

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

LAKE CHARLES EXPORTS, LLC

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DOCKET NO. 11-59-LNG
DOCKET NO. 16-110-LNG

ORDER DENYING APPLICATION FOR SECOND EXTENSION
OF DEADLINE TO COMMENCE EXPORTS OF LIQUEFIED NATURAL GAS
TO NON-FREE TRADE AGREEMENT COUNTRIES

DOE/FECM ORDER NO. 3324-C
DOE/FECM ORDER NO. 4011-B

APRIL 21, 2023

I. INTRODUCTION AND BACKGROUND

On June 21, 2022, Lake Charles Exports, LLC (LCE) filed an application (Application)¹ with the Department of Energy's (DOE) Office of Fossil Energy and Carbon Management (FECM)² under section 3 of the Natural Gas Act (NGA).³ LCE asks DOE to amend its two long-term export authorizations⁴ issued under NGA section 3(a),⁵ which authorize LCE to export domestically produced liquefied natural gas (LNG) from the proposed Lake Charles Terminal liquefaction facilities (Liquefaction Project) to be constructed in Lake Charles, Louisiana,⁶ to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas⁷ and with which trade is not prohibited by U.S. law or policy (non-FTA countries), as follows:

- Under DOE/FE Order No. 3324-A, as amended,⁸ authorizing the export of LNG in a volume equivalent to 730 Bcf/yr of natural gas; and
- Under DOE/FE Order No. 4011, as amended,⁹ authorizing the export of LNG in

¹ Lake Charles Exports, LLC, Application for Amendment to Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 11-59-LNG and 16-110-LNG (June 21, 2022) [hereinafter App.].

² The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

³ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

⁴ For purposes of this Order, DOE uses the terms “authorization” and “order” interchangeably.

⁵ 15 U.S.C. § 717b(a).

⁶ The Lake Charles Terminal is an existing LNG import terminal located in Lake Charles, Calcasieu Parish, Louisiana. *See, e.g.*, App. at 1 & n.1. LCE is a wholly owned subsidiary of Energy Transfer Equity, L.P. *See* U.S. Dep't of Energy, Lake Charles Exports, LLC, Notice of Change in Control, 87 Fed. Reg. 36,844 (June 21, 2022). LCE states that “[v]arious subsidiaries of Energy Transfer LP (Energy Transfer) are developing the Liquefaction Project.” App. at 4.

⁷ The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

⁸ *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A, Docket No. 11-59-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations (July 29, 2016), *amended* by Order No. 3324-B (Oct. 6, 2020) (extending export commencement deadline).

⁹ *Lake Charles Exports, LLC*, DOE/FE Order No. 4011, Docket No. 16-110-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles

a volume equivalent to 121 Bcf/yr of natural gas.¹⁰

Both authorizations were granted for a 20-year term.¹¹ Additionally, consistent with DOE practice, each authorization originally set forth a seven-year deadline for LCE to commence exports of LNG to non-FTA countries—July 29, 2023, and June 29, 2024, for Order Nos. 3324-A and 4011, respectively.¹²

In 2015, the Federal Energy Regulatory Commission (FERC) issued an order approving the Liquefaction Project and set December 16, 2020, as the deadline for LCE's affiliates to complete construction of the Liquefaction Project and make it available for service.¹³ In 2019, FERC issued an order (FERC 2019 Extension Order) extending the construction and in-service deadline for the Liquefaction Project by five years, to December 16, 2025.¹⁴

On October 6, 2020, DOE granted LCE's application to amend its non-FTA orders to extend its then-existing export commencement deadlines to December 16, 2025, which aligned with the deadline approved in the FERC 2019 Extension Order.¹⁵ For Order No. 3324-A, this extension was for approximately 28.5 months. For Order No. 4011, this extension was for approximately 17.5 months.¹⁶ In finding good cause to grant the commencement extensions,

Terminal in Lake Charles, Louisiana, to Free Trade Agreement and Non-Free Trade Agreement Nations (June 29, 2017), *amended by* Order No. 4011-A (Oct. 6, 2020) (extending export commencement deadline in non-FTA authorization).

¹⁰ App. at 1-2. DOE/FE Order No. 4011 is a consolidated order authorizing exports to both FTA and non-FTA countries. Because only the non-FTA portion of that order is at issue in this proceeding, all references to Order No. 4011 herein are to the non-FTA authorization alone.

¹¹ LCE's application to extend this 20-year export term through December 31, 2050, in both non-FTA authorizations is under review.

¹² See *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A, at 151 (Ordering Para. D); *Lake Charles Exports, LLC*, DOE/FE Order No. 4011, at 55 (Ordering Para. E); see also App. at 3-4, n.9.

