

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

GOLDEN PASS LNG TERMINAL LLC

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DOCKET NO. 12-156-LNG

ORDER DENYING REQUEST FOR REHEARING OF
ORDER AMENDING LONG-TERM AUTHORIZATION TO EXPORT LIQUEFIED
NATURAL GAS TO NON-FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 3978-F

JUNE 24, 2022

I. INTRODUCTION

On April 27, 2022, the Office of Fossil Energy and Carbon Management of the Department of Energy (DOE/FECM)¹ issued DOE/FECM Order No. 3978-E (Order or Order No. 3978-E)² to Golden Pass LNG Terminal LLC (Golden Pass LNG), under section 3(a) of the Natural Gas Act (NGA).³ In the Order, DOE amended Golden Pass LNG's existing long-term authorization to export domestically produced liquefied natural gas (LNG) to non-free trade agreement (non-FTA)⁴ countries by increasing Golden Pass LNG's approved export volume from the equivalent of 808 to 937 billion cubic feet per year (Bcf/yr) of natural gas.⁵

DOE gave public notice of Golden Pass LNG's application for limited amendment⁶ (Amendment Application) in the *Federal Register* on September 18, 2020 (Notice of Amendment Application), and invited interested persons to submit protests, comments, motions to intervene, or notices of intervention addressing the Amendment Application no later than November 17, 2020.⁷ DOE stated in the Notice of Amendment Application that “[a] decisional record on the [Amendment] Application will be developed through responses to this Notice by parties, including the parties’ written comments and replies thereto.”⁸

¹ The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

² *Golden Pass LNG Terminal LLC*, DOE/FECM Order No. 3978-E, Docket No. 12-156-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (April 27, 2022) [hereinafter Order or Order No. 3978-E].

³ 15 U.S.C. § 717b(a). The authority to regulate the imports and exports of natural gas, including LNG, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2021, issued on March 25, 2021.

⁴ Non-FTA countries are countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy.

⁵ All other terms and conditions of Order No. 3978, as amended, remained the same. *See* DOE/FECM Order No. 3978-E, at 52.

⁶ Golden Pass LNG Terminal LLC, Application for Limited Amendment to Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket No. 12-156-LNG (Aug. 14, 2020).

⁷ Golden Pass LNG Terminal LLC, Application for Limited Amendment to Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, 85 Fed. Reg. 58,347 (Sept. 18, 2020).

⁸ *Id.* at 58,348.

DOE received no filings in response to the Notice of Amendment Application, and therefore the Amendment Application was uncontested.⁹ Accordingly, DOE issued Order No. 3978-E on April 27, 2022. On May 27, 2022 — the last day of the rehearing period — Sierra Club filed a request for rehearing of Order No. 3978-E (Request).¹⁰ In its Request, Sierra Club did not address any procedural basis for its filing but made three chief substantive arguments, alleging (i) DOE’s climate change analysis was deficient under the National Environmental Policy Act of 1969 (NEPA)¹¹ and NGA; (ii) DOE’s conclusions on the additional exports benefits for Europe were arbitrary; and (iii) DOE’s NEPA analysis was insufficient.¹² For purposes of the instant order, DOE only addresses the procedural issues.

On June 10, 2022, Golden Pass LNG filed a Motion for Leave to Answer (Motion) and Answer to Sierra Club’s Request for Rehearing (Answer), in which Golden Pass LNG opposed the Request on both procedural and substantive grounds.¹³ In regard to the procedural issues, as discussed below, Golden Pass LNG asks DOE to reject Sierra Club’s Request. Golden Pass LNG states that because Sierra Club waived its arguments by failing to timely make them, and that by recognizing new arguments in the Amendment Application that are raised for the first time during rehearing, especially when Sierra Club never contested the Amendment Application, Sierra Club’s Request is disruptive to the administrative process and presents fairness and due process concerns.¹⁴

⁹ Order No. 3978-E at 5.

¹⁰ Sierra Club, Request for Rehearing of DOE/FECM Order No. 3978-E, Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 12-156-LNG (May 27, 2022) [hereinafter Request].

¹¹ 42 U.S.C. § 4321 *et seq.*

¹² Request at 2-3.

¹³ Golden Pass LNG Terminal LLC, Motion for Leave to Answer and Answer to the Sierra Club’s Request for Rehearing, Docket No. 12-156-LNG (June 10, 2022) [hereinafter Golden Pass Motion and Answer].

