

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

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MEXICO PACIFIC LIMITED LLC )  
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DOCKET NO. 18-70-LNG

ORDER EXTENDING EXPORT TERM FOR AUTHORIZATIONS  
TO FREE TRADE AND NON-FREE TRADE AGREEMENT  
NATIONS THROUGH DECEMBER 31, 2050

DOE/FECM ORDER NO. 4248-A  
DOE/FECM ORDER NO. 4312-A

JUNE 3, 2022

## **I. DESCRIPTION OF REQUEST**

On January 24, 2022, Mexico Pacific Limited LLC (MPL) filed an application (Application)<sup>1</sup> with the Department of Energy’s (DOE) Office of Fossil Energy and Carbon Management (formerly the Office of Fossil Energy)<sup>2</sup> under section 3 of the Natural Gas Act (NGA).<sup>3</sup> As explained below, MPL asks DOE to extend the export term set forth in its two long-term authorizations, pursuant to DOE’s policy statement entitled, “Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050” (Policy Statement).<sup>4</sup>

Both authorizations involve the proposed liquefaction and export terminal facility referred to as the MPL Facility, to be located in the State of Sonora, Mexico, directly south of the Arizona-Mexico border.<sup>5</sup> MPL is currently authorized to export domestically produced natural gas from the United States to Mexico, and after liquefaction in Mexico, to deliver and consume the liquefied natural gas (LNG) in Mexico and/or to re-export<sup>6</sup> the LNG as follows:

- (i) Under DOE/FE Order No. 4248,<sup>7</sup> authorizing exports of U.S.-sourced natural gas by pipeline from the United States to Mexico and, after liquefaction in Mexico, by vessel from the proposed MPL Facility to any country 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), in a total

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<sup>1</sup> Mexico Pacific Limited LLC, Application to Amend Export Term for Existing Long-Term Authorization[s] Through December 31, 2050, Docket No. 18-70-LNG (Jan. 24, 2022) [hereinafter App.].

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

<sup>3</sup> 15 U.S.C. § 717b. The authority to regulate the imports and exports of natural gas, including liquefied natural gas, 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>4</sup> U.S. Dep’t of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 Fed. Reg. 52,237 (Aug. 25, 2020) [hereinafter Policy Statement].

<sup>5</sup> App. at 4.

<sup>6</sup> For purposes of MPL’s orders, “re-export” means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE’s jurisdiction under the NGA, 15 U.S.C. § 717b, from one foreign country (*i.e.*, a country other than the United States) to another foreign country.

<sup>7</sup> *Mexico Pacific Limited LLC*, DOE/FE Order No. 4248, Docket No. 18-70-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (Sept. 19, 2018).

volume equivalent to 621 billion cubic feet per year (Bcf/yr) of natural gas, under NGA section 3(c);<sup>8</sup> and

- (ii) Under DOE/FE Order No. 4312,<sup>9</sup> authorizing re-exports of U.S.-sourced natural gas in the form of LNG by vessel from the proposed MPL Facility to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), in a volume equivalent to 621 Bcf/yr of natural gas, under NGA section 3(a).<sup>10</sup>

These FTA and non-FTA volumes are authorized on a non-additive basis.<sup>11</sup> MPL is authorized to export these volumes for a 20-year term under both orders.<sup>12</sup> In the Application, MPL asks DOE to amend each order to extend the existing export term through December 31, 2050.<sup>13</sup>

In this Order, DOE grants MPL's Application and authorizes the requested term extension for both orders. Specifically, DOE grants the FTA portion of the Application under NGA section 3(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."<sup>14</sup> The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE approves the requested term extension to Order No. 4248 without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA portion of this authorization.

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<sup>8</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, 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>9</sup> *Mexico Pacific Limited LLC*, DOE Order No. 4312, Docket No. 18-70-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Mexico for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Dec. 14, 2018).

<sup>10</sup> 15 U.S.C. § 717b(a).

<sup>11</sup> See *Mexico Pacific Limited LLC*, DOE/FE Order No. 4312, at 47 (Term and Condition I).

<sup>12</sup> See *id.* at 48 (Ordering Para. A); see also *Mexico Pacific Limited LLC*, DOE/FE Order No. 4248, at 12 (Ordering Para. A). Additional information is set forth in each order.

<sup>13</sup> App. at 2-3, 8-9. Although the Policy Statement does not apply to exports of natural gas to FTA countries under NGA section 3(c), 15 U.S.C. § 717b(c), DOE anticipated that authorization holders would seek to align their long-term FTA and non-FTA export terms through December 31, 2050, for administrative efficiencies. See Policy Statement, 85 Fed. Reg. at 52,238 n.3, 52,248.

