

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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GOLDEN PASS LNG TERMINAL LLC)	FE DOCKET NOS.	12-88-LNG
)		12-156-LNG
_____)		

ORDER GRANTING REQUEST
FOR EXTENSION OF EXPORT COMMENCEMENT DEADLINES

DOE/FE ORDER NO. 3147-B
DOE/FE ORDER NO. 3978-C

MARCH 24, 2020

I. INTRODUCTION AND BACKGROUND

On October 28, 2019, Golden Pass LNG Terminal LLC (GPLNG) filed with the Office of Fossil Energy (FE) of the Department of Energy (DOE) a “Request for Extension of Commencement Deadlines”¹ (Request) under section 3 of the Natural Gas Act (NGA).² GPLNG currently holds two long-term authorizations to export domestically produced liquefied natural gas (LNG)—DOE/FE Orders No. 3147³ and No. 3978.⁴ In the Request, GPLNG asks DOE/FE to extend the individual deadline by which GPLNG must commence commercial exports of LNG under both orders to September 30, 2025.⁵ This Request, if granted, would extend the commencement deadline by approximately 36 months for Order No. 3147 and by approximately 17 months for Order No. 3978, as explained below.⁶

Both orders involve exports of LNG from GPLNG’s existing Golden Pass LNG Terminal (Terminal), which is located near Sabine Pass, Texas. The exports will originate from GPLNG’s proposed export project, which will be constructed contiguous to and integrated with the

¹ Golden Pass LNG Terminal LLC, Request for Extension of Commencement Deadlines, FE Docket Nos. 12-156-LNG & 12-88-LNG (Oct. 28, 2019) [hereinafter GPLNG Request].

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. 00-002.04G issued on June 4, 2019.

³ *Golden Pass Products LLC*, DOE/FE Order No. 3147, FE Docket No. 12-88-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal to Free Trade Agreement Nations (Sept. 27, 2012), *amended by Golden Pass LNG Terminal LLC (formerly Golden Pass Products LLC)*, DOE/FE Order No. 3147-A, Order Granting Request to Transfer Authorizations and Responding to Statement of Change in Control (Mar. 4, 2020) (transferring authorization from Golden Pass Products LLC to GPLNG).

⁴ *Golden Pass Products LLC*, DOE/FE Order No. 3978, FE Docket No. 12-156-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations (Apr. 25, 2017), *reh’g denied*, DOE/FE Order No. 3978-A (Mar. 30, 2018), *amended by Golden Pass LNG Terminal LLC (formerly Golden Pass Products LLC)*, DOE/FE Order No. 3978-B, Order Granting Request to Transfer Authorizations and Responding to Statement of Change in Control (Mar. 4, 2020) (transferring authorization from Golden Pass Products LLC to GPLNG).

⁵ GPLNG Request at 2, 5.

⁶ *Id.* at 2, 4-5.

Terminal.⁷ In 2016, the Federal Energy Regulatory Commission (FERC) issued an order approving the siting, construction, and operation of the proposed export project.⁸

In DOE/FE Order No. 3147, issued on September 27, 2012, DOE/FE authorized GPLNG to export LNG from the Terminal to any country with which the United States has, or in the future enters into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),⁹ in a volume equivalent to 740 billion cubic feet per year (Bcf/yr) of natural gas.¹⁰ Under the terms of that order, GPLNG is authorized to export the LNG to FTA countries for a 25-year period.¹¹ The 25-year export term begins “on the earlier of the date of first export or 10 years from the date the authorization is issued (September 27, 2012)”¹²

In DOE/FE Order No. 3978, issued on April 25, 2017, DOE/FE authorized GPLNG to export domestically produced LNG from the Terminal to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries),¹³ in a volume equivalent to 808 Bcf/yr of natural gas.¹⁴ GPLNG is authorized to export this LNG to non-FTA countries for a 20-year period.¹⁵ The 20-year export term begins “when [GPLNG] commences commercial export” of LNG, and GPLNG “must commence export operations using the planned liquefaction facilities

⁷ See, e.g., GPLNG Request at 2-3.

⁸ See *Golden Pass Products LLC & Golden Pass Pipeline LLC*, Docket Nos. CP14-517-000 *et al.*, Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, 157 FERC ¶ 61,222 (Dec. 21, 2016) [hereinafter FERC Order].

⁹ 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

¹⁰ *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3147, at 7 (Ordering Para. A.).

¹¹ *Id.*

¹² *Id.*

¹³ 15 U.S.C. § 717b(a).

¹⁴ *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978, at 173 (Ordering Para. A.).

