

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

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CAMERON LNG, LLC	)	DOCKET NOS. 11-145-LNG, <i>et al.</i>
ECOGAS MEXICO, S. DE R.L. DE C.V.	)	DOCKET NO. 21-50-NG
ECA LIQUEFACTION, S. DE R.L. DE C.V	)	DOCKET NO. 18-144-LNG
ENERGÍA COSTA AZUL, S. DE R.L. DE C.V.	)	DOCKET NO. 18-145-LNG
PORT ARTHUR LNG, LLC	)	DOCKET NOS. 15-53-LNG, <i>et al.</i>
PORT ARTHUR LNG PHASE II, LLC	)	DOCKET NO. 20-23-LNG
SEMPRA GAS & POWER MARKETING, LLC	)	DOCKET NO. 20-43-NG
SEMPRA LNG INTERNATIONAL, LLC	)	DOCKET NO. 21-83-NG
SEMPRA LNG MARKETING, LLC	)	DOCKET NO. 20-52-LNG
TERMoeLECTRICA DE MEXICALI, S. DE R.L. DE C.V.	)	DOCKET NO. 20-145-NG
VISTA PACIFICO LNG, S.A.P.I DE C.V.	)	DOCKET NO. 20-153-LNG

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ORDER APPROVING CHANGE IN CONTROL

DOE/FECM ORDER NO. 4815

MAY 3, 2022

## I. INTRODUCTION AND BACKGROUND

On February 22, 2022, the following entities submitted a Statement of Change in Control (Statement)<sup>1</sup> to the Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy)<sup>2</sup> of the Department of Energy (DOE): Cameron LNG, LLC; Ecogas Mexico, S. de R.L. de C.V.; ECA Liquefaction, S. de R.L. de C.V.; Energía Costa Azul, S. de R.L. de C.V.; Port Arthur LNG, LLC; Port Arthur LNG Phase II, LLC; Sempra Gas & Power Marketing, LLC; Sempra LNG International, LLC; Sempra LNG Marketing, LLC; Termoelectrica de Mexicali, S. de R.L. de C.V.; and Vista Pacifico LNG, S.A.P.I de C.V. (collectively, Authorization Holders). These Authorization Holders are all affiliates of Sempra Energy and KKR Pinnacle Investor, L.P. (KKR Pinnacle), a subsidiary of KKR & Co. Inc. In the Statement, the Authorization Holders provide notice of a change in their upstream ownership, in light of DOE's Change in Control Procedures.<sup>3</sup>

The Authorization Holders, in their respective dockets, are authorized to import natural gas, to export natural gas, and/or to export liquefied natural gas (LNG) under section 3 of the Natural Gas Act (NGA)<sup>4</sup> 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),<sup>5</sup> and/or to any other country with which trade is not prohibited by U.S.

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<sup>1</sup> See Cameron LNG, LLC, *et al.*, Statement of Change in Control, Docket Nos. 11-145-LNG, *et al.* (Feb. 22, 2022), [https://www.energy.gov/sites/default/files/2022-02/Cameron%20LNG%20LLC%20et%20al.%20-%20Change%20in%20Control%20Filing\\_.pdf](https://www.energy.gov/sites/default/files/2022-02/Cameron%20LNG%20LLC%20et%20al.%20-%20Change%20in%20Control%20Filing_.pdf) [hereinafter Statement].

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

<sup>3</sup> 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].

<sup>4</sup> 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.

<sup>5</sup> 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,

law or policy (non-FTA countries).<sup>6</sup> Table 1 of the Statement identifies each of these existing authorizations.<sup>7</sup> Additionally, three of the Authorization Holders currently have non-FTA applications pending with DOE, as identified in Table 2 of the Statement.<sup>8</sup>

Consistent with DOE's Change in Control Procedures, DOE published a notice of the Authorization Holders' Statement in the *Federal Register* on April 1, 2022 (Notice).<sup>9</sup> DOE invited protests, motions to intervene, and written comments to be filed no later than April 18, 2022.<sup>10</sup> In response, DOE received one filing from Public Citizen, Inc. (Public Citizen)<sup>11</sup> and one filing from the Industrial Energy Consumers of America (IECA),<sup>12</sup> both dated April 18, 2022. Both filings state that the respective organization "moves to intervene" in the change in control proceeding and express opposition to the Authorization Holders' Statement.<sup>13</sup>

Therefore, DOE construes the filings as motions to intervene and protest the proposed change in control.<sup>14</sup> On April 21, 2022, the Authorization Holders filed an "Answer in Support of Statement of Change in Control" (Answer).<sup>15</sup>

As discussed below, DOE (i) grants Public Citizen's motion to intervene and protest in this portion of the proceedings; (ii) dismisses IECA's motion to intervene and protest due to lack of compliance with DOE's regulations, and (iii) finds that the Authorization Holders'

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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.