¹⁴ *Id.* at 6-7.

Upon review, DOE finds that Sierra Club's Request raising new arguments in opposition to Order No. 3978-E does not comply with the procedures contained in DOE's regulations.¹⁵ Accordingly, for the reasons discussed below, DOE grants Golden Pass LNG's Motion as responsive and relevant to DOE's consideration of the procedural issues and dismisses Sierra Club's Request in its entirety.

II. BACKGROUND

In 2012, Golden Pass LNG filed its original application seeking to export LNG from the proposed Golden Pass LNG Terminal to non-FTA countries.¹⁶ Sierra Club timely filed a motion to intervene and protest that application.¹⁷ In April 2017, DOE granted Golden Pass LNG's application in Order No. 3978¹⁸ and, in doing so, granted Sierra Club's motion to intervene to oppose Golden Pass LNG's application. Sierra Club timely sought rehearing of Order No. 3978, which DOE denied in Order No. 3978-A in March 2018, finding that it had not been shown that a grant of the requested authorization is inconsistent with the public interest.¹⁹

Subsequently, on August 14, 2020, Golden Pass LNG filed the new Amendment Application, seeking to amend its existing non-FTA order to export an increased volume of LNG. DOE published a Notice of Application in the *Federal Register*, inviting interested parties to file protests, motions to intervene or notices of intervention (as applicable), and written comments on the Amendment Application. DOE provided a 60-day comment period ending on November 17,

¹⁵ 10 C.F.R. Part 590.

¹⁶ Golden Pass LNG Terminal LLC (formerly Golden Pass Products LLC), Application for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries, Docket No. 12-156-LNG (Oct. 26, 2012).

¹⁷ Sierra Club, Motion for Leave to Intervene, Protest and Comment, Docket No. 12-156-LNG (Feb. 4, 2013).

¹⁸ *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978, Docket No. 12-156-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations (April 25, 2017).

¹⁹ *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978-A, Docket No. 12-156-LNG, Opinion and Order 3978-A Granting Motion for Leave to Answer Request for Rehearing and Denying Request for Rehearing, at 8 (Mar. 30, 2018); *See also* Order No. 3978-E at 1-5 (discussing background of proceeding).

2020.²⁰ No filings were submitted in response to the Notice of Amendment Application by Sierra Club, nor any other interested party, to be made a part of the decisional record of the Amendment Application, and therefore DOE deemed the Amendment Application uncontested.²¹

On May 27, 2022—the last day of the rehearing period and approximately 18 months after the comment period closed on the Notice of Amendment Application—Sierra Club filed a Request for Rehearing, raising arguments opposing Golden Pass LNG’s Amendment Application for the first time.

III. GOLDEN PASS LNG’S PROCEDURAL ARGUMENTS

In its Answer filed June 10, 2022,²² Golden Pass LNG asserts that DOE should reject Sierra Club’s Request because reconsideration would be improper where Sierra Club waived its arguments in opposition to the Amendment Application by failing to timely make them. Golden Pass LNG notes that DOE’s Notice of Amendment Application clearly and expressly limited the time for submitting “[p]rotests..., requests for additional procedures, and written comments.”²³ Golden Pass LNG asserts that Sierra Club did not comply with the procedures in DOE’s regulations and had ample opportunity to make its arguments in 2020 but chose to remain silent and not contest the Amendment Application until May 27, 2022.²⁴

Golden Pass LNG argues procedurally that raising new arguments for the first time on rehearing is inappropriate for several reasons. First, it is “disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.”²⁵ Golden Pass LNG maintains that such an outcome would be contrary to public

²⁰ See supra note 7.

²¹ Order No. 3978-E at 5.

²² See supra note 13.

²³ Golden Pass Motion and Answer at 5 (quoting 85 Fed. Reg. at 58,348).

²⁴ *Id.* at 6-7.

²⁵ *Id.* (citing *Nevada Power Company*, 111 FERC ¶ 61111, 61616 (2005)).

interests in administrative efficiency and finality. Second, new arguments in rehearing requests “raises concerns of fairness and due process”²⁶ because parties are not permitted to answer a request for rehearing as a matter of right. Finally, Golden Pass LNG states that both agencies and courts properly refuse “new arguments” in a “petition for rehearing” where the party “could have raised them earlier and there was no reasonable ground for not having done so.”²⁷

IV. DISCUSSION AND CONCLUSIONS

On June 10, 2022, Golden Pass LNG filed its Motion and Answer to Sierra Club’s Request.²⁸ Golden Pass LNG’s Answer is relevant to DOE’s consideration of the procedural issues arising out of Sierra Club’s Request. Sierra Club did not oppose Golden Pass LNG’s Motion. Accordingly, we grant Golden Pass LNG’s Motion.

