

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

Delfin LNG LLC

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**Docket Nos. 13-129-LNG
and 13-147-LNG**

**ANSWER OF DELFIN LNG LLC TO
INTERVENTIONS, COMMENTS AND PROTESTS
OF ITS REQUESTED EXTENSION OF TIME**

Pursuant to Sections 590.302(b), 303(e), and 304(f) of the Administrative Procedures with respect to the Import and Export of Natural Gas of the Department of Energy (“DOE”),¹ Delfin LNG LLC (“Delfin”) hereby submits this answer to the interventions, comments, and protests submitted in response to its request for a conditional extension of time in the above-captioned proceedings filed on March 1, 2024 (the “Request”). In its Request, Delfin requested that DOE’s Office of Fossil Energy and Carbon Management (“DOE/FECM”) issue a supplemental order modifying Delfin’s existing natural gas export authorizations under Section 3 of the Natural Gas Act (“NGA”)² to provide for an extension of time from June 1, 2024, to June 1, 2029, for the commencement of liquefied natural gas (“LNG”) export operations from its Deepwater Project with floating LNG vessels (“FLNGVs”) to be moored in the Gulf of Mexico offshore Cameron Parish, Louisiana (the “Project”).

¹ 10 C.F.R. §§ 590.302(b), 303(e), and 304(f) (2024).

² *Delfin LNG LLC*, DOE/FE Order No. 3393, Docket No. 13-129-LNG (Feb. 20, 2014 (FTA authorization) amended by Order No. 3393-A (Dec. 10, 2020)(extension of term through 2050), further amended by Order No. 3393-B (May 18, 2021)(correcting the precise location of the FLNGVs); and DOE/FE Order No. 4028, Docket No. 13-147-LNG (June 1, 2017)(non-FTA authorization), *reh’g denied* by Order No. 4028-A (Apr. 3, 2018), amended by Order No. 4028-B (Dec. 10, 2020)(extension of term through 2050), further amended by Order No. 4028-C (May 18, 2021)(correcting the precise location of the FLNGVs).

Following DOE/FECM's public notice of the Request,³ comments strongly supporting the extension of time were filed by: Senators Bill Cassidy and Ted Cruz; Centrica LNG Company Limited; Mitsui O.S.K. Lines, Ltd.; Chesapeake Energy Corp.; Vitol Inc.; Devon Energy Corp.; Pacific Summit Energy LLC; Enbridge Holdings (LNG) LLC; Argent Mineral Management, LLC for Donner Properties, Inc.; and the USLNG Association, Marcellus Shale Coalition, and Energy Equipment and Infrastructure Alliance. Delfin is gratified by this wide-ranging support for its Request, and its Project, and urges DOE/FECM to consider carefully all the important points raised by those commenting parties and recognize that their views, together with the Request itself, warrant granting the requested extension of time.

On the other hand, opposition to the Request was filed on April 29, 2024, in: (1) the Motion to Intervene and Protest of Public Citizen, Inc. ("Public Citizen Protest") and (2) the Motion to Intervene and Protest of Sierra Club and the Center for Biological Diversity ("Sierra Club Protest"). For the reasons explained below, the claims by these long-standing opponents of LNG exports and consistent critics of DOE/FECM's policies⁴ fail to undermine Delfin's

³ Notice of Request for Supplemental Order Granting Conditional Extension of Time for Long-Term Authorization To Export Liquefied Natural Gas, 89 Fed. Reg. 22137 (Mar. 29, 2024) ("Notice of Request").

⁴ DOE/FECM on July 18, 2023 issued its Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas filed by the Sierra Club, Center for Biological Diversity ("CBD"), and aligned groups. See <https://www.energy.gov/sites/default/files/2023-07/DOE%20Response%20to%20Sierra%20Club%27s%20Petition%20for%20Rulemaking%207.18.2023%20%28002%29.pdf> (the "Rulemaking Denial"). In its Rulemaking Denial, DOE/FECM not only explained and defended its well-established policies related to LNG exports, but also observed that it has considered and rejected Sierra Club's arguments opposing those policies repeatedly in numerous orders since 2013. *Id.* at 18-20. Most prominently, Sierra Club challenged at the U.S. Court of Appeals for the District of Columbia Circuit five long-term LNG export authorizations issued by DOE/FECM for the first wave of U.S. LNG export projects (outside Alaska), which it had actively opposed at the agency. See *Sierra Club v. U.S. Department of Energy*, 867 F.3d 189 (D.C. Cir. 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., *et al.*); *Sierra Club v. U.S. Department of Energy*, Nos. 16-1186, 16-1252, 16-1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*, respectively); *Sierra Club v. U.S. Dept. of Energy*, No. 16-1426, Per Curium Order (D.C. Cir. Jan. 30, 2018) (granting Sierra Club's unopposed motion for voluntarily dismissal).

Sierra Club also opposed Delfin's proposal to export LNG from the start, with its initial protest of Delfin's application for non-FTA exports filed on May 27, 2014. DOE rejected all Sierra Club's arguments when it authorized non-FTA exports by Delfin. See Order No. 4028 at 136-159. The arguments advanced now in the Sierra

showing of good cause for the requested extension of time and certainly do not demonstrate that the extension, or LNG exports by Delfin, would be inconsistent with the public interest.

I. PUBLIC CITIZEN’S INTERVENTION SHOULD BE DENIED

DOE/FECM’s regulations require, at Section 590.303, that a person seeking to become a party “shall file a motion to intervene, *which sets out clearly and concisely the facts upon which the petition’s claim of interest is based.*”⁵ The Notice of Request explicitly stated that “notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.”⁶ Delfin will concede that Sierra Club and CBD have satisfied the standards for intervention as generally applied by DOE/FECM to allow liberal intervention, but Public Citizen has not.

