

185 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Delfin LNG LLC

Docket No. CP15-490-004

ORDER GRANTING EXTENSION OF TIME

(Issued October 4, 2023)

1. On July 21, 2023, Delfin LNG LLC (Delfin) filed a request for a four-year extension of time,¹ until September 28, 2027, to construct and place into service the onshore metering, compression, and piping facilities authorized by the Commission in its September 28, 2017 order issuing certificate.² These onshore facilities are intended to interconnect with Delfin's planned deepwater LNG port, which is not subject to the Commission's jurisdiction. For the reasons discussed below, we grant the extension request.

I. Background

2. The 2017 Certificate Order authorizes Delfin to construct and operate onshore metering, compression, and piping facilities located in Cameron Parish, Louisiana (Onshore Project), which would be used exclusively to deliver domestic natural gas into Delfin's planned, non-jurisdictional deepwater LNG port facilities located offshore Louisiana. The Onshore Project primarily consists of a metering station, compressor station, and pipeline segments totaling approximately two miles.³ The Certificate Order

¹ Delfin LNG LLC July 21, 2023 Request for Extension of Time.

² *Delfin LNG LLC*, 160 FERC ¶ 61,130 (2017) (Certificate Order).

³ Certificate Order, 160 FERC ¶ 61,130 at P 1. More specifically, the onshore facilities include: a new metering and regulation station at Transco's Compressor Station 44; new supply header pipelines consisting of 0.25 mile of new 42-inch-diameter pipeline to connect approximately 1.1 miles of existing onshore 42-inch-diameter pipeline to the new meter station and 0.6 mile of new twin 30-inch-diameter pipelines between the new meter station and the new compressor station; and 120,000 horsepower of new compression, two control buildings, three 600-kilowatt generators, and appurtenant connecting piping on previously disturbed property within the fence of the existing

required Delfin to construct the Onshore Project and make it available for service by September 28, 2019.⁴

3. Delfin's proposed deepwater port export facilities, which commence at mean high water mark, fall under the jurisdiction of the U.S. Department of Transportation Maritime Administration (MARAD) and the U.S. Coast Guard, in accordance with the Deepwater Port Act of 1974.⁵ A license for Delfin's Deepwater Port was issued on March 13, 2017.⁶ The licensed offshore facilities will include four semi-permanently moored floating LNG vessels, each capable of producing approximately 3.0 million metric tonnes per annum (MTPA) of LNG for export.⁷ The LNG would be stored onboard the vessels until it is transferred to LNG trading carriers for delivery to customers.⁸

4. On June 21, 2019, Delfin requested an extension of time to complete construction and place the Onshore Project into service due to delays Delfin has experienced in developing the connected deepwater port and in securing offtake agreements with potential customers.⁹ By delegated order, Commission staff granted a one-year extension.¹⁰ Since 2019, the Commission has granted Delfin three more one-year

Cameron Meadows Gas Plant.

⁴ *Id.* at ordering para. (C)(1).

⁵ 33 U.S.C. §§ 1501-1524, as amended. On March 13, 2017, MARAD approved Delfin LNG's application to construct and operate the deepwater port, concluding "that construction and operation of the Delfin LNG deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality." U.S. Department of Transportation, Secretary's Decision on the Deepwater Port License Application of Delfin LNG, LLC, at 68 (Mar. 13, 2017).

⁶ U.S. Department of Transportation, Secretary's Decision on the Deepwater Port License Application of Delfin LNG, LLC, at 68 (Mar. 13, 2017).

⁷ *Id.* at 9-10.

⁸ *Id.*

⁹ *See Delfin LNG LLC*, 178 FERC ¶ 61,031, at PP 3-4 (2022) (detailing Delfin's prior requests for extensions of time).

¹⁰ Letter Order to Delfin LNG LLC, Docket No. CP15-490-000 (issued July 8, 2019) (July 2019 Extension Order).

extensions of time, the most recent of which established a deadline of September 28, 2023.¹¹

5. On July 21, 2023, Delfin filed the current request for an extension of time until September 28, 2027.¹² Delfin argues it has demonstrated good cause for an extension because since the Commission granted Delfin's 2022 extension request it has entered into further offtake contracts for the deepwater port project. Specifically, Delfin states that, since the previous extension, it has entered into binding sale and purchase agreements with Hartree Partners for 0.6 MTPA and with Centrica for 1.0 MTPA, bringing the total volume under contract to 2.1 MTPA.¹³ Delfin asserts that it also is in negotiations with Devon Energy Corporation over an additional off-take agreement for 1.0 MTPA.¹⁴ Delfin further states that it is nearing a final investment decision for its first floating LNG vessel. Delfin anticipates that the construction, transport, and installation of its first floating LNG vessel and commencement of operations at the deepwater port will take approximately four years.¹⁵ Delfin emphasizes that the onshore facilities subject to Commission jurisdiction are integral to the deepwater port project under the jurisdiction of MARAD and the U.S. Coast Guard, and denying an extension would undermine the jurisdiction of those agencies.¹⁶