¹⁵ *Id.* (Ordering Para. B.).

no later than seven years from the issuance of this Order”—*i.e.*, by April 25, 2024.¹⁶ These approved FTA and non-FTA volumes are not additive.¹⁷

Below, DOE/FE grants GPLNG’s Request for both orders. Specifically, DOE/FE grants the request to extend the commencement deadline for GPLNG’s FTA authorization, Order No. 3147, under NGA section 3(c), 15 U.S.C. § 717b(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”¹⁸ The FTA portion of the Request falls within NGA section 3(c) and, therefore, DOE/FE approves the requested extension for Order No. 3147 without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA portion of the Request.

Additionally, DOE/FE has reviewed GPLNG’s request to extend the commencement deadline for its non-FTA authorization (Order No. 3978) under NGA section 3(a), 15 U.S.C. § 717b(a). On December 3, 2019, DOE/FE published a Notice of Request for the non-FTA portion of GPLNG’s Request in the *Federal Register*.¹⁹ The Industrial Energy Consumers of America (IECA) filed a document entitled, “Notice of Intervention, Protest and Comment” (Pleading) on December 18, 2019,²⁰ and GPLNG filed an Answer to IECA’s Pleading on December 31, 2019.²¹ DOE/FE has reviewed the record in this proceeding, including the arguments raised by IECA opposing the Request and GPLNG’s Answer. We also note that, on

¹⁶ *Id.* (Ordering Paras. B, D).

¹⁷ *Id.* at 174 (Ordering Para. E).

¹⁸ 15 U.S.C. § 717b(c).

¹⁹ U.S. Dep’t of Energy, Golden Pass Products LLC; Request for Extension of Commencement Deadline for Non-Free Trade Agreement Authorization, 84 Fed. Reg. 66,178 (Dec. 3, 2019).

²⁰ Industrial Energy Consumers of America, Notice of Intervention, Protest and Comment, FE Docket No. 12-156-LNG (Dec. 18, 2019) [hereinafter IECA Pleading].

²¹ Golden Pass LNG Terminal LLC (formerly Golden Pass Products LLC), Answer to the Motion to Intervene and Protest of the Industrial Energy Consumers of America, FE Docket No. 12-156-LNG (Dec. 31, 2019) [hereinafter GPLNG Answer].

December 11, 2019, the Federal Energy Regulatory Commission (FERC) granted an extension through November 30, 2026, for GPLNG to complete construction of the export project and place it in service.²² Based on this record, DOE/FE approves the Request for Order No. 3978.

II. DESCRIPTION OF REQUEST

GPLNG states that the respective export commencement deadline set forth in Order Nos. 3147 and 3978 “will not provide sufficient time for GPLNG to complete the construction of the export facilities and place them in service.”²³ GPLNG therefore asks DOE/FE to modify the terms of each order, such that GPLNG would have until September 30, 2025, under both orders to place the Terminal facilities in service and to commence exports of LNG.²⁴

In support of this request, GPLNG states that, due to the length of time required to obtain the necessary FERC and DOE authorizations, and the “resulting uncertainty” during this time period, GPLNG requires additional time to finalize commercial arrangements and reach a final investment decision on the construction of its proposed export project.²⁵ GPLNG further states that it has proceeded diligently with its intention to construct and operate the export project.

GPLNG points to the following recent actions:

- Final investment decision for the export project announced in February 2019;
- Engineering, procurement, and construction contracts awarded;
- 20-year firm transportation agreement executed;
- Pipeline capacity secured;
- Authorization received from FERC in April 2019 to proceed with initial site-clearing; and

²² Fed. Energy Regulatory Comm’n, Response to Request for an Extension of Time, Docket Nos. CP14-517-000 *et al.* (Dec. 11, 2019) [hereinafter FERC Extension]; *see infra* § III.

²³ GPLNG Request at 4.

²⁴ *Id.* at 2; *see also id.* at 4-5.

²⁵ *Id.* at 3.

- Commencement of construction of the export facilities, including site raising, soil stabilization, and wetland restoration activities.²⁶

Finally, GPLNG asserts that extending the commencement deadline until September 30, 2025, for its non-FTA order is consistent with the public interest.²⁷

III. FERC’S GRANT OF GPLNG’S EXTENSION REQUEST

In its 2016 Order, FERC required GPLNG’s affiliates to complete the construction of the export project and place it in service within five years—*i.e.*, by December 21, 2021.²⁸ We take administrative notice that, on December 11, 2019, FERC granted GPLNG’s request to extend the in-service deadline for the export project by approximately five more years—to “no later than November 30, 2026.”²⁹

IV. DOE/FE PROCEEDING FOR NON-FTA AUTHORIZATION

A. IECA’s Notice of Intervention, Protest, and Comment

In response to the Notice of Request, DOE/FE received one filing submitted by IECA. In support of its request for intervention, IECA states that it is a nonpartisan association of leading manufacturing companies with \$1.0 trillion in annual sales and more than 1.7 million employees worldwide. IECA’s stated purpose is to promote the interests of manufacturing companies. IECA asserts that “the availability, use and cost of energy, power [and] feedstock play a significant role” in its members’ ability to compete in domestic and world markets.³⁰ IECA states that its membership represents a diverse set of industries including chemicals, plastics, aluminum, fertilizer, automotive, and many more.³¹

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 5.

