UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

Commonwealth LNG, LLC	)	**FECM Docket No. 19-134-LNG**

ANSWER OF COMMONWEALTH LNG, LLC IN OPPOSITION TO MOTION TO INTERVENE OUT-OF-TIME OF SIERRA CLUB, CENTER FOR BIOLOGICAL DIVERSITY, NATURAL RESOURCES DEFENSE COUNCIL, AND PUBLIC CITIZEN

I. Introduction.

Pursuant to Section 590.303(e) of the Rules of Practice and Procedure ("Rules") of the Department of Energy ("DOE"),[1] Commonwealth LNG, LLC ("Commonwealth") respectfully offers this answer in opposition ("Answer") to the March 12, 2024 Motion to Intervene Out-of-Time ("Late Intervention") and Answer to Commonwealth's February 26, 2024 request for rehearing[2] ("Rehearing Request") of DOE's January 26, 2024 pause[3] on all pending applications to export domestically produced liquefied natural gas ("LNG") to non-Free Trade Agreement ("non-FTA") nations filed by Sierra Club, Center for Biological Diversity, Natural Resources Defense Council, and Public Citizen (collectively, "Environmental Litigants").[4] Environmental Litigants' Late Intervention makes the unprecedented request that DOE permit Environmental

[1] 10 C.F.R. §§ 590.303(e) & 590.304(f) (2024).

[2] *Commonwealth LNG, LLC,* Request for Rehearing of Commonwealth LNG, LLC, DOE/FECM Docket No. 19-134-LNG (Feb. 26, 2024) ("Rehearing Request").

[3] U.S. Dep't of Energy, DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies, (issued January 26, 2024), available at https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals (hereinafter referred to as the "Pause").

[4] *Commonwealth LNG, LLC,* Sierra Club, Center for Biological Diversity, Natural Resources Defense Council, and Public Citizen Motion for Leave to Intervene Out of Time, Motion for Leave to Answer, and Answer to Request for Rehearing, DOE/FECM Docket No. 19-134-LNG (Mar. 8, 2024) ("Late Intervention").

Litigants to intervene in Commonwealth's non-FTA proceeding[5] in order to respond to the Rehearing Request, despite the deadline for interventions, comments, and protests in Commonwealth's DOE docket having passed well over four years ago.[6] As discussed in greater detail herein, Environmental Litigants' Late Intervention is an affront to DOE's Rules, and is a farce put forth by Environmental Litigants to interfere with Commonwealth's long-pending non-FTA proceeding, to make up for Environmental Litigants' conscious (or otherwise) decision not to intervene in this proceeding during the allotted timeframe. DOE must not permit such a gambit, and should summarily dismiss the Late Intervention and in so doing afford no weight to Environmental Litigants' answer to the Rehearing Request. For the sake of clarity, Commonwealth also offers herein responses to certain misstatements of fact and law presented by Environmental Litigants regarding the Rehearing Request. Finally, if DOE denies Commonwealth's Rehearing Request, Commonwealth respectfully requests that in so doing DOE note that as the Rehearing Request is the (purported) basis for the Late Intervention, denial of the Rehearing Request renders the Late Intervention, and all arguments presented within it, moot.

In support of this Answer, Commonwealth states the following:

[5] *Commonwealth LNG, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Nations, DOE/FECM Docket No. 19-134-LNG (Oct. 16, 2019) ("Application").

[6] *Commonwealth LNG, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Nations, 84 Fed. Reg. 65144 (Nov. 26, 2019) (stating that "Protests, motions to intervene, or notices of intervention… and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 26, 2019.") ("Notice").

