

RECEIVED

By Docket Room at 1:39 pm, Jun 21, 2022

Lord^{LLP}

Attorneys & Counselors

June 21, 2022

VIA ELECTRONIC DELIVERY

Larine A. Moore
U.S. Department of Energy
FE-34
P.O. Box 44375
1000 Independence Avenue, S.W.
Washington, D.C. 20026-4375

RE: Lake Charles Exports, LLC
Docket Nos. 11-59-LNG and 16-110-LNG
Application for Amendment to Long-Term Authorization to Export Liquefied Natural
Gas to Non-Free Trade Agreement Countries

Dear Ms. Moore:

Please find enclosed for filing on behalf of Lake Charles Exports, LLC ("LCE") an application to amend existing long-term, multi-contract authorizations to export domestically-produced liquefied natural gas issued in Docket Nos. 11-59-LNG and 16-110-LNG.

LCE is submitting an electronic payment of \$50.00 for the filing fee pursuant to 10 C.F.R. § 590.207. Please contact the undersigned at (202) 220-6965 if you have any questions regarding this filing.

Respectfully submitted,

/s/ Jennifer Brough

Jennifer Brough

Counsel to Lake Charles Exports, LLC

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

Lake Charles Exports, LLC

)
)
)

**Docket Nos. 11-59-LNG
16-110-LNG**

**APPLICATION OF LAKE CHARLES EXPORTS, LLC FOR
AMENDMENT TO LONG-TERM AUTHORIZATIONS TO EXPORT LIQUEFIED
NATURAL GAS TO NON-FREE TRADE AGREEMENT COUNTRIES**

Michael T. Langston
Vice President & Chief Regulatory Officer
Lake Charles Exports, LLC
1300 Main Street
Houston, TX 77002
michael.langston@energytransfer.com

Thomas E. Knight
Jennifer Brough
Locke Lord LLP
701 8th Street, NW
Suite 500
Washington, DC 20001
(202) 220-6922
tknight@lockelord.com
jbrough@lockelord.com

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

Lake Charles Exports, LLC

)
)
)

**Docket Nos. 11-59-LNG
16-110-LNG**

**APPLICATION OF LAKE CHARLES EXPORTS, LLC FOR
AMENDMENT TO LONG-TERM AUTHORIZATIONS TO EXPORT LIQUEFIED
NATURAL GAS TO NON-FREE TRADE AGREEMENT COUNTRIES**

Pursuant to Section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. § 717b, and Part 590 of the regulations of the Department of Energy (“DOE”), 10 C.F.R. § 590, Lake Charles Exports, LLC (“LCE”) submits this application to the DOE Office of Fossil Energy (“DOE/FE”) for authorization to amend its existing authorizations to export liquefied natural gas (“LNG”) from the terminal in Lake Charles, Louisiana (“Lake Charles Terminal”).¹

I. BACKGROUND

LCE holds the following export authorizations from DOE/FE with respect to exports from the Lake Charles Terminal:²

<u>Order No. and Date Issued</u>	<u>Amendment and Date Issued</u>	<u>FTA/Non-FTA</u>	<u>Export Volume Authorized³</u>
2987 (July 22, 2011)	2987-A (October 6, 2020)	FTA	730 Bcf/year
3324 (August 7, 2013)	3324-A (July 29, 2016) 3324-B (October 6, 2020)	Non-FTA	730 Bcf/year

¹ The Federal Energy Regulatory Commission (“FERC”) originally certificated the Lake Charles Terminal in 1977, with the original construction completed in July 1981. *Trunkline LNG Co., et al.*, 58 FPC 726 (Opinion No. 796), *order on reh’g*, 58 FPC 2935 (1977) (Opinion No. 796-A).

² Lake Charles LNG Export Company, LLC holds separate, non-additive, authorizations to export LNG from the Lake Charles Terminal and is filing concurrently herewith to similarly amend its export authorizations. In addition, on May 24, 2022, LCE filed an application with DOE/FE to extend the export terms of its authorizations to December 31, 2050.

³ Total Approved FTA Volumes: 851 Bcf/year. Total Approved Non-FTA Volumes: 851 Bcf/year. The approved export volumes are non-additive with those approved for Lake Charles LNG Export Company, LLC in Order Nos. 3252, 3868, and 4010.

4011 (June 29, 2017)	4011-A (October 6, 2020)	FTA and Non-FTA	121 Bcf/year
----------------------	--------------------------	-----------------	--------------

FERC approved construction of the Lake Charles Terminal liquefaction facilities (“Liquefaction Project”) in 2015 and set December 16, 2020 as the initial deadline for construction.⁴ FERC subsequently extended the construction deadline for the Liquefaction Project to December 16, 2025.⁵ On October 6, 2020, DOE/FE issued an order aligning the commencement of operations deadline with the December 16, 2025 deadline established by FERC.⁶ On May 6, 2022, FERC granted a three-year extension of time, to December 16, 2028, to construct the Liquefaction Project and make it available for service.⁷

In light of FERC’s extension, LCE respectfully requests that DOE/FE issue an order amending the existing Non-FTA export authorization deadlines to December 16, 2028. This amendment application requires no new construction or modification of authorized facilities nor does it request authority to export additional quantities of LNG. In support of this amendment application, LCE respectfully states the following:

II. 10 C.F.R. § 590.202(a)

1. Legal Name Of Applicant

The exact legal name of the applicant is Lake Charles Exports, LLC. LCE is a limited liability company formed under the laws of Delaware with its principal place of business at 1300 Main Street, Houston, Texas 77002.