<sup>14</sup> 15 U.S.C. § 717b(c).

DOE also grants the non-FTA portion of the Application under NGA section 3(a). No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.<sup>15</sup> Upon review of the record in this proceeding, DOE finds that it has not been shown that the term extension for Order No. 4312 is inconsistent with the public interest, as would be required to deny the non-FTA portion of the Application under NGA section 3(a).

In sum, DOE is amending DOE/FE Order Nos. 4248 and 4312 to extend the existing export term in each authorization through December 31, 2050 (inclusive of any make-up period), with an attendant increase in the total export volume over the life of each authorization owing to the additional period that exports may occur.<sup>16</sup> These orders remain unchanged in all other respects.

## **II. APPLICANT'S PUBLIC INTEREST ANALYSIS FOR REQUESTED NON-FTA TERM EXTENSION**

MPL states that the requested term extension is in the public interest for the reasons set forth in the Policy Statement—namely, because the United States will experience economic and energy security benefits associated with exporting LNG through December 31, 2050.<sup>17</sup> Citing the Policy Statement, MPL notes that an export term through 2050 would provide important commercial benefits to existing and future authorization holders by enhancing long-term regulatory certainty for both authorization holders and foreign buyers of U.S. LNG.<sup>18</sup>

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<sup>15</sup> 10 C.F.R. § 590.102(b).

<sup>16</sup> See Policy Statement, 85 Fed. Reg. at 52,247. In many long-term FTA and non-FTA authorizations, DOE has approved a three-year “make-up period” following the end of the original export term, during which the authorization holder may continue to export any “make-up volume” that it was unable to export during the export term. See *id.* at 52,239.

<sup>17</sup> App. at 5-8.

<sup>18</sup> *Id.* at 7.

### **III. DOE PROCEEDING**

On February 28, 2022, DOE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).<sup>19</sup> The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, and/or comments addressing the requested term extension by March 15, 2022.<sup>20</sup> DOE received no filings in response to the Notice of Application, and therefore the Application is uncontested.<sup>21</sup>

### **IV. DISCUSSION FOR REQUESTED NON-FTA TERM EXTENSION**

#### **A. Standard of Review**

Section 3(a) of the NGA sets forth the applicable standard of review for the non-FTA portion of the Application. 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.<sup>22</sup>

DOE, as affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.<sup>23</sup> Accordingly, DOE will conduct an informal

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<sup>19</sup> U.S. Dep't of Energy, Mexico Pacific Limited LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 87 Fed. Reg. 11,059 (Feb. 28, 2022).

<sup>20</sup> *Id.* DOE finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590 is applicable only to non-FTA applications under NGA section 3(a).

<sup>21</sup> 10 C.F.R. § 590.102(b)

<sup>22</sup> 15 U.S.C. § 717b(a).

<sup>23</sup> 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)).

adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.<sup>24</sup>

NGA section 3(a) does not define “public interest” or identify criteria that must be considered in evaluating the public interest. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application for export authorization. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.

Before reaching a final decision, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA).<sup>25</sup> DOE’s environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or environmental assessment (EA) describing the potential environmental impacts associated with the application. In other cases, DOE may determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA, pursuant to DOE’s regulations implementing NEPA.

## **B. Public Interest Review Under NGA Section 3(a)**

In the Policy Statement, DOE discontinued its practice of granting a standard 20-year export term for long-term authorizations to export domestically produced natural gas, including LNG, from the lower-48 states to non-FTA countries.<sup>26</sup> On the basis of the record evidence, DOE adopted a term through December 31, 2050, as the standard export term for long-term non-

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<sup>24</sup> *See id.* (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass’n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

<sup>25</sup> 42 U.S.C. § 4321 *et seq.*

<sup>26</sup> Policy Statement, 85 Fed. Reg. at 52,247.

