



Department of Energy
Washington, DC 20585

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VIA EMAIL

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RE: February 26, 2024 Application

Dear Mr. Moran, Mr. Wagner, Mr. Meyers, and Ms. Soderberg,

Thank you for your February 26, 2024 submission on behalf of the American Petroleum Institute, as well as the American Exploration & Production Council, the Center for Liquefied Natural Gas, the Energy Workforce & Technology Council, the Interstate Natural Gas Association of America, the National Association of Manufacturers, and The US LNG Association (collectively, the Trade Associations). The submission was titled an "Application for Rehearing of the Department of Energy's Indefinite 'Pause' of Consideration of Applications for Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations" (Application).¹ It was not filed in any active docket.

¹ American Petroleum Institute, *et al.*, Application for Rehearing of the Department of Energy's Indefinite "Pause" of Consideration of Applications for Authorization to Export Liquefied Natural Gas to Non-Free Trade Associations (Feb. 26, 2024), <https://energy.doe.gov/sites/default/files/2024-03/Petition%20for%20Rehearing%2002.26.2024.pdf> [hereinafter App.]. On March 12, 2024, Sierra Club, Natural Resources Defense Council, and Center for Biological

On January 26, 2024, the U.S. Department of Energy (DOE) issued a statement that it is undertaking a process “to update the [economic and environmental analyses] used to inform whether additional liquefied natural gas (LNG) export authorization requests to non-Free Trade Agreement (non-FTA) countries are in the public interest” under Natural Gas Act (NGA) section 3(a) (the Update).² In the Application, the Trade Associations seek rehearing of DOE’s Update. The Trade Associations assert that the Update violates the NGA and the Administrative Procedure Act (APA).³

An application for rehearing under NGA section 19(a) and DOE regulations at 10 C.F.R. § 590.501(a) may be filed *only* by a “party” that is “aggrieved” by “an order issued by [DOE].”⁴ If these prerequisites are not met, there is no basis for rehearing. A “party,” in turn, means “an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending, and any state commission which has intervened by notice”⁵

For the reasons discussed more fully in DOE’s Notice Dismissing Request for Rehearing filed by Commonwealth LNG, LLC (attached and incorporated by reference herein),⁶ and as the Trade

Diversity (collectively, Environmental Advocates) filed a “Motion for Leave to Answer, Answer to Request for Rehearing, and Precautionary Motion to Intervene.” Sierra Club, *et al.*, Motion for Leave to Answer, Answer to Request for Rehearing, and Precautionary Motion to Intervene (Mar. 12, 2024), <https://energy.doe.gov/sites/default/files/2024-03/Motion%20to%20Intervene%20and%20Answer%20API%20Rehearing%20on%20DOE%20Pause.pdf> [hereinafter Enviro. Advocates Motion]. Additionally, on March 26, 2024, Vessel Project of Louisiana, Healthy Gulf, For a Better Bayou, and Alliance for Affordable Energy (together with additional signatories and, collectively, Frontline Advocates) submitted a letter expressing opposition to the Trade Associations’ Application, as well as a “Precautionary Motion to Intervene.” See Vessel Project of La., *et al.*, Opposition to American Petroleum Institute Request for Rehearing and Precautionary Motion to Intervene (Mar. 26, 2024), <https://energy.doe.gov/sites/default/files/2024-03/Response%20to%20API%20Rehearing%20Request%20final.pdf> [hereinafter Frontline Advocates Motion].

² U.S. Dep’t of Energy, “DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies” (Jan. 26, 2024), <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals> [hereinafter January 26 Announcement]. Under NGA section 3(a), 15 U.S.C. § 717b(a), non-FTA countries are those with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy.

