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FREQUENTLY USED ACRONYMS

AEO	Annual Energy Outlook
Bcf/d	Billion Cubic Feet per Day
Bcf/yr	Billion Cubic Feet per Year
CCS	Carbon Capture and Sequestration
DOE	U.S. Department of Energy
EIA	U.S. Energy Information Administration
EPC	Engineering, Procurement, and Construction
FE	Office of Fossil Energy (before July 4, 2021)
FECM	Office of Fossil Energy and Carbon Management
FERC	Federal Energy Regulatory Commission
FID	Final Investment Decision
FTA	Free Trade Agreement
LNG	Liquefied Natural Gas
NGA	Natural Gas Act

I. INTRODUCTION and BACKGROUND

On June 21, 2022, Lake Charles LNG Export Company, LLC (Lake Charles LNG Export) filed an application (Second Extension Request)¹ with the Department of Energy’s (DOE) Office of Fossil Energy and Carbon Management (FECM) under section 3 of the Natural Gas Act (NGA).² Lake Charles LNG Export asked DOE to amend, for a second time, its two long-term export authorizations³ issued on July 29, 2016⁴ and June 29, 2017,⁵ under NGA section 3(a),⁶ to extend the export commencement deadline therein from December 16, 2025 to December 16, 2028, respectively.⁷ These two long-term authorizations authorize Lake Charles LNG Export to export domestically produced liquefied natural gas (LNG) from the proposed Lake Charles Terminal liquefaction facilities to be constructed in Lake Charles, Louisiana (Liquefaction Project),⁸ to any country with which the United States has not entered into a free

¹ *Lake Charles LNG Export Company, LLC*, Application for Amendment to Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 13-04-LNG and 16-109-LNG (June 21, 2022) [hereinafter Second Extension 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 FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

³ For purposes of this Order, DOE uses the terms “authorization” and “order” interchangeably.

⁴ *Lake Charles LNG Export Co., LLC*, DOE/FE Order No. 3868, Docket No. 13-04-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations (July 29, 2016) [hereinafter Order No. 3868], *amended by* Order No. 3868-A (Oct. 6, 2020) (extending export commencement deadline).

⁵ *Lake Charles LNG Export Co., LLC*, DOE/FE Order No. 4010, Docket No. 16-109-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Lake Charles, Louisiana, to Free Trade Agreement and Non-Free Trade Agreement Nations (June 29, 2017) [hereinafter Order No. 4010], *amended by* Order No. 4010-A (Oct. 6, 2020) (extending export commencement deadline in non-FTA authorization).

⁶ 15 U.S.C. § 717b(a).

⁷ Second Extension Request at 2.

⁸ The Lake Charles Terminal is an existing LNG import terminal located in Lake Charles, Calcasieu Parish, Louisiana. *See, e.g.* Second Extension Request at 1 & n.1. Lake Charles LNG Export is owned by Energy Transfer Equity, L.P. and Energy Transfer Partners, Lake Charles LNG Export states that “[v]arious subsidiaries of Energy Transfer LP (Energy Transfer) are developing the Liquefaction Project.” Second Extension Request at 4.

trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA) countries.⁹

- Under DOE/FE Order No. 3868, as amended,¹⁰ authorizing the export of LNG, for a 20-year term, in a volume equivalent to 730 Bcf/yr of natural gas; and
- Under DOE/FE Order No. 4010, as amended,¹¹ authorizing the export of LNG, for a 20-year term, in a volume equivalent to 121 Bcf/yr of natural gas.¹²

Consistent with DOE practice, each authorization originally set forth a seven-year deadline for Lake Charles LNG Export to commence exports of LNG to non-FTA countries – July 29, 2023, and June 29, 2024, for Order Nos. 3868 and 4010, respectively.¹³ Pursuant to NGA section 3, DOE authorizes the export of LNG itself, while the Federal Energy Regulatory Commission (FERC) authorizes the construction and operation of onshore LNG terminal facilities.¹⁴ Additionally, similar to DOE’s practice of establishing deadlines by which commercial exports of LNG to non-FTA countries must begin, FERC establishes deadlines by which LNG terminal facilities must be constructed and placed into service.¹⁵

⁹ Non-FTA countries are countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy. 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 Order No. 3868, *amended by* Order No. 3868-A (Oct. 6, 2020) (extending export commencement deadline).

¹¹ Order No. 4010, *amended by* Order No. 4010-A (Oct. 6, 2020) (extending export commencement deadline in non-FTA authorization).

¹² Second Extension Request at 1-2. DOE/FE Order No. 4010 is a consolidated order authorizing exports to both FTA and non-FTA countries. Because only the non-FTA portion of that order is at issue in this proceeding, all references to Order No. 4010 herein are to the non-FTA authorization alone.

¹³ *See* Order No. 3868, at 163 (Ordering Para. D); Order No. 4010, at 57 (Ordering Para. E); *see also* App. at 3-4, n.9.

¹⁴ 15 U.S.C. §§ 717b(a), (e); *see also Sierra Club v. Fed. Energy Regulatory Comm’n*, 827 F.3d 36, 40 (D.C. Cir. 2016) (observing that, while DOE “maintains exclusive authority over the export of natural gas as a commodity,” DOE has delegated to FERC the authority to approve or deny an application for siting, construction, operation, or expansion of an LNG terminal under NGA section 3(e)).

¹⁵ NGA section 3(e)(3)(A) provides that “the Commission may approve an [LNG terminal] application) . . . , in whole or part, with such modifications and upon such terms and conditions as the Commission [finds] necessary or appropriate.” 15 U.S.C. § 717b(e)(3)(A).

In an order issued in December 2015, FERC first authorized the construction and operation of the Liquefaction Project, setting a construction and in-service deadline five years from the date of its authorizing order.¹⁶ Following an initial request from the Liquefaction Project's developers, this deadline was extended to December 16, 2025.¹⁷ On March 4, 2020, Lake Charles LNG Export submitted its first request to DOE seeking an extension of its commencement date (First Extension Request) to align with FERC's extension of its construction deadline.¹⁸ On October 6, 2020, DOE granted Lake Charles LNG Export's request to amend its non-FTA export commencement deadline in Order Nos. 3868 and 4010, as amended, to December 16, 2025, under NGA section 3(a), 15 U.S.C. § 717b(a) (2020 Lake Charles LNG Export Extension Order).¹⁹

On May 6, 2022, and before Lake Charles LNG Export filed its Second Extension Request, FERC granted a second extension of the Liquefaction Project's construction and in-service deadline, to December 17, 2028.²⁰ On June 21, 2022, Lake Charles LNG Export filed its Second Extension Request, asking DOE to extend the export commencement deadline in Order Nos. 3868 and 4010, as amended, to December 16, 2028 (to align with FERC's approval of a

¹⁶ *Lake Charles LNG Export Co., LLC, et al.*, Order Granting Section 3 and Section 7 Authorizations and Approving Abandonment, FERC Docket Nos. CP14-119-000 *et al.*, 153 FERC ¶ 61,300 (2015), *reh'g denied*, 155 FERC ¶ 61,328 (2016).

¹⁷ Letter order to Lake Charles LNG Export Co., LLC, *et al.*, FERC Docket Nos. CP14-119-000 *et al.* (issued Dec. 5, 2019).

¹⁸ Lake Charles LNG Export Co., LLC, Application for Amendment of Long-Term Authorizations to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Countries, Docket Nos. 13-04-LNG & 16-109-LNG (Mar. 4, 2020) [hereinafter First Extension Request].

¹⁹ See Lake Charles LNG Export Company, LLC, DOE/FE Order Nos. 3252-B, *et al.*, Docket Nos. 13-04-LNG and 16-109-LNG, Order Granting Application to Amend Long-Term Authorizations (Oct. 6, 2020) [hereinafter 2020 Lake Charles LNG Export Extension Order], <https://www.energy.gov/sites/prod/files/2020/10/f79/ord3252b%2C%203868a%2C%204010a.pdf>

²⁰ *Lake Charles LNG Export Co., LLC, et al.*, Order Granting Extension of Time Request, FERC Docket Nos. CP14-119-002, *et al.*, 179 FERC ¶ 61,086 (2022), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220506-3073 [hereinafter FERC 2022 Extension Order]. We note that, although the FERC 2022 Extension Order extended the construction and in-service deadline to December 17, 2028, the Second Extension Request refers to December 16, 2028, as the extended FERC deadline (*see* Second Extension Request at 2-5).

request to extend the construction and in-service deadline).²¹ On April 21, 2023, DOE issued DOE/FECM Order Nos. 3324-C and 4010-B (Denial Order) denying Lake Charles LNG Export’s Second Extension Request.²² Based on the record and guided by our longstanding rationale for the export commencement period, DOE determined that Lake Charles LNG Export had not shown good cause under section 3(a) of the NGA for a second extension of the export commencement deadline in Order Nos. 3868 and 4010, as amended.²³

Also on April 21, 2023, DOE issued a Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries (Policy Statement).²⁴ The Policy Statement announced that DOE will no longer extend commencement deadlines for non-FTA LNG export authorizations “unless the authorization holder demonstrates both that: it has physically commenced construction on the associated export facility, and its inability to comply with the existing export commencement deadline is the result of extenuating circumstances outside of its control.”²⁵ The Policy Statement also clarified that extension requests filed prior to the issuance of the Policy Statement—including Lake Charles LNG Export’s—were not subject to the bright-line approach adopted by the Policy Statement and would instead be reviewed “under DOE’s prior practice based on the record in each commencement extension proceeding.”²⁶

²¹ Second Extension Request at 2-3.

²² *Lake Charles LNG Export, LLC*, DOE/FECM Order Nos. 3868-B, *et. al.*, Docket Nos. 13-04-LNG and 16-109-LNG, Order Denying Application for Second Extension of Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Apr. 21, 2023) [hereinafter Denial Order].

²³ *Id.*

²⁴ U.S. Dep’t of Energy, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25,272 (Apr. 26, 2023) [hereinafter Policy Statement]. DOE published the original version of the Policy Statement on its website on April 21, 2023, noting that “should any discrepancy occur between the document posted here and the document published in the Federal Register, the Federal Register publication controls.” Thus, the citation here is to the Federal Register publication.

²⁵ Policy Statement, 88 Fed. Reg. at 25,273.

²⁶ *Id.* at 25,278.

On May 22, 2023, Lake Charles LNG Export timely filed a Request for Rehearing of the Denial Order.²⁷ For the reasons set forth below, DOE denies Lake Charles LNG Export’s Request for Rehearing.²⁸ Accordingly, Lake Charles LNG Export’s existing authorizations, including its current deadline to commence exports to non-FTA countries under both orders by December 16, 2025, remain in effect. In addition, should Lake Charles LNG Export be unable to commence exports by December 16, 2025, it is welcome to resubmit a non-FTA request so that it can be evaluated under current policies with the most recent market information.