FTA authorizations.<sup>27</sup> DOE implemented this policy change after considering its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement,<sup>28</sup> and a wide range of information bearing on the public interest—including the 2018 LNG Export Study that analyzed exports of U.S. LNG through the year 2050, the U.S. Energy Information Administration’s (EIA) then-most recent projections for U.S. natural gas, and relevant environmental issues.<sup>29</sup> DOE stated that, for applications to amend existing authorizations submitted pursuant to this Policy Statement, DOE would provide notice and an opportunity for comment on the requested term extension. DOE further stated that, following the notice and comment period, it would conduct a public interest analysis under NGA section 3(a) limited to the requested term extension.<sup>30</sup>

In this uncontested proceeding, MPL asks DOE to amend the export term in its non-FTA order, Order No. 4312, through December 31, 2050, pursuant to the Policy Statement. DOE notes that this term extension will increase MPL’s total volume of exports over the life of the authorization (by extending the duration of DOE/FE Order No. 4312 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the MPL Facility.<sup>31</sup> Upon review, DOE has determined that it has not been demonstrated that the requested term extension will be inconsistent with the public interest, as would be required to deny the non-FTA portion of MPL’s Application.

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<sup>27</sup> *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

<sup>28</sup> *See* U.S. Dep’t of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Proposed Policy Statement and Request for Comments, 85 Fed. Reg. 7,672 (Feb. 11, 2020).

<sup>29</sup> *See* Policy Statement, 85 Fed. Reg. 52,247; *see also id.* at 52,240 (discussing the 2018 LNG Export Study and DOE’s most recent life cycle analysis of greenhouse gas emissions associated with exports of U.S. LNG), 52,243-44 (discussing EIA’s *Annual Energy Outlook 2020*), 52,244-45 (discussing additional environmental issues).

<sup>30</sup> *See id.* at 52,239, 52,247.

<sup>31</sup> *See id.* at 52,247.

### C. Environmental Review Under NEPA

MPL states, in relevant part, that approval of the term extension does not affect DOE's previous determination that a categorical exclusion applies to exports from the MPL Facility.<sup>32</sup> DOE's regulations at 10 C.F.R. Part 1021, Subpart D, Appendix B provide a list of categorical exclusions from preparation of either an EA or EIS under NEPA. Categorical exclusion B5.7, *Export of natural gas and associated transportation by marine vessel*, applies to "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel."<sup>33</sup> On June 1, 2022, DOE issued a categorical exclusion under this provision.<sup>34</sup> This Order grants the non-FTA portion of the Application, in part, on the basis of this categorical exclusion.

### V. 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 (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas, and/or (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. The portion of MPL's Application requesting an amendment to its FTA authorization (DOE/FE Order No. 4248) falls within NGA section 3(c), as amended.<sup>35</sup>

Therefore, DOE is charged with granting the requested term extension for this order without

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<sup>32</sup> App. at 8.

<sup>33</sup> 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7. This categorical exclusion amended the prior B5.7 categorical exclusion, and took effect on January 4, 2021. *See* U.S. Dep't of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197 (Dec. 4, 2020).

<sup>34</sup> U.S. Dep't of Energy, Categorical Exclusion Determination, Mexico Pacific Limited LLC, Docket No. 18-70-LNG (June 1, 2022) [hereinafter Categorical Exclusion].

<sup>35</sup> 15 U.S.C. § 717b(c).

modification or delay.

(2) Upon a review of the record, DOE finds that a grant of the non-FTA portion of the Application has not been shown to be inconsistent with the public interest under NGA section 3(a).<sup>36</sup> Additionally, the non-FTA portion of the Application qualifies for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE therefore grants the requested term extension for Order No. 4312.

### **ORDER**

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Mexico Pacific Limited LLC's Application to amend the respective export terms set forth in DOE/FE Order Nos. 4248 and 4312 is granted.

B. In DOE/FE Order No. 4248, the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is up to the equivalent of 621 Bcf/yr of natural gas for a term beginning on the earlier of the date of first export or five years from the date the authorization is issued (September 19, 2023), and extending through December 31, 2050.

This term extension supersedes any references to a 20-year export term in the Ordering Paragraphs of DOE/FE Order No. 4248.

C. In DOE/FE Order No. 4312, the relevant sentence in Ordering Paragraph A is amended to state:

This authorization is for a term to commence on the date of first commercial re-export and to extend through December 31, 2050.

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<sup>36</sup> *Id.* § 717b(a).

This term extension supersedes any references to a 20-year export term in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 4312.

D. These export terms lasting through December 31, 2050, are inclusive of any make-up period previously authorized in the orders, during which the authorization holder may continue to export any make-up volume that it was unable to export during the original export term.<sup>37</sup>

Accordingly, as relevant here, any references to make-up periods and make-up volumes in the Terms and Conditions or Ordering Paragraphs of DOE/FE Order Nos. 4248 and 4312 are now moot.

E. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 4248 and 4312 remain in effect.

Issued in Washington, D.C., on June 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>37</sup> See *supra* at 4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.