

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

_____)	DOCKET NO. 13-69-LNG
VENTURE GLOBAL CALCASIEU PASS, LLC)	DOCKET NO. 14-88-LNG
_____)	DOCKET NO. 15-25-LNG
_____)	(Consolidated)

ORDER DENYING LATE-FILED MOTION
FOR LEAVE TO INTERVENE OUT OF TIME

NOVEMBER 14, 2023

I. INTRODUCTION AND BACKGROUND

This Order addresses Repsol LNG Holding, S.A.’s (Repsol) “Motion for Leave to Intervene Out of Time” (Motion)¹ in the consolidated dockets of Venture Global Calcasieu Pass, LLC (Calcasieu Pass), which Repsol submitted to the U.S. Department of Energy (DOE)’s Office of Fossil Energy and Carbon Management (FECM)² on April 25, 2023. For the reasons set forth below, DOE denies this Motion.

In March 2019, DOE issued DOE/FE Order No. 4346³ to Calcasieu Pass under section 3(a) of the Natural Gas Act (NGA).⁴ This long-term order authorizes Calcasieu Pass to export domestically produced liquefied natural gas (LNG) from the Venture Global Calcasieu Pass Project (the Project), located in Cameron Parish, Louisiana, to any country with which the United States does not have 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 (non-FTA countries), in a volume equivalent to 620 billion cubic feet per year (Bcf/yr) of natural gas.⁵ In issuing this

¹ Repsol LNG Holding, S.A., Motion for Leave to Intervene Out of Time, Docket Nos. 13-69-LNG, *et al.* (Apr. 25, 2023) [hereinafter Repsol Mot.].

² The Office of Fossil Energy (FE) changed its name to the Office of Fossil Energy and Carbon Management (FECM) on July 4, 2021.

³ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, Docket Nos. 13-69-LNG, *et al.*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Mar. 5, 2019), *amended by* DOE/FE Order No. 4346-A (Oct. 21, 2020) (extending export term), *further amended by* DOE/FE Order No. 4641 (Dec. 18, 2020) (amending authorization to include short-term export authority).

⁴ 15 U.S.C. § 717b(a). The authority to regulate the imports and exports of natural gas, including liquefied natural gas (LNG), under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

⁵ Under NGA section 3(c), 15 U.S.C. § 717b(c), Calcasieu Pass is also authorized to export domestically produced LNG to FTA countries under three orders: DOE/FE Order Nos. 3345 (Docket No. 13-69-LNG), 3520 (Docket No. 14-88-LNG), and 3662 (Docket No. 15-25-LNG), each as amended. Repsol references these three FTA authorizations in its Motion (at 2, 5). However, DOE has found that the requirement for public notice of applications in 10 C.F.R. Part 590 is applicable only to applications to export LNG to non-FTA countries. Therefore, the discussion herein pertains only to Calcasieu Pass’s non-FTA authorization—Order No. 4346, as amended, which was issued in the above-captioned consolidated dockets.

order, DOE relied in part on the Federal Energy Regulatory Commission’s (FERC) 2019 order authorizing the siting, construction, and operation of the Project (2019 FERC Authorization).⁶

Subsequently, in 2020, DOE issued a blanket order, Order No. 4641, amending Order No. 4346 (as well as other long-term non-FTA authorizations) to add short-term export authority, including for the export of commissioning volumes.⁷ “Commissioning volumes” are defined in Calcasieu Pass’s non-FTA order as “the volume of LNG produced and exported ... during the initial startup of each LNG train, before each LNG train has reached its full steady-state capacity and begun its commercial exports pursuant to Calcasieu Pass’s long-term contracts.”⁸ As of December 18, 2020 (the date specified in Order No. 4641), Calcasieu Pass is authorized “to export commissioning volumes (in the same approved volume) prior to the commercial operations of the LNG export facility ... named in this authorization, on a non-additive basis.”⁹

In December 2021, Calcasieu Pass submitted an application for an amendment (Amendment Application),¹⁰ asking DOE (in relevant part) to increase the authorized non-FTA export volume in Order No. 4346 from 620 Bcf/yr to 640.666 Bcf/yr of natural gas. The non-FTA portion of this Amendment Application remains pending in Calcasieu Pass’s consolidated dockets.