II. SUMMARY OF LAKE CHARLES LNG EXPORT’S REHEARING ARGUMENTS

A. Lake Charles LNG Export Contends DOE’s Seven-Year Export Commencement Deadline Is Contrary to NGA Section 3

Lake Charles LNG Export asserts that DOE has “no basis, statutory or otherwise,” for its initial seven-year export commencement deadline and thus the “imposition of such an initial deadline is contrary to NGA section 3 and is arbitrary and capricious.”²⁹ Lake Charles LNG Export maintains that “[n]othing in NGA section 3 imposes ‘an obligation to ensure...that non-FTA authorizations are utilized in a timely manner’ or requires an export commencement deadline.”³⁰ Rather, according to Lake Charles LNG Export, NGA section 3 is “completely silent” on these subjects and “does not provide any room for agency gap-filling or deference to such efforts.”³¹ Therefore, in Lake Charles LNG Export’s view, DOE’s “attempt to create a

²⁷ Lake Charles LNG Export Company, LLC, Request for Rehearing of DOE/FECM Order No. 3868-B; 4010-B, Order Denying Application for Second Extension of Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 13-04-LNG and 16-109-LNG (May 22, 2023) [hereinafter Request for Rehearing].

²⁸ Lake Charles LNG Export Company LLC’s affiliate Lake Charles Export (LCE) holds separate, non-additive authorizations to export LNG from the proposed Liquefaction Project. See Second Extension Request at 1 & n.2. LCE has filed a similar Request for Rehearing in response to DOE/FECM Order Nos. 3324-C and 4011-B denying LCE’s application for a second extension of its deadline to commence exports of LNG from the Liquefaction Project. Concurrently with this Order, DOE is issuing an Order Denying LCE’s Request for Rehearing in both proceedings. (DOE/FECM Order Nos. 3324-D and 4011-C respectively)

²⁹ Request for Rehearing at 40.

³⁰ *Id.* at 40 (citing Denial Order at 18).

³¹ *Id.*

deadline through a policy pronouncement exceeds its statutory authority and has no basis in the statutory public interest standard by which DOE is bound.”³²

B. Lake Charles LNG Export Believes DOE’s Interpretation of “Good Cause” is Inconsistent with NGA Section 3

Lake Charles LNG Export asserts that DOE erred in reviewing its Second Extension Request under “merely a ‘good cause’ standard.”³³ In Lake Charles LNG Export’s view, “NGA section 3’s reference to ‘good cause’ is governed by and subject to the statutory standard pursuant to which DOE must approve a LNG export application unless it ‘will not be consistent with the public interest.’”³⁴ Thus, according to Lake Charles LNG Export, DOE has “no discretion to exceed its statutory authority by denying an extension where, as here, that denial will result in the demise of an approved project found to be in the public interest by FERC, as recently as May 2022.”³⁵

C. Lake Charles LNG Export Asserts it Demonstrated ‘Good Cause’

Lake Charles LNG Export asserts in its Request for Rehearing that its Second Extension Request “established ‘good cause’ under the standards applicable to all extension requests predating the Policy Statement.”³⁶ Lake Charles LNG Export contends that, prior to the Policy Statement, DOE considered the “same general factors” to evaluate whether an extension request established “good cause,” including whether project-specific facts warranted an extension, the amount of time requested, any unique delays and challenges faced by the authorization holder, and whether FERC had approved an extension of its own construction and in-service deadline.³⁷ In Lake Charles LNG Export’s view, the impact of the COVID-19 pandemic, Lake Charles LNG

³² *Id.* at 40-41.

³³ *Id.* 38.

³⁴ *Id.*

³⁵ Request for Rehearing. at 39.

³⁶ *Id.* at 16.

³⁷ *Id.*

Export’s execution of several long-term offtake contracts, Lake Charles LNG Export’s semi-annual reports to DOE detailing the Liquefaction Project’s progress toward construction, and FERC’s recent extension approval are “more than enough to satisfy the ‘good cause’ standard.”³⁸

“As for the impact of COVID-19,” Lake Charles LNG Export points to Royal Dutch Shell, plc’s (Shell) withdrawal from the Liquefaction Project, the difficulty of obtaining financing when the “LNG long-term contract market was frozen for nearly three years,” and the delays incurred from Lake Charles LNG Export’s engineering, procurement, and construction (EPC) contractors soliciting updated bids.³⁹ Lake Charles LNG Export further asserts that, in denying its application, DOE required Lake Charles LNG Export to supply more than “‘generalized statements’ regarding the impact of COVID-19” and to ‘provide evidence’ of actions taken to advance the Project” since its first extension—neither of which, according to Lake Charles LNG Export, DOE required prior to issuing the Policy Statement.⁴⁰ Lake Charles LNG Export maintains that DOE “merely needed to ask” for a “more detailed description of the adverse effects of the COVID-19 pandemic” or “more specific information regarding the progress that Lake Charles LNG Export had made on the Project,” and Lake Charles LNG Export “would have been happy to provide” it.⁴¹

With respect to progress toward completion of the Liquefaction Project, Lake Charles LNG Export first argues that the “execution of additional offtake contracts should have itself been sufficient” because “securing long-term offtake contracts is the foundation for completing an LNG project.”⁴² Lake Charles LNG Export also asserts in its Request for Rehearing that

³⁸ *Id.* at 17.

³⁹ *Id.* at 19.

⁴⁰ *Id.* at 18.

⁴¹ Request for Rehearing at 18.

⁴² *Id.* at 19-20.

DOE should have asked it for more information to allow Lake Charles LNG Export to further supplement its request and if DOE had “requested or required further information showing the [Liquefaction] Project’s progress, Lake Charles LNG Export would have further emphasized” additional “evidence of the physical construction” that, according to Lake Charles LNG Export, “unquestionably establishes sufficient ‘progress toward completion.’”⁴³ Lake Charles LNG Export maintains that, because this “evidence” was detailed in reports filed with DOE and with FERC, DOE could have “easily taken administrative notice of these reports and their contents.”⁴⁴ In Lake Charles LNG Export’s view, for DOE “instead to say nothing, disregard publicly filed reports...and request no further information” constitutes “arbitrary and capricious agency action.”⁴⁵ Lake Charles LNG Export further argues that DOE’s denial “is all the more unreasonable” because without the requested extension the “Project ‘likely would fail.’”⁴⁶ Lake Charles LNG Export thus contends that because DOE’s denial “will likely result in...the hundreds of millions of dollars that have already been spent [becoming] a total loss,” it raises “serious constitutional questions concerning a lack of due process and impermissible takings.”⁴⁷

Additionally, Lake Charles LNG Export asserts that “DOE’s refusal to accord any consideration to the second extension granted by FERC...is a clear departure from prior DOE policy and precedent.”⁴⁸ Lake Charles LNG Export maintains that “DOE’s ‘good cause’ inquiry has always taken into account, at least in part, FERC’s judgments,” and points to the 2020 Lake Charles LNG Export Extension Order and Port Arthur LNG, LLC (PALNG) Extension Order as

⁴³ *Id.* at 21, 24.

⁴⁴ *Id.* at 24-25.

⁴⁵ *Id.* at 25.

⁴⁶ *Id.* at 25, 29 (citing the 2020 Lake Charles LNG Export Extension Order).

⁴⁷ Request for Rehearing at 26.

⁴⁸ *Id.* at 26.

support.⁴⁹ In Lake Charles LNG Export’s view, “principles of reasoned decisionmaking demand that DOE articulate its reasons for disagreeing with FERC’s findings supporting an extension.”⁵⁰ Thus, according to Lake Charles LNG Export, “ignoring FERC’s determination and reasoning altogether, as DOE did in the Denial Order...reflects arbitrary decisionmaking.”⁵¹

D. Lake Charles LNG Export Argues Granting the Second Extension Request is Consistent with the Purpose of DOE’s Export Commencement Deadline

Lake Charles LNG Export asserts that granting its Second Extension Request would “be consistent with the purpose of DOE’s export commencement deadline” required by the public interest standard of NGA Section 3.⁵² Lake Charles LNG Export first points to the “recognized need to allow for ‘unplanned delays in the licensing and construction,’” arguing that there “can be no serious dispute that Lake Charles LNG Export endured such ‘unplanned delays’” resulting from the effects of the COVID-19 pandemic.⁵³ Lake Charles LNG Export maintains that granting its request “will not ‘frustrate[]’ the efforts of any other current or prospective authorization holders.”⁵⁴ In Lake Charles LNG Export’s view, “DOE does not appear to disagree,” given DOE’s acknowledgement of other authorization holders’ progress and its recognition that the decline of the COVID-19 pandemic and Russia’s Ukraine invasion “present ‘opportunities for participants in the U.S. LNG market.’”⁵⁵ Lake Charles LNG Export also asserts that denying its extension does “nothing” to reduce the gap between total approved

⁴⁹ *Id.* at 26-27 (citing 2020 Lake Charles LNG Export Extension Order at 6; *Port Arthur LNG, LLC*, DOE/FECM Order Nos. 3698-C & 4372-B, Docket Nos. 15-53-LNG, *et al.*, Order Granting Application to Extend Term to Begin Exports of Liquefied Natural Gas to Free Trade Agreement Countries and to Extend Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries, at 12 (Apr. 21, 2023) [hereinafter PALNG Extension Order]).

⁵⁰ *Id.* at 27.

⁵¹ *Id.*

⁵² *Id.* at 35.

⁵³ Request for Rehearing at 35 (citing Denial Order at 14).

⁵⁴ *Id.* at 36 (citing Denial Order at 14).

⁵⁵ *Id.* at 36 (citing Denial Order at 16).

authorization volume and total operational capacity, as DOE cannot reduce a given LNG project's authorized export volume to FTA nations if a developer fails to satisfy DOE's export commencement deadline for the non-FTA project component.⁵⁶ Here, Lake Charles LNG Export is authorized to export the same volume to FTA and non-FTA countries on a non-additive basis, and its FTA authorization would remain valid even if it missed the commencement deadline for its non-FTA authorization.⁵⁷

Lake Charles LNG Export further contends that denying its application would not further the commencement deadline's additional purpose to "cultivat[e] a healthy market for LNG export authorizations."⁵⁸ Lake Charles LNG Export maintains that "there is no evidence suggesting that granting an extension would have any chilling effect on current or prospective authorization holders" and thus denying Lake Charles LNG Export's extension does not further the deadline's purpose.⁵⁹ Nor does it, according to Lake Charles LNG Export, "comply with the NGA section 3 requirement that DOE authorize all otherwise-compliant non-FTA export applications that are not inconsistent with the public interest."⁶⁰

E. Lake Charles LNG Export Claims its Second Extension Request was Subjected to a Heightened Standard

Lake Charles LNG Export asserts that DOE, throughout the Denial Order, "repeatedly indicated that Lake Charles LNG Export must satisfy a higher standard for its extension application, despite a lack of prior notice to Lake Charles LNG Export."⁶¹ In Lake Charles LNG Export's view, comparing PALNG's successful initial extension application with Lake Charles LNG Export's unsuccessful Second Extension Request "demonstrates the higher standard that

⁵⁶ *Id.* at 36-37.

⁵⁷ *Id.*

⁵⁸ *Id.* at 37.

⁵⁹ Request for Rehearing at 37.

⁶⁰ *Id.*

⁶¹ *Id.* at 29.