¹³ App. at 2 (citing *Trunkline Gas Co., LLC, et al.*, 153 FERC ¶ 61,300 (Ordering Para. L) (2015), *order denying reh'g*, 155 FERC ¶ 61,328 (2016)).

¹⁴ *Id.* (citing *Lake Charles Exports, LLC, et al.*, Letter Order, FERC Docket Nos. CP14-119-000, *et al.* (Dec. 5, 2019)).

¹⁵ See *Lake Charles Exports, LLC*, DOE/FE Order Nos. 2987-A, *et al.*, Docket Nos. 11-59-LNG and 16-110-LNG, Order Granting Application to Amend Long-Term Authorizations (Oct. 6, 2020), https://www.energy.gov/sites/prod/files/2020/10/t79/ord2987a%2C%203324b%2C%204011a_0.pdf.

¹⁶ See *id.* at 6.

DOE cited the numerous actions taken by LCE to “actively progress[] the Project” following “an unforeseen construction delay resulting from a commercial merger in LCE’s corporate ownership.”¹⁷ DOE also cited the FERC 2019 Extension Order; noted that LCE’s extension application was unopposed; and found that no facts associated with LCE’s non-FTA authorizations would be affected by the extension beyond the additional time period for LCE to commence export operations.¹⁸

LCE now asks DOE to amend the export commencement deadline in its non-FTA orders for a second time—from December 16, 2025, to December 16, 2028.¹⁹ LCE states that, if granted, the requested commencement deadlines would align with FERC’s construction and in-service deadline for the Liquefaction Project which, on May 6, 2022, FERC extended for a second time (FERC 2022 Extension Order).²⁰

On July 27, 2022, DOE published a notice of LCE’s Application in the *Federal Register* (Notice of Application).²¹ DOE invited the public to submit protests, motions to intervene, notices of intervention, and written comments in response to the Application no later than August 11, 2022. DOE received two filings: a “Notice of Intervention, Protest, and Comment”

¹⁷ *Id.* at 5 (internal quotation omitted) (stating, for example, that the sponsors of the Liquefaction Project had obtained all required federal, state, and local authorizations and permits; secured all LNG export terminal land rights; taken steps towards construction, such as tree-clearing and drilling of test piles; completed front-end engineering and design; and incurred and/or committed in excess of \$450 million in development costs).

¹⁸ *Id.* at 6-7.

¹⁹ App. at 2.

²⁰ *Lake Charles LNG Export Co., LLC, et al.*, Order Granting Extension of Time Request, FERC Docket Nos. CP14-119-002, *et al.*, 179 FERC ¶ 61,086 (2022), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220506-3073 [hereinafter FERC 2022 Extension Order] (extending construction and in-service deadline from December 16, 2025, to December 17, 2028). We note that, although the FERC 2022 Extension Order extended the construction and in-service deadline to December 17, 2028 (*see id.* at page 11), the Application refers to December 16, 2028, as the extended FERC deadline (*see App.* at 2-5).

²¹ U.S. Dep’t of Energy, Lake Charles Exports, LLC; Application to Amend Existing Long-Term Authorizations to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, 87 Fed. Reg. 45,091 (July 27, 2022) [hereinafter Notice of App.].

filed by the Industrial Energy Consumers of America (IECA);²² and a “Motion to Intervene and Protest” filed jointly by Sierra Club, Louisiana Bucket Brigade, and Healthy Gulf (collectively, Environmental Advocates).²³ Subsequently, LCE submitted a response to both filings entitled “Answer of [LCE] to the Protests of the Industrial Energy Consumers and Sierra Club.”²⁴ Because LCE opposes the protests of IECA and Environmental Advocates but did not oppose either motion to intervene, the motions to intervene are deemed granted by operation of law.²⁵

DOE has reviewed the Application, the protests opposing the Application filed by IECA and Environmental Advocates, LCE’s Answer, and the FERC 2022 Extension Order, among other information discussed below. Based on this record, DOE has determined that LCE has not shown good cause under NGA section 3(a) for an unprecedented second extension of the export commencement deadline in Orders Nos. 3324-A and 4011, as amended.²⁶ Therefore, for the reasons set forth below, DOE denies the Application.²⁷ LCE’s existing authorizations, including

²² Industrial Energy Consumers of America, Notice of Intervention, Protest, and Comment, Docket Nos. 11-59-LNG and 16-110-LNG (Aug. 11, 2022) [hereinafter IECA Pleading]. Under DOE’s regulations, only a state commission may file a notice of intervention. See 10 C.F.R. §§ 590.303(a), (b), 590.102(q). Therefore, DOE construes IECA’s filing as a motion to intervene under 10 C.F.R. § 590.303(b).

²³ Sierra Club, *et al.*, Motion to Intervene and Protest of Sierra Club, Louisiana Bucket Brigade, and Healthy Gulf, Docket Nos. 11-59-LNG and 16-110-LNG (Aug. 11, 2022) [hereinafter Env’tl. Advocates Pleading].

