

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

CARIB ENERGY (USA) LLC

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DOCKET NO. 21-99-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS IN ISO CONTAINERS BY VESSEL
TO FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 4772

DECEMBER 20, 2021

I. INTRODUCTION

On September 14, 2021, Carib Energy (USA) LLC (Carib Energy) filed an Application¹ with the Office of Fossil Energy and Carbon Management (FECM)² of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA).³ Carib Energy requests authorization to export (or “re-export”)⁴ liquefied natural gas (LNG) previously imported into the United States from foreign sources in a volume equivalent to 0.48 billion cubic feet (Bcf) of natural gas for a two-year period on a cumulative basis.⁵ Carib Energy seeks to export this LNG in approved IMO7/TVAC-ASME LNG containers (ISO containers) loaded at the Crowley LNG Truck Loading Facility (Crowley Facility) located in Peñuelas, Puerto Rico, and transported on ocean-going carriers or container vessels.⁶

Carib Energy seeks to export this LNG to any country within Central America, South America, or the Caribbean with the capacity to import LNG via ocean-going carriers or container ships carrying approved ISO containers and with which trade is not prohibited by U.S. law or policy.⁷ This includes both countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),⁸ and any

¹ *Carib Energy (USA) LLC*, Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas, Docket No. 21-99-LNG (Sept. 14, 2021) [hereinafter App.].

² The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

³ Authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2021, issued on March 25, 2021.

⁴ Although Carib Energy uses the term “re-export” in the Application, DOE generally uses the term “export” in this Order consistent with DOE’s standard practice for this type of authorization.

⁵ App. at 1, 5.

⁶ In an email submitted to DOE, Carib Energy confirmed that it seeks to re-export this LNG by ISO containers only, not by LNG bulk carrier. *See* Email from Greg Buffington, Crowley Maritime Corp., to DOE/FECM, Docket No. 21-99-LNG (Oct. 26, 2021). As noted below, Carib Energy is a wholly-owned subsidiary of Crowley Shipping, Inc.

⁷ *See* App. at 1.

⁸ 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁹

Carib Energy seeks to export this LNG for a two-year period, commencing on the earlier of the date of first export of LNG or five years from the date DOE issues this Order.¹⁰ Carib Energy is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export.¹¹

In this Order, DOE grants Carib Energy's Application and authorizes the requested export of previously imported LNG in a volume equivalent to 0.48 Bcf of natural gas on a cumulative basis over the requested two-year period.

Specifically, DOE grants the FTA portion of the Application under NGA section 3(c), 15 U.S.C. § 717b(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications "shall be deemed to be consistent with the public interest" and granted "without modification or delay."¹² The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE approves the requested FTA authorization without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA authorization.

DOE has reviewed the non-FTA portion of the Application under NGA section 3(a), 15 U.S.C. § 717b(a). On November 5, 2021, DOE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).¹³ The Notice of Application called on interested persons to submit protests, motions to intervene, notices of intervention, and comments by December 6, 2021. DOE received one filing submitted by Matthew Deinhardt,

⁹ *Id.* § 717b(a).

¹⁰ App. at 1.

¹¹ *Id.* at 2, 5.

¹² 15 U.S.C. § 717b(c).

¹³ U.S. Dep't of Energy, Carib Energy (USA) LLC; Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis, 86 Fed. Reg. 61,201 (Nov. 5, 2021).

which DOE is construing as a comment in opposition to the Application.¹⁴ No protests or interventions were filed in response to the Application, and therefore the non-FTA portion of the Application is uncontested under DOE's regulations.¹⁵ On December 16, 2021, Carib Energy filed an Answer opposing Mr. Deinhardt's filing.¹⁶

DOE has reviewed the record for the non-FTA portion of this proceeding, and finds that it has not been demonstrated that Carib Energy's proposed exports of LNG to non-FTA countries are inconsistent with the public interest under NGA section 3(a). Accordingly, DOE grants Carib Energy's requested non-FTA authorization, as set forth below.