II. Notice, Protest, and Comments

6. Notice of Delfin's Extension of Time request was issued on July 25, 2023, establishing August 9, 2023, as the deadline for filing interventions, comments, and

¹¹ Letter Order to Delfin LNG LLC, Docket No. CP15-490-000 (issued July 15, 2020) (July 2020 Extension Order); *Delfin LNG LLC*, 178 FERC ¶ 61,031 (2022) (January 2022 Extension Order); *Delfin LNG LLC*, 181 FERC ¶ 61,144 (2022) (November 2022 Extension Order).

¹² Delfin LNG LLC July 21, 2023 Request for Extension of Time at 2.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* Delfin notes that its contractor will construct the newly built floating LNG vessel in a Korean shipyard, and once constructed the vessel must be transported to the port location in the Gulf of Mexico and installed. *Id.*

¹⁶ *Id.* at 4.

protests.¹⁷ Public Citizen, Centrica LNG Company, and Sierra Club filed timely motions to intervene.¹⁸

7. Sierra Club opposes granting the extension of time, arguing that Delfin has not demonstrated good cause. Sierra Club incorporates the protest that it lodged in the 2022 extension of time proceeding, Docket No. CP15-490-003, in an appendix to its current filing.¹⁹ Sierra Club argues that the Commission must consider new information on the project's impacts on the proposed critical habitat of the Rice's whale, a threatened and endangered species. Otherwise, Sierra Club reasserts its prior arguments that circumstances have changed to such a degree that the Commission must reconsider the public interest and environmental findings in the 2017 Certificate Order. Specifically, Sierra Club reiterates that the Commission must reexamine the project's air quality impacts, the project's contribution to climate change, and the potential upstream impacts of LNG export. Because Sierra Club is not raising new arguments on these subjects, and we have addressed those arguments in a final order, we decline to address them further, and we adopt the reasoning in the November 2022 Extension Order regarding those arguments.²⁰

8. Dave Butler filed comments stating the Commission should continue to require Delfin to follow the Louisiana Department of Wildlife and Fisheries recommendations and mitigation obligations from the 2017 Certificate Order²¹ and consider the project's impact on the federally listed eastern black rail.²² Centrica LNG Company filed comments in support of the requested extension.

III. Discussion

9. The completion date specified in a certificate or authorization order provides what the Commission believes—based on the applicant's initial project schedule and the

¹⁷ 88 Fed. Reg. 50,135 (Aug. 1, 2023).

¹⁸ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2022).

¹⁹ See Sierra Club August 9, 2023 Protest at app. B.

²⁰ See November 2022 Extension Order, 181 FERC ¶ 61,144 at PP 13-14, 17.

²¹ Dave Butler August 8, 2023 Comments at 1. The Commission is treating Mr. Butler's filings as comments from an individual because it is unclear if Mr. Butler is commenting as a representative of the Louisiana Department of Wildlife and Fisheries.

²² Dave Butler August 9, 2023 Comments at 1.

Commission's 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.²³ However, construction deadlines may be extended for good cause.²⁴ Good cause can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered circumstances that prevented it from doing so.²⁵

A. Good Cause Exists for Granting an Extension of Time

10. Sierra Club argues that Delfin has not shown good cause for an extension, arguing that the failure to meet the original deadline in the 2017 Certificate Order was due to Delfin's decision to wait for market conditions to improve.²⁶ It states that Delfin's failure to acquire customers for its LNG terminal is not sufficient justification for an extension, and asserts that, even now, Delfin does not have customers sufficient to support the entire LNG project.²⁷ Sierra Club argues that “[a] mere market downturn is not sufficient justification for an extension under FERC’s precedents.”²⁸

11. Although the Commission has stated that it will “in general, grant extensions of time when a project sponsor demonstrates that good faith efforts to meet a deadline have been thwarted[,]”²⁹ we consider such requests on a case-by-case basis.³⁰ As noted above, Delfin's onshore facilities are a small, but integral component of Delfin's larger, non-jurisdictional deepwater LNG port. We have previously found in this proceeding and others that, “where, as here, the sole purpose of the project is to serve the needs of a

²³ *Const. Pipeline Co., LLC*, 165 FERC ¶ 61,081, at P 9 (2018) (citing *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165, at P 8 (2016)).