On March 1, 2022, Calcasieu Pass loaded its first export of LNG at the Project—a

⁶ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, at 3 n.10 (citing *Venture Global Calcasieu Pass, LLC, et al.*, Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, 166 FERC ¶ 61,144 (Feb. 21, 2019) [hereinafter 2019 FERC Authorization]).

⁷ See *supra* note 3.

⁸ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, at 76 (Term and Condition C) (emphasis added); see also U.S. Dep’t of Energy, Office of Fossil Energy and Carbon Management, *LNG Monthly*, at 33 (Sept. 2023), https://www.energy.gov/sites/default/files/2023-09/LNG%20Monthly%20July%202023_0.pdf (stating that a “commissioning cargo” is a “pre-commercial cargo loaded while export facility operations are still undergoing final testing and inspection”).

⁹ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, amended by Order No. 4641, at 12 (Ordering Para. A).

¹⁰ *Venture Global Calcasieu Pass, LLC*, Application for Limited Amendment to Existing Long-Term, Multi-Contract Authorizations to Export Liquefied Natural Gas to Free Trade and Non-Free Trade Agreement Nations, Docket Nos. 13-69-LNG, *et al.* (Dec. 3, 2021) [hereinafter Calcasieu Pass Amendment App.].

commissioning cargo—pursuant to Order No. 4346.¹¹ Since that time, Calcasieu Pass states that it has exported “numerous commissioning cargos on an on-going basis, all of which are reflected in [its] monthly reports to DOE/FECM.”¹² Consistent with its obligations under Order No. 4346, Calcasieu Pass has reported to DOE that, “although [it] has completed most construction” of its Project, “the commissioning phase is ongoing.”¹³ Specifically, in its most recent Semi-Annual Report filed on September 29, 2023, Calcasieu Pass informed DOE that:

Calcasieu Pass continues with its phased operational start-up that allows the export of LNG cargos as commissioning of the facility continues. Additionally, Calcasieu Pass is conducting necessary repairs and replacement of critical power generation equipment at the facility in order to complete the facility in preparation for full commercial operations.¹⁴

Calcasieu Pass also stated that it “anticipates that it will commence full commercial operations in the fourth quarter of 2024.”¹⁵

On April 25, 2023, Repsol filed its Motion, requesting to intervene out of time in Calcasieu Pass’s consolidated dockets.¹⁶ Repsol states that it is a long-term customer of Calcasieu Pass as a “buyer counterparty” to a LNG sales and purchase agreement signed on August 14, 2018.¹⁷ According to Repsol, it seeks to intervene because Calcasieu Pass is continuing to export commissioning cargos of LNG under Order No. 4346, and thus is not yet

¹¹ See Venture Global Calcasieu Pass, LLC, Semi-Annual Report, Docket Nos. 13-69-LNG, *et al.*, at 2 (Sept. 29, 2023) [hereinafter Calcasieu Pass Sept. 2023 Semi-Annual Report], https://www.energy.gov/sites/default/files/2023-10/VG%20CPass_Oct%202023%20DOE%20Progress%20Report%20%28Final%29.pdf; see also Venture Global Calcasieu Pass, LLC, Notification re: First Export Cargo, Docket Nos. 13-69-LNG, *et al.* (Mar. 22, 2022).

¹² Calcasieu Pass Sept. 2023 Semi-Annual Report, at 2.

¹³ *Id.*

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ The deadlines for intervention established by DOE in the *Federal Register* for Calcasieu Pass’s Application and Amendment Application, respectively, were August 28, 2015 (Docket No. 15-25-LNG), and March 11, 2022 (Docket Nos. 13-69-LNG, *et al.*); see also Calcasieu Pass Answer at 1.

