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**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

In the Matter of:)
)
Venture Global Calcasieu Pass, LLC) **Docket Nos. 13-69-LNG**
) **14-88-LNG**
) **15-25-LNG**

Pursuant to Section 590.303(e) of the administrative procedures with respect to the import and export of natural gas of the Department of Energy (“DOE”),¹ Venture Global Calcasieu Pass, LLC (“Calcasieu Pass”) hereby submits this answer opposing the Motion for Leave to Intervene Out of Time of Repsol LNG Holding, S.A. (“Repsol”) filed on April 25, 2023, in the above-captioned proceedings (the “Motion”). Repsol seeks to intervene over seven years after the deadline established by DOE for interventions,² more than four years after the DOE authorized Calcasieu Pass to export liquefied natural gas (LNG) to nations with which the United States has not entered into a Free Trade Agreement (FTA) requiring the national treatment of natural gas,³ and more than one year since Calcasieu Pass actually commenced the export of LNG.⁴

¹ 10 C.F.R. § 590.303(e) (2023).

² The deadline that was established for interventions in Docket No. 15-25-LNG (the last-established of these three proceedings) was August 28, 2015. See Notice of Application, 80 Fed. Reg. 36977 (June 29, 2015).

³ DOE/FE Order No. 4346 issued in FE Docket Nos. 13-69-LNG, 14-88-LNG, and 15-25-LNG on March 5, 2019. Calcasieu Pass had previously been authorized for exports to FTA nations in three successive order addressing incremental volumes. DOE/FE Order No. 3345 issued in FE Docket No. 13-69-LNG on September 27, 2013; DOE/FE Order No. 3520 issued in FE Docket No. 14-88-LNG on October 10, 2014; and DOE/FE Order No. 3662 issued in FE Docket No. 15-25-LNG on June 17, 2015.

⁴ Calcasieu Pass exported its first LNG cargo on March 1, 2022, as stated in a notification of that event filed with DOE in these proceedings on March 22, 2022.

Repsol entered into an LNG Sales and Purchase Agreement with Calcasieu Pass dated as of August 14, 2018,⁵ before DOE authorized non-FTA exports from the Project. Yet, Repsol never sought to intervene in these proceedings until its recent Motion.

Calcasieu Pass is currently exporting LNG in accordance with the terms and conditions of its already issued export authorizations, including the required monthly reports regarding exports. Repsol claims (in its Motion at 4) that it “will be directly affected by the outcome of these proceedings” but it is far from clear what future “outcome” it has in mind.⁶ Repsol explains that it “is not seeking to relitigate the DOE authorization orders, but instead has an interest in the implementation of those orders and other applicable requirements that are subject to the ongoing jurisdiction of the DOE.”⁷ At this late stage, there is no legitimate role for a late-intervenor like Repsol to play. To the extent that Repsol envisions some role for itself here, that activity would surely result in an additional burden upon, and potential prejudice to, Calcasieu Pass. Furthermore, Repsol fails to provide any good cause to justify its intervention at this very late date, contrary to well-established DOE policy.

⁵ Calcasieu Pass submitted its long-term contract with Repsol to DOE, along with a public summary of its terms, on Sept. 7, 2018.

⁶ Calcasieu Pass has filed for a limited amendment of its export authorizations to increase the total authorized export volumes from 620 billion cubic feet per year (Bcf/yr) to 640.666 Bcf/yr, to reflect a refined analysis of the peak liquefaction capacity of the authorized Project facilities under optimal conditions. See Order No. 3662-B issued in Docket No. 15-25-LNG on April 22, 2022 (amending authorized volumes for FTA exports). A future DOE order addressing that amendment with respect to non-FTA exports remains pending. But for that “uprate amendment,” no further DOE action in these proceedings would be contemplated. Notably, Repsol did not mention the uprate amendment in its Motion, nor present any issues related to that amendment. Moreover, even with respect to that amendment, the deadline for interventions was March 11, 2022. See Notice of Amendment Application, 87 Fed. Reg. 1131 (Jan. 10, 2022).

⁷ Motion at 5.