In its most recent order granting an extension of time for the commencement of LNG exports, DOE/FECM denied Public Citizen’s motion to intervene based on its failure to satisfy the Rule 303 standard.⁷ Despite this recent history, Public Citizen offered as justification for its intervention here merely a single paragraph that describes the organization in general.⁸ Specifically, Public Citizen explains only: the basic nature of the organization and its date of founding; its membership numbers; that it is active before the Federal Energy Regulatory Commission (“FERC”); that it frequently intervenes in DOE proceedings related to electricity and natural gas exports; that its Energy Program Director is an expert who has testified before Congress and served on advisory committees of another agency; and that the organization’s

Club Protest are merely variations on its long-standing, general opposition to LNG exports that DOE has consistently rejected.

⁵ 10 C.F.R. § 590.303 (emphasis added).

⁶ 89 Fed. Reg. 22139.

⁷ *Port Arthur LNG, LLC*, Order Nos. 3698-C/4372-B, Docket No. 15-53-LNG, *et al.* at 11 (Apr. 21, 2023).

⁸ Public Citizen Protest at 2.

financial details are on its website.⁹ None of those general statements establish any particularized interest of Public Citizen in Delfin or its extension Request, much less provide facts upon which such a claim of interest is based.

Therefore, Delfin opposes Public Citizen’s intervention as not justified in accordance with the applicable DOE requirements. Public Citizen should not be made a party in the proceeding with any further rights. Nevertheless, DOE/FECM presumably will consider the arguments offered in the Public Citizen Protest even it denies the intervention, and so Delfin will respond to those arguments here.

II. DELFIN’S REQUEST IS CONSISTENT WITH THE POLICY STATEMENT

The Public Citizen Protest and Sierra Club Protest claim that Delfin has failed to satisfy the two requirements for extension of an export commencement date established in DOE/FECM’s Commencement Extension Policy, namely that: (1) the authorization holder has physically commenced construction of its export facility and (2) the authorization holder’s inability to comply with its deadline is the result of extenuating circumstances outside of its control.¹⁰ Their arguments ignore the substantial evidence set forth in Delfin’s Request showing that its proposed extension of time is consistent with the Commencement Extension Policy.¹¹

Public Citizen’s argument related to “extenuating circumstances” is short, simplistic, and easily rebutted. First, Public Citizen claims that “[t]he lack of experience of Delfin’s owners in

⁹ *Id.*

¹⁰ *See* Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25,272 at 25,277 (April 26, 2023) (“Commencement Extension Policy”).

¹¹ *See* Request at 3-4 and 34-36 (discussing application of the Commencement Extension Policy), 7-8 (describing Delfin’s construction requirements, which are very different from those of land-based projects), 11-16 (detailing developments since Delfin’s Non-FTA Authorization amounting to circumstances outside its control delaying exports) and 22-27 (detailing efforts to obtain final license issuance under the Deepwater Port Act further delaying exports).

constructing floating LNG export terminals... appear to be the primary reasons for their inability to meet the original Department of Energy deadline.”¹² Of course, the very first FLNGV in the world commenced operation only in 2017, just as Delfin was securing permits for its Project.¹³ At that time, the Maritime Administration (“MARAD”) in its Record of Decision (“ROD”) conditionally authorizing the Project under the Deepwater Port Act (“DWPA”) explicitly recognized that Delfin was “comprised of a diverse and experienced team of energy, business and financial professionals with over 30 years of combined experience developing domestic and international oil and gas projects within the global energy sector.”¹⁴ Soon after that, beginning in 2018, Delfin brought in new senior management from Golar LNG (“Golar”), the most experienced operator in the floating LNG business.¹⁵ As detailed in the Request, Delfin’s leadership that came from Golar “have over 150 years combined experience in the LNG industry at senior management levels, and they successfully executed the commercial, financial and operational deployment of Golar’s FLNGV Hilli Episeyo, the world’s first conversion FLNGV,”¹⁶ as well as numerous other FLNGV and FRSU projects. As a result, Delfin is extremely experienced and well-qualified to develop the country’s first FLNG export project.

¹² Public Citizen Protest at 2.

¹³ See Request at 10.

¹⁴ MARAD, Secretary’s Decision on the Deepwater Port License Application of Delfin LNG, LLC, issued in Docket USCG-2015-0472 at 31 (March 13, 2017)(the “ROD”). One of the two individuals specifically referenced by Public Citizen, Fred Jones, was Delfin’s CEO at that time and had several decades of experience in the energy, commodities, and maritime shipping industries.

¹⁵ See <https://www.golarlng.com/>.

¹⁶ Request at 12. Two of the individuals mentioned in the Request (Delfin’s current Chief Executive Officer and Chief Operating Officer) joined Delfin from Golar in 2018; the other two individuals followed in 2020. The second individual mentioned by the Public Citizen Protest, Jason Kalisman, is a significant owner of Delfin through the Talisman funds that, as explained in the Request (at 11), acquired a controlling interest in Delfin in 2018 and then brought in the experienced management team from Golar.

Second, in an even more preposterous claim, Public Citizen opines that Delfin “appears to have not taken its authorization seriously until 2022.”¹⁷ This claim is readily rebutted by the explanation of Delfin’s continuing efforts that advanced its Project from 2017 through 2022 provided in the Request at 11-15, as well as in Delfin’s semi-annual reports to DOE submitted over those years.¹⁸ The efforts detailed there include: management from Golar joining Delfin beginning in 2018; completing the Front End Engineering Design (“FEED”) for a conversion FLNGV with Golar in 2019; extensive efforts throughout 2018-19 to develop a China-focused FLNGV; contracting with Samsung Heavy Industries (“SHI”), supported by Black & Veatch, for the FEED for a third-generation, new-build FLNGV that was completed in 2020; and, after that, the further refinement and optimization of that FEED and the negotiation of an Engineering, Procurement, Construction and Integration (“EPCI”) Agreement with SHI. Additional efforts by Delfin throughout the period included obtaining and maintaining necessary regulatory authorizations for the Project and the maintenance and upkeep of the Project’s existing offshore pipeline infrastructure. Thus, despite Public Citizen’s facile and offensive charge, no one can seriously contend that Delfin has not been diligently seeking to develop its Project consistently over the years since receipt of its non-FTA export authorization.