¹⁷ Repsol Mot. at 4. Calcasieu Pass states that it has entered into a total of nine long-term LNG sales and purchase agreements (eight for the Project’s nameplate capacity, and one for available annual quantities in excess of the nameplate capacity). See Calcasieu Pass Sept. 2023 Semi-Annual Report, at 3.

exporting LNG under its long-term sales and purchase agreements—including its sales and purchase agreement with Repsol.¹⁸ Repsol asserts that it “has an interest in the implementation of [Order No. 4346] and other applicable requirements that are subject to the ongoing jurisdiction of DOE.”¹⁹ Calcasieu Pass subsequently submitted an “Answer Opposing Motion for Leave to Intervene Out of Time” (Answer), urging DOE to deny Repsol’s Motion.²⁰

Upon review of Repsol’s Motion and Calcasieu Pass’s Answer, DOE denies Repsol’s Motion for the reasons set forth below.

II. REGULATORY STANDARD FOR INTERVENTION

DOE’s regulations establish procedures “applicable to proceedings conducted on all applications or other requested actions filed under this part.”²¹ DOE’s regulation governing the timing of motions to intervene, 10 C.F.R. § 590.303(d), states that “[m]otions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such motions or notices in the applicable [FECM] notice or order, unless a later date is permitted ... for good cause shown and after considering the impact of granting the late motion of the proceeding.”²²

III. MOTION FOR LEAVE TO INTERVENE FILED OUT OF TIME

A. Repsol’s Motion to Intervene

Repsol contends that DOE has good cause to grant its Motion under 10 C.F.R. § 590.303(d).²³ Repsol asserts that none of Calcasieu Pass’s LNG cargos to date have been

¹⁸ Repsol Mot. at 2-3; *see also id.* at 4.

¹⁹ *Id.* at 5.

²⁰ Venture Global Calcasieu Pass, LLC, Answer Opposing Motion for Leave to Intervene Out of Time of Repsol LNG Holding, S.A., Docket Nos. 13-69-LNG, *et al.* (May 1, 2023) [hereinafter Calcasieu Pass Answer].

²¹ 10 C.F.R. § 590.301.

²² *Id.* § 590.303(d).

²³ Repsol Mot. at 4.

exported on behalf of Repsol or any other long-term customer of the Project.²⁴ Repsol appears to question why “[a]ll of the cargos have been exported for the account of [Calcasieu Pass],” when Calcasieu Pass has been concurrently informing FERC that it remains in the commissioning phase—with commercial operations delayed—because of continuing ““reliability challenges”” impacting the Project.²⁵ Repsol maintains that, as a long-term customer, it “has a substantial interest in these proceedings, including in [Calcasieu Pass’s] export activities, which remain subject to the ongoing oversight of DOE and the conditions set forth in DOE’s export authorization[.]”²⁶

According to Repsol, the issues involving Calcasieu Pass’s commissioning cargos “were not anticipated at the time that interventions were due” and “instead are related to whether [Calcasieu Pass] is complying now” with the requirements of Order No. 4346 and “making accurate representations to DOE and its staff regarding the status of the Project and the cargos being exported.”²⁷

Additionally, Repsol argues that, because it “is not seeking to relitigate” Calcasieu Pass’s order and because its interest involves only “post-authorization issues,”²⁸ its intervention should not prejudice or burden Calcasieu Pass.²⁹

²⁴ *Id.* at 3.

²⁵ *Id.* at 2-3 & n.7 (citing March 28, 2023 letter from Calcasieu Pass to FERC’s Director of the Office of Energy Projects).

²⁶ *Id.* at 4.

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 5.

²⁹ Repsol Mot. at 5.

B. Calcasieu Pass’s Answer in Opposition to Repsol’s Motion

Calcasieu Pass opposes Repsol’s Motion, arguing that Repsol fails to provide good cause to justify its intervention “at this very late date, contrary to well-established DOE policy” and that its intervention, if granted, would result in a burden on Calcasieu Pass.³⁰

Addressing DOE’s precedent regarding late-filed motions to intervene under 10 C.F.R. § 590.303(d), Calcasieu Pass notes that DOE “has frequently denied motions to intervene in its LNG export proceedings filed after the date established for interventions in the usual context where an application for export authorization remains pending.”³¹ Calcasieu Pass points out, for example, that in the Sabine Pass proceeding in 2011, DOE denied a motion to intervene filed 16 months after the established deadline, “holding that ‘at some point, the opportunity for interested persons to intervene as parties in a proceeding must close.’”³² Calcasieu Pass argues that, unlike these prior proceedings, DOE “has already taken its final action” on Calcasieu Pass’s export application—the issuance of Order No. 4346.³³

