

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE**

Macquarie Energy LLC

)

GDO Docket No. EA-479-A

**MOTION FOR LEAVE TO ANSWER AND
ANSWER OF MACQUARIE ENERGY LLC
TO PROTEST OF PUBLIC CITIZEN**

On November 19, 2024, Public Citizen, Inc. (“Public Citizen”) submitted a motion to intervene and protest (“Protest”) of Macquarie Energy LLC’s (“Macquarie Energy”) August 31, 2024 application for renewal of its blanket authorization to export electric energy to Canada in the above-captioned docket (“Renewal Application”). As demonstrated herein, the Protest is premised on falsehoods regarding Macquarie Energy’s conduct that, critically, have no bearing whatsoever on the applicable standard of review for electricity export applications. Accordingly, Macquarie Energy submits this motion for leave to answer and answer to the Protest (“Answer”), and respectfully requests that the Department of Energy (“DOE”) deny the Protest and issue the requested export authorization as soon as practicable to limit interruption to Macquarie Energy’s commercial operations.¹

I. MOTION FOR LEAVE TO ANSWER

The October 18, 2024, Federal Register notice of the Renewal Application² states that comments or protests to the Renewal Application should be filed in accordance with Rule 211 of the rules of practice and procedure (“Rules”) of the Federal Energy Regulatory Commission (“FERC”).³ To that end, Macquarie Energy submits this Answer to the Protest pursuant to FERC Rules. While answers to protests are not permitted by FERC Rules, FERC routinely accepts such answers to assist FERC in its decision-making process, clarify disputed issues, and ensure that the record is accurate and complete.⁴ Macquarie respectfully requests that the DOE accept the Answer for this purpose.

¹ Macquarie Energy submits this filing pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. §§ 385.212, 213.

² [Federal Register: Application for Renewal of Authorization to Export Electric Energy; Macquarie Energy LLC](#) (Oct. 18, 2024)

³ 18 C.F.R. § 385.311.

⁴ *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057, at P 93 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 19 (2010), *reh’g denied*, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); *Duke Energy Ky., Inc.*, 122 FERC ¶ 61,182, at P 25 (2008) (accepting answers in proceeding that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083, at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process) “it provides information that clarifies the issues and aids us in the decisional process.”); *Duke Energy Oakland, LLC*, 102 FERC ¶ 61,093 at P 10 (2003) (finding good cause to accept an otherwise impermissible answer because it assisted the Commission in understanding and resolving the issues involved in the proceeding); *Carolina Power & Light Co.*, 97 FERC ¶ 61,048 at 61,278 (2001) (finding good cause

II. ANSWER

A. The Protest Fails To Address The Applicable Standard Of Review

At the outset, it is important to note that Public Citizen has not requested any specific relief in its Protest. Public Citizen does not state that the DOE should not grant the Renewal Application. Rather, Public Citizen appears to imply that certain of Macquarie Energy's commercial operations render it somehow unfit to engage in the export of electric energy to Canada. Setting aside, briefly, the litany of falsehoods Public Citizen has marshalled to support this allegation, this strategy suffers from a fatal deficiency in that none of Public Citizen's arguments address the applicable standard of review for electric export applications.

Exports of electric energy to foreign countries are governed by Section 202(e) of the Federal Power Act ("FPA"),⁵ which provides that the DOE shall issue an order authorizing a person to transmit electric energy from the United States to a foreign country, "*unless* after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission."⁶ Extending from these guidelines, the DOE has determined it "will grant authorization to export electric energy if it finds that:

1. sufficient generating resources exist such that the exporter could sustain the exports while still maintaining adequate generating resources to meet all firm supply obligations; and
2. the export would not cause operating parameters on regional transmission systems to fall outside of established industry criteria."⁷

Nowhere in the Protest does Public Citizen assert that granting the Renewal Application would impact the sufficiency of available generating resources or operation of regional transmission systems. Indeed, considering that Macquarie Energy held this export authority for the prior five years without issue, it is hard to see *how* Public Citizen could make such claims.

Instead, Public Citizen resorts to hurling baseless allegations of manipulation and misconduct at Macquarie Energy. Public Citizen makes a glancing reference to Macquarie Energy being sued by the State of Kansas, and notes that FERC's Office of Enforcement is engaged in an "ongoing enforcement investigation" involving "companies' actions during Winter Storm Uri."⁸ Again, these references, whether true or false, are apropos of absolutely nothing relevant to the statutory requirements governing the grant of electric export authority.

to waive Rule 213 when the pleading helped to ensure a complete and accurate record); *Morgan Stanley Capital Group, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record.").

⁵ 16 U.S.C. § 824a(e) (2015).

⁶ *Id.* (emphasis added)

⁷ [Export Authorizations | Department of Energy](#) (last accessed Nov. 21, 2024)

⁸ Protest at 1.

B. Public Citizen's Allegations Are Categorically False

Public Citizen's statements and allegations concerning Macquarie Energy are "categorically false." Macquarie Energy was completely accurate when it stated in its application that it "does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area." Macquarie Energy does not own or control generation facilities. Affiliates of Macquarie Energy by virtue of common upstream ownership – Puget Sound Energy, Inc. ("Puget") and Cleco Power LLC ("Cleco") – *do* own/control generation and transmission facilities and have franchised service areas. But neither of these entities is seeking renewal of its export authority through this proceeding. Macquarie Energy is seeking export reauthorization from DOE. And critically, because of information/communication barriers, and separation of functions, Macquarie Energy is incapable of controlling any of the assets owned and/or operated by Puget or Cleco.

Lastly, Public Citizen asserts that Macquarie Energy's "control of Multifuels Midstream Group" facilitated alleged price-gouging in Texas."⁹ Setting aside the fact that this issue is not probative of the supply and reliability considerations that inform the DOE's review of electric export applications, Public Citizen has again presented no information to demonstrate this alleged misconduct. Public Citizen has not even demonstrated that Macquarie Energy "controls" Multifuels Midstream Group. And indeed, this is not the case. As with Puget and Cleco, Macquarie Energy is only an affiliate of Multifuels Midstream Group by virtue of common upstream ownership. Macquarie Energy does not have any control over Multifuels Midstream Group as a function of common ownership. In short, Public Citizen has again launched spurious allegations against Macquarie Energy without performing even the scantest amount of diligence as to the voracity of the claims asserted.

⁹ *Id.*

III. CONCLUSION

Public Citizen’s protest is woefully deficient in all respects and should be denied. Public Citizen attempts to support its Protest with allegations of market misconduct that have no bearing on the applicable standard of review for electric export applications. These allegations are irrelevant to DOE’s consideration, spurious, unsupported, unsupportable, and false. As the DOE is aware, this is familiar territory for Public Citizen.¹⁰ Accordingly, it is incumbent upon the DOE to reject Public Citizen’s Protest and grant the Renewal Application as expeditiously as possible.

Respectfully submitted,

/s/Michael A. Yuffee

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Macquarie Energy LLC

Dated: November 27, 2024

¹⁰ *American LNG Marketing LLC*, DOE/FECM Order No. 5172-A (issued Oct. 30, 2024) (Finding, in rejecting a request for rehearing, that “Public Citizen has failed to offer any analysis or evidence that the proposed change in control [is] inconsistent with the public interest. Indeed, neither of Public Citizens filings ***even mention*** the [applicable standard] in the context of the proposed change in control, thus undermining Public Citizens arguments....”)(emphasis added).

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 by the Secretary in this proceeding.

Dated at Washington, D.C. this 27th of November, 2024.

/s/ Ryan C. Norfolk
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