⁴ See *Trunkline Gas Company, LLC, et al.*, 153 FERC ¶ 61,300 at Ordering Paragraph (L) (2015), *order denying reh’g*, 155 FERC ¶ 61,328 (2016).

⁵ *Lake Charles Exports, LLC, et al.*, Letter Order, Docket Nos. CP14-119-000, et al. (issued Dec. 5, 2019).

⁶ *Lake Charles Exports, LLC*, DOE/FE Order Nos. 2987-A, 3324-B-A, 4011-A (Oct. 6, 2020) (“DOE/FE Extension Order”).

⁷ *Lake Charles LNG Company, LLC, et al.*, 179 FERC ¶ 61,086 (2022) (“FERC 2022 Extension Order”). A copy of the FERC 2022 Extension Order is attached hereto as Appendix A.

2. Service List Contacts

All correspondence and communications concerning this amendment application should be directed to the following persons:⁸

Michael T. Langston
Vice President & Chief Regulatory
Officer
Lake Charles Exports, LLC
1300 Main Street
Houston, TX 77002
michael.langston@energytransfer.com

Thomas E. Knight
Jennifer Brough
Locke Lord LLP
701 8th Street, NW
Suite 500
Washington, DC 20001
(202) 220-6922
tknight@lockelord.com
jbrough@lockelord.com

3. Statement Of Action Sought From DOE/FE

LCE hereby respectfully requests that DOE/FE issue an order amending the existing export authorizations as follows:

Order No.	FTA/Non-FTA	Amendment Requested
3324	Non-FTA	Amend commencement of operations deadline (currently December 16, 2025) to December 16, 2028 to align with the FERC 2022 Extension Order.
4011	Non-FTA	Amend commencement of operations deadline (currently December 16, 2025) to December 16, 2028 to align with the FERC 2022 Extension Order.

The grant of the extension of the commencement of operations deadlines for the Non-FTA authorizations is necessary to align the existing DOE/FE export authorizations with the FERC construction authorization for the Liquefaction Project facilities.

4. Justification For Action Sought From DOE/FE

Ordering Paragraph B of DOE/FE Order No. 3324 and Ordering Paragraph E of DOE/FE Order No. 4011 required that LCE commence export operations using the planned liquefaction

⁸ LCE respectfully requests a waiver of Section 590.202(a) of the DOE/FE regulations, 10 C.F.R. § 590.202(a) (2022), to the extent necessary to include more than two persons on the official service list.

facilities no later than seven years from the date of issuance of the orders.⁹ On October 6, 2020, DOE/FE issued the DOE/FE Extension Order extending the commencement date for each Non-FTA export authorization to December 16, 2025 to align with FERC’s then-current extension of time.¹⁰ FERC subsequently granted an additional three-year extension of time to December 16, 2028 to construct the Liquefaction Project and make it available for service.

Various subsidiaries of Energy Transfer LP (“Energy Transfer”) are developing the Liquefaction Project. Energy Transfer has made significant progress towards reaching a Final Investment Decision (“FID”), including executing several long-term agreements that were filed with DOE/FE. Because it is a precondition of FID that all authorizations remain in full force and effect during construction of the Liquefaction Project, LCE requires an additional three-year extension of the current deadline set forth in Order Nos. 3324-A and 4011-A.

Since LCE’s request for a DOE/FE extension in 2020, the world has experienced significant changes in the global LNG market caused by the ongoing COVID-19 pandemic, including difficulties in securing long-term offtake contracts in light of the uncertainty of future LNG demand resulting from declines in economic activity around the world. In addition, the world has experienced increased trade tensions that have resulted in increased tariffs between countries and other changes to international trade policies. Put simply, 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. The Liquefaction Project has not been spared from the effects of these difficult circumstances.

With the recent rebound in worldwide economic activity resulting from a lessening of the effects of the COVID pandemic, however, the global LNG market has also experienced renewed

⁹ DOE/FE Order No. 3324-A (Original commencement of operations date: July 29, 2023); DOE/FE Order No. 4011 (Original commencement of operations date: June 29, 2024).

¹⁰ DOE/FE Extension Order at 7-8.

appetite for securing long-term LNG supply. Recently, Energy Transfer entered into several long-term offtake contracts. However, such agreements and the resulting FID are contingent on a commencement deadline under the DOE authorizations that enables the Liquefaction Project to be in service within the timeframe reflected in the FERC authorization, which is December 16, 2028. Complex FID financing arrangements require an extension of the deadline now, which recognizes the full schedule to reach in-service, prior to advancing to a FID and starting full-scale construction.

In granting the recent extension, FERC found:

The companies request only to change the timing, not the nature, of the project. Extending the deadline to construct the project and place it into service by 2028 will not undermine the Commission's findings in the Authorization Order that the project is required by the public convenience and necessity and is not inconsistent with the public interest. The facts underlying the Authorization's conclusions have not significantly changed.¹¹

FERC's analysis is relevant to DOE/FE's public interest finding under NGA Section 3. DOE/FE expeditiously should grant LCE's extension request because it is not inconsistent with the public interest under NGA Section 3.