For their part, Sierra Club and CBD assert that Delfin in its Request “fails to describe how the listed hurdles-- technological refinement, chosen trade partners, MARAD licensing — are in fact extenuating circumstances.”¹⁹ Delfin will assist here with connecting the dots,

¹⁷ Public Citizen Protest at 1.

¹⁸ Delfin’s semi-annual reports are available at: <https://www.energy.gov/fecm/articles/semi-annual-reports-delfin-lng-dkt-no-13-129-lng-fta-order-3393-and-fe-dkt-13-147-lng>.

¹⁹ Sierra Club Protest at 21.

summarizing the very strong demonstration in the Request of the extenuating circumstances that have prevented it from commencing exports within the originally contemplated timeline.

First, the new and evolving nature of the FLNGV industry is a factor outside of Delfin’s control that required it to spend years “to refine its project repeatedly to reflect advances being made in the FLNG industry, to comply with the ‘best technology’ requirements of the DWPA, market demand and expectation, and the desire to improve efficiency and environmental performance.”²⁰ These actions -- including switching from the original plan of a conversion FLNGV to a new-build FLNGV, and improving on existing FLNGV design to reduce emissions – which are not present for land-based LNG export projects, have delayed the Project. Second, the U.S. – China trade war was an extenuating circumstance outside of Delfin’s control which set back the development of its Project after an early concentrated focus on Chinese investment, construction, and off-take.²¹ Third, the COVID-19 pandemic, an incontestable albeit generally applicable extenuating circumstance, had an adverse impact that caused further delays on Delfin’s project by retarding the necessary commercial contracting.²² Sierra Club and CBD fault Delfin for “fail[ing] to provide any explanation addressing how COVID-19 continues to hinder their construction and operational plans.”²³ Delfin did not and would not suggest that COVID continues to do so: rather the point is that the pandemic further delayed the commercial success of the Project, which took off starting in 2022.²⁴

²⁰ Request at 35.

²¹ *See id.* at 13.

²² *Id.* at 13-14.

²³ Sierra Club Protest at 21.

²⁴ *See* Request at 16-22 (detailing commercial success from 2022 forward).

A fourth extenuating circumstance, the MARAD final licensing process – detailed in the Request at 22-27 and updated in the next section of this Answer – is manifestly outside of Delfin’s control. This regulatory process, not applicable to any of the other LNG export projects with non-FTA authorizations, has undoubtedly and significantly further delayed Delfin’s Project. Finally, in yet another extenuating circumstance outside of Delfin’s control, there are only a few shipyards in the world capable of constructing Delfin’s FLNGVs and they all have limited slots allocated for ship construction and require binding commitments to proceed.²⁵ Combining the unique nature of Delfin’s FLNGV approach and the MARAD process, this extenuating factor of world ship-building capabilities has further delayed the Project. Delfin submits that the combination of all of these extenuating factors resulted in significant delays in the Project and Delfin’s inability to comply with its original export commencement deadline, clearly satisfying one criteria of the Commencement Extension Policy.

Turning to the other criteria of the Commencement Extension Policy, Sierra Club / CBD also argue that Delfin fails to satisfy the “physical construction” requirement.²⁶ To the contrary, the bulk of Delfin’s Deepwater Port (which does not include the FLNGVs themselves) has already been constructed, as Delfin is efficiently re-purposing existing offshore pipelines to transport feedgas to its vessels.²⁷ In response, Sierra Club / CBD counter that “this construction was already completed prior to authorization of this project.”²⁸ They do not explain why pre-existing facilities cannot satisfy the construction prong of the Commencement Extension Policy. Moreover, as stated in the Request, “Delfin has invested tens of millions of dollars purchasing,

²⁵ See Request at 4, 7-8, and 27-28.

²⁶ Sierra Club Protest at 10.

²⁷ See Request at 3-4 and 7.

²⁸ Sierra Club Protest at 10.

maintaining, and preparing this infrastructure for use as the foundation of its Deepwater Port.”²⁹ Thus, Delfin has moved forward with the already constructed infrastructure in the development of its Project.

Furthermore, as suggested above and emphasized in the Request, project construction for Delfin is very different than for land-based LNG export projects. A land-based project with a FERC authorization in hand – presumably the model contemplated in the Commencement Extension Policy, as the status of all non-FTA authorization holders other than Delfin – can readily commence construction by hiring available labor to begin physical construction of the authorized project facilities. In contrast, absent its final DWPA license, Delfin can neither construct its Deepwater Port (with the limited additional construction that will be added to the existing offshore pipelines) nor rationally commence construction of a multi-billion-dollar FLNGV in an overseas shipyard.

Sierra Club/CBD further argue that “Delfin has no concrete plan for moving forward with construction” and has not offered a “timeline” for construction.³⁰ Yet, as explained in the Request, Delfin has negotiated and agreed upon major terms of a near-ready-for-execution EPCI Agreement with SHI (with which it previously finalized the associated FEED study) and the parties will finalize and execute that contract following the receipt of the DWPA license and DOE’s extension of time.³¹ The referenced EPCI contract negotiated with SHI contains a detailed timeline allowing for LNG exports commencing within approximately 57 months of contract execution, including the time needed for the FLNGV construction in the shipyard, a transit period with the FLNGV sailing under its own power to the Gulf of Mexico for mooring at

²⁹ Request at 4.

³⁰ Sierra Club Protest at 10.

³¹ Request at 4 and 27-28.

Delfin’s deepwater port, and then the commencement of testing and commissioning.³² The only uncertainty regarding this construction timeline is when Delfin can commit to the EPCI agreement, which is being held up not by any commercial impediments but instead by regulatory issues.