²⁴ Lake Charles Exports, LLC, *et al.*, Answer of Lake Charles Exports, LLC and Lake Charles LNG Export Co., LLC to the Protests of the Industrial Energy Consumers of America and Sierra Club, Docket Nos. 11-59-LNG, *et al.* (Aug. 23, 2022) [hereinafter LCE Answer] (opposing joint filing by Sierra Club, Louisiana Bucket Brigade, and Healthy Gulf).

²⁵ 10 C.F.R. § 590.303(g).

²⁶ Concurrently with the issuance of this Order, DOE is issuing a policy statement on extensions to export commencement deadlines in non-FTA orders going forward. See U.S. Dep’t of Energy, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, __ Fed. Reg. __ (forthcoming) (signed on Apr. 21, 2023) [hereinafter Policy Statement]. The Policy Statement also will be posted on DOE’s website at <https://www.energy.gov/fecm/regulation>. Because LCE submitted its Application before issuance of the Policy Statement, DOE is not taking action under the Policy Statement in this Order. As discussed below, however, some of the reasoning from the Policy Statement informs DOE’s reasoning in this Order. See *infra* § IV.B.3.

²⁷ LCE’s affiliate, Lake Charles LNG Export Company, LLC (Lake Charles LNG Export) holds separate, non-additive authorizations to export LNG from the proposed Liquefaction Project. See App. at 1 n.2. Lake Charles LNG Export has filed a similar application to extend the export commencement deadline in its non-FTA orders issued in Docket Nos. 13-04-LNG and 16-109-LNG. Concurrently with this Order, DOE is issuing orders denying Lake Charles LNG Export’s application in both proceedings (DOE/FECM Order Nos. 3868-B and 4010-B, respectively).

its extended deadline to commence non-FTA exports under both orders by December 16, 2025, remain in effect.

II. DESCRIPTION OF APPLICATION

LCE requests that DOE, “[i]n light of FERC’s extension ... issue an order amending the existing Non-FTA export authorization deadlines to December 16, 2028.”²⁸ As support for these requested amendments, LCE states that the sponsor of the Liquefaction Project, Energy Transfer,²⁹ “has made significant progress towards reaching a Final Investment Decision (‘FID’), including executing several long-term agreements” filed with DOE.³⁰ LCE asserts that these long-term offtake agreements and the resulting FID “are contingent on a commencement deadline under the DOE authorizations that enables the Liquefaction Project to be in service within the timeframe reflected in the FERC authorization, which is December 16, 2028.”³¹ LCE adds that “[c]omplex FID financing arrangements” require an extension of DOE’s commencement deadlines now, before Energy Transfer can advance to FID and start full-scale construction.³²

LCE further states that, since its initial request for a commencement extension in 2020, “the world has experienced significant changes in the global LNG market caused by the ongoing COVID-19 pandemic.”³³ According to LCE, these global events “have created an extremely challenging environment for construction of large-scale infrastructure projects and execution of international commercial agreements.”³⁴ LCE contends that “[t]he Liquefaction Project has not

²⁸ App. at 2; *see also id.* at 3.

²⁹ *See supra* note 6.

³⁰ App. at 4.

³¹ *Id.* at 5; *see also supra* note 20.

³² *Id.*

³³ *Id.* at 4.

³⁴ *Id.*

been spared from the effects of these difficult circumstances.”³⁵ LCE states, however, that with the recent rebound in worldwide economic activity resulting from a lessening of the effects of the COVID-19 pandemic, “the global LNG market has ... experienced renewed appetite for securing long-term LNG supply.”³⁶

Additionally, LCE points to the FERC 2022 Extension Order and states that FERC’s analysis in granting the second extension of the construction and in-service deadline is relevant to DOE’s evaluation of the Application.³⁷ LCE cites FERC’s observation, for example, that an extension changes “only ... the timing, not the nature, of the project.”³⁸

LCE also notes that DOE established the seven-year export commencement deadline in its non-FTA orders “to ensure that ‘other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.’”³⁹ LCE maintains, however, that “[n]o entity would be prevented from obtaining export authorization if [DOE] were to grant the requested extension” because, in LCE’s view, the “parties who have received FERC authorization for construction of other LNG export terminal facilities already have received export authorization from [DOE].”⁴⁰ Finally, LCE asserts that the public interest would be served by granting the requested commencement extension, thus “realizing the benefits of the proposed exports” as contemplated in LCE’s non-FTA authorizations.⁴¹

³⁵ *Id.*

³⁶ App. at 4-5.

³⁷ *See id.* at 5.

³⁸ *Id.* (quoting FERC 2022 Extension Order at P 10).