Calcasieu Pass also distinguishes Repsol’s Motion from a recent DOE order granting a late motion to intervene in the Alaska LNG Project LLC (Alaska LNG) docket (Docket No. 14-96-LNG).³⁴ Calcasieu Pass notes that, in the Alaska LNG rehearing proceeding, DOE made an exception to its “policy of denying late intervention” based on “the unique circumstances in that case – where the intervenor sought to comment on a new study being developed by DOE for purposes of a further order.”³⁵ Calcasieu Pass asserts that Repsol’s requested intervention is not

³⁰ Calcasieu Pass Answer at 2.

³¹ *Id.* at 3.

³² *Id.* (quoting *Sabine Pass Liquefaction, LLC*, Docket No. 10-111-LNG, Procedural Order on Late Filed Proceedings, at 5 (Mar. 25, 2011)).

³³ *Id.*

³⁴ *Id.* at 4 & n.13 (citing *Alaska LNG Project LLC*, DOE/FECM Order No. 3643-C, Docket No 14-96-LNG, Order Affirming and Amending DOE/FE Order No. 3643-A Following Partial Grant of Rehearing, at 16-23 (Apr. 13, 2023)).

³⁵ *Id.* at 4.

“remotely” like the circumstances of that proceeding, and that “Repsol’s mere status as a customer ... – or even an impatient one – is no basis to disregard well-established DOE policy with respect to late interventions.”³⁶

Turning to Repsol’s arguments concerning the Project, Calcasieu Pass points to its “unique modular, midscale design” in explaining why its commissioning phase is continuing.³⁷ Calcasieu Pass states that, because of “the Project’s unique design, phased construction and commissioning, and on-site power generation,” the Project “requires a lengthy commissioning process before it can be expected to be fully operational and confirmed to be prepared to reliably meet its long-term contractual obligations.”³⁸

Calcasieu Pass further argues that “DOE ... has no regulatory role with respect to the construction and commissioning of the Project facilities,” as FERC carries out this responsibility pursuant to its 2019 order authorizing the siting, construction, and operation of the Calcasieu Pass facilities.³⁹ According to Calcasieu Pass, FERC is aware that the Project has experienced “certain reliability challenges that are delaying its commercial operations,” and FERC “is exercising close, on-going supervision of the construction and commissioning of the Project facilities.”⁴⁰

Next, Calcasieu Pass disputes Repsol’s suggestion that it is not complying with the terms and conditions of Order No. 4346 or making accurate representations to DOE and its staff.⁴¹ Calcasieu Pass maintains that it is currently exporting LNG in accordance with the terms and conditions of Order No. 4346, including the required monthly reports for its exports.⁴²

³⁶ Calcasieu Pass Answer at 4, 6-7.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.* at 5 & nn.17, 18 (citing 2019 FERC Authorization).

⁴⁰ *Id.* at 5 & nn.16, 18 (detailing FERC’s supervision of the Project as required by the 2019 FERC Authorization).

⁴¹ *Id.* at 6.

⁴² Calcasieu Pass Answer at 2.

Finally, Calcasieu Pass argues that there is no legitimate role for a late intervenor like Repsol to play. Calcasieu Pass states that, whatever the role that Repsol envisions for itself, “its participation at this late stage would result in a burden on Calcasieu Pass and could substantially prejudice it.”⁴³ For these reasons, Venture Global urges DOE to deny Repsol’s Motion.⁴⁴

IV. DISCUSSION AND CONCLUSIONS

A. Regulatory Authority to Evaluate Repsol’s Motion Based on Its “Post-Authorization” Interests

Repsol acknowledges that its Motion has far exceeded the limited time prescribed by DOE to seek intervention.⁴⁵ Indeed, Repsol’s Motion is the first time in a LNG export proceeding where a movant has filed a motion to intervene *after* DOE has issued a final order on an export application and the 30-day period to seek rehearing of that order has passed⁴⁶—in this case, more than four years ago for Calcasieu Pass’s Application.⁴⁷ Repsol asserts, however, that its “interest in these proceedings extend[s] only to post-authorization issues.”⁴⁸ Thus, even though Calcasieu Pass’s application to amend Order No. 4346 to increase its non-FTA export volume remains pending before DOE, Repsol is not seeking to file a late motion to intervene in that application proceeding (and, indeed, does not even mention the Amendment Application).⁴⁹ Rather, Repsol states that it is interested “in the implementation of [Order No. 4346] and other applicable requirements that are subject to the ongoing jurisdiction of the DOE.”⁵⁰ Repsol

⁴³ *Id.* at 7; *see also id.* at 2.

