

156 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Downeast Liquefaction, LLC	Docket Nos. PF14-19-000
Downeast LNG, Inc.	CP07-52-000
Downeast Pipeline, LLC	CP07-53-000 CP07-53-001 CP07-54-000 CP07-55-000

ORDER DISMISSING DOCKETS AND TERMINATING PROCEEDINGS

(Issued August 17, 2016)

1. On December 22, 2006, Downeast LNG, Inc. and Downeast Pipeline, LLC (collectively, Downeast), filed applications under sections 3 and 7, respectively, of the Natural Gas Act (NGA) for the siting, construction, and operation of a liquefied natural gas (LNG) import terminal and associated pipeline take-away facilities in Washington County, Maine. On July 22, 2014, Downeast filed a letter requesting the Commission initiate the pre-filing process for the conversion of its proposed import project facilities into a bidirectional import/export LNG terminal and associated pipeline facilities.¹ Downeast indicated it would operate the export project on an integrated basis with the import project and stated it intended to submit, by January 2015, an application to amend its pending import project applications so that the Commission could review the proposed import and export projects together as a single project. On August 11, 2014, the Commission approved Downeast's request to use the Commission's pre-filing process for the bidirectional import/export project.

¹ See 18 C.F.R. §§ 153.12 and 157.21 (2015).

2. The Commission's pre-filing process in Downeast has resulted in no significant recent progress toward the development of the bidirectional import/export project application or in stakeholder engagement. On June 2, 2016, Downeast requested the Commission hold the pre-filing process in abeyance until September 30, 2016, while it "pursued discussions with existing and potential investors to optimize the Downeast LNG Project." As discussed below, because of this lack of progress, we are terminating the pre-filing review process for the bidirectional import/export project and dismissing the pending import project applications. This dismissal is without prejudice to Downeast filing new applications, if it so chooses, in the future when it is in a position to commit to actively pursuing development and authorization of its project.

Discussion

3. Downeast entered the Commission's pre-filing process for its bidirectional import-export LNG terminal and associated pipeline proposal on August 11, 2014. However, no significant, recent progress has been made in that process. Downeast filed initial drafts of Resource Reports 2 (on April 15, 2015), 3 (on June 1, 2015), 8 (on April 14, 2015), and 10 (on August 11, 2014). Downeast's last environmental submissions were a second draft of Resource Report 1, generally describing the project, filed on August 3, 2015, and a draft Resource Report 5 concerning potential socioeconomic impacts filed on June 6, 2016, in conjunction with Downeast's latest request that the Commission hold its proceedings in abeyance. There has been no other demonstrable progress on the development of the environmental information needed to prepare an eventual application to be submitted to the Commission since at least October 2015. With no new draft resource reports provided in the last 12 months (other than the revised Resource Reports 1 and 5 referenced above), the parties and the Commission have lost any benefit of the early identification and resolution of environmental and stakeholder issues the pre-filing process was initiated to achieve.² We are unaware of any ongoing stakeholder outreach by Downeast, and at this point, two years after pre-filing on the liquefaction/export-related components of the project commenced, additional scoping and outreach, including

² See 18 C.F.R. § 157.21. The Commission's pre-filing process is intended to facilitate cooperation among applicants and state and local officials, early involvement by public and governmental agencies, and widespread dissemination of information about proposed projects. For example, the regulations provide that the applicant will respond to issues raised during the scoping comment period within 14 days of the end of that period and file draft Resource Reports 1 through 12 within 60 days of the end of the scoping comment period. 18 C.F.R. § 157.21(f)(9) and (10).

surveys and consultation, would likely be required if the Commission were to grant the latest requested delay in processing.³

4. Downeast filed with the Commission on October 30, 2015, to hold its proceedings in abeyance until February 29, 2016, while “Downeast LNG and its investors undertake an economic analysis of current market conditions and the associated impact on the proposed Downeast LNG project.” Downeast filed again on February 29, 2016, requesting the Commission continue to hold the proceedings in abeyance until June 1, 2016, as “discussions with existing and potential investors are still ongoing.” In its June 2, 2016 request to hold the pre-filing process in abeyance, Downeast asserted that it was still pursuing investors/customers for its project. While we appreciate the interest an applicant has in ensuring that its proposed project will be economically feasible before committing additional resources in furtherance of obtaining regulatory authority to proceed with the project, the Commission must similarly exercise responsibility in the expenditure of its resources and has broad discretion in managing its proceedings and priorities.⁴ At this point, Downeast’s project has been before the Commission in one form or another for more than ten years.⁵ There has been essentially no progress at all toward completion of an application in the past nine months and Downeast has presented nothing to persuade us that its situation is likely to change in the immediate future. Accordingly, we decline to grant Downeast’s request to hold the proceedings in abeyance until September 30, 2016. Because Downeast has not demonstrated meaningful progress in the pre-filing review process toward a single, integrated proposal, its pending import application and bidirectional import/export pre-filing proceedings have become stale and warrant dismissal and termination without prejudice.

³ The final Environmental Impact Statement on the previously proposed import-only project was issued over two years ago, on May 15, 2014.

⁴ See *Mobil Oil Explor. & Prod. Serv. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991); see also *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003) (citing *Telecomm. Resellers Assoc. v. FCC*, 141 F.3d 1193, 1196 (D.C. Cir. 1998) (administrative agencies enjoy broad discretion to manage their own dockets).

⁵ The pre-filing process for Downeast’s import proposal was initiated on January 25, 2006; its application for that project was filed December 22, 2006. 72 Fed. Reg. 766 (Jan. 22, 2007).

The Commission orders:

Downeast's applications for an LNG import terminal and associated take-away pipeline and pre-filing proceedings for an export terminal are dismissed and terminated without prejudice to its making a future application.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.