II. BACKGROUND

Applicant. Carib Energy is a wholly-owned subsidiary of Crowley Shipping, Inc. (Crowley), with its principal place of business in Jacksonville, Florida. Crowley is a wholly-owned subsidiary of Crowley Maritime Corporation, which is a wholly-owned subsidiary of Crowley Holdings, Inc. Crowley Holdings, Inc. is a privately held corporation.¹⁷

Procedural History. Carib Energy currently holds two authorizations from DOE. Under DOE/FE Order No. 3937, issued in 2016, Carib Energy is authorized to export domestically produced LNG in a volume equivalent to 1.3 Bcf per year (Bcf/yr) of natural gas loaded at designated facilities owned by Pivotal LNG, Inc.¹⁸ Carib Energy is authorized to

¹⁴ See Comment of Matthew Deinhardt, Docket No. 21-99-LNG (Dec. 3, 2021). Although Mr. Deinhardt states that he "want[s] to file a motion to oppose this application" (*id.*), his filing does not meet the requirements for a motion under DOE's regulations (10 C.F.R. §§ 590.103, 590.302, 590.303) and thus will be construed as a comment opposing the Application. See *infra* § V.

¹⁵ See 10 C.F.R. § 590.102(b).

¹⁶ Carib Energy (USA) LLC, Answer in Opposition to Filing of Matthew Deinhardt, Docket No. 21-99-LNG (Dec. 16, 2021) [hereinafter Carib Energy Answer].

¹⁷ App. at 2.

¹⁸ *Carib Energy (USA) LLC*, DOE/FE Order No. 3937, Docket No. 16-98-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at Designated Pivotal LNG, Inc. Facilities and Exported by Vessel to Non-Free Trade Agreement Nations in Central America, South America, or the Caribbean (Nov. 28, 2016); see App. at 4.

export this LNG to non-FTA countries in Central America, South America, and the Caribbean for a 20-year period.¹⁹

Under DOE/FE Order No. 2993, issued in 2011, Carib Energy is authorized to export domestically produced and previously imported LNG in a volume equivalent to 11.53 Bcf/yr of natural gas from the southeast United States to FTA countries in Central America, South America, and the Caribbean for a 25-year term.²⁰

Crowley Facility. Carib Energy states that Crowley LNG Puerto Rico (Crowley LNG) has completed construction of the Crowley Facility in Peñuelas, Puerto Rico, on a site that Crowley LNG owns and controls.²¹ According to Carib Energy, commissioning of the Crowley Facility was expected to occur on or about September 23, 2021.²² Carib Energy further states that the Crowley Facility is subject to the regulatory jurisdiction of the Public Service Commission of Puerto Rico.²³

Carib Energy states that the Crowley Facility includes truck loading stations capable of loading standard LNG trailers, an LNG supply pipeline, and other components, but the Facility does not include LNG or natural gas storage facilities.²⁴ The Crowley Facility will receive LNG that has been imported into Puerto Rico via the EcoElectrica LNG Terminal, which Carib Energy states is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).²⁵ The Crowley Facility will have an annual LNG send-out capability equivalent to approximately 0.24

¹⁹ See App. at 4.

²⁰ *Carib Energy (USA) LLC*, DOE/FE Order No. 2993, Docket No. 11-71-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations in Central America, South America, or the Caribbean by Vessel in ISO Containers (July 27, 2011).

²¹ Carib Energy has provided Crowley LNG's deed to the Crowley Facility as Appendix C to the Application.

²² App at 3.

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.* at 4.

