] West Cameron also discussed the inconsistency between LC Port's prior positions as represented to the Commission when LC Port filed its lease with Cameron LNG/Sempra **the same day** it filed its Amended Complaint. LC Port's filing of its lease was **over three years** after execution. The Memorandum of Understanding whereby West Cameron and Cheniere agreed upon the $1,000 per vessel rental term and on which LC Port's Complaint is based was dated October 27, 2003, **over two years** prior to the filing of the instant Complaint.

[9] This matter was not, in fact, mediated.

[10] West Cameron devoted three full pages of discussion to LC Port's burden and its failure to provide any evidence in furtherance of satisfying that burden. *See* Supplemental Brief at 4-6.

That same day, LC Port filed its supplemental brief. LC Port again rested on the allegations of its Complaint and stated unequivocally that "[t]he Commission indisputably has jurisdiction over West Cameron in this matter." (Supplemental Brief at 2). Again, notwithstanding the repeated citation of La. R.S. 34:2556 by West Cameron that it is impotent under state law to do what LC Port has alleged and which LC Port has conveniently ignored and the submission of the affidavits of Messrs. Cabell and Romero, LC Port attached the following evidence to its supplemental brief:

Exhibit A	Louisiana Attorney General opinion declining to opine on LC Port's retention of special counsel in this matter without prior Attorney General approval
Exhibit B	February 22, 2006, resolution of West Cameron Port Commission
Exhibit C	Handwritten notes and emails of undersigned counsel produced by West Cameron
Exhibit D	March 28, 2006, resolution of West Cameron clarifying the term "wharfage" as being as being a term of rental
Exhibit E	February 15, 2006, Commission letter to Michael K. Dees, general counsel for LC Port, returning LC Port's three-year-old lease with Sempra as "Not Subject" to Commission jurisdiction
Exhibit F	Internet website printout outlining the government of Cameron Parish
Exhibit G	Aerial photograph of a FEMA trailer park

Once again, LC Port never submitted any affidavit in furtherance of its burden of establishing subject matter jurisdiction. Many of the above listed exhibits are not remotely relevant to anything, much less the threshold issue of Commission jurisdiction. The most that could be said about LC Port's exhibits was that they could possibly be pertinent to the *merits* of its claims. None of those exhibits can realistically be interpreted as suggesting that West Cameron is a marine terminal operator, that an LNG terminal is a marine terminal operator, or that an LNG vessel is a common carrier.

LC Port apparently took issue with West Cameron's supplemental brief and filed a reply to it on April 13, 2006. It again instead referred to matters and documents

irrelevant to the jurisdictional inquiry—this time extensive quotation from West Cameron's August 26, 2005, letter to the Louisiana Attorney General regarding the ongoing dispute between LC Port and West Cameron pertaining to the parties' respective rights *under state law*, undersigned counsel's letter to the Attorney General responding to LC Port's letter which was already attached by West Cameron as Exhibit 10 to its Motion to Dismiss (Exhibit B to LC Port's reply), and to the timeline which West Cameron had attached as Exhibit 1 to its supplemental brief (Exhibit C to LC Port's reply). *Yet again, LC Port failed to attach any affidavit or anything for that matter addressing the jurisdictional questions raised by West Cameron.* In effect, West Cameron's affidavits were undisputed and uncontroverted and LC Port made no attempt at arguing that they were in any fashion inaccurate.

On May 4, 2006, LC Port noticed the depositions of Howard Romero, Cliff Cabell, Charles Terry Hebert and Ricky Poole, all members of the West Cameron Port Commission. West Cameron immediately filed on May 10, 2006, a Motion to Quash Depositions seeking the quashing of those four depositions. LC Port replied on May 12, 2006, presumptively asserting, "Regardless of the presiding judge's ruling on the motion to dismiss, it is appropriate for Lake Charles to continue to develop the record." (Reply at 4). West Cameron filed a supplemental brief on May 16, 2006, summarizing its position with respect to LC Port's incessant demands for full blown discovery on the merits while failing to submit so much as one single affidavit or any other evidence supporting subject matter jurisdiction:

> West Cameron does not dispute that LC Port is entitled to reasonable discovery to prove its case. West Cameron does dispute that LC Port should be permitted unbridled authority to explore the full extent of the merits of its Shipping Act claims while West Cameron's Motion to

> Dismiss is pending. If LC Port's allegations are as clear cut and West Cameron's acts as egregious as it alleges, it could have produced at least a scintilla of evidence, be it an affidavit from one of its tenants allegedly being extorted, harassed, hustled or threatened by West Cameron without constantly stating that it now needs depositions of members of the West Cameron Port Commission. The relationships between West Cameron and Cheniere are completely embodied within the contracts between the two parties, which are before the Presiding Judge. Cheniere provided an affidavit [of Darron Granger] which substantiates that all charges provided for in these contracts were voluntary and that they were agreed to by Cheniere in exchange for considerations to be received by Cheniere under the contracts. If there is any substance to LC Port's allegations, it would have behooved it to attach to its numerous filings evidence from West Cameron's 1,011 page production or proof (of any sort) from its "extorted" tenants. Instead, LC Port attaches correspondence regarding special counsel compensation and retention issues under Louisiana law and a photo of a FEMA trailer park, none of which are remotely germane to the issue of Commission jurisdiction.

(May 16, 2006, supplemental brief at 1-2). LC Port filed a reply to this brief the next day, yet again focusing not on the issue of subject matter jurisdiction but rather accusing West Cameron of dilatory tactics.

By ruling dated May 18, 2006, Judge Krantz granted West Cameron's Motion to Quash Depositions. Judge Krantz succinctly and correctly stated the posture of this matter as it pertains to the necessity of discovery as LC Port had been demanding:

> Both parties were offered the opportunity to supplement their original briefs on the motion after documentary discovery was provided, and both parties did so. **The pending motion to dismiss is addressed to the threshold legal of the Commission's jurisdiction.** Both sides have presented documentary evidence to support their positions on this issue.
>
> If the pending motion is denied, depositions for testimony on the merits can be scheduled. **However, it is inefficient and unnecessary to conduct those depositions now, while a motion is pending that would, if granted, render them moot.**

(emphasis added).