Given these factors, as further detailed in the Request, Delfin’s extension request is consistent with the construction requirement of the Commencement Extension Policy. Furthermore, recognizing that the role of physical construction in the policy may be intended as indicia of a project truly moving forward on a definitive timeline, and given uncertainty about the precise DOE/FECM requirements for an extension, Delfin proposed in the Request that its extension be conditional. Specifically, Delfin suggested that the extension be conditioned on it demonstrating reasonably promptly (suggesting a 9-month period) that it has: (1) obtained the final DWPA license; (2) secured necessary financing arrangements to construct its first FLNGV and the Deepwater Port; (3) made its positive Final Investment Decision (“FID”) with respect to the first FLNGV; and (4) issued an unconditional, full notice to proceed for first FLNGV to the EPCI contractor pursuant to a binding, executed EPCI contract.

III. MARAD’S RECENT ACTION IS NO REASON TO DENY THE EXTENSION

Sierra Club and CBD attempt to make much of MARAD’s April 17, 2024 correspondence with Delfin.³³ MARAD’s April Letter does announce that MARAD will not issue Delfin its DWPA license based on the 2017 ROD conditionally authorizing the Project, and directs Delfin to amend its application for further “interagency review,” with a Supplemental

³² *Id.* at 28. [

³³ Sierra Club Protest at 2 and 11-12, and Attachment 1 (a copy of the MARAD letter to Delfin’s CEO Dudley Poston, which is available at <https://www.regulations.gov/document/USCG-2015-0472-0121> (“MARAD April Letter”).

Environmental Assessment (“EA”) or Supplemental Environmental Impact Statement (“EIS”) to be made available to the public for comment.³⁴

Delfin readily admits that the MARAD April Letter is a disappointing and unfavorable development. To the extent that the development is seen as inconsistent with Delfin’s explanation in the Request of the status of the DWPA license issuance, that is because it was wholly unexpected by Delfin and, at least from Delfin’s perspective, inconsistent with indications from MARAD over the more than two years that Delfin has been engaged with the agency pursuing license issuance. The development also flies in the face of the U.S. government’s assurance following the Russian invasion of Ukraine that it “commits to maintaining an enabling regulatory environment with procedures to review and expeditiously act upon applications to permit any additional export LNG capacities that would be needed to meet this emergency energy security objective and support the [European Union’s] goals, affirming the joint resolve to terminate EU dependence on Russian fossil fuels by 2027.”³⁵

As explained in the Request, MARAD asked Delfin on March 30, 2023, to prepare an EA so that it could evaluate whether a Supplemental EIS would be required under the National Environmental Policy Act (“NEPA”), and Delfin provided the requested EA to MARAD on April 7, 2023 (and attached it to the Request for DOE’s consideration).³⁶ As stated in the Request, “the EA demonstrate[d] that there are no substantial changes to the project or significant new circumstances relevant to environmental concerns that require supplemental NEPA analysis, and that Delfin’s engineering refinements use the best available technology

³⁴ See MARAD April Letter at 2.

³⁵ See Press Release, European Commission, *Joint Statement between the European Commission and the United States on European Energy Security*, Mar. 25, 2022, available at https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2041.

³⁶ See Request at 23-24 and Attachment 2 of the Request (the EA).

(which is required under the DWPA) and result in equal or lesser level environmental impacts than those analyzed in the Final EIS.”³⁷ As further explained in the Request, Delfin subsequently supplemented the EA with an analysis focused on Greenhouse Gas (“GHG”) emissions, which detailed the significant *reductions* in the Project’s direct emissions compared to the Final EIS (and was also attached to the Request).³⁸

MARAD included the EA prepared by Delfin as an attachment to its letters reinitiating consultation under Section 7 of the Endangered Species Act in letters sent to the U.S. Fish & Wildlife Service (“FWS”) on August 17, 2023, and to National Marine Fisheries Service (“NMFS”) on October 27, 2023. Those letters requested expedited concurrence with *MARAD’s conclusion* that Delfin’s Project is not likely to adversely affect any listed species or critical habitat. Delfin mentioned these additional developments in its Request at 25-26 but, in the interest of a more complete record, is submitting them here as Attachments 1 and 2 to this Answer. Notably, in its letter to NMFS, MARAD noted the three major refinements to Delfin’s Project since the earlier FEIS and recognized that they all have reduced environmental effects.³⁹ The Request further explained that FWS concurred in MARAD’s determination on September 29, 2023: that concurrence is reflected in the attached copy of the reinitiation request at its page 5. Delfin also mentioned in the Request that it is uncertain of the status of the NMFS consultation (which remains the case), but that it had provided MARAD with additional information intended to address certain questions raised by NMFS: again in the interest of a complete record, Delfin includes that submission as Attachment 3 here.

³⁷ Request at 24.

³⁸ *Id.* at 24-25 and Attachment 3 of the Request (the GHG Supplement).

³⁹ See MARAD letter to NMFS, Attachment 2, at 3-4, discussing the refining cooling system and mooring system in detail, while simply noting in passing (because of the lack of any impact on species) the change in power generation system and its reductions in GHG emissions.

Only with the MARAD April Letter did Delfin learn that, despite these developments, MARAD now intends further NEPA processing prior to license issuance, and heard for the very first time that it must amend its DWPA application. Nevertheless, the reality is that further administrative processing will inescapably be required before MARAD will issue the necessary DWPA license. The principal relevance of that fact for the Request concerns the “condition” on the requested extension of time voluntarily suggested by Delfin in an effort to ensure DOE issuance of the extension.

Sierra Club / CBD opine that the timeline for license issuance following the MARAD April Letter “would make it nearly impossible for Delfin to meet the nine-month licensing deadline proposed as a condition of its extension request,” citing the DWPA timeline of 330 days for action on a new deepwater port license application.⁴⁰ Yet, Delfin is not submitting a new application to MARAD, which would require preparation of a new EIS from scratch and then a decision within that statutory timeline: rather, Delfin is amending an already conditionally approved application, with *supplemental* NEPA review of the prior FEIS. In Delfin’s opinion, that supplemental review will confirm the conclusions of the EA submitted to MARAD over a year ago, which demonstrated *reduced* impacts compared to the prior FEIS. Therefore, Delfin remains hopeful that it may still obtain its DWPA license this calendar year, though admittedly almost certainly not until near the end of the year.

