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April 7, 2023

Mr. William K. Paape
Associate Administrator for Ports & Waterways
U.S. Maritime Administration
1200 New Jersey Avenue SE, W21-310 (MAR-530)
Washington, DC 20590

Via E-mail to William.Paape@dot.gov

**Subject: Delfin LNG Deepwater Port Project, Docket No. USCG2015-0472
Submission of Supplemental Environmental Impact Assessment**

Dear Mr. Paape:

Delfin LNG LLC (Delfin) continues to advance its Deepwater Port Project and looks forward to the issuance by the U.S. Maritime Administration (“MARAD”) of its final license pursuant to the Deepwater Port Act of 1974, as amended (“DWPA”), and the Record of Decision issued in this proceeding on March 13, 2017 (the “ROD”). In this regard, your letter of March 30, 2023 directs Delfin to submit to MARAD and the U.S. Coast Guard (“USCG”) detailed descriptions and analyses of environmental and operational information about the Project that has changed since the Final Environmental Impact Statement (“FEIS”) for the Project was completed in 2016 in the form of an Environmental Impact Assessment (“EA”). The requested EA is provided as Attachment 1 to this letter and demonstrates that due to reduced impacts associated with Project engineering refinements there are no substantial changes or significant new circumstances or information relevant to environmental concerns that require supplemental National Environmental Policy Act (“NEPA”) review prior to licensing. The updated list of relevant Project permits that you also requested is provided as Attachment 2.

As you know, we have been engaged with MARAD and the USCG in a renewed push toward license issuance since a meeting on May 10, 2022, at which we updated the agencies about the status of the Project and the results of our Front End Engineering Design (“FEED”) work. We followed up on that meeting with a letter to MARAD and USCG dated June 14, 2022, in which we provided a detailed description of the engineering refinements in the Project since it was reviewed in 2016, explaining that the refinements reflect the use of the best available technology and result in equal or lesser level of environmental impacts than that analyzed in the FEIS. We

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also stated in that letter last June that “we are now prepared to move forward with the actions needed for MARAD to issue the Deepwater Port license to the project.”

Among other subsequent correspondence, on December 15, 2022, we provided MARAD and USCG with a detailed update regarding the status of relevant permits and authorizations for the Project in an effort to facilitate timely issuance of the DWPA license. In that letter, in the context of addressing the November 2022 order by the Federal Energy Regulatory Commission (“FERC”) extending the time for construction of Delfin’s on-shore facilities, we explained:

In this extension order, the FERC rejected claims by environmentalist opposition to LNG exports that the analysis under the National Environmental Policy Act (NEPA) of the Delfin Project is outdated and needs to be reconsidered. FERC recognized that the nature of the Project has not changed and explained that supplemental NEPA analysis is required only “[i]f there remains [a] ‘major Federal actio[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affec[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered.”[FN 5]

FERC’s recent holding that the NEPA analysis of the Delfin Deepwater Port – which was led by the USCG -- remains valid despite the passage of time is consistent with its uniform policy when acting on similar extension requests with respect to other LNG export projects.[FN 6] Delfin urges the USCG and MARAD to recognize the lawfulness and reasonableness of this approach when moving forward with the issuance of the Project’s DWPA license.

- [5] *Delfin LNG LLC*, 181 FERC ¶ 61,144 at P 14 & note 54, citing *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1987) and 40 C.F.R. § 1502.9(d) (“Agencies: (1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and: (i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”). In its previous extension order for Delfin, FERC similarly rejected claims that the environmental analysis for the Project was no longer valid. *Delfin LNG LLC*, 178 FERC ¶ 61,031 at PP 16-19.
- [6] See, e.g., *Port Arthur LNG, LLC*, 181 FERC ¶ 61,024 at PP 10-12 (2022); *Freeport LNG Development, L.P.*, 181 FERC ¶



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61,023 at PP 13-16 (2022); *Corpus Christi Liquefaction Stage III, LLC*, 179 FERC ¶ 61,087 at PP 14-16 (2022); *Trunkline Gas Co., LLC*, 179 FERC ¶ 61,086 at PP 12-15 (2022).

Also over the past year, especially following Russia's invasion of Ukraine, the need around the world for additional exports of abundant, low-cost, and clean-burning U.S. natural gas has become increasingly evident, resulting in significant commercial progress for the Delfin Project. In that regard, I updated MARAD and USCG officials via email regarding the following developments: (1) Delfin's binding sales and purchase agreement with the Americas-based affiliate of Vitol, the world's largest trader of energy, for 0.5 million tonnes per annum (MTPA) of LNG for a 15 year period (as reflected in my email of July 13, 2022); (2) our Heads of Agreement (HOA) to provide Centrica plc – a leading international energy services provider and the parent company of British Gas and Bord Gais -- with 1.0 MTPA of LNG (my email of August 9, 2022); and (3) our HOA with Devon Energy -- a leading U.S. oil and gas producer -- that contemplates a firm commitment for 1.0 - 2.0 MTPA of liquefaction capacity, as well as a strategic investment by Devon in Delfin (my email of September 7, 2022). We are nearing finalization of the definitive agreements contemplated in those HOAs, as well as of additional LNG offtake agreements that we expect to announce publicly in the near future.

In conjunction with this success with offtake agreements, we have been making good progress, with the guidance of Citigroup as our financial structuring advisors, in negotiations with large infrastructure funds capable of providing all of the equity required for at least one Floating LNG Vessel ("FLNGV") for the Project, as well as with commercial banks with respect to project finance debt. In addition, we are engaged in active negotiations with a consortium of Samsung Heavy Industries and Black & Veatch for an agreement for the Engineering, Procurement, Construction, Integration and Commissioning of that FLNGV. We also have commenced a tender process with suppliers for the Engineering, Procurement, Construction and Installation of the FLNGV mooring system.