On June 7, 2006, Judge Krantz issued his ruling granting West Cameron's Motion to Dismiss wherein he made specific reference to LC Port's repeated demands for depositions of West Cameron officials as well as oral argument:

> However, the evidence to address the points relating to subject matter jurisdiction was at least as available to LC as it would have been after deposition of officials of WC. LC includes LNG companies among its tenants. If WC's affidavit concerning the characteristics of LNG terminals and ships were inaccurate LC could rebut them with affidavits from other industry experts, who could speak with far more authority on the nature of terminals and vessels than could the WC officials that it sought to depose.
>
> Furthermore, the firms that operate within LC's territory are alleged to be under threat of extortion by imposition of tolls by WC. If any of them have been thus threatened they could provide affidavits to say so and assist LC in relieving them of an expense that would be both burdensome and a violation of Louisiana state law. On the record presented none has said so and one (Exhibit 2, WC Supplemental Brief) has expressly denied it.

LC Port has appealed that ruling. As discussed below, Judge Krantz's decision was correct and should be upheld.

Law and Argument

I. Introduction

The threshold issues raised in West Cameron's Motion to Dismiss were whether West Cameron is a marine terminal operator, whether LNG terminals are marine terminal operators, and whether LNG vessels are common carriers. If the answer is "no" as to any of these three prongs, there is no jurisdiction. Judge Krantz ruled like he did based upon the evidentiary record before him. LC Port made no attempt to satisfy its burden of establishing subject matter jurisdiction. Contrary to LC Port's attempt to satisfy its burden by relying on its allegations, which does not suffice as discussed below, the only reasonable conclusion that can be reached is that LC Port failed to satisfy its burden.

Additionally, LC Port's arguments that it was prevented from fulfilling its burden by not being allowed to take depositions and other full-blown discovery finds no basis in law or common sense.

II. LC Port's Erroneous Reliance on its Own Allegations

The fundamental flaw in LC Port's argument that Judge Krantz's ruling is incorrect is that it premises its legal argument upon its own allegations in its Complaint. (*See* Appeal at 2-3). In other words, LC Port is relying upon its allegations and assertions as fact in arguing that Judge Krantz's ruling is incorrect. When a factual attack is made, a court is free to reject a plaintiff's allegations and evaluate subject matter jurisdiction for itself:

> Because at issue is a factual 12(b)(1) motion is the trial court's jurisdiction its very power to hear the case there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. **In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.** Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist.

Mortensen v. First Fed. Savings & Loan Ass'n, 549 F.2d 884, 891 (3rd Cir. 1977) (emphasis added). *Mortensen* is by no means anomalous. *See generally Montez v. Dep't of Navy*, 392 F.3d 147, 149 (5th Cir. 2004); *Morrison v. Amway Corp.*, 323 F.3d 920, 925 (11th Cir. 2003); *Spirit Lake Tribe v. N. Dakota*, 262 F.3d 732, 744 (8th Cir. 2001); *Carpet Group Int'l v. Oriental Rug Importers Ass'n, Inc.*, 227 F.3d 62, 70 (3rd Cir. 2000); *Cameron v. Children's Hosp. Med. Ctr.*, 131 F.3d 1167, 1170 (6th Cir. 1997); *Armitage v. U.S.*, 22 Cl. Ct. 767, 772-73 (Cl. Ct. 1991); *Ritza v. Int'l Longshoremen's & Warehousemen's Union*, 837 F.2d 365, 369 (9th Cir. 1988); *W. Transp. Co. v. Couzens Warehouse & Distribs., Inc.*, 695 F.2d 1033, 1038 (7th Cir. 1982).

The Second Circuit has also provided that "a party opposing a Rule 12(b)(1) motion cannot rest on the mere assertion that factual issues may exist." *Exchange Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1131 (2nd Cir. 1976). That same circuit has also stated that a favorable inference from a plaintiff's pleadings cannot be even be made, "But when the question to be considered is one involving the jurisdiction of a federal court, jurisdiction **must be shown affirmatively**, and that **showing is not made by drawing from the pleadings inferences favorable to the party asserting it**." *Shipping Fin. Servs. Corp. v. Drakos*, 140 F.3d 129, 131 (2nd Cir. 1998) (emphasis added). Thus, LC Port was required to submit evidence separate and apart from its allegations to support is claim of subject matter jurisdiction.

III. West Cameron's Motion to Dismiss was a "Factual Attack" on LC Port's Assertion of Commission Subject Matter Jurisdiction

Since West Cameron did not merely contest LC Port's allegations of subject matter jurisdiction but instead submitted affidavits and other documentary evidence, its challenge of Commission jurisdiction was a "factual attack." The Ninth Circuit in *Trentacosta v. Frontier Pac. Aircraft Indus.*, 813 F.2d 1553, 1558-59 (9th Cir. 1987), provided the generally accepted framework whereby a factual attack is analyzed:

> **A moving party is entitled to prevail as a matter of law if the nonmoving party fails "to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof."** *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). When a defendant files a motion to dismiss for lack of subject matter jurisdiction on the ground he is not a Jones Act employer, the plaintiff has the burden of proving that the defendant is an employer within the meaning of the statute. *Rodriguez*, 703 F.2d at 1072. If a defendant files a "speaking motion" to dismiss for lack of subject matter jurisdiction, as appellees did here, the plaintiff "cannot rest on the mere assertion that factual issues can exist." *Exchange Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1131 (2d Cir. 1976) (cited with approval in *Thornhill Publishing Co.*, 594 F.2d at 733). **He must**

come forward with evidence outside his pleadings to support his jurisdictional allegation. *Exchange Nat'l Bank*, 544 F.2d at 1131; 5 C. Wright & A. Miller, *Federal Practice and Procedure*, § 1363, at 653-54 (1969). As stated by Wright & Miller:

> If [a motion to dismiss for lack of subject matter jurisdiction] simply challenges the sufficiency of the allegations of subject matter jurisdiction, then the pleading's contents are taken as true for purposes of the motion. However, if it challenges the actual existence of subject matter jurisdiction, then the pleading's allegations are merely evidence on the issue. **Since the party invoking the federal court's jurisdiction has the burden of proving the actual existence of subject matter jurisdiction, regardless of the pleading's allegations, the courts have held that the pleader must establish with evidence from other sources, such as affidavits or depositions.** The general rule, therefore, is that a pleading's allegations of jurisdiction are taken as true unless denied or controverted by the movant. Thus, if the movant fails to contradict the pleader's allegation of subject matter jurisdiction, in his motion to dismiss [for lack of subject matter jurisdiction], the he is presumed to be challenging the pleading's sufficiency under Rule 8(a)(1), and the allegations of the pleading pertaining to jurisdiction are taken as true. But if the movant, either in his motion or in any supporting materials, denies or controverts the pleader's allegations of jurisdiction, then he is deemed to be challenging the actual existence of subject matter jurisdiction, and the allegations of subject matter jurisdiction, and the allegations of the complaint are not controlling.

