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BY ELECTRONIC FILING

Amy Sweeney
Director, Office of Regulation, Analysis and Engagement
Office of Fossil Energy and Carbon Management, FE-34
1000 Independence Ave., S.W.
Washington, DC 20585

**Re: Energía Costa Azul, S. de R.L. de C.V., FE Docket No. 18-145-LNG
Request for Action Regarding Pending Non-FTA Application**

Dear Ms. Sweeney:

On September 18, 2020, Energía Costa Azul, S. de R.L. de C.V. (“ECA”) filed an Application to Amend Long-Term Multi-Contract Authorization to Export Natural Gas to Mexico and to Export Liquefied Natural Gas (“LNG”) from Mexico to Free Trade Agreement (“FTA”) and Non-Free Trade Agreement (“Non-FTA”) Nations in FE Docket No. 18-145-LNG (“Design Increase Application”). ECA respectfully submits this letter requesting that the Department of Energy’s (“DOE”) Office of Fossil Energy and Carbon Management (“DOE/FECCM”) act promptly to approve the pending Non-FTA portion of the Design Increase Application.

As discussed further below, recent comments by the Secretary of Energy before Congress suggest that the unopposed applications of ECA and other Mexican exporters are currently subject to additional review based upon unspecified concerns regarding trade with Mexico, an FTA country. ECA submits that such additional burdens applied to applications that have been long pending before the agency conflict with the DOE’s statutory obligations and the commitments that the DOE has made to Congress. Prompt approval of ECA’s Design Increase Application is necessary for the project to move forward and serve the public interest in meeting the urgent global need for LNG exports.

Background

On September 18, 2020, ECA filed the Design Increase Application, requesting to amend its existing authorizations to export natural gas to Mexico by pipeline to the ECA Large-Scale Project (“Project”), and to re-export LNG from the Project to FTA and Non-FTA countries. Specifically, the Design Increase Application sought to increase the volumes of natural gas authorized for export to Mexico, as well as the volumes of LNG authorized for re-export from Mexico to FTA and Non-FTA countries. Notice of the Design Increase Application was issued in the *Federal Register* on October 13, 2020, and the comment period closed on December 14, 2020.

No adverse comments or protests to the Design Increase Application were filed.¹ On June 11, 2021, DOE granted the FTA portion of the Design Increase Application pursuant to section 3(c) of the Natural Gas Act (“NGA”). However, the unopposed Non-FTA portion of the Design Increase Application has remained pending for over 1.5 years since its filing.

In her testimony before the Senate Committee on Energy & Natural Resources on May 5, 2022, Secretary Granholm indicated that while DOE has “permitted every LNG terminal that has been requested of us that is in our domestic space,” “[t]here are two in Mexico that have not begun construction and for other reasons are . . . not on hold, but we are looking at those. But the others have all been permitted.”² When asked when DOE can be expected to act on the pending Mexican LNG terminal export authorizations, Secretary Granholm explained “those terminals are not even under construction yet. We are taking a look at it. We are also looking at what is happening in Mexico with respect to their energy reform and have concerns about that and the questions that have been raised about violation of the USMCA [United States-Mexico-Canada Agreement] so we are watching all of that. . . . [W]e are well aware that those are pending and since they’re not under construction yet and we are watching what is happening in Mexico, we are taking all that into consideration.”³

Request for Action on Pending Non-FTA Authorization

ECA respectfully requests that DOE promptly act on the pending Non-FTA portion of the Design Increase Application.

The standard for review of applications to export LNG to Non-FTA countries is established by section 3(a) of the NGA, which provides, in pertinent part, that:

[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] authorizing it to do so. The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.⁴

In applying this provision, DOE has found, and the D.C. Circuit has affirmed, that NGA section 3(a) creates a rebuttable presumption that proposed exports of natural gas are in the public

¹ During the comment period, one anonymous comment was filed raising issues not relevant to the Design Increase Application and one comment was filed by the Board of County Commissioners of Rio Blanco County, CO in support of the Design Increase Application.

² *The President’s Budget Request for the Department of Energy for Fiscal Year 2023*, Hearing Before the Senate Comm. on Energy & Natural Resources (statement of Secretary Granholm). Secretary Granholm went on to explain “[w]e also permitted an additional—‘we’ meaning the last administration—had permitted and are still waiting on an additional 30 billion cubic feet . . . of liquefied natural gas from terminals, about 12 additional projects that are looking at financing. So we believe that it is important for us to be allied in supplying liquefied natural gas to Europe. The President has called for, by the end of this year, an additional 15 billion cubic meters.”