In short, all aspects of the Project are advancing well, positioning us for a Final Investment Decision for at least our first FLNGV in the coming months. Obviously, issuance of our DWPA license is a crucial part of that process.

In that context, we were disappointed to learn for the first time in your recent letter – more than 9 months after we detailed the Project's engineering refinements -- of the need for an EA for MARAD and USCG to evaluate whether a Supplemental EIS ("SEIS") is required. We truly hope that the delay in issuance of this request will not result in a regulatory delay in the issuance of our license and, thus, stand in the way of needed, substantial increase of LNG exports.

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As explained in our letter last June, the differences between our current Project compared to that considered in the FEIS are essentially engineering refinements that inevitably occur as a project advances towards final design. Such refinements are clearly contemplated in the DWPA regulations, at 33 C.F.R. Sections 148-150, which all provide for submission of only “preliminary design drawings,” thereby recognizing the need for further engineering design that will always result in certain modifications and refinements. Indeed, USCG Navigation and Vessel Inspection Circular 03-05 anticipates a collaborative process *after license issuance* in which the USCG works with the holder of a DWPA license to further refine project engineering details and technical approvals. Analogously, FERC in authorizing the siting, construction and operation of on-shore LNG export facilities recognizes that engineering refinements always occur as a project progresses past the level of engineering done at that time of permitting to final design, with the refinements overseen and approved by FERC Staff as necessary as part of the project implementation process.¹ Moreover, the design refinements that have been implemented during the FEED demonstrate our continuous adherence, also post issuance of the ROD, to the application of best available technologies (which is a fundamental requirement for Deepwater Port licensing).

As indicated in the recent FERC order referenced above, “an agency need not supplement an EIS every time new information comes to light after an EIS is finalized.”² Rather, a “supplemental EIS must be prepared” only when a new action will, in the agency’s judgment under a rule of reason, affect the environment “in a significant manner or to a significant extent not already considered.”³ The Council on Environmental Quality’s regulations (which you reference in your letter) similarly provide that supplemental NEPA analysis is only necessary when the agency is presented with “substantial changes in the proposed action,” or “new and significant circumstances or information relevant to environment concerns” after the EIS is prepared.⁴ Neither is present here.

Your letter also references the section entitled “Changes to the Deepwater Port” in the ROD, beginning at page 57 of it, which relates to “substantive change to the construction and/or operation of the Port from what is specifically authorized in the License.” This section of the

¹ For instance, FERC’s most recent order authorizing LNG export facilities (which is typical in this regard) includes over 50 conditions that begin “Prior to construction of final design...” *Cameron LNG, LLC*, 182 FERC ¶ 61,173 (2023). Notably in particular, condition 24 requires that “Prior to construction of final design, Cameron LNG shall file change logs that list and explain any changes made from the front end engineering design (FEED) provided in Cameron’s application and filings. A list of all changes with an explanation for the design alteration shall be provided and all changes shall be clearly indicated on all diagrams and drawings.”

² *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373 (1989).

³ *Id.* at 374.

⁴ *See* 40 C.F.R. § 1502.9(c)(1).



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ROD is not literally applicable because the license for Port Delfin has not yet issued. More importantly though, there have been no “substantive changes” in Delfin’s proposed Deepwater Port and certainly none that will affect the environment “in a significant manner or to a significant extent not already considered.” Rather, overall environmental impacts will decrease from that evaluated in the FEIS for the Project.

As detailed in our letter last June and addressed further in the EA provided in Attachment 1, the two most important improvements of the Project since the EIS are: (1) the adoption of a Submerged Swivel and Yoke Mooring System and (2) incorporation of waste heat recovery from the refrigerant compression gas turbine drives in combination with steam turbine power generation on the FLNGVs, which are not actually part of the DWP⁵ but will operate in conjunction with it and were considered as part of the FEIS evaluation. The selected mooring system was considered as an alternative in the FEIS (but not selected as it was deemed technically less developed at that time), and it has environmental *advantages* over the previously preferred mooring system, given the need for only 3 rather than 4 pilings for each mooring system with a corresponding reduction in the associated noise impacts during construction. The adoption of combined cycle power on the FLNGVs (which has emerged as a new standard in recent years) significantly reduces emissions compared to those analyzed in the FEIS, including with respect to the important issue of greenhouse gases a reduction of approximately 100,000 CO₂ equivalent tons per year per FLNGV.

We understand the agencies’ need for additional documentation to confirm these conclusions. Indeed, Delfin engaged SWCA Environmental Consultants late last year to evaluate this topic. In response to your recent letter, SWCA has updated its analysis at our request and we are providing here the resulting EA as Attachment 1. The EA evaluates the environmental impact of the engineering refinements and concludes that none of them have a substantial environmental impact beyond that contemplated in the FEIS. The EA also evaluates the potential impact of the Project refinements on threatened and endangered species, including those listed since the FEIS, and concludes that none of them are likely to be adversely affected by the Project

We hope that your review and consideration of this EA will enable MARAD and the USCG to conclude promptly that no SEIS or further NEPA analysis is necessary prior to issuance of the DWPA license. Of course, we stand ready to answer any questions you may have and to provide

⁵ See Letter from Captain S.T. Brady, of the USCG Office of Operating and Environmental Standards, to William Daughdrill, dated July 26, 2019 (determining that the FLNGVs are not part of the deepwater port but rather are “vessels” subject to other USCG regulation).



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further supplemental information if necessary. We look forward to discussing this topic, along with other issues related to issuance of the DWPA license, at our upcoming face-to-face meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "W. H. Daughdrill".

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A handwritten signature in black ink that reads "J. Patrick Nevins".

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