

**UNITED STATES OF AMERICA
BEFORE THE
UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

In the Matter of:

Corpus Christi Liquefaction Stage III

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FE Docket No. 18-78-LNG

**ANSWER OF CORPUS CHRISTI LIQUEFACTION STAGE III
IN OPPOSITION TO DEFICIENT
MOTION TO INTERVENE, PROTEST AND COMMENTS**

On October 15, 2018, in this docket, the Industrial Energy Consumers of America (“IECA”) filed a “Notice of Intervention, Protest and Comment.”¹ As it has now done in several proceedings before DOE/FE, IECA failed to serve the applicant in this proceeding, Corpus Christi Liquefaction Stage III (“Applicant”). IECA’s pleading should be dismissed on that basis.

Applicant discovered IECA’s pleading last week, on January 7, 2019, after receiving an inquiry from DOE regarding service of a filing. Until that moment, Applicant was unaware that a protest had been filed in this proceeding. Applicant has since confirmed that the original representatives on the service list in this proceeding were not served with IECA’s pleading on October 15, provided a copy of a recent filing to IECA representatives by email on January 8, 2019, and now endeavors to respond to IECA’s pleading as promptly as possible here. 10 C.F.R. § 590.302(b).

For the reasons set forth below, IECA’s failure to show good cause for what can only rightfully be considered a late-filed intervention and protest, and lack of good faith in providing notice and service to Applicant, require rejection of IECA’s pleading without prejudice.

¹ Notice of Intervention, Protest and Comment of IECA, FE Docket No. 18-78-LNG (Oct. 15, 2018) (“IECA Pleading”).

I. IECA's Pleading Must Be Dismissed for Failure to Serve Applicant

DOE/FE's regulations require that documents filed with DOE/FE be served on the applicant (even when other parties are not yet known), 10 C.F.R. § 590.107(b), and that all documents contain a certification that such service has been made. *Id.* at § 590.103(b). IECA's pleading failed to comply with either of those requirements and should be dismissed on that basis. IECA has established a pattern of failing to serve parties in DOE/FE proceedings. Applicant understands that IECA has failed to timely serve applicants in at least two other proceedings: Freeport LNG in FE Docket No. 11-161-LNG and Driftwood LNG in FE Docket No. 16-144-LNG. Even after these service failures were brought to IECA's attention in those proceedings, IECA made no effort to correct its failure to serve the Applicant here.

When organized groups like IECA ignore DOE/FE's intervention and service requirements, applicants are undeniably prejudiced by the loss of time to prepare an appropriate response. Applicant became aware of IECA's pleading last week, nearly three months after it was filed. DOE/FE should enforce its regulations against IECA – an entity that has repeatedly ignored the rules – and dismiss IECA's pleading without prejudice.

II. IECA Has Not and Can Not Demonstrate Good Cause At This Late Date

Even if DOE/FE were to consider IECA's pleading, the pleading would have to be treated as having been filed nearly three months out of time, because Applicant did not become aware of the pleading until last week. DOE's regulations allow for late-filed motions to intervene and late-filed protests only "for good cause shown." 10 C.F.R. §§ 590.303(d), 590.304(e). IECA has made no such showing, and should not be allowed to cure this deficiency at this late date.

Section II of the Application filed by Applicant in this proceeding provided the names and contact information for four individuals designated to receive service on behalf of Applicant. Line 1 of IECA's pleading references the Application, so it can be assumed that IECA read the Application and was aware of the names of persons to serve on behalf of Applicant. Yet none of these representatives received service.

This situation is not unlike the situation IECA finds itself in elsewhere. In FE Docket No. 16-144-LNG, IECA argued that it had no obligation to provide service because it had no information regarding which other parties might intervene.² But DOE/FE's regulations specifically address this circumstance and require that service be provided to the applicant even when the other parties to a proceeding are not yet known. 10 C.F.R. § 590.107(b) ("When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements . . . of this section may be met by serving a copy of all documents on the applicant and on FE for inclusion in the FE docket in the proceeding."). IECA's failure to show good cause and lack of good faith require rejection of IECA's pleading.

III. IECA's Pleading Will Not Aid in DOE/FE's Decisionmaking

Nor can IECA's pleading be accepted on the grounds that it will add meaningfully to the record of this proceeding or aid in DOE/FE's decisionmaking. Each of the claims made in IECA's pleading either are unsubstantiated, have been raised and resolved in earlier proceedings, or have now been addressed by DOE/FE in its December 28, 2018 *Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study* (DOE/FE Response to Comments).³

² See Answer of IECA to Driftwood LNG LLC Claim that IECA Late Filed Motion to Intervene, Protest and Comment, FE Docket No. 16-144-LNG (Dec. 27, 2018).

³ See Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study, 83 Fed. Reg. 67,251 (Dec. 28, 2018) ("DOE/FE Response to Comments").

