



**Department of Energy**  
Washington, DC 20585

J. Gordon Arbuckle  
Squire Patton Boggs  
2550 M Street, N.W.  
Washington, DC 20037

RE: SeaOne Gulfport, LLC—DOE/FE Docket No. 16-22-CGL

Dear Mr. Arbuckle:

I am writing to respond to your letter, dated December 9, 2016, regarding the above-referenced application from SeaOne Gulfport, LLC (SeaOne) for authority to export natural gas contained in compressed gas liquids (CGL) to countries with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas (non-FTA countries). The application proposes that these exports originate from a yet to be built facility within the Port of Gulfport, Mississippi (SeaOne Gulfport Facility).

Your letter asserts that the record in this proceeding is complete and includes no information that could lead to the conclusion that granting the application is not in the public interest. You further assert that, given the content of the record, this agency has no discretion and must grant the application because section 3 of the Natural Gas Act, 15 USC 717b, (NGA) establishes a rebuttable presumption that an application to export natural gas is in the public interest. Inasmuch as you believe DOE's obligation to grant the pending application is non-discretionary, you also assert that the application is exempt from review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

Regardless of our final action in this proceeding, you assert that the record supports a conclusion that the SeaOne Gulfport Facility will be built and is economically sustainable because SeaOne received authority in December 2014 to export natural gas contained in compressed gas liquids (CGL) to countries with which the United States has a free trade agreement requiring national treatment for trade in natural gas<sup>1</sup> and because SeaOne plans to ship CGL to U.S. territories. Based on your assertion that the Facility will be built regardless of DOE's action in this proceeding, you maintain that the Facility is exempt from NEPA review under Categorical Exclusion B5.7. Categorical exclusion B5.7 in the Department's regulations applies to "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor

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<sup>1</sup> See *SeaOne Pascagoula, LLC*, DOE/FE Order No. 3555, FE Docket No. 14-83-CGL, Order Granting Long-Term, Multi-Contract Authorization to Export by Vessel Natural Gas Contained in or Mixed With Compressed Gas Liquid From the Proposed Pascagoula Compressed Gas Liquid Export Facility to be Located at the Port of Pascagoula, Mississippi, to Free Trade Agreement Nations in the Caribbean Basin and Gulf of Mexico (Dec. 2, 2014), *as amended sub nom.* SeaOne Gulfport, LLC, DOE/FE Order No. 3555-A (Sept. 25, 2015).



operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”<sup>2</sup>

Even were DOE to conclude that the Facility is not eligible for Categorical Exclusion B5.7, you maintain that any required environmental review has already been completed. You refer to (1) an environmental assessment (EA) of the Port of Gulfport operations by the United States Army Corp. of Engineers and a finding of no significant impact (FONSI) in connection with the EA; (2) a draft environmental impact statement (EIS) prepared by the Army Corp. for the Port of Gulfport Expansion Project in late 2015; and (3) a Preliminary Waterway Suitability Assessment for Compressed Gas Liquid (CGL) Marine Traffic from the U.S. Coast Guard that concluded that CGL is a radically different product than liquefied natural gas (LNG) and that facilities for shipment of CGL will be significantly safer and more secure than LNG vessels and facilities. In light of these environmental reviews, you conclude that any environmental review required by DOE/FE in this proceeding would be duplicative and unnecessary. You also request a meeting to reach a consensus as to how to proceed with approval of the pending application.

In considering your letter, we have reviewed our statutory responsibilities under both the Natural Gas Act and NEPA. This proceeding arises under section 3(a) of the NGA which expressly requires DOE to find that the proposed export of natural gas to non-FTA countries is not inconsistent with the public interest. While there is a rebuttable presumption in section 3(a) proceedings that a proposed export is consistent with the public interest, this finding is not automatic, unlike the requirements for applications for FTA export authority under NGA section 3(c), but must be based on a thorough examination of the record. Independently of the public interest review required by the NGA, DOE must determine whether the proposed authorization is a major federal action that requires compliance with NEPA. Moreover, section 3(a) of the NGA and NEPA afford this agency considerable discretion in attaching terms and conditions to non-FTA export authorizations in order to ensure that section 3(a) export authorizations are consistent with the public interest and to mitigate adverse environmental impacts.

In light of our unvarying statutory responsibilities, as described above, we do not agree with your assertions that the record in this proceeding is complete and that our action in this proceeding is not discretionary. These conclusions, if adopted, would circumvent the public interest review required under NGA section 3(a) and the environmental review required under NEPA and would mean that DOE could not attach meaningful terms and conditions to any authorization that may eventually be issued in this or similar proceedings.

We note that fashioning meaningful and effective terms and conditions depends on the cooperation of the applicant to submit information necessary for DOE to complete its public interest and NEPA reviews. While you assert that it is clear that the Gulfport Facility will be completed regardless of our action in this proceeding, we considered and rejected that assertion in Order No. 3905, issued October 14, 2016 in this proceeding.<sup>3</sup> To date, no new evidence has been submitted to contradict the conclusions reached in Order No. 3905 or to substantiate your claim that the Gulfport Facility is exempt from NEPA review or is otherwise eligible for

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<sup>2</sup> 10 C.F.R. Part 1021, Subpart D, App. B, Exclusion B5.7.

<sup>3</sup> *SeaOne Gulfport, LLC*, Order Denying Motion for Opinion and Order on Application, DOE/FE Order No. 3905 (Oct. 17, 2016).



Categorical Exclusion B.5.7. This finding includes a review of the confidential and sealed Annex A of your December 9 letter.

Similarly, while the environmental reviews by the Army Corp. and the Coast Guard cited in your letter may have some relevance to our statutorily mandated reviews, you have not provided sufficient information concerning the proposed Facility for us to conclude that our reviews would be duplicative or that either of the named agencies examined with particularity the proposed operations involved in manufacturing CGL and preparing it for export. This contrasts with instances where DOE has agreed to assume cooperating agency status in order to avoid duplicative environmental reviews by other agencies, *e.g.* the Federal Energy Regulatory Commission.

In Order No. 3905, we stated that “[i]f the proposed Gulfport Facility is an export facility subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), then FERC will be the lead agency for NEPA purposes and SeaOne should initiate pre-filing procedures there.<sup>4</sup> SeaOne’s Application contends, however, that the Gulfport Facility is *not* an export facility within FERC’s jurisdiction.<sup>5</sup> That question is for FERC to decide and DOE/FE will not address it in this proceeding. If the Gulfport Facility falls outside FERC’s jurisdiction, DOE will be the lead agency for the environmental review required by NEPA. We stand ready to begin that process at SeaOne’s initiative.” We hereby reaffirm the willingness to commence NEPA review as soon as SeaOne is ready to proceed. Please let us know when you are ready to move forward.

Issued in Washington, D.C., on December 23, 2016.



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**John A. Anderson**  
Director, Office of Regulation and International Engagement  
Office of Oil and Natural Gas

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<sup>4</sup> See 15 U.S.C. § 717n.

<sup>5</sup> See SeaOne App. at 12, 16-20.