⁴⁴ *Id.* at 7.

⁴⁵ Repsol Mot. at 4 (“acknowledg[ing] that its motion to intervene is out of time and is being made after DOE issued the export authorization[.]”); *see also supra* note 16.

⁴⁶ By contrast, in the recent Alaska LNG proceeding discussed by Calcasieu Pass, Cook Inletkeeper and Center for Biological Diversity moved to intervene after DOE had issued a final order under NGA section 3(a), but during an ongoing rehearing proceeding in which DOE had prepared a supplemental environmental impact statement under the National Environmental Policy Act. *See supra* at 6-7.

⁴⁷ No party requested rehearing of Order No. 4346 pursuant to NGA section 19(a), 15 U.S.C. § 717r(a), and 10 C.F.R. § 590.501.

⁴⁸ Repsol Mot. at 5.

⁴⁹ *See supra* at note 10.

⁵⁰ Repsol Mot. at 5; *see also id.* at 4.

further asserts that “its interest in these proceedings is only with respect to export activities at the Project and the material delay in [Calcasieu Pass] declaring that construction and commissioning of the Project have been completed and that commercial operation has been achieved.”⁵¹

DOE’s regulations at 10 C.F.R. Part 590 do not explicitly address the possibility of such “post-authorization” intervention, focused only on an authorization holder’s ongoing export activities. However, 10 C.F.R. § 590.301 states that the procedures set forth in Subpart C—which include interventions and answers (10 C.F.R. § 590.303)—“are applicable to proceedings conducted on all applications or other requested actions filed under this part.”⁵² This language indicates that a proposed intervenor may file a motion to intervene in a proceeding only when there is an “application” pending (or other requested action)—not *after* DOE has taken action on the application by issuing a final order and the time to request rehearing of that order has passed, as is the case here.⁵³

Additionally, under DOE’s regulations, anyone seeking “to become a party to a proceeding shall file a motion to intervene.”⁵⁴ Status as a party is a prerequisite to seeking rehearing, and ultimately judicial review, of a DOE order under the NGA.⁵⁵ Here, however, the

⁵¹ *Id.* at 4; *see also id.* at 4-5 (stating the issues raised by Repsol “are related to whether [Calcasieu Pass] is complying now with the requirements of DOE’s orders and making accurate representations to DOE and its staff regarding the status of the Project and the cargos being exported”).

⁵² 10 C.F.R. § 590.301 (emphasis added).

⁵³ *See* 15 U.S.C. § 717r(a); 10 C.F.R. § 590.501(a).

⁵⁴ 10 C.F.R. § 590.303(b); *see also id.* § 590.102(l) (“*Party* means an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending”); *id.* § 590.102(o) (“*Proceeding* means the process and activity, and any part thereof, instituted by [FECM] either in response to an application, petition, motion or other filing under this part ... by which [FECM] develops and considers the relevant facts, policy and applicable law concerning the ... exportation of natural gas and which may lead to the issuance of an order”).

⁵⁵ *See id.* § 590.501(a) (“An application for rehearing of a final opinion and order ... may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance.”); 15 U.S.C. § 717r(a) (“Any person ... aggrieved by an order issued by [DOE] in a proceeding under this chapter to which such person ... is a party may apply for a rehearing within thirty days after the issuance of such order.”); *id.* § 717r(b) (“Any party to a proceeding under this chapter aggrieved by an order issued by [DOE] in such proceeding may obtain a review of such order in the court of appeals of the United States”).

period to seek rehearing of Order No. 4346 has passed, such that the application proceeding has ended.⁵⁶ Party status—and thus judicial review of Calcasieu Pass’s Order under the NGA—is not available to Repsol. This also weighs against any basis for Repsol to intervene at this stage, as intervenor status would serve no concrete purpose. Nonetheless, we also find below that Repsol has not met the standard for late intervention under 10 C.F.R. § 590.303(d).