DOE’s administrative procedures require that motions to intervene must be filed “no later than the date fixed for filing such motions or notices in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion of the proceeding.”⁸ DOE has frequently denied motions to intervene in its LNG export proceedings filed after the date established for interventions in the usual context where an application for export authorization remains pending before the agency. This policy was established over a dozen years ago in the Sabine Pass proceeding when DOE denied an intervention filed 16 months after the applicable deadline, holding that “at some point, the opportunity for interested persons to intervene as parties in a proceeding must close.”⁹ DOE explained there that allowing late filings would unfairly prejudice the parties as well as unnecessarily delay final agency action:¹⁰ the latter concern is not really applicable here as DOE has already taken its final action on Calcasieu Pass’s export authorization.

In much more recent orders, DOE has continued to deny interventions in LNG export proceedings filed late – but prior to its decision – establishing a firm policy that interventions must be submitted by the published deadline.¹¹ Indeed, DOE is currently litigating against the Sierra Club in the U.S. Court of Appeals for the District of Columbia Circuit in two different cases in which Sierra Club’s compliance with the deadline

⁸ 10 C.F.R. § 590.303(d) (2023).

⁹ *Sabine Pass Liquefaction, LLC*, Docket No. 10-111-LNG, Procedural Order on Late Filed Proceedings, at 5 (Mar. 25, 2011).

¹⁰ *Id.*

¹¹ *E.g., Energía Costa Azul, S. de R.L. de C.V.*, Order No. 4365-B, Docket No. 18-45-LNG at 50-54 (Dec. 20, 2022); *Vista Pacifico LNG, S.A.P.I. de C.V.*, Order No. 4929, Docket No. 20-153-LNG at 50-53 (Dec. 20, 2022);

established by DOE in the Federal Register to submit a protest and motion to intervene in response to a LNG export application is a central issue.¹²

DOE did make an exception to this policy of denying late interventions in one recent case, allowing a late intervention when it conducted a supplemental environmental impact statement (“EIS”) for the Alaska LNG project and the new intervenor sought to comment on the draft EIS.¹³ Nothing here is remotely like the unique circumstances in that case – where the intervenor sought to comment on a new study being developed by DOE for purposes of a further order.

As an implicit explanation of why it is seeking to intervene only now, Repsol asserts that its interest here concerns “the material delay in Venture Global declaring that construction and commissioning of the Project have been completed and that commercial operation has been achieved.”¹⁴ Calcasieu Pass was able, as a result of its unique modular, midscale design and other factors, to produce LNG in a record short amount of time for a large-scale greenfield LNG facility (moving from Final Investment Decision to LNG production in just 29 months).¹⁵ Moreover, Calcasieu Pass was able to begin exporting LNG cargos last March while Terminal construction was on-going, enabling it to provide much needed new LNG supplies to the global

¹² See *Sierra Club v. U.S. Dep’t of Energy*, Case No. 22-12-17 (D.C. Cir.) (pending) (Magnolia LNG proceeding); *Sierra Club v. U.S. Dep’t of Energy*, Case No. 22-12-18 (D.C. Cir.) (pending) (Golden Pass LNG proceeding).

¹³ *Alaska LNG Project LLC*, Order No. 3643-C, Docket No. 14-96-LNG at 16-23 (Arp. 13, 2023).

¹⁴ Motion at 4.

¹⁵ In its “Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries” issued on April 11, 2023, DOE recognized (at 14) that Calcasieu Pass constructed and began operating its LNG export facility within three years from the date it received its non-FTA authorization, even during the COVID-19 pandemic while other projects have been delayed.

market at a time of critical need, particularly in Europe following Russia’s invasion of Ukraine. Calcasieu Pass has now completed most of the construction of the Export Terminal, but its commissioning phase continues. As another result of its unique design, phased construction and commissioning, and on-site power generation, the Calcasieu Pass Terminal requires a lengthy commissioning process before it can be expected to be fully operational and confirmed to be prepared to reliably meet its long-term contractual obligations. Recently, the facility has experienced certain reliability challenges that are delaying its commercial operations, as explained in a filing submitted to the Federal Energy Regulatory Commission (“FERC”) on March 28, 2023, and attached for reference in Calcasieu Pass’s most recent semi-annual report to DOE.¹⁶

DOE, however, has no regulatory role with respect to the construction and commissioning of the Project facilities.¹⁷ Calcasieu Pass does have an ongoing proceeding before FERC which is exercising close, on-going supervision of the construction and commissioning of the Project facilities.¹⁸ Repsol similarly has just

¹⁶ Letter to OEP Director Terry Turpin from Fory Musser of Venture Global, filed in FERC Docket CP15-550 on March 28, 2023 (Accession No. 20230328-5239), as attached to Calcasieu Pass’s Semi-annual Status Report submitted to DOE in these proceedings on March 31, 2023.

