

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

BP ENERGY COMPANY

)
)
)
DOCKET NO. 22-111-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS BY VESSEL
TO FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 4917

DECEMBER 1, 2022

I. INTRODUCTION

On September 14, 2022, BP Energy Company (BPEC) filed an Application¹ with the Office of Fossil Energy & Carbon Management (FECM) (formerly the Office of Fossil Energy)² of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA).³ BPEC requests authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in a volume equivalent to 30 billion cubic feet (Bcf) of natural gas on a cumulative basis for a two-year period commencing on December 2, 2022.⁴ BPEC seeks to export this LNG by vessel, on a short-term or spot market basis, from the Cove Point LNG Terminal, owned by Cove Point LNG, LP (Cove Point)⁵ and located in Calvert County, Maryland.⁶

BPEC seeks to export this LNG to any country with the capacity to import LNG via ocean-going carrier 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 will have, 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 policy (non-FTA countries).⁹ BPEC states that it does not seek authorization to export any domestically produced natural gas

¹ BP Energy Co., Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas on a Short-Term Basis, Docket No. 22-111-LNG (Sept. 14, 2022) [hereinafter 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. § 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-FE1-2022, issued on June 13, 2022.

⁴ App. at 1.

⁵ *See, e.g., Cove Point LNG, LP*, Docket No. 22-22-LNG.

⁶ App. at 1.

⁷ *Id.*

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, 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 *Id.* § 717b(a).

or LNG.¹⁰ BPEC is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export.¹¹

In this Order, DOE grants BPEC's Application and authorizes the requested export of previously imported LNG in a volume equivalent to 30 Bcf of natural gas on a cumulative basis over the requested two-year period. Specifically, DOE grants the FTA portion of the Application under NGA section 3(c).¹² 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."¹³ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE approves the requested FTA authorization without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA authorization. As to the non-FTA portion of the Application, DOE has reviewed the record in this proceeding under NGA section 3(a) and grants that requested authorization as set forth below.¹⁴

II. **BACKGROUND**

Applicant. BPEC is a Delaware corporation with its principal place of business in Houston, Texas. BPEC is a wholly owned indirect subsidiary of BP America Inc.¹⁵

BPEC's Contractual Rights at Cove Point LNG Terminal. BPEC states that it has contracted for 0.333 Bcf per day (Bcf/d) of import capacity at the Cove Point LNG Terminal.¹⁶

¹⁰ App. at 3.

¹¹ *Id.* at 1.

¹² 15 U.S.C. § 717b(c).

¹³ *Id.*

¹⁴ 15 U.S.C. § 717b(a).

¹⁵ App. at 2.

¹⁶ *Id.*

BPEC states that this contract has a primary term of 20 years that will expire on August 18, 2023, although BPEC may extend the contract term.¹⁷

Procedural History. DOE previously issued DOE/FE Order No. 4628, authorizing BPEC to export LNG previously imported from foreign sources in a volume equivalent to 30 Bcf of natural gas on a cumulative basis over a two-year period commencing on December 2, 2020, and extending through December 1, 2022.¹⁸ BPEC is authorized to export this LNG, on its own behalf or as agent for other entities who hold title to the natural gas at the time of export,¹⁹ by vessel from the Cove Point LNG Terminal to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy (which includes both FTA and non-FTA countries).²⁰

Additionally, on August 4, 2022, DOE issued DOE/FECM Order No. 4859, authorizing BPEC to import LNG from various international sources by vessel, up to a total volume equivalent to 1,200 Bcf of natural gas, for a two-year term commencing on August 22, 2022, and extending through August 21, 2024.²¹ Under the terms of that authorization, BPEC may import the LNG at any LNG import terminal in the United States and its territories.²²

In this proceeding, BPEC filed its Application on September 14, 2022. On October 6, 2022, DOE published a Notice of Application in the *Federal Register* for the non-FTA portion of the Application.²³ Comments, protests, and motions or notices to intervene on the Application

¹⁷ *Id.*

¹⁸ *BP Energy Co.*, DOE/FE Order No. 4628, Docket No. 20-102-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations, at 10-11 (Dec. 2, 2020).

¹⁹ *Id.* at 10.

²⁰ *Id.* at 11.

²¹ *BP Energy Co.*, DOE/FECM Order No. 4859, Docket No. 22-71-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel, at 3 (Aug. 4, 2022).

²² *Id.*

²³ *BP Energy Co.*; Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis, 87 Fed. Reg. 60,666 (Oct. 6, 2022).

were due by November 7, 2022. DOE received no filings in response to the Notice of Application, and therefore the non-FTA portion of the Application is uncontested.²⁴

III. DESCRIPTION OF REQUEST

BPEC requests blanket authorization to export previously imported LNG on a short-term or spot market basis in a volume equivalent to 30 Bcf of natural gas cumulatively over a two-year period beginning on December 2, 2022.²⁵ BPEC seeks to export this LNG from the Cove Point LNG Terminal to FTA and non-FTA countries, both on its own behalf and as an agent for other entities.²⁶

BPEC states that it “does not request the authority to export any domestically produced natural gas or LNG, although it is possible the previously imported LNG may be commingled in the Cove Point LNG terminal with LNG sourced from domestic natural gas.”²⁷ BPEC adds that no modifications to the Cove Point LNG Terminal will be required to accommodate the requested authorization.²⁸

IV. APPLICANT’S PUBLIC INTEREST ANALYSIS FOR NON-FTA AUTHORIZATION

BPEC maintains that its requested authorization is consistent with NGA section 3(a) and DOE’s policy. BPEC asserts that the volume of previously imported foreign-sourced LNG that it proposes to export is not necessary to meet domestic needs. In support of this argument, BPEC points to DOE’s findings in recent authorizations to export LNG—including its prior authorization (DOE/FE Order No. 4628)²⁹ and an authorization issued to Cheniere Marketing

²⁴ See 10 C.F.R. § 590.102(b).

²⁵ App. at 2.

²⁶ *Id.* at 1-2.

²⁷ *Id.* at 3.

²⁸ See *id.* at 5.

²⁹ *Id.* at 4.

LLC and Corpus Christi Liquefaction, LLC in 2022 (DOE/FECM Order No. 4799)³⁰—and suggests that DOE’s findings in these orders should apply to its request.³¹ BPEC highlights DOE’s finding in DOE/FE Order No. 4628 that “U.S. consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG that BPEC seeks to export.”³² BPEC also points to the Energy Information Administration’s (EIA) projections of U.S. natural gas production and demand in *Annual Energy Outlook 2022* (AEO 2022).³³ In particular, BPEC notes DOE’s finding in Order No. 4799 that “EIA’s projections in AEO 2022 continue to show market conditions that will accommodate increased exports of natural gas.”³⁴ BPEC suggests that DOE’s prior conclusions, as supported by EIA’s projections in AEO 2022, should apply to its Application.³⁵

V. DISCUSSION AND CONCLUSIONS FOR NON-FTA AUTHORIZATION

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard for DOE’s review of BPEC’s requested non-FