

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 AND PROTEST OF NATURAL RESOURCES DEFENSE COUNCIL

I. Introduction

Pursuant to Sections 590.303(e) and 590.304(f) 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 to the December 24, 2024 Motion for Leave to Intervene out of Time and Protest (“Late Intervention” or as applicable, “Protest”) filed in the above-captioned proceeding by Natural Resources Defense Council (“NRDC”).² NRDC’s Late Intervention is yet another in a string of such recent filings by project opponents³ seeking to correct their failure to timely intervene in this proceeding regardless of the fact that the deadline for interventions passed over five years ago, to which Commonwealth already has responded.⁴ To justify its Late Intervention, NRDC distorts DOE’s Rules and precedent to allege that the availability of “new information” alone – with no other showing – can somehow substantiate good

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

² *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, Motion for Leave to Intervene and Protest Out of Time of NRDC (Dec. 24, 2024) (“Late Intervention” or as applicable, “Protest”).

³ *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, Motion to Intervene and Protest Out of Time of Sierra Club (Nov. 22, 2024) (“Sierra Club Late Intervention”); *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, Motion for Leave to Intervene and Protest Out of Time of FISH, For a Better Bayou, Healthy Gulf, and the Vessel Project of Louisiana (Dec. 3, 2024) (“FISH et. al. Late Intervention”).

⁴ *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, Answer of Commonwealth LNG, LLC in Opposition to Motion to Intervene Out-of-Time and Protest of Sierra Club (Dec. 9, 2024) (“Answer to Sierra Club”); *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, Answer of Commonwealth LNG, LLC in Opposition to Motion to Intervene Out-of-Time and Protest of Fisherman Involved in Sustaining our Heritage (“FISH”), For a Better Bayou, Healthy Gulf, and the Vessel Project of Louisiana (Dec. 18, 2024) (“Answer to FISH et al.”).

cause to intervene and protest⁵ in a proceeding *five years* since the deadline to timely do so, and that granting such a motion would not adversely impact this proceeding, DOE, or Commonwealth. As discussed in greater detail below, this is simply not the case, and DOE Rules and precedent clearly support summary rejection of NRDC’s Late Intervention and Protest. Accordingly, Commonwealth respectfully requests DOE/FECM to reject NRDC’s Late Intervention and Protest and dismiss all arguments included therein.

In support of this answer, Commonwealth states the following:

II. Background

Commonwealth provides a complete discussion of the background of its non-FTA application (“Application”) proceeding in its recent Answer to Sierra Club’s Late Intervention.⁶

III. Answer

A. NRDC Has Not Demonstrated Good Cause to Intervene Five Years After the Deadline.

NRDC relies on a single factor in asserting that it has good cause to intervene so far past the deadline: that DOE “has recognized that late intervention should be granted following the addition of new information.”⁷

As an initial matter, Commonwealth notes the obvious: there are *many* factors that DOE takes into consideration when determining whether a movant has demonstrated good cause to intervene after the deadline, most importantly why the movant could not timely intervene in the first place.⁸ NRDC never attempts to address this factor, or why it could not or did not seek to

⁵ Similar to *Sierra Club and Fish et al.*, NRDC seeks to protest Commonwealth’s application after the deadline, but does not attempt to demonstrate good cause for its failure to timely protest as required by DOE’s Rules at 10 C.F.R. § 590.304 (e). *See* Answer to Sierra Club at 16-17.

⁶ Answer to Sierra Club at 2-4.

⁷ Late Intervention at 3.

⁸ Answer to Sierra Club at 9; *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FECM Order No. 4365-B, Docket No. 18-145-LNG, Order Amending Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the

intervene in this proceeding in the five years since Commonwealth filed its application. Because NRDC has not satisfied this prerequisite, DOE need not consider any other factors presented by NRDC asserting that it has good cause to intervene out of time.

To the extent that DOE wishes to entertain NRDC’s argument that new information in this proceeding constitutes good cause to permit late intervention, none of NRDC’s arguments hold water. In support of its Late Intervention, NRDC relies on a DOE order in the Alaska LNG proceeding, wherein DOE permitted late intervention following its publication of a draft supplemental environmental impact statement (“SEIS”) that would “assess the impacts of exporting Alaskan-sourced LNG by vessel to Asia and other markets” for the first time.⁹ Commonwealth has already explained that *Alaska LNG* provides no support for permitting late intervention in this proceeding.¹⁰ In *Alaska LNG*, DOE permitted late interventions submitted during the comment period for DOE’s own draft SEIS for the Alaska LNG Project, in the “spirit of” Federal Energy Regulatory Commission (“FERC”) regulations permitting such intervention.¹¹ By DOE’s own admission, however, the facts that led to the grant of late intervention in *Alaska LNG* were “unique” and are not applicable to this situation, where DOE is not preparing its own SEIS.

Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries, at 50-53 (Dec. 20, 2022) (rejecting late intervention of Sierra Club after finding Sierra Club failed to demonstrate good cause “for failing to file the motion and protest within the time prescribed” as required by DOE regulations); *Vista Pacifico LNG, S.A.P.I. de C.V.*, DOE/FECM Order No. 4929, Docket No. 20-153-LNG, Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Nations, at 50-53 (Dec. 20, 2022) (same).

⁹ *Alaska LNG Project LLC*, DOE/FECM Order No. 3643-C, Dkt. No. 14-96-LNG, at 18 (Apr. 13, 2023) (“*Alaska LNG*”).