In the DOE/FE Extension Order, DOE/FE concluded that good cause existed to grant an extension in 2020 because: (1) FERC had already granted the same extension of the in-service deadline; (2) extending the deadline did not alter DOE/FE's public interest determination in granting the authorizations under NGA Section 3; and (3) no facts associated with LCE's original applications, and no requirements of the non-FTA authorizations, were affected by the extension beyond the additional time period for LCE to commence export operations.¹² None of these findings in the DOE/FE Extension Order have changed.

¹¹ FERC 2022 Extension Order at P 10.

¹² DOE/FE Extension Order at 6.

The purpose of the DOE/FE seven year commencement of operations requirement 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.”¹³ No entity would be prevented from obtaining export authorization if DOE/FE were to grant the requested extension. In fact, parties who have received FERC authorization for construction of other LNG export terminal facilities already have received export authorization from DOE/FE.¹⁴ As a result, the public interest would be served by granting the extension and realizing the benefits of the proposed exports as contemplated in the original export authorization orders.¹⁵

Energy Transfer continues to progress the Liquefaction Project and the requested amendments are a necessary step. Through the grant of these amendments, the interested parties will be able to continue to benefit from the substantial work already done by DOE/FE staff in its review and approval of the applications for exports from the Lake Charles Terminal. As explained above, FERC granted the request for an extension of time until December 16, 2028 to construct the Liquefaction Project. Accordingly, LCE respectfully requests that DOE/FE issue an order amending Order Nos. 3324 and 4011 so that the deadline for commencement of export operations is December 16, 2028.

¹³ See, e.g., *Lake Charles Exports, LLC*, DOE/FE Order No. 3324 at 128 (Aug. 7, 2013).

¹⁴ Compare FERC List of Approved LNG Export Facilities, available at <https://cms.ferc.gov/media/north-american-lng-export-terminals-existing-approved-not-yet-built-and-proposed-8> with DOE/FE Summary of LNG Export Applications of the Lower 48 States, available at <https://www.energy.gov/fe/downloads/summary-lng-export-applications-lower-48-states>.

¹⁵ DOE/FE consistently has affirmed its past findings that exports of LNG from the lower-48 states will not be inconsistent with the public interest. See DOE/FE, Final Policy Statement Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050, FE Docket Nos. 10-111-LNG, et al. (July 29, 2020).

III. 10 C.F.R. § 590.202(b)

The requirements of 10 C.F.R. § 590.202(b) are not applicable to this amendment application because LCE does not seek to export any additional quantities of LNG. The project scope, source and security of the natural gas supply to be exported, participants, and terms of the transaction remain unchanged from those previously authorized by DOE/FE. In addition, the DOE/FE previously determined that there is a lack of a national or regional need for the gas, which is further supported by recent DOE/FE studies (Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update and the 2018 DOE/FE study entitled Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports).¹⁶

LCE respectfully submits that a categorical exclusion applies to request for an amendment to existing authorizations. Pursuant to DOE/FE NEPA implementing regulations, a categorical exclusion applies for “[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel.”¹⁷

IV. APPENDICES

The following appendices are included with this amendment application:

Appendix A	FERC 2022 Extension Order
Appendix B	Verification
Appendix C	Opinion of Counsel

¹⁶ 2020 DOE/FE Response to Comments, 85 Fed. Reg. 72 (Jan. 2, 2020); *Study on Macroeconomic Outcomes of LNG Exports*: Response to Comments Received On Study, 83 Fed. Reg. 67251, 67259 (Dec. 28, 2018) (Concluding that U.S. consumer well-being increases and total economic activity expands with rising LNG exports and also that U.S. LNG exports are backed by increased natural gas production).

¹⁷ 10 C.F.R. Part 1021, Subpart D, Appendix B: Categorical Exclusions, B5.7.

V. **CONCLUSION**

WHEREFORE, for the reasons set forth above, Lake Charles Exports, LLC respectfully requests that the DOE/FE proceed expeditiously to issue an order amending DOE/FE Order Nos. 3324 and 4011 so that the commencement of export operations deadline is December 16, 2028. As demonstrated herein, LCE's requested amendments are not inconsistent with the public interest and, accordingly, should be granted pursuant to NGA Section 3.

Respectfully submitted,

/s/ Michael T. Langston

Michael T. Langston
Vice President & Chief Regulatory Officer
Lake Charles Exports, LLC

Dated: June 21, 2022

APPENDIX A
FERC 2022 EXTENSION ORDER

179 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Trunkline Gas Company, LLC

Docket Nos. CP14-119-002

Lake Charles LNG Export Company, LLC and
Lake Charles LNG Company, LLC

CP14-120-002

ORDER GRANTING EXTENSION OF TIME REQUEST

(Issued May 6, 2022)

1. On February 3, 2022, Trunkline Gas Company, LLC (Trunkline), Lake Charles LNG Export Company, LLC (Lake Charles LNG Export), and Lake Charles LNG Company, LLC (Lake Charles LNG; jointly, the companies) filed a motion requesting a three-year extension of time,¹ until December 16, 2028, to complete construction and make available for service the Pipeline Modifications Project and the Liquefaction Project (collectively, the project) authorized in December, 2015.² Currently, the project is required to complete construction and made available for service by December 16, 2025. For the reasons discussed below, the extension request is granted.