²⁴ 18 C.F.R. § 385.2008(a) (2022) (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).

²⁵ *See, e.g., Adelpia Gateway, LLC*, 178 FERC ¶ 61,030, at P 15 (2022).

²⁶ Sierra Club August 9, 2023 Protest at 6.

²⁷ *Id.* at 5

²⁸ *Id.* at 7 (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, at P 13 (2012))

²⁹ *See, e.g., Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149 at P 11.

³⁰ *Id.* P 8.

single customer, that customer's unanticipated difficulties in receiving service can also be an appropriate basis for granting an extension of time."³¹ That circumstance is present here, as the sole purpose of the onshore facilities is to provide transportation service for feed gas to the deepwater port, but the single customer, the deepwater port, is not yet able to receive that service.³² Delfin states it anticipates making a final investment decision on the deepwater port project in October, 2023.³³

12. Sierra Club reasserts the argument from its 2022 protest that the circumstances here are similar to those in *Chestnut Ridge*, where the Commission denied an extension of time after finding that a delay solely due to market conditions was not good cause for an extension where the project is no longer commercially viable.³⁴ As we previously explained: "Unlike the applicant in *Chestnut Ridge*, Delfin has not 'set its [authorization] on a shelf and let it lie dormant.'"³⁵ As noted previously, Delfin continues to make progress in the commercialization of its project. Since the prior extension request, Delfin has entered into two binding sale and purchase agreements for 1.6 MTPA with Hartree Partners and Centrica and is in negotiations with further offtake partners.³⁶ Delfin states that it is close to executing a binding engineering, construction, and procurement contract

³¹ *Nw. Pipeline LLC*, 171 FERC ¶ 61,077, at P 14 (2020) (granting an extension of time where the certificated facilities were to serve a single customer facing delays for a methane plant). *See also* November 2022 Extension Order, 181 FERC ¶ 61,144 at P 10.

³² November 2022 Extension Order, 181 FERC ¶ 61,144 at P 10.

³³ Delfin LNG LLC July 21, 2023 Request for Extension of Time at 3-4. Delfin states that it has completed the engineering and design for the floating LNG vessels and is in advanced negotiations with Samsung Heavy Industries and Black & Veatch for an engineering, construction, and procurement contract. *Id.*

³⁴ *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149 at PP 11, 25. *See also Delfin LNG LLC*, 178 FERC ¶ 61,031, at PP 12-14 (2022) (emphasizing that a company's demonstrated commitment to a project signals the viability of a project).

³⁵ November 2022 Extension Order, 181 FERC ¶ 61,144 at P 10.

³⁶ Delfin LNG LLC July 15, 2022 Request for Extension of Time at 3. Delfin explains that the current contracts are adequate to support a final investment decision on one floating LNG vessel. *Id.* Because Delfin's proposed deepwater LNG port is a modular design, the Deepwater Port is commercially viable with one floating LNG vessel, even if, ultimately, the other three vessels are never added. *Id.* Thus, the first floating LNG vessel would require the completion of the Commission jurisdictional onshore facilities. *Id.* at 2.

with Samsung Heavy Industries and Black & Veatch for the first floating LNG vessel.³⁷ We note again that the Onshore Project over which the Commission has jurisdiction is a small component of the larger deepwater port project subject to the jurisdiction of MARAD and the Coast Guard. Delfin continues to hold a valid deepwater port license from the U.S. Department of Transportation.³⁸ Under these circumstances, we find that Delfin's continued efforts to enter into commercial agreements and finalization of the design of the deepwater port are sufficient evidence of continued commitment to proceeding with the project and demonstrate good cause for granting the requested extension of time to construct the Onshore Project and place it into service.³⁹

B. The Certificate Order's Public Interest and Environmental Findings are Valid

13. Sierra Club argues that the Commission must assess whether subsequent factual developments undermine the Commission's prior findings in the 2017 Certificate Order and renders the environmental analysis inadequate.⁴⁰ As noted above,⁴¹ we will not relitigate Sierra Club's prior arguments regarding the continued validity of the Certificate Order, which were addressed in the November 22 Extension Order.⁴² We adopt the reasoning in the November 2022 Extension Order regarding those arguments.⁴³ Similarly, regarding Mr. Butler's request that the Commission should continue to require Delfin to follow the mitigation obligations from the 2017 Certificate Order,⁴⁴ we note that

³⁷ *Id.*

³⁸ U.S. Department of Transportation, Secretary's Decision on the Deepwater Port License Application of Delfin LNG, LLC, at 23 (Mar. 13, 2017).

