

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

---

GOLDEN PASS PRODUCTS LLC

---

)  
)  
)

FE DOCKET NO. 12-156-LNG

OPINION AND ORDER GRANTING  
MOTION FOR LEAVE TO ANSWER REQUEST FOR REHEARING  
AND DENYING REQUEST FOR REHEARING

DOE/FE ORDER NO. 3978-A

MARCH 30, 2018

## I. INTRODUCTION

On April 25, 2017, the Department of Energy's (DOE or the Department) Office of Fossil Energy (DOE/FE) issued DOE/FE Order No. 3978<sup>1</sup> (Order or Order No. 3978) to Golden Pass Products LLC (GPP)<sup>2</sup> under section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. § 717b(a).<sup>3</sup> In that 178-page Order, DOE/FE granted GPP's application filed on October 26, 2012 (Application),<sup>4</sup> in which GPP requested long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) by vessel to nations with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).<sup>5</sup>

Order No. 3978 authorizes GPP to export LNG to non-FTA countries in a volume equivalent to 808 billion cubic feet per year (Bcf/yr) of natural gas (2.21 Bcf per day), not to exceed the 15.6 million metric tons per annum (mtpa) of LNG approved by the Federal Energy Regulatory Commission (FERC) in its December 21, 2016 order for GPP.<sup>6</sup> GPP's exports will originate from its proposed export project (GPP Export Project) to be constructed contiguous to and interconnected with the existing Golden Pass LNG Terminal (Terminal), a LNG import

---

<sup>1</sup> *Golden Pass Products LLC*, DOE/FE Order No. 3978, FE Docket 12-156-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations (Apr. 25, 2017) [hereinafter GPP Order].

<sup>2</sup> GPP is a Delaware limited liability company with its principal place of business in Houston, Texas. GPP is owned by QTL U.S. Terminal LLC (an affiliate of Qatar Petroleum International Limited) and Golden Pass LNG Terminal Investments LLC, and is affiliated with Golden Pass LNG Terminal LLC and Golden Pass Pipeline LLC.

<sup>3</sup> The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-006.02 issued on November 17, 2014.

<sup>4</sup> Golden Pass Products LLC, Application for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries, FE Docket No. 12-156-LNG (Oct. 26, 2012).

<sup>5</sup> The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore (FTA countries). FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>6</sup> See GPP Order at 1-2, 173; see also *Golden Pass Products LLC*, Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act, 157 FERC ¶ 61,222, at PP 3, 9 (Dec. 21, 2016) [hereinafter FERC Order].

terminal owned and operated by Golden Pass LNG Terminal LLC.<sup>7</sup> The Terminal is located near Sabine Pass, in Jefferson County, Texas.<sup>8</sup> GPP intends to construct and operate the GPP Export Project for the liquefaction and export of domestically-produced natural gas.<sup>9</sup> Under the terms of the Order, GPP is authorized to export LNG from the GPP Export Project for a term of 20 years.<sup>10</sup>

DOE/FE participated as a cooperating agency in FERC's review of the GPP Export Project under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*<sup>11</sup> On July 29, 2016, FERC issued a final environmental impact statement (EIS) for the GPP Export Project.<sup>12</sup> The EIS evaluated the potential environmental impacts of the proposed GPP Export Project, and recommended that FERC subject any approval of the GPP Export Project to 85 environmental conditions.<sup>13</sup>

As noted above, on December 21, 2016, FERC issued an order authorizing GPP (in relevant part) to site, construct, and operate the GPP Export Project subject to 83 of the 85 environmental conditions recommended in the EIS, as identified in the Appendix of the FERC Order.<sup>14</sup> After an independent review, DOE/FE adopted FERC's EIS for the proposed GPP Export Project (DOE/EIS-0501).<sup>15</sup> Concurrently with its issuance of Order No. 3978 on April

---

<sup>7</sup> FERC previously authorized the Golden Pass LNG Terminal and related pipeline owned by Golden Pass Pipeline LLC. *See Golden Pass LNG Terminal LP and Golden Pass Pipeline LP*, 112 FERC ¶ 61,041 (2005), amended, *Golden Pass Pipeline LP*, 117 FERC ¶ 61,015, further amended, 117 FERC ¶ 61,332 (2006), further amended, 134 FERC ¶ 61,037 (2011).

<sup>8</sup> GPP App. at i, 2.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> GPP is authorized to export the LNG on its own behalf and as an agent for other entities that hold title to the LNG, after registering each such entity with DOE/FE. Order No. 3978 contains numerous other terms and conditions. *See* GPP Order at 166-78.

<sup>11</sup> *See id.* at 9, 128.

<sup>12</sup> Federal Energy Regulatory Comm'n, Golden Pass LNG Export Project *Final Env'tl. Impact Statement*, Docket Nos. CP14-517-000, CP14-518-000 (July 29, 2016) [hereinafter EIS]; *see also* GPP Order at 8, 129-30.

<sup>13</sup> *See id.*

<sup>14</sup> *See* FERC Order, *supra* note 6; *see also* GPP Order at 8-9, 131-35.