I. Background

2. On December 17, 2015, the Commission issued an order authorizing Lake Charles LNG Export and Lake Charles LNG to construct and operate facilities for the liquefaction and export of domestically-produced natural gas adjacent to Lake Charles LNG's existing

¹ Lake Charles LNG Company, LLC, et al., February 3, 2022 Request for Extension of Time (2022 Extension Request).

² *Lake Charles LNG Company, LLC*, et al., 153 FERC ¶ 61,300 (2015) (Authorization Order), *reh'g denied*, 155 FERC ¶ 61,328 (2016).

liquefied natural gas (LNG) terminal in Calcasieu Parish, Louisiana.³ In the same order, the Commission issued a certificate to Trunkline to expand and modify its pipeline system and associated compressor stations in Arkansas, Mississippi, and Louisiana in order to provide supply for the export terminal.⁴ The 2015 Authorization Order required Trunkline to complete construction of the Pipeline Modifications Project and make it available for service by December 17, 2019,⁵ and required Lake Charles LNG and Lake Charles LNG Export to make the Liquefaction Project available for service by December 17, 2020.⁶

3. On August 20, 2019, Trunkline and Lake Charles LNG requested an extension of time to construct the Pipeline Modifications Project and the Liquefaction Project and place them into service until December 16, 2025. Commission staff, through its delegated authority, granted the requested extension.⁷

4. On January 31, 2022, the companies filed the current request for an extension of time until December 17, 2028, to complete the project and place the facilities in service.⁸ The companies state that they have made significant progress towards execution of commercial agreements with LNG offtake customers and towards a final investment decision.⁹ Lake Charles notes that it has obtained all required federal, state, and local authorizations and permits related to construction and operation of the Liquefaction Project, and that it has kept those permits valid despite the delays.¹⁰ The companies cite the significant disruptions to the global LNG market caused by the COVID-19 pandemic

³ Authorization Order, 153 FERC ¶ 61,200 at PP 9-13. The Liquefaction Project consists of three liquefaction trains and related equipment, along with the modification of existing LNG Storage and marine berthing facilities. The three liquefaction trains would have a design capacity of 16.45 million tonnes per annum (MTPA) of LNG. *Id.* P 10.

⁴ *Id.* PP 18-24. The Pipeline Modifications Project would enable the delivery of 2.6 billion cubic feet (Bcf) per day of natural gas to the liquefaction facilities. *Id.* P 18.

⁵ *Id.* at ordering para. (B)(1).

⁶ *Id.* at ordering para. (L).

⁷ Letter order to Lake Charles LNG Company, LLC, Docket Nos. CP14-119-000, CP14-120-000, & CP14-122-000 (issued Dec. 5, 2019).

⁸ January 31, 2022 Request for Extension of Time at 1.

⁹ *Id.*

¹⁰ *Id.* at 2.

as one reason for the need for an extension, but argue that recent trends in the LNG market have created a demand for long-term supply.¹¹

Notice, Interventions, and Protests

5. Notice of the companies' Extension of Time Request was issued on February 3, 2022, and published in the *Federal Register* on February 9, 2022.¹² The notice established February 18, 2022, as the deadline for filing interventions, comments, and protests. The Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade (together, Sierra Club) filed a timely joint motion to intervene and protest.¹³

6. Sierra Club opposes granting the extension of time arguing that: (1) the companies have not demonstrated good cause to justify granting the requested extension of time; (2) developments since the issuance of the Certificate Order undermine the Commission's finding that the project is required by the public convenience and necessity and is an environmentally acceptable action; and (3) new information requires the Commission to undertake new environmental analyses to account for endangered species and environmental justice. The Sierra Club further asserts that if the Commission were to grant the requested extension, such an action would be a new major federal action requiring new analysis under the National Environmental Policy Act (NEPA) and consultation under the Endangered Species Act (ESA).

7. On March 7, 2022, the companies filed an answer to Sierra Club's protest.¹⁴ The companies state that it files the answer to refute Sierra Club's claim that the companies opted to delay due to market conditions and have not demonstrated good cause for an extension, to ensure a complete and correct record, and to aid the Commission's decision-making. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁵ answers to protests are prohibited unless otherwise ordered by the decisional

¹¹ *Id.*

¹² Notice of Request for Extension of Time, 87 Fed. Reg. 7446 (Feb. 9, 2021).

¹³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. *See* 18 C.F.R. § 385.214 (2021).

¹⁴ Lake Charles LNG Company, LLC, et al., March 7, 2022 Answer in Opposition.

¹⁵ 18 C.F.R. § 385.213(a)(2) (2021); *see also* *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 39 (2020) (barring both reply comments and answers in extension of time proceedings).

authority. We accept the companies' answer as it provides information that will assist us in our decision-making process.

II. Discussion

8. The completion date specified in a certificate or authorization order provides what the Commission believes—based on its assessment of circumstances relevant to the specific project—to be a reasonable period of time for the project sponsor to complete construction and make the project available for service.¹⁶ However, construction deadlines may be extended for good cause.¹⁷ The Commission generally will grant an extension of time if the movant files for an extension of time within a timeframe during which the environmental findings underlying the Commission's authorization can be expected to remain valid.¹⁸ Good cause can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadlines but encountered circumstances that prevented it from doing so.¹⁹

A. The Authorization Order's Public Interest Findings Are Still Valid

9. The Sierra Club argues that the LNG market has substantially changed since the issuance of the Authorization Order.²⁰ Sierra Club states that the need for LNG to meet global market demand no longer exists."²¹ It suggests that market changes caused by

¹⁶ *Constitution Pipeline Co., LLC*, 165 FERC ¶ 61,081, at P 9 (2018) (citing *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165, at P 8 (2016)).

¹⁷ 18 C.F.R. § 385.2008(a) (2021) (allowing the relevant decisional authority to extend for good cause the time by which any person is required or allowed to act under any statute rule or order).

¹⁸ *See Constitution Pipeline Co., LLC*, 165 FERC ¶ 61,081 at P 9; 18 C.F.R. § 385.2008(a). The Commission specifies the time period for authorized action as a condition in a certificate to "diminish[] the potential that the public interest might be compromised by significant changes occurring between the issuance of the certificate and commencement of the project." *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, 62,103 (1996).

¹⁹ *See, e.g., Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at P 15 (2022).

²⁰ Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade February 18, 2022 Motion to Intervene and Comments at 6.

²¹ Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade February 18, 2022

climate change, alternative sources of gas, and growth in renewable energy adoption require the Commission to account for the changed circumstances by reassessing the public benefits of the project.²²

10. We disagree. The companies request only to change the timing, not the nature, of the project. Extending the deadline to construct the project and place it into service by 2028 will not undermine the Commission's findings in the Authorization Order that the project is required by the public convenience and necessity and is not inconsistent with the public interest.²³ The facts underlying the Authorization's conclusions have not significantly changed.

11. Nonetheless we note that although we may deny an extension of time based on significantly changed market conditions,²⁴ the record in this case does not support that result. The companies have provided evidence that the global LNG market is rebounding from the effects of the COVID-19 pandemic.²⁵ We note that since the companies filed the request there has been evidence of an increase in demand for LNG, demonstrated, for example, by the recently announced partnership with the European Union seeking to ensure additional LNG volumes for the E.U. import market of at least 15 billion cubic meters in 2022, with expectations of increased demand going forward.²⁶ In light of this

Motion to Intervene and Comments at 12.

²² *Id.* at 12-14.

²³ Authorization Order, 153 FERC ¶ 61,300 at P 56 (concluding that, based on the benefits the project will provide, the lack of existing customers and the lack of adverse impacts on other pipelines and their captive customers, and landowners and surrounding communities, the project is consistent with the Certificate Policy Statement); *id.* P 39 (concluding LNG facilities not inconsistent with the public interest).

²⁴ *See, e.g., Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at PP 11, 23-25 (2012) (affirming on rehearing Commission staff's denial of a request for extension of time where the certificate holder admitted that the project was not financially viable and lacked both prospective customers and project financing despite having previously represented customers had expressed strong interest during an open season).

²⁵ Lake Charles LNG Company, LLC, et al., March 7, 2022 Answer in Opposition at 5.

²⁶ *See* Fact Sheet: United States and European Commission Announce Task Force To Reduce Europe's Dependence On Russian Fossil Fuels (March 25, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes->

record evidence, Sierra Club's generalized claim that the LNG market no longer supports the increasing number of proposed LNG projects is insufficient to show that this particular project is not commercially viable.

B. The Authorization Order's Environmental Analysis Remains Valid

12. The Sierra Club states that new information regarding the project's impacts on threatened and endangered species render the project's environmental reviews invalid.²⁷ Specifically, Sierra Club notes that there are newly listed aquatic species, including the Gulf of Mexico Bryde's Whale, and one newly listed avian species, the eastern black rail. With respect to these listed species, the Sierra Club states that the Commission must reinitiate consultation under section 7 of the ESA.²⁸ The Sierra Club notes that endangered West Indian Manatee's have been spotted in Big Lake and the Calcasieu River, requiring reinitiation of consultation with the National Marine Fisheries Service (NMFS).²⁹

13. We agree that the information regarding newly listed threatened and endangered species requires consideration and that the ESA regulations³⁰ require a determination whether the project may have impacts on the newly listed species.³¹ Specifically, if a new species is listed after the Commission's issuance of a certificate and before the completion of project construction, Commission staff will determine whether the project may affect the species. If the project will not affect the species, the Commission has no further ESA obligation. If the project may affect the species, the Commission must

dependence-on-russian-fossil-fuels/, 2022 WL 884707.

²⁷ Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade February 18, 2022 Motion to Intervene and Comments at 9.

²⁸ *Id.*

²⁹ *Id.* at 15-16.

³⁰ *Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation*, 84 Fed. Reg. 44,976 (Aug. 27, 2019).

