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

IN THE MATTER OF:

Commonwealth LNG, LLC

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)
)

FE DOCKET NO. 19-134-LNG

**ANSWER OF COMMONWEALTH LNG, LLC
TO NOTICE OF INTERVENTION, PROTEST, AND COMMENT**

On December 20, 2019, the Industrial Energy Consumers of America (“IECA”) filed a Notice of Intervention, Protest and Comment (“IECA Notice”) with the Department of Energy (“DOE”), Office of Fossil Energy (“DOE/FE”) opposing Commonwealth LNG, LLC’s (“Commonwealth”) application (“Application”) to export liquefied natural gas (“LNG”) to Free Trade Agreement (“FTA”),¹ and Non-Free Trade Agreement (“Non-FTA”) countries.² Commonwealth hereby opposes the IECA Notice, as described in detail herein (“Answer”) pursuant to Sections 590.303(e) and 590.304(f) of DOE/FE’s regulations.³

In support of its Answer, Commonwealth states the following:

¹ FTA Countries means any country that has, or in the future will have, the capacity to import LNG via ocean-going carrier, with which the United States has, or in the future enters into, an FTA requiring the national treatment for trade in natural gas.

² Non-FTA Countries means any country that has, or in the future will have, the capacity to import LNG via ocean-going carrier, with which the U.S. does not have an FTA and with which trade is not prohibited by U.S. law or policy.

³ 10 C.F.R. §§ 590.303(e); 590.304(f) (2019).

I. BACKGROUND

On October 16, 2019, Commonwealth filed the Application with DOE/FE, requesting long-term, multi-contract authorization to export domestically produced LNG, up to the equivalent of 441.4 billion cubic feet of natural gas per year to FTA Countries for a 25-year period and to Non-FTA Countries for a 20-year period, each commencing on the date of first commercial export or seven years from the issuance of the authorization, from Commonwealth's proposed liquefaction and export facility located in Cameron Parish, Louisiana. On November 26, 2019, DOE/FE posted notice of Commonwealth's Application in the Federal Register, setting a comment deadline of December 26, 2019.⁴

On December 20, 2019, IECA filed the IECA Notice arguing that (i) Commonwealth's request for authorization is not in the public interest and (ii) objecting to DOE/FE's use of the 1984 Policy Guidelines ("Guidelines"),⁵ originally developed for review of LNG imports, to inform DOE/FE's public interest determination with respect to LNG exports.

II. IECA'S REQUEST TO INTERVENE SHOULD BE DENIED

The IECA Notice does not meet the baseline standards necessary to become a party to the instant proceeding through filing a motion to intervene. DOE/FE's regulations state that "[a]ny ... person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of

⁴ 84 Fed. Reg. 65,144 (Nov. 26, 2019).

⁵ New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

interest is based.”⁶ The petitioners claim of interest must go “beyond the general interest of the public as a whole.”⁷

IECA’s interest in the Application does not go beyond the general interest of the public as a whole. Each of IECA’s objections in the IECA Notice broadly apply to any LNG export application under consideration by DOE/FE. The discussion of these objections is painted with a broad brush, and never ties the objections specifically to the pending Application.

IECA’s criticisms of DOE/FE’s policies would be more appropriately presented in a different forum, such as a request for rulemaking regarding general LNG export policy under the Natural Gas Act (“NGA”). An individual export application proceeding is the wrong venue to request such sweeping review and policy changes.

III. IECA’S SUBSTANTIVE ARGUMENTS SHOULD BE DISMISSED

A. Consistency with the Public Interest

IECA’s principal claim is that Commonwealth’s Application requesting authorization “to export LNG to [Non-FTA] countries is inconsistent with the public interest.”⁸ In an effort to bolster this baseless assertion, IECA claims that (i) there is “uncertainty about future adequate domestic supply at reasonable prices and available pipeline capacity,” and (ii) it is inconsistent with the public interest “to not retain a competitive advantage for U.S. manufacturing,” and “to authorize LNG shipments to [Non-FTA] countries who subsidize energy prices to their manufacturers and power generators.”⁹

⁶ 10 C.F.R. § 590.303(b), (c).

⁷ *Id.* § 590.102(h).

⁸ *IECA Notice* at 1.

⁹ *Id.* at 2.

Neither of IECA's generic and self-serving purported concerns is relevant to the pending Application. As an initial matter, IECA's assertions about available pipeline capacity should be raised with the Federal Energy Regulatory Commission ("Commission"), and not with DOE/FE, as DOE/FE does not have any jurisdictional nexus over the siting, construction and operation of interstate pipelines. The Commission "regulates the transmission and sale of natural gas for resale in interstate commerce; [and] [a]pproves the siting and abandonment of interstate natural gas pipelines and storage facilities,"¹⁰ and therefore would be the appropriate venue to raise concerns about allocation of capacity, approvals of new pipelines, and rates.

With regard to concerns over the sufficiency of domestic natural gas supply, current short and long term projections demonstrate sufficient supply to support both domestic consumption and expanding LNG exports. As Commonwealth noted in its Application, "[n]atural gas production in the U.S. is at the highest levels ever recorded, increasing over 50% in the last 10 years."¹¹ Regarding storage, the U.S. Energy Information Administration's ("EIA") latest Short-Term Energy Outlook notes that

the U.S. total working gas inventories were 3,616 [Bcf] at the end of November. This level was about equal to the five-year (2014–18) average and 19% higher than a year ago. EIA expects storage withdrawals to total 1.9 [Tcf] from the end of October to the end of March, which is less than the five-year average winter withdrawal. A withdrawal of this amount would leave the end-of-March inventories at almost 1.9 Tcf, which would be 8% higher than the five-year (2015–19) average.¹²

¹⁰ FERC, What FERC Does, <https://www.ferc.gov/about/ferc-does.asp> (August 14, 2018).