³⁹ *Id.* at 6 (quoting *Lake Charles Exports, LLC*, DOE/FE Order No. 3324, at 128).

⁴⁰ *Id.*

⁴¹ App. at 6.

III. DOE PROCEEDING

Because IECA's and Environmental Advocates' motions to intervene were not opposed by LCE and therefore are deemed granted by operation of law,⁴² we summarize only their protests of the Application below.

A. IECA's Motion to Intervene, Protest, and Comments

IECA argues that an extension of LCE's commencement deadlines is not in the public interest under the NGA. Specifically, IECA contends that, "[t]o extend the requested time and eventual operation of LCE is to lock-in decades of increased natural gas and power prices, inflation, damaging manufacturing competitiveness, reshoring and threaten economic, and national security."⁴³ IECA maintains that "LNG exports, including future exports by LCE," serve foreign customers—not U.S. consumers, and not the national security interests of the United States.⁴⁴ According to IECA, exports of U.S. LNG "create higher demand and lower national natural gas inventories that are needed for peak winter demand thereby threatening reliability."⁴⁵ IECA also argues that DOE's 2018 LNG Export Study provides "further evidence" that the requested extensions are not in the public interest.⁴⁶ Finally, IECA states that DOE should define the term "public interest" in NGA section 3(a) to mean that "'the export volume, individually or collectively must not materially impact the price of natural gas in the U.S.'"⁴⁷ IECA "urge[s] DOE to examine LCE using this new definition."⁴⁸

⁴² See *supra* at 5; see also IECA Pleading at 1; Env'tl. Advocates Pleading at 3-6.

⁴³ IECA Pleading at 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 3 (quoting excerpts from the 2018 LNG Export Study).

⁴⁷ *Id.* at 6.

⁴⁸ *Id.*

B. Environmental Advocates' Motion to Intervene and Protest

Failure to demonstrate good cause. Environmental Advocates first argue that Energy Transfer, LCE's parent company,⁴⁹ fails to demonstrate that it is working to complete the proposed Liquefaction Project, and thus "fails to show good cause for the requested extension."⁵⁰ Environmental Advocates state that, "nearly six years after [LCE] obtained initial export authorization, almost nothing has happened."⁵¹ Environmental Advocates assert that the change in conditions in the LNG export market since 2020 "may have impacted the wisdom of proceeding with the project, but nothing in the application ... demonstrates that it impacted Energy Transfer's ability to do so."⁵² Environmental Advocates question why, despite Energy Transfer's claims about the "supposed resurgence" in global demand for U.S. LNG, Energy Transfer "is still more than six years away from completing the Lake Charles LNG Project" (as of the date of Environmental Advocates' filing in 2022).⁵³ In Environmental Advocates' view, "[e]ven if market conditions could constitute good cause for holding off on breaking ground, [Energy Transfer] can't justify failing to even take reasonable steps toward being ready to break ground if and when market conditions improve."⁵⁴

Environmental Advocates next assert that Energy Transfer has not demonstrated that the COVID-19 pandemic impacted its ability to proceed with the Liquefaction Project, other than by reducing global demand for LNG. According to Environmental Advocates, "Energy Transfer has not alleged, much less demonstrated, that it was ready to begin construction but was unable

⁴⁹ In their pleading, Environmental Advocates refer to Energy Transfer instead of LCE, so we follow that convention in summarizing their arguments.

⁵⁰ Env'tl. Advocates Pleading at 7.

⁵¹ *Id.* at 2.

⁵² *Id.* at 7-8.

⁵³ *Id.* at 2, 8.

⁵⁴ *Id.* at 8.

to do so because of public health concerns relating to workforce, supply chain issues, etc.”⁵⁵ For this reason, Environmental Advocates argue that Energy Transfer has provided “no particular facts ... to support the conclusion that, even if Energy Transfer had wanted to, it would have been unable to proceed on the approved schedule and meet the current deadline.”⁵⁶

Finally, Environmental Advocates assert that Energy Transfer has failed to show good cause for the requested extensions because the Application is “cursory” and “fall[s] short of even its last set of extension requests in 2020.”⁵⁷ Environmental Advocates note that, in DOE’s order approving LCE’s first extension application, DOE highlighted the fact that Energy Transfer was ““working to complete the export facilities necessary to commence its approved exports.””⁵⁸ Environmental Advocates state that Energy Transfer had provided nearly four pages of detail about specific steps that the Project sponsors had taken to advance the Liquefaction Project, including incurring or committing \$450 million in expenditures.⁵⁹ Environmental Advocates contend that, by contrast, “in a single paragraph” in the current Application, Energy Transfer “merely highlights securing ‘several long-term offtake contracts’ that necessitate the extension,” while “fail[ing] to identify any steps it has taken to construct the project since its last extension request.”⁶⁰ In sum, Environmental Advocates argue that the Application “falls far short of the demonstration of working to complete the project required to support good cause for granting an extension.”⁶¹

Reevaluation of public interest determinations. In the remainder of its protest, Environmental Advocates argue against continued exports of U.S. LNG generally, stating that

⁵⁵ *Id.*

⁵⁶ Env’tl. Advocates Pleading at 8.