²⁸ FERC Order, 157 FERC ¶ 61,222, at ¶ 102 (Ordering Para. B).

²⁹ FERC Extension at 1-2, *supra* note 22.

³⁰ IECA Pleading at 1.

³¹ *Id.*

IECA does not directly address GPLNG's Request, but instead challenges DOE/FE's approval of LNG exports generally on a variety of grounds. IECA alleges, for example, that:

- It is not in the public interest for a foreign government state-owned enterprise to own all or part of a LNG export terminal located in the United States;³²
- Exports of U.S. LNG increase supply and price risk to U.S. consumers and the economy, and specifically harm the domestic manufacturing sector;
- DOE should not authorize LNG shipments to non-FTA countries that subsidize energy prices to their manufacturers and power generators; and
- DOE has not determined whether there is adequate natural gas pipeline capacity in the United States to accommodate the approved export levels of LNG.³³

IECA also contends that DOE/FE is improperly interpreting the statutory phrase "public interest" in NGA section 3(a) in its "decision making on LNG exports."³⁴

B. Golden Pass LNG's Answer

In its Answer to IECA's Pleading, GPLNG contends that DOE should deny IECA's motion to intervene. GPLNG states that "IECA does not allege, let alone demonstrate, that the relatively brief extension of time GPLNG has requested would directly affect any interest asserted by IECA and its members."³⁵

Turning to IECA's Pleading, GPLNG argues that IECA is attempting to challenge both GPLNG's non-FTA authorization (DOE/FE Order No. 3978) and the cumulative exports of U.S. LNG authorized by DOE/FE to date.³⁶ GPLNG contends that IECA's "generic arguments" against DOE/FE's policies are improper because they do not address the "sole issue" of whether

³² We note that Qatar Terminal Company Limited, an affiliate of Qatar Petroleum Company (a company owned and controlled by the State of Qatar), owns a 70% interest in GPLG. *See, e.g., Golden Pass LNG Terminal LLC (formerly Golden Pass Products LLC)*, DOE/FE Order Nos. 3147-A, *et al.*, FE Docket Nos. 12-88-LNG, *et al.*, Order Granting Request to Transfer Authorizations and Responding to Statement of Change in Control, at 4-5 (Mar. 4, 2020).

³³ IECA Pleading at 1-3.

³⁴ *Id.* at 9.

³⁵ GPLNG Answer at 5.

³⁶ *Id.*

IECA's requested extension of time is reasonable.³⁷ For these and other reasons set forth in its Answer, GPLNG asks DOE/FE to deny IECA's motion to intervene and grant its Request.³⁸

V. DISCUSSION FOR NON-FTA AUTHORIZATION

A. IECA's Motion to Intervene

As a preliminary matter, we note that IECA styled its Pleading to include a "Notice of Intervention." IECA, however, appears to be seeking to intervene under 10 C.F.R. § 590.303(b), which involves a motion to intervene.³⁹ A notice of intervention as a matter of right is available only to state commissions, as specified in 10 C.F.R. §§ 590.303(a) and 590.102(q). DOE/FE previously has informed IECA that its filing of a "Notice of Intervention" does not comply with DOE/FE's regulations.⁴⁰ Although DOE/FE will construe IECA's Notice of Intervention as a motion to intervene in this proceeding, future lack of compliance with DOE/FE's regulations may result in dismissal of IECA's pleadings.

GPLNG filed an Answer opposing IECA's intervention request on the basis that IECA failed to demonstrate an interest in GPLNG's Request and failed to tailor its arguments to the Request, such that IECA's arguments amount to an out-of-time request for rehearing of DOE/FE Order No. 3978. As discussed *infra*, we agree that IECA's arguments address matters other than GPLNG's pending extension request. On balance, however, we nevertheless find that IECA has established that its members have an interest in the subject matter of this proceeding.

Accordingly, we will grant IECA's request for intervention.

³⁷ *Id.*

³⁸ *Id.* at 10-11.

³⁹ Compare IECA Pleading at 1 and 11.

⁴⁰ See, e.g., *Port Arthur LNG, LLC*, DOE/FE Order No. 4372, FE Docket No. 15-96-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 36 n.186 (May 2, 2019); *Corpus Christi Liquefaction Stage III*, FE Docket No. 18-78-LNG, Order Dismissing Industrial Energy Consumers of America's Notice of Intervention, Protest, and Comment, at 1 n.5 (Apr. 10, 2019); *Driftwood LNG LLC*, FE Docket No. 16-144-LNG, Order Dismissing Industrial Energy Consumers of America's Motion to Intervene and Protest and Accepting Late-Filed Comments, at 4 n.16 (Apr. 10, 2019).

