

187 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Venture Global Calcasieu Pass, LLC

Docket Nos. CP15-550-002
CP15-550-000

ORDER ESTABLISHING PROCEDURES BEFORE AN ADMINISTRATIVE
LAW JUDGE AND DIRECTING RELEASE OF INFORMATION
UNDER A PROTECTIVE AGREEMENT

(Issued June 10, 2024)

1. On February 15, 2024, Venture Global Calcasieu Pass, LLC (Venture Global) filed a request for an extension of time to place into service its liquified natural gas (LNG) terminal in Cameron Parish, Louisiana (Calcasieu Pass LNG Terminal).¹ BP Gas Marketing Ltd. (BP), China International United Petroleum & Chemicals Co., Ltd. (China International), Edison S.p.A. LLC (Edison), Galp Trading S.A. (Galp), Orlen Spółka Akcyjna (Orlen), Repsol LNG Holding, S.A. (Repsol), and Shell NA LNG LLC (Shell) (collectively, Customers) filed motions to intervene and submitted requests for material that Venture Global filed as privileged. Venture Global objected to the Customers' requests for privileged documents and refused to release the documents under a protective agreement unless ordered to do so by the Commission.² As discussed below, we are referring the matter to an administrative law judge and requiring Venture Global to provide Customers with access to the requested material.

¹ Venture Global February 15, 2024 Extension of Time Request (Extension of Time Request).

² See, e.g., Venture Global February 26, 2024 Initial Response at 2; see also Venture Global March 18, 2024 Answer (Venture Global March 18 Answer).

I. Background

2. On February 21, 2019, the Commission issued an order authorizing Venture Global to site, construct, and operate the Calcasieu Pass LNG Terminal.³ The terminal consists of one natural gas meter station; three pretreatment blocks; nine integrated pre-cooled singled mixed refrigerant blocks (liquefaction blocks); two full-containment, above-ground 200,000 cubic meter LNG storage tanks; two LNG berthing docks; a 720-megawatt electric power generation facility; and other appurtenant facilities. The terminal's currently authorized export capacity is 12.4 million metric tons per annum or 640.7 billion cubic feet per year.⁴ Ordering Paragraph (B) of the Authorization Order required Venture Global to complete construction of the liquefaction facilities and make them available for service by February 21, 2024.⁵

3. Venture Global commenced construction of the project in 2019⁶ and began exporting commissioning cargoes⁷ in 2022.⁸ As of October 26, 2023, Commission staff has authorized Venture Global to place all nine liquefaction blocks into service; however, Venture Global has stated that the terminal remains in the commissioning phase due to reliability challenges with the heat recovery steam generators.⁹

³ *Venture Glob. Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019) (Authorization Order).

⁴ *Venture Glob. Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 (2023) (amending Venture Global's section 3 authorization to increase the terminal's export capacity).

⁵ Authorization Order, 166 FERC ¶ 61,144 at ordering para. (B).

⁶ See Venture Global April 8, 2019 Construction Progress Report.

⁷ A commissioning cargo is a pre-commercial cargo loaded while export facility operations are still undergoing final testing and inspection. *Venture Global Calcasieu Pass, LLC*, Docket. No. 13-69-LNG at n.21 (DOE/FE 2023).

⁸ Extension of Time Request at 3.

⁹ *Id.* See also Commission Staff October 26, 2023 In-Service Authorization.

4. On February 15, 2024, Venture Global filed a request for an extension of time to place the remaining facilities in service.¹⁰ Notice of the request was issued on February 22, 2024, and established a 15-day deadline for interventions and comments.