⁵⁷ *Id.*

⁵⁸ *Id.* at 8-9 (quoting, e.g., *Lake Charles Exports, LLC*, DOE/FE Order Nos. 2987-A, *et al.*, at 5).

⁵⁹ *Id.* at 9; *see also supra* at 4 & note 17.

⁶⁰ *Id.* (quoting App. at 5).

⁶¹ *Id.*

“[e]xtending [natural] gas exports and use cannot be reconciled” with U.S. and global climate goals.⁶² Environmental Advocates also assert that, even if DOE believes that Energy Transfer has shown that it is working to complete the Liquefaction Project, DOE “still must revisit numerous findings underlying its initial public interest determinations” in granting LCE’s non-FTA authorizations under NGA section 3(a).⁶³

According to Environmental Advocates, “subsequent events make it unreasonable” for DOE to rely on LCE’s non-FTA authorizations “without further analysis.”⁶⁴ Environmental Advocates contend that, “[g]iven the significant changed economic, political, and scientific circumstances that have developed since DOE first issued an export authorization for the Lake Charles LNG Project in 2016, DOE must reevaluate its original public interest finding.”⁶⁵ Environmental Advocates add that, where “a developer asks that the initial authorization be reopened for purposes of changing the commencement of operations deadline, it is appropriate to reopen it for other purposes as well.”⁶⁶

C. LCE’s Answer to Protests

In its Answer to the protests of IECA and Environmental Advocates, LCE argues that IECA and Environmental Advocates were limited to protesting the requested extension of the deadlines in the Application and thus should not be permitted to protest LCE’s underlying non-FTA authorizations.⁶⁷ Quoting the Notice of Application, LCE states that “DOE warned prospective protestors that ... ‘DOE will not consider comments or protest that do not bear

⁶² Env’tl. Advocates Pleading at 35; *see also, e.g., id.* at 16 (alleging that “DOE’s uniform approval of all export applications has not protected consumers from exploitation at the hands of gas companies”).

⁶³ *Id.* at 9 (quoting section title).

⁶⁴ *Id.* at 10.

⁶⁵ *Id.* at 21.

⁶⁶ *See id.* at 10 (citing 15 U.S.C. § 717o and arguing that “[r]econsidering prior determinations *in response to an extension request* is not a collateral or out-of-time attack on the initial authorization”) (emphasis in original).

⁶⁷ LCE Answer at 2-4.

directly on the Application [for the extension of construction deadlines].”⁶⁸ LCE argues that IECA and Environmental Advocates “completely disregard” these limitations by claiming that LCE’s non-FTA authorizations “are not, or are no longer, in the public interest.”⁶⁹ LCE therefore asks DOE to reject these protests. LCE adds that, in the Application, it demonstrated that the requested amendment of its export commencement deadlines to December 16, 2028, are not inconsistent with the public interest under NGA section 3(a), and thus DOE should approve the Application.⁷⁰

IV. DISCUSSION AND CONCLUSIONS

A. Scope of Review

DOE is reviewing LCE’s Application under NGA section 3(a) which states, in relevant part, that DOE “may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order ... as it may find necessary or appropriate.”⁷¹

Additionally, when reviewing an application to amend the export commencement deadline in an existing non-FTA authorization, DOE considers whether the requested extension will alter DOE’s public interest determination in originally granting the authorization under NGA section 3(a).⁷² This inquiry, however, is not the same as reevaluating DOE’s public interest determination in granting Order Nos. 3324-A and 4011, as the protestors urge.⁷³

In the normal course, the NGA does not require DOE to affirmatively reevaluate whether exports remain in the public interest during the term of an existing export authorization. Thus,

⁶⁸ *Id.* at 2 (quoting Notice of App., 87 Fed. Reg. at 45,093).

⁶⁹ *Id.* at 3.

⁷⁰ *Id.* at 4-5.

⁷¹ 15 U.S.C. § 717b(a).

⁷² *See, e.g., Lake Charles Exports, LLC*, DOE/FE Order Nos. 2987-A, *et al.*, at 6.

