

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

NEW FORTRESS ENERGY LOUISIANA FLNG LLC

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DOCKET NO. 22-39-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS TO
FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 4839

JULY 12, 2022

I. DESCRIPTION OF REQUEST

New Fortress Energy Louisiana FLNG LLC (New Fortress Energy) filed an application (Application)¹ 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) on March 30, 2022,³ and supplemented the Application on April 22, 2022.⁴ New Fortress Energy requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 145 billion cubic feet per year (Bcf/yr) of natural gas, or approximately 2.8 million metric tons per annum (mtpa) of LNG.⁵ New Fortress Energy seeks authorization to export the LNG by vessel from its proposed deepwater port export terminal project, the New Fortress Energy Louisiana FLNG Project (Project), to be located off the southeast coast of Grand Isle, Louisiana.⁶

New Fortress Energy requests authorization to export this LNG to any country with the capacity to import LNG via ocean-going carriers and with which trade is not prohibited by U.S. law or policy.⁷ This includes both countries with which the United States currently has, or in the future enters into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),⁸ and any other country with which trade is not prohibited by U.S. law or

¹ New Fortress Energy Louisiana FLNG LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, Docket No. 22-39-LNG (Mar. 30, 2022) [hereinafter New Fortress Energy App.].

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

³ 15 U.S.C. § 717(b). 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.

⁴ New Fortress Energy Louisiana FLNG LLC, Supplement to Application, Docket No. 22-39-LNG (Apr. 22, 2022) [hereinafter New Fortress Energy Supp. to App.].

⁵ New Fortress Energy App. at 1.

⁶ *Id.*

⁷ *Id.* at 1-2; *see also* New Fortress Energy Supp. to 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,

policy (non-FTA countries).⁹ New Fortress Energy requests both the FTA and non-FTA authorization on a non-additive basis for a term to commence on the date of first export following the commencement of commercial operation of the Project, and extending through December 31, 2050.¹⁰ New Fortress Energy further requests this authorization on its own behalf and as agent for other entities that may hold title to the LNG at the time of export.¹¹

The portion of New Fortress Energy's Application that seeks authorization to export domestically produced LNG to FTA countries is being reviewed pursuant to NGA section 3(c), 15 U.S.C. § 717b(c), and approved in this Order. The portion of the Application that seeks authorization to export domestically produced LNG to non-FTA countries will be reviewed pursuant to NGA section 3(a), 15 U.S.C. § 717b(a), and addressed in a separate order.¹²

II. BACKGROUND

Applicant. New Fortress Energy is a Delaware limited liability company with its principal place of business in New York, New York. New Fortress Energy states that it is a wholly-owned subsidiary of New Fortress Energy Inc. (NFE), a Nasdaq listed company, and was formed for the purpose of developing and owning the Project.¹³

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.

⁹ 15 U.S.C. § 717b(a).

¹⁰ New Fortress Energy App. at 1-2, 5. *See also* 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 2050 Policy Statement]. Additionally, DOE notes that, effective January 12, 2021, long-term export authorizations contain authority to export the same approved volume of LNG pursuant to transactions with terms of less than two years, including commissioning volumes, on a non-additive basis. *See* U.S. Dep't of Energy, Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis; Policy Statement, 86 Fed. Reg. 2243 (Jan. 12, 2021).

¹¹ New Fortress Energy App. at 2, 5.

¹² *See* New Fortress Energy Louisiana FLNG LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 87 Fed. Reg. 29,151 (May 12, 2022).

¹³ New Fortress Energy App. at 2.

New Fortress Energy states that its wholly-owned subsidiaries, NFE FLNG 1 LLC (FLNG1) and NFE FLNG 2 LLC (FLNG2) will each hold one of the Project's two liquefaction systems, as described below.¹⁴ New Fortress Energy, as well as FLNG1 and FLNG2, are registered to conduct business in Louisiana.¹⁵

Proposed New Fortress Energy Project. New Fortress Energy states that it proposes to construct, own, and operate the proposed offshore Project to be located in West Delta Block 38 (WD-38), in approximately 30 meters (98 feet) of water, off the southeast coast of Grand Isle, Louisiana.¹⁶ According to New Fortress Energy, the Project will be a deepwater port under the Deepwater Port Act of 1974, as amended (DWPA).¹⁷ New Fortress Energy states that it is concurrently filing an application for a license to construct, own, and operate the Project pursuant to the DWPA, and in accordance with the United States Coast Guard (USCG) and the Maritime Administration's (MARAD) implementing regulations.¹⁸

New Fortress Energy states that the proposed Project will be designed using a modular approach involving the installation of two nominal 1.4 mtpa liquefaction systems, FLNG1 and FLNG2.¹⁹ Each system will contain three platforms consisting of natural gas processing, natural gas liquefaction, and utilities and accommodations. FLNG1 will utilize self-elevating platforms

¹⁴ See New Fortress Energy App. at 2 n.5.

¹⁵ *Id.* at 2. See also New Fortress Energy Supp. to App. at 1.

¹⁶ See *id.* at 1, 3-4. New Fortress Energy provides a map showing the location of the Project as Appendix C to the Application.