<sup>6</sup> *Id.* § 717b(a).

<sup>7</sup> *See* Statement at 2-4.

<sup>8</sup> *See id.* at 4.

<sup>9</sup> U.S. Dep't of Energy, Change in Control; Cameron LNG, LLC, *et al.*, 87 Fed. Reg. 19,082 (Apr. 1, 2022) [hereinafter DOE Notice].

<sup>10</sup> *See id.*

<sup>11</sup> Public Citizen, Inc., Docket Nos. 11-145-LNG, *et al.* (Apr. 18, 2022) [hereinafter Public Citizen Filing].

<sup>12</sup> Industrial Energy Consumers of America, Docket Nos. 11-145-LNG, *et al.* (Apr. 18, 2022) [hereinafter IECA Filing].

<sup>13</sup> *See id.* at 1; *see also* Public Citizen Filing at 1.

<sup>14</sup> *See* 10 C.F.R. §§ 590.303, 590.304.

<sup>15</sup> Cameron LNG, LLC, *et al.*, Answer in Support of Statement of Change in Control, Docket Nos. 11-145-LNG, *et al.* (Apr. 21, 2022) [hereinafter Authorization Holders' Answer].

proposed change in control has not been demonstrated to render the underlying non-FTA authorizations inconsistent with the public interest under NGA section 3(a). DOE's actions for the Authorization Holders' FTA authorizations and pending non-FTA applications are also set forth below.

## **II. DESCRIPTION OF CHANGE IN CORPORATE OWNERSHIP**

The Authorization Holders state that the upstream ownership change described in the Statement is the result of the acquisition (Transaction) by Black Silverback ZC 2022 LP (Black Silverback), a wholly owned indirect subsidiary of the Abu Dhabi Investment Authority (ADIA)<sup>16</sup> (collectively, Buyer), of a non-controlling 10% interest in the equity of Sempra Infrastructure Partners, LP (SI Partners).<sup>17</sup> SI Partners is an upstream owner of the Authorization Holders.<sup>18</sup>

According to the Authorization Holders, following the consummation of the Transaction, Sempra Energy will continue to maintain control of SI Partners as the 70% majority owner, with Buyer having certain customary minority protections, including the ability to appoint a manager to the board of managers.<sup>19</sup> KKR Pinnacle will retain its 20% non-controlling equity interest in SI Partners. The Authorization Holders further state that, at the time of the closing of the Transaction, Sempra Energy and the other partners of SI Partners will enter into a second amended and restated agreement of limited partnership of SI Partners, which will govern Sempra

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<sup>16</sup> The Authorization Holders state that the Abu Dhabi Investment Authority is an independent investment institution established by the Emirate of Abu Dhabi, United Arab Emirates, in 1976. *See* Statement at 2 n.2.

<sup>17</sup> *Id.* at 2. The described change in control may also require the approval of the Committee on Foreign Investment in the United States (CFIUS). DOE expresses no opinion regarding the need for review by CFIUS. Additional information can be obtained at: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

<sup>18</sup> *See, e.g.*, Statement at 5 (identifying SI Partners' ownership) and Appendix A (showing SI Partners in organizational chart).

<sup>19</sup> *See id.* at 5.

Energy's and SI Partners' minority owners' respective rights and obligations with respect to their ownership of SI Partners.<sup>20</sup>

The Authorization Holders provide charts showing the proposed change in ownership structure as Appendix A ("Pre-Transaction Organizational Structure as of January 1, 2022") and as Appendix B ("Post-Transaction Organizational Structure") to the Statement.