5. Customers filed comments asserting that they cannot properly comment on the extension of time request without access to documents in the record regarding the commissioning status of the project that Venture Global has filed as privileged.¹¹ Customers sent requests to Venture Global for the non-public documents, along with executed protection agreements, which they modeled after the Commission's Model Protective Order¹² because Venture Global did not include a proposed form of protective agreement when it filed the non-public documents.¹³ In response, Venture Global stated that it "will not provide any such documents unless and until explicitly ordered to do so by the Commission."¹⁴ Galp, Repsol, and Edison then moved for the Commission to compel Venture Global to release the requested documents.¹⁵ Other Customers also requested that the Commission require Venture Global to release the documents and extend the comment period in the extension of time proceeding until after Customers receive the non-public documents.¹⁶

¹⁰ Venture Global's request for an extension of time to place the facilities at the Calcasieu Pass LNG Terminal into service will be addressed in a separate order.

¹¹ See, e.g., BP February 27, 2024 Comments at 2; see also Edison March 8, 2024 Comments at 10.

¹² Administrative Litigation, *Model Protective Order* (revised May 11, 2020), <https://www.ferc.gov/administrative-litigation-0>; see also *Revisions to the Model Protective Order and Related Guidance*, AD20-12-000 (May 11, 2020).

¹³ See, e.g., Galp March 1, 2024 Motion to Compel at 2; see also Repsol March 1, 2024 Motion to Compel at 2.

¹⁴ Venture Global February 26, 2024 Initial Response at 2.

¹⁵ Galp March 1, 2024 Motion to Compel at 3-5; Repsol March 1, 2024 Motion to Compel at 3-5; Edison April 1, 2024 Objections and Motion to Compel at 6-9. Both Galp and Repsol also request that the Commission find that Venture Global has waived any right to object to the protective order. As discussed below, we are referring all objections to the form of protective agreement to an administrative law judge, so we deny this request.

¹⁶ Edison March 8, 2024 Comments at 10; Galp March 8, 2024 Comments at 2; Repsol March 8, 2024 Comments at 2-3; Orlen March 8, 2024 Comments at 4.

6. On March 13, 2024, Commission staff issued a deficiency letter requiring Venture Global to either identify where a protective agreement has already been filed in the docket or provide a form of protective agreement as required by the Commission's regulations.¹⁷ On March 14, 2024, Venture Global filed a form of protective agreement but reiterated that it would not provide any non-public documents unless ordered to do so by the Commission.¹⁸ Customers filed objections to the proposed form of protective agreement and asked the Commission to either refer the matter to an administrative law judge or rule on the terms of a protective agreement.¹⁹

II. Discussion

A. Procedural Matters

1. Motions to Compel

7. On March 1, 2024, Galp and Repsol filed motions asking the Commission to compel Venture Global to comply with section 388.112(b)(2) of the Commission's regulations and release the requested non-public documents.²⁰ Venture Global argues that the motions to compel are improper because this is not a proceeding that is set for hearing with discovery rights.²¹ The Commission's regulations, however, do not limit motions in this manner, stating that a motion may be filed at any time, by a person who filed a timely intervention that has not been denied, and in any proceeding except an

Comments received related to the request for an extension of time will be addressed in a future order.

¹⁷ Commission Staff March 13, 2024 Deficiency Letter.

¹⁸ Venture Global March 14, 2024 Deficiency Response at 2, attach. (Proposed Protective Agreement).

¹⁹ BP March 25, 2024 Answer and Objections at 5-6; Edison April 5, 2024 Objections and Motion to Compel at 3-6; Galp March 25, 2024 Answer and Objections at 9-10; Repsol March 22, 2024 Answer and Objections at 9-10; Shell April 12, 2024 Objections and Motion for Expedited Remedial Relief at 9-11.

²⁰ Galp March 1, 2024 Motion to Compel at 3-5; Repsol March 1, 2024 Motion to Compel at 3-5.

²¹ Venture Global March 18 Answer at 12.

informal rulemaking proceeding.²² Therefore, we will consider the motions to compel below.