II. Background.

Commonwealth provides a complete discussion of the background of its non-FTA proceeding in the Rehearing Request.[7] On March 12, 2024, the Environmental Litigants filed the Late Intervention and an answer to the Rehearing Request, and in so doing "seek party status to address" the Rehearing Request.[8]

III. Opposition to Environmental Litigants' Late Intervention

A. Environmental Litigants' Late Intervention Is A Clear Violation Of DOE's Rules.

Environmental Litigants acknowledge that they "did not initially seek to intervene in opposition to Commonwealth's LNG export application" but "now seek party status" in response to the Rehearing Request.[9]

At the outset, Commonwealth notes the obvious—under DOE's Rules, a request for rehearing does not provide a basis upon which an interested party may seek to intervene in a DOE proceeding. DOE's Rules state plainly that the triggering event for interventions in DOE proceedings is "the filing of an application."[10] By the express terms of DOE's notice of Commonwealth's Application the deadline for protests and/or motions to intervene was 4:30 PM on December 26, 2019.[11] Environmental Litigants are experienced practitioners in DOE proceedings, with Environmental Litigants' members having intervened in dozens of DOE dockets prior to and after Commonwealth's filing of the Application,[12] and even appealing non-

[7] Rehearing Request at Application at 3-5.
[8] Late Intervention at 3.
[9] Late Intervention at 3.
[10] 10 C.F.R. §590.303(d).
[11] *See* Notice, 84 Fed. Reg. 65144.
[12] *Cameron LNG, LLC*, Sierra Club's Motion to Intervene, Protest and Comment, DOE/FE Docket No. 11-162-LNG (April 23, 2012); *Cameron LNG, LLC*, Public Citizen's Motion to Intervene for the Notice of Change in Control, DOE/FE Docket Nos. 11-145-LNG, 11-162-LNG, 14-204-LNG, 15- 36-LNG, 15-67-LNG, 15-90-LNG, 21-50-NG, 18-144-LNG, 18- 145-LNG, 15-53-LNG, 15-96-LNG, 18-162-LNG, 20-23-LNG, 20-43-NG, 21-83-NG, 20-52-LNG, 20-145-NG and 20-153- LNG (April 18, 2022); *CE FLNG*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 12-

FTA authorizations issued by DOE to the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit").[13] Thus, Environmental Litigants were well aware in 2019, that in order to obtain "party status" in Commonwealth's proceeding, they were required to intervene by the December 26, 2019 deadline. Environmental Litigants, however, made a decision—whether intentional or not is irrelevant—not to intervene in this proceeding.[14] As DOE is no doubt aware, DOE's Rules

123-LNG (February 4, 2013); *Cheniere Marketing, LLC*, Sierra Club's Renewed Motion to Reply and Reply Comments, DOE/FE Docket No. 12-97 (January 25, 2013); *Dominion Cove Point LNG, LP*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 11-128-LNG (February 6, 2012); *Delfin LNG, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 13-147 (May 27, 2014); *Freeport LNG*, Public Citizen's Motion to Intervene, DOE/FE Docket Nos. 10-160-LNG; 10-161-LNG, 16-108-LNG, 18-26-LNG, 21-98-LNG (May 27, 2022); *Golden Pass Products LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 12-156-LNG (February 4, 2013); *Lake Charles LNG Export Company, LLC*, Sierra Club et al's Motion to Intervene and Protest, DOE/FE Docket Nos. 13-04-LNG, 16-109-LNG, 11-59-LNG, and 16-110-LNG (August 11, 2022); *Magnolia LNG, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 13-132-LNG (May 23, 2014); *Magnolia LNG, LLC*, Public Citizen's Motion to Intervene and Protest, DOE/FE Docket No. 13-132-LNG (May 4, 2023); *Magnolia LNG, LLC,* Sierra Club et al's Motion to Intervene and Protest, DOE/FE Docket No. 13-132 (May 15, 2023); *NFE Altamira GLNG, S. de R.L. de C.V.*, Sierra Club's Motion to Intervene and Protest of NFE Altamira's FLNG's Request for Export and Re-Export Authorization, DOE/FE Docket No. 22-110-LNG (December 5, 2022); *Port Arthur LNG, LLC*, Public Citizen's Motion to Intervene, DOE/FE Docket No. 15-96-LNG (January 3, 2023); *Sabine Pass LNG, LLC*, Sierra Club's Motion to Intervene Out of Time, Protest, and Comments, DOE/FE Docket No. 10-111-LNG (April 18, 2012); *Sabine Pass Liquefaction, LLC*, Sierra Club's Motion to Intervene, Protest and Comments, DOE/FE Docket Nos. 13-30-LNG and 13-42-LNG (September 23, 2013); *Sabine Pass Liquefaction, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 13-121-LNG (April 14, 2014); *Sabine Pass Liquefaction, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 15-63-LNG (October 26, 2015); *Southern LNG Company, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 12-100-LNG (December 17, 2012); *Venture Global LNG, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 13-69-LNG (June 26, 2014); *Venture Global LNG, LLC*, Public Citizen's Motion to Intervene, DOE/FE Docket Nos. 21-131-LNG, 13-69-LNG, 14-88-LNG, 15-25-LNG (March 11, 2022); *Venture Calcasieu Pass, LLC*, Sierra Club's Motion to Intervene, Protest, and Comments, DOE/FE Docket No. 14-88-LNG (January 9, 2015); *Venture Global Plaquemines LNG, LLC*, Public Citizen's Motion to Intervene and Protest, DOE/FE Docket No. 16-28-LNG (July 11, 2022); *Venture Global Plaquemines LNG, LLC*, Sierra Club et al's Motion to Intervene and Protest, DOE/FE Docket No. 16-28-LNG (July 11, 2022); *Venture Global CP2 LNG, LLC*, Natural Resources Defense Council Motion to Intervene and Protest, DOE/FE Docket No. 21-131-LNG (March 11, 2022); *Venture Global CP2 LNG, LLC*, Sierra Club's Motion to Intervene and Protest of Natural Resources Defense Council, DOE/FE Docket No. 21-131-LNG (March 11, 2022).