### **III. PROCEDURAL MATTERS**

In their filings submitted to DOE, both Public Citizen and IECA express general concern about the Authorization Holders' proposed change in control, with IECA asserting that the proposed ownership change is not in the public interest.<sup>21</sup>

#### **A. Public Citizen**

Public Citizen states that it "is concerned with allowing foreign governments to control equity of companies that export natural gas out of the United States."<sup>22</sup> Public Citizen argues that "[u]nprecedented volumes of natural gas exports are directly causing record high domestic natural gas prices," which (according to Public Citizen) is resulting in "sustained energy poverty hardship" for millions of American families.<sup>23</sup> Public Citizen states that the role of foreign governments in these alleged impacts "raises questions about whether such exports are in the public interest."<sup>24</sup>

In their Answer (in relevant part), the Authorization Holders do not oppose Public Citizen's filing on procedural grounds. Further, we find that the proposed change in control could affect the interests of Public Citizen and its members, insofar as DOE must determine

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<sup>20</sup> *Id.*

<sup>21</sup> See IECA Filing at 1-2; Public Citizen Filing at 1.

<sup>22</sup> Public Citizen Filing at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

whether the proposed Transaction renders the Authorization Holders' existing non-FTA orders inconsistent with the public interest. Accordingly, we grant Public Citizen's motion to intervene in this change in control portion of the proceedings.<sup>25</sup>

## **B. IECA**

The Authorization Holders oppose IECA's motion to intervene and protest on procedural grounds, arguing that IECA "failed to serve [its filing] on the Authorization Holders as required by 10 C.F.R. § 590.107 and the *Federal Notice* in these proceedings ...."<sup>26</sup> Upon review, DOE agrees that IECA did not comply with DOE's regulations in submitting its filing.

DOE's Notice in the *Federal Register* stated that all responsive filings "must meet the requirements specified by the regulations in 10 CFR part 590."<sup>27</sup> IECA did not include a certificate of service, as required by 10 C.F.R. § 590.103(b), or otherwise serve its filing on the official service list in each of the Authorization Holders' dockets as required by 10 C.F.R. § 590.107. In prior proceedings, DOE has strictly enforced these requirements.<sup>28</sup> Accordingly, DOE dismisses IECA's motion to intervene and protest.

## **IV. DISCUSSION AND CONCLUSIONS REGARDING CHANGE IN CONTROL**

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

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<sup>25</sup> See DOE Notice, 87 Fed. Reg. at 19,083 n.4 ("Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings.").

<sup>26</sup> Authorization Holders' Answer at 2.

<sup>27</sup> DOE Notice, 87 Fed. Reg. at 19,083.

<sup>28</sup> See, e.g., *Corpus Christi Liquefaction Stage III*, Order Dismissing Industrial Energy Consumers of America's Notice of Intervention, Protest, and Comment, Docket No. 18-78-LNG, at 5 (Apr. 10, 2019).

stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.<sup>29</sup> 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.<sup>30</sup>

In this proceeding, the Authorization Holders state that, under the terms and conditions of the Purchase Agreement, Buyer will acquire “a non-controlling 10% interest in the equity of [SI Partners].”<sup>31</sup> We find that this proposed Transaction constitutes a change in control.<sup>32</sup>

#### **A. LNG Import and FTA Export Authorizations**

DOE’s Change in Control Procedures provide that, upon receipt of a statement of change in control relating to existing LNG import and FTA export authorizations, DOE will give immediate effect to the change in control and will take no further action.<sup>33</sup> Accordingly, the Authorization Holders’ proposed change in control has taken effect insofar as it relates to the LNG import authorizations, FTA export authorizations, and FTA portion of the export authorizations referenced in Table 1 of the Statement (and any amendments to these orders, as applicable).<sup>34</sup>

#### **B. Non-FTA Export Authorizations**

DOE’s Change in Control Procedures state that, with respect to existing non-FTA export authorizations issued under NGA section 3(a), DOE will give effect to the change in control and will publish a notice of the change in the *Federal Register*.<sup>35</sup> If no interested person protests the

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<sup>29</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>30</sup> See *id.*

<sup>31</sup> Statement at 2; see also *id.* at 4-5.

<sup>32</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>33</sup> See *id.*

<sup>34</sup> See Statement at 2-4.