Bcf of natural gas.²⁶ Carib Energy states that it will purchase LNG from the Crowley Facility, and this LNG will be loaded into approved ISO containers for export from Puerto Rico.²⁷

III. DESCRIPTION OF REQUEST

Carib Energy requests blanket authorization to export LNG imported from foreign sources in a volume equivalent to 0.24 Bcf of natural gas during any consecutive 12-month period, equivalent to 0.48 Bcf cumulatively over the requested two-year period.²⁸ Carib Energy states that the LNG “will have been imported into Puerto Rico via the EcoElectrica LNG Terminal from locations outside the United States.”²⁹ Carib Energy further states that it will acquire title to this LNG through purchases made after the LNG has entered the Crowley Facility. According to Carib Energy, it will export this LNG to FTA and non-FTA countries in Central America, South American, or the Caribbean “depending on the demand for [natural] gas and global market conditions.”³⁰

Carib Energy requests authorization to export this LNG both on its own behalf and as an agent for other entities. Carib Energy states that it will comply with all DOE requirements for exporters and agents. Carib Energy further states that, when acting as agent, it will register with DOE each LNG title holder for which it seeks to export LNG as agent, and will comply with other registration requirements as set forth in recent DOE orders.³¹

IV. APPLICANT’S PUBLIC INTEREST ANALYSIS FOR NON-FTA AUTHORIZATION

Carib Energy maintains that its requested authorization is consistent with NGA section 3(a) and DOE’s policy. Carib Energy asserts that the volume of previously imported foreign-

²⁶ *See id.*

²⁷ *See id.*

²⁸ App. at 5.

²⁹ *See id.* at 4.

³⁰ *Id.* at 5.

³¹ *Id.* at 5-6.

sourced LNG that it proposes to export is not necessary to meet domestic needs. In support of this argument, Carib Energy points to DOE’s findings in a similar blanket authorization, DOE/FE Order No. 4545, issued to Sabine Pass Liquefaction, LLC (SPL) in 2020.³² Carib Energy notes that, in the SPL order, DOE took administrative notice of the U.S. Energy Information Administration’s (EIA) *Annual Energy Outlook 2020* (AEO 2020) in finding that SPL’s requested volume of foreign-sourced LNG—500 Bcf of natural gas over two years—was not needed to meet domestic demand.³³ Carib Energy suggests that this conclusion should also apply to its Application.³⁴

Next, Carib Energy asserts that the requested non-FTA authorization would provide Carib Energy and its customers with “the flexibility required to respond in a timely, efficient manner to changes in global markets for natural gas and LNG.”³⁵ Carib Energy also states that the option to re-export previously imported LNG will encourage continued imports.³⁶ For these reasons, Carib Energy contends that its requested non-FTA authorization is consistent with the public interest.³⁷

V. CURRENT PROCEEDING FOR NON-FTA AUTHORIZATION

A. Comment of Matthew Deinhardt

Mr. Deinhardt submitted a filing on December 3, 2021, which DOE is construing as a comment opposing the Application.³⁸ First, Mr. Deinhardt questions the impacts associated with

³² *Id.* at 6-7 (citing *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4545, Docket No. 20-28-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Countries (June 4, 2020)).

³³ *Id.* at 7 (discussing U.S. Energy Info. Admin., *Annual Energy Outlook 2020* (Jan. 29, 2020), available at: <https://www.eia.gov/outlooks/archive/aeo20>)).

³⁴ App. at 7.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See *supra* note 14.

Carib Energy’s proposed exports. He argues that there is “a lack of environmental impact studies” on “moving the LNG from Puerto Rico to the destination [countries].”³⁹ He also questions whether there is an “impact statement” on the territory of Puerto Rico and the Puerto Rican residents “who most likely rely on LNG for many things such as heating, cooking, [and] boiling,” among other uses.⁴⁰ Mr. Deinhardt also states that there is “a trend of us relying more and more on green energy.”⁴¹ He suggests that the proposed exports may limit the transition from fossil fuels to green energy for the citizens of Puerto Rico—which he states “may be” an adequate basis to deny the Application.⁴²