¹¹ U.S. EIA, U.S. Natural Gas Marketed Production, <http://www.eia.gov/dnav/ng/hist/n9050us2A.htm> (September 30, 2019).

¹² U.S. EIA, Short-Term Energy Outlook December 2019, https://www.eia.gov/outlooks/steo/pdf/steo_text.pdf (Dec. 10, 2019).

As further noted in Commonwealth's Application, the EIA's Annual Energy Outlook for 2019 confirms that "[t]he growth in natural gas production supports increasing domestic consumption, particularly in the industrial and electric power sectors, and higher levels of natural gas exports."¹³

Finally, DOE's purported obligation (according to IECA) to "retain a competitive advantage" in favor of the U.S. manufacturing industry is inapposite to DOE/FE's general policy approach of allowing the market to drive competition. In discussing the Guidelines in a recent order, DOE/FE noted that the goals of the Guidelines "are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system."¹⁴ DOE further quotes the Guidelines themselves, which state:

The market, not government, should determine the price and other contract terms of imported [or exported] natural gas ... The federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.¹⁵

It also bears noting that despite the IECA's assertions, it is in no way apparent that granting Commonwealth's Application could or would negatively impact U.S. manufacturing, as both natural gas production and pipeline construction is market-driven, and will rise to meet growing demand.

¹³ *U.S. EIA*, Annual Energy Outlook 2019 with Projections to 2050, pg. 69 (Jan. 24, 2019), available at <https://www.eia.gov/outlooks/aeo/pdf/aeo2019.pdf>.

¹⁴ *Venture Global Calcasieu Pass, LLC*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4346 at 20, FE Docket Nos. 13-69-LNG et al. (March 5, 2019).

¹⁵ *Id.*

B. DOE/FE's 1984 Policy Guidelines

IECA generally objects to DOE/FE's reliance on the Guidelines when conducting its public interest review because the Guidelines originally contemplated LNG imports, rather than LNG exports. IECA has raised this argument in previous proceedings before DOE to no avail.¹⁶ While the NGA does not establish specific criteria that DOE/FE must rely upon in conducting its public interest analysis, DOE/FE has successfully used the Guidelines as a criterion when evaluating export applications for decades, and IECA has presented no compelling rationale for a shift away from this long-standing practice.

Earlier this year, DOE explicitly addressed this issue, noting that while the Guidelines “are nominally applicable to natural gas import cases, DOE subsequently held in Order No. 1473 that the same Policy Guidelines should be applied to natural gas export applications.”¹⁷ DOE/FE went on to note that its evaluation of export applications to Non-FTA countries looks at “(i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with *DOE's policy of promoting market competition*, and (iv) any other factors bearing on the public interest, as determined by DOE.”¹⁸

¹⁶ *Port Arthur LNG, LLC*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4372, FE Docket No. 15-96-LNG (May 2, 2019); *Driftwood LNG LLC*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4373, FE Docket No. 16-144-LNG (May 2, 2019).

¹⁷ *Venture Global Calcasieu Pass, LLC*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4346 at 20, FE Docket Nos. 13-69-LNG et al. (March 5, 2019).

¹⁸ *Id.* at 21 (*emphasis added*).

In this regard, the Guidelines provide a general framework for DOE/FE when reviewing export applications, but as described above, the Guidelines certainly are not the sum total of DOE/FE's analysis of the public interest. Furthermore, DOE/FE has conducted numerous studies which demonstrate that LNG exports are not inconsistent with the public interest.¹⁹

IV. **CONCLUSION**

Commonwealth respectfully requests the Commission deny IECA's purported intervention and dismiss the arguments in the IECA Notice, for the reasons set forth herein.

Respectfully submitted,

/s/Lisa M. Tonery
Lisa M. Tonery
Mariah T. Johnston
Attorneys for
Commonwealth LNG, LLC

Dated: January 6, 2020

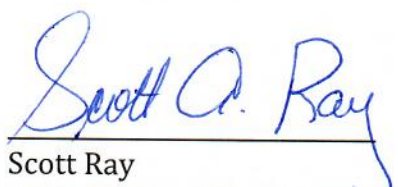
¹⁹ See e.g. *NERA Econ. Consulting*, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports, pg. 21 (June 7, 2018), available at <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf>.

VERIFICATION

State of TEXAS)

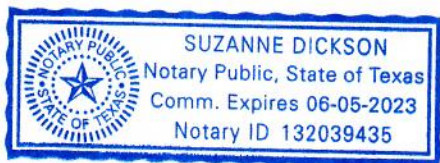
County of HARRIS)

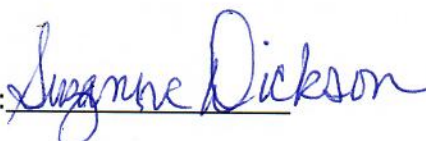
BEFORE ME, the undersigned authority, on this day personally appeared Scott Ray, who, having been by me first duly sworn, on oath says: that he is Senior Vice President – Engineering, Procurement, Construction and Permitting for Commonwealth Projects, LLC, and is duly authorized to make this Verification; that he has read the foregoing instrument; and that the facts therein stated are true and correct to the best of his knowledge, information, and belief.



Scott Ray
SVP – EPC and Permitting
Commonwealth Projects, LLC

SWORN TO AND SUBSCRIBED before me on the 16th day of January, 2020



Name: 
Title: Notary Public

My Commission expires:

06-05-2023

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 these proceedings.

Dated at New York, N.Y., this 6th day of January, 2020.

/s/Dionne McCallum-George
Dionne McCallum-George
*Executive Assistant on behalf of
Commonwealth LNG, LLC*