Id. (footnotes omitted).

The requirement that the nonmoving party present evidence outside his pleadings in opposition to a motion to dismiss for lack of subject matter jurisdiction is the same as that required under Rule 56(e) that the nonmoving party to a motion for summary judgment must set forth specific facts, beyond his pleadings, to show that a genuine issue of material fact exists. *Celotex Corp.*, 106 S. Ct. at 2553; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); *Matsushita Electric Industrial Co., v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

> In his opposition to the defendants' motion to dismiss for lack of subject matter jurisdiction, Trentacosta did not present any evidence outside his pleadings to show that the vessel defendants were his employers within the meaning of the Jones Act. The defendants' motion to dismiss and supporting evidentiary papers challenged the existence of facts which were alleged to provide subject matter jurisdiction and presented evidence which supported their contention that Trentacosta was not the employee of any defendant (except perhaps Aero).
>
> We conclude that the district court properly dismissed Trentacosta's Jones Act claim against all defendants except Aero.

(modification in original & emphasis added). *See also New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1498-99 (10th Cir. 1995); *U.S. ex rel. Phipps v. Comprehensive Cmty. Dev. Corp.*, 152 F. Supp. 2d 443, 448-49 (S.D.N.Y. 2001). Here, LC Port did not submit any evidence outside of its pleadings to show that West Cameron is a marine terminal operator, that LNG terminals are marine terminal operators, or that LNG vessels are common carriers.

IV. LC Port Had to Submit Affidavits and Other Evidence in Response

When a defendant mounts a factual attack on a plaintiff's allegations of subject matter jurisdiction and attaches affidavits and other documentary evidence, the burden rests on the plaintiff to provide countervailing affidavits and other documentary evidence in response. Courts construe the requirement of providing countervailing evidence as mandatory:

> Because the filing requirements at issue in this case are jurisdictional, it is the plaintiff's burden to establish that they have been met. Moreover, when the party moving for dismissal under Rule 12(b)(1) challenges the factual basis for jurisdiction, the nonmoving party (i.e., the plaintiff) **must** submit affidavits and other relevant evidence to resolve the factual dispute regarding the court's jurisdiction.

Kontos v. U.S. Dep't of Labor, 826 F.2d 573, 576 (7th Cir. 1987) (emphasis added & citations omitted). The Ninth Circuit also requires such a showing:

> It then becomes **necessary** for the party opposing the motion to **present affidavits or any other evidence** necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction. The district court obviously does not abuse its discretion by looking to this extra-pleading material in deciding the issue, even if it becomes necessary to resolve factual disputes.

St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989) (emphasis added). *See also U.S. ex rel. Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 797-98 (10th Cir. 2002) ("Stone must therefore sustain 'the burden of alleging the facts essential to show jurisdiction and supporting those facts with competent proof.'"); *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981) ("In the latter case a plaintiff is also required to submit facts through some evidentiary method and has the burden of proving by a preponderance of the evidence that the trial court does have subject matter jurisdiction."). Not only did LC Port fail to submit affidavits or any other evidence suggestive of subject matter jurisdiction to its reply to West Cameron's Motion to Dismiss, it failed to do so in its numerous supplemental briefs as well even after being reminded of its burden at every instance.

V. LC Port Never Controverted West Cameron's Factual Attack

As outlined in the procedural history discussion above, LC Port never submitted an affidavit controverting any statement in any of West Cameron's affidavits; in fact, LC Port did not submit a single affidavit on anything. Thus, on the record presented to Judge Krantz, the only evidence submitted on the jurisdictional issues raised by West Cameron was what was submitted by West Cameron. As such, pursuant to the reasoning in *Trentacosta*, West Cameron was entitled to dismissal of LC Port's Complaint. In its numerous filings, LC Port attached the following exhibits (note again that no exhibits were attached to its original Reply):

- Louisiana Attorney General opinion declining to opine on LC Port's retention of special counsel in this matter without prior Attorney General approval (Exhibit A to April 10, 2006, Supplemental Brief);
- February 22, 2006, resolution of West Cameron Port Commission (Exhibit B to April 10, 2006, Supplemental Brief);
- Handwritten notes and emails of undersigned counsel produced by West Cameron (Exhibit C to April 10, 2006, Supplemental Brief);
- March 28, 2006, resolution of West Cameron clarifying the term "wharfage" as being as being a term of rental (Exhibit D to April 10, 2006, Supplemental Brief);
- February 15, 2006, Commission letter to Michael K. Dees, general counsel for LC Port, returning LC Port's three-year-old lease with Sempra as "Not Subject" to Commission jurisdiction (Exhibit E to April 10, 2006, Supplemental Brief);
- Internet website printout outlining the government of Cameron Parish (Exhibit F to April 10, 2006, Supplemental Brief);
- Aerial photograph of a FEMA trailer park (Exhibit G to April 10, 2006, Supplemental Brief);
- LC Port's August 1, 2005, letter to Louisiana Attorney General's Office discussing LC Port's claims *under state law* to purchase property beyond its jurisdiction (Exhibit A to April 13, 2006, Reply to West Cameron's Supplemental Brief);
- West Cameron's August 26, 2005, letter to Louisiana Attorney General's Office discussing West Cameron's rights under state law relative to LC Port's purchase of property in West Cameron jurisdiction (Exhibit B to April 13, 2006, Reply to West Cameron's Supplemental Brief); and
- West Cameron's timeline attached by West Cameron as Exhibit 1 to its April 10, 2006, Supplemental Brief (Exhibit C to Reply to April 13, 2006, Reply to West Cameron's Supplemental Brief).