Next, Mr. Deinhardt questions whether Carib Energy should receive the requested authorization, when both Carib Energy and its parent company (Crowley) are based in Florida and do not reside in Puerto Rico. In his view, it is “not possible” for Carib Energy or Crowley to understand the impacts of the proposed exports to Puerto Rico.⁴³ He also cites a lack of “total profit information” provided in the Application which, he contends, is necessary to “weigh the pros and cons” of the requested authorization.⁴⁴

Finally, Mr. Deinhardt states that he would like to know the price per unit of LNG that Carib Energy has paid (or is paying) to sell the LNG to other countries. He states that the citizens of Puerto Rico “deserve to pay the same price per unit.”⁴⁵

B. Carib Energy’s Answer

In its Answer opposing Mr. Deinhardt’s filing, Carib Energy asserts that Mr. Deinhardt’s arguments lack merit and do not provide a credible basis for DOE to deny the requested non-

³⁹ Comment of Matthew Deinhardt.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Comment of Matthew Deinhardt.

FTA authorization.⁴⁶

As to Mr. Deinhardt’s environmental arguments, Carib Energy states that the National Environmental Policy Act (NEPA) provides for certain “categorical exclusions” if neither an environmental impact statement (EIS) or environmental assessment (EA) is required.⁴⁷ Carib Energy maintains that its proposed exports fall under DOE’s categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5), *Export of natural gas and associated transportation by marine vessel*.⁴⁸ To support its assertion that no EIS or EA is required under NEPA for its requested authorization, Carib Energy cites DOE’s statement that the “transport of natural gas by marine vessel normally does not pose the potential for significant environmental impacts.”⁴⁹ Carib Energy further states that its proposed exports require no new construction and “would merely expand the disposition of LNG volumes from the Crowley Facility to include re-exports by [ISO] containers on marine vessel.”⁵⁰

Carib Energy adds that Mr. Deinhardt’s claims about green energy “trends” are speculative and lack evidentiary support.⁵¹ Specifically, Carib Energy states that Mr. Deinhardt does not explain how preventing re-exported LNG volumes would “limit the overall impact” of the transition to green energy in Puerto Rico, particularly given that the proposed exports will not be consumed in Puerto Rico.⁵²

Next, Carib Energy states that Mr. Deinhardt’s reference to an “impact statement on the territory of Puerto Rico” appears to indicate concern over the availability of natural gas in Puerto

⁴⁶ Carib Energy Answer at 1, *supra* note 16.

⁴⁷ *Id.* at 2.

⁴⁸ Carib Energy Answer at 2-3 (citing 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7).

⁴⁹ *See id.* (citing U.S. Dep’t of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197, 78,198 (Dec. 4, 2020)).

⁵⁰ *Id.* at 2.

⁵¹ *Id.* at 4.

⁵² *Id.*

Rico. Carib Energy asserts that, because the proposed exports consist of LNG previously imported from foreign sources, the exports “would not reduce the level of domestically produced natural gas available to Puerto Rico.”⁵³ Further, citing EIA’s *Annual Energy Outlook 2021* (AEO 2021),⁵⁴ Carib Energy states that domestic natural gas production during the years of the requested export term (2022 and 2023) is projected to significantly surpass annual natural gas consumption.⁵⁵ Carib Energy thus argues that Puerto Rico’s consumers will not need to rely on the LNG that Carib Energy seeks to export.⁵⁶

Turning to Mr. Deinhardt’s arguments about Carib Energy and Crowley, Carib Energy states that DOE does not require an entity to “live” or to be based in a jurisdiction from which it seeks to export LNG. Even so, Carib Energy states that it and Crowley have established a significant presence in Puerto Rico through their investment of time and money in both the Crowley Facility and their ongoing commercial activities (including the proposed exports).⁵⁷ Carib Energy maintains that its activities have brought, and will continue to bring, “beneficial impacts, in terms of revenue and jobs” to Puerto Rico.⁵⁸ Carib Energy further asserts that Mr. Reinhardt’s inquiry about “total profit information” is irrelevant for purposes of its requested authorization, as such information “is not and has never been part of DOE’s assessment of export authorizations to non-FTA countries.”⁵⁹

Lastly, Carib Energy argues that Mr. Deinhardt’s question about relative LNG purchase prices are not relevant to DOE’s evaluation of the Application, and are unknown at this time.