[13] *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189 (D.C. Cir. 2017) ("*Freeport*").

[14] *See* Late Intervention at 3 (where Environmental Litigants note that they "did not initially seek to intervene in opposition" to the Application).

do not even permit *answers* to requests for rehearing, let alone a new intervention.[15] Accordingly, given that the Late Intervention is patently inconsistent with DOE's Rules, DOE should dismiss the Late Intervention summarily, along with all arguments included, and Commonwealth respectfully requests DOE do so without delay to remove all uncertainty regarding Environmental Litigants' party status in this proceeding.

B. Environmental Litigants Have Demonstrated Neither Good Cause Nor A Lack Of Adverse Impacts To Support Their Late Intervention.

Not content with flouting DOE's Rules by seeking to intervene in a proceeding over four years after the deadline to do so on the impermissible basis of responding to a request for rehearing, Environmental Litigants strain credulity in asserting that there is good cause to permit them to intervene so long after the intervention deadline, and that in so doing, Commonwealth will not be adversely impacted. Neither point holds water.

1. There Is No Good Cause To Permit Environmental Litigants To Intervene Over Four Years After The Deadline Passed.

Environmental Litigants assert that good cause exists to permit the Late Intervention "because they acted promptly in response to Commonwealth's improper request for rehearing," even though they "did not initially seek to intervene in opposition to Commonwealth's LNG export application."[16] As Commonwealth explains above, however, DOE's Rules only permit interventions in response to applications.[17] Environmental Litigants fail entirely to address this fact, or explain how acting to intervene "promptly" in response to a request for rehearing could possibly demonstrate good cause to intervene in the underlying proceeding, particularly where DOE does not permit parties to intervene in responses to requests for rehearing, and

[15] 10 C.F.R. 590.505 ("No answers to applications for rehearing shall be entertained.")
[16] Late Intervention at 2.
[17] 10 C.F.R. §590.303(d).

Environmental Litigants admit that they chose not to intervene in this proceeding by the December 2019 deadline.[18]

DOE must see the Late Intervention for what it is—a ploy by Environmental Litigants to make up for their decision not to intervene in this proceeding for the 4.5 years it has been pending with DOE. As DOE is fully aware, the Environmental Litigants are serial litigants and experienced participants in DOE proceedings, and have timely intervened in multiple proceedings and sought appeal of numerous DOE orders. Put simply, Environmental Litigants knew what was needed to be done to obtain party status in this proceeding and chose not to undertake those steps, either intentionally or inadvertently. Whatever the reason, their failure to abide by DOE's regulations and avail themselves of the administrative process that is clearly laid out and of which they are clearly aware, cannot now be rewarded by granting them legal party status more than four years late. There can be no possible good cause to justify their failure to intervene on a timely basis.