2. Timely Motions to Intervene

8. The Commission's notice of Venture Global's request for an extension of time established March 8, 2024, as the deadline for filing comments and motions to intervene. BP, Edison, Galp, Orlen, Public Citizen, Repsol, and Shell filed timely motions to intervene.²³ On March 18, 2024, Venture Global opposed all interventions in the extension of time proceeding.

9. Pursuant to Rule 214(c)(2) of the Commission's Rules of Practice and Procedure, if an answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party only when the motion is expressly granted.²⁴ Because Venture Global failed to file its opposition within 15 days, the motions to intervene filed by BP, Galp, Public Citizen, Repsol, and Shell are automatically granted pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. Nevertheless, we address Venture Global's arguments in opposition below.²⁵ We also discuss below Venture Global's timely opposition to Orlen's and Edison's motions to intervene.

²² 18 C.F.R. § 385.212 (2023).

²³ Repsol February 21, 2024 Motion to Intervene and Comments; Shell February 21, 2024 Motion to Intervene and Comments; Galp February 22, 2024 Motion to Intervene and Comments; Public Citizen February 26, 2024 Motion to Intervene; BP February 27, 2024 Motion to Intervene and Comments; Edison March 8, 2024 Motion to Intervene and Comments; Orlen March 8, 2024 Motion to Intervene and Comments.

²⁴ 18 C.F.R. § 385.214(c)(2) (2023).

²⁵ Venture Global also opposes Shell, Repsol, Galp, and Public Citizen's motions to intervene, claiming that they did not demonstrate a specific interest in the proceeding, or show how they would be directly affected by the Commission's action or why their interventions would be in the public interest. Venture Global March 18, 2024 Answer at 8 n.27; Venture Global April 1, 2024 Answer at 6-7. Venture Global further asserts that it could not have been expected to oppose incomplete motions to intervene and that its filed opposition on March 18, 2024, should be considered timely because Shell, Repsol, and Galp did not complete their motions to intervene until their filings on March 8, 2024. Venture Global April 1, 2024 Answer at 7. Venture Global had enough information in the initial motions to intervene to timely oppose them but failed to do so. Therefore, the motions to intervene were automatically granted and this argument is moot.

10. Venture Global states that it opposes all motions to intervene and that if the Commission were to grant intervenor status, the intervenors' rights should be limited to Docket No. CP15-550-002 and not to the underlying docket in CP15-550-000.²⁶ Venture Global further asserts that the Commission should deny the interventions because the Customers are using the extension of time proceeding to gain access to documents for purposes beyond commenting on the extension of time.²⁷ Additionally, Venture Global states that whether Customers should be allowed to intervene in the underlying proceeding in Docket No. CP15-550-000 or be provided access to non-public documents is the subject of two other proceedings before the Commission and should be addressed in those proceedings rather than with the extension of time request.²⁸

11. Venture Global's arguments are unpersuasive. The notice soliciting motions to intervene included both subdockets, CP15-550-000 and CP15-550-002, and stated that intervenors would have "the rights afforded to parties [in] the above captioned proceedings." Additionally, the Commission's policy is to allow interventions in extension of time proceedings even when the entity did not intervene in the underlying proceeding.²⁹ When establishing the policy, the Commission stated that requests to extend deadlines have public interest implications and allowing intervention ensures that any entities whose interests or circumstances may have changed since the underlying proceeding have the opportunity to be heard.³⁰ Moreover, Venture Global's concern about additional litigation in the underlying authorization proceeding is unfounded. The Commission has explained that even though it allows entities to intervene in extension of time proceedings despite not having intervened in the initial proceeding, entities "may

²⁶ Venture Global March 18 Answer at 9-10. As an initial matter, Venture Global argues that it does not need an extension of time because the liquefaction facilities are already in service and therefore all motions to intervene should be dismissed or denied. *Id.* at 4-6, 9; Venture Global April 19, 2024 Answer at 2-3, 15. We will address this assertion in a future order on the merits of its request.