⁵³ *Id.* at 3.

⁵⁴ U.S. Energy Info. Admin., *Annual Energy Outlook 2021* (Feb. 3, 2021), available at: <https://www.eia.gov/outlooks/aeo> [hereinafter AEO 2021].

⁵⁵ Carib Energy Answer at 3.

⁵⁶ *See id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 4.

According to Carib Energy, it has not purchased any LNG volumes for re-export to date, pending DOE's approval of its Application, nor does it know the price paid for LNG by the citizens of Puerto Rico.⁶⁰ Carib Energy adds that DOE typically imposes monthly reporting requirements on authorization holders, such that "the specified LNG pricing information [will be] available to Mr. Deinhardt on a monthly basis."⁶¹

VI. DISCUSSION AND CONCLUSIONS FOR NON-FTA AUTHORIZATION

In reviewing the non-FTA portion of Carib Energy's Application (which is uncontested under DOE's regulations), DOE has considered the Application (as clarified), the comment filed by Mr. Deinhardt in opposition to the Application, and Carib Energy's Answer to Mr. Deinhardt's comment, among other evidence discussed below.

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard for DOE's review of Carib Energy's requested non-FTA authorization. Section 3(a) provides:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [she] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.⁶²

⁶⁰ *Id.* at 4-5.

⁶¹ Carib Energy Answer at 5 n.10.

⁶² 15 U.S.C. § 717b(a).

This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest.⁶³ DOE must grant such an application unless the presumption is overcome by an affirmative showing of inconsistency with the public interest.⁶⁴

In evaluating an export application under this standard, DOE applies the principles described in DOE Delegation Order No. 0204-111⁶⁵—which focus primarily on domestic need for the natural gas to be exported, as described in DOE’s 1984 Policy Guidelines⁶⁶—and any other matters determined to be appropriate to a determination of the public interest. In addition, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Domestic Need

Carib Energy requests authorization to export LNG that was previously imported into the United States from foreign sources. First, we note that Puerto Rico’s natural gas market operates largely independent from the rest of the U.S. market. For this reason, Carib Energy’s proposed non-FTA exports will not reduce the availability of domestically produced natural gas in the lower-48 states.

Additionally, the volumes of natural gas imported into Puerto Rico from foreign sources do not become part of the natural gas supply in the lower-48 states. Carib Energy’s exports of previously imported LNG (totaling 0.48 Bcf for the requested two-year period) thus will reduce the volume of natural gas potentially available for consumption only within Puerto Rico, and

⁶³ See, e.g., *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (citations omitted).

⁶⁴ See *id.* (citations omitted).

⁶⁵ DOE Delegation Order No. 0204-111 (Feb. 22, 1984), at 1(¶ (b)). DOE Delegation Order No. 0204-111 was later rescinded by DOE Delegation Order No. 00-002.00 (¶ 2) (Dec. 6, 2001), and DOE Redelelegation Order No. 00-002.04 (¶ 2) (Jan. 8, 2002).

⁶⁶ U.S. Dep’t of Energy, *New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984) (incorporating DOE Delegation Order No. 0204-111).

only by a small amount. For the period from November 2020 through October 2021, Puerto Rico imported LNG in a total volume equivalent to 75.5 Bcf of natural gas.⁶⁷ Carib Energy's requested authorization for export—equivalent to 0.24 Bcf for a 12-month period—would be approximately 0.3% of that annual imported amount.

Finally, we note that numerous DOE authorization holders are able to increase the volumes of natural gas imported to Puerto Rico in response to market conditions. More than 25 companies are currently authorized by DOE to import LNG into Puerto Rico.⁶⁸ If any additional applicant requests authority to import LNG into Puerto Rico, DOE must grant that request without modification or delay as required by NGA section 3(c).