Given the foregoing, West Cameron submits that LC Port's arguments beg the following question: What evidence did LC Port submit in satisfaction of its burden of establishing subject matter jurisdiction? In other words, what pertinence do any of the above-listed exhibits have on the threshold questions of whether West Cameron is a marine terminal operator, whether LNG terminals are marine terminal operators, or whether LNG vessels are common carriers? The answer is clear that those exhibits are not remotely relevant to those issues. They do not implicate the Shipping Act such that Commission jurisdiction is triggered. The only relevance the majority of the exhibits

have is that it provided Judge Krantz with a background of West Cameron's **state court** dispute with LC Port which has absolutely no bearing on the question of Commission jurisdiction, **which is the real reason why LC Port filed its Complaint in this matter.**

VI. Response to LC Port's Assertions that it was Hamstrung by Judge Krantz's Ruling

Since LC Port did not submit any affidavits or relevant evidence, it has resorted to arguing that Judge Krantz's ruling quashing the depositions of Cliff Cabell and Howard Romero operated to their prejudice. LC Port is effectively arguing that Judge Krantz hamstrung it from satisfying its burden. When viewed in context, this assertion is wholly without merit. West Cameron does not dispute that a party is entitled to reasonable discovery; however, a party is not entitled to unbridled discovery as LC Port has demanded.

A. Depositions of Members of West Cameron Port Commission

LC Port also alleges that Judge Krantz erred in not permitting it to depose members of the West Cameron Port Commission. What is particularly noteworthy about LC Port's argument in this regard is that it does not indicate one particular fact or subject matter area into which it wished to inquire which would be relevant to the issue of jurisdiction in this matter. It is beyond peradventure that West Cameron neither owns nor furnishes, or ever owned or furnished, wharfage, dock, warehouse, or other terminal facilities such that the definition of marine terminal operator under 46 U.S.C. App. § 1702(14) is satisfied.

LC Port has cited the destruction by Hurricane Rita of certain requested documents as justifying depositions, "With the loss of documentary evidence, Lake

Charles must be afforded the opportunity to question the West Cameron Port Board members, the individuals who govern and make decisions on behalf of West Cameron, and obtain any documents in those individual's possession, custody, or control that have not already been produced by West Cameron." (May 12, 2006, Reply in Opposition of Lake Charles Harbor and Terminal District to Motion to Quash at 5) (emphasis added). Question them about what? All of their interrogatories were answered. The interrogatories arguably pertinent to subject matter jurisdiction and their responses were as follows:[11]

Int. No. 5	Describe with particularity all marine terminal facilities and services that you offer to vessels.
Response	None
Int. No. 6	Identify each and every vessel, by year, that has called at terminals within the jurisdiction of West Cameron since January 1, 2000.
Response	Unknown. No records are kept by West Cameron Port regarding that information sought.
Int. No. 7	List and itemize each and every increment of wharfage you have collected since January 1, 2000 and provide who paid each such increment of wharfage.
Response	None
Int. No. 8	List and itemize each and every fee assessed by you against vessels that have called at terminals within the jurisdiction of West Cameron since January 1, 2000 and identify who paid each such fee.
Response	None
RFP No. 2	Each and every tariff/schedule of charges published by West Cameron from January 1, 2000 to the present
Response	None
RFP No. 6	Any and all documents concerning expenses or costs incurred by West Cameron in providing services or facilities to vessels since January 1, 2000.
Response	None.

[11] While LC Port's discovery requests were propounded with its Complaint pursuant to Rule 201(b). However, West Cameron's responses were not filed with the Secretary. In order to respond adequately to LC Port's assertions and provide the Commission with a complete picture of the extent of West Cameron's responses to those requests, West Cameron attaches its responses (without the 1,011 pages of documents) as **Exhibit 1** hereto.

RFP No. 7 Any and all documents used, referred to or relied upon in establishing each fee charged to vessels using the Calcasieu River Ship Channel since January 1, 2000

Response None.

LC Port requested of West Cameron interrogatory responses and documents relating to the question of whether West Cameron qualified as a marine terminal operator. The above responses and the affidavits of Cliff Cabell and Howard Romero were completely consistent.

Obtain what "documents in those individual's possession, custody, or control that have not already been produced by West Cameron"? If a particular document was requested, it was produced. In any event, if West Cameron owned or operated wharfage, dock, warehouse or other terminal facilities, those activities could not have possibly been conducted in a *sub rosa* fashion such that LC Port could not controvert West Cameron's assertions with affidavit testimony of someone (or anyone for that matter) with personal knowledge of such activities being conducted by West Cameron, even employees or representative of LC Port. The depositions of West Cameron officials would have been pointless given what is already public record and public knowledge and what has to date been produced for purposes of jurisdiction.

B. Deposition of Cheniere LNG Officials

LC Port next asserts in its Appeal, "Lake Charles expected to depose individuals from Cheniere with respect to such issues as vessel itineraries, and the identity and number of shippers/consignees of the LNG vessels calling at terminals in West Cameron." (Appeal at 8; *see also* Appeal at 13). LC Port misleads the Commission by insinuating that LNG vessels call at terminals in West Cameron territory when LC Port knows full well that **Cheniere has no operating LNG terminal in West Cameron**

territory. The two proposed terminals have not yet been constructed. With no terminal, it is beyond West Cameron's comprehension that vessel itineraries and shipper identities of LNG vessels to which LC Port is referring. No Liquefied Natural Gas has ever been offloaded at any facility located in West Cameron territory. This assertion by LC Port is ridiculous and misrepresentative.

C. Darron Granger Affidavit

With all due respect to Mr. Granger, West Cameron is confident that there are numerous individuals competent to attest to the characteristics of LNG vessels and terminals. West Cameron suggests that LC Port would have only had to submit an affidavit of anyone with knowledge of the characteristics of **any** LNG vessel and/or terminal, not just the proposed Cheniere facilities. LC Port has never contended that LNG vessels that will be offloading at Cheniere's facilities are in any way different than any other LNG vessel—even those accessing LC Port's Trunkline facility.