DOE impermissibly applied to Lake Charles LNG Export’s application.”⁶² Lake Charles LNG Export asserts that, in denying its application, DOE found it contained “‘generalized statements’ [which] did not demonstrate with sufficient specificity how the COVID-19 pandemic impacted the [Liquefaction] Project.”⁶³ Yet, according to Lake Charles LNG Export, DOE approved PALNG’s application which “invoked similar generalized statements” regarding the adverse impacts from the COVID-19 pandemic.⁶⁴ Lake Charles LNG Export further states that in granting PALNG’s application, DOE “acknowledged FERC’s extension” and “noted that ‘[n]o facts associated with’ PALNG’s original application were affected by the extension,” but that “DOE declined to take into account these same considerations when deciding Lake Charles LNG Export’s second extension request.”⁶⁵

Lake Charles LNG Export contends that when it submitted its Second Extension Request, DOE gave it “no reason to expect that an ‘unprecedented’ second extension” would be held to a “heightened standard as compared to a first extension request.”⁶⁶ Lake Charles LNG Export asserts that because “nothing in NGA section 3(a) suggests that the public-interest standard changes depending on a first or second extension request,” Lake Charles LNG Export thus had “every reasonable expectation that the same standard would apply to first and second extension requests.”⁶⁷

Lake Charles LNG Export also contends that DOE’s assertion that “Lake Charles LNG Export ought to have amended its March 2020 application” is “flawed in several respects.”⁶⁸

⁶² *Id.* at 29-31.

⁶³ *Id.* at 30.

⁶⁴ *Id.*

⁶⁵ *Id.* (citing PALNG Extension Order at 12).

⁶⁶ Request for Rehearing at 31 (*cf.* Lake Charles LNG Export Co., LLC, Application for Amendment of Long-Term Authorizations to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Countries, Docket Nos. 13-04-LNG and 16-109-LNG (Mar. 4, 2020) [hereinafter First Extension Request]).

⁶⁷ *Id.*

⁶⁸ *Id.* (citing Denial Order at 15).

According to Lake Charles LNG Export, this is a “tacit admission” that DOE would have granted an extension “but for the fact that Lake Charles LNG Export sought that additional time via two extension requests, rather than a single, longer request at the beginning.”⁶⁹

Lake Charles LNG Export maintains that DOE’s approval of PALNG’s request “betrays its reasoning for denying Lake Charles LNG Export’s request as pretextual.”⁷⁰ In Lake Charles LNG Export’s view, if DOE correctly concluded that Lake Charles LNG Export “failed to demonstrate ‘good cause’ because ‘the primary, acute effects of the COVID-19 pandemic had largely subsided’ by June 2022,” DOE should also have required PALNG to submit more reasoning for its extension request in November 2022.⁷¹ Lake Charles LNG Export further asserts that DOE’s prior position “belies” the federal government’s “consistent stance” that “the pandemic continued to impose real burdens on individuals and businesses throughout 2022.”⁷²

Finally, Lake Charles LNG Export contends that “DOE applied a version of the Policy Statement’s new, more rigorous standard to Lake Charles LNG Export’s extension request, despite no prior notice to Lake Charles LNG Export.”⁷³ Lake Charles LNG Export argues that it was “plainly improper” for DOE to consider the Policy Statement in the Denial Order, given Lake Charles LNG Export’s “undisputed lack of notice” and because “DOE omitted any similar analysis from its simultaneous PALNG Extension Order.”⁷⁴ Lake Charles LNG Export further asserts that, even proceeding under the new Policy Statement, DOE should have granted Lake

⁶⁹ *Id.* at 32.

⁷⁰ *Id.* at 33.

⁷¹ *Id.* (citing Denial Order at 15).

⁷² Request for Rehearing at 34-35.

⁷³ *Id.* at 27-28.

⁷⁴ *Id.* at 28.

Charles LNG Export's request.⁷⁵ According to Lake Charles LNG Export, it "provided DOE with ample evidence" to meet both parts of the Policy Statement's required demonstration.⁷⁶

III. STANDARD OF REVIEW

Under NGA section 19(a), a party "aggrieved" by an order issued by DOE may file a request for rehearing within 30 days after the issuance of the order.⁷⁷ When acting upon such a request, DOE has the "power to grant or deny rehearing or to abrogate or modify its order without further hearing."⁷⁸

The purpose of a rehearing is to provide an opportunity for parties to challenge a DOE action when they are aggrieved for the first time, and for DOE to consider such a challenge before the action is subject to judicial review.⁷⁹

IV. DISCUSSION

A. DOE's Authority under the NGA to Impose Conditions and Grant Extensions For Good Cause is Well-Established.

Lake Charles LNG Export asserts that DOE has "no basis, statutory or otherwise," for its initial seven-year export commencement deadline, and thus that the "imposition of such an initial deadline is contrary to NGA section 3 and is arbitrary and capricious."⁸⁰ According to Lake Charles LNG Export, DOE's "attempt to create a deadline through a policy pronouncement exceeds its statutory authority and has no basis in the statutory public interest standard by which DOE is bound."⁸¹ Lake Charles LNG Export also asserts that DOE's denial raises constitutional concerns.⁸²

⁷⁵ *Id.* at 28.

⁷⁶ *Id.* 28-29.

⁷⁷ 15 U.S.C. § 717r(a); *see also* 10 C.F.R. § 590.501.

⁷⁸ *Id.*

⁷⁹ *See Pan Am. Petroleum Corp. v. Fed. Power Comm'n*, 322 F.2d 999, 1003-04 (D.C. Cir. 1963).

⁸⁰ Request for Rehearing at 40.

⁸¹ *Id.* at 40-41.

⁸² *Id.* at 18, 26.

Both the NGA and DOE's regulations provide DOE with broad authority to attach conditions to non-FTA export authorizations.⁸³ NGA section 3(a) states, in its entirety:

[DOE] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. **[DOE] may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Department] may find necessary or appropriate,** and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.⁸⁴

Since 2011, when DOE issued its first conditional long-term export authorization involving domestically produced LNG to Sabine Pass Liquefaction, LLC (Sabine Pass),⁸⁵ DOE has interpreted “upon such term and conditions as the [Department] may find necessary or appropriate” to include a deadline of seven years for authorization holders to commence exports to non-FTA countries from the date the authorization is issued.⁸⁶ In DOE’s authorization to Sabine Pass, we noted that although Sabine Pass had requested “that its authorization commence on the earlier of the date of first export or five years from the date of the issuance of the authorization,” we determined, after reviewing the record, that a period of seven years for an applicant to commence its non-FTA exports was consistent with the public interest.⁸⁷ DOE further determined that “the purpose of [the commencement deadline] is to ensure that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.”⁸⁸ In

⁸³ See 15 U.S.C. § 717b(a); see also 10 C.F.R. § 590.404.

⁸⁴ 15 U.S.C. § 717b(a).

⁸⁵ See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, Docket No. 10–111–LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (May 20, 2011) [hereinafter *Sabine Pass*]. DOE incorporated this seven-year commencement period in Sabine Pass’s final order (DOE/FE Order No. 2961–A), issued on August 7, 2012.

⁸⁶ *Id.*; see also Denial Order at 13 (noting that the seven-year commencement deadline has been a condition of all long-term LNG export authorizations granted to date).

⁸⁷ *Sabine Pass*, DOE/FE Order No. 2961, at 2, 33.

⁸⁸ *Id.* at 33.

addition, we found that a seven-year operations commencement date provided “a reasonable accommodation given [Sabine Pass’s] representation that it plans to be ready to commence operations by 2015–2016.”⁸⁹ DOE reasoned that a seven-year commencement period “provides approximately two years beyond [Sabine Pass’s] current planned commencement date before the condition must be met,” and thus “will allow for time lost due to unplanned delays in licensing and construction of the planned liquefaction facilities.”⁹⁰

DOE also has regulatory discretion to impose suitable terms. Under 10 C.F.R. § 590.404, we may “issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the final record.”⁹¹ It is clear that we have authority to include an export commencement deadline as a condition to a non-FTA export authorization, it is consistent with our precedent to include such terms, and it is reasonable for us to expect those terms and conditions to be followed.

Therefore, rather than being arbitrary and capricious, the commencement deadline condition has multiple reasonable and long-articulated purposes. First, as noted above, the commencement deadline “ensure[s] that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.”⁹² Second, the deadline ensures that DOE’s decision approving the authorization does not rely on stale facts.⁹³ That purpose is all the more important in the context of a request to extend a commencement deadline where, after several years, it is incumbent upon the agency charged with ensuring that non-FTA authorizations are not

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ 10 C.F.R. § 590.404.

⁹² Denial Order at 13; *see also Sabine Pass*, DOE/FE Order No. 2961, at 33.

⁹³ Denial Order at 19.

inconsistent with the public interest to consider whether the requested extension will alter DOE's public interest determination in originally granting the authorization under NGA section 3(a). Therefore, it is reasonable for DOE to impose conditions to ensure that it can fulfill its statutory responsibility.

Lake Charles LNG Export also asserts that DOE erred in reviewing its extension application under "merely a 'good cause' standard."⁹⁴ In Lake Charles LNG Export's view, the "good cause" language of NGA section 3 cannot be divorced from the statute's command to approve LNG export applications, including applications for extension of time, "unless they 'will not be consistent with the public interest.'"⁹⁵ Thus, according to Lake Charles LNG Export, DOE has "no discretion to exceed its statutory authority by denying an extension" when a project is found to be in the public interest.⁹⁶

Even if the public interest determination that DOE made when issuing an initial authorization is relevant for a request to modify the initial authorization, Lake Charles LNG Export's conclusion that DOE is somehow bound by that initial public interest finding, regardless of whether Lake Charles LNG Export has shown good cause for a modification, is plainly wrong.

First, DOE's interpretation and application of the good cause standard for modifications to orders is well established and plainly authorized, as the language of NGA Section 3(a) reveals immediately:

[DOE] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. [DOE] . . . may from time to time, after opportunity for hearing,

⁹⁴ Request for Rehearing at 38.

⁹⁵ *Id.*

⁹⁶ *Id.* at 39.

and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.⁹⁷

While section 3(a) uses the directing word “shall” with respect to initial applications to export natural gas (so long as DOE finds that the export will not be inconsistent with the public interest), it also uses the word “may,” which by definition indicates discretion, in the context of any supplemental order.⁹⁸ DOE’s statutory discretion to amend orders—including those initial conditions on authorizations that it finds necessary and appropriate, such as the date by which exports must begin—could not be more clear.

Nor does section 3(a) of the NGA, by its terms, require (or, for that matter, permit) DOE to make a supplemental order modifying the authorization if good cause is not shown.⁹⁹ In fact, by establishing two requirements—a finding that the authorization, as modified, is not inconsistent with the public interest, and a showing that a modification is for good cause—section 3(a) imposes an *additional* burden on modifications than it does on initial authorizations.¹⁰⁰ Lake Charles LNG Export’s interpretation of section 3(a), in which DOE has no discretion on supplemental orders once an underlying authorization has been found ‘not inconsistent with the public interest’ altogether eliminates the “opportunity for hearing” and “for good cause shown” from the standard. Such a reading distorts the plain language interpretation of section 3(a) and is untenable.