In sum, although Mr. Deinhardt suggests that Carib Energy's proposed exports could impact the availability of imported LNG for citizens of Puerto Rico, we find that the evidence does not support this claim.

C. Other Public Interest Factors

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. Consistent with DOE's Policy Guidelines and DOE precedent, DOE considers the potential effects of proposed exports on other aspects of the public interest. Although Mr. Deinhardt's comment touches on several issues (including environmental review, discussed below), he does not provide evidence to support these concerns or otherwise to demonstrate that Carib Energy's proposed exports are inconsistent with the public interest.

⁶⁷ See U.S. Dep't of Energy, Office of Fossil Energy and Carbon Mgmt., *LNG Monthly*, at 7 (Dec. 2021) (Table 1g(ii): Vessel-Borne Imports of LNG to Puerto Rico), available at: https://www.energy.gov/sites/default/files/2021-12/LNG%20Monthly%20October%202021_0.pdf.

⁶⁸ DOE maintains a list of its authorizations at: <https://www.energy.gov/fecm/articles/electronic-docket-room-e-docket-room>.

For example, Mr. Deinhardt states that it is not possible for Carib Energy or its parent company (Crowley) to understand the impacts of the proposed exports, when they “are based out of Florida.”⁶⁹ DOE does not require an applicant or authorization holder to reside in or maintain a headquarters in its export location.⁷⁰ Nonetheless, Carib Energy’s affiliate, Crowley LNG, has built the Crowley Facility in Peñuelas, Puerto Rico, and Carib Energy’s planned export operations will take place there. We therefore agree with Carib Energy that it has shown a “significant” physical presence in Puerto Rico, contrary to Mr. Deinhardt’s claims.⁷¹

Similarly, Mr. Deinhardt questions whether DOE should deny the Application “to limit the overall impact of the transition from fossil fuels to green energy” in Puerto Rico.⁷² Although Puerto Rico “relies primarily on imported fossil fuels to meet its energy needs,”⁷³ we note that imported natural gas can provide reliable standby energy supply available immediately, while renewable development is occurring. As relevant here, however, Mr. Deinhardt provides no evidence that Carib Energy’s modest volume of exports of foreign-sourced LNG would have any effect on Puerto Rico’s energy mix for the two-year export term.

Finally, Mr. Deinhardt’s statement that the citizens of Puerto Rico “deserve to pay” the same price per unit of LNG as Carib Energy is beyond the scope of this proceeding.

D. Environmental Review

DOE’s NEPA procedures provide for a categorical exclusion if neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required—specifically, categorical exclusion B5.7, *Export of natural gas and associated transportation by marine*

⁶⁹ Comment of Matthew Deinhardt.

⁷⁰ Similarly, an applicant is not required to provide “total profit information” or other revenue information in an application for an export authorization. *See* 10 C.F.R. § 590.202 (“Contents of applications”).

⁷¹ Carib Energy Answer at 4.

⁷² Comment of Matthew Deinhardt.

⁷³ U.S. Energy Info. Admin., Puerto Rico Territory Profile and Energy Estimates (last updated Dec. 16, 2021), available at: <https://www.eia.gov/state/analysis.php?sid=RQ>.

vessel.⁷⁴ On December 17, 2021, DOE issued a categorical exclusion for the non-FTA portion of Carib Energy’s Application under this provision.⁷⁵

