UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

BP Gas Marketing Limited **Complainant,** **v.** **Venture Global Calcasieu Pass, LLC** **Respondent.**	**Docket No. RP24-239-000**

COMMENTS IN SUPPORT OF BP GAS MARKETING LIMITED
BY SHELL NA LNG LLC

Shell NA LNG LLC ("Shell LNG") submits these comments in support of BP Gas Marketing Limited's ("BP") complaint (the "Complaint") against Venture Global Calcasieu Pass, LLC ("VGCP"). The Complaint describes VGCP's failure to follow the Federal Energy Regulatory Commission's (the "Commission") regulations regarding requests for privileged treatment.[1] The Complaint explains how the unprecedented delay in VGCP's process for purported commissioning combined with VGCP's ability to generate windfall profits from the same delay raises troubling implications and presents an acute need for a process to allow public disclosure. This will ensure that that the public and interested parties can understand whether VGCP has adhered to its duties under the Commission's order authorizing the construction of the Calcasieu Pass Facility (the "Authorization Order"). However, Shell LNG differs somewhat on its view for the required resolution to this situation. The Complaint requested an order for blanket disclosure of privileged documents, or unilateral redaction of documents by VGCP. Shell LNG

[1] *BP Gas Marketing Ltd. v. Venture Global Calcasieu Pass, LLC*, Complaint of BP Gas Marketing Limited, Docket No. RP24-239-000 (filed Dec. 11, 2023) [hereinafter Complaint].

respectfully suggests that the Commission establish a proceeding before an Administrative Law Judge to create an orderly process for disclosure. Ultimately, foundation customers such as Shell LNG and BP—as well as the public—need due process to understand VGCP's unprecedented and inexplicable process for purported commissioning that has so far been shielded from public view by VGCP's failure to follow Commission regulations regarding requests for privileged treatment of documents. Permitting VGCP to benefit from its noncompliance with the Commission's regulations regarding the privileged treatment of documents would set a troubling precedent that can be avoided by granting appropriate relief in this proceeding.

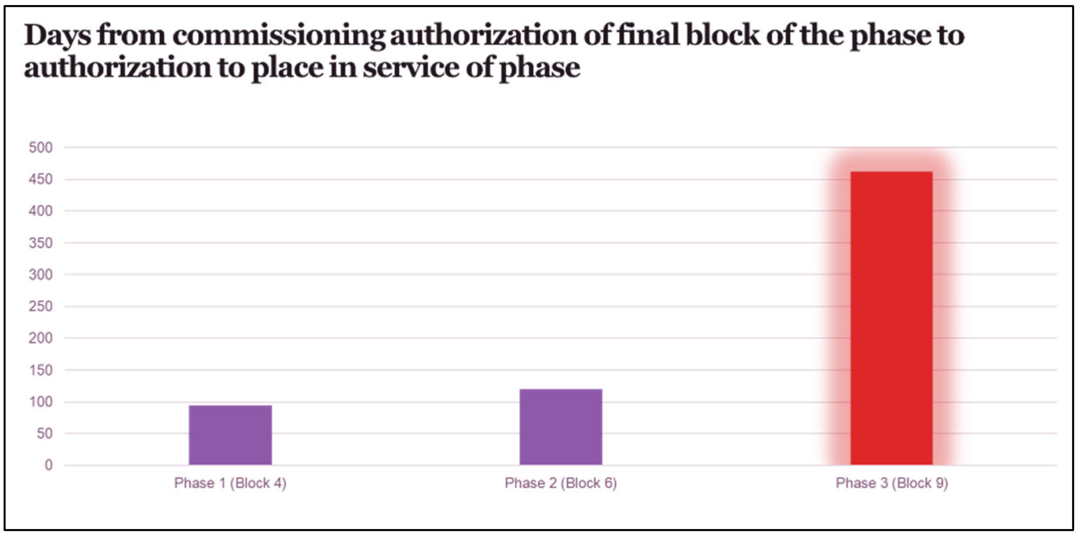
I. BP'S COMPLAINT CAPTURES VENTURE GLOBAL'S FAILURES AND THE NEED FOR PUBLIC DISCLOSURE