2. Granting The Late Intervention Would Substantially Prejudice Commonwealth And DOE.

Environmental Litigants then claim that allowing them to intervene at this point "will not negatively impact the proceeding."[19] In support, Environmental Litigants note that they will "accept the record as it stands to date" and that Commonwealth's Application is already contested, by a single party.[20]

Environmental Litigants seek to cloud the true purpose of their intervention by insisting that their interest is limited to responding to the Rehearing Request; however, in reality Environmental Litigants seek to obtain "party status" in this proceeding and the rights attendant

[18] Late Intervention at 2.
[19] Late Intervention at 3.
[20] *Id.*

thereto.[21] Under the NGA, parties to a proceeding may seek rehearing of any order issued by DOE in that proceeding, and seek appeal of such order in federal appellate court.[22] Members of Environmental Litigants have appealed multiple orders of DOE,[23] and despite Environmental Litigants' assurance that their intervention is only with respect to Commonwealth's Rehearing Request, the Late Intervention makes clear that Environmental Litigants are opposed to Commonwealth's Project and LNG exports in general.[24] As DOE is aware, the NGA does not delineate the rights of intervenors in a DOE proceeding based on their purported "interest" in that proceeding – as an intervenor, Environmental Litigants would be fully within their rights under the NGA to seek rehearing of, and appeal, any future non-FTA authorization issued by DOE in this proceeding, despite having slept on their administrative rights and obligations. DOE must reject such flagrant disregard of administrative procedures.

Such a scenario would have significant adverse impacts on both Commonwealth and DOE. Environmental Litigants assure DOE that they "are willing to accept the record as it stands to date"—yet that is clearly false, as Environmental Litigants submitted a 36-page filing seeking to rebut Commonwealth's Rehearing Request, injecting new information into the proceeding, and forcing Commonwealth to draft this response. Given that Environmental Litigants are seasoned litigants in opposing DOE non-FTA export authorizations, permitting Environmental Litigants to intervene in this proceeding four years after the deadline to do so

[21] *Id.*

[22] 15 U.S.C. 717r(a)(b).

[23] *See, i.e. Freeport*, 867 F.3d 189 (D.C. Cir. 2017); *Sierra Club v. U.S. Dep't of Energy*, No. 16-1426 (D.C. Cir. 2016) (appealing DOE non-FTA authorization for Sabine Pass LNG terminal); *Sierra Club v. U.S. Dep't of Energy*, No. 22-1217 (D.C. Cir. 2022) (appealing amendment to DOE non-FTA authorization for Magnolia LNG terminal to increase export volumes); *Center for Biological Diversity v. U.S. Dep't of Energy*, No. 23-1214 (D.C. Cir. 2023) (appealing DOE non-FTA authorization for Alaska LNG project).

[24] Late Intervention at 5 ("Proposals, such as this one, that encourage long-term use of carbon-intensive fossil fuels will increase and prolong greenhouse gas emissions, increasing the severity of climate change and thus of these harms.").

would invite requests for rehearing and federal appeal of any non-FTA authorization issued in this proceeding, despite their prior decision not to participate in this proceeding.

DOE also must take into consideration the reverberating effects granting the Late Intervention will have in other non-FTA proceedings. By permitting Environmental Litigants to intervene in response to a request for rehearing, DOE would be inviting such interventions in all future non-FTA proceedings, requiring DOE to then respond to new arguments raised in response to requests for rehearing, and potentially defend its orders on appeal from these parties that intervened late. From a practical standpoint, this would be an untenable position for DOE. DOE can avoid such pitfalls by denying the Late Intervention for the reasons discussed herein.