A. DOE's Public Interest Review Standards Are Sound

IECA recycles the argument that the 1984 Policy Guidelines were developed to address LNG import authorization decisions, not LNG exports. But for decades, and again recently in its Response to Comments, DOE/FE explained that the central claim of the 1984 Policy Guidelines – *i.e.* that it is better for the market to determine prices and commercial terms than for the government to do so – applies with equal force to export authorization decisions.⁴ DOE/FE is also under no legal obligation to further define the “public interest” by rule. Over the course of dozens of LNG export orders, DOE/FE has established a comprehensive set of factors it considers in its public interest review, while also allowing parties to introduce new considerations that may affect the public interest on a case-by-case basis. Like any agency, DOE/FE is free to make policy in this manner through successive adjudications rather than through rulemaking.⁵

B. IECA Comments On The 2018 DOE/FE Macroeconomic Study and Data Quality Act Are Redundant And Should Be Disregarded

IECA again argues that DOE/FE has violated the Data Quality Act.⁶ IECA made this claim in response to the 2018 LNG Export Study, and DOE/FE addressed this claim in its Response to Comments published on December 28, 2018.⁷ Raising the issue again will add nothing to DOE/FE's decisionmaking in this proceeding.

Further, similar to its comments filed on the 2018 LNG Export Study, IECA's pleading suggests that its members will see increased natural gas price exposure in the future, citing a

⁴ See DOE Response to Comments, 83 Fed. Reg. at 67,253 (citing *Phillips Alaska Natural Gas*, DOE/FE Order No. 1473 at 14 (citing *Yukon Pacific Corp.*, DOE/FE Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FE ¶ 70,259, ¶ 71,128 (1989))).

⁵ See *Id.* at 67,253 n.9. See also 15 U.S.C. § 717b(a) (directing implementation of the public interest standard in response to individual applications); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974).

⁶ IECA Pleading at 4.

⁷ See DOE/FE Response to Comments, 83 Fed. Reg. at 67,269 – 71.

single data point in the 2018 LNG Export Study.⁸ IECA’s pleading fails to mention the many other conclusions in the 2018 LNG Export Study, including that market-determined export levels will increase U.S. gross domestic product and improve household income and consumer welfare.⁹ In fact, contrary to IECA’s claims, “Chemical industry subsectors of the economy that rely heavily on natural gas for energy as a feedstock continue to exhibit robust growth even at higher LNG export levels. This growth is only insignificantly slower than cases with lower LNG export levels.”¹⁰ IECA’s economic theory has been rebutted by DOE/FE, which was “not persuaded by IECA’s claim that DOE’s approval of LNG exports will put trillions of dollars of U.S. manufacturing assets and millions of jobs at risk, among other alleged negative impacts.”¹¹ IECA’s cursory treatment of the 2018 Study in its protest adds nothing of substance to the record in this proceeding.

C. IECA’s Unsubstantiated Speculation Regarding Conditions In Other Markets Should Be Disregarded

IECA speculates that the liberalization of crude oil exports is somehow responsible for high gasoline prices in the United States, and attempts to draw a correlation to impacts that may occur with increasing exports of LNG.¹² In a later section of its protest, IECA points to domestic markets in Australia,¹³ citing a news article that reports that *netback* prices in Australia, an exporting country, are expected to increase this year. IECA offers no empirical support for its

⁸ IECA Pleading at 3.

⁹ DOE/FE Response to Comments, 83 Fed. Reg. at 67,264 (“[T]he 2018 Study found that all scenarios within the more likely range of results are welfare-improving for the average U.S. household. This result is driven by households’ receipt of additional income from export revenues and take-or-pay tolling charges for LNG exports, and this additional income outweighs the income lost from higher energy prices.”). IECA cites prior LNG studies improperly as well. On page 2, Figure 1 of its pleading, IECA reproduces a slide from the 2012 LNG Study, which has been superseded by the 2018 LNG Study finding that benefits are not limited to natural gas producers and exporters.

¹⁰ DOE/FE Response to Comments, 83 Fed. Reg. at 67,255.

¹¹ *Id.* at 67,265.

¹² IECA Pleading at 3.

¹³ *Id.*

claims nor basis for applying crude oil export market experiences or Australian market experiences to U.S. LNG exports. Even a cursory consideration of these theories reveals flaws. The United States has been a net importer of crude oil for decades, and has therefore been exposed to global oil prices since well before the liberalization of crude oil exports. And IECA provides no reason to believe that the Australian economy and natural gas sectors are capable of predicting markets in the United States such that the Australian example will be meaningful for U.S. policymakers.

IV. Conclusion

IECA has repeatedly failed to follow DOE/FE's regulations regarding service and has made no effort to remedy the ongoing prejudice to Applicant in this proceeding, despite having multiple occasions to do so and names and addresses for the Applicant on file. DOE/FE should reject IECA's pleading as deficient and deny party status to IECA on this basis alone. If IECA's pleading is considered, DOE/FE should treat it as a late-filed motion to intervene, which should be dismissed for failure to show good cause.

Respectfully submitted,

/s/ Taylor Johnson

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Dated: January 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington, D.C. this 17th day of January, 2019.

/s/ Janna Chesno

Cheniere Energy, Inc.