B. Repsol Fails to Show Good Cause for Its Late Intervention

1. No Basis for Late Filing

Although Repsol states that there is good cause to grant its Motion, we find that it does not provide sufficient facts to support this assertion. Repsol’s principal reason for its late intervention is that the issues identified in the Motion “were not anticipated at the time that interventions were due.”⁵⁷ Repsol, however, has long been on notice that Calcasieu Pass would eventually commence export activities under Order No. 4346, and that “it [would] be permitted to ... export Commissioning Volumes prior to the commencement of the first commercial exports” from the Project.⁵⁸ In 2018, for example—even before DOE had issued Order No. 4346 and the non-FTA portion of Calcasieu Pass’s applications were still pending—Repsol had entered into a LNG sales and purchase agreement with Calcasieu Pass to buy LNG from the Project for export.⁵⁹ In the Amendment Application filed in December 2021, Calcasieu Pass observed that its “existing long-term authorizations ... allow for the export of a portion of the approved volumes on a short-term or spot basis, including for commissioning purposes.”⁶⁰ We find that Repsol, as a customer of Calcasieu Pass,⁶¹ could have anticipated that it would have an

⁵⁶ See *supra* note 54 (definition of “proceeding”).

⁵⁷ Repsol Mot. at 4.

⁵⁸ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, at 76 (Term and Condition C); see also *id.* at 80 (Ordering Para. B).

⁵⁹ See *supra* at 3.

⁶⁰ Calcasieu Pass Amendment App. at 4 n.8.

⁶¹ See Repsol Mot. at 3.

interest in Calcasieu Pass’s exports from the Project well before April 2023, when it submitted its Motion. The burden was on Repsol to act affirmatively to protect its interests, yet Repsol did not seek to intervene until after Calcasieu Pass had been exporting commissioning cargos for more than a year.⁶²

2. FERC, Not DOE, Determines The Project’s Operational Status

To the extent Repsol means that it could not have “anticipated” that Calcasieu Pass’s Project would have an extended commissioning phase—such that Calcasieu Pass is not currently exporting any commercial cargos of LNG on behalf of Repsol⁶³—this issue likewise does not establish good cause for late intervention in DOE’s dockets.

Although Repsol nominally discusses its interest in Calcasieu Pass’s “export activities” and DOE’s implementation of Calcasieu Pass’s export authorizations,⁶⁴ those statements appear to be secondary to its chief interest: questioning Calcasieu Pass’s “material delay in ... declaring that construction and commissioning of the Project have been completed and that commercial operation has been achieved.”⁶⁵

Under NGA section 3, however, it is FERC, not DOE, that exercises jurisdiction over the construction and operation of the Project under Calcasieu Pass’s 2019 FERC Authorization.⁶⁶ This includes determining when the Project’s commissioning phase is complete and thus when Calcasieu Pass may place the Project into service.⁶⁷ As set forth in Order No. 4346, DOE’s

⁶² See *supra* at 3.

⁶³ See Calcasieu Pass Answer at 4-5.

⁶⁴ Repsol Mot. at 4.

⁶⁵ *Id.*; see also *id.* at 5 (discussing “its interest in the Project achieving completion”).

⁶⁶ The Secretary of Energy has delegated to FERC the authority under NGA section 3(e) to approve or disapprove the construction and operation of natural gas import and export facilities. The most recent delegation is in U.S. Dep’t of Energy Delegation Order No. S1-DEL-FERC-2006, effective May 16, 2006, at 4 (¶ 1.21); see also 2019 FERC Authorization at ¶ 14 n.16.

⁶⁷ See, e.g., 2019 FERC Authorization at 51-52 (Enviro. Condition #12) (“Calcasieu Pass must receive written authorization from the Director of [Office of Energy Projects] before placing the Terminal facilities into service.”); see also *id.* at 52 (Enviro. Condition #14). The 2019 FERC Authorization addresses commissioning activities in numerous environmental conditions, including #102. See *id.*

authority under NGA section 3(a) (as relevant here) is to authorize Calcasieu Pass’s exports from the Project to non-FTA countries and to oversee Calcasieu Pass’s reporting of those exports.