IV. Answer[25]

A. The Pause Constitutes A Stay Of Commonwealth's Application.

As Commonwealth explains in its Rehearing Request, despite how it was (or was not) presented, the Pause amounts to a stay of Commonwealth's Application, that is subject to judicial review.[26]

In response to this argument, Environmental Litigants make a single point, curiously stating that the Pause "neither 'suspends' nor 'halts' the agency's evaluation of Commonwealth's application."[27] By DOE's own admission, however, this is precisely the purpose of the Pause. In announcing the Pause, DOE stated clearly that "DOE will pause determinations on pending

[25] Commonwealth offers certain responses to arguments raised by Environmental Litigants in response to Commonwealth's Rehearing Request. In its Late Intervention, Environmental Litigants also included responses to arguments raised by the American Petroleum Institute in its own request for rehearing of the Pause. Commonwealth does not address any of these issues. Commonwealth's Answer is limited to responding to those arguments of Environmental Litigants that relate to Commonwealth's Rehearing Request.

[26] Rehearing Request at 7-11.

[27] Late Intervention at 14.

applications for export of LNG to non-Free Trade Agreement countries."[28] In a supplemental issuance "Unpacking the Misconceptions Surrounding the DOE's LNG Update,"[29] DOE again stated that it was "pausing review of pending export applications."[30] Then a third time, DOE Deputy Secretary David Turk, before the full Senate Committee on Environment and Natural Resources, testified that it was pausing non-FTA export applications.[31] It is unclear how Environmental Litigants contend that "DOE's analysis of Commonwealth's application is therefore still ongoing" when DOE itself stated expressly on multiple occasions that it was "pausing *review* of pending export applications."[32]

B. Environmental Litigants Misstate the Construction of Section 3 of the Natural Gas Act.

Environmental Litigants dispute Commonwealth's contention, supported by the express language of Section 3 of the Natural Gas Act ("NGA") and ample D.C. Circuit precedent, that Congress has determined exports of LNG to non-FTA nations to be in the public interest, and that DOE "shall" approve an application for such exports, unless it can be shown to DOE that such exports are inconsistent with the public interest.[33] Environmental Litigants contend that "Congress has determined that LNG exports provide some public benefits"[34] but "*not*" that exports of LNG to non-FTA nations are in the public interest.[35] Environmental Litigants further claim that

[28] *See* Pause, available at https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals.

[29] U.S. Dep't of Energy, Unpacking the Misconceptions Surrounding the DOE's LNG Update, (issued February 8, 2024), available at https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update ("DOE Pause Supplement").

[30] *Id.*

[31] Testimony of David Turk, Deputy Secretary U.S. Department of Energy Before the Committee on Energy and Natural Resources, United States Senate, Regarding Liquefied Natural Gas Applications and Exports (Feb. 8, 2024), *available at* https://www.energy.senate.gov/services/files/12C4B00D-BFF3-4D11-9CD7-E462B156BF61.

[32] DOE Pause Supplement (emphasis added).

[33] Rehearing Request at 9.

[34] Late Intervention at 18 (emphasis added).

[35] *Id.* (emphasis in original).

NGA Section 3's presumption that non-FTA exports are in the public interest is purely an interpretation of DOE.[36]

Environmental Litigants' arguments fail on numerous fronts. First, it is critical to reiterate to Environmental Litigants, and DOE, that the presumption that non-FTA exports are in the public interest is not merely DOE's interpretation, as Environmental Litigants have stated.[37] Long-standing D.C. Circuit precedent holds that "section 3 sets out a general presumption favoring such authorization, by language which requires approval of an application unless there is an express finding that the proposed activity would not be consistent with the public interest."[38] Thus, precedent clearly instructs that *Congress*, not DOE, set forth the presumption that exports to non-FTA nations are in the public interest. This is not, as Environmental Litigants suggest, an interpretation of DOE, or a finding that LNG exports to non-FTA nations provide "some public benefits."[39]

Had Congress sought to provide DOE with more discretion in determining whether exports of LNG to non-FTA nations were in the public interest, it would have. One need only compare the differences in Sections 3 and 7 of the NGA to understand this point. Section 3, which is called "Mandatory Authorization Order," provides that:

> The Commission 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.[40]

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[36] *Id*. at 17.