¹⁷ 33 U.S.C. 1501 *et seq.* The DWPA “establishes a licensing system for the ownership, construction, operation, and decommissioning of deepwater port structures located beyond the U.S. territorial sea for the import and export of oil and natural gas.” New Fortress Energy App. at 3 n.7 (quoting MARAD website).

¹⁸ New Fortress Energy App. at 3-4 (citing 33 U.S.C. Part 148), 13. New Fortress Energy states that MARAD and USCG will conduct an evaluation of the potential impacts of the Project on the environment pursuant to the National Environmental Policy Act (NEPA). DOE is expected to participate as a cooperating agency in that environmental review process. See *id.* at 13-14. We take notice that New Fortress Energy filed its application with MARAD and USCG, pursuant to the DWPA, on March 31, 2022. See U.S. Department of Transportation, Deepwater Port License Application: New Fortress Energy Louisiana FLNG LLC; Notice of Application, 87 Fed. Reg. 24,389 (Apr. 25, 2022).

¹⁹ See *id.* at 4-5.

(such as jack-up platforms or rigs), and FLNG2, located adjacent to FLNG1, will utilize fixed platform structures. New Fortress Energy states that an additional self-elevating platform will house feed gas compressors.²⁰

New Fortress Energy further states that both FLNG1 and FLNG2 will be connected to a single Floating LNG Storage Unit (FSU) via a flexible, partially submerged, 220-meter cryogenic hose transfer system.²¹ The FSU will be positioned approximately 100 meters (328 feet) from the FLNGs.²² New Fortress Energy states that, “[t]hrough its affiliates, NFE anticipates that it will purchase and transport natural gas, offload produced LNG into [the] FSU, and transload such LNG to LNG carriers for distribution to its downstream terminals or third-party customers.”²³ According to New Fortress Energy, up to 40 LNG carriers are expected to call on the Project annually.²⁴

New Fortress Energy asserts that other than the potential for temporary construction staging areas, there will be no onshore facilities associated with the Project. New Fortress Energy states that it expects the Project “to commence [operations] within several months after all required authorizations have been received.”²⁵

Source of Supply. New Fortress Energy states that it plans to export domestically produced natural gas sourced from multiple supply hubs.²⁶ According to New Fortress Energy, feed gas supply to the Project will be transported via the existing Kinetica Energy Express, LLC

²⁰ New Fortress Energy App at 4.

²¹ *Id.*

²² *Id.*

²³ *See id.* at 6.

²⁴ *Id.* at 4.

²⁵ *See* New Fortress Energy Supp. to App. at 1.

²⁶ New Fortress Energy App. at 4.

(Kinetica) offshore natural gas pipeline system and two newly constructed, 24-inch pipeline laterals connecting the Kinetica pipeline system to the Project.²⁷

Business Model. New Fortress Energy requests this authorization on its own behalf and as agent for other entities who will hold title to the LNG at the time of export.²⁸ New Fortress Energy states that it will comply with all DOE requirements for exporters and agents, including registration requirements.²⁹

New Fortress Energy states that it has not yet entered into long-term natural gas supply or export contracts for the requested exports.³⁰ According to New Fortress Energy, NFE will own the Project through its wholly-owned subsidiary, and anticipates that it will sell or consume the exported the LNG within its portfolio of downstream assets.³¹ New Fortress Energy further states that it will file all long-term, binding contracts associated with the exports of LNG from the Project, once executed, in accordance with DOE's established policy and precedent.³²

III. 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 a 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 FTA portion of New Fortress Energy's Application falls within

²⁷ *Id.*

²⁸ *Id.* at 2, 5.

²⁹ *See id.* at 5.

³⁰ *Id.*

³¹ *Id.* at 5; *see also id.* at 6.

³² *Id.* at 6.

section 3(c), as amended, and therefore, DOE grants the requested FTA authorization without modification or delay.³³

(2) In light of DOE's statutory obligation to grant the FTA portion of this Application without modification or delay, there is no need for DOE to review other arguments asserted by New Fortress Energy in support of the Application. The instant grant of authority should not be read to indicate DOE's views on those arguments or on New Fortress Energy's request for non-FTA export authorization.

(3) The countries with which the United States has a FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

(4) New Fortress Energy requests authorization to export LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export. DOE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,³⁴ 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*,³⁵ which established that the title for all LNG authorized for export must be held by the authorization holder at the

³³ DOE further 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.

³⁴ *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).

³⁵ *The Dow Chemical Company*, 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.

point of export. DOE finds 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 has reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.³⁶ 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 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.³⁷

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

(5) Section 590.202(b) of DOE's regulations requires applicants to supply transaction-specific factual information "to the extent practicable."³⁸ Additionally, DOE regulations at 10 C.F.R. § 590.202(e) allow confidential treatment of the information supplied in support of or in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.

(6) DOE will require that New Fortress Energy file or cause to be filed with DOE any relevant long-term commercial agreements or contracts pursuant to which New Fortress Energy

³⁶ *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).

³⁷ *Id.* at 8-9.