²⁷ Venture Global March 18 Answer at 9; Venture Global April 19, 2024 Answer at 14.

²⁸ Venture Global March 18 Answer at 9.

²⁹ *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at P 10 (2022) (stating that extension of time proceedings "may raise important questions for landowners *and other stakeholders*") (emphasis added). Contrary to Venture Global's assertions, the ruling in *Adelphia* was not limited to landowners. *See* Venture Global April 1, 2024 Answer at 4.

³⁰ *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030 at P 10.

not relitigate the Commission's decision to issue a certificate."³¹ Nor does the existence of other proceedings where some Customers seek to intervene in the Authorization Order docket (CP15-550-000) alter the fact that Customers have a direct interest in the extension of time proceeding and should be allowed to intervene here.³²

12. As noted above, Venture Global opposed the timely interventions of Edison and Orlen. Both Edison and Orlen demonstrated that—as customers of the Calcasieu Pass LNG Terminal—they may be directly affected by the outcome of the extension of time proceeding.³³ Moreover, allowing the interventions will not cause any additional burden upon the existing parties. Therefore, their timely motions to intervene are granted.

3. Late Motion to Intervene

13. On March 11, 2024, China International filed a motion to intervene out of time. China International seeks to intervene because it is a customer of Venture Global's Calcasieu Pass LNG facility, it has a substantial interest in the proceeding, and it will be directly affected by the outcome of the proceeding. On March 18, 2024, Venture Global filed an answer opposing China International's intervention.

14. In deciding whether to grant a late intervention, the Commission may consider the factors set forth in Rule 214(d) of the Commission's Rules of Practice and Procedure.³⁴ Here, China International has a direct interest in the proceeding that may not be adequately represented by other parties, and allowing the intervention will not disrupt the proceeding or cause any prejudice to or additional burdens upon the existing parties. Therefore, the motion to intervene is granted.

³¹ *Id.*

³² *See* Edison April 5, 2024 Objections and Motion to Compel at 8 (arguing that it should not be barred from getting information from this proceeding just because other parties have filed a complaint, especially when it is not a party to the other proceedings).

³³ Edison March 8, 2024 Motion to Intervene and Comments; Orlen March 8, 2024 Motion to Intervene and Comments; *see also* Orlen April 2, 2024 Answer at 3; Edison April 5, 2024 Answer at 3, 6-7.

³⁴ 18 C.F.R. § 385.214(d)(1)(i)–(v) (factors include the potential disruption caused by such late intervention, whether the movant's interest is not adequately represented by other parties, and any prejudice to existing parties).

4. Answers

15. On March 18, 2024, Venture Global filed a motion for leave to answer and an answer to Customers' comments on the extension of time request and requests for non-public documents. Shell, Repsol, Galp, and BP filed motions for leave to answer and answers to Venture Global's March 18 Answer.³⁵ On April 1, 2024, Venture Global filed an answer to Shell, Repsol, Galp, and BP's answers.³⁶ On April 2 and 5, 2024, Orlen and Edison filed answers to Venture Global's March 18 Answer,³⁷ and, on April 19, 2024, Venture Global filed an answer to Edison's answer.

16. The February 22, 2024 notice of Venture Global's request for an extension of time prohibited reply comments and answers. Additionally, Rule 213(a)(2) of the Commission's Rules of Practice and Procedures prohibits answers to answers unless otherwise ordered by the decisional authority.³⁸ We accept all the answers, however, because they will assist us in our decision-making process.

B. Access to Non-Public Documents

17. Section 388.112 of the Commission's regulations permits any person filing a document with the Commission to request privileged treatment for some or all of the information contained in the document that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act. To obtain privileged treatment, the filer is to: (1) include a justification for requesting privileged treatment; (2) designate the document as privileged; (3) submit a public version of the document with the information that is claimed to be privileged material redacted, to a practicable extent,³⁹ and (4) when such material is filed in a proceeding to which a right to intervene exists, as is the case here, include a proposed form of protective agreement with the

³⁵ Shell March 22, 2024 Answer; Repsol March 22, 2024 Answer and Objections to Protective Agreement; Galp March 25, 2024 Answer and Objections to Protective Agreement; BP March 25, 2024 Answer and Objections to Protective Agreement.