<sup>15</sup> *See* U.S. Env'tl. Prot. Agency, Environmental Impact Statements; Notice of Availability, 82 Fed. Reg. 8613 (Jan. 27, 2017) (providing notice that DOE/FE adopted FERC's final EIS for the GPP Export Project).

25, 2017, DOE/FE issued a Record of Decision for the proposed Project.<sup>16</sup> In the Order, DOE/FE conditioned GPP's export approval upon GPP's compliance with the 83 environmental conditions adopted in the FERC Order.<sup>17</sup> Additional procedural history and information about DOE/FE's administrative record are discussed in Order No. 3978.

On May 25, 2017, Sierra Club—an intervenor-protestor in this proceeding<sup>18</sup>—timely filed a Request for Rehearing of Order No. 3978.<sup>19</sup> On June 8, 2017, GPP filed a Motion for Leave to Answer and Answer to Sierra Club's Request for Rehearing.<sup>20</sup> On June 23, 2017, DOE/FE issued an order granting both Sierra Club's Rehearing Request and GPP's Motion for Leave to Answer for the limited purpose of further consideration.<sup>21</sup> Most recently, on March 21, 2018, GPP filed a request asking DOE/FE to issue an order denying Sierra Club's Request for Rehearing in light of recent decisions by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), discussed below.<sup>22</sup>

For the reasons set forth herein, DOE/FE grants GPP's Motion for Leave to Answer,<sup>23</sup> denies Sierra Club's Request for Rehearing, and affirms the findings and conclusions in DOE/FE Order No. 3978.

---

<sup>16</sup> U.S. Dep't of Energy, Golden Pass Products LLC, Record of Decision and Floodplain Statement of Findings for the Golden Pass Products LLC Application to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 12-156-LNG (Apr. 25, 2017) [hereinafter Record of Decision].

<sup>17</sup> See GPP Order at 174 (Ordering Para. H).

<sup>18</sup> Sierra Club, Motion for Leave to Intervene, Protest, and Comments, FE Docket No. 12-156-LNG (Feb. 4, 2013).

<sup>19</sup> Sierra Club, Request for Rehearing, FE Docket No. 12-156-LNG (May 25, 2017) [hereinafter Sierra Club Rehearing Request].

<sup>20</sup> Golden Pass Products LLC, Motion for Leave to Answer and Answer to Request for Rehearing and Motion for Stay of Sierra Club, FE Docket No. 12-156-LNG (June 8, 2017) [hereinafter GPP Answer].

<sup>21</sup> *Golden Pass Products LLC*, Order Granting Request for Rehearing and Motion for Leave to Answer for the Purpose of Further Consideration, FE Docket No. 12-156-LNG (June 23, 2017).

<sup>22</sup> Golden Pass Products LLC, Letter Requesting Denial of Rehearing Request, FE Docket No. 12-156-LNG (March 21, 2018).

<sup>23</sup> In this Order, DOE/FE grants GPP's Motion for Leave to Answer because the Answer is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request. See *infra* at 8.

## II. DISCUSSION

### A. Sierra Club's Arguments

In protesting GPP's Application, Sierra Club asserted that the GPP Export Project is not in the public interest and is not supported by adequate economic and environmental analysis, as is required to satisfy the NGA and NEPA.<sup>24</sup> On review, however, DOE/FE found in Order No. 3978 that "the evidence ... showing that the proposed exports would be in the public interest outweighs the concerns expressed by the intervenors."<sup>25</sup>

More specifically, Sierra Club argued—both to FERC and to DOE/FE—that, under NEPA, the agencies must consider the potential for increased domestic natural gas production and associated increased environmental impacts resulting from the proposed GPP Export Project.<sup>26</sup> In Order No. 3978, DOE/FE rejected this argument, concluding that "FERC's environmental review covered all reasonably foreseeable environmental impacts of the proposed GPP Export Project, and that NEPA does not require the review to include induced upstream natural gas production."<sup>27</sup> DOE/FE provided a detailed rebuttal to this and other environmental arguments raised by Sierra Club,<sup>28</sup> citing (among other considerations) the findings presented in DOE/FE's *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*.<sup>29</sup>

In its Request for Rehearing of the Order, Sierra Club reiterates its position that DOE/FE violated NEPA by approving the GPP Export Project without an EIS that adequately considered the direct, indirect, and cumulative effects of GPP's proposed exports.<sup>30</sup> Sierra Club asserts that

---

<sup>24</sup> See GPP Order at 28-41 (summarizing Sierra Club's arguments).

<sup>25</sup> *Id.* at 138.

<sup>26</sup> See *id.* at 33-41, 131-35, 146.

<sup>27</sup> *Id.* at 147 (internal citation omitted).

<sup>28</sup> See *id.* at 145-61.

<sup>29</sup> U.S. Dep't of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 Fed. Reg. 48, 132 (Aug. 15, 2014); see also, e.g., GPP Order at 5-7, 92-102.

<sup>30</sup> See Sierra Club Rehearing Request at 2-18.