⁷³ *Cf.* FERC 2022 Extension Order at P 10 (observing that Energy Transfer’s extension application is a request “only to change the timing, not the nature, of the project”); *see also id.* (Danyl, Comm’r, concurring) (“[O]ur inquiry when reviewing a request for extension of time is narrow—it is not an opportunity to revisit the determinations made in ... proceedings after orders have become final and unappealable.”).

contrary to the protestors' arguments, DOE has no basis to use this limited amendment proceeding as a mechanism for "reopening" LCE's final orders, "revisiting" DOE's prior findings based on a substantial record, or "redefining" the public interest. Indeed, despite DOE making clear in the Notice of Application that such collateral attacks on LCE's orders would not be entertained,⁷⁴ both IECA and Environmental Advocates' protests contain pages of broad criticism of LNG exports and related DOE policy that are not directly connected to LCE's requested extension. We therefore agree with LCE that the protestors' arguments opposing exports of U.S. LNG, and LCE's orders generally, are not relevant to DOE's review here.⁷⁵

B. Denial of Application for Failure to Show Good Cause

1. DOE's Establishment of Seven-Year Export Commencement Deadline

We begin by observing that, in 2011, when DOE originally adopted a seven-year export commencement deadline in a non-FTA authorization issued to Sabine Pass Liquefaction, LLC, it did so based upon an explicit recognition that an authorization holder would need time to construct its proposed facility before commencing exports of LNG—and that this time period must be sufficiently long to allow for "unplanned delays in the licensing and construction" of the facility.⁷⁶ Additionally, as a condition of all long-term LNG export authorizations granted to date, DOE continues to state that the seven-year commencement deadline is necessary "to ensure

⁷⁴ Notice of App., 87 Fed. Reg. at 45,093 ("The public previously was given an opportunity to intervene in, protest, and comment on LCE's long-term non-FTA applications. Therefore, DOE will not consider comments or protests that do not bear directly on the Application.").

⁷⁵ Certain arguments made by IECA and Environmental Advocates concerning public interest considerations for a commencement extension, such as changed circumstances in domestic pricing, global interests, and environmental considerations (including greenhouse gas emissions), could be relevant, provided they are distinguishable from general criticisms of natural gas exports. However, DOE does not reach the merits of those arguments because DOE is denying LCE's Application for lack of good cause shown, as discussed herein.

⁷⁶ *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 33 (Term and Condition E) (May 20, 2011).

that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.”⁷⁷

Although DOE has granted limited extensions to this seven-year export commencement period (including for LCE and its affiliate, Lake Charles LNG Export),⁷⁸ LCE is now seeking an unprecedented second commencement extension. For Order No. 3324-A, this extension of three years, when added to the first extension of 28.5 months currently in effect, would give LCE nearly 5.5 additional years to commence exports under Order No. 3324-A—nearly double the original seven-year export commencement deadline.⁷⁹ For Order No. 4011, a second extension would give LCE a total of nearly 4.5 additional years to commence exports (17.5 months plus three additional years).

2. LCE’s Lack of Facts to Justify Second Extension

LCE contends that the second extension is justified for two principal reasons. First, LCE states that global events over the past few years, including the COVID-19 pandemic, have made it “extremely challenging” for authorization holders to construct their LNG export facilities and to execute international commercial agreements.⁸⁰ Although this may be true, we note that DOE granted LCE’s first extension request (for a substantial amount of time aligned with the FERC 2019 Extension Order) on October 6, 2020—approximately seven months into the COVID-19

⁷⁷ *E.g.*, Corpus Christi Liquefaction Stage III, LLC, DOE/FE Order No. 4490, Docket No. 18-78-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 49 (Term and Condition B) (Feb. 10, 2020); *see also Vista Pacifico LNG, S.A.P.I. de C.V.*, DOE/FECM Order No. 4929, Docket No. 20-153-LNG, Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Nations, at 73-74 (Term and Condition B) (Dec. 20, 2022).

⁷⁸ In 2020, DOE granted extensions of the export commencement deadline in six non-FTA orders (held by four different authorization holders) in the following dockets: Docket No. 12-156-LNG (Golden Pass LNG Terminal LLC); Docket Nos. 13-04-LNG and 16-19-LNG (Lake Charles LNG Export); Docket Nos. 11-59-LNG and 16-110-LNG (LCE); and Docket No. 15-190-LNG (Cameron LNG). Concurrently with the issuance of this Order, DOE is granting an extension of the export commencement deadline in the non-FTA order held by Port Arthur LNG, LLC (Docket No. 15-96-LNG). *See infra* note 84.

⁷⁹ *See supra* at 3.

⁸⁰ App. at 4.

pandemic. Given that LCE’s first extension request remained pending during part of the COVID-19 pandemic, if LCE was experiencing difficult circumstances that further delayed advancement of the Liquefaction Project at the time, it could have amended its first extension application to provide more time beyond 2025. Instead, LCE filed the Application requesting its second extension in June 2022, after the primary, acute effects of the COVID-19 pandemic had largely subsided.