¹⁰ *Id.* at 10-11.

¹¹ *Alaska LNG* at 18-19

NRDC contends that DOE’s issuance of its “2024 LNG Export Study: Energy, Economic, and Environmental Assessment of U.S. LNG Exports”¹² presents the type of new information that should permit them to intervene at this late stage. Unlike in *Alaska LNG*, however, where DOE for the first time prepared and issued its own draft SEIS to assess the impacts of exports from the Alaska LNG Project, there is nothing “unique” about DOE’s preparation and issuance of the 2024 LNG Export Study. The mere publication of the 2024 LNG Export Study does not manufacture good cause for late intervention in the Commonwealth docket or any active LNG export proceeding before DOE. DOE has regularly published updates to its LNG export studies, having done so in 2014, 2018, and 2019 previously.¹³ Each time DOE has issued such a study, it has published the study in the dockets of active non-FTA export application proceedings and sought comment.¹⁴ These studies have never been recognized as a basis of good cause for late intervention.

To that end, Commonwealth notes that in issuing public notice of the 2024 LNG Export Study in the *Federal Register*, DOE explicitly does not call for interventions in response to the study.¹⁵ In fact, the notice states that:

. . . the submission of comments in response to this Notice will not make commenters parties to any of the affected dockets. Persons with an interest in the outcome of one or more of the affected dockets have been given an opportunity to intervene in or protest

¹² DOE, 2024 LNG Export Study: Energy, Economic, and Environmental Assessment of U.S. LNG Exports, 89 Fed. Reg. 245 (Dec. 20, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-12-20/pdf/2024-30370.pdf> (“2024 LNG Export Study”).

¹³ *Energy, Economic, and Environmental Assessment of U.S. LNG Export*, DOE/FECM (Dec. 17, 2024); Federal Register Vol. 79, No. 107 at 32260 (Jun. 4, 2014); Federal Register Vol. 84, No. 182 at 49278 (Sep. 19, 2019).

¹⁴ Federal Register Vol. 84, No. 182 at 49278-9 (Sep. 19, 2019).

¹⁵ Notice of Availability of the 2024 LNG Export Study and Request for Comments, 89 Fed. Reg. at 104132.

those matters by complying with the procedures established in the notice of application issued in each respective docket and published in the Federal Register.¹⁶

DOE, then, clearly contemplated and has rejected the notion that the 2024 LNG Export Study could be the basis for intervening in a proceeding (whether late or otherwise).

NRDC further argues that FERC's preparation of an SEIS in response to the U.S. Court of Appeals for the D.C. Circuit's remand of Commonwealth's authorization¹⁷ should also persuade DOE to grant late intervention, again relying on *Alaska LNG*.¹⁸ As Commonwealth explains above and has explained previously, *Alaska LNG* provides no support for granting late intervention in this proceeding, as the sole trigger for DOE's grant of late intervention in *Alaska LNG*—DOE's preparation of an SEIS—is absent from this proceeding.¹⁹ Nor does NRDC provide any other support for its notion that a separate independent federal agency's preparation of an SEIS can somehow establish good cause for a party to intervene in a proceeding at a different agency, five years after the deadline to do so. Of course, NRDC cannot provide any rational justification for such an extreme, legally infirm course of action, as no such justification exists.

B. Granting Late Intervention Would Prejudice DOE and Commonwealth.

NRDC repeats false arguments made by other parties in alleging that permitting late intervention nearly five years past the intervention deadline would not prejudice either DOE or Commonwealth.²⁰ As Commonwealth has explained, such an action would substantially prejudice both DOE and Commonwealth and be very disruptive to this proceeding overall.²¹ NRDC's insistence that no prejudice to DOE or Commonwealth would arise given that it is willing to accept

¹⁶ *Id.* at 104136.

¹⁷ *Healthy Gulf v. FERC*, 107 F.4th 1033, 1047 (D.C. Cir. 2024).

¹⁸ Late Intervention at 4-5.

¹⁹ Answer to Sierra Club at 10-11.

²⁰ Sierra Club Late Intervention at 5-9; FISH et. al. Late Intervention at 5-6.

²¹ Answer to Sierra Club at 12-16.

the record in this proceeding has no merit.²² Prejudice remains even if the record is accepted by NRDC, given that NRDC essentially seeks the ability to appeal any authorization issued by DOE despite its failure to intervene in this proceeding for the 60 months it has been pending with DOE,²³ and during which time NRDC intervened in Commonwealth's FERC proceeding.²⁴ Moreover, NRDC's statement is factually incorrect, as NRDC's Late Intervention and Protest attempts to supplement the record with new facts and arguments opposing Commonwealth's project.

IV. Conclusion

WHEREFORE, for the foregoing reasons, DOE should deny NRDC's Late Intervention and Protest and all arguments contained therein, and otherwise reject NRDC's arguments raised in opposition to Commonwealth's Application.

Respectfully submitted,

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Dated: January 8, 2025

²² See Sierra Club Late Intervention at 5-6.

²³ Answer to Sierra Club at 14.

²⁴ *Commonwealth LNG, LLC*, FERC Docket Nos. CP19-502-000 and CP19-502-001, Motion to Intervene and Comments on the Draft Environmental Impact Statement of NRDC (Accession no. 20220523-5172) (May 23, 2022).

CERTIFICATE OF SERVICE

I certify that I have this 8th day of January 2025, 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
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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 Ahrabi, 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 January 8, 2025.

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