³ *Id.*

⁴ 15 U.S.C. § 717b(a).

interest.⁵ DOE will grant Non-FTA export applications unless there is an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest.⁶ While the NGA does not define “public interest,” DOE has looked to principles established in its 1984 Policy Guidelines, the goals of which are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system.⁷ The Policy Guidelines provide that:

The market, not government, should determine the price and other contract terms of imported [or exported] gas. . . . The federal government’s primary responsibility in authorizing imports [or exports] should be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.⁸

As noted above, ECA’s Design Increase Application was filed over 1.5 years ago, and the comment period closed in December 2020 with no adverse comments or protests filed. No affirmative evidence exists in the record of this proceeding that the pending Non-FTA authorization is inconsistent with the public interest. To the contrary, all evidence in this proceeding supports the issuance of the requested authorization. ECA respectfully submits that the considerations raised by Secretary Granholm in her May 5, 2022 testimony are not matters that

⁵ See *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“We have construed [NGA section 3(a)] as containing a ‘general presumption favoring [export] authorization.’”) (quoting *W. Va. Pub. Serv. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

⁶ *Phillips Alaska Nat. Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, at 13 n.42 (Apr. 2, 1999) (citing *Panhandle Producers & Royalty Owners Ass’n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) (finding that NGA section 3 “requires an affirmative showing of inconsistency with the public interest to deny an application” and that a “presumption favoring . . . authorization . . . is completely consistent with, if not mandated by, the statutory directive”) (emphasis in original); see also *Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A, FE Docket No. 11-59-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations at 13 (July 29, 2016); *Lake Charles LNG Export Co.*, DOE/FE Order No. 3868, FE Docket No. 13-04-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations at 11 (July 29, 2016); *Cameron LNG, LLC*, DOE/FE Order No. 3846, FE Docket No. 15-90-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From Trains 4 and 5 of the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Non-Free Trade Agreement Nations at 10 (July 15, 2016); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792, FE Docket No. 15-63-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Sabine Pass LNG Terminal Located in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations at 13-14 (Mar. 11, 2016); see also Hearing Before the Committee on Energy and Natural Resources to Consider Market Developments for U.S. Natural Gas, Including the Approval Process and Potential for Liquefied Natural Gas Exports, 112th Cong. (2011) (statement of Christopher Smith, Deputy Assistant Secretary for Oil and Natural Gas, Office of Fossil Energy, Department of Energy) (“Section 3(a) thus creates a rebuttable presumption that a proposed export of natural gas is in the public interest, and requires DOE to grant an export application unless DOE finds that *the record in the proceeding* of the application overcomes that presumption.”) (emphasis added).

⁷ U.S. Dep’t of Energy, New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 at 6,685 (Feb. 22, 1984).

⁸ *Id.*

have been raised or articulated on the record of this unopposed proceeding. Accordingly, they cannot serve as a basis for further inaction on ECA's Design Increase Application. This is particularly acute given the presumption favoring the approval of export applications established by Section 3 of the NGA and the burden the statute places upon opposition to provide contrary evidence, which is entirely lacking in this proceeding.

Moreover, the two matters mentioned in the Secretary's testimony are not among the factors that have been considered by DOE in its public interest analysis and therefore do not serve as appropriate bases for further delay in approving ECA's Design Increase Application. First, regarding the Secretary's statement that the two Mexican projects associated with the pending export applications are not under construction, the DOE has never required commencement of construction of an export project as a prerequisite to the issuance of an export authorization. To the contrary, DOE has routinely and recently approved Non-FTA authorizations associated with LNG terminals that have not commenced construction as of the time of DOE's authorization.⁹

Second, regarding the foreign policy and international trade concerns expressed in the Secretary's Congressional testimony, ECA respectfully submits that prompt approval of its Design Increase Application will substantially promote the public interest by furthering U.S. trade and policy objectives. On these matters, DOE has found that:

An efficient, transparent international market for natural gas with diverse sources of supply provides both economic and strategic benefits to the United States and our allies. For example, in light of the recent Russian invasion of Ukraine, there are renewed concerns about energy security for Europe and Central Asia, particularly given the relative share of Russian natural gas supplies into those regions. By authorizing additional exports to non-FTA countries, including to U.S. allies in Europe and elsewhere, this Order [approving LNG exports] will enable [the authorization holder] to help mitigate energy security concerns once it begins exporting U.S. LNG. More generally, to the extent U.S. exports diversify global LNG supplies and increase the volumes of LNG available globally, these additional exports will improve energy security for many U.S. allies and trading partners.¹⁰

⁹ See, e.g., *Magnolia LNG LLC*, DOE/FECM Order No. 3909-C, FE Docket No. 13-132-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations at 27 (Apr. 27, 2022); *Annova LNG Common Infrastructure, LLC*, DOE/FE Order No. 4491, FE Docket No. 19-34-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020).