We also agree with Environmental Advocates that LCE’s generalized statements do not demonstrate with specificity how, in fact, the development and construction of the Liquefaction Project has been delayed by global events since LCE’s first extension application.⁸¹ Nor does LCE provide evidence of any actions Energy Transfer has taken to advance the Liquefaction Project since the first extension was granted in 2020, other than LCE entering into several long-term offtake contracts (specifically, in 2022).⁸² We agree with Environmental Advocates that these contracts alone do not demonstrate that Energy Transfer has made significant progress toward the physical completion of the Liquefaction Project since 2020, including “progress towards reaching FID.”⁸³

We also observe that recent global events—which include both the COVID-19 pandemic and Russia’s invasion of Ukraine—created both challenges *and* opportunities for participants in the U.S. LNG market. Although LCE has executed some long-term offtake contracts since 2020, it has not achieved the level of commercial progress that other authorization holders have

⁸¹ See Env’tl. Advocates Pleading at 8; compare *Lake Charles Exports, LLC*, DOE/FE Order Nos. 2987-A, *et al.*, at 5-6; see also *supra* note 17.

⁸² App. at 5; see also *id.* at 4; see also *Lake Charles Exports, LLC*, Semi-Annual Report, Docket No. 11-59-LNG, at 3 (Apr. 3, 2023) (summarizing long-term contracts associated with the Liquefaction Project), https://www.energy.gov/sites/default/files/2023-04/20230403_LCE%20DOE_FE-OrderNos_3324_3324-A_SemiAnnualReport.pdf.

⁸³ App. at 4.

reached in a similar time period, which is all the more important when requesting an unprecedented second extension.⁸⁴

We further note that all authorization holders currently exporting from the seven large-scale export facilities in the United States commenced exports within their original seven-year commencement period—some while weathering the challenging delays and uncertainties associated with the COVID-19 pandemic and related market repercussions.⁸⁵ Most recently, Venture Global Calcasieu Pass, LLC (Calcasieu Pass) constructed and began operating its LNG export facility in Cameron Parish, Louisiana, within three years from the date it received its non-FTA authorization in 2019,⁸⁶ demonstrating that it is possible for major LNG projects to be placed in-service well within the seven-year commencement period, even during the COVID-19 pandemic.

DOE also takes note that, since 2022, three additional authorization holders—Venture Global Plaquemines LNG, LLC; Corpus Christi Liquefaction Stage 3, LLC; and Port Arthur LNG, LLC—have each announced that they have reached a final investment decision and

⁸⁴ As a basis of comparison, DOE is granting Port Arthur LNG, LLC's (PALNG) first commencement extension concurrently with this Order (*see supra* note 78), but PALNG sought a 25-month extension (citing adverse market conditions and logistical issues associated with the COVID-19 pandemic) and identified numerous steps it has taken to advance its project in the meantime. *See Port Arthur LNG, LLC*, DOE/FECM Order Nos. 3698-C & 4372-B, Docket Nos. 15-53-LNG, *et al.*, Order Granting Application to Extend Term to Begin Exports of Liquefied Natural Gas to Free Trade Agreement Countries and to Extend Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries, at 6-7, 12-14 (April 21, 2023).

⁸⁵ The authorization holders that have commenced exports before their commencement deadline are: (i) Sabine Pass; (ii) Cove Point LNG, LP; (iii) Southern LNG Company, L.L.C.; (iv) Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC (joint authorization holders); (v) Cameron LNG, LLC; (vi) Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (joint authorization holders); and (vii) Venture Global Calcasieu Pass, LLC.

⁸⁶ Calcasieu Pass received its non-FTA export authorization, DOE/FECM Order No. 4346, on March 5, 2019. On March 1, 2022, Calcasieu Pass loaded its first cargo of LNG at the newly constructed Venture Global Calcasieu Pass Project, and it has exported dozens of cargoes to date. *See* Venture Global Calcasieu Pass, LLC, Semi-Annual Status Report, Dockets No. 13-69-LNG, *et al.*, at 2 (Mar. 31, 2023), https://www.energy.gov/sites/default/files/2023-04/VG%20Calcasieu%20Pass_April%202023%20DOE%20Progress%20Report%20%28final%29.pdf.

commenced construction of their respective export facility, all within three or four years of receiving their long-term non-FTA authorization from DOE.⁸⁷

For these reasons, we do not believe that the “difficult circumstances” cited by LCE warrant a second extension.⁸⁸ Indeed, DOE has long noted the “continuing uncertainty that all or even most of the proposed LNG export projects will ever be realized because of the time, difficulty, and expense of commercializing, financing, and constructing LNG export terminals, *as well as the uncertainties and competition inherent in the global market for LNG.*”⁸⁹

We also reiterate that, by providing seven years for authorization holders to commence exports, DOE’s export commencement period already was designed to provide authorization holders with a buffer against challenging circumstances inherent in LNG project development.⁹⁰ If DOE did not enforce these commencement deadlines, an authorization holder might seek extension after extension without ever being ready to proceed with its project. DOE has an obligation to ensure performance of its statutory responsibilities, including ensuring that non-FTA authorizations are utilized in a timely manner.⁹¹