BP's statement that "VGCP has violated FERC's regulations at 18 C.F.R. § 388.112 regarding the designation and withholding of privileged material and has contravened the Commission's policy regarding the same" should not be subject to dispute.[2] VGCP has designated almost all of its documents, without any apparent regard for the actual substance of the documents, as privileged material. Although VGCP claims privilege in the interests of itself and its customers, in reality, customers like Shell LNG do not know what the documents actually contain. Because Shell LNG does not have access to the documents, it has no way to independently analyze whether any of the materials are worthy of privileged treatment. To fairly serve the interests of VGCP's customers and the public, there should be an opportunity for interested parties to understand the basis for VGCP's requests for privileged treatment, and to access documents that should otherwise be publicly available.

BP alleges that VGCP has drawn out the process it claims is for commissioning by taking the position that the Calcasieu Pass Facility ("the Facility") has not achieved its Commercial

[2] Complaint at 19.

Operation Date, and thus, cannot fulfill its contractual obligations to its customers.[3] Based on the public record available, Shell LNG shares BP's concern about this highly unusual process and VGCP's self-serving conduct. As BP alleges, VGCP has been operating at or near its nameplate capacity since 2022, and has been continually exporting a significant number of cargoes.[4] As the Complaint details, VGCP has "blown past" multiple proposed deadlines for its Commercial Operation Date ("COD") from 2022 to late 2024, and its purported commissioning process has become elongated:[5]



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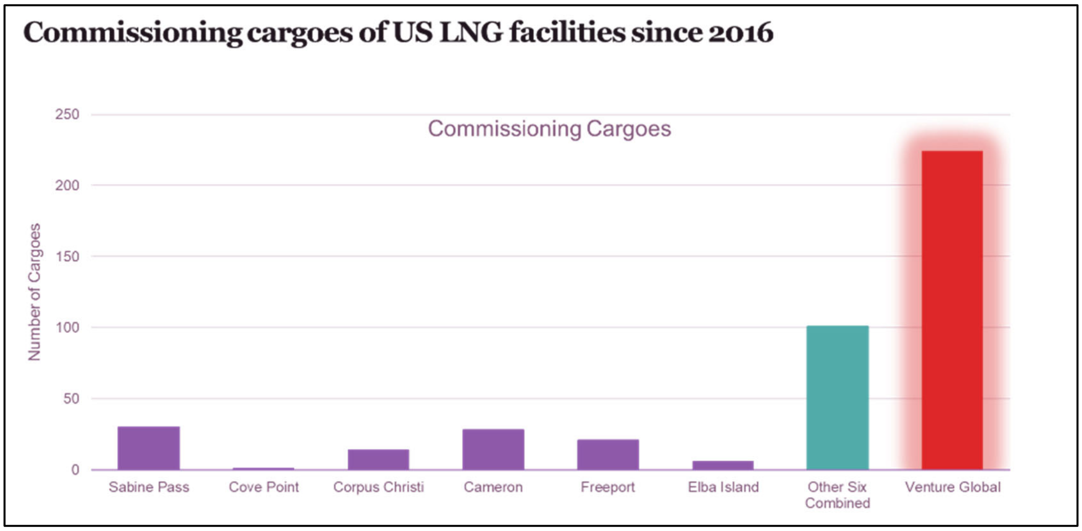
[3] *See* Complaint at 9-13.
[4] See Complaint at 6, 10-11.
[5] Complaint at 6; Chart figures are determined by calculating the days between the approval to commission of the final block of each phase and the authorization to place the phase into service. *See* Authorization to Commence Service of Liquefaction Blocks 7-9 and Modified Commissioning and In-Service Schedule, Docket No. CP15-550-000 (letter order issued Oct. 26, 2023); Authorization to Commence Service of Liquefaction Blocks 5-6, Docket No. CP15-550-000 (letter order issued July 28, 2022); Approval to Commission Liquefaction to Block 9, Docket No. CP15-550-000 (letter order issued July 8, 2022); Authorization to Commence Service of Liquefaction Blocks 1-4, Docket No. CP15-550-000 (letter order issued May 13, 2022); Approval to Commission Liquefaction to Block 6, Docket No. CP15-550-000 (letter order issued March 30, 2022); Approval to Commission Block 4 Liquefaction Modules, Docket No. CP15-550-000 (letter order issued Feb. 8, 2022).