³ App. at 1. In their respective Motions (*supra* note 1), both the Environmental and Frontline Advocates urge DOE to deny the Application (which they refer to as a “Request for Rehearing”) as “procedurally improper.” Enviro. Advocates Motion at 1-3; Frontline Advocates Motion at 1. The Environmental Advocates move, as appropriate, for leave to answer the Application, and both the Environmental and Frontline Advocates have filed a “precautionary” motion to intervene in any proceeding established by DOE for the Update and/or for the Trade Associations’ Application. See Enviro. Advocates Motion at 1, 4; Frontline Advocates Motion at 1, 5.

⁴ 15 U.S.C. § 717r(a). This is consistent with DOE’s regulations, which provide that “[a]n application for rehearing” must seek rehearing of an “order,” and such application must be made by a “party aggrieved by the issuance of such opinion and order.” 10 C.F.R. § 590.501(a) (rehearing limited to “a final opinion and order, conditional order, or emergency interim order”); see also, e.g., 10 C.F.R. §§ 590.402, 590.403, 590.404 (regulations governing the types of “orders” identified in 10 C.F.R. § 590.501(a)).

⁵ *Id.* § 590.102(l) (definition of “Party”).

⁶ DOE is concurrently issuing the Notice Dismissing Request for Rehearing filed by Commonwealth LNG, LLC in Docket No. 19-134-LNG, <https://www.energy.gov/fecm/articles/commonwealth-lng-llc-fe-dkt-no-19-134-lng> (see Sections VI.A and V of the Notice).

Associations concede in their Application,⁷ the Update does not constitute an “order” under the NGA or DOE’s regulations.⁸

The Update is an integral part of DOE’s *process* for the public interest determination required by NGA section 3(a). Before issuing an order granting or denying a non-FTA export application, DOE must have “sufficient information on which to base a public interest determination.”⁹ For more than a decade, economic and environmental analyses have been a critical component of DOE’s public interest determinations authorizing the export of domestically produced LNG from the lower-48 states under NGA section 3(a). Because of the profound changes in both the U.S. and global natural gas markets and in the cumulative volume of long-term LNG exports approved for non-FTA countries since DOE’s most recent economic analysis in 2018¹⁰ and environmental analyses in 2014¹¹ and 2019,¹² it is necessary for DOE to update these analyses. Specifically, the Update is necessary to provide a sufficient basis for DOE to evaluate the public interest for any pending or new applications to export LNG to non-FTA countries, as required by NGA section 3(a).¹³ Therefore, DOE is undertaking a step in its usual process—in accordance with DOE’s past practice—to update the analyses that DOE has long determined are necessary to make a reliable assessment of the public interest.

Upon completion of the Update, and consistent with DOE’s past practice, DOE will publish a Notice of Availability of the updated analyses in the *Federal Register* and will invite public comment for a period of at least 60 days.¹⁴ In addition, DOE will publish the Notice of Availability and analyses in all pending (and future) dockets involving non-FTA export applications. This ongoing process of updating the analyses for DOE’s public interest determinations under NGA section 3(a) is not an order subject to rehearing under NGA section 19(a). Without an order issued by DOE, the Trade Associations do not identify a basis to seek rehearing under NGA section 19(a) and 10 C.F.R. § 590.501(a), which (as stated above) both allow rehearing only of an “order.”¹⁵

⁷ App. at 6 (“The Trade Associations believe that this Indefinite Pause likely does not constitute an ‘order’ within the meaning of the Natural Gas Act.”).

⁸ 15 U.S.C. § 717r(a); 10 C.F.R. § 590.501(a).

⁹ Dep’t of Energy, Procedures for Liquefied Natural Gas Export Decisions; Final Revised Procedures, 79 Fed. Reg. 48,132, 48,135 (Aug. 15, 2014).

¹⁰ *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018), <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf> (2018 LNG Export Study).

¹¹ *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014); *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States*, 79 Fed. Reg. 32,260 (June 4, 2014).

¹² *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update*, 84 Fed. Reg. 49,278 (Sept. 19, 2019).

¹³ See, e.g., *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (citation omitted).