³⁶ Venture Global April 1, 2024 Answer.

³⁷ Orlen April 2, 2024 Answer; Edison April 5, 2024 Answer.

³⁸ 18 C.F.R. § 385.213(a)(2) (2023).

³⁹ 18 C.F.R. § 388.112(b)(1) (2023).

filing⁴⁰ and provide the public version of the document and its proposed form of protective agreement to each entity that is required to be served with the filing.⁴¹

18. An intervenor to the proceeding may make a written request to the filer for a copy of the complete, non-public version of the document. The request must include an executed copy of the protective agreement and a statement of the person's right to party status or a copy of their motion to intervene. The filer, or any other person, may file an objection to the disclosure of the requested material, generally or to a particular person or persons who have sought intervention. In that case, the privileged material will not be disclosed until so ordered by the Commission or another decisional authority.⁴²

19. Customers assert that Venture Global violated section 388.112 of the Commission's regulations because it did not file a form of protective agreement when it initially filed privileged material.⁴³ Venture Global claims that it did not previously file a protective agreement because no party in the proceeding had ever sought access to non-public filings.⁴⁴ Venture Global should have complied with the Commission's regulations and filed a proposed form of protective agreement when it first requested that material be treated as privileged; however, it responded to the Commission's March 13, 2024 deficiency letter and provided a proposed form of protective agreement for this proceeding. We therefore find Customers' allegation moot.

20. Customers also claim that Venture Global did not timely or properly object to the requests for privileged documents or the list of requested documents and therefore any objections should be waived.⁴⁵ Venture Global argues that it made its position clear in its

⁴⁰ *Id.* § 388.112(b)(2)(i).

⁴¹ The Commission specifically exempts two categories of documents from the protective agreement procedure for obtaining privileged material: (1) landowner lists; and (2) privileged information filed under section 380.12(f) or section 380.16(f) of the Commission's regulations, which pertains to cultural resources.

⁴² 18 C.F.R § 388.112(b)(2)(iv).

⁴³ Shell March 22, 2024 Answer at 5; Edison April 5, 2024 Answer at 10; Shell April 12, 2024 Objections at 17-20.

⁴⁴ Venture Global April 19, 2024 Answer at 10.

⁴⁵ Galp March 1, 2024 Motion to Compel at 3-5; Repsol March 1, 2024 Motion to Compel at 3-5; Repsol March 22, 2024 Answer and Objections at 7; Shell March 22, 2024 Answer at 5; Galp March 25, 2024 Answer and Objections at 6-7; Shell April 12, 2024 Objections at 20-22.

initial filing on February 26, 2024,⁴⁶ where it stated that it “will not provide any such documents unless and until explicitly ordered to do so by the Commission.”⁴⁷ While this statement, made before some requests for the documents had been made, was thus premature, we deem it to satisfy the regulations.

21. Venture Global claims that the privileged documents Customers request have no bearing on the request for an extension of time and that Venture Global is not relying on any non-public information to justify the extension.⁴⁸ Customers disagree, asserting that Venture Global’s extension of time request specifically cites non-public information related to the heat recovery steam generator and that obtaining this information is necessary to fully evaluate the extension of time request.⁴⁹

22. Venture Global also argues that the Commission should reach the same decision here as it did in the recent *Rio Grande LNG* order, where the Commission denied an intervenor’s request for non-public information.⁵⁰ It asserts that some of the privileged information Customers request is highly confidential and should not be released.⁵¹ For their part, Customers state that this concern can be adequately addressed by a protective agreement.⁵²

⁴⁶ Venture Global April 19, 2024 Answer at 8-9.