This timing undoubtedly presents a very significant challenge for Delfin to meet the 9-month condition it voluntarily proposed in its Request when it (sincerely but mistakenly) believed MARAD to be on the verge of license issuance. Of course, ideally DOE/FECM will conclude that the good cause for the extension demonstrated by Delfin justifies the requested

⁴⁰ Sierra Club Protest at 12 & n. 32.

extension of time *without any need for such a proposed condition*. Even if DOE/FECM concludes that a condition like that offered by Delfin is required in connection with an extension, Delfin asks DOE/FECM to consider whether, based on the latest MARAD developments, a longer period for satisfaction of the condition – say 12 or 15 months -- would be acceptable. Obviously, Delfin would enthusiastically accept such an improvement on its originally proposed condition. A somewhat longer period allowed for Delfin to satisfy the proposed conditions would still serve the same purpose intended by the proposed condition. That is, it would “eliminate soon any uncertainty about the status of Delfin’s project, providing assurance to DOE (and all other stakeholders and interested observers) that Delfin will actually commence LNG exports by the extended deadline.... [and thereby] satisfy the objective of the Commencement Extension Policy of reducing the ‘regulatory overhang’ between authorized export volumes and projects actually moving forward.”⁴¹

Even if DOE/FECM concludes that no more than the originally proposed 9-month condition period is acceptable, the practical challenge for Delfin to meet that deadline is no reason to deny the requested extension. Delfin is hopeful that MARAD may progress quickly with its licensing process, perhaps inspired by reasonable action by DOE/FECM in supporting a Project that is ready to move forward with LNG exports to contracted buyers, including American allies in need of gas supplies to replace Russian supplies.⁴² Conversely, if the

⁴¹ See Request at 4-5.

⁴² See, e.g., Comments of Centrica LNG Company Limited in Support of Request of Delfin LNG LLC, filed in this proceeding on April 26, 2024, at 3 (“There is clear recognition of the important role that LNG exports from the United States have played in helping Europe in meeting its energy needs during these difficult times, as well as the future role of LNG from the United States in Europe’s long term energy mix. Securing LNG supply from Delfin is a crucial part of Centrica’s plan to achieve these goals.”); Vitol Inc. letter submitted in this proceeding on April 26, 2024 (“Vitol has entered into a long-term supply contract with Delfin (along with other long-term customers) in addition to making a strategic investment in the first liquefaction vessel of the Project. Vitol delivers LNG to countries around the world, including South Korea, Japan, the UK, Spain, France, Germany, and Italy. In March, the terminal and storage company VTTI B.V., which is indirectly owned by Vitol’s parent company, announced the acquisition of a receiving terminal in Italy, Adriatic LNG, to help further satisfy Europe’s natural gas demand. Vitol

conditional extension is granted and MARAD does not progress quickly and the condition cannot be satisfied, Delfin then would need to submit a new export application. That possibility, however, is no reason for DOE/FECM not to grant the conditional extension and allow Delfin the opportunity to meet the condition; to the contrary, the fact that the extenuating circumstances of delay by another regulatory agency (uniquely applicable to Delfin's Project among all non-FTA authorization holders) support issuance of the requested extension of time.

IV. ENVIRONMENTAL CHALLENGES TO THE EXTENSION ARE MISPLACED, AND PARTICULARLY INAPPLICABLE TO DELFIN'S REQUEST

Sierra Club and CBD argue at length that DOE/FECM must engage in further NEPA review prior to granting an extension of time and allege that new information about environmental impacts of Delfin's Project demonstrate that the extension is not in the public interest.⁴³ Yet, granting an extension of time does not substantively change the underlying proposed action nor constitute new approval of a project: thus, the extension is an administrative action, not a major Federal action significantly affecting the quality of the human environment. Therefore, the extension of time does *not* require additional NEPA review. Notably, the FERC has repeatedly and explicitly so held when it has granted its own extensions of time under NGA Section 3.⁴⁴ DOE/FECM implicitly embraced this conclusion when it has granted extensions building off FERC-issued extensions for the same project without further NEPA review.⁴⁵

will depend on LNG from the Project to help fulfill its supply obligations. Vitol, and the countries and companies it supplies, are just some of the many constituents who would suffer negative impacts if the Project was unable to proceed due to regulatory barriers.”)

⁴³ Sierra Club Protest at 23-37.

⁴⁴ See, e.g., *Delfin LNG LLC*, 181 FERC ¶ 61,023 at P 14 (2022); *Freeport LNG Development, L.P.*, 181 FERC ¶ 61,023 at P 14 (2022); *Truckline Gas Co., LLC*, 179 FERC ¶ 61,086 at PP 16-17 (2022). See also *Eagle Crest Energy Co.*, 168 FERC ¶ 61,186 at P 22 (2019)(extension of time to comply with a license requirement under the Federal Power Act to complete construction is an administrative action categorically excluded from further NEPA review), *aff'd sub nom. Nat'l Parks Conserv. Ass'n v. FERC*, 6 F.4th 1044 (9th Cir. 2021).

⁴⁵ See, e.g., *Golden Pass LNG*, DOE/FE Order No. 3978-C, Docket No. 12-156-LNG (Mar. 24, 2020); *Lake Charles LNG*, DOE/FE Order No. 3868-C and 4010-A, Docket Nos. 13-04-LNG and 16-109-LNG (Oct. 6, 2020);

Nothing in the Commencement Extension Policy alters this conclusion. To the contrary, DOE/FECM's direction that authorization holders should submit extension requests at least 90 days prior to the existing deadline, thereby allowing it time to act within that period following a public comment period,⁴⁶ clearly implies that no further NEPA analysis is contemplated for an extension. Therefore, the NEPA arguments advanced by Sierra Club / CBD are outside the scope of issues to be considered by DOE/FECM for a requested extension of time.

Furthermore, to the extent that there might be any potential concern that a NEPA analysis underlying an export authorization has grown "stale," that worry is particularly untenable with respect to Delfin. As explained in the Request, and updated above, MARAD is undertaking a refreshed, supplemental NEPA review of the Project in connection with the DWPA final licensing. Delfin has provided in support of its Request an updated EA, along with a supplemental GHG analysis, demonstrating that the impacts of the Project have decreased since the FEIS that supported Delfin's existing non-FTA export authorization. More specifically, much of the Sierra Club / CBD argument focuses on alleged impacts of the Project on listed species and their critical habitat.⁴⁷ Yet, as explained in Section III above, not only does Delfin's EA (attached to the Request) resolve any such concern, but MARAD itself has concluded, in the letters to the relevant resources agencies provided as Attachments here, that Delfin's Project is not likely to adversely affect any listed species or critical habitat, and is obtaining resource agency concurrence in that conclusion.⁴⁸ Other NEPA arguments advanced by Sierra Club /

Lake Charles Exports, DOE/FE Order No. 3324-B and 4011-A, Docket Nos. 11-59-LNG and 16-110-LNG (Oct. 6, 2020); *Cameron LNG*, DOE/FE Order No. 3846-A, Docket Nos. 15-90-LNG (Nov. 2, 2020); *Port Arthur LNG, LLC*, Order Nos. 3698-C/4372-B, Docket No. 15-53-LNG, *et al.* (Apr. 21, 2023).

⁴⁶ Commencement Extension Policy, 88 Fed. Reg. 25,272, at 25,277.

⁴⁷ *See* Sierra Club Protest at 28-32.

⁴⁸ *See* the related discussion in Section III and Attachments 1-3.

CBD advocate more wide-ranging environmental analysis that DOE/FERC has held to be unnecessary and inappropriate even in the context of new export authorizations,⁴⁹ much less for the administrative task of an extension of time.

For all of these reasons, DOE/FECM should reject, on both procedural and substantive grounds, the Sierra Club / CBD opposition to the Request based on allegations of environmental impacts. Those claims in no way demonstrate that the requested extension is inconsistent with the public interest.

V. ECONOMIC CHALLENGES TO THE EXTENSION ARE EASILY REBUTTED

Sierra Club and CBD also offer in opposition to Delfin’s Request for an extension two non-environment arguments. They claim that that (1) impacts on domestic natural gas prices render LNG exports inconsistent with the public interest⁵⁰ and (2) there is decreased global demand for LNG projects in general and that Delfin’s Project in particular is not “commercially viable.”⁵¹ These arguments should be readily dismissed by DOE/FECM.

A. Worries About Impacts On Domestic Gas Prices Are Baseless

Opposition to LNG exports based on potential impacts on domestic natural gas prices has been consistently considered and rejected by DOE in its many decisions authorizing exports. In its most recent study of the macro-economic effects of LNG exports, for instance, DOE/FECM concluded that:

- “Increasing U.S. LNG exports under any given set of assumptions about U.S. natural gas resources and their production leads to only small increases in U.S. natural gas prices; and

⁴⁹ See Rulemaking Denial, *supra*. note 4, explaining DOE’s consistent rejection of Sierra Club’s arguments that are the same or similar to those offered now in the Sierra Club Protest.

⁵⁰ Sierra Club Protest at 14-20.

⁵¹ Sierra Club Protest at 20-23.

- Available natural gas resources have the largest impact on natural gas prices. Therefore, U.S. natural gas prices are far more dependent on available resources and technologies to extract available resources than on U.S. policies surrounding LNG exports.”⁵²

While it is not clear that this issue is pertinent to an extension of time, in its Request Delfin incorporated that 2018 Study by reference, and also addressed subsequent DOE/FECM rulings and the most recent gas price data, demonstrating that arguments against LNG exports based on misplaced concern about insufficient supplies or domestic natural gas prices are baseless.⁵³ Indeed, at this time of record high LNG exports, domestic natural gas prices are at historically low levels, even leading major producers to hold back supplies in light of insufficient demand.⁵⁴

The Sierra Club Protest utterly ignores the most recent market developments, emphasizing instead selected points from years earlier.⁵⁵ Attempting to draw support from assertions of its long-standing ally in opposing LNG exports, Sierra Club / CBD states that the Industrial Energy Consumers of America (“IECA”) “has repeatedly written to DOE about how export-driven gas price increases are harming domestic industry.”⁵⁶ They fail to acknowledge that DOE/FECM has thoroughly considered and rejected IECA’s arguments, as when offered in

⁵² Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports at 55 (July 7, 2018), available at: <https://fossil.energy.gov/app/docketindex/docket/index/10>. See also “Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study,” 83 Fed. Reg. 67,251 (Dec. 28, 2018).

⁵³ Request at 39-42.

⁵⁴ See, e.g., Wall Street Journal, Natural Gas Hasn’t Been This Cheap in Decades: The lowest inflation-adjusted prices in at least 34 years have drillers throttling down from record production (Feb. 25, 2024), available at: <https://www.wsj.com/finance/commodities-futures/natural-gas-hasnt-been-this-cheap-in-decades-95959da7>.

⁵⁵ See Sierra Club Protest at 14-20 (emphasizing price data from the Winter of 2021-22, with some mention of the Winter of 2022-23, but no mention of any more current data).

⁵⁶ Sierra Club Protest at 18.

response to the 2018 study of LNG exports,⁵⁷ as well as in recent non-FTA export authorizations.⁵⁸

Seeking particularly high prices in an effort to bolster its arguments, Sierra Club emphasizes the winter of 2021-22 and also (in further cheery-picking) natural gas prices that winter at the Algonquin Citygate, near Boston.⁵⁹ Yet, as well explained by DOE in the 2018 Study:

There is often interest in New England natural gas prices because of the frequent price spikes that have been observed there. We expect the average basis differential between New England and Henry Hub to be unaffected by changes in U.S. LNG exports in the long run. Currently, the changes in basis differential between New England and Henry Hub are often caused by changes internal to New England's natural gas supply and demand balance. When New England natural gas demand exceeds New England natural gas supply, the basis will increase. This increase in basis between New England and Henry Hub can become greater than that for other Eastern regions such as Mid-Atlantic and Henry Hub. The reason for this greater change is the limited natural gas pipeline capacity into New England. New England has no indigenous natural gas production and little storage capacity relative to swings in natural gas demand. Aside from pipeline shipments, the only other supply source to New England is delivered LNG and New England's capacity to receive and store LNG is also limited. These shipments normally originate in foreign countries because the Jones Act makes shipments from the Gulf Coast prohibitively expensive. As a result, New England supply is limited by natural gas pipeline capacity into New England, New England regasification capacity, and regional storage capacity. When local demand exceeds these capacities, natural gas prices in New England will increase because it is no longer possible to deliver additional natural gas supplies into the region. This increase will

⁵⁷ See *Response to Comments Received on the 2018 Study*, *supra* n.52, at 67,267-269.

⁵⁸ See *Cheniere Marketing LLC & Corpus Christie Liquefaction, LLC*, DOE/FE Order No. 4799 at 51 (Mar. 16, 2022); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4800 at 52 (Mar. 16, 2022); *Freeport LNG Expansion, L.P., et al.*, Order No. 4961 at 57 (March 3, 2023).

⁵⁹ Sierra Club Protest at 16-17.

happen irrespective of whether or not U.S. LNG exports are increasing or decreasing.⁶⁰

Similarly, Sierra Club attempts to draw support from a study of that 2021-22 winter by FERC Staff, suggesting that FERC concluded that the domestic natural gas price increase “was driven largely by competition with demand for LNG exports.”⁶¹ Examination of the cited FERC report, however, reveals that this reference too focused just on Algonquin Citygate prices, stating that “This increase in futures prices at the Algonquin Citygate hub is being driven by a variety of factors; these include, but are not limited to, the winter-peaking New England region’s limited natural gas pipeline capacity and competition for global liquefied natural gas (LNG) cargoes in light of rising global LNG prices and demand.”⁶² The unique challenges related to gas supply in New England provide no basis to oppose LNG exports from the Gulf Coast.

Sierra Club and CBD also emphasize domestic price reactions to the 2022 outage at the Freeport LNG facility.⁶³ The dramatic price response to the sudden and unexpected disappearance of nearly 2 Bcf/d of natural gas demand, in what at the time was an extraordinarily tight market, is simple economics. But it reveals nothing about the key issue of the expected *long-term* impact of LNG exports on domestic prices, as abundant U.S. natural gas supplies result in increased production over time as exports increase. As noted by Delfin in its Request, the reference case in the 2023 Annual Energy Outlook (“AEO 2023”) projects that total U.S. dry natural gas production will increase to 42.07 Tcf in 2050, with average growth amount of 0.5%

⁶⁰ 2018 Study, *supra*. n.30 at 54-55, n. 47.

⁶¹ Sierra Club Protest at 16 & n.44 (*citing* FERC, Winter Energy Market and Reliability Assessment (Oct. 21, 2021) at 2, available at: <https://www.ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022%20-%20Report.pdf>).

⁶² FERC Winter Energy Market and Reliability Assessment (Oct. 21, 2021) at 2, available at: <https://www.ferc.gov/sites/default/files/2021-10/Winter%20Assessment%202021-2022%20-%20Report.pdf>.

⁶³ Sierra Club Protest at 14-15.

per year from 2022-50, whereas consumption is projected to decrease by an average of 0.2% per year over that time period, resulting in 2050 projected consumption of 30.01 Tcf.⁶⁴

This growing surplus of U.S. natural gas production compared to consumption continues to support additional LNG exports. There should be no reasonable doubt that the abundant domestic gas reserves are more than sufficient to supply all domestic needs as well as serve U.S. allies and trade partners with growing supplies of urgently needed natural gas. Furthermore, even if all the market projections prove wrong over time and natural gas exports from the U.S. become uneconomic because of price factors, Delfin's Project is uniquely situated in that its FLNGVs are re-deployable and could move elsewhere in the world.⁶⁵ Therefore, the worry of Sierra Club / CBD that LNG projects "will become obsolete long before the end of their intended lifespans"⁶⁶ is entirely inapposite for Delfin. For all these reasons, the domestic price arguments in no way indicate that granting Delfin the requested extension of time would be contrary to the public interest.

B. Claims of Lack of LNG Demand are Wrong in General and Ignore the Strong Commercial Support for Delfin's Project

Sierra Club and CBD argue that "the need for LNG proposed for export to meet global market demands no longer exists at the rate anticipated over five years ago,"⁶⁷ and assert that LNG projects generally are being delayed.⁶⁸ Specifically with respect to Delfin, they claim "While the project has entered into a few LNG offtake contracts, the project does not have

⁶⁴ Request at 39-40, citing EIA, AEO 2023, at Table 13 *Natural Gas Supply, Disposition, and Prices (Reference Case)*, available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2023&cases=ref2023&sourcekey=0>.

⁶⁵ See Request at 9.

⁶⁶ Sierra Club Protest at 23.

⁶⁷ *Id.* at 21.

⁶⁸ *Id.* at 22-23.

enough support to be commercially viable.”⁶⁹ These claims should be rejected on multiple levels.

To begin with, DOE has never required evidence of commercial support for an LNG export project as the basis for an export authorization. Nor does the Commencement Extension Policy provide for such a consideration for an extension of time. To the extent that DOE/FECM considers such factors here, however, Sierra Club / CBD are simply wrong about the market for LNG exports in general and, more importantly, about the status of the Delfin Project.

The observations offered by Sierra Club and CBD about the overall LNG market focus predominantly on information from mid-2021, when most LNG projects were facing setbacks and delaying FIDs.⁷⁰ For example, in the most obviously outdated reference, they point to a 2021 press report related to delays in FID for Sempra’s Port Arthur LNG project;⁷¹ but Port Arthur reached FID in March 2023, as DOE/FECM observed when granting it an extension of time.⁷² Even sticking with the project tracking source chosen by Sierra Club/CBD, the anti-fossil fuel environmentalist-activist “Global Energy Monitor,” more current information from it (as opposed to the June 2021 information referenced in the Sierra Club Protest⁷³) recognizes:

After U.S. project developers secured a flurry of new long-term LNG contracts in 2022, three projects reached FID in 2023: Plaquemines LNG Terminal Phase 2 (10 mtpa), Port Arthur LNG Terminal Phase 1 (13.5 mtpa), and Rio Grande LNG Terminal Phase 1 (17.6 mtpa). Three more projects were already under construction as of this year, Golden Pass LNG Terminal (18.1 mtpa), Corpus Christi LNG Terminal Stage 3 (11.5 mtpa), and the first phase of Plaquemines LNG Terminal (13.33 mtpa). Along

⁶⁹ *Id.* at 21.

⁷⁰ *Id.* at 22-23 and notes 66-71 (all citing sources from 2021).

⁷¹ *Id.* at 23 and note 70.

⁷² *See Port Arthur LNG, LLC*, Order Nos. 3698-C/4372-B, Docket No. 15-53-LNG, *et al.* at 8 (Apr. 21, 2023).

⁷³ Sierra Club Protest at 22 & notes 68 and 69.

with export projects underway in Canada and Mexico, LNG export capacity across all of North America could more than double by 2027.⁷⁴

Citing that same biased source from June 2021 (notably before Russia's invasion of Ukraine), Sierra Club / CBD opine that "European buyers recognize that LNG, long touted as a climate solution, is in fact a climate problem."⁷⁵ This claim has been disproven by reality, and the actions of actual European buyers. Notably, Centrica LNG – whose parent company is the largest energy supplier in the United Kingdom – has not only contracted for 1.0 MTPA of LNG from Delfin for a 15-year term but explained in its comments to DOE/FECM supporting the Request that:

Following the onset of the European energy crisis in early 2022, the critical importance of investing in the United Kingdom's energy security and addressing the immediate impact of the energy crisis on behalf of Centrica's customers has been one of Centrica's biggest priorities. Natural gas is an essential transition fuel in the move to net zero emissions and securing LNG from the United States is vital to the United Kingdom's energy security. There is clear recognition of the important role that LNG exports from the United States have played in helping Europe in meeting its energy needs during these difficult times, as well as the future role of LNG from the United States in Europe's long term energy mix. Securing LNG supply from Delfin is a crucial part of Centrica's plan to achieve these goals.⁷⁶

Another long-term contracted customer of Delfin, and one of America's largest gas producers, Chesapeake Energy explained in its support for the Request the very low methane intensity of the natural gas it produces (an order of magnitude below the level set for the methane fee in the Inflation Reduction Act) and that "The U.S-produced natural gas that will be shipped

⁷⁴ Global Energy Monitor, LNG 2023 at 6 (Dec. 2023), available at: https://globalenergymonitor.org/wp-content/uploads/2023/12/GEM_LNG_Oversupply.pdf

⁷⁵ Sierra Club Protest at 22.

⁷⁶ Comments of Centrica LNG Company Limited in Support of Request of Delfin LNG LLC, filed in this proceeding on April 26, 2024, at 3.

through the Delfin facility will provide some of the cleanest natural gas in the world to our allies as evidenced by recently-conducted studies from the Appalachian Methane Initiative and the Berkeley Research Group.”⁷⁷

Thus, Sierra Club and CBD are misguided when arguing that American natural gas is not part of the solution to climate change. Even more importantly here, however, they utterly fail to understand the commercial status of Delfin’s Project, when charging that it is not commercially viable.⁷⁸ Delfin’s commercial success is detailed in the Request at 16-22. The bottom-line detailed there is that Delfin has secured five long-term off-take contracts for a total of 3.3 MTPA with an associated revenue stream of almost \$19 billion, with additional volumes in advanced commercial negotiations that are expected to be completed.⁷⁹ Given Delfin’s modular structure, with the ability and long-standing plan to develop its FLNGVs sequentially, at least Delfin’s first FLNGV is most definitely commercially viable.⁸⁰ Indeed, the commercial readiness of Delfin’s Project – together with the very real need for LNG to be exported by Delfin by contracted off-takers around the world, as evidenced by the comments filed in support of the Request – may be the strongest reason for DOE/FECM to grant the requested extension of time.

VI. ATTACHMENTS

As previously noted, the following Attachments are included as part of this answer:

⁷⁷ Chesapeake Energy Corp. letter submitted in this proceeding on April 22, 2024, citing the recent study available at: <https://www.thinkbrg.com/insights/publications/comparative-ghg-footprint-analysis-for-european-and-asian-supplies-of-uslng-pipeline-gas-and-coal/>.

⁷⁸ Sierra Club Protest at 21.

⁷⁹ With regard to *additional* contracting not included within the existing 3.3 MTPA, see the confirmation in Devon’s comments in support of the Request filed on April 16, 2026 (at 2) that while it has not yet finalized its offtake agreement with Delfin pursuant to the parties’ Heads of Agreement it “expects to be a customer of Delfin utilizing its Deepwater Port facility to export domestic natural gas to overseas markets.” *See also* Request at 19 (similarly explaining the status of the expected offtake contract with Devon).

⁸⁰ *See* Request at 2-3.

Attachment 1: MARAD Letter to the U.S. Fish & Wildlife Service, dated August 17, 2023;

Attachment 2: MARAD Letter to National Marine Fisheries Service, dated October 27, 2023;

Attachment 3: Delfin Letter to MARAD, dated Feb. 9, 2024 related to questions of the National Marine Fisheries Service

In accordance with DOE regulations, Delfin has also attached to this Request a Verification and a Certificate of Service.

VII. CONCLUSION

WHEREFORE, for all the reasons detailed in the Request, the comments filed by interested stakeholders in support of the Request, and this answer, Delfin respectfully requests that DOE/FECM issue an order modifying its existing natural gas export authorizations to allow Delfin to commence export operations from the Delfin Deepwater Port by no later than June 1, 2029, with no other changes in the existing authorizations, as more fully described in the Request.

Respectfully submitted,

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Dated: May 14, 2024

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 this proceeding.

Dated at Washington, D.C., this 14th day of May, 2024.

/s/ J. Patrick Nevins

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