In addition, it is unclear why DOE’s original finding of exports from Lake Charles LNG Export being found in the public interest would force DOE to grant an extension request. While the NGA does not require DOE to reevaluate an underlying authorization to export LNG when a

⁹⁷ 15 U.S.C. § 717b(a).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

modification is requested,¹⁰¹ DOE does, appropriately, consider whether the requested extension will alter DOE's public interest determination granting the export authorization under NGA section 3(a).¹⁰² For the reasons discussed above related to the purpose of the commencement deadline, DOE's conclusion that Lake Charles LNG Export's export of natural gas to non-FTA countries was not inconsistent with the public interest relied, in part, on a condition that exports commence within seven years (subsequently extended by approximately 28.5 months for Order No. 3868 and approximately 17.5 months for Order No. 4010)).¹⁰³ Here, Lake Charles LNG Export has asked DOE to amend that condition. Lake Charles LNG Export makes no showing that this material change in DOE's authorization will yield a project that remains in the public interest. And, for the reasons discussed *infra*, an extended commencement deadline at the very least raises questions about whether the authorization would remain in the public interest.

To be clear, DOE's determination that Lake Charles LNG Export's export of natural gas to non-FTA countries is not inconsistent with the public interest *if* it commences by December 16, 2025, remains unchanged.¹⁰⁴ The denial of Lake Charles LNG Export's Second Extension Request does not vacate Lake Charles LNG Export's export authorizations or its commencement extensions granting 28.5 and 17.5 additional months to commence exports.¹⁰⁵ Moreover, any authorization holder—including Lake Charles LNG Export should it be unable to commence exports by December 16, 2025—is welcome to resubmit a non-FTA request so that it can be evaluated under current policies with the most recent market information.

¹⁰¹ *Id.*

¹⁰² *See* Denial Order at 12-13.

¹⁰³ *See* Order No. 3868 at Term and Condition B and Ordering Para. D, and Order No. 4010 at Term and Condition B and Ordering Para. E.

¹⁰⁴ Denial Order at 19-20.

¹⁰⁵ *Id.*

Finally, DOE properly exercised its statutory authority, and thus Lake Charles LNG Export does not have any claims related to lack of due process or impermissible takings. First, DOE's regulations at 10 C.F.R. Part 590 set forth procedures for persons to submit applications to obtain authorizations from DOE to import and export natural gas under the NGA, including requesting an export commencement extension.¹⁰⁶ Based on the regulations, Lake Charles LNG Export filed a Second Extension Request with DOE. This opportunity—the proceeding itself—provides all the process that is due to Lake Charles LNG Export and any other applicant, and Lake Charles LNG Export's dissatisfaction with the result thus far does not render the process insufficient. Second, Lake Charles LNG Export has no property right in, or other entitlement to, a second commencement extension. Lake Charles LNG Export's existing authorizations, which will remain valid and were already amended to include a later commencement deadline than the original authorization, are clear that exports must begin by December 16, 2025.¹⁰⁷ A denial of a request to postpone that date a second time therefore does nothing to change existing expectations.¹⁰⁸ To the extent Lake Charles LNG Export committed resources to advance the project without certainty that it could meet the terms of its existing authorization, Lake Charles LNG Export did so at risk. Lake Charles LNG Export now argues for an entitlement it does not hold, and for DOE to mitigate risks for which DOE is not responsible. Again, despite Lake Charles LNG Export's disappointment with DOE's statutory implementation, and despite Lake Charles LNG Export's claims to the contrary, DOE has met every constitutional requirement.

¹⁰⁶ 10 C.F.R. § 590.100 *et seq.*

¹⁰⁷ *See* 2020 Lake Charles LNG Export Extension Order.

¹⁰⁸ *See infra* section IV.E (observing that Lake Charles LNG Export's semi-annual reports indicated that it would be ready to commence exports by 2022, 2023, 2024, and 2025). Even as years have come and gone, that has not invalidated Lake Charles LNG Export's active authorizations.)

B. DOE’s Denial of Lake Charles LNG Export’s Second Extension Request is Consistent with the Purpose of the Commencement Deadline.

In addition to asserting that inclusion of any commencement deadline as a condition of authorization is arbitrary and capricious, which DOE addresses *supra*, Lake Charles LNG Export also asserts that granting its extension request would “be consistent with the purpose of DOE’s export commencement deadline... to allow for ‘unplanned delays in [] licensing and construction.’”¹⁰⁹ Lake Charles LNG Export claims that granting its Second Extension Request would not have “any chilling effect on current or prospective authorization holders” and would do nothing “to reduce the so-called authorization ‘overhang’” because it will still be able to export to FTA nations.¹¹⁰

As discussed *supra*, the commencement deadline has multiple purposes.¹¹¹ Enforcing the commencement deadline allows DOE to “better assess whether any new non-FTA applications are in the public interest,” “provide[s] more certainty to the U.S. and global LNG export markets,” and “ensure[s] that DOE is making decisions utilizing the latest market information and analytical tools available.”¹¹²

In utilizing the latest market information, DOE considers the impact of its actions on existing authorization holders that have commenced exports, as well as those that have yet to commence exports, and potential new entrants to the LNG market.¹¹³ Cumulative exports are material to DOE’s public interest determination, as our precedent demonstrates.¹¹⁴ For instance,

¹⁰⁹ Request for Rehearing at 35 (citing Denial Order at 14).

¹¹⁰ *Id.* at 36-37.

¹¹¹ *See supra* at 14-15.

¹¹² Denial Order at 19.

¹¹³ *See, e.g.*, Freeport LNG Expansion, L.P., et al., DOE/FECM Order No. 4961, Docket No. 21-98-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 70-71 (Mar. 3, 2023) [hereinafter Freeport LNG Expansion Order].

¹¹⁴ *See, e.g., id.* at 55-58.

DOE's 2018 LNG Export Study examined the impact of varying levels of LNG exports on domestic energy markets, identifying various assumptions for domestic and international supply and demand conditions to capture a wide range of uncertainty in natural gas markets.¹¹⁵ The seven-year timeline, without specific good cause shown for a longer timeline, allows DOE to rely on those market forces while still monitoring total exports and not disadvantaging new entrants.

DOE also considers the total approved non-FTA export volume as compared to the actual export volume.¹¹⁶ In examining this difference, it exacerbates the uncertainty over when or whether approved exports will become available, especially if authorized projects such as Lake Charles LNG Export take almost 16 years—the amount of time between Lake Charles LNG Export's initial application for non-FTA exports and the latest extended commencement date Lake Charles LNG Export has requested—to commence exports. In addition, regardless of its impacts on potential authorization holders, the uncertainty associated with projects in continuous limbo that repeatedly seek additional time to commence exports (when they have admittedly not reached a final investment decision and have changed their estimated date to begin exports seven times¹¹⁷) hinders DOE's ability to properly assess new non-FTA applications and increases the possibility that the reasoning supporting certain non-FTA authorizations has weakened or become invalid.¹¹⁸ This is a circumstance we seek to avoid.

¹¹⁵ See NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018), <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf> [hereinafter 2018 LNG Export Study or 2018 Study].

¹¹⁶ See e.g., Freeport LNG Expansion Order at 70-71, 76.

¹¹⁷ Semi-Annual Reports for Lake Charles LNG Export Company, LLC, Docket No. 13-04-LNG – Order 3868, <https://www.energy.gov/fecm/articles/semi-annual-reports-lake-charles-lng-export-company-llc-dk-no-13-04-lng-orders-3252> (last viewed June 21, 2023).

¹¹⁸ See Denial Order at 19.

While DOE found that Lake Charles LNG Export had demonstrated good cause for the additional time in its First Extension Request, and that it did not alter its original public interest determination, DOE was concerned that an extension of this duration—extending the commencement date to almost 16 years from the initial application for export authorization and 12 years from DOE’s initial authorization—would alter the underlying public interest determination.¹¹⁹

Approving Lake Charles LNG Export’s Second Extension Request on the record before us would require DOE to continue to rely on the facts presented in Lake Charles LNG Export’s original 2013 application. There are examples of facts in that application that have become obsolete due to changes in the domestic and global marketplace for natural gas, including the estimates of U.S. natural gas supply and demand.¹²⁰ For instance, the market projection referenced in Lake Charles LNG Export’s 2013 application, U.S. Energy Information Administration’s (EIA) Annual201 Energy Outlook (AEO) 2013, had projections only through the year 2035 whereas since 2017, EIA’s AEO includes projections through the year 2050.¹²¹ AEO 2010 did not even include an estimate of LNG exports as that was seen as a “new market” at the time. Simply put, the facts Lake Charles LNG Export relied upon are increasingly out of date.

Thus, based upon the above Lake Charles LNG Export’s argument seeks to render the commencement deadline meaningless. To approve an extension request that has failed to demonstrate good cause would be contrary to the very purpose of the commencement deadline

¹¹⁹ See Denial Order at 12-13.

¹²⁰ See *Lake Charles Exports, LLC*, Application of Lake Charles Exports, LLC for Long-Term Authorization to Export Liquefied Natural Gas, Docket No. 13-04-LNG, at 11-15 (Jan. 10, 2013).

¹²¹ See, e.g., U.S. Energy Info. Admin., Annual Energy Outlook 2023 (AEO 2023) (Mar. 16, 2023), https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf.

and would perpetuate the very concerns that DOE is attempting to address. As the Denial Order stated, “[i]f DOE did not enforce these commencement deadlines, an authorization holder might seek extension after extension without ever being ready to proceed with its project.”¹²²

Furthermore, Lake Charles LNG Export asserts that a denial of its Second Extension Request does not address the authorization “overhang,” implying that its Second Extension Request was evaluated under the Policy Statement. As explained in Section IV.D.3 below, Lake Charles LNG Export’s Second Extension Request was not evaluated under the Policy Statement, as evidenced by the fact that it was not rejected on the basis that Lake Charles LNG Export failed to demonstrate it has physically commenced construction on the Liquefaction Project or its inability to comply with the existing export commencement deadline was the result of extenuating circumstances outside of its control. Rather, the Second Extension Request was evaluated, and denied, on the basis of DOE’s long-standing criteria for considering whether an extension is “for good cause shown,” particularly in light of the extent to which the requested extension would significantly alter a condition DOE had found “necessary and appropriate” to its public interest evaluation.

Lastly, while we agree with Lake Charles LNG Export that NGA section 3 requires DOE to authorize all otherwise compliant non-FTA export applications that are not inconsistent with the public interest, we do not accept Lake Charles LNG Export’s argument that “unless DOE has reason to conclude that a requested authorization **or an extension thereof** is inconsistent with the public interest, it cannot deny it.”¹²³ As explained in more detail in section IV.A above, an authorization to export is distinct from a modification to a condition on that export authorization. And while DOE does consider whether a commencement deadline extension will alter the public

¹²² Denial Order at 18.

¹²³ Request for Rehearing at 37.

interest determination of the underlying export authorization (for example, by changing a material condition that DOE found to be “necessary or appropriate” for finding that the authorization was not inconsistent with the public interest), that consideration does not eliminate the applicant’s responsibility to demonstrate good cause for the modification.