¹⁷ DOE’s authority under Section 3 of the Natural Gas Act was established by the Department of Energy Organization Act, 42 U.S.C. 7151(b), which transferred jurisdiction over import and export authorizations from the Federal Power Commission to the Secretary of Energy; *see also* 42 U.S.C. 7172(f). The authority to regulate the imports and exports of natural gas, including LNG, under NGA section 3 has been delegated to the Assistant Secretary for Fossil Energy and Carbon Management (FECM) in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023. The Secretary delegated to FERC, however, the authority to approve or disapprove the construction and operation of natural gas import and export facilities and the site at which such facilities shall be located. The most recent such delegation is in DOE Delegation Order No. S1-DEL-FERC-2006, effective May 16, 2006.

¹⁸ FERC authorized the siting, construction and operation of the Calcasieu Pass facilities in *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019). Pursuant to the conditions of that order, Calcasieu Pass submits to FERC both monthly construction reports and (since first production of LNG began) weekly commissioning reports. FERC Staff also engages in weekly update conference calls with Calcasieu Pass and periodically inspects the Terminal site to determine compliance with the conditions in the FERC order.

recently sought to intervene out-of-time (by many years) in those FERC proceedings. Calcasieu Pass also opposes that late intervention as not justified by good cause and likely to be prejudicial, as detailed in its answer to Repsol’s intervention filed with FERC.¹⁹

Repsol charges that Calcasieu Pass “continues to represent to DOE that the cargos exported to date are ‘commissioning cargos’, even though it has exported for its own account (and not for its long-term Project customers) over 128 LNG cargos in less than a year and is continuing its export activities.”²⁰ All of the cargos exported to-date are indeed “commissioning cargoes,” simply because the Terminal has not completed its commissioning and Calcasieu Pass is not exporting LNG pursuant its long-term sale and purchase agreements.²¹

Repsol further asserts that the issues of concern to it “are related to whether Venture Global is complying now with the requirements of DOE’s orders and making accurate representations to DOE and its staff.”²² This manufactured and unsubstantiated concern is misleading and underscores both the improper purpose of Repsol’s Motion and the harm that could be caused were DOE to grant it. Repsol’s

¹⁹ Calcasieu Pass’s answer opposing Repsol’s FERC intervention is available as Accession No. 20230424-5067 in FERC Docket No. CP15-550.

²⁰ Repsol Motion at 4.

²¹ Every LNG Monthly published by DOE defines “commissioning cargo” as a “pre-commercial cargo loaded while export facility operations are still undergoing final testing and inspection.” *See, e.g.*, LNG Monthly, published April 2023, at 30 (Notes and Definitions), available at: <https://www.energy.gov/sites/default/files/2023-04/LNG%20Monthly%20February%202023.pdf>. Similarly, Calcasieu Pass’s non-FTA export authorization defines “Commissioning Volumes” as LNG produced and exported before the liquefaction facilities reach its full steady-state capacity and commercial exports pursuant to long-term contracts begin. DOE/FE Order No. 4346 at 76. While that authorization contemplated that commissioning cargoes would be exported pursuant to a short-term authorization, DOE subsequently issued a blanket order, Order No. 4641, amending Calcasieu Pass’ long-term export authorizations (as well as others) to add short-term export authority, including for commissioning volumes.

²² Motion at 4.

mere status as a customer of Calcasieu Pass – or even an impatient one – is no basis to disregard well-established DOE policy with respect to late interventions.

Therefore, not only does Repsol not demonstrate good cause for its long delay in seeking to intervene, its participation at this late stage would result in a burden on Calcasieu Pass and could substantially prejudice it. Depending on how Repsol might seek to participate here if its intervention were to be allowed, its actions also could impose an additional burden on the DOE and its Staff.

Wherefore, for all the foregoing reasons, Calcasieu Pass respectfully urges the DOE to deny Repsol’s motion to intervene out of time in these proceedings.

Respectfully submitted,

/s/ J. Patrick Nevins

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Dated: May 1, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon each person designated on the official service list compiled for in these proceedings.

Dated at Washington, D.C., this 1st day of May, 2023.

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