FERC’s EIS for the GPP Export Project was deficient, and that DOE/FE failed to cure the deficiencies in the EIS or to supplement the EIS to address the effects of DOE’s export approval.<sup>31</sup> In particular, Sierra Club maintains that DOE/FE violated NEPA by authorizing GPP’s exports without taking a “hard look” at the effects of induced natural gas production.<sup>32</sup> Additionally, Sierra Club argues that, in issuing Order No. 3978, DOE/FE violated NGA section 3(a) by failing to adequately weigh economic and environmental impacts in evaluating the public interest.<sup>33</sup>

## **B. D.C. Circuit Precedent**

Before seeking rehearing in this case, Sierra Club petitioned the D.C. Circuit for review of five long-term LNG export authorizations issued by DOE/FE under NGA section 3(a)—the same type of authorization as Order No. 3978. In those individual cases, Sierra Club challenged DOE/FE’s approval of U.S. LNG exports from projects proposed or operated by the following authorization holders: Freeport LNG Expansion, L.P., *et al.*; Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*

The D.C. Circuit subsequently denied four of the five petitions for review: one in a published decision issued on August 15, 2017 (*Freeport*),<sup>34</sup> and three in a consolidated, unpublished opinion issued on November 1, 2017.<sup>35</sup> In the unpublished opinion, the Court stated that its “decision in *Freeport* largely governs the resolution of the instant cases,” leaving “three narrow issues” raised by Sierra Club that it likewise rejected in DOE’s favor.<sup>36</sup> Sierra Club did

---

<sup>31</sup> *See id.* at 3-4.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *See id.* at 19-21.

<sup>34</sup> *Sierra Club vs. U.S. Dep’t of Energy*, 867 F.3d 189 (Aug. 15, 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., *et al.*).

<sup>35</sup> *Sierra Club v. U.S. Dep’t of Energy*, Nos. 16-1186, 16-1252, 16-1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*, respectively).

<sup>36</sup> *Id.* at 2.

not seek further judicial review of either decision. In January 2018, Sierra Club voluntarily withdrew its fifth and remaining petition for review.<sup>37</sup>

In *Freeport*, the D.C. Circuit concluded that DOE/FE complied with both NEPA and the NGA in issuing the LNG export authorization in that case. First, in rejecting Sierra Club’s principal NEPA argument, the Court found that DOE “offered a reasonable explanation as to why it believed the indirect effects pertaining to increased [natural] gas production were not reasonably foreseeable.”<sup>38</sup> The Court thus held that, “[u]nder our limited and deferential review, we cannot say that the Department failed to fulfill its obligation under NEPA by declining to make specific projections about environmental impacts stemming from specific levels of export-induced [natural] gas production.”<sup>39</sup>

Second, in reviewing Sierra Club’s claims under the NGA, the Court found that Sierra Club “repeats the same argument it made to support its NEPA claim—namely, that the Department arbitrarily failed to evaluate foreseeable indirect effects of exports.”<sup>40</sup> Having “already rejected this argument” under NEPA, the Court determined that “Sierra Club offers no basis for reevaluating the scope of DOE’s evaluation for purposes of the Natural Gas Act.”<sup>41</sup> In sum, the Court held that “Sierra Club has given us no reason to question the Department’s judgment that the [*Freeport*] application is not inconsistent with the public interest.”<sup>42</sup>

In its Request for Rehearing of Order No. 3978, Sierra Club presents substantially the same arguments that it raised in the *Freeport* case and in its other petitions for review described above. Accordingly, in light of the D.C. Circuit’s decision in *Freeport*, as well as the Court’s

---

<sup>37</sup> See *Sierra Club v. U.S. Dep’t of Energy*, No. 16-1426, Per Curiam Order (Jan. 30, 2018) (granting Sierra Club’s unopposed motion for voluntarily dismissal).

<sup>38</sup> *Sierra Club*, 867 F.3d at 198.

<sup>39</sup> *Id.* at 201.

<sup>40</sup> *Id.* at 203.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

consolidated, unpublished opinion issued on November 1, 2017, we have determined that the Court's conclusions and reasoning control Sierra Club's arguments in this proceeding.

### **III. CONCLUSION**

We find that it has not been shown that a grant of the requested authorization is inconsistent with the public interest. We further find the D.C. Circuit's decisions in *Freeport* and the related cases are controlling precedent in this proceeding. We therefore dismiss Sierra Club's arguments, and affirm our previous finding that GPP's Application should be granted subject to the terms and conditions set forth in DOE/FE Order No. 3978.

### **IV. ORDER**

Pursuant to sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, in DOE/FE Order No. 3978, the Record of Decision, and *Sierra Club v. U.S. Dep't of Energy*, it is ordered that:

- A. Golden Pass Products LLC's Motion for Leave to Answer Sierra Club's Request for Rehearing is granted.
- B. Sierra Club's Request for Rehearing is denied.

Issued in Washington, D.C., on March 30, 2018.

---

Robert J. Smith  
Acting Deputy Assistant Secretary  
Office of Oil and Natural Gas  
Office of Fossil Energy