B. Grant of Requested Extension for Non-FTA Authorization

DOE/FE finds good cause to grant the requested extension. First, we note that FERC already has extended the in-service deadline for GPLNG's export project through November 30, 2026. Additionally, we agree with GPLNG that extending the deadline for it to commence non-FTA exports by 17 months—to ensure against unanticipated construction delays—does not alter DOE/FE's public interest determination in granting the authorization under NGA section 3(a), 15 U.S.C. § 717b(a).⁴¹ No facts associated with GPLNG's original application, and no requirements of the non-FTA authorization, are affected by this extension beyond the additional time period for GPLNG to commence export operations. GPLNG is working to complete the export facilities necessary to commence its approved exports, and thus we find that granting the Request promotes the public interest under NGA section 3(a).

In this regard, we are not persuaded by IECA's arguments opposing the Request. IECA does not address the issue raised in the Request: whether extending the deadline for GPLNG to commence its non-FTA exports is consistent with the public interest. Rather, IECA broadly challenges DOE/FE's approval of applications to export domestically produced LNG to non-FTA countries.⁴² For example, IECA asserts that, “[t]he DOE has approved applications to export volumes [of natural gas] for 20-30 years, substantially increasing supply and price risk to all U.S. consumers and the economy.”⁴³ Notwithstanding that IECA does not provide sufficient evidence to support these arguments,⁴⁴ this indiscriminate opposition to exports of U.S. LNG and

⁴¹ See GPLNG Request at 4-5; GPLNG Answer at 1, 8, 10.

⁴² See, e.g., IECA Pleading at 1 (stating that “[t]his extension *and the application* are inconsistent with the public interest”) (emphasis added), 2 (stating that “[t]he DOE's actions to approve every LNG application exporting to NFTA countries threatens the U.S. manufacturing sector long-term”).

⁴³ *Id.* at 2.

⁴⁴ See, e.g., U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study, 83 Fed. Reg. 67,251 (Dec. 28, 2018) (summarizing DOE's 2018 LNG Export Study and concluding that exports of LNG from the lower-48 states, in volumes up to and including 52.8 Bcf/d of natural gas, will not be inconsistent with the public interest).

IECA's related policy recommendations do not speak to GPLNG's Request. DOE/FE already found that GPLNG's proposed exports had not been shown to be inconsistent with the public interest and, consequently, authorized those exports in DOE/FE Order No. 3978. Although the public was given an opportunity to participate in that stage of the proceeding, IECA chose not to do so.⁴⁵ We agree with GPLNG that IECA is foreclosed from now challenging the determinations made in Order No. 3978.⁴⁶ For these reasons, DOE/FE finds that IECA has failed to demonstrate that the non-FTA portion of GPLNG's Request is inconsistent with the public interest under NGA section 3(a).

ORDER

Pursuant to section 3 of the Natural Gas Act (15 U.S.C. § 717b), DOE/FE hereby orders that:

A. **FTA Authorization.** Ordering Paragraph A of DOE/FE Order No. 3147 is amended to state as follows:

Golden Pass LNG Terminal LLC (GPLNG) is authorized to export domestically produced LNG by vessel from the Golden Pass Terminal in Sabine Pass, Texas, in a volume equivalent to 740 Bcf per year of natural gas for a 25-year term commencing on September 30, 2025. GPLNG is authorized to export the LNG on its own behalf and as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

This amended Ordering Paragraph A supersedes Ordering Paragraph A in DOE/FE Order No. 3147 in its entirety.

B. **Non-FTA Authorization.** Ordering Paragraph D of DOE/FE Order No. 3978 is amended to state as follows:

⁴⁵ See *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978, at 25-26 (summarizing commenters and intervenors).

⁴⁶ See *id.* at 5-7.

Golden Pass LNG Terminal LLC (GPLNG) must commence commercial export operations using the planned liquefaction facilities no later than September 30, 2025.

This amended Ordering Paragraph D supersedes Ordering Paragraph D in DOE/FE Order No. 3978 in its entirety.⁴⁷

C. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3147 and 3978, as amended, remain in effect.

D. IECA's motion to intervene is granted.

Issued in Washington, D.C., on March 24, 2020.

Steven E. Winberg

Steven E. Winberg
Assistant Secretary
Office of Fossil Energy

⁴⁷ This amendment renders moot Term and Condition (B) of Order No. 3978, "Commencement of Operations Within Seven Years." See *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978, at 167.