<sup>35</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

change in control and DOE takes no action on its own motion, the amendment to the existing non-FTA authorization(s) will be deemed granted 30 days after publication in the *Federal Register*.<sup>36</sup>

DOE complied with this notice procedure for non-FTA authorizations, as described above. As noted above, Public Citizen has opposed the Authorization Holders' Statement, expressing its concern about foreign governments having equity in U.S. natural gas companies that export U.S. natural gas (including LNG) to other countries. Public Citizen appears to suggest that foreign ownership in U.S. natural gas companies is linked to current natural gas prices.<sup>37</sup> Additionally, Public Citizen questions "whether such exports are in the public interest."<sup>38</sup>

As a preliminary matter, the issue before us is not whether any exports are in the public interest under NGA section 3(a). This portion of the proceedings is limited to the Authorization Holders' proposed change in upstream ownership. Public Citizen's challenge to U.S. exports generally—as well as any related arguments concerning natural gas prices—are therefore beyond the scope of this proceeding.

Further, we see no basis to conclude that the described equity ownership by a subsidiary of the Abu Dhabi Investment Authority would render the Authorization Holders' existing non-FTA orders inconsistent with the public interest under NGA section 3(a). The Abu Dhabi Investment Authority is an independent investment institution established by the United Arab Emirates government—a U.S. trading partner with strong diplomatic ties to the United States. Although Public Citizen makes broad claims about the impacts of foreign ownership of U.S.

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<sup>36</sup> *Id.*

<sup>37</sup> *See* Public Citizen Filing at 2.

<sup>38</sup> *Id.*



natural gas companies on U.S. citizens, it provides no evidence to support these allegations.<sup>39</sup> DOE previously held that “[a] commenter’s indiscriminate opposition to foreign controlling interests does not support a determination that the change in control in this proceeding is inconsistent with the public interest.”<sup>40</sup> On the basis of Public Citizen’s unsubstantiated claims, we reach the same conclusion here.

Accordingly, the change in control with respect to the non-FTA export authorizations and the non-FTA portion of the export authorizations referenced in Table 1 of the Statement (and any amendments to these orders, as applicable) is deemed granted, effective immediately.

### **C. Pending Non-FTA Export Applications**

DOE has not yet issued a final order on the non-FTA portion of the applications pending in Docket Nos. 18-145-LNG, 20-23-LNG and 20-153-LNG.<sup>41</sup> The Change in Control Procedures state that, with respect to “pending non-FTA export applications, *i.e.*, proceedings in which DOE has not yet issued a final order,” applicants may amend their applications to reflect a change in control by submitting notice of the amendment to DOE and serving that notice on other parties in the proceeding.<sup>42</sup>

Under the Change in Control Procedures, DOE will give immediate effect to the amendment to each of these applications, but it will accept and consider answers to the notice of amendment received within 15 days of service of the applicant’s pleading.<sup>43</sup> DOE will address

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<sup>39</sup> See Public Citizen Filing at 2.

<sup>40</sup> *Freeport LNG Expansion, L.P., et al.*, Letter Order, Docket Nos. 10-161-LNG, *et al.*, at 4 (June 17, 2016); see also *Jordan Cove Energy Project L.P.*, DOE/FE Order No. 3413-A, Docket No. 12-32-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 94 (July 6, 2020) (stating that “DOE/FE has never required an applicant to have domestic ownership under NGA section 3(a) . . . .”) (order vacated at Jordan Cove’s request).

<sup>41</sup> See Statement at 4.

<sup>42</sup> DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>43</sup> *Id.*

the issues raised in any answers to the amendment in its final order on the pending applications.<sup>44</sup>

The Authorization Holders complied with the service requirements of the Change in Control Procedures when they served the Statement.<sup>45</sup> The change in control applicable to the non-FTA portion of the applications in Docket Nos. 18-145-LNG, 20-23-LNG and 20-153-LNG thus has taken effect. Because DOE is dismissing IECA's filing and rejecting Public Citizen's arguments (*see supra* at 6, 9), no further action is required in any future DOE action on these pending applications.

### **ORDER**

Pursuant to NGA section 3, DOE's regulations at 10 C.F.R. Part 590, and DOE's Change in Control Procedures, it is ordered that:

- A. The motion to intervene and protest submitted by IECA is dismissed.
- B. The motion to intervene submitted by Public Citizen is granted.
- C. The proposed change in control is approved, as set forth in the body of this Order.

Issued in Washington, D.C., on May 3, 2022.

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

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<sup>44</sup> *Id.*

<sup>45</sup> *See* Statement at 14 (Certificate of Service).