³⁸ 10 C.F.R. § 590.202(b).

exports LNG as agent for a Registrant once those agreements or contracts have been executed. DOE finds that the submission of all such agreements or contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b). By way of example and without limitation, a “relevant long-term commercial agreement” would include an agreement with a minimum term of two years.

(7) DOE also will require New Fortress Energy to file any long-term contracts New Fortress Energy enters into providing for the long-term export of U.S. sourced natural gas as LNG on its own behalf from the Project. DOE finds that the submission of these contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).

(8) In addition, DOE finds that section 590.202(c) of DOE’s regulations³⁹ requires that New Fortress Energy file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Project, whether signed by New Fortress Energy or the Registrant, within 30 days of their execution.

(9) DOE recognizes that some information in New Fortress Energy’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Project, may be commercially sensitive. DOE therefore will provide New Fortress Energy the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) New Fortress Energy may file, or cause to be filed, long-term contracts under seal, but it also will file either: (i) a copy of each long-term contract with commercially sensitive information redacted, or (ii) a summary of all major

³⁹ *Id.* § 590.202(c).

provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destination, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted or non-disclosed information should be exempted from public disclosure.⁴⁰

To ensure that DOE destination and reporting requirements included in the Order are conveyed to subsequent title holders, DOE will include as a condition of this authorization that future contracts for the sale or transfer of LNG exported pursuant to the Order shall include an acknowledgement of these requirements.

ORDER

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

A. New Fortress Energy Louisiana FLNG LLC (New Fortress Energy) is authorized to export domestically produced LNG by vessel from the proposed New Fortress Energy Louisiana FLNG Project, to be located in West Delta Block 38 (WD-38), off the southeast coast of Grand Isle, Louisiana. The volume authorized in this Order is equivalent to 145 Bcf/yr of natural gas for a term to commence on the date of first export following the commencement of commercial operation of the Project, and to extend through December 31, 2050. New Fortress Energy is authorized to export this LNG on its own behalf and as agent for other entities that hold title to the LNG, pursuant to one or more contracts of any duration.⁴¹

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua,

⁴⁰ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

⁴¹ These contracts may include the export of commissioning volumes prior to the start of facility operations on a non-additive basis. *See* U.S. Dep't of Energy, Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis; Policy Statement, 86 Fed. Reg. 2,243, 2,245 (Jan. 12, 2021).

Oman, Panama, Peru, Republic of Korea, and Singapore, and to any nation with which the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via ocean-going vessels.

FTA countries are currently identified by DOE at:

<https://www.energy.gov/fecm/how-obtain-authorization-import-andor-export-natural-gas-and-lng>.

C. New Fortress 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, MARAD, and the USCG. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (i) New Fortress Energy shall file, or cause others to file, with the U.S. Department of Energy, Office of Fossil Energy and Carbon Management, Office of Resource Sustainability, Office of Regulation, Analysis, and Engagement (FE-34) a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG from the Project on its own behalf or as agent for other entities. The non-redacted must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) New Fortress Energy shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Project. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

E. New Fortress Energy is permitted to use its authorization to export LNG as agent for other LNG title-holders (Registrants), after registering those entities with DOE. Registration

materials shall include an acknowledgement and agreement by the Registrant to supply New Fortress Energy with all information necessary to permit New Fortress 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) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE, described in Ordering Paragraph D of this Order.

Any change in the registration materials—including changes in company name, contact information, length of the long-term contract, termination of the long-term contract, or other relevant modification—shall be filed with DOE within 30 days of such change(s).

F. New Fortress Energy, or others for whom New Fortress Energy acts as agent, shall include the following provision in any agreement or other 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. 4839, issued July 12, 2022, in Docket No. 22-39-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 New Fortress Energy Louisiana FLNG LLC that identifies the country (or countries) into which the LNG or natural gas was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that New Fortress Energy Louisiana FLNG LLC is made aware of all such actual destination countries.

G. Within two weeks after the first export of domestically produced LNG occurs from the Project, New Fortress Energy shall provide written notification of the date of first export to DOE.

H. New Fortress Energy shall file with the Office of Regulation, Analysis, and Engagement, on a semi-annual basis, written reports describing the progress of the proposed Project. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the Project, the date the Project is expected to be operational, and the status of any long-term supply and export contracts associated with the long-term export of LNG from the Project.

I. With respect to any change in control of the authorization holder, New Fortress Energy must comply with DOE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.⁴² For purposes of this Ordering Paragraph, a “change in control” shall include any change, directly or indirectly, of the power to direct the management or policies of New Fortress Energy, 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.⁴³

J. Monthly Reports: With respect to the LNG exports authorized by this Order, New Fortress 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

⁴² 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).

⁴³ See *id.* at 65,542.

whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30th day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of “no activity” for that month must be filed. If exports have occurred, the report must provide the information specified for each applicable activity and mode of transportation, as set forth in the Guidelines for Filing Monthly Reports. These Guidelines are available at: <https://www.energy.gov/fecm/guidelines-filing-monthly-reports>.

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

K. All monthly report filings on Form FE-746R shall be made to the 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/fecm/regulation>.

Issued in Washington, D.C., on July 12, 2022.

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