C. The Record Supports DOE’s Denial of Lake Charles LNG Export’s Second Extension Request

As explained above, section 3(a) of the NGA provides, in relevant part, that DOE “may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order...as it may find necessary or appropriate.”¹²⁴ Each request to amend the export commencement deadline for a non-FTA authorization is unique and evaluated on a case-by-case basis.¹²⁵ In consideration of an extension request, prior to issuance of the Policy Statement, DOE considered the project-specific facts presented in the extension application, including the authorization holder’s progress in constructing the proposed export facility, the additional time necessary to commence exports, and any unique delays and challenges faced by the authorization holder; whether FERC approved an extension of its “construction and in-service deadline;” and any arguments raised in protest by an opposing party, motions to intervene, or comments filed in response to the request.¹²⁶ DOE also considered whether granting a commencement extension request would alter DOE’s original “public interest” determination for the underlying non-FTA authorization.¹²⁷ As explained in detail below, based on the record submitted to DOE, our finding that Lake Charles LNG Export's Second Extension Request failed to demonstrate good cause was reasonable.

¹²⁴ 15 U.S.C. § 717b(a).

¹²⁵ Policy Statement, 88 Fed. Reg. at 25,275.

¹²⁶ *Id.* at 25,275-76.

¹²⁷ Denial Order at 12-13.

Lake Charles LNG Export claims that under DOE’s pre-Policy Statement standard of review, its Second Extension Request was “more than enough to satisfy the ‘good cause’ standard” for applications predating the Policy Statement.¹²⁸ Lake Charles LNG Export alleges that, before the Policy Statement, DOE considered the “same general factors” to evaluate whether an extension request established “good cause,” and that it satisfied those standards by noting its execution of several long-term offtake contracts, its semi-annual reports to DOE detailing the Project’s construction-related progress, the impact of the COVID-19 pandemic on its Liquefaction Project, and FERC’s recent extension approval.¹²⁹ Lake Charles LNG Export also contends that DOE did not take administrative notice of its semi-annual reports, and more generally, that DOE should have requested additional information from Lake Charles LNG Export.¹³⁰ Lake Charles LNG Export asserts that if DOE needed Lake Charles LNG Export to “‘provide [more] evidence’ of actions taken to advance the Project” since its first extension, DOE “merely needed to ask.”¹³¹

Lake Charles LNG Export’s Second Extension Request did not satisfy the burden required to demonstrate good cause that DOE has historically considered when evaluating extension requests. Specifically, Lake Charles LNG Export failed to describe 1) in specificity the steps it had taken towards completing the Liquefaction Project, since the approval of its First Extension Request in October 2022; 2) what unique delays and challenges it faced, since the approval of its First Extension Request in October 2020; and 3) why FERC’s grant of extension to complete construction must be dispositive on DOE’s consideration of a request to extend commencement of export.

¹²⁸ Request for Rehearing at 17.

¹²⁹ *Id.*

¹³⁰ *Id.* at 18, 24-25.

¹³¹ *Id.* at 18.

Before addressing the sufficiency of the explanation Lake Charles LNG Export provided in its Second Extension Request, we first address Lake Charles LNG Export’s more general objection that if DOE needed more specific information on how these factors delayed its progress, DOE should have simply asked for more detailed information and it would have been happy to provide it. NGA Section 3(a) states that “[DOE] . . . may from time to time, after opportunity for hearing, and for good cause *shown*, make such supplemental order in the premises as it may find necessary or appropriate.”¹³² Therefore, the burden is on the applicant—not DOE—to demonstrate good cause for DOE to issue a supplemental order, such as an order granting a commencement extension request. DOE will consider all the evidence submitted by an applicant, but DOE is not obligated to independently search for evidence to support the applicant’s request if the applicant fails to submit that information. In addition, if this burden were placed on DOE, it would disrupt DOE’s administration of the LNG regulatory program by incentivizing applicants to, as in this instance, provide only the most cursory information and shift the resource burden from applicants to DOE to develop a record sufficient to act. Furthermore, it would be contrary to the often-adversarial process established for orders by establishing a moving target that intervenors would not be able to appropriately address in their protests.

Concerning the steps Lake Charles LNG Export had taken since its First Extension Request, as noted in the Denial Order, the only fact Lake Charles LNG Export provided was that it had executed long-term offtake contracts.¹³³ Lake Charles LNG Export applied for authorization to export LNG to non-FTA countries in 2013 and was approved to export LNG to non-FTA countries in 2016. At the time Lake Charles LNG Export filed its Second Extension

¹³² 15 U.S.C. § 717b(a) (emphasis added).

¹³³ Second Extension Request at 4-7. *See also* Denial Order at 16.

Request, about 36% of its total authorized volume was subscribed, with long-term offtake contracts for approximately 0.85 Bcf/d.¹³⁴ Moreover, DOE takes administrative notice of the fact that offtake contracts Lake Charles LNG Export used to demonstrate progress on the Liquefaction Project are not necessarily tied to this facility, as noted in its public summaries. Thus, rather than demonstrating that Lake Charles LNG Export was progressing toward completing the Liquefaction Project, the execution of long-term offtake contracts after the passage of so much time highlighted how little progress Lake Charles LNG Export had made. Presently, after more than a decade since seeking authorization to export LNG and almost seven years since DOE initially authorized Lake Charles LNG Export to commence exports to non-FTA countries, Lake Charles LNG Export has executed long-term offtake contracts for only approximately half of its total authorized volume.¹³⁵

DOE notes that all of the LNG export projects that are currently operational had at least one fully executed contract prior to obtaining their DOE non-FTA authorization, reached FID within 6 years of applying for the DOE non-FTA authorization, and commenced exports within 9 years from their original DOE application, whereas Lake Charles LNG Export only executed long-term offtake contracts after 9 years from its original DOE application and has yet to reach FID after twelve years. In light of the time that has passed and the limited progress Lake Charles

¹³⁴ See Lake Charles Facility Long-Term Contract Information and Registrations at U.S. LNG Export Facilities (Nov. 1, 2022), <https://www.energy.gov/fecm/articles/lake-charles-facility> (Lake Charles LNG Export's current long-term offtake contracts with their associated volumes and dates executed are: ENN LNG (Singapore) Pte. Ltd. (China) 1.8 million metric tons per annum (mtpa), Mar. 28, 2022; ENN Global Trading Pte. Ltd. (China), 1 mtpa, Mar. 28, 2022; Gunvor Singapore Pte Ltd., (Singapore), 2 mtpa, Apr. 29, 2022; SK Gas Trading (South Korea), 0.4 mtpa, Apr. 29, 2022, China Gas Hongda Energy Trading Co., Ltd. (China), 0.7 mtpa, Jun. 1, 2022; Shell NA LNG LLC (United Kingdom), 2.1 mtpa, Aug. 23, 2022. The total contracted volume at the time of the Second Extension Request is equivalent to 5.9 mtpa, or 0.85 Bcf/day. Lake Charles LNG Export notes that these contracted volumes are not specifically tied to the Liquefaction Project. Lake Charles LNG Export's public summaries of the contracts state that these volumes may be delivered to the Buyer from any alternate location on the U.S. Gulf Coast, with approximately half the volumes contracted with Chinese entities.)

¹³⁵ See *id.* (as of August 23, 2022, Lake Charles LNG Export has subscribed approximately 50% of its volume, or approximately 1.16 Bcf/day).

LNG Export has made toward commencing exports, DOE determined it could not sustain a decision that there is good cause to authorize an extension for an additional three years, as required by section 3(a) of the NGA.¹³⁶

Furthermore, Lake Charles LNG Export repeatedly states that DOE should have taken administrative notice of its semi-annual reports, but Lake Charles LNG Export's semi-annual reports are ambiguous. For example, Lake Charles LNG Export's most recent semi-annual update states that it conducted "[m]aintenance clearing of the greenfield site."¹³⁷ Lake Charles LNG Export offered no details, however, explaining what type of "maintenance clearing" occurred or how much occurred. The maintenance could have included anything from trimming grass to heavy excavation, but DOE has no way to identify or decipher these critical facts from the information provided in the update. Again, Lake Charles LNG Export did not meet its burden to offer specific facts and explanation to support its request. This deficiency was especially critical with Lake Charles LNG Export asking to postpone its export commencement date an *additional five years* in total—on orders that had already received commencement extensions of 28.5 months and 17.5 months, respectively—beyond its initial seven-year commencement deadline. Second, Lake Charles LNG Export's complaint that DOE did not take administrative notice of its semi-annual reports is, at worst, harmless error. Even a generous reading of Lake Charles LNG Export's semi-annual reports, as discussed in Section IV.E below, would not have changed DOE's determination that Lake Charles LNG Export failed to demonstrate good cause for its Second Extension.¹³⁸

¹³⁶ Denial Order at 16.

¹³⁷ Lake Charles LNG Exports, Semi-Annual Report, Docket No. 13-04-LNG, at 2, (Apr. 3, 2023), https://www.energy.gov/sites/default/files/2023-04/20230403_LCE%20DOE_FE-OrderNos_3252_3868_SemiAnnualReport.pdf.

¹³⁸ See Denial Order at 19-20. DOE notes that it did reference Lake Charles LNG Export's semi-annual reports in the Denial Order but did not discuss them in detail. See *id.* at 16 n.82. We have specifically addressed the semi-annual reports below.

Concerning the unique delays and challenges Lake Charles LNG Export faced, the only reasons Lake Charles LNG Export proffered for needing even more time than it had already been approved were complex FID financing agreements that are not material to DOE’s decision making and general references to global events without any information specific to Lake Charles LNG Export’s efforts.

With respect to Lake Charles LNG Export’s justification for delay related to its “[c]omplex FID financing arrangements,”¹³⁹ Lake Charles LNG Export explained that it had executed several long-term agreements, but that a precondition of FID is that all authorizations must remain in effect through FERC’s construction and in-service deadline of December 16, 2028.¹⁴⁰ Lake Charles LNG Export’s submission of “[c]omplex FID financing arrangements” as justification for a second extension ignored DOE’s past precedent. DOE is not required to, nor has it ever considered the terms of an authorization holder’s financial arrangement as a factor to show good cause for a commencement extension request. As described above, when evaluating an extension request, DOE considers the steps an authorization holder has taken toward progressing the project and the unique, project-specific challenges that developed since the prior authorization which prompted an extension request. “Complex FID financing arrangements” and their associated terms and conditions do not provide insight into the steps Lake Charles LNG Export had taken toward progressing the project, nor do they describe the unique, project-specific challenges that developed which required Lake Charles LNG Export to need more time to commence exports. Rather, “[c]omplex FID financing arrangements” are something all authorization holders must negotiate and manage. Several authorization holders, including ones that were authorized *after* Lake Charles LNG Export, have already met or are on track to

¹³⁹ Second Extension Request at 5.

¹⁴⁰ *Id.*

meeting their commencement deadlines. To the extent projects need to maintain their authorizations to reach FID, it is a burden that the authorization holder must bear and that cannot be shifted to the Department. Moreover, there cannot be an expectation that DOE must grant an extension for an authorization holder to obtain FID; this is not justification that an extension of the commencement deadline is warranted.