³⁹ November 2022 Extension Order, 181 FERC ¶ 61,144 at P11 (citations omitted); *see also id.* at P 12 (noting that the Commission jurisdictional onshore facilities are an integral part of the deepwater port project and declining to "act in a way that will unilaterally undermine the decisions of the Coast Guard and MARAD regarding the deepwater port, by denying an extension of time for construction of our component.").

⁴⁰ Sierra Club August 9, 2023 Protest at 7-8.

⁴¹ *See supra* P 7.

⁴² *See* November 2022 Extension Order, 181 FERC ¶ 61,144 at PP 13-17.

⁴³ *See id.*

⁴⁴ Dave Butler August 8, 2023 Comments at 1.

all environmental conditions and mitigation requirements from the 2017 Certificate Order remain in effect.

14. In its August 2023 Protest, Sierra Club highlights new information regarding potential impacts on endangered species, specifically the Rice's whale, that has been developed since Delfin's previous extension request, and argues that an extension of time to construct constitutes a federal action triggering Endangered Species Act (ESA) section 7 consultation.⁴⁵

15. As we have previously explained,⁴⁶ information regarding newly listed threatened and endangered species requires consideration and the ESA regulations⁴⁷ require a determination whether Delfin's project may have impacts on the newly listed species.⁴⁸ Specifically, if a new species or newly designated critical habitat 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 consult with NMFS or FWS, as appropriate, if the effects are reasonably certain to occur.⁴⁹ Where, as here, another federal agency will undertake the action that may directly impact the listed species, the Commission will look to that agency to take the lead in engaging with NMFS and FWS.⁵⁰

⁴⁵ Sierra Club August 9, 2023 Protest at 8-9. Sierra Club cites to recent proposed designation of critical habitat in the western and central Gulf of Mexico. *Id.* at 9-10 (citing 88 Fed. Reg. 47,453 (July 24, 2023)).

⁴⁶ See January 2022 Extension Order, 178 FERC ¶ 61,031 at P 17; November 2022 Extension Order, 181 FERC ¶ 61,144 at P 15.

⁴⁷ Endangered and Threatened Wildlife and Plans; Regulations for Interagency Cooperation, 84 Fed. Reg. 44,976 (Aug. 27, 2019).

⁴⁸ *Endangered and Threatened Wildlife and Plans; Regulations for Interagency Cooperation*, 84 Fed. Reg. 44,976.

⁴⁹ 50 C.F.R. § 402.02 (2022).

⁵⁰ Because the licensing of Delfin LNG's proposed deepwater port facilities falls under the jurisdiction of MARAD and the U.S. Coast Guard, those agencies were the lead agencies in the preparation of the environmental impact statement (EIS) and engaging in ESA consultation. The Commission participated as a cooperating agency for the EIS, and Commission staff provided technical assistance regarding the ESA consultation with respect to the jurisdictional onshore facilities. January 2022 Extension Order, 178 FERC ¶ 61,031 at P 17.

On August 17, 2023, MARAD reinitiated section 7 consultation with the U.S. Fish and Wildlife Service (FWS) for species potentially impacted by the onshore project. In its consultation letter, MARAD states that the onshore facility “may affect, but is not likely to adversely affect” the eastern black rail.⁵¹ Commission staff will continue to engage with MARAD regarding newly listed species.⁵²

16. We further note that the EIS discussed threatened and endangered species, but that since the issuance of the EIS the Rice’s whale has been listed as endangered by National Marine Fisheries Service (NMFS) and, on July 24, 2023, proposed critical habitat for that species has been designated.⁵³ With respect to the Rice’s whale, the EIS considered potential impacts on many large marine mammals, including the Gulf of Mexico Bryde’s whale,⁵⁴ which has been scientifically confirmed a genetically distinct species from the Bryde’s whale and renamed as the Rice’s whale since the issuance of the 2017 Certificate Order.⁵⁵ The EIS determined that the project may affect but is not likely to adversely

⁵¹ August 17, 2023 Letter from MARAD to FWS Reinitiating Section 7 Consultation at 2.

⁵² See November 2022 Extension Order, 181 FERC ¶ 61,144 at P 16 (highlighting that the Commission will undertake its obligations under NEPA and ESA prior to authorizing Delfin to commence construction).

⁵³ 80 Fed. Reg. 47,452 (July 24, 2023). The proposed critical habitat for the Rice’s whale is described as one continuous marine area within the Gulf of Mexico from the Texas-Mexico border in the west to the Florida Keys in the east between 100 meter to 400 meter isobaths. 80 Fed. Reg. 47,452, 47,471.