DOE has no basis to second-guess FERC’s determinations concerning the operational status of the Project. Indeed, in Order No. 4346, DOE expressly defers to FERC on Calcasieu Pass’s obligations set forth in the 2019 FERC Authorization, including its commissioning activities.⁶⁸

Further, we note that when Repsol filed a similar motion for late intervention with FERC (shortly before it filed its Motion with DOE), FERC issued notices denying Repsol’s motion for late intervention and its request for rehearing of that denial, respectively.⁶⁹

Calcasieu Pass points out that FERC is currently exercising oversight of its commissioning activities on a *weekly* basis.⁷⁰ Among other ongoing communication with FERC, Calcasieu Pass is required to submit weekly reports to FERC “on the commissioning of the proposed systems that detail the progress toward demonstrating the facilities can safely and reliably operate at or near the design production rate.”⁷¹ Thus, to the extent that Repsol is seeking to intervene at this stage, whether to influence Calcasieu Pass’s export activities or Project status, we emphasize again that DOE has no grounds to question FERC’s well-established process for determining when a facility’s commissioning process has been

⁶⁸ See *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, at 81 (Ordering Para. H) (“Calcasieu Pass shall ensure compliance with all terms and conditions established by FERC ... including the 111 environmental conditions adopted in the FERC Order issued on February 21, 2019.”).

⁶⁹ See *Venture Global Calcasieu Pass, LLC*, FERC Docket No. CP15-550-000, Notice Denying Late Intervention (May 3, 2023) (denying Repsol’s late motion to intervene), *reh’g denied* *Venture Global Calcasieu Pass, LLC*, FERC Docket No. CP15-550-000, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, 184 FERC ¶ 62,003 (July 3, 2023).

⁷⁰ See 2019 FERC Authorization at 65-66 (Enviro. Condition #102); see also *Calcasieu Pass Answer* at 5 n.18.

⁷¹ 2019 FERC Authorization at 65-66 (Enviro. Condition #102); see, e.g., *Venture Global Calcasieu Pass, LLC and TransCameron Pipeline, LLC*, FERC Docket Nos. CP15-550-000 and CP15-551-001; Weekly Commissioning Status Report No. 94, at 1 (Nov. 9, 2023); Federal Energy Regulatory Comm’n, FERC Docket No. CP15-550-000, Virtual Inspection Report, *Venture Global Calcasieu Pass L.L.C.’s Calcasieu Pass LNG Project*, at 2-3 (filed date Sept. 11, 2023) (discussing, in part, FERC’s August 30, 2023 inspection that “reviewed the ongoing commissioning activities” at the Project and stating that FERC staff will continue to monitor the Project’s commissioning “through weekly commissioning phone calls, and in-person inspections as needed”).

completed. Therefore, DOE cannot provide the ultimate relief that Repsol appears to seek involving a change in Calcasieu Pass’s commissioning status.

3. DOE Does Not Intervene in Commercial Export Arrangements

Finally, we note that Repsol’s claims supporting its Motion concern its commercial relationship with Calcasieu Pass and, specifically, Calcasieu Pass’s obligations under the 2018 LNG sales and purchase agreement.⁷² DOE has long taken the position that commercial arrangements—including disagreements with contract terms and performance—are a matter for the commercial parties to resolve.

For example, in a 2018 proceeding, BP Energy Company (BPEC) applied for authorization to export LNG that previously had been imported into the United States from foreign sources.⁷³ BPEC sought to export the previously imported LNG from the Cove Point LNG Terminal, owned by Dominion Energy Cove Point LNG, LP (DECP) (now Cove Point LNG, LP).⁷⁴ BPEC, however, did not have a contract for LNG export services at the Cove Point Terminal. BPEC argued that DECP (an intervenor in the proceeding) was holding BPEC and other potential exporters “captive via its export license” and exercising “exclusive control” over exports from the Cove Point Terminal for its own commercial advantage.⁷⁵

DOE granted BPEC’s application in Order No. 4302. Addressing the parties’ disagreement over BPEC’s desire to export LNG from the Cove Point Terminal, DOE stated that, “[i]nsofar as BPEC is seeking to obtain from DOE/FE an express right to export services at

⁷² See, e.g., Repsol Mot. at 4-5 (citing, for example, “Repsol’s standing as a long-term customer of [Calcasieu Pass] and its interest in the Project achieving completion”).

