



Department of Energy
Washington, DC 20585

May 10, 2022

Via Email

Lisa M. Tonery
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RE: Notice of Corporate Reorganization and Request for Transfer
Corpus Christi Liquefaction Stage III, LLC, Docket No. 18-78-LNG

Dear Ms. Tonery:

This correspondence constitutes the response of the Department of Energy (DOE), Office of Fossil Energy and Carbon Management (FECM),¹ to the Notice of Corporate Reorganization and Request for Transfer² filed on behalf of your client, Corpus Christi Liquefaction Stage III, LLC (CCL Stage III), in the above-referenced proceeding. In the Notice, CCL Stage III (i) provides information regarding an expected corporate reorganization, in light of DOE's Change in Control Procedures;³ (ii) and asks DOE to transfer its existing export authorizations to its planned successor, Corpus Christi Liquefaction, LLC (CCL), once the proposed reorganization is complete.

I. BACKGROUND

CCL Stage III states that it is a Delaware limited liability company and a wholly-owned direct subsidiary of Cheniere Energy, Inc. (Cheniere).⁴ Its affiliate, CCL, is a Delaware limited liability company and a wholly-owned indirect subsidiary of Cheniere.⁵ Both have their primary place of business in Houston, Texas.

¹ The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

² See Corpus Christi Liquefaction Stage III, LLC, Notice of Corporate Reorganization and Request for Transfer, Docket No. 18-78-LNG (Mar. 28, 2022), <https://www.energy.gov/sites/default/files/2022-03/CCL%20Stage%203%20DOE%20Transfer%20Letter.pdf> [hereinafter Notice].

³ See U.S. Dep't of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,541 (Nov. 5, 2014) [hereinafter DOE Change in Control Procedures].

⁴ See Notice at 1.

⁵ See *id.*

CCL Stage III holds two long-term authorizations issued by DOE under section 3 of the Natural Gas Act (NGA).⁶ Under these orders, CCL Stage III is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed natural gas liquefaction and export facilities (Stage 3 LNG Facilities) associated with the Stage 3 Project,⁷ to be located at the existing Corpus Christi LNG Terminal in San Patricio and Nueces Counties, Texas, as follows:

(i) DOE/FE Order No. 4277, as amended,⁸ authorizing exports to countries with which the United States currently has, or in the future will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), under NGA section 3(c);⁹ and

(ii) DOE/FE Order No. 4490, as amended,¹⁰ authorizing exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), under NGA section 3(a).¹¹

Together, these “Stage 3 Authorizations” approve exports of LNG in a volume equivalent to 582.14 billion cubic feet per year (Bcf/yr) of natural gas on a non-additive basis for a term extending through December 31, 2050.¹²

II. DESCRIPTION OF CORPORATE REORGANIZATION AND REQUEST FOR TRANSFER

Cheniere currently owns 100% of both CCL Stage III and CCL.¹³ CCL Stage III states that, prior to or concurrent with Cheniere making a final investment decision (FID) on the Stage 3 LNG Facilities, and conditional on Cheniere taking FID to proceed with development of the Stage 3 LNG Facilities, Cheniere intends to merge CCL Stage III into CCL, with CCL as the surviving entity and successor in interest to all of CCL Stage III’s assets and obligations.¹⁴

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

⁷ The Stage 3 Project means the Stage 3 LNG Facilities, together with the Stage 3 Pipeline, which is being developed by Cheniere Corpus Christi Pipeline, L.P. See Notice at 2 n.2.

⁸ *Corpus Christi Liquefaction Stage III, LLC*, DOE/FE Order No. 4277, Docket No. 18-78-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Stage 3 LNG Facilities to be Located at the Corpus Christi LNG Terminal in San Patricio and Nueces Counties, Texas, to Free Trade Agreement Nations (Nov. 9, 2018), *amended by* DOE/FE Order No. 4277-A (Oct. 21, 2020) (extending export term).

⁹ 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.

¹⁰ *Corpus Christi Liquefaction Stage III, LLC*, DOE/FE Order No. 4490, Docket No. 18-78-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020), *amended by* DOE/FE Order No. 4490-A (Oct. 21, 2020) (extending export term).

¹¹ 15 U.S.C. § 717b(a).

¹² See Notice at 2. CCL Stage III notes that, in 2020, DOE amended the Stage 3 Authorizations to include short-term export authority. See *id.* at 2 & n.6.

¹³ See *id.* at 3.