⁴⁷ Venture Global February 26, 2024 Initial Response at 2; *see also* Venture Global March 14, 2024 Response to Deficiency Letter; Venture Global March 18 Answer; Venture Global April 11, 2024 Opposition to Request for Documents.

⁴⁸ Venture Global March 18 Answer at 7, 12-13; Venture Global April 19, 2024 Answer at 7-8.

⁴⁹ Galp March 1, 2024 Motion to Compel at 3-4; Repsol March 1, 2024 Motion to Compel at 2-3; Repsol March 22, 2024 Answer and Objections at 7-8; Galp March 25, 2024 Answer and Objections at 7-8; BP March 25, 2024 Answer and Objections at 4-5; Orlen April 2, 2024 Answer at 6-7; Edison April 5, 2024 Answer at 11-12; Edison April 5, 2024 Objections and Motion to Compel at 8.

⁵⁰ Venture Global April 19, 2024 Answer at 8.

⁵¹ Venture Global March 18 Answer at 13.

⁵² Repsol March 22, 2024 Answer and Objections at 8; Galp March 25, 2024 Answer and Objections at 8; Edison April 5, 2024 Answer at 12; Edison April 5, 2024 Objections and Motion to Compel at 8-9.

23. When considering an intervenor's request to access non-public information, the Commission has explained that it is "obligated to balance the interests of a party seeking confidential treatment for information with the interests of parties seeking access to that information."⁵³ The Commission has acknowledged that parties to a proceeding must be permitted to participate meaningfully therein.⁵⁴ In addition, we have generally found that use of protective agreements appropriately balances the interests of filers in protecting their sensitive information against inappropriate disclosure and the right of intervenors to access information necessary to their full and meaningful participation in a contested proceeding.⁵⁵ It is common practice for parties to a proceeding to use a protective agreement to gain access to confidential and proprietary information submitted on a non-public basis while at the same time ensuring that such information is neither publicly disclosed nor used by parties for purposes unrelated to their participation in the proceeding.⁵⁶

24. Here, while Customers seek access to privileged information that pertains to specific engineering details of the LNG facilities, the information is directly related to the need for Venture Global to request an extension of time. In its request for an extension of time, Venture Global states that reliability issues with the heat recovery steam generators require the facilities to remain in the commissioning phase.⁵⁷ Numerous filings related to the heat recovery steam generators are filed as privileged, contradicting Venture Global's claim that its extension of time request is not based on non-public information.

25. We also find that the *Rio Grande LNG* case is distinguishable from this proceeding. In *Rio Grande LNG*, the Commission found that the intervenor's need to access the privileged information was outweighed by Rio Grande's need to protect it, considering the sensitive nature of the information and that the information requested did not align with the intervenor's specific interest in the proceeding.⁵⁸ The Commission looked at the motion to intervene to determine the intervenor's interest in the

⁵³ *W. Deptford Energy, LLC*, 134 FERC ¶ 61,189, at P 30 (2011).

⁵⁴ *Id.* P 25.

⁵⁵ *Id.* PP 27-29.

⁵⁶ See, e.g., *Tri-State Generation & Transmission Ass'n, Inc.*, 170 FERC ¶ 61,222, at PP 26-27 (2020); *Dominion Cove Point LNG*, 147 FERC ¶ 61,202, at P 16 (2014); *Arlington Storage Co., LLC*, 145 FERC ¶ 61,025, at P 9 (2013); *Tex. E. Transmission, LP*, 145 FERC ¶ 61,027, at P 11 (2013).

⁵⁷ Extension of Time Request at 3.