With that in mind, it is quite remarkable that LC Port argues that "Lake Charles had **no** opportunity to respond to the affidavit of E. Darron Granger submitted with the West Cameron supplemental brief[,]" (Appeal at 13) (emphasis in original), especially considering that the content of such affidavit must have been remarkably similar to the representations made by Mr. Dees and LC Port with respect to the filing of its Cameron LNG/Sempra lease with the Commission. LC Port also alleges, "Nor did it have the opportunity to question Mr. Granger or provide any of its own affidavits to refute the statements made in the Granger Affidavit with respect to the characteristics of the LNG vessels." LC Port seems to impute ambush by West Cameron in its submission of Granger's affidavit. It is true that that affidavit was submitted with West Cameron's

Supplemental Brief but LC Port filed a "Reply of Lake Charles to West Cameron Supplemental Brief" on April 13, 2006. At no point did LC Port ever complain about an inability to obtain an affidavit. Instead, again, LC Port chose to focus on matters unrelated to subject matter jurisdiction. There is no mention of Granger's affidavit. Judge Krantz was correct in relying on Granger's affidavit as it was the only evidence of record available to him on those points.

D. A.W. Prebula Affidavit

LC Port also claims a similar ambush by West Cameron with regard to the Prebula Affidavit. Mr. Prebula is Plant Manager of the CITGO Petroleum Corporation Lake Charles Manufacturing Complex. As alleged in Paragraph 2 of the Complaint, CITGO is one of LC Port's tenants allegedly being extorted by West Cameron. Nowhere does LC Port contend in its appeal that Prebula's affidavit was inaccurate. In effect, the affidavits were uncontested and uncontroverted.

West Cameron submits that a plaintiff is not well served by being reactive and passive in satisfying its burden of establishing subject matter jurisdiction. The widely accepted law discussed above provides that a plaintiff must submit evidence in response to a factual attack. Even West Cameron would acknowledge that the proof required is not overly stringent. *Trentacosta*, *supra*, equated the required showing to that of defeating a motion for summary judgment. There is no *per se* right for a party defending such a motion to depose every individual providing an affidavit attached to a motion for summary judgment. All LC Port had to do was submit its own countervailing affidavit(s).

E. West Cameron Services

LC Port has gone out of its way to argue that West Cameron does not provide services. Its Appeal is no exception, "We are ignorant as to what services that West Cameron provides to LNG vessels because the presiding judge prevented the discovery that would have disclosed those facts." (Appeal at 10). This is yet another attempt by LC Port to create an issue where none exists.

West Cameron has not hidden the fact that it provides no wharfage, dock, warehouse or any other facilities to any vessels much less LNG vessels. West Cameron has also never assessed charges on any vessels within its own territory because it does not have the apparatus or infrastructure to do so. West Cameron also expressly stated in response to Interrogatory No. 5 that it has no marine terminal facilities and provides no services to vessels. It is functionally impossible for West Cameron to provide any services to LNG vessels **because there is no operational LNG terminal in Cameron Parish.** This argument as a basis for reversing Judge Krantz's ruling is downright frivolous.

F. LC Port's Statement about Violation of State Law

LC Port states that "any reliance on the potential violation of state law is inapposite to the issues before the Commission, which is only concerned with violations of the Shipping Act." (Appeal at 10). No state law is cited but West Cameron is confident that LC Port is referring to La. R.S. § 34:2556 which was cited by Judge Krantz and West Cameron repeatedly in this proceeding. LC Port has consistently ignored and refused to acknowledge La. R.S. § 34:2556 and its prohibition on what it is alleging in its Complaint. As quoted above, La. R.S.§ 34:2556 provides in part that West Cameron

"shall not assess, levy, or charge any fee, rate, tariff or other charge on any person, vessel, watercraft or cargo on account of passage through the district. . . ." LC Port's refusal to acknowledge La. R.S. § 34:2556 and its failure to provide at least the most barebones affidavit of someone so assessed speaks volumes about the merits of its claims, putting aside the jurisdictional defects. Furthermore, in order to unequivocally establish that there have never been nor was there any intent to violate either the state law or the Shipping Act, West Cameron formally adopted a resolution so providing. West Cameron took affirmative action with respect to the issue. West Cameron agrees that a violation of state law does not equate to a violation of the Shipping Act, but it is nonetheless extremely relevant in negating a factual basis upon which LC Port relies so heavily.

G. Observations

How else did LC Port expect Judge Krantz to rule on West Cameron's Motion to Dismiss? On what evidence did LC Port expect Judge Krantz to rule on West Cameron's Motion to Dismiss? After all, "In factual attacks, on the other hand, the court delves into the arguments asserted by the parties and the credibility **of the evidence presented**." *Lamb v. Charlotte County*, 429 F. Supp. 2d 1302, 1305 (M.D. Fla. 2006) (emphasis added). LC Port presented no evidence in support of a finding of Commission jurisdiction.

It is not like Judge Krantz ever prevented LC Port from obtaining facts wholly within the knowledge of members of the West Cameron Port Commission. Judge Krantz expressly recognized the futility of depositions of such individuals, "However, the evidence to address the points relating to subject matter jurisdiction was at least as available to LC as it would have been after deposition of officials of WC." (June 7, 2006,

Ruling at 3). LC Port had the affidavits of Cliff Cabell and Howard Romero as well as the responses to the interrogatories and requests for production propounded by it inquiring into the matters as listed above.

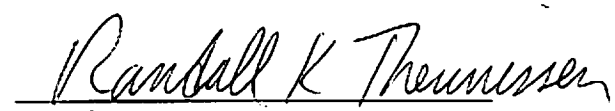
LC Port has not argued that any of the discovery responses or averments in any of the affidavits were inaccurate. Rather, it consistently argues its unsupportable position for *carte blanche* discovery for the mere exercise of doing it. LC Port has yet to indicate what facts or areas of testimony, in addition to those already provided and in the public record anyway, it sought in depositions. The most that can be accomplished by depositions of West Cameron Port Commission officials would be, "Are you sure?" Such a vague and generalized claim of entitlement does not warrant the cost and harassment implicit in those depositions.