Although Mr. Deinhardt does not address DOE’s NEPA obligations directly, he states that he opposes the Application “due to the lack of environmental impact studies moving the LNG from Puerto Rico to the destination countries.”⁷⁶ DOE, however, amended its B5.7 categorical exclusion in December 2020 in part to consider impacts associated with the transport of LNG by marine vessel.⁷⁷ As part of that rulemaking proceeding, DOE conducted “a detailed review of technical documents regarding potential effects associated with marine transport of LNG.”⁷⁸ These documents were identified in an accompanying Technical Support Document.⁷⁹ On the basis of the data referenced in the Technical Support Document, DOE concluded that “the transport of natural gas by marine vessels adhering to applicable maritime safety regulations and established shipping methods and safety standards normally does not pose the potential for significant environmental impacts.”⁸⁰

Additionally, in determining that the non-FTA portion of Carib Energy’s Application is eligible for the B5.7 categorical exclusion, DOE found that “there are no extraordinary circumstances ... that may affect the significance of the environmental effects of [Carib

⁷⁴ See 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7.

⁷⁵ U.S. Dep’t of Energy, Categorical Exclusion Determination, Carib Energy (USA) LLC, Docket No. 21-99-LNG (Dec. 17, 2021) [hereinafter Categorical Exclusion Determination].

⁷⁶ Comment of Matthew Deinhardt.

⁷⁷ See U.S. Dep’t of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197 (Dec. 4, 2020) [hereinafter NEPA Final Rule].

⁷⁸ *Id.* at 78,199.

⁷⁹ See *id.* at 78,198 n.16 (citing U.S. Dep’t of Energy, Technical Support Document, Notice of Final Rulemaking, National Environmental Policy Act Implementing Procedures (10 CFR part 1021) (Nov. 2020)).

⁸⁰ *Id.* at 78,200; see also *id.* at 78,202.

Energy’s] proposal,” such that no EIS or EA was required.⁸¹ For these reasons, we are satisfied that DOE adequately considered the impacts of transporting LNG by marine vessel.

E. Conclusion

Upon review of the record, DOE finds that the record evidence showing that the proposed exports will be in the public interest outweighs Mr. Deinhardt’s concerns. In particular, the record shows that there is a sufficient supply of natural gas to satisfy demand in Puerto Rico from multiple other sources at competitive prices without drawing on Carib Energy’s proposed exports during the two-year authorization period. Further, the proposed exports qualify for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE therefore grants the non-FTA portion of the Application, as set forth below.⁸²

VII. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications requesting authority for the export of natural gas, including LNG, to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas shall be deemed consistent with the public interest and granted without modification or delay.⁸³ The FTA portion of Carib Energy’s Application falls within section 3(c), as amended, and therefore, DOE grants the requested authorization without modification or delay.⁸⁴

⁸¹ Categorical Exclusion Determination at 1; *see also* NEPA Final Rule, 85 Fed. Reg. at 78,199 (“In implementing the revised CX, DOE will consider whether an extraordinary circumstance is present such that an EA or EIS will be required.”) (citing 40 C.F.R. 1501.4(b)).

⁸² Carib Energy “requests confirmation that it may extend [this] authorization so long as third parties are authorized to import LNG into Puerto Rico.” App. at 5. To obtain a blanket authorization effective upon the expiration of the export term in this Order, Carib Energy will need to submit a new application pursuant to NGA section 3(a) and 3(c) at the appropriate time. DOE will evaluate the application under the standards of review set forth in this Order.

⁸³ 15 U.S.C. § 717b(c).

⁸⁴ DOE finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590 are applicable only to applications seeking to export natural gas, including LNG, to non-FTA countries.

(2) With respect to the non-FTA portion of the Application, and after due consideration based on all facts and evidence of record, DOE finds that a grant of the export application is not inconsistent with the public interest under NGA section (a), 15 U.S.C. § 717b(a).