¹⁴ *Id.*

According to CCL Stage III, “Cheniere will remain the 100% ultimate, indirect owner of all CCL Stage III assets before and after the corporate reorganization,” which is “currently targeted to occur in mid-year 2022.”¹⁵

CCL Stage III submits that, although the transaction will result in both the merger of CCL Stage III with and into another entity (CCL) and a name change of the authorization holder, the transaction will not constitute a change in control.¹⁶ To support this argument, CCL Stage III states that Cheniere will continue to be the ultimate parent and owner of CCL after the reorganization.¹⁷ CCL Stage III further states that “there will be no change in the operation or manner in which the authorization holder is managed, or in any aspect of the facilities or operations of the Stage 3 LNG Facilities or of the terms and conditions of its associated export arrangements”¹⁸ CCL Stage III also provides charts showing the organizational structure before and after the proposed reorganization.¹⁹

Finally, CCL Stage III states that the planned merger will not affect the grounds underlying the NGA section 3 public interest determination previously made by DOE in issuing CCL Stage III’s non-FTA order, DOE/FE Order No. 4490.²⁰

On this basis, CCL Stage III asks DOE to update, or transfer, the Stage 3 Authorizations to reflect CCL as the authorization holder once the planned merger is complete.²¹

III. DISCUSSION AND CONCLUSIONS

DOE construes a change in control to mean a change, directly or indirectly, of the power to direct the management or policies of an entity whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.²² A rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, 10% or more of the voting securities of such entity.²³

Upon review of the information set forth in the Notice, DOE finds that the planned corporate reorganization “resulting in the merger of CCL Stage III with and into CCL” will not constitute a change in control. First, we note that DOE issued the Change in Control Procedures pursuant (in part) to its regulations at 10 C.F.R. § 590.405. That regulation states: “Authorizations issued by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized”²⁴ We previously found that the policy underlying this

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.*

¹⁸ Notice at 3.

¹⁹ *See id.* at Attachment 1.

²⁰ *Id.* at 3.

²¹ *Id.* at 1, 3-4.

²² *See* DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

²³ *See id.*

²⁴ 10 C.F.R. § 590.405.

regulation—and therefore the Change in Control Procedures—pertains to external transfers or assignments, not to internal corporate reorganizations.²⁵

As described in the Notice, the planned merger will be an internal corporate reorganization whereby CCL will become “the surviving entity and successor in interest to all of CCL Stage III’s assets and obligations.”²⁶ Cheniere—currently the ultimate parent company for both CCL Stage III and CCL—will remain the ultimate parent company and 100% owner of CCL after the merger.²⁷

Further, other indicia of a change in control identified in the Change of Control Procedures—such as an asset sale, stock transfer, or other change resulting in the ownership or the power to vote, directly or indirectly, 10% or more of the voting securities of an entity—are not present here. Accordingly, DOE agrees with CCL Stage III that no transfer of control will occur as a result of the planned merger.

Additionally, CCL Stage III asks DOE to update the Stage 3 Authorizations to name CCL as the authorization holder following the merger.²⁸ CCL Stage III states that “CCL will promptly notify DOE/FECM when the proposed transaction is complete.”²⁹ Once CCL provides notice that the merger has occurred as described, DOE will issue an order transferring the Stage 3 Authorizations to CCL, consistent with the applicable standards of review under the NGA and DOE precedent.³⁰

Sincerely,

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

²⁵ See *Port Arthur LNG, LLC*, Notice of Internal Corporate Reorganization, Docket Nos. 15-53-LNG, *et al.* (Apr. 11, 2019) (noting that DOE’s Change in Control Procedures, 79 Fed. Reg. at 65,541, focus on “ownership or management of the exporting entity chang[ing] hands, resulting in a change in control . . .”).

²⁶ Notice at 3.

²⁷ *Id.*; see *Port Arthur LNG, LLC*, *supra* note 25, at 3-4; see also *ECA Liquefaction, S. de R.L. de C.V.*, DOE/FE Order Nos. 4317-A, 4364-A, Docket No. 18-144-LNG, Order Granting Request to Transfer Authorizations (Mid-Scale Project), at 7 (Oct. 7, 2019) (no change in control where Sempra Energy would remain the ultimate parent company after internal corporate reorganization).

²⁸ See Notice at 3-4.

²⁹ *Id.* at 4.

³⁰ See, e.g., *ECA Liquefaction*, DOE/FE Order Nos. 4317-A, 4364-A, at 6-7 (granting request to transfer FTA and non-FTA authorizations in light of internal corporate reorganization).