³¹ *Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation*, 84 Fed. Reg. 44,976.

consult with NMFS or the U.S. Fish and Wildlife Service, as appropriate, if the effects are reasonably certain to occur.³²

14. However, the potential need to re-initiate consultation on newly listed species does not in and of itself render the environmental analysis stale or trigger the need for a supplemental environmental impact statement (EIS).³³ A determination as to whether additional NEPA analysis is needed cannot be made prior to determining whether further ESA consultation is required and obtaining the results of such consultation.³⁴ Neither of those determinations is germane to our action here on the requested extension of time. We note that, should it become necessary based on ESA consultation with the Services, we will supplement our environmental review under NEPA prior to authorizing the companies to commence construction.

15. Sierra Club also raises issues with the final environmental impact statement (FEIS) for the project. It argues that the Commission did not adequately consider either the impacts of the project on environmental justice communities, particularly the impacts of increased traffic, air, noise, and light pollution³⁵ or the impacts of prolonged construction timelines on these communities.³⁶ Sierra Club's argument constitutes an improper collateral attack on the Authorization Order and will not be discussed further.³⁷

³² 50 C.F.R. § 402.02 (2021).

³³ See, e.g., *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,027, at P 41 (2020) (discussing the effect of continued consultation under section 7 of the ESA and noting that consultation is separate from the processes established under NEPA).

³⁴ If additional ESA consultation results in proposed new measures with impacts not previously studied or if an amendment is necessary to incorporate new measures, the Commission would supplement its NEPA review.

³⁵ Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade February 18, 2022 Motion to Intervene and Comments at 10.

³⁶ *Id.* at 16.

³⁷ See *Columbia Gas Transmission, LLC*, 172 FERC ¶ 61,162, at P 17 (2020) (finding that argument in a proceeding on an extension of time request that the Commission's NEPA document erred by not calculating the social cost of carbon was an impermissible collateral attack on the certificate order authorizing the project); *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at P 16 (2022) (finding in order addressing request for extension of time to complete construction that commenters arguments the Commission did not properly account for public safety, air pollution levels, and public

Nevertheless, we note that the Commission recognizes the impact energy infrastructure may have on environmental justice communities, and that the FEIS in this proceeding considered the issues raised by Sierra Club and found there would not be adverse environmental and human health impacts from the export terminal.³⁸

C. Granting an Extension of Time Does Not Constitute a Major Federal Action

16. The Sierra Club argues that the decision to grant an extension of time is a “major federal action” requiring the Commission to conduct additional review under NEPA.³⁹ We disagree. NEPA requires a supplemental EIS when a major Federal action remains to occur and the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.⁴⁰

17. Approval of a request for extension of time is an administrative action and is not considered to be a major Federal action significantly affecting the quality of the human environment.⁴¹ Granting an extension of time to complete an approved action does not constitute the substantial changes to the proposed action envisioned in the NEPA

need for the project, were an improper collateral attack on the certificate order).

³⁸ Final Environmental Impact Statement for Lake Charles Liquefaction Project, Docket No. CP14-119-000, at 4-104 (Aug. 2015). *See also* Authorization Order, 153 FERC ¶ 61,200 at P 39.

³⁹ Sierra Club, Healthy Gulf, and Louisiana Bucket Brigade February 18, 2022 Motion to Intervene and Comments at 17.

⁴⁰ 40 C.F.R. § 1502.9(d)(1) (2021).

⁴¹ *Adelphia Gateway LLC, Adelphia Gateway, LLC*, 178 FERC ¶ 61,030 at P 23; *see also Eagle Crest Energy Co.*, 168 FERC ¶ 61,186, at P 22 (2019) (holding that an extension of time to comply with a license requirement to commence and complete construction by a certain date, that involves no construction or changes to the project development, is an administrative action appropriately categorically excluded from further NEPA review), *aff’d sub nom. Natal Parks Conservation Ass’n v. FERC*, 6 F.4th 1044 (9th Cir. July 28, 2021); *see also ANR Pipeline Co.*, 98 FERC ¶ 61,067, 61,179 (2002) (acting on request for an extension of time is a matter of administrative discretion).

regulations nor does it constitute a new approval of the specific project in question.⁴² Moreover, there has been no showing that the environmental effects of the project have changed since the issuance of the Authorization Order.⁴³

D. Good Cause Exists for Granting an Extension of Time

18. The Sierra Club argues in its comments that the companies have not demonstrated good cause for an extension of time because there is overbuilding of oil and gas infrastructure in the Gulf region without demand for export and the project will cause environmental disruptions that are unnecessary in light of LNG market changes.⁴⁴ It also argues that the companies' request lacks sufficient information.⁴⁵

19. The companies argue that good cause exists for an extension and it has worked diligently to develop the project.⁴⁶ They state that progress has been made in executing contracts with LNG engineering, procurement, and contracting companies.⁴⁷ The companies also note that economic conditions are recovering from the COVID-19 pandemic, leading to an improvement in the LNG markets, which it suggests will help find partners to enter into long-term LNG offtake contracts.⁴⁸ Finally, they state that they

⁴² See *Eagle Crest Energy Co.*, 168 FERC ¶ 61,186 at P 22. Cf. 40 C.F.R. § 1508.1(q) (2021) (defining major Federal actions).

⁴³ See 40 C.F.R. § 1502.9(d)(1) (2021) (stating that agencies “[s]hall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and: (i) [t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”).