⁵⁴ EIS at 3-18.

⁵⁵ Endangered and Threatened Wildlife and Plants; Technical Corrections for the Bryde’s Whale (Gulf of Mexico Subspecies), 86 Fed. Reg. 47,022 (Aug. 23, 2021) (codified at 50 C.F.R. § 224.101(h) (2022)). Whales thought to be Bryde’s whales were first observed in the Gulf of Mexico in the 1960s, but, in the 2010s, scientists began to suspect that the population of Bryde’s whales in the Gulf of Mexico was a distinct species. At the time of the EIS in 2016, the Gulf of Mexico Bryde’s whale was proposed to be listed as a protected species by the National Marine Fisheries Service, but it was not listed as an endangered sub-species until 2019. See Endangered and Threatened Wildlife and Plants; Endangered Status of the Gulf of Mexico Bryde’s Whale, 84 Fed. Reg. 15,446 (Apr. 15, 2019). In 2021, a formal description of a distinct species of Bryde’s-like whales—the Rice’s whale—was published for the first time. “How the Gulf of Mexico Bryde’s Whale Became the Rice’s Whale,” National Oceanographic and Atmospheric Administration, <https://www.fisheries.noaa.gov/southeast/marine-mammal-protection/how-gulf-mexico-brydes-whale-became-rices-whale> (last accessed Aug. 24,

affect the Gulf of Mexico Bryde's whale.⁵⁶ Without further indication that the environmental impacts of the project will extend beyond those that have already been considered, the distinguishing of the Rice's whale as a protected species in itself is not enough to trigger further ESA consultation.⁵⁷ To the extent that additional impacts to critical habitat must be considered, MARAD and Coast Guard can coordinate any necessary consultation with NMFS.

IV. Conclusion

17. Because we find that Delfin has demonstrated good cause for the extension of time, we will grant the requested four-year extension of time to complete the onshore facilities authorized in the 2017 Certificate Order.

18. 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:

Delfin LNG LLC is granted a four-year extension of time, to September 28, 2027, to construct and make available for service the onshore facilities as authorized in CP15-490-000.

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

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

2023).

⁵⁶ EIS at 4-39.

⁵⁷ See, e.g., *Freeport LNG Dev., L.P.*, 182 FERC ¶ 61,112, at P 15 (2023) (explaining that if the Commission has previously considered the impacts of a project on a species, the formal listing of that species as protected under the ESA is not sufficient to trigger further consultation).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Delfin LNG LLC

Docket No. CP15-490-004

(Issued October 4, 2023)

DANLY, Commissioner, *concurring*:

1. I concur in the Commission’s decision to grant the request filed by Delfin LNG LLC (Delfin) for a four-year extension of time,¹ until September 28, 2027, to construct and place into service the onshore metering, compression, and piping facilities authorized by the Commission in its September 28, 2017 order (Authorization Order).²

2. As a reminder, “[e]xtension of time proceedings are not an invitation to re-open the underlying dockets.”³ Our inquiry when reviewing a request for extension of time is narrow—it is not an opportunity to revisit the determinations made in Natural Gas Act authorizations after orders have become final and unappealable.⁴ There is thus no question of whether the public interest determination made in the Authorization Order remains valid. Instead, it is a question of whether there is good cause to grant the extension of time, and Delfin has indeed demonstrated good cause for the requested extension.

¹ See Delfin LNG LLC July 21, 2023 Request for Extension of Time.

² *Delfin LNG LLC*, 160 FERC ¶ 61,130 (2017).

³ *Delfin LNG LLC*, 181 FERC ¶ 61,144, at P 17 (2022) (citation omitted).

⁴ See *Corpus Christi Liquefaction Stage III, LLC*, 179 FERC ¶ 61,087, at P 15 (2022) (“extension of time proceedings are not an invitation to re-open the dockets”) (citations omitted); see also *Nat’l Fuel Gas Supply Corp.*, 179 FERC ¶ 61,226, at P 20 (2022) (“Rule 716 does not provide the Commission with additional authority to reopen the record underlying the Certificate Order here, where a final, non-appealable order has issued.”) (citations omitted); *id.* (Danly, Comm’r, concurring at P 5) (“Circumstances, no matter how extraordinary, cannot themselves grant jurisdiction where Congress has conferred no power. In the absence of authority provided by Congress, the Commission simply cannot revisit its public convenience and necessity determinations once a certificate order becomes final and unappealable.”).

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For these reasons, I respectfully concur.

James P. Danly
Commissioner

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