⁷³ See *BP Energy Co.*, DOE/FE Order No. 4302, Docket No. 18-69-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations, at 2 (Nov. 19, 2018).

⁷⁴ *Id.*

⁷⁵ *Id.* at 10, 13 (citation omitted).

Cove Point Terminal, DOE/FE declines to do so.”⁷⁶ DOE further stated that, “BPEC and DECP ultimately may agree upon contractual terms for such services,” but DOE “takes no position on the commercial arrangements necessary to effectuate the export of this LNG.”⁷⁷ DOE explained that “this approach is consistent with DOE/FE’s long-standing policy” set forth in DOE’s 1984 Policy Guidelines “of promoting market competition and allowing commercial parties to freely negotiate their own arrangements.”⁷⁸

Applying these same considerations here, we find that DOE’s longstanding policy and precedent do not support Repsol’s basis for intervention out of time, as it arises directly from Repsol’s disagreement with Calcasieu Pass’s performance under their 2018 LNG sales and purchase agreement.⁷⁹ DOE has no role in commercial disputes—even ones involving exports of LNG—and DOE proceedings cannot be utilized as a means of applying commercial pressure.

For all of these reasons, we find that Repsol’s alleged claims of interest in DOE’s post-authorization proceeding do not constitute good cause under 10 C.F.R. § 590.303(d).

C. Granting Repsol’s Late-Filed Motion to Intervene Would Adversely Impact Calcasieu Pass and DOE

Under 10 C.F.R. § 590.303(d), DOE must consider the impact of granting Repsol’s Motion. Repsol asserts, without elaboration, that “there will be no prejudice to, or additional burdens upon, the existing parties” if DOE allows its late intervention.⁸⁰

We disagree. As discussed herein, Repsol’s Motion is an unprecedented attempt to “participate” in an authorization holder’s export activities, more than a year after those export

⁷⁶ *Id.* at 13.

⁷⁷ *Id.* at 13-14.

⁷⁸ *Id.* at 14 (quoting New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684, 6685 (Feb. 22, 1984)); *see also id.* (quoting the 1984 Policy Guidelines in observing that “[t]he market, not government, should determine the price and other contract terms of imported [or exported] [natural] gas.”).

⁷⁹ *See* Repsol Mot. at 2-4.

⁸⁰ Repsol Mot. at 5.

activities have begun.⁸¹ If DOE were to grant the Motion, Repsol’s actions would impose a significant burden on both DOE staff and Calcasieu Pass as Repsol sought to participate in some undefined capacity in Calcasieu Pass’s implementation of Order No. 4346—specifically concerning “the status of the Project and the cargos being exported.”⁸² Moreover, Calcasieu Pass’s other customers could file a similar motion to intervene out of time, thus multiplying the adverse impacts associated with Repsol’s requested intervention.⁸³

Even beyond Repsol’s immediate actions in these dockets, the effects of Repsol’s late intervention would be far-reaching. There would be little reason for a potential intervenor to observe the deadline for timely intervention established by DOE in non-FTA export proceedings, as anyone with a tangible interest in an authorization holder’s “exports activities” arguably would have grounds to intervene at any time. This would be extremely disruptive to DOE’s administrative process and is counter to DOE’s regulatory scheme. We therefore find that granting the Motion would cause substantial adverse impacts.

ORDER

For the foregoing reasons, and pursuant to 10 C.F.R. Part 590, including 10 C.F.R. § 590.303(d), Repsol LNG Holding, S.A.’s Motion for Leave to Intervene Out of Time is denied.

Issued in Washington, D.C., on November 14, 2023.

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Bradford Crabtree
Assistant Secretary
Office of Fossil Energy and Carbon Management

⁸¹ See *id.* at 4 (arguing that “its participation in these proceedings is in the public interest”).

⁸² See *id.* at 5.

⁸³ See *supra* note 17.