As we observed in the Denial Order, DOE’s seven-year commencement deadline is “based upon an explicit recognition that an authorization holder [] need[s] time to construct its proposed facility before commencing exports.”¹⁴¹ Seven years was deemed “sufficiently long” to allow for “unplanned delays in [] licensing and construction” which inherently includes any delays associated with complex financial arrangements needed to finance the construction.¹⁴² Lake Charles LNG Export had its non-FTA authorization for almost six years by the time it applied for the second extension,¹⁴³ a length of time in which other projects have been able to obtain FID, construct necessary facilities, and begin commercial exports.¹⁴⁴ A statement of fact that an active authorization is necessary to reach FID does not explain why, in the past six years, Lake Charles LNG Export could not reach FID. Therefore, while DOE acknowledged that lenders seek assurance that DOE export authorizations will remain valid due to complex financing arrangements, we reasonably determined that this universally applicable challenge facing authorization holders was an insufficient reason to grant an extension.¹⁴⁵

¹⁴¹ Denial Order at 14.

¹⁴² *Id.*

¹⁴³ Order No. 3868 was issued July 29, 2016, and Order No. 4010 was issued June 29, 2017, 70 months and 59 months, respectively, before the filing of the Second Extension Request.

¹⁴⁴ Calcasieu Pass received its non-FTA export authorization, DOE/FECM Order No. 4346, on March 5, 2019. On March 1, 2022, Calcasieu Pass loaded its first cargo of LNG at the newly constructed Venture Global Calcasieu Pass Project, and it has exported dozens of cargoes to date. *See* Venture Global Calcasieu Pass, LLC, Semi-Annual Status Report, Docket Nos. 13-69-LNG *et al.*, at 2 (Mar. 31, 2023). *See also* Denial Order at 17 & n.86.

¹⁴⁵ Denial Order at 18.

With respect to Lake Charles LNG Export’s identification of global events as the cause for further delay, Lake Charles LNG Export’s few statements addressing the unique delays and challenges it faced were too vague and generic for DOE to act upon.¹⁴⁶ Lake Charles LNG Export stated, “*the world* has experienced significant changes in the global LNG market,” “*the world* has experienced increased trade tensions,” and “global events over the past few years have created an extremely challenging environment for construction of *large-scale infrastructure projects* and execution of international commercial agreements.”¹⁴⁷ DOE reasonably evaluated whether other authorization holders, faced with the same general global challenges at the same time, were able to meet their application deadlines. We found that impacts from the COVID-19 pandemic were not unique to Lake Charles LNG Export, with liquefaction capacity for three projects advancing to FID in 2022 and 2023.¹⁴⁸ Where applicants provided concrete and specific information about particular challenges, such as Port Arthur, DOE considered that information. But Lake Charles LNG Export did not provide specific facts explaining *how* the COVID-19 pandemic was impacting the development and construction of the Liquefaction Project.¹⁴⁹ Instead, Lake Charles LNG Export simply stated that it “has not been spared from the effects of these difficult circumstances.”¹⁵⁰ It was Lake Charles LNG Export’s burden, not DOE’s, to articulate the particular challenges its Liquefaction Project was facing to show good cause for an additional extension to its commencement deadline. DOE, in consideration of the record and the progress other authorization holders were able to make during the COVID-19 pandemic,

¹⁴⁶ See *id.* 17-18.

¹⁴⁷ Second Extension Request at 5 (emphasis added).

¹⁴⁸ Denial Order at 17 (“[S]ince 2022, three additional authorization holders—Venture Global Plaquemines LNG, LLC; Corpus Christi Liquefaction Stage 3, LLC; and Port Arthur LNG, LLC—have each announced that they have reached a final investment decision and commenced construction of their respective export facility . . .”).

¹⁴⁹ *Id.* at 15-16.

¹⁵⁰ Second Extension Request at 5.

reasoned that the mere existence of general global challenges did not establish good cause to grant a commencement extension.

Lake Charles LNG Export's vague statement about the "difficult circumstances" it faced was also reasonably considered and addressed in the Denial Order.¹⁵¹ DOE explained that global events had created both challenges *and* opportunities for participants in the U.S. LNG market.¹⁵² Even Lake Charles LNG Export noted that global events had helped the U.S. LNG market, concluding ". . . however, the global LNG market has also experienced renewed appetite for securing long-term LNG supply."¹⁵³ Thus, DOE was justified in its decision that this fact in support of an extension request was unpersuasive.

DOE also countered Lake Charles LNG Export's claim that COVID-19 had "created an extremely challenging environment for construction of large-scale infrastructure projects", citing Venture Global Calcasieu Pass, LLC's export facility in Cameron Parish, Louisiana, as an example of a project that completed construction during the COVID-19 pandemic and began operations in 2022 (four years before its commencement deadline).¹⁵⁴ Consequently, as explained in detail in the Denial Order, DOE reasoned that Lake Charles LNG Export's seven-year commencement deadline, plus the additional 28.5 months under Order No. 3868 and 17.5 months under Order No. 4010¹⁵⁵ that Lake Charles LNG Export received pursuant to the approval of its the First Extension Request, was a sufficient buffer against unexpected delays and challenges, including the COVID-19 pandemic.¹⁵⁶

¹⁵¹ Denial Order at 15-19.

¹⁵² *Id.* at 16.

¹⁵³ Second Extension Request at 5.

¹⁵⁴ Denial Order at 16-17.

¹⁵⁵ *See* 2020 Lake Charles LNG Export Extension Order; *see also* Denial Order at 3-4.

¹⁵⁶ Denial Order at 18.

Lake Charles LNG Export appears to view FERC’s extension of a construction and in-service deadline as sufficient to establish good cause for DOE to extend an export commencement deadline accordingly. This view is mistaken, as DOE treats the FERC extension as a *necessary*—but not *sufficient*—condition for its own extension. As explained in the Denial Order, our export commencement deadlines allow more time than FERC’s typical five-year construction and in-service deadline.¹⁵⁷ Therefore, to consider a request for extending a commencement deadline *before* an applicant received approval from FERC to extend the construction and in-service deadline would be premature and a poor use of agency resources. As demonstrated by our precedent, and noted in the Denial Order, “an authorization holder obtaining an extension of its FERC [construction] deadline is a *prerequisite* to DOE considering an extension of the export commencement deadline...”¹⁵⁸ Put simply, a FERC approval of a construction and in-service extension request informs DOE that a request for an extension to commence exports is ripe for consideration.¹⁵⁹ But a FERC construction and in-service extension does not, on its own, establish good cause for a commencement extension or obligate DOE to approve a request for a commencement extension.¹⁶⁰

FERC and DOE exercise different authority under NGA section 3—specifically, FERC authorizes the siting, construction, expansion, or operation of onshore LNG terminals,¹⁶¹ and DOE authorizes the export (or import) of natural gas.¹⁶² FERC’s evaluation of terminal facilities and the impacts of such facilities reasonably may or may not change if the deadline to commence

¹⁵⁷ *Id.* at 18-19 & n.93.

¹⁵⁸ *Id.* at 18-19 (emphasis added).

¹⁵⁹ *See id.*

¹⁶⁰ *See id.* at 18.

¹⁶¹ 15 U.S.C. § 717b(e); *see also id.* § 717a(11) (definition of LNG terminal); *Sierra Club v. Fed. Energy Regulatory Comm’n*, 827 F.3d 36, 40 (D.C. Cir. 2016) (observing that, while DOE “maintains exclusive authority over the export of natural gas as a commodity,” DOE has delegated to FERC the authority to approve or deny an application for the siting, construction, operation, or expansion of an LNG terminal under NGA section 3(e)).

¹⁶² 15 U.S.C. § 717b(a).

operations is extended. Like FERC, DOE conducts its own evaluation of the facts and issues submitted in the record, but DOE's evaluation focuses on whether any particular authorization to export, in context of all other authorizations, would be inconsistent with the public interest. To conclude that an authorization meets this standard, and not to prejudice future applications that may request authorization with certain assumed cumulative exports that are authorized, DOE sets a reasonable timeline for the commencement of exports. DOE may extend a commencement deadline if good cause is shown, and any extension is informed by, but not dispositively determined by, FERC's decision on whether to extend the construction and in-service deadline for the facilities at issue. DOE must consider its unique interest in the deadline when weighing the reasons for the delay against the need for the deadline.

DOE and FERC may inform each other's decisions, particularly on related matters like the approval of LNG processing facilities and the physical export of LNG, but neither is required to follow the other's decisions in lockstep. In practice, for non-FTA LNG export proceedings with a related proceeding at FERC, DOE considers FERC's decision alongside the other set of factors DOE considers, such as unique circumstances for delay. As explained above, DOE will not extend a commencement deadline unless and until FERC extends a service deadline, but once FERC has done so, DOE accounts for FERC's reasoning in deciding whether to extend its own commencement deadline. FERC extensions need not, and do not, *guarantee* DOE extensions. The agencies can reach functionally and practically inconsistent decisions that remain consistent with their independent statutory and regulatory authority, as is the case here.

Based on the totality of the record and the dearth of facts submitted in support of the Second Extension Request, DOE's denial of Lake Charles LNG Export's Second Extension Request was therefore reasonable and supported by the record.

D. Lake Charles LNG Export’s Second Extension Request was Not Evaluated Under a Heightened Standard

Lake Charles LNG Export asserts that DOE applied a heightened standard of review to its Second Extension Request.¹⁶³ Relatedly, Lake Charles LNG Export asserts that DOE treated it differently than other similarly situated applicants, specifically, PALNG.¹⁶⁴ Lastly, in the alternative, Lake Charles LNG Export contends that DOE evaluated its Second Extension Request under the Policy Statement.¹⁶⁵ For the following reasons, DOE disagrees.

1. DOE Did Not Apply a Heightened Evidentiary Standard to Lake Charles LNG Export’s Second Extension Request

Lake Charles LNG Export alleges that DOE applied a heightened evidentiary standard for its “unprecedented second extension” request without notice.¹⁶⁶ Lake Charles LNG Export argues that DOE deviated from past practice and that Lake Charles LNG Export had “no reason to expect” that its Second Extension Request would require “increased specificity” or “significant progress toward the physical completion” of its Liquefaction Project.¹⁶⁷ Lake Charles LNG Export claims that it had “every reasonable expectation that the same standard would apply to first and second extension requests.”¹⁶⁸ Lake Charles LNG Export also complains that DOE “refused to grant” its Second Extension Request even though, as with its First Extension Request, FERC granted a corresponding extension, no facts affecting the public interest or original authorization had changed, and the Liquefaction Project would likely fail without the extension.¹⁶⁹

¹⁶³ Request for Rehearing at 29.

¹⁶⁴ *Id.* at 29-34.

¹⁶⁵ *Id.* at 27-28.

¹⁶⁶ *Id.* at 29-34.

¹⁶⁷ *Id.* at 31.

¹⁶⁸ *Id.*

¹⁶⁹ Request for Rehearing at 25, 29.