Moreover, under NGA section 19(a), a party aggrieved by an order issued by DOE may file a request for rehearing within 30 days after the issuance of the order.²⁹ When acting upon such request, DOE has the “power to grant or deny rehearing or to abrogate or modify its order without further hearing.”³⁰

However, after reviewing the record, including the arguments made by Golden Pass LNG, we find that Sierra Club did not comply with DOE’s procedures in several respects.

Specifically, Sierra Club disregarded the requirements on protests set forth in DOE’s procedures at 10 C.F.R. §§ 590.304(c) and 590.304(e) which provide the following respectively:

A protest shall be made part of the official [DOE] docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

²⁶ *Id.* at 7 (citing *Omaha Public Power District*, 164 FERC ¶ 61238, at *3 (2018)).

²⁷ *Id.* (citing *Town of Norwood v. FERC*, 962 F.2d 20, 25 (D.C. Cir. 1992)).

²⁸ *See supra* note 13.

²⁹ 15 U.S.C. § 717r(a).

³⁰ *Id.*

Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable [DOE] notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown.

In *Sabine Pass Liquefaction, LLC (Sabine Pass)*, DOE explained that “the instant matter was publicly noticed in the Federal Register and interested persons were given sixty days from the date of the notice in which to file motions to intervene.”³¹ DOE stated that it established a “sixty day notice period ... in recognition of the need to afford the public sufficient time to consider the precedential nature of the proceeding.”³² DOE explained that “at some point, the opportunity for interested persons to intervene as parties in a proceeding must close” to “ensure that the resolution of a proceeding and the issuance of a final order are not unduly delayed by inattentiveness or intentional delay.”³³

Similar reasoning applies here, where Sierra Club did not protest the Amendment Application within the 60-day comment period set forth in the Notice of Amendment Application. Instead, Sierra Club waited until DOE issued its final Order 3978-E to challenge the increased export volume. Almost 10 years ago, DOE concluded in *Sabine Pass* that “Sierra Club, like other members of the public, had a responsibility to comply with the filing deadlines established in the Notice of Application if it wanted to raise issues regarding the environmental impacts of granting the instant application.”³⁴ There, Sierra Club filed its protest 16 months out of time, and DOE dismissed the motion to intervene, noting that allowing a 16-month late protest “would unnecessarily delay the final agency action and unfairly prejudice the parties to the

³¹ *Sabine Pass Liquefaction, LLC*, Docket No. 10-111-LNG, Procedural Order on Late Filed Proceedings, at 5 (Mar. 25, 2011).

³² *Id.*

³³ *Id.*

³⁴ *Sabine Pass Liquefaction, LLC*, Order No. 2961-A, Docket No. 10-111-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 25 (Aug. 7, 2012).

proceeding.”³⁵ In the instant application, Sierra Club filed its protest to the Amendment Application 18 months out of time — later even than the 16-months delay in *Sabine Pass* — and raising issues for the first time after DOE issued its final Order 3978-E.

By contrast, Sierra Club’s submissions in prior proceedings demonstrate its awareness of the requirement to timely file its protest opposing Golden Pass LNG’s Amendment Application during the comment period set forth in the Notice of Amendment Application and not for the first time upon rehearing of final Order 3978-E. For example, in *Jordan Cove Energy Project, L.P.* (Jordan Cove), Sierra Club filed in 2012 a motion to intervene, comment, and protest³⁶ Jordan Cove’s original application in Docket No. 12-32-LNG³⁷ that DOE granted in its conditional order, DOE/FE Order No. 3413.³⁸

Subsequently, in 2015, Jordan Cove filed an application to amend Order No. 3413 to increase the authorized export volume from 292 Bcf/yr to 350 Bcf/yr of natural gas.³⁹ In response to the notice of amendment in the Federal Register,⁴⁰ Sierra Club timely filed an “Answer to Amendment to Application and Protest” expressing opposition to Jordan Cove’s amendment to increase its requested export volume. In that answer, Sierra Club states that it

³⁵ *Id.* at 26.

