

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

CORPUS CHRISTI LIQUEFACTION
STAGE III

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FE DOCKET NO. 18-78-LNG

ORDER DISMISSING INDUSTRIAL ENERGY CONSUMERS OF AMERICA'S
NOTICE OF INTERVENTION, PROTEST, AND COMMENT

APRIL 10, 2019

I. INTRODUCTION AND BACKGROUND

This proceeding involves an application (Application)¹ by Corpus Christi Liquefaction Stage III (CCL Stage III), filed with the Department of Energy’s Office of Fossil Energy (DOE/FE) on June 29, 2018, for authorization under section 3 of the Natural Gas Act (NGA) to export domestically produced liquefied natural gas (LNG).² DOE/FE gave public notice of the Application (Notice of Application) in the *Federal Register* on August 14, 2018, and invited interested persons to submit comments, motions to intervene, notices of intervention, and/or protests addressing the Application no later than October 15, 2018.³ DOE/FE stated in the Notice of Application that all responsive filings “must meet the requirements specified by the regulations in 10 CFR part 590.”⁴

In response to the Notice of Application, DOE/FE received one filing, dated October 15, 2018, from the Industrial Energy Consumers of America (IECA) entitled “Notice of Intervention, Protest, and Comment” (Pleading).⁵ IECA’s Pleading argues that CCL Stage III’s pending Application to export LNG—and U.S. LNG exports at certain volumes—are not consistent with

¹ Corpus Christi Liquefaction Stage III, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, FE Docket No. 18-78-LNG (June 29, 2018) [hereinafter CCL Stage III App.].

² The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-006.02, issued on November 17, 2014.

³ Corpus Christi Liquefaction Stage III, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 83 Fed. Reg. 40,269, 40,270 (Aug. 14, 2018) (Notice of Application). On November 9, 2018, in DOE/FE Order No. 4277, DOE/FE granted the portion of CCL Stage III’s Application requesting authority to export LNG to any country with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries). Only the portion of the Application requesting authority to export LNG to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries) is still pending in the above-captioned docket.

⁴ Notice of Application, 83 Fed. Reg. at 40,270.

⁵ Industrial Energy Consumers of America, Notice of Intervention, Protest, and Comment, FE Docket No. 18-78-LNG (Oct. 15, 2018). Although IECA styled its Pleading to include a “Notice of Intervention,” IECA was seeking to intervene under 10 C.F.R. § 590.303(b), which involves a motion to intervene. A notice of intervention is available only to state commissions, as specified in 10 C.F.R. §§ 590.303(a) and 590.102(p).

the public interest under NGA section 3(a).⁶ DOE/FE received no other filings in response to the Notice of Application.

On January 17, 2019, CCL Stage III filed an “Answer in Opposition to Deficient Motion to Intervene, Protest, and Comments” (Answer), in which CCL Stage III opposed IECA’s Pleading on both substantive and procedural grounds.⁷ In regard to the procedural issues, as discussed below, CCL Stage III asks DOE/FE to reject the Pleading because IECA failed to submit a certificate of service, failed to serve the Pleading on CCL Stage III, and failed to offer good cause for permitting late intervention and protest.

Upon review, DOE/FE finds that IECA did not comply with the applicable filing and service requirements contained in DOE’s regulations. Further, as of the date of this Order, IECA has not: (i) filed a corrected Pleading with a certificate of service, (ii) served its Pleading on CCL Stage III, or (iii) responded to CCL Stage III’s Answer in an attempt to demonstrate “good cause” for its actions. Accordingly, for the reasons discussed below, DOE/FE dismisses IECA’s Pleading in its entirety.

II. CCL STAGE III’S PROCEDURAL ARGUMENTS

In its Answer, CCL Stage III asserts that DOE/FE should reject IECA’s Pleading for lack of service and lack of good cause for its actions. CCL Stage III states that it first learned of IECA’s Pleading on January 7, 2019—“nearly three months after it was filed.”⁸ CCL Stage III notes that the Application “provided the names and contact information for four individuals designated to receive service on behalf of the Applicant,” yet “none of those representatives

⁶ *See id.*

⁷ Corpus Christi Liquefaction Stage III, Answer in Opposition to Deficient Motion to Intervene, Protest, and Comments, FE Docket No. 18-78-LNG (Jan. 17, 2019) [hereinafter CCL Stage III Answer]. In this Order, we address only the procedural arguments raised by CCL Stage III in opposition to IECA’s Pleading.