¹⁰ *Magnolia LNG LLC*, DOE/FECM Order No. 3909-C at 53. See also *id.* at 49 ("the proposed exports will improve the United States' ties with its allies and trade partners and make a positive contribution to the United States' trade balance."); *Golden Pass LNG Terminal LLC*, DOE/FECM Order No. 3978-E, FE Docket No. 12-156-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations at 39-40 (Apr. 27, 2022); *Cheniere Marketing, LLC*, DOE/FECM Order No. 4799, FE Docket No. 19-24-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations at 51, 54-55 (Mar. 16, 2022); *Sabine Pass Liquefaction, LLC*, DOE/FECM Order No. 4800, FE Docket No. 19-125-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations at 52, 55-56 (Mar. 16, 2022).

Approval of ECA's requested U.S.-sourced LNG exports to Non-FTA countries will similarly provide economic and strategic benefits to the United States and its allies. As noted in the Design Increase Application and consistent with the DOE's recent statements above,¹¹ the diversification of supplies offered by the ECA project will allow the U.S. and its allies to respond to present and future global energy security issues. U.S. allies will benefit through access to direct exports from the project and indirectly through increased supply of U.S. LNG to the global market.¹² In addition to clear international advantages, the ECA project will lead to significant domestic benefits as well. As the DOE has repeatedly found, increased levels of natural gas exports in response to international demand consistently lead to higher levels of U.S. GDP and overall consumer welfare.¹³

Furthermore, the ECA project will be located in and subject to the environmental and permitting laws of Mexico—an FTA country. ECA's anticipated exports of natural gas from the United States to Mexico are deemed consistent with the public interest pursuant to NGA section 3(c) and have been authorized in DOE's June 11, 2021 order. ECA respectfully submits that its proposed re-export of U.S.-sourced LNG from Mexico to Non-FTA countries does not have a bearing on the subjects raised by the Secretary during the May 5, 2022 hearing and that nothing in the record supports further review or delay.

Finally, in 2015, in testimony before Congress referring to its review of Non-FTA export applications, the DOE stated its commitment to "treat applicants in Canada, applicants in Mexico, and applicants in the United States in a way that is open, . . . transparent, . . . fair, [and]. . . consistent."¹⁴ The Secretary's statements—which highlight the recent approval of all pending U.S. Non-FTA applications while indicating that applications to export natural gas to Mexico for re-export to Non-FTA countries are subject to additional review—suggest that the DOE may be treating the application of ECA in a manner inconsistent with this commitment.

Accordingly, for the reasons set forth in the Design Increase Application and herein, ECA respectfully requests that DOE determine that its proposed Non-FTA exports are not inconsistent with the public interest and promptly act on the pending Non-FTA portion of the Design Increase Application.

¹¹ Design Increase Application at 35 (noting that LNG exports "will increasingly diversify the global supply of energy resources, which will support the geopolitical security interests of the United States by providing energy supply alternatives to its allies. The export of domestically produced LNG will promote liberalization of the global gas market by fostering increased liquidity and trade at prices established by market forces. By introducing additional market-based price structures, the Project will help to reduce premiums charged to economies which do not currently have sufficient energy supply alternatives and reduce gas price volatility around the world.").

¹² For example, U.S. allies in Europe will benefit from the increased availability of U.S. LNG from other terminals on the Gulf and East Coast, which supplies might otherwise be delivered to markets in Asia, Latin America, or other parts of the world that will now be served by the ECA project.

¹³ NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports*, at 14 (June 7, 2018).

¹⁴ *Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency: Hearing Before the Subcomm. on Energy and Power of the H. Comm. on Energy & Commerce*, 114 Cong. 36 (Apr. 30, 2015) (statement of Assistant Secretary for Fossil Energy Christopher Smith).

Amy Sweeney

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Please contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/ Brett A. Snyder

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Counsel to Energía Costa Azul, S. de R.L. de C.V.

BAS:lnr

cc: Jerrod L. Harrison, Counsel for Energía Costa Azul, S. de R.L. de C.V.

Sen. Joe Manchin, Chairman, Senate Committee On Energy & Natural Resources

Sen. John Barasso, Ranking Member, Senate Committee On Energy & Natural Resources

CERTIFICATE OF SERVICE

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

Dated at Washington, DC this 21st day of June, 2022.

/s/ Lamiya Rahman _____

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