⁴⁴ *Id.* at 6.

⁴⁵ *Id.*

⁴⁶ Jan. 31, 2022 Request for Extension of Time at 1.

⁴⁷ *Id.*

⁴⁸ *Id.* The companies state that Lake Charles LNG is in active negotiations with several European and Asian customers for significant volumes of LNG under long-term offtake contracts of 15-20 years. Lake Charles LNG Company, LLC, et al., March 7, 2022 Answer in Opposition at 5.

have been actively negotiating with potential buyers and an extension is necessary due to the unique challenges and complexities of large-scale LNG projects.⁴⁹

20. As stated above, the Commission will find good cause exists for an extension of time where the certificate holder makes a good faith effort to complete authorized actions within the time allotted but encountered circumstances that prevent it from doing so. The Commission has previously found good cause exists for an extension of time where an authorization holder requested more time to secure contracts with potential customers⁵⁰ and where there are delays constructing related non-jurisdictional facilities that the jurisdictional project is designed to serve.⁵¹ We consider extension requests on a case-by-case basis.⁵²

21. Here, the companies are actively pursuing securing long-term offtake contracts with prospective customers and completing front-end engineering design with engineering, procurement, and contracting companies. The companies state that they remain committed to completing the project, and highlight the several hundreds of millions of dollars spent on the development of the project as evidence of their good faith efforts.⁵³ The companies continue to demonstrate commitment to the project and have made a good faith effort to meet the previous deadline. The unforeseeable impacts of the

⁴⁹ Jan. 31, 2022 Request for Extension of Time at 2. The companies highlight their efforts to expand their presence in China to meet growing demand. Lake Charles LNG Company, LLC, et al., March 7, 2022 Answer in Opposition at 5.

⁵⁰ See, e.g., *Delfin LNG LLC*, 178 FERC ¶ 61,031, at PP 21-23 (2022) (granting an extension of time to construct the onshore portions of a non-jurisdictional LNG export terminal while the terminal sought LNG offtake contracts); see also Letter Order to LA Storage, LLC, Docket No. CP08-454-000 (issued Nov. 14, 2013) (granting a certificate holder a second extension of time due to changing market conditions and difficulty in finding customers, providing LA Storage six years from the issuance of the certificate to place the project facilities into service).

⁵¹ *Northwest Pipeline, LLC*, 171 FERC ¶ 61,077, at PP 12-14 (2020) (granting a third extension of time (for a total four-year extension) where the sole shipper faced delays in constructing the proposed methanol plant that the pipeline project was designed to serve).

⁵² *Transcontinental Gas Pipe Line Co., LLC*, 175 FERC ¶ 61,148 at P 8.

⁵³ Lake Charles LNG Company, LLC, et al., March 7, 2022 Answer in Opposition at 6.

Docket Nos. CP14-119-002 and CP14-120-002

- 11 -

COVID-19 pandemic combined with their continued interest in the project satisfy the Commission's good cause inquiry.

22. Because we find that Trunkline, Lake Charles Export LNG, and Lake Charles LNG have demonstrated good cause for the delay, we will grant the request for a three-year extension to complete construction of the project.

23. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the motion and exhibits thereto, and upon consideration of the record,

The Commission orders:

Trunkline Gas Company, LLC, Lake Charles LNG Export Company, LLC and Lake Charles LNG Company, LLC are granted a three-year extension of time, to December 17, 2028, to construct the project and make it available for service the onshore facilities authorized in CP14-119-000 and CP14-120-000.

By the Commission. Commission Danly is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Trunkline Gas Company, LLC

Docket Nos. CP14-119-002

Lake Charles LNG Export Company, LLC and
Lake Charles LNG Company, LLC

CP14-120-002

(Issued May 6, 2022)

DANLY, Commissioner, *concurring*:

1. I concur in today's decision¹ to grant the requested extension of time to construct and place into service the facilities authorized by the Commission in its December 2015 order.² I write separately to state that the Commission should exercise caution when inquiring into whether a prior authorization order's public interest findings and environmental analysis remain valid.

2. Although the Commission's practice of establishing project deadlines in authorization orders is in order to "diminish the potential that the public interest might be compromised by significant changes occurring between issuance of the [authorization order] and commencement of the project,"³ our inquiry when reviewing a request for extension of time is narrow—it is not an opportunity to revisit the determinations made in certificate proceedings after orders have become final and unappealable.

3. While I take comfort in the Commission's statement in an order issued concurrently with this one, that, "extension of time proceedings are not an invitation to re-open the dockets,"⁴ I remain wary. And with good reason. Recent Commission orders

¹ See *Trunkline Gas Co., LLC*, 179 FERC ¶ 61,086 (2022) (Extension of Time Order).

² See *Lake Charles LNG Co., LLC*, 153 FERC ¶ 61,300 (2015) (Authorization Order).

³ *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996).