Conclusion

LC Port's Appeal is replete with factual misrepresentations and meritless assignments of error. In a nutshell, LC Port failed to carry its burden of proving subject matter jurisdiction by a preponderance of the evidence. It provided **no** evidence to prove that West Cameron is a marine terminal operator (notwithstanding the fact that such activity is hard to conceal), that LNG terminals are marine terminal operators (not just as applied to the proposed Cheniere facility but to *any* LNG terminal, even the one about which it apparently was quite capable of providing factual representation to the Commission for determination as to whether its contract should be filed), and that LNG vessels are common carriers (again not just those that will be assessing the proposed Cheniere facility but *any* LNG vessel, even those that have been accessing a tenant of LC Port for years), notwithstanding its prior affirmative representations to the Commission

when it filed its three-year-old lease the same day it filed its Amended Complaint. Judge Krantz ruled based on the evidence before him. There is no basis in law or in fact for reversing Judge Krantz's June 7, 2006, dismissal of LC Port's Complaint, original and as amended.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT
WEST CAMERON PORT, HARBOR AND
TERMINAL DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record by facsimile and email a copy to each such person.

Dated at, Lafayette, Louisiana, this 18th day of July, 2006.

Randall K. Theunissen
On Behalf of Respondent, West
Cameron Port, Harbor and
Terminal District

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

THE LAKE CHARLES HARBOR AND
TERMINAL DISTRICT
Claimant

VERSUS DOCKET NO. 06-02

WEST CAMERON PORT, HARBOR
AND TERMINAL DISTRICT
Respondent

****

RESPONDENT, WEST CAMERON PORT, HARBOR AND TERMINAL DISTRICT'S RESPONSES TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY COMPLAINANT, THE LAKE CHARLES HARBOR AND TERMINAL DISTRICT

NOW INTO COURT, through undersigned counsel, comes Respondent, WEST CAMERON PORT, HARBOR AND TERMINAL DISTRICT ("West Cameron"), for providing its Answers to Interrogatories and its Responses to Request for Production of Documents propounded by Complainant, The Lake Charles Harbor and Terminal District ("LC Port").

PREFACE

The law firm of Allen & Gooch became engaged as General Counsel for West Cameron on 10 January 2005. Prior to that, the District Attorney for Cameron Parish was counsel, by statute, for West Cameron. Immediately before the engagement of the law firm of Allen & Gooch, Mr. Cecil Sanner was the District Attorney. Immediately before his becoming District Attorney, Mr. Glenn Alexander was District Attorney.

EXHIBIT
tabbies
1

The West Cameron does not now and has not had any employees. The West Cameron Port Board are unpaid members. West Cameron has no office and many of its records were kept at the District Attorney's Office or at the Cameron Parish Police Jury Office, in Cameron, Louisiana.

The West Cameron Port file of Cecil Sanner has been attached to the discovery responses. Mr. Sanner advises that the West Cameron Port file kept by Mr. Alexander, when he was District Attorney, is missing and believed to have been destroyed by Hurricane Rita. Many of the West Cameron Port records that were kept at the Cameron Parish Police Jury were lost or destroyed by Hurricane Rita. Best efforts have been made to collect information and documentation to respond to these Interrogatories and Request for Production of Documents, but the above characterizes and describes the difficulty in doing so.

Interrogatories

1. Identify each person providing answers to or otherwise assisting in responding to these Interrogatories.

ANSWER:

(a) Randall Theunissen and Neil Vincent – attorneys with the law firm of Allen & Gooch, General Counsel for West Cameron. The business address for both are P. O. Box 3768, Lafayette, Louisiana, 70502, telephone (337) 291-1000.

(b) Howard Romero, West Cameron Port Board Member. His home address was 690 Middle Ridge, Cameron, Louisiana, 70631, but his home was destroyed.

(c) Tunie Dunaway, employed by Cameron Parish Police Jury, currently officed at 302 N. Cutting Avenue, Jennings, Louisiana, 70546.

(d) Mr. Cecil Sanner, District Attorney for Cameron Parish, P. O. Drawer 280, Cameron, Louisiana, 70631.

(e) Dwight Savoie, West Cameron Port Board Member, 1521 Highway 384, Lake Charles, Louisiana, 70607.

2. Identify each and every person with knowledge of any fact stated in the Complaint, and describe with particularly the substance of each person's knowledge.

ANSWER:

(a) The persons with knowledge of facts set forth in the Complaint include: Charif Souki and Darron Granger, both of Cheniere Energy, Houston, Texas and Glenn Alexander, P. O. Box 1550, Cameron, Louisiana, 70631. Mr. Alexander represents Cheniere Energy. Those three individuals have information about the Memorandum of Understanding concerning the Sabine LNG Project. The particular substance of their knowledge includes the fact that Cheniere Energy offered, without any pressure, the monies which are the subject of the Memorandum of Understanding, which is attached in response to this discovery together with the rental arrangements with respect to the Creole Trail location. These witnesses have knowledge that no "extraction" of money, fees or charges took place by West Cameron against the Cheniere companies. Charif Souki and Darron Granger (or other representatives of Cheniere not yet known) have knowledge that that neither of the Cheniere LNG Facilities is a common carrier, that both facilities will be used exclusively to discharge LNG tankers and neither facility will be used to furnish services and facilities to common carriers. They have further knowledge

that the general purposes and activities which are to occur at the two Cheniere facilities will be the basically the same as what is to occur at the Cameron LNG facility.

(b) The West Cameron Port Board Members whose name and addresses are provided in response to Interrogatory No. 4 below. The substance of their knowledge includes the fact that West Cameron has not announced that it was charging "wharfage" to any LNG Vessels, whether just passing through its jurisdiction or stopping to conduct business in its jurisdiction. The factual averments contained in the affidavits of Howard Romero and Cliff Cabbell submitted with West Cameron's Motion to Dismiss. They have knowledge that no board member has been made aware of any company with vessels calling at Lake Charles (or any other place for that matter) having received or being concerned about any threat by West Cameron to charge LNG Vessels for passing through it jurisdiction.

(c) Persons employed by Citgo, Trunkline, Conoco and the other entities named within the Complaint whose specific identities along with their specific knowledge is not yet known by West Cameron.

(d) Mr. Adam McBride and Mr. Michael Dees, both with the Lake Charles Port along with Port Board Members of LC Port, whose specific knowledge of any of the facts and the substance of same is not yet fully known by West Cameron. However, Mike Dees has knowledge of facts presented to the Federal Maritime Commission including facts upon which to make a determination that Cameron LNG is not, itself a common carrier and that Cameron LNG would be using its facilities exclusively to discharge LNG tankers and not to furnish services and facilities to common carriers. (See W CAM PORT 0001010-0001011).