⁸ *Id.* at 2.

received service.”⁹ CCL Stage III states that IECA’s Pleading references the Application, so it can be assumed that IECA read the Application and was aware of the names of the persons to serve on behalf of CCL Stage III.¹⁰ CCL Stage III thus asserts that IECA’s Pleading should be dismissed for failure to comply with DOE/FE’s regulations regarding both a certificate of service and service on the applicant (10 C.F.R. §§ 590.103(b) and 590.107(b), respectively).¹¹

Further, CCL Stage III contends that IECA “has established a pattern of failing to serve parties in DOE/FE proceedings”—citing the Freeport LNG proceeding in FE Docket No. 11-161-LNG and the Driftwood LNG proceeding in FE Docket No. 16-144-LNG.¹² CCL Stage III points out that, “[e]ven 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.”¹³ According to CCL Stage III, “[w]hen 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.”¹⁴ CCL Stage III thus urges DOE/FE to “enforce its regulations against IECA – an entity that has repeatedly ignored the rules – and dismiss IECA’s Pleading without prejudice.”¹⁵

Finally, CCL Stage III asserts that IECA has made no demonstration of “good cause shown” (10 C.F.R. §§ 590.303(d), 590.304(e)), and thus “should not be allowed to cure this deficiency at this late date.”¹⁶

⁹ *Id.* at 3.

¹⁰ *See id.* at 3.

¹¹ *See id.* at 1-2.

¹² *See id.* at 2.

¹³ *See* CCL Stage III Answer at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

III. DISCUSSION AND CONCLUSIONS

After reviewing the record, including the arguments made by CCL Stage III, we find that IECA failed to comply with DOE/FE's filing and service requirements in several respects.

When IECA filed its Pleading on October 15, 2018, it did not include a certificate of service, as required by 10 C.F.R. § 590.103(b). Nor did IECA serve a copy of the Pleading on CCL Stage III, as required by 10 C.F.R. §§ 590.107 and 590.304(d). In particular, IECA disregarded the specific requirement set forth in section 590.107(b) of DOE's regulations regarding service obligations during the initial phase of a new application proceeding:

When the parties are not known, *such as during the initial comment period following publication of the notice of application*, service requirements under paragraph (a) ... may be met by *servicing a copy of all documents on the applicant* and on FE for inclusion in the FE docket in the proceeding.¹⁷

As CCL Stage III points out, the Application identified CCL Stage III's counsel for all communications, including "service of pleadings and notices."¹⁸ Therefore, IECA's failure to serve its Pleading on CCL Stage III on October 15, 2018, was due to its own inaction, not to a lack of available information. We note that IECA has complied with the service requirement under the same regulations in other LNG export proceedings, yet failed to do so here.¹⁹

We further find that IECA has made no effort to correct these deficiencies or to show good cause for its actions. As of the date of this Order—nearly six months after IECA filed its Pleading, and nearly three months after CCL Stage III filed its Answer—IECA still has not

¹⁷ 10 C.F.R. § 590.107(b).

¹⁸ CCL Stage III App. at 3; *see also* CCL Stage III Answer at 3.

¹⁹ *See, e.g.*, Industrial Energy Consumers of America, Comments and Motion to Intervene, FE Docket Nos. 13-30-LNG and 13-42-LNG (Sept. 23, 2013), *available at*: https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2013/applications/IECA13_42_lng09_23_13.pdf (IECA timely serving applicant Sabine Pass Liquefaction, LLC).

submitted a certificate of service to DOE/FE nor has it served the Pleading on CCL Stage III. Thus, IECA has never completed filing and service of its Pleading.

DOE's regulations at 10 C.F.R. §§ 303(d) and 304(e), respectively, provide that motions to intervene and protests must be filed no later than the date fixed for filing in the applicable FE notice or order, unless a later date is permitted "for good cause shown."²⁰ IECA, however, has not responded to CCL Stage III's Answer or provided any other explanation to support a finding of "good cause" for its actions.

In sum, IECA has neither complied with DOE/FE's regulations on these issues nor shown an interest in doing so.

ORDER

Pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. IECA's Notice of Intervention, Protest, and Comment is dismissed.

Issued in Washington, D.C. on April 10, 2019.

Shawn Bennett
Deputy Assistant Secretary for Oil and Natural Gas
Office of Fossil Energy

²⁰ 10 C.F.R. §§ 590.303(d), 590.304(e).