³⁶ Sierra Club, Motion to Intervene, Protest, and Comments, Docket No. 12-32-LNG, at 1 (Aug. 6, 2012).

³⁷ Jordan Cove Energy Project, L.P., Application of Jordan Cove Energy Project, L.P. for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 12-32-LNG (Mar. 23, 2012); see also *Alaska LNG Project LLC*, Order No. 3643-B, Docket No. 14-96-LNG, Order on Rehearing, at 2, fn 7, and at 5 (Apr. 15, 2021) (noting DOE’s grant of Sierra Club’s request for rehearing, where Sierra Club timely filed for rehearing on Sept. 21, 2020, after it had earlier moved to intervene and protest on Nov. 17, 2014 within the comment period of the notice of application).

³⁸ *Jordan Cove Energy Project L.P.*, DOE/FE Order No. 3413, Docket No. 12-32-LNG, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Jordan Cove LNG Terminal in Coos Bay, Oregon, to Non-Free Trade Agreement Nations at 136 and at 158 (Ordering Para. Q) (Mar. 24, 2014), amended by DOE/FE Order No. 3413-A, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 9 (July 6, 2020).

³⁹ See Jordan Cove Energy Project L.P., Amendment of Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 12-32-LNG (Oct. 5, 2015).

⁴⁰ Jordan Cove Energy Project, L.P., Amendment of Application for Long-Term, Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 81 Fed. Reg. 11,202 (Mar. 3, 2016).

“protested the initial application, and protests this amendment.”⁴¹

Further, in 2018, Jordan Cove filed yet another application to amend Order No. 3413,⁴² and Sierra Club timely filed yet another protest to that application. In that protest, Sierra Club stated that, “[t]his protest is submitted in response to the [Federal Register] notice issued by DOE on April 19, 2018,⁴³ ... Sierra Club has already been granted intervenor status in [this docket].”⁴⁴

In the instant Amendment Application, Sierra Club chose not to contest it and, in any event, has not made any arguments to show good cause for its actions and inaction. Where an intervenor or person did not timely contest an application and fails to show good cause for its failure but raises objections for the first time on rehearing of a final order, DOE finds that reconsideration of Order No. 3978-E would upend DOE’s established administrative process, undermining the public interest in administrative efficiency and finality and rendering its comment period meaningless.⁴⁵ It would also exacerbate fairness and due process concerns for parties seeking finality in administrative decisions.

In addition, Golden Pass LNG notes that, under 10 C.F.R § 590.310, DOE may limit the time a party may seek additional procedures and may prohibit such requests after issuance of an order if DOE sets no earlier time limit. Section 590.310 provides in relevant part as follows:

Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Assistant Secretary for good cause shown grants additional

⁴¹ Sierra Club, Answer to Amendment to Application and Protest, Docket No. 12-32-LNG, at 1 (Mar. 23, 2016).

⁴² Jordan Cove Energy Project L.P., Application to Amend Long-Term Authorizations to Export Liquefied Natural Gas to Free Trade Agreement Countries and Non-Free Trade Agreement Countries and Amendment to Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 11-127-LNG and 12-32-LNG (Feb. 6, 2018).

⁴³ Jordan Cove Energy Project, L.P., Application to Amend Long-Term, Conditional Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations and To Amend Application for Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 83 Fed. Reg. 17,406 (Apr. 19, 2018).

⁴⁴ Sierra Club, Protest, Docket No. 12-32-LNG, at 1 (May 9, 2018).

⁴⁵ See, generally, *Tennessee Gas Pipeline Company v. Federal Energy Regulatory Commission*, 871 F.2d 1099 (D.C. Cir. 1989).

time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final opinion and order.

DOE agrees. Sierra Club's "wait-and-see" approach to objecting to the Amendment Application upon rehearing after DOE issues an order is improper. Sierra Club has not offered a procedural basis for its actions nor shown good cause. For the same reason, DOE rejects Sierra Club's suggestion that DOE amend and/or rescind existing export authorizations under 15 U.S.C. § 717o in the context of a single authorization holder's proceeding.⁴⁶

ORDER

Pursuant to Sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

- A. Golden Pass LNG's Motion for Leave to Answer Sierra Club's Request for Rehearing is granted.
- B. Sierra Club's Request for Rehearing is denied.

Issued in Washington, D.C. on June 24, 2022.

Amy R. Sweeney
Director, Office of Regulation, Analysis, and Engagement
Office of Resource Sustainability

⁴⁶ Request at 14.