[37] *Id.*

[38] *W. Va. Pub. Servs. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847,856 (D.C. Cir. 1982) ("*West Virginia*"); *see also Freeport*, 867 F.3d at 203; *Center for Biological Diversity v. FERC*, 67 F.4th 1176, 1188 (D.C. Cir. 2023); *Earth Reports v. FERC*, 828 F.3d 949, 953 (D.C. Cir. 2016).

[39] Late Intervention at 17-18.

[40] 15 U.S.C. § 717b(a).

Congress clearly "set[] out a general presumption"[41] favoring exports and *requiring* approval of such applications unless this presumption is overcome. In contrast, Section 7 provides that:

> a certificate shall be issued to any qualified applicant therefor, … *if it is found* that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and *that the proposed service, sale, operation, construction, extension, or acquisition*, to the extent authorized by the certificate, *is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied*.[42]

Thus in the context of interstate natural gas pipelines, Congress charged the Federal Energy Regulatory Commission ("FERC") with making an affirmative determination of the public convenience and necessity, and in so doing charged FERC with "evaluat[ing] all factors bearing on the public interest."[43] DOE has consistently acknowledged Section 3's statutory presumption, explaining that it "must grant" a non-FTA export application unless *opponents* of the exports can overcome the statutory presumption set forth by Congress.[44]

Finally, Environmental Litigants seek to sidestep this issue by asserting that, regardless of Congress determining that exports of LNG to non-FTA nations are in the public interest, Section 16 of the NGA[45] provides DOE blanket discretion in how to "evaluate LNG exports."[46]

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[41] *West Virginia*, 681 F.2d at 856.

[42] 15 U.S.C. § 717f(e) (emphasis added).

[43] *Atl. Ref. Co. v. Pub. Serv. Comm'n of NY*, 360 U.S. 378, 391 (1959).

[44] *Cameron LNG, LLC*, DOE/FE Order No. 3391 at 6 (Feb. 11, 2014); *Cheniere Marketing, LLC*, Order DOE/FE Order No. 3638 at 12 (May 12, 2015); *Delfin LNG, LLC*, DOE/FE Order No. 4028 at 11 (June 1, 2017); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4150 at 7 (Jan. 30, 2018).

[45] 15 U.S.C. § 717 (providing, in pertinent part that "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter.")

[46] Late Intervention at 18, *citing* 15 U.S.C. § 717o.

However, contrary to Environmental Litigants' suggestion, the broad discretion provided to DOE in Section 16 is limited to "all acts… as it may find necessary or appropriate ***to carry out the provisions of this chapter***."[47] This authority makes no mention of Section 16 supplanting other provisions of the NGA or giving DOE the authority to act contrary to other provisions in the NGA. The D.C. Circuit has stated expressly that Section 16 of the NGA "is not an enlargement of the specific authority granted" under the NGA.[48] Further, DOE cannot use Section 16 to exercise authority that the NGA does not expressly grant to DOE or that contradicts the mandates of other sections of the NGA.[49] As previously discussed, NGA Section 3 sets forth a presumption that non-FTA exports are in the public interest and compels DOE to grant the non-FTA export authorization unless opponents can overcome this statutory presumption. NGA Section 16, therefore, does not give DOE the authority to act contrary to the statutory presumption in favor of granting such applications as laid out in NGA Section 3. Contrary to Environmental Litigants' assertion, DOE cannot seek to evade NGA Section 3's presumption that non-FTA exports are in the public interest under the guise of exercising its authority under NGA Section 16.

[47] 15 U.S.C. § 717o (emphasis added).