3. Identify each and every person who is or has been employed by West Cameron during the time period of January 1, 2000 to the present and provide their title and home address.

ANSWER:

None.

4. Identify each and every Commissioner (past and present) of West Cameron during the time period of January 1, 2000 to the present and provide his or her title, occupation, and home address.

ANSWER:

Past:

(a) Rodney Guilbeaux, Board Member, Old Address: 282 Richard Lane, Cameron, Louisiana, 70631, New Address: 2312 Augustine Street, Sulphur, Louisiana, 70663, Occupation: Retired.

(b) Sammie Faulk, Board Member, 117 Bank Street, Lake Charles, Louisiana, 70607, Occupation: Self-Employed.

(c) Robert Manuel, Board Member, 117 Manuel Lane, Lake Charles, Louisiana, 70607, Occupation: Retired.

Present:

(a) J. P. Constance-Deceased, Board Member, 2640 Teal Street, Cameron, Louisiana, 70631, Occupation: Retired.

(b) Greg Wicke, Secretary, 4575 W. Creole Hwy, currently destroyed, Creole, Louisiana, 70632, Occupation: Vice-President of Cameron State Bank.

(c) Charles Terry Hebert, Treasurer, 114 Smith Circle, Cameron, Louisiana, 70631, Occupation: Self-Employed.

(d) Ricky Poole, Board Member, 159 Cripple Creek Road, Lake Charles, Louisiana, 70607, Occupation: Self-Employed.

(e) Jimmy Brown, Vice-President, 170 Johnny Benoit, Hackberry, Louisiana, 70645, Occupation: Self-Employed.

(f) Cliff Cabell, President, 540 W. Main Street, Hackberry, Louisiana, 70645, Occupation: Security Manager.

(g) Wendell Wilkerson, Board Member, 104 William Duhon Road, currently destroyed, Creole, Louisiana, 70632, Occupation: Self-Employed.

(h) Dwight Savoie, Board Member, 1521 Hwy 384, Lake Charles, Louisiana, 70607, Occupation: Manager.

(i) Howard Romero, 690 Middle Ridge, currently destroyed, Cameron, Louisiana, 70631, Occupation: Self-Employed.

5. Describe with particularity all marine terminal facilities and services that you offer to vessels.

ANSWER:

None.

6. Identify each and every vessel, by year, that has called at terminals within the jurisdiction of West Cameron since January 1, 2000.

ANSWER:

Unknown. No records are kept by West Cameron Port regarding that information sought.

7. List and itemize each and every increment of wharfage you have collected since January 1, 2000 and provide who paid each such increment of wharfage.

ANSWER:

None.

8. List and itemize each and every fee assessed by you against vessels that have called at terminals within the jurisdiction of West Cameron since January 1, 2000 and identify who paid each such fee.

ANSWER:

None.

9. Provide the West Cameron budget for each year of the last five years.

ANSWER:

See the attached documents numbered W CAM PORT 0001-0016. These are the records provided by the Cameron Parish Police Jury in response to West Cameron's request for the budget for each year for the last five years.

10. Identify each and every lease, option, agreement, or the like relating to an LNG facility or potential LNG facility that you have been a party to since January 1, 2000, and for each lease identified, state the following information:

a. Identify each party to the lease, option, agreement, or the like and the role of each party (i.e., lessee, property owner, etc.);

b. Describe with particularity the property that is the subject of the lease, option, agreement, or the like, including without limitation the specific location of the property, whether it is real property and whether it includes docking facilities;

c. Describe with particularity all rights granted by you under the lease option, agreement, or the like;

d. Describe with particularity all obligations imposed by you by the lease, option, agreement, or the like, including without limitation the amount of any charges imposed by you, how the charge is calculated and the frequency with which it is paid;

e. State the beginning and ending date of the lease option, agreement, or the like and whether it has been renewed and/or is eligible for renewal or extension, and if so, state when it is up for renewal or extension;

f. Identify each and every person who participated in any way in the negotiations, discussions or drafting of the lease, option, agreement, or the like and describe with particularity each person's involvement; and

g. Identify each and every document concerning the lease, option, agreement, or the like.

ANSWER:

See the attached documents numbered W CAM PORT 0017-0099 and W CAM PORT 0000996-0000997.

11. Describe with particularity any communications between you or anyone on your behalf and Cheniere since January 1, 2000, and for each such communication, state the following information:

a. Date and time of the communication;

b. Identities of each and every person involved;

c. Whether the communication was oral or in writing;

d. Whether the communication was in person, over the telephone, or via some other electronic means;

e. Describe with particularity the substance of the communication; and

f. Identify each and every document concerning in any way to the communication.

ANSWER:

The communications between West Cameron or anyone on its behalf and Cheniere since January 1, 2000 are evidenced in attached page numbers W CAM PORT 0100-0000995. The documents are self-explanatory about the method of communication, the identity of the persons involved, whether said communication was oral or in writing, whether the communication was in person, over the phone, or via some other electronic means and the substance of the communication is identified as well as documents which are attached to same. In addition, other communications include the following:

a) On January 31, 2005, a meeting took place with Cheniere Energy's Darron Granger, Patricia Outtrim, Carlos Macis, James Ducote, Walter Williams and Keith Teague, along with West Cameron's Howard Romero, Greg Wicke, Terry Hebert, Randall Theunissen, Chad Mudd and David Bruchhaus. That meeting was oral and in person. Cheniere personnel discussed its LNG Project probably locating on Westland

Corporation land rather than West Cameron Port property. No documents were brought to the meeting by West Cameron Port. Cheniere had some of their documents that they referenced, but no copies of those were given to West Cameron representatives.

b) On February 11, 2005, a meeting was held in Houston, Texas at Cheniere Energy's office. The meeting took place by personal attendance. Charif Souki, Darron Granger, and Glenn Alexander of Cheniere were present as were Howard Romero and Dwight Savoie, Randall Theunissen, Neil Vincent and Chad Mudd. The substance of the communications was Cheniere's plans with respect to the option to lease the property of West Cameron and specific terms of same. The document that resulted from those communications is the First Amendment to Option which is provided as an attachment to the discovery requested.

c) On March 17, 2006, Randall Theunissen met with Cheniere representatives at their office to update them on status of the various litigation matters involving West Cameron Port and Lake Charles Port as well as discuss House Bill 292 and Senate Bill 103. A note of that meeting along with the specific names of those at said meeting is included and identified in the attachments to this discovery.