Prior to the Policy Statement, the plain language of section 3(a) of the NGA and DOE's precedent provided every authorization holder sufficient notice of what was required of them when seeking to amend the commencement date of their authorization. Modifications to export authorizations may be made "for good cause shown" and in consideration of the factors discussed *supra* in Section IV.C.¹⁷⁰ When Lake Charles LNG Export applied for its Second Extension Request it had possessed its authorization for nearly six years for Order No. 3868 and nearly five years under Order No. 4010.¹⁷¹ Lake Charles LNG Export has already received a 28.5-month extension for Order No. 3868 and a 17.5-month extension for Order No. 4010. Therefore, Lake Charles LNG Export has a total of nearly nine and a half years to commence exports for Order No. 3868, and nearly eight and a half years for Order No. 4010.¹⁷² Lake Charles LNG Export's Second Extension Request sought to nearly double the commencement time that DOE determined was both flexible enough to accommodate unexpected delays and consistent with the public interest.¹⁷³ No authorization holder had requested a second extension to its export commencement deadline before Lake Charles LNG Export did so.¹⁷⁴ Even though all authorization holders currently exporting from the seven large-scale export facilities in the U.S. commenced exports within their original seven-year commencement period, Lake Charles LNG Export's Second Extension Request sought to have more time to commence exports than any other LNG project.¹⁷⁵ It is worth noting that if Lake Charles LNG Export's First Extension Request had asked for an extension out to 2028, we would have been reasonable to say no based on the facts above. As discussed, one of DOE's primary considerations, pre-Policy Statement, is

¹⁷⁰ 15 U.S.C. § 717b(a).

¹⁷¹ See *supra* notes 4 and 5.

¹⁷² See Denial Order at 14.

¹⁷³ The second extension would have resulted in Orders No. 3868 and 4010 having a total of 12.5 years and 11.5 years, respectively, to commence exports. See also Denial Order at 14-15.

¹⁷⁴ See Denial Order at 14-15.

¹⁷⁵ Denial Order at 16-17.

the additional time necessary for the authorization holder to commence exports. This factor increases in significance for each additional year beyond the original seven-year date, regardless of whether an extension request seeks one very long extension or multiple shorter ones. Our pre-Policy Statement standard accounts for the full scope of what is requested.

DOE did not apply a heightened evidentiary standard to Lake Charles LNG Export's Second Extension Request. Instead, in a case of first impression, DOE appropriately applied the NGA's section 3(a) good cause standard to a *new* set of facts to determine whether it was "necessary and appropriate" to grant a second extension.¹⁷⁶ For an authorization holder that 1) was nearly six years into its original seven-year commencement deadline by the time it applied for its Second Extension Request, 2) changed its expected date of operation no fewer than seven times, and 3) had already received an additional 28.5 months and 17.5 months to reach commencement, on Order Nos. 3868 and 4010, respectively, the arguments set forth by Lake Charles LNG Export to demonstrate good cause needed to reflect the magnitude of the request.¹⁷⁷ Lake Charles LNG Export's Second Extension Request did not. Rather, Lake Charles LNG Export provided *less* detail in its second request than in its first. For example, Lake Charles LNG Export states in its First Extension Request that it had issued an "Invitation to Tender" to prospective EPC bidders and incurred more than \$300 million in development costs, but Lake Charles LNG Export's Second Extension Request makes no mention of its EPC contractors or how much it incurred after DOE's approval of the first extension.¹⁷⁸ In addition, in Lake Charles LNG Export's First Extension Request, it described numerous actions it had taken to "actively progress[] the Project" following a unique challenge that resulted in an

¹⁷⁶ 15 U.S.C. § 717b(a).

¹⁷⁷ See *supra* note 122. See also Denial Order at 14.

¹⁷⁸ See First Extension Request at 7. DOE notes that Lake Charles LNG Export submitted those facts in its Request for Rehearing, and they are addressed *infra* in Section IV.E.

unexpected delay: the commercial merger in Lake Charles LNG Export’s corporate ownership.¹⁷⁹ Lake Charles LNG Export explained that it had:

- 1) obtained all required federal, state, and local authorizations and permits;
- 2) secured all LNG export terminal land rights;
- 3) taken steps toward construction, such as tree-clearing and drilling of test piles;
- 4) completed front-end engineering and design; and
- 5) committed more than \$450 million in development costs¹⁸⁰

In contrast, Lake Charles LNG Export’s Second Extension Request did not include a list of several steps it had taken towards completing the Liquefaction Project. The First Extension Request shows that Lake Charles LNG Export understood the level of detail that could establish good cause for an export commencement deadline extension. As Lake Charles LNG Export’s second request was less specific and more cursory, DOE reasonably presumed that Lake Charles LNG Export had less evidence to establish good cause for the second extension than for the first extension.

Finally, even assuming, *arguendo*, that DOE did apply a heightened evidentiary standard to Lake Charles LNG Export’s request, such an action would not have been unreasonable or arbitrary.¹⁸¹ Lake Charles LNG Export had no reasonable expectation of a second extension;

¹⁷⁹ First Extension Request at 6.

¹⁸⁰ *Id.* at 5-7.

¹⁸¹ See *Williams Nat. Gas Co. v. FERC*, 3 F.3d 1544, 1554–55 (D.C. Cir. 1993) (explaining that in determining whether a rule announced in an administrative adjudication may be given retroactive effect, “there has emerged ‘[a] basic distinction ... between (1) new applications of law, clarifications, and additions, and (2) substitution of new law for old law that was reasonably clear’” and holding that retroactivity in the former case is “‘natural, normal, and necessary,’ a corollary of an agency’s authority to develop policy through case-by-case adjudication rather than rulemaking”) (citations omitted) (citing *Aliceville Hydro Assocs. v. FERC*, 800 F.2d 1147, 1152 (D.C. Cir. 1986)). See also *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 332–34 (D.C. Cir. 2006) (explaining that in administrative adjudications, as in judicial adjudications, retroactivity is the norm and an agency may apply new policy to a new situation) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947)).

DOE had not established by precedent that *second* extensions will be treated the same as first extensions, especially when the request would take the total time to commence construction to nearly double the amount of time deemed (and proven) sufficient to construct facilities and commence exports. Holding applicants to a higher standard when they ask for a second extension than when they ask for a first is not arbitrary – it is prudent. It is needed to ensure a reasonable administration of the program and to balance the harms to the program of successively later in time extensions with the benefits to the authorization holder.

2. DOE Reviews the Merits of Each Authorization Holder’s Extension

Application

Lake Charles LNG Export asserts that DOE treated it differently than other authorization holders, specifically PALNG, whose first extension request was approved.¹⁸² Lake Charles LNG Export claims that DOE found its Second Extension Request contained “generalized statements” but approved PALNG’s application which “invoked similar generalized statements.”¹⁸³ Lake Charles LNG Export further states that in granting PALNG’s application, DOE “acknowledged FERC’s extension” and took “administrative notice” of facts in the public domain when evaluating PALNG’s request but did not do so in Lake Charles LNG Export’s case.¹⁸⁴ Lake Charles LNG Export accuses DOE of dissimilar treatment of “substantially similar applications.”¹⁸⁵

First, Lake Charles LNG Export’s arguments presume that its Second Extension Request and PALNG’s Extension Request, were “substantially similar.” They were not. DOE’s review involves the consideration of “any unique delays and challenges” faced by the authorization

¹⁸² Request for Rehearing at 29-31.

¹⁸³ *Id.* at 30.

¹⁸⁴ *Id.* at 30-31.

¹⁸⁵ *Id.* at 31.

holder and the amount of additional time necessary to commence exports.¹⁸⁶ Contrary to Lake Charles LNG Export's assertions, PALNG proffered several specific reasons to demonstrate why good cause existed to grant its first extension request.¹⁸⁷ Of note, within four years of obtaining its authorization, PALNG executed an EPC contract with a third-party contractor and secured FID.¹⁸⁸ Lake Charles LNG Export has yet to do either of those things. In addition, Lake Charles LNG Export was seeking to extend its commencement date by a total of five years past its initial date (after already receiving extensions of 28.5 months and 17.5 months), whereas PALNG was only seeking to extend its commencement date by 25 months.¹⁸⁹ It is reasonable to consider the total time elapsed since authorization in evaluating an extension request, whether the request is for a single lengthy extension or multiple extensions. Therefore, with notably different facts, Lake Charles LNG Export's comparison of itself to PALNG is uneven.

Second, Lake Charles LNG Export's assertion that DOE failed to acknowledge or accord any consideration to FERC's extension of its construction and in-service deadline, as it did in PALNG's request, is also inaccurate.¹⁹⁰ Just as in all prior requests to extend an export commencement deadline, DOE noted and acknowledged several times in the Denial Order that FERC had extended Lake Charles LNG Export's construction and in-service deadline.¹⁹¹ As noted in section IV.C above, while DOE has always looked to FERC's deadline extensions in

¹⁸⁶ Policy Statement, 88 Fed. Reg. at 25,275-76.

¹⁸⁷ See *Port Arthur LNG, LLC*, Request for Extensions for Long-Term Authorizations to Export Liquefied Natural Gas, Docket Nos. 15-53-LNG, *et al.* (Nov. 18, 2022) (requesting a 25-month extension, citing adverse market conditions and logistical issues associated with the COVID-19 pandemic). The applicant noted several concrete steps it had taken in the meantime, including that it had obtained all federal, state, and local authorizations necessary for construction; executed an EPC contract with a third-party contractor; relocated a state highway and collocated utilities, access roads, and a dock; conducted site preparation activities, removed abandoned pipelines and utilities within the project site; and expended more than \$220,000,000 on its liquefaction project.

¹⁸⁸ See PALNG Extension Order at 6-7, 12-14.

¹⁸⁹ *Id.* at 4.

¹⁹⁰ Request for Rehearing at 26-27.

¹⁹¹ See Denial Order at 4, 5, 6, 7, 18.

reviewing requests to extend export commencement deadlines, DOE’s decisions are not bound by FERC’s determinations.¹⁹²

3. DOE Did Not Review Lake Charles LNG Export’s Second Extension Request Under its Policy Statement

Lake Charles LNG Export contends that “DOE applied a version of the Policy Statement’s new, more rigorous standard to Lake Charles LNG Export’s extension request.”¹⁹³ Lake Charles LNG Export argues that it was “plainly improper” for DOE to consider the Policy Statement in Lake Charles LNG Export’s Denial Order, given Lake Charles LNG Export’s “undisputed lack of notice.”¹⁹⁴ Lake Charles LNG Export argues further that even proceeding under the new Policy Statement, DOE should have granted Lake Charles LNG Export’s request because it “provided DOE with ample evidence” to meet both parts of the Policy Statement’s required demonstration.¹⁹⁵

As explained in Section IV.C, DOE reviewed Lake Charles LNG Export’s Second Extension Request under the pre-Policy Statement standard and applied historical factors to demonstrate good cause; not under the Policy Statement.¹⁹⁶ DOE considered Lake Charles LNG Export’s Second Extension Request, its unique situation, the progress it had made toward commencing construction, and the additional time it requested and found that the facts Lake Charles LNG Export submitted did not rise to good cause warranting an extension.¹⁹⁷ Moreover, as explained in the Denial Order, our decision therein was consistent with the Policy Statement.¹⁹⁸ Therefore, even assuming *arguendo* that Lake Charles LNG Export’s request was

¹⁹² See *supra* at 33-34.

¹⁹³ Request for Rehearing at 27.

¹⁹⁴ *Id.* at 28.

¹⁹⁵ *Id.*

¹⁹⁶ See also Denial Order at 19.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

evaluated under the Policy Statement, DOE's decision based on the record before it would have been the same.