¹⁴ See, e.g., U.S. Dep’t of Energy, Office of Fossil Energy & Carbon Mgmt., “The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas,” at 1 (Feb. 23, 2024), <https://www.energy.gov/sites/default/files/2024-2/The%20Temporary%20Pause%20on%20Review%20of%20Pending%20Applications%20to%20Export%20Liquefied%20Natural%20Gas.pdf> [hereinafter DOE FECM Fact Sheet].

¹⁵ See 15 U.S.C. § 717r(a); 10 C.F.R. § 590.501.

The Trade Associations assert that DOE made a decision to “pause indefinitely” its consideration of pending and future applications to export LNG to non-FTA countries.¹⁶ They contend that this purported “Indefinite Pause” is final agency action subject to judicial review under the APA and NGA.¹⁷ That is a misperception of the Update and relevant principles of administrative law. When DOE announced the Update, it noted that it would *temporarily* defer its public interest determination of pending (and newly filed) non-FTA export applications until the Update is completed.¹⁸ DOE publicly shared this information in the interests of transparency. But this Announcement is not itself an order or final agency action; nor does it establish a substantive rule. The Announcement simply acknowledges that DOE needs the information that it will develop in the Update to evaluate non-FTA applications under the public interest standard set forth in NGA section 3(a). Accordingly, neither the Announcement nor the Update constitutes an order or final agency action subject to judicial review.¹⁹

Moreover, the Trade Associations state that they have “numerous members [that are] adversely affected” by the Update.²⁰ They fail, however, to establish that any of the Trade Associations are, in fact, a “party” for purposes of seeking rehearing under NGA section 19(a) and 10 C.F.R. § 590.501(a).²¹ And the Application was not filed in any active docket.²²

Accordingly, upon review of the Application, we find that DOE’s Update is not an “order” under NGA section 19(a) and DOE’s regulations.²³ We also find that none of the entities comprising the Trade Associations is a “party” who may seek rehearing.²⁴ Because the Trade Associations fail to meet the statutory and regulatory requirements to seek rehearing under the NGA, DOE dismisses the Application for Rehearing.²⁵ We therefore do not reach the merits of any of the Trade Associations’ arguments concerning the Update.

Once DOE has completed its Update and published notice of the analyses in the *Federal*

¹⁶ App. at 10.

¹⁷ *Id.* at 6.

¹⁸ See January 26 Announcement, *supra* note 2 (noting that the temporary pause of determinations on pending applications for export of LNG to non-FTA countries “is subject to exception for unanticipated and immediate national security emergencies”); see also DOE FECM Fact Sheet (reiterating “temporary” aspect of Update).

¹⁹ See, e.g., *Telecommc’ns Research & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984).

²⁰ See App. at 7-8.

²¹ 10 C.F.R. § 590.102(*l*) (definition of “Party”).

²² See App. at 1 (Application not submitted in any ongoing DOE docket).

²³ See 15 U.S.C. § 717r(a); 10 C.F.R. §§ 590.404, 590.501(a); see also *supra* note 4.

²⁴ 10 C.F.R. §§ 590.501(a), 590.102(*l*).

²⁵ Because DOE is dismissing the Application, and because DOE is not establishing a new proceeding for either the Update or the Application—*i.e.*, the stated basis for the “precautionary” motions to intervene filed by the Environmental and Frontline Advocates—there is no basis to reach any of the motions. See *supra* notes 1, 3. Therefore, DOE dismisses both of the Environmental Advocates’ motions, as well as the Frontline Advocates’ motion. See 10 C.F.R. §§ 590.303, 590.505.

Register, we welcome any comments provided by the Trade Associations at that time.

Sincerely,



Brad Crabtree
Assistant Secretary
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Attachment: Notice Dismissing Request for Rehearing filed by Commonwealth LNG, LLC,
Docket No. 19-134-LNG (Mar. 27, 2024)

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