⁴ *Corpus Christi Liquefaction, LLC*, 179 FERC ¶ 61,087, at P 15 (2022) (citation omitted); see also *id.* ("The Commission will not consider the NGO Parties' arguments regarding reconsideration of GHGs and the impact on exports on domestic natural gas prices because they seek to re-litigate the issuance of an authorization or certificate order,

on extensions of time, some of which I have voted for, have included language that I believe reinforces the Commission's misguided view in *Algonquin Gas Transmission, LLC*,⁵ issued in 2021, that it may revisit determinations made in final, unappealable certificate orders.⁶ In that proceeding, in the face of more than 80 years of contrary precedent, the Commission reopened the record of a judicially-final certificate order without even an *attempt* to offer a statutory basis for its action.⁷ Although the Commission has since terminated the proceeding,⁸ in doing so it refused to identify the

including whether the Commission properly found the project to be in the public convenience and necessity or public interest.”) (citation omitted).

⁵ 174 FERC ¶ 61,126 (2021) (Danly, Comm'r, dissenting).

⁶ For example, recently in *Delfin LLG LLC*, the Commission stated, “[i]n *Chestnut Ridge*, we explained that when we act on an application, we rely on information available at that time but that the data that underpin our conclusions on the need for a project, its commercial prospects, and its environmental impacts are subject to change. As we stated there, ‘the validity of our conclusions and environmental mitigation conditions *cannot be sustained indefinitely*.’” 178 FERC ¶ 61,031, at P 12 (2022) (quoting *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at PP 11, 25 (2012)) (emphasis added). As I note above the line, I have voted for other orders that have included similar language. See, e.g., *Transcon. Gas Pipe Line Co.*, 175 FERC ¶ 61,148, at P 17 (2021). In my concurrence in part and dissent in part in *Delfin LNG LLC*, I explained how that language reinforces the misguided view in *Algonquin Gas Transmission, LLC*. See 178 FERC ¶ 61,031 (Danly, Comm'r, concurring in part and dissenting in part at P 3).

⁷ See *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126; *id.* (Danly, Comm'r, dissenting at PP 18, 22); Former Commissioners Mike Naeve, Elizabeth A. Moler, Donald F. Santa, Jr., Pat Wood, III, Nora Mead Brownell, Joseph T. Kelliher, and Suede G. Kelly April 12, 2021 Letter to the Commission, Docket No. CP16-9-000, et al., at 1 (“We are troubled by the novel assertion of authority to reconsider a long-since-final certificate order, without any suggestion that the terms of that order were violated, and long after a private company built and placed into service the facilities in question, at a cost of approximately a half billion dollars. We are unaware of any other instance, in the eight-decade history of the Natural Gas Act, where the Commission has taken such a step.”). Cf. *U.S. v. Seatrail Lines, Inc.*, 329 U.S. 424 (1947) (affirming district court’s holding that the Interstate Commerce Commission had exceeded its statutory authority in reopening the proceeding and altering the certificate).

⁸ *Algonquin Gas Transmission, LLC*, 178 FERC ¶ 61,029 (2022) (Danly, Comm'r, concurring in part and dissenting in part).

Docket Nos. CP14-119-002 and CP14-120-002

- 3 -

authority that would permit it to reopen a certificate proceeding once final, while still leaving the door open to later revisit whether an approved project is still in the public convenience and necessity.⁹

4. To be clear: the Commission lacks authority to revisit its public convenience and necessity determinations once the order is final and unappealable.

For these reasons, I respectfully concur.

James P. Danly
Commissioner

⁹ *Id.* (Danly, Comm'r, concurring in part and dissenting in part at P 9) (“The majority’s refusal to explain the Commission’s authority only highlights the obvious fact that it had none. And instead of acknowledging this plain fact, the majority leaves the door open to revisit whether a project is in the public convenience and necessity at its whim.”).

APPENDIX B

VERIFICATION

VERIFICATION

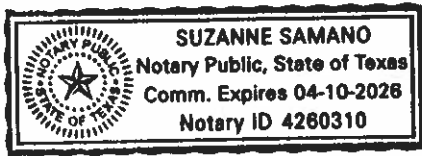
County of Harris

State of Texas

BEFORE ME, the undersigned authority, on this day personally appeared Michael T. Langston who, having been by me first duly sworn, on oath says that he is duly authorized to make this Verification on behalf of Lake Charles Exports, LLC; that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.



SWORN TO AND SUBSCRIBED before me on: June 21, 2022.


Notary Public

APPENDIX C
OPINION OF COUNSEL

June 21, 2022

Ms. Amy Sweeney
U.S. Department of Energy
Office of Regulation, Analysis, and Engagement
Office of Fossil Energy
Forrestal Building, Room 3E-042
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Lake Charles Exports, LLC, Docket Nos. 11-59-LNG and 16-110-LNG

Dear Ms. Sweeney:

This opinion of counsel is submitted pursuant to Section 590.202(c) of the regulations of the U.S. Department of Energy, 10 C.F.R. § 590.202(c) (2022). The undersigned is counsel to Lake Charles Exports, LLC. I have reviewed the corporate documents of Lake Charles Exports, LLC and it is my opinion that the proposed export of natural gas as described in the amendment application filed by Lake Charles Exports, LLC to which this Opinion of Counsel is attached as Appendix C, is within the limited liability company powers of Lake Charles Exports, LLC.

Respectfully submitted,

/s/ Kevin Erwin
Kevin Erwin
Associate General Counsel
Lake Charles Exports, LLC