E. Even Considering Information Lake Charles Export Failed to Submit in its Second Extension Request and the New Facts it Raises – DOE Reaffirms its Order Denying Lake Charles Export's Second Extension Request

In addition to the facts and arguments presented in its Second Extension Request, which are addressed *supra*, in its Request for Rehearing Lake Charles LNG Export sets forth additional facts and provides new information that did not appear in its Second Extension Request. The purpose of a rehearing is to provide an opportunity for parties to challenge a DOE action when they are aggrieved for the first time, and for DOE to consider such a challenge before the action is subject to judicial review. Considering the complete record and facts presented, including Lake Charles LNG Export's Second Extension Request and Request for Rehearing, DOE maintains its finding that Lake Charles LNG Export has not shown good cause for a second extension of its export commencement deadline, as required by NGA section 3(a).

1. Information Lake Charles Export Failed to Submit

Throughout its Request for Rehearing, Lake Charles LNG Export provided additional information about the progress it was making towards completing the Liquefaction Project and the challenges it faced. Lake Charles LNG Export described in more detail the impact of the COVID-19 pandemic on the Liquefaction Project, which included Shell's withdrawal from the Liquefaction Project; supply chain shortages of LNG critical equipment; and the need to solicit updated bids from EPC contractors.¹⁹⁹ Lake Charles LNG Export also noted that since the approval of the First Extension Request, it had spent \$50 million, received approval from FERC to make major modifications to the Trunkline pipeline that will feed the Liquefaction Project,

¹⁹⁹ Request for Rehearing at 18-19.

and conducted site clearing work.²⁰⁰ Lake Charles LNG Export asserted that this information was in its semi-annual reports, which, as discussed in Section IV.C above, it believes DOE should have taken administrative notice of in making its decision.²⁰¹

DOE has reviewed the above facts and reaffirms its finding that a second export commencement extension is not warranted. As discussed *supra*, it is not DOE's responsibility to scour FERC reports or semi-annual reports for any facts that could be used to demonstrate good cause. However, even when we reviewed this information, DOE found that it only demonstrates Lake Charles LNG Export's inconsistent, at best, effort to advance the Liquefaction Project. For example, Lake Charles LNG Export emphasizes its semi-annual reports in particular, but a search for additional facts in Lake Charles LNG Export's semi-annual reports revealed many inconsistent statements regarding when Lake Charles LNG Export expected the project to be operational. As we noted *supra* in Section IV.D.1, Lake Charles LNG Export changed its expected date of operation no fewer than seven times in its semi-annual reports.²⁰² In Lake Charles LNG Export's April 2021 semi-annual report, well into the COVID-19 pandemic and six months after Lake Charles LNG Export received its first commencement extension, Lake Charles LNG Export stated that it expected the Liquefaction Project to be operational in 2024—well before the December 16, 2025 export commencement deadline in its current authorization.²⁰³ In a string of broken predictions, earlier semi-annual reports indicated the

²⁰⁰ *Id.* at 21-23.

²⁰¹ *Id.* at 25.

²⁰² See Semi-Annual Reports for Lake Charles LNG Export Co., LLC, Docket No. 13-04-LNG, <https://www.energy.gov/fecm/articles/semi-annual-reports-lake-charles-lng-export-company-llc-dk-no-13-04-lng-orders-3252> (last viewed June 21, 2023).

²⁰³ See Lake Charles LNG Export Co., LLC, Semi-Annual Report, Docket No. 13-04-LNG, at 2 (Apr. 6, 2021) https://www.energy.gov/sites/default/files/2021-04/LCLNG%20SAR%204_2021.pdf

Liquefaction Project would be operational in 2019, 2020, 2021, 2022, 2023, and 2024.²⁰⁴ With Lake Charles LNG Export updating its expected export commencement date this many times, and most recently not indicating a date it expects to be operational, we are unable to find convincing evidence that Lake Charles LNG Export would actually commence exports, if its deadline were extended again. Other shifting facts include Lake Charles LNG Export's statements concerning its EPC contractors. Lake Charles LNG Export stated in its October 2014 semi-annual report that an "Invitation to Tender" was "issued to three EPC contractor consortia,"²⁰⁵ and stated in its April 2015 semi-annual report that bids had been received and were being evaluated.²⁰⁶ In subsequent semi-annual reports from 2015 to 2018, Lake Charles LNG Export stated that it was reviewing the EPC terms and conditions in preparation for a bid revalidation process.²⁰⁷ In fact, four consecutive semi-annual reports provided the exact same update, stating that "[w]ork continues with two bidding consortia to do further engineering and risk reduction work and there have been further reviews of the EPC terms and conditions in preparation for a bid revalidation process" and adding that "[e]ngineering work for the relocation of the Communications Facilities has been completed."²⁰⁸ Given the length of time that Lake Charles LNG Export has previously spent in review and revalidation of EPC bids, well before the COVID-19 pandemic, and the observed pattern of milestones coming and going, DOE cannot

²⁰⁴ Semi-Annual Reports for Lake Charles LNG Export Co., LLC, Docket No. 13-04-LNG , <https://www.energy.gov/fecm/articles/semi-annual-reports-lake-charles-lng-export-company-llc-dk-no-13-04-lng-orders-3252> (last viewed June 21, 2023).

²⁰⁵ Lake Charles LNG Export Co., LLC, Semi-Annual Report, Docket No. 13-04-LNG, at 3 (Oct. 1, 2014), https://www.energy.gov/sites/default/files/2014/10/f18/20141001_TLNG%20EXPORT%20DOE_FE%20Order%20No%203252%20Semi-Annual%20Report.pdf.

²⁰⁶ Lake Charles LNG Export Co., LLC, Semi-Annual Report, Docket No. 13-04-LNG, at 2 (Apr. 1, 2015), https://www.energy.gov/sites/default/files/2015/04/f21/Apr%202015%20TLNG%2013_04_LNG.pdf

²⁰⁷ See Semi-Annual Reports for Lake Charles LNG Export Co., LLC, Docket No. 13-04-LNG, <https://www.energy.gov/fecm/articles/semi-annual-reports-lake-charles-lng-export-company-llc-dk-no-13-04-lng-orders-3252> (last viewed June 21, 2023).

²⁰⁸ See *id.*

assume that the more recent review of EPC bids will progress faster or now result in the selection of an EPC contractor.

Lake Charles LNG Export also notes in their Request for Rehearing that they have begun site clearing work; however, DOE notes that in Lake Charles LNG Export's April 2017 semi-annual report it identified "[s]ome preliminary site work was undertaken in order to facilitate the main construction."²⁰⁹ Therefore, it seems that site clearing work has been occurring for quite some time. It is not until Lake Charles LNG Export's October 2021 semi-annual report, more than a year after the start of the COVID-19 pandemic, that Lake Charles LNG Export mentions evaluating pandemic driven scheduling impacts - equipment availability, supply chain constraints, etc.²¹⁰ At a minimum, Lake Charles LNG Export had to provide enough evidence to give DOE a reasonable expectation that exports would, in fact, begin by the extended export commencement deadline, despite challenges experienced to date. Even considering the material provided by Lake Charles LNG Export in its Second Extension Request, including all the semi-annual reports, Lake Charles LNG Export has not provided enough material to give DOE adequate confidence that it could meet the second commencement extension after failing to meet the first. Therefore, it has not shown good cause for an extension.

DOE also notes that Lake Charles LNG Export was one of only two large-scale U.S. LNG projects with DOE non-FTA authorization that did not take timely advantage of DOE's 2020 policy statement invitation to extend non-FTA authorizations to 2050.²¹¹ Lake Charles LNG Export did not apply for an extension of its export term until May 2022, although nearly all

²⁰⁹ Lake Charles LNG Export Co., LLC, Semi-Annual Report, Docket No. 13-04-LNG, at 1 (Apr. 3, 2017), . <https://www.energy.gov/sites/default/files/2017/04/f34/Lake%20Charles%20SAR%20April%202017.pdf>

²¹⁰ Lake Charles LNG Export Co., LLC, Semi-Annual Report, Docket No. 13-04-LNG, at 1 (Oct. 1, 2021), .

²¹¹ U.S. Department of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy. Statement and Response to Comments, 85 Fed. Reg. 52,237 (Aug. 25, 2020).

other U.S. large-scale non-FTA authorization holders applied under the policy statement within six months of its issuance in July 2020.²¹² This delay, coupled with other observations, suggests that Lake Charles LNG Export has not taken the same level of care and effort in maintaining its authorization as other similarly situated authorization holders.

As noted above and explained in the Denial, DOE's seven-year commencement deadline was designed to “provide authorization holders with a buffer against challenging circumstances.” Further, Lake Charles LNG Export has already been afforded an extension to the original commencement deadline of seven-years' timeline with their first extension request.²¹³ Therefore, guided by our longstanding rationale for the export commencement period and having re-considered the record before us, including the information Lake Charles LNG Export identified in its Request for Rehearing, as well as the amount of time already granted to develop and construct the Liquefaction Project and to commence exports, DOE is not persuaded that Lake Charles LNG Export has demonstrated good cause to justify a commencement extension.

2. New Information Provided by Lake Charles LNG Export

In its Request for Rehearing, for the first time in any filing with DOE, Lake Charles LNG Export asserts that its Liquefaction Project will have a carbon capture and sequestration (CCS) component.²¹⁴ This is a new development that was not previously reported in any semi-annual report with DOE or FERC. DOE believes that CCS will be a part of achieving a clean and equitable energy economy and hopes that future LNG export projects, including Lake Charles, consider including a CCS component, which can reduce greenhouse gas emissions associated

²¹² Lake Charles LNG Export Co., LLC, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, Docket Nos. 13-04-LNG and 16-109-LNG (May 24, 2022).

²¹³ 2020 Lake Charles LNG Export Extension Order.

²¹⁴ See Request for Rehearing at 4, 22.

with LNG exportation. However, adding CCS to a liquefaction project would necessitate amendments to Lake Charles LNG Export's DOE authorizations at a minimum,²¹⁵ if not also to the FERC authorization for the siting, construction, and operation of the Liquefaction Project. Lake Charles LNG Export has filed no such amendment. Since Lake Charles LNG Export has yet to officially file this significant modification with DOE, it would be improper for us to consider it in this proceeding. We look forward to evaluating the CCS component when Lake Charles LNG Export submits an amendment to its authorization with these additional facts.

V. CONCLUSION

On the basis of the findings and conclusions set forth above, DOE denies Lake Charles LNG Export's Request for Rehearing of DOE/FECM Order Nos. 3868-B and 4010-B denying Lake Charles LNG Export's application for second extension of deadline to commence exports of liquefied natural gas to non-free trade agreement countries. We note, however, that Lake Charles LNG Export's existing export commencement deadline granted in its first extension request (as well as its underlying authorization) to December 16, 2025, remains in effect for both Order Nos. 3868 and 4010, as amended.²¹⁶ In addition, should Lake Charles LNG Export be unable to commence exports by December 16, 2025, it is welcome to submit a new non-FTA application, which would be evaluated under current policies with the most recent market information.

²¹⁵ See 10 C.F.R. § 590.204.

²¹⁶ See 2020 Lake Charles LNG Export Extension Order (extending commencement deadlines to December 16, 2025).

VI. ORDER

Pursuant to sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

- A. Lake Charles LNG Export's Request for Rehearing is denied.

Issued in Washington, D.C., on June 21, 2023.



Brad Crabtree
Assistant Secretary
Office of Fossil Energy and Carbon Management