⁵⁸ *Rio Grande LNG, LLC*, 186 FERC ¶ 61,007, at P 15 (2024).

proceeding.⁵⁹ According to the motion in *Rio Grande LNG*, the intervenor's stated interest was related to whether construction of a non-jurisdictional carbon dioxide pipeline would impact an ancestral village and burial sites sacred to the intervenor's Tribe, but the requested privileged information in question did not address the pipeline's potential impacts on environmental or cultural resources.⁶⁰

26. Customers' stated interest in this proceeding, however, does align with the information sought. For example, Repsol's motion to intervene states that as a customer of the Calcasieu Pass LNG Terminal it "has substantial interest in this proceeding, including in Venture Global's construction and commissioning activities."⁶¹ Other customers also assert that their interest in the proceeding is directly related to their status as customers of the LNG terminal, such that they have a stake in the ongoing commissioning process and the extension of time request.⁶² Thus, Customers' stated interests do relate to the privileged information, which includes the reliability issues with the heat recovery steam generators that have necessitated the extension of time request and allegedly prevented Venture Global from providing service to its customers.

27. Last, Venture Global has failed to demonstrate why the "highly confidential" documents requested by Customers cannot be adequately protected by a protective agreement governing the documents' use and disclosure.⁶³ Therefore, we conclude that, on balance, Customers' need to access the privileged information is not outweighed by Venture Global's need to protect it, especially under a protective agreement. Accordingly, the Commission hereby orders Venture Global to provide a copy of the requested documents to Customers within 5 days of receiving an executed protective

⁵⁹ *Id.* (citing *Filing of Privileged Materials & Answers to Motions*, Order No. 769, 141 FERC ¶ 61,049, at P 40 (2012)).

⁶⁰ *Id.*

⁶¹ Repsol February 21, 2024 Motion to Intervene at 3; *see also* Galp February 22, 2024 Motion to Intervene at 2 ("Galp Trading has a substantial interest in this proceeding, including in Venture Global's construction and commissioning activities.").

⁶² *See* Shell February 21, 2024 Motion to Intervene; BP February 27, 2024 Motion to Intervene at 1-2; Edison March 8, 2024 Motion to Intervene at 5-6; Orlen March 8, 2024 Motion to Intervene at 2; China International March 11, 2024 Late Motion to Intervene.

⁶³ "The burden is on the party seeking to safeguard information to show that the protective order does not adequately protect its interests." *Empire State Pipeline*, 115 FERC ¶ 61,113, at P 7 (2006) (citing *Mojave Pipeline Co.*, 38 FERC ¶ 61,249, at 61,842 (1987)).

agreement that is either agreed to by the parties or issued by an administrative law judge, as discussed in more detail below.⁶⁴

C. Form of Protective Agreement

28. As noted above, on March 14, 2024, Venture Global filed a proposed form of protective agreement applicable to documents it filed as privileged, including commissioning status reports and responses to data requests related to reliability challenges at the Calcasieu Pass LNG Terminal.⁶⁵ BP, Edison, Galp, Repsol, and Shell filed objections to the proposed form of protective agreement, chiefly that it unnecessarily departs from the Commission's Model Protective Order.⁶⁶ Shell also moved for remedial relief and asked the Commission to establish expedited proceedings before an administrative law judge to adopt a protective order and establish a subsequent process for challenging Venture Global's requests for privileged treatment.⁶⁷ In response, Venture Global states that the Commission does not require the use of its model agreements but concedes to adopt one of BP's modifications to the proposed protective agreement.⁶⁸ Venture Global also opposes referring the matter to an administrative law judge because it would be a waste of the parties' and the Commission's resources⁶⁹ and

⁶⁴ Galp, Repsol, and Edison's motions to compel Venture Global to release the requested documents are hereby granted.

⁶⁵ Venture Global March 14, 2024 Proposed Form of Protective Agreement; *see also* Venture Global March 18 Answer at 14 (asking the Commission to approve its version of the proposed protective agreement).