Due to this, "VGCP has shipped more so-called 'commissioning' cargoes than any other LNG terminal project in the history of the United States—by almost a factor of ten."[6]



Since it began shipping cargoes for its own benefit, BP alleges that VGCP has made over $18 billion and counting.[7] Because VGCP has designated almost all of its documents as privileged, Shell LNG and the public do not have a complete understanding of the reason for the significant incongruity of VGCP saying it is still commissioning while at the same time shipping vast amounts of LNG. Indeed, in its Answer in this proceeding VGCP claims that it files "detailed and *entirely public* monthly construction status reports" in accordance with the Authorization Order and points to its most recent filing on December 13, 2023.[8] However, an examination of this report reveals that for the Power Island, which is apparently at the center of the delay and for which VGCP states it received approval to proceed with a remediation plan in October 12, 2023, the report lists that

[6] Complaint at 14. Chart figures are determined by totaling the "commissioning cargoes," as reported by the Department of Energy, for each facility from January 2016 to September 2023. *See generally*, Department of Energy, LNG Reports (last accessed January 2, 2024), available at https://www.energy.gov/fecm/listings/lng-reports-november-2023-final-edition-lng-monthly.
[7] Complaint at 29.
[8] *BP Gas Marketing Ltd. v. Venture Global Calcasieu Pass, LLC*, Answer of Venture Global Calcasieu Pass, LLC to Complaint filed by BP Gas Marketing Limited at 5, Docket No. RP24-239-000 (filed Jan. 2, 2024) [hereinafter Answer] (emphasis in original).

"[n]o construction activities occurred during the reporting period," and that "[n]o new construction work [is] planned for next period."[9] Perhaps there is a logical reason for this inconsistency, but there is no doubt that the "public" documents VGCP directs BP and the Commission to in its Answer are wholly inadequate for VGCP's customers and the public to understand what is going on at the Facility and whether the Commission's Authorization Order is being followed.

Given the unprecedented nature of VGCP's delayed process that it claims is for ongoing commissioning, there is an acute need for public scrutiny of VGCP's actions. Instead, VGCP has provided no sufficient grounds to merit its broad requests for privileged treatment—this violates both the letter and spirit of the Commission's regulations. Operating commercially for its own benefit, but not for its foundation customers, does not support VGCP's reasoning to keep documents as privileged for the purpose of protecting its customers. BP outlines significant precedent in which the Commission has allowed intervention by interested parties in the event of changing circumstances.[10] In the instant case, the changing circumstance that has resulted in VGCP's continual postponement of service while still operating commercially is worthy of intervention by the public and interested parties.

BP raises the pertinent point that the Commission has an obligation to ensure that VGCP is acting in accordance with the conditions of the Authorization Order.[11] It is not only in VGCP's customers' interests to ensure this compliance, but it is also in the Commission's and public interest. VGCP has been operating commercially for more than a year, but has caused unprecedented postponements of service to its foundation customers. This is inconsistent with what VGCP has apparently been asserting in Commission filings. Currently, the inconsistencies

[9] *Compare* Answer at 5, 11, *with* Monthly Construction Status Report No. 057, Docket No. CP15-550-000, Accession No. 20231213-5114 (Dec. 13, 2023).
[10] Complaint at 23-25.
[11] Complaint at 23.

in VGCP's behavior suggest that VGCP is providing inaccurate information to either the Commission or its foundation customers—and if that is the case, due process for public disclosure is an appropriate remedy for all parties involved.