[48] *Murphy Oil Corp. v. FPC*, 431 F.2d 805, 810 (D.C. Cir. 1970); *See also Consol. Gas Transmission Corp. v. FERC,* 771 F.2d 1536, 1551 (D.C. Cir. 1972) (explaining that Section 16 is not an unrestricted grant of authority, but rather that it "merely augment[s] existing powers conferred upon the agency by Congress, [but] do[es] not confer independent authority to act.") (citing *New England Power Co. v. FPC*, 467 F.2d 425, 430-31 (D.C. Cir. 1972), *aff'd* 415 U.S. 345 (1974)); *Mobil Oil Corp. v. Fed. Power Comm'n*, 483 F.2d 1238, 1254-57 (D.C. Cir. 1973) (explaining that while the provisions must be read in a broad and expansive manner, they can only be implemented consistently with the provisions and purposes of the legislation, provided the agency's action conforms with the purpose and policies of Congress and does not contravene any terms of the act.).

[49] *Fed. Power Comm'n v. Texaco Inc.*, 417 U.S. 380, 394-95 (1974) (explaining that Section 16 "does not authorize the Commission to set at naught an explicit provision of the Act" and that precedent does not suggest or hold that Section 16 permits the Commission to ignore the specific mandates of other sections of the Act).

C. The Pause Is Fundamentally Unfair As Applied To Commonwealth.

Environmental Litigants look to other proceedings, finding inklings of language provided by DOE in separate orders to piece together a narrative that the Pause is not unfair to Commonwealth, as Environmental Litigants contend DOE has been "expressing doubts about the continuing validity of older analyses."[50]

As to the validity of these "older analyses,"[51] Commonwealth notes that it filed its Application on October 16, 2019—*less than one month* after DOE issued its 2019 Update to its Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States, and just over one year after DOE issued its 2018 LNG Export Study assessing the economic impacts of LNG exports. Moreover, DOE never indicated to Commonwealth that the agency had concerns regarding these studies in reviewing Commonwealth's Application and DOE has not explained how these concerns prevented DOE from acting on Commonwealth's Application in the now more than 16 months since FERC authorized construction and operation of Commonwealth's Project.

V. If DOE Rejects The Rehearing Request It Must Also Reject The Late Intervention.

Finally, if DOE were to reject the Rehearing Request, either via order and opinion or operation of law,[52] DOE must then state that the Late Intervention is denied, and that it will not take into consideration any of the arguments included in it. Despite Environmental Litigants' designs otherwise, their stated purpose for intervening in this proceeding is in response to the Rehearing Request. If DOE denies the Rehearing Request, consistent with the Environmental Litigants' own statements in its Late Intervention it would have no basis for intervening in this

[50] Late Intervention at 22-23.

[51] *Id.*

[52] 15 U.S.C. § 717r (providing that if DOE does not respond to a request for rehearing within 30 days of a filing, it is deemed denied by operation of law).

proceeding. Thus, in the event DOE rejects the Rehearing Request, DOE also must affirmatively state that the Late Intervention is dismissed as moot, as well as all arguments included therein, in order to remove any ambiguity as to the Environmental Litigants lack of party status in this proceeding.

VI. Conclusion

WHEREFORE, for the foregoing reasons, DOE should deny Environmental Litigants' Late Intervention and reject their answer to the Rehearing Request, and otherwise dismiss the Late Intervention as moot if DOE denies the Rehearing Request.

Respectfully submitted,

/s/ David L. Wochner

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Dated: March 27, 2024

CERTIFICATE OF SERVICE

I certify that I have this 27th day of March, 2024, serviced copies of the foregoing document filed with DOE/FECM on the designated representatives of all of the parties to this proceeding, in accordance with 10 C.F.R. § 590.107(a).

/s/ Timothy J. Furdyna
Timothy J. Furdyna
Counsel for Commonwealth LNG, LLC

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

In the Matter of	**)**	
	)	**FECM Docket No. 19-134-LNG**
Commonwealth LNG, LLC	**)**	

VERIFICATION

I, Farhad Arabi, declare that I am President and CEO for Commonwealth LNG, LLC, and am duly authorized to make this Verification; that I have read the foregoing instrument and that the facts therein stated are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Houston, Texas on March 27, 2024.

/s/
Farhad Arabi
President and CEO
Commonwealth LNG, LLC