12. Identify each and every contract, lease, option, agreement or the like which you are a party to and which Cheniere is also a party. For each such contract, state the following information:

a. Date of the contract, lease, option or agreement;

b. Identify each and every party to the contract, lease, option, or agreement;

c. Describe with particularity the rights granted to each party by the contract, lease, option or agreement and the obligations imposed on each party by the contract, lease, option or agreement;

d. Identify each and every person who participated in any way in the negotiations, discussions or drafting of the contract, lease, option or agreement, and describe with particularity each person's involvement;

e. Describe with particularity each and every communication concerning in any way to the negotiation, discussion or drafting of the contract, lease, option or agreement, including without limitation, the date of the communication, the identities of the parties to the communication, the form of the communication (ie., in writing, oral, telephonically, etc.), the substance of the communication, and identify each and every document which refers, reflects or relates to the communication; and

f. Identify each and every document concerning in any way the contract, lease, option or agreement.

ANSWER:

See answer to No. 10.

13. Identify the person(s) most knowledgeable about the negotiations listed in your answer to Interrogatory Number 12.

ANSWER:

Howard Romero of the West Cameron Port Board, Randall Theunissen and Neil Vincent.

14. Describe with particularity any communications between you or anyone on your behalf and the Federal Maritime Commission since January 1, 2000 relating to wharfage charges to be assessed against vessels, and for each such communication, state the following information:

a. Date and time of the communication;

b. Identities of each and every person involved;

c. Whether the communication was oral or in writing;

d. Whether the communication was in person, over the telephone, or via some other electronic means;

e. Describe with particularity the substance of the communication; and

f. Identify each and every document concerning in any way to the communication.

ANSWER:

None.

STATE OF LOUISIANA)
) SS.
PARISH OF LAFAYETTE)

COMES NOW RANDALL K. THEUNISSEN, being first duly sworn and on his oath states that he has read the foregoing Answers to the Interrogatories, that he is authorized to sign this Affidavit on behalf of WEST CAMERON PORT and that the information contained therein is true to the best of his knowledge, information and belief.

Randall K Theunissen
RANDALL K. THEUNISSEN

Subscribed and sworn to before me this 29th day of MARCH, 2006.

Notary Public
#35209

(SEAL)

My Commission is for life

Requests for Production

1. Any and all documents that relate to wharfage charges to be assessed against vessels using the Calcasieu River Ship Channel, including without limitation, any and all minutes by West Cameron.

RESPONSE:

None. However attached to discovery are the November 12, 2003 Resolution, (W CAM PORT 0236) (minutes believed to be destroyed in Hurricane Rita), February 22, 2005 Resolution and Minutes (W CAM PORT 0000998-0001004) and Resolution Dated March 28, 2006 (W CAM PORT 0001005-0001009) (minutes for this meeting to be provided once approved and signed at the April regularly scheduled board meeting. Although it is the position of West Cameron that these documents are not required to be produced in response to this request as written as no "wharfage" charges have ever been assessed or collected, because the word "wharfage" appears in the body and to avoid any semblance or argument that such documents are being withheld from LC Port on a technicality, same are being produced.

2. Each and every tariff/schedule of charges published by West Cameron from January 1, 2000 to the present.

RESPONSE:

None.

3. Each and every financial report, profit and loss statement, expense record and budget of West Cameron from January 1, 2000 to the present.

RESPONSE:

See records in response to Interrogatory No. 9.

4. Each and every contract, lease, option, agreement or the like to which you are a party and to which Cheniere is also a party since January 1, 2000, and any and all documents concerning any such contract, lease, option, agreement or the like.

RESPONSE:

See attachments which are responsive to Interrogatory No. 10 (except the lease between West Cameron and West Coast Development, L.L.C.)

5. Each and every contract, lease, option, agreement or the like relating to LNG terminals or facilities to which you have been a party to since January 1, 2000, and any and all documents concerning any such contract, lease, option, agreement or the like.

RESPONSE:

See attachments which are responsive to Interrogatory No. 10.

6. Any and all documents concerning expenses or costs incurred by West Cameron in providing services or facilities to vessels since January 1, 2000.

RESPONSE:

None.

7. Any and all documents used, referred to or relied upon in establishing each fee charged to vessels using the Calcasieu River Ship Channel since January 1, 2000.

RESPONSE:

None.

8. Any and all written statements, including notes of interviews, of the person(s) most knowledgeable about the negotiations with Cheniere relating to LNG facilities or potential LNG facilities.

RESPONSE:

See attachments responsive to Interrogatory No. 10.

9. Any and all documents you relied upon or referred to in responding to the Complainant's First Set of Interrogatories Directed to Respondent West Cameron Port, Harbor and Terminal District.

RESPONSE:

All documents relied upon are referred to in responding to Complainant's First Set of Interrogatories directed to Respondent, West Cameron Port, Harbor and Terminal District, are attached to this discovery or to the Motion to Dismiss filed by West Cameron.

Respectfully submitted,

RANDALL K. THEUNISSEN
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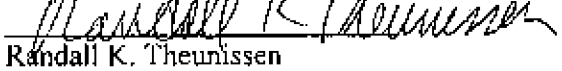
337-291-1240 (telephone)
337-291-1245 (fax)
ATTORNEYS FOR RESPONDENT
WEST CAMERON PORT, HARBOR AND
TERMINAL DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record by email and overnight mail a copy to Mr. Edward J. Sheppard, Jr. and Mr. Michael K. Dees.

Dated at, Lafayette, Louisiana, this 29 day of March, 2006.



Randall K. Theunissen
On Behalf of Respondent, West
Cameron Port, Harbor and
Terminal District

VERIFICATION

I, Randall K. Theunissen, counsel for the West Cameron Port, Harbor and Terminal District hereby declare pursuant to Rule 112 that I have read the foregoing Answers to Interrogatories and Responses to Request for Production of Documents and that, to the best of my knowledge, information and belief, same are well founded.

Signed at Lafayette, Louisiana, this 29 day of March, 2006.

Randall K Theunissen

Randall K. Theunissen