II. SHELL LNG SUPPORTS BP'S REQUEST TO CONSOLIDATE

Shell LNG agrees that the Commission can, and should, consolidate BP's Complaint proceeding with Docket No. CP15-550-000. BP is one of VGCP's foundation customers, and the issues raised in the Complaint are directly tied to VGCP's compliance with the Commission's Authorization Order and the status of VGCP's operations as outlined in Docket No. CP15-550-000. Consolidation is appropriate where the pending proceedings "involve closely related issues," or "will ultimately result in greater administrative efficiency."[12] In evaluating a motion for consolidation, the Commission may consider whether the pending proceedings "include[] unique facts and circumstances involving different parties different transactions."[13] Here, the relief requested by BP directly concerns VGCP failures regarding its requests for privileged treatment in CP15-550-000 regardless of whether VGCP is abiding by the Authorization Order. Thus, consolidation of this proceeding with the certificate proceeding would be an appropriate step toward ensuring efficiency and finality of the resolution to these questions. Additionally, to the extent not already addressed, Shell LNG supports BP's request that the Commission "make a

[12] *Pac. Gas & Elec. Co.*, 180 FERC ¶ 61,072, at P 28 (Aug. 2, 2022); *Midcontinent Indep. Sys. Op., Inc.*, 170 FERC ¶ 61,241, at P 43 (Mar. 20, 2020).
[13] *Excelon Generation Co.*, 181 FERC ¶ 61,043, at P 28 (Oct. 20, 2022).

finding affirming that interested persons may intervene in this proceeding and in Docket No. CP15-550-000."[14]

III. SHELL LNG URGES THE COMMISSION TO IMPLEMENT DUE PROCESS FOR IT, AND OTHER CUSTOMERS, TO REVIEW VGCP'S FILINGS

BP has requested the Commission "(1) find[] that VGCP has failed to justify its request to withhold as privileged the information set forth in Section IV above; and (2) plac[e] such information in the public record of the proceeding in Docket No. CP15-550-000, or alternatively, direct[] VGCP to file public versions of the filings with only privileged information redacted."[15] Because VGCP has not given foundation customers like Shell LNG any confidence that it will correctly characterize documents as privileged, Shell LNG instead proposes that the Commission establish due process for reviewing, and potentially challenging, VGCP's privilege designations in a proceeding before an Administrative Law Judge.

Shell LNG requests that the Commission grant BP, Shell LNG, and the public due process to review the privileged documents in the certificate proceeding by establishing proceedings before an Administrative Law Judge. This would give Shell LNG, and other foundation customers, the opportunity to make targeted requests pertaining to VGCP's documents currently designated as privileged. Additionally, this proposed process would place burden on Shell LNG (and potentially others) to undertake a review and possibly challenge the requests for privileged treatment. If, as VGCP claims, its requests were entirely appropriate,[16] then there may be little for the parties to resolve and the reviewing party would have suffered the burden in this process.

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[14] Complaint at 31.
[15] *Id.*
[16] Answer at 30 ("Calcasieu Pass not has not ***improperly*** designated ***any*** information as privileged or confidential.") (emphasis in the original).

VGCP has failed to follow the Commission's regulations by failing to adequately justify why its documents need to be treated as privileged, and such failure further emphasizes that Shell LNG and other foundational customers need the opportunity to review materials and make assessments independent of VGCP. Moreover, there needs to be a uniform, transparent process that the public can follow to challenge privilege determinations in the certificate proceeding.

IV. CONCLUSION

Shell LNG respectfully submits these comments in support of BP's Complaint. VGCP has failed to follow the Commission's regarding privileged treatment making it impossible for its foundation customers and the public to understand what is behind the unprecedent delay of its purported commissioning process. Shell LNG also supports BP's request for consolidation of these dockets and intervention for interested parties.

The Commission can and should implement due process to give VGCP's customers and the public an opportunity to understand what is going on and ensure that VGCP is complying with its Authorization Order and the Commission's regulations. Allowing VGCP to benefit from noncompliance with Commission regulations would be unjust and set bad precedent for the future. Shell LNG supports BP's Complaint and respectfully requests that the Commission ensure a just resolution to the problems identified in the Complaint and these comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list complied by the Secretary in this proceeding.

Dated at New York, NY this 2nd day of January, 2024.

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