(3) Carib Energy requests authorization to export LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export. DOE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,⁸⁵ which granted Freeport LNG Expansion, L.P. *et al.* (collectively, FLEX) authority to export LNG to FTA countries. In that Order, DOE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE in *The Dow Chemical Company*, which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.⁸⁶ We find that the same policy considerations that supported DOE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.⁸⁷ In that Order, DOE determined that, in LNG export orders in which Agency Rights have been granted, DOE shall require registration materials filed for, or by, an LNG title-holder (Registrant) to include the same company

⁸⁵ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No 2913, Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

⁸⁶ *The Dow Chemical Co.*, DOE/FE Order No. 2859, Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 7-8 (Oct. 5, 2010), discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

⁸⁷ *Cameron LNG, LLC*, DOE/FE Order No. 3680, Docket No. 15-36-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Free Trade Agreement Nations (July 10, 2015).

identification information and long-term contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.⁸⁸

To ensure that the public interest is served, this authorization shall require that where Carib Energy proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Carib Energy must register with DOE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

ORDER

Pursuant to section 3 of the NGA it is ordered that:

A. Carib Energy (USA) LLC (Carib Energy) is authorized to export LNG previously imported from foreign sources in a volume equivalent to 0.48 Bcf of natural gas, pursuant to transactions that have terms of not greater than two years. This authorization shall be effective for a two-year term beginning on the earlier of the date of first export or five years from the date this Order is issued.

B. This LNG may be exported from the Crowley Facility to any country in Central America, South America, or the Caribbean that has, or in the future develops, the capacity to import LNG via approved ISO containers on ocean-going carriers or container vessels, and with which trade is not prohibited by U.S. law or policy.

C. Carib Energy shall ensure that all transactions authorized by this Order are permitted and lawful under U.S. laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

⁸⁸ See *id.* at 8-9.

D. Carib Energy, or others for whom Carib Energy acts as agent, shall include the following provision in any agreement or contract for the sale or transfer of LNG exported pursuant to this Order:

Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FECM Order No. 4772, issued December 20, 2021, in Docket No. 21-99-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Carib Energy (USA) LLC that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Carib Energy (USA) LLC is made aware of all such countries.

E. Carib Energy is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other entities with DOE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply Carib Energy with all information and copies of contracts necessary in order to permit Carib Energy to register that person or entity with DOE, including: (1) the Registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 C.F.R. Part 590, including but not limited to destination restrictions; (2) the exact legal name of the Registrant, state/location of incorporation/registration, primary place of doing business, and the Registrant's ownership structure, including the ultimate parent entity if the Registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the Registrant to whom inquiries may be directed; and (4) an acknowledgement and agreement by the Registrant to include the provision in Ordering Paragraph D in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. Each registration submitted pursuant to this Order shall have current information on file with DOE. Any changes in company name, contact information, or other relevant modifications shall be filed with DOE within 30 days of such change(s).

G. Carib Energy shall ensure that all persons required by this Order to register with DOE have done so.

H. Monthly Reports: With respect to the export of LNG authorized by this Order, Carib Energy shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R indicating whether exports of LNG have been made. Monthly reports must be filed whether or not initial deliveries have begun. If no exports have been made, a report of “no activity” for that month must be filed. If exports of LNG in ISO containers by vessel have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE; (2) the name of the U.S. export terminal; (3) the name of the vessel; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the exported LNG or natural gas is actually delivered; (6) the name of the supplier(s)/seller(s); (7) the volume in thousand cubic feet (Mcf); (8) the price at point of export per million British thermal units (MMBtu); (9) the name and location (city/state) of the facility where the ISO container is loaded with LNG; (10) the mode(s) of transport used to move the loaded ISO container from the loading facility to the export port or terminal; (11) the duration of the supply agreement (indicate spot sales); and (12) the name(s) of the purchaser(s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

I. Within two weeks after the first export of previously imported LNG from the Crowley Facility occurs, Carib Energy shall provide written notification of the date of first export to DOE.

J. All monthly report filings on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy and Carbon Management, Office of Regulation,

Analysis, and Engagement, according to the methods of submission listed on the Form FE-746R reporting instructions available at <https://www.energy.gov/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on December 20, 2021.

Amy R. Sweeney
Director, Office of Regulation, Analysis, and Engagement
Office of Resource Sustainability