⁸⁷ See “Venture Global Announces Final Investment Decision and Financial Close for Plaquemines LNG” (May 25, 2022), <https://ventureglobalng.com/press/venture-global-announces-final-investment-decision-and-financial-close-for-plaquemines-lng/>; “Cheniere Announces Positive Final Investment Decision on the Corpus Christi Stage 3 Liquefaction Project” (June 22, 2022), <https://lngir.cheniere.com/news-events/press-releases/detail/252/cheniere-announces-positive-final-investment-decision-on>; “Sempra Launches Port Arthur LNG Project” (Mar. 20, 2023), <https://www.sempra.com/sempra-launches-port-arthur-lng-project>.

⁸⁸ App. at 4.

⁸⁹ *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961, Docket No. 21-98-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 71 (Mar. 3, 2023) (emphasis added).

⁹⁰ See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, *supra* note 76, at 33. In first establishing this seven-year period, DOE explained that “a seven-year operations commencement date has been selected as a reasonable accommodation given [Sabine Pass’s] representation that it plans to be ready to commence operations [in five years] by 2015-2016.” *Id.* DOE reasoned that a seven-year period “provides approximately two years beyond [Sabine Pass’s] current planned commencement date . . .” and thus “will allow for time lost due to unplanned delays in licensing and construction of the planned liquefaction facilities.” *Id.*

⁹¹ See, e.g., *Freeport LNG Expansion L.P., et al.*, DOE/FE Order No. 3282, Docket No. 10-161-LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations, at 113 (May 17, 2013).

Second, LCE states that its requested extension is necessary due to “[c]omplex FID financing arrangements,” which require Energy Transfer to demonstrate that “all authorizations [will] remain in full force and effect during construction of the Liquefaction Project” (*i.e.*, through the deadline established in the FERC 2022 Extension Order).⁹² DOE understands that lenders often seek assurance that DOE export authorizations will remain valid through the FERC construction and in-service deadline for the associated export facility. However, there can be no expectation of one-for-one deadline extensions between FERC and DOE. As our precedent shows, an authorization holder obtaining an extension of its FERC deadline is a prerequisite to DOE considering an extension of the export commencement deadline; it does not mean, however, that DOE has an obligation to match every FERC extension.⁹³

3. Consistency With DOE Policy Statement

In the Policy Statement on export commencement deadlines being issued concurrently with this Order,⁹⁴ DOE describes at length both the disruption and challenges that arise where a non-FTA authorization holder cannot commence exports within its original seven-year commencement period—or, as here, even within its first extension period. DOE explains that enforcing these commencement periods without delay provides several important benefits, including: (i) to better assess whether any new non-FTA applications are in the public interest; (ii) to provide more certainty to the U.S. and global LNG export markets; and (iii) to ensure that DOE is making decisions utilizing the latest market information and analytical tools available,

⁹² App. at 4-5; *see also supra* note 20.

⁹³ DOE’s seven-year period for authorization holders to begin exports is longer than FERC’s standard five-year construction and in-service deadline, precisely (as noted above) to allow for unanticipated delays in the approval and construction process for the export facility. *See supra* at 13.

⁹⁴ *See* Policy Statement, *supra* note 26.

and not based on stale analysis.⁹⁵ Although we are not taking action on LCE’s Application under the Policy Statement, DOE’s reasoning in the Policy Statement is consistent with and supports our decision in this Order.

In sum, guided by our longstanding rationale for the export commencement period, and on the record before us, we are not persuaded that LCE has demonstrated good cause to justify a second commencement extension for either of its non-FTA orders. We note, however, that LCE’s existing export commencement deadline granted in its first extension request—December 16, 2025—remains in effect for both Orders No. 3324-A and 4011, as amended.⁹⁶

ORDER

Pursuant to section 3 of the Natural Gas Act, DOE hereby orders that:

A. LCE’s Application is denied.

Issued in Washington, D.C., on April 21, 2023.



Brad Crabtree
Assistant Secretary
Office of Fossil Energy and Carbon Management

⁹⁵ See *id.* Although LCE maintains that “[n]o entity would be prevented from obtaining export authorization if [DOE] were to grant the requested extension” (App. at 6), DOE notes in the Policy Statement that uncertainty over the status of non-FTA orders may serve to discourage or delay potential new entrants to the U.S. export market, including those that seek to utilize newer technology and to adopt better environmental practices.

⁹⁶ See *Lake Charles Exports, LLC*, DOE/FE Order Nos. 2987-A, *et al.*, *supra* note 15, at 8-10 (extending export commencement deadlines to December 16, 2025).