⁶⁶ BP March 25, 2024 Answer and Objections at 5-6; Repsol March 22, 2024 Answer and Objections at 9-10; Galp March 25, 2024 Answer and Objections at 9-10; Edison April 5, 2024 Objections and Motion to Compel at 3-6; Shell April 12, 2024 Objections and Motion for Expedited Remedial Relief at 9-11.

⁶⁷ Shell April 12, 2024 Objections and Motion for Expedited Remedial Relief at 22-24.

⁶⁸ Venture Global April 19, 2024 Answer at 11-12.

⁶⁹ *Id.* at 13.

asserts that there is no Commission precedent comparable to the circumstances in this proceeding that would support sending the matter to an administrative law judge.⁷⁰

29. Although the Commission does not often have occasion to refer matters in certificate proceedings to an administrative law judge, the Commission has established such proceedings when the parties could not reach an agreement and use of an administrative law judge would resolve the dispute in the most efficient manner.⁷¹ The Commission prefers that parties enter into protective agreements and provide confidential documents without Commission involvement.⁷² Because Venture Global and Customers disagree about the terms of a protective agreement, the Commission finds that the most efficient way for the parties to reach an agreement is with the assistance of an administrative law judge. Therefore, we will refer the matter to an administrative law judge to issue a protective order within 45 days of this order if the parties cannot agree to their own form of protective agreement within that timeframe.⁷³

⁷⁰ *Id.* at 14 (stating that *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,226 (2022), does not support referring the matter to an administrative law judge).

⁷¹ *Midship Pipeline Co., LLC*, 177 FERC ¶ 61,186, at P 13 (2021) (citing referral to an administrative law judge as the most efficient way to move the proceeding forward), *vacated in part on other grounds, Midship Pipeline Co., LLC v. FERC*, 45 F.4th 867 (5th Cir. 2022).

⁷² *See* Order No. 769, 141 FERC ¶ 61,049 at PP 14-15 (“The protective agreement should be self implementing and not require action or approval by the Commission.”); *see also Panhandle E. Pipe Line Co.*, 68 FERC ¶ 61,249, at 62,138 (1994) (“Only if the parties are unable to negotiate a satisfactory protective agreement . . . will the Commission consider a request for the issuance of a protective order by the Commission.”); *but see Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,022, at P 14 (2022) (adopting the Commission’s Model Protective Order for the proceeding). We decline to set a specific schedule but instead will allow the assigned judge to set a schedule based on an expedited deadline for a protective order. Therefore, Shell’s motion for remedial action is hereby granted in part.

⁷³ *See, e.g., Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,226 at P 17 n.27 (noting that the Commission may decide to refer the matter to an administrative law judge to resolve objections to information disclosure more efficiently); *Midship Pipeline Co., LLC*, 177 FERC ¶ 61,186 at P 13, *vacated in part on other grounds, Midship Pipeline Co., LLC v. FERC*, 45 F.4th at 877 (suggesting that the Commission’s authority to establish proceedings before an administrative law judge stems from the Commission’s own grant of authority from Congress).

30. Once the parties agree on the terms of a protective agreement or the presiding judge issues a protective order and the parties receive the confidential information they are seeking in this proceeding, interested parties will be allowed to file additional comments regarding the extension of time. Additional comments must be filed with the Commission within 15 days of the date the interested parties gain access to the materials. Based on a review of these additional comments and other supporting documents in the record, the Commission will issue an order on Venture Global's request for an extension of time.

The Commission orders:

(A) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose, shall, within 5 days of the date of the Presiding Administrative Law Judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The Presiding Administrative Law Judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(B) If the parties cannot reach an agreement on the terms of a protective agreement, the Administrative Law Judge shall issue a protective order no more than 45 days from the date of this order.

(C) Within 5 days of receiving an executed protective agreement, Venture Global must provide the requested materials to interested parties pursuant to the terms of the protective agreement, as required by section 388.112(b)(2) of the Commission's regulations.

(D) Interested parties may file additional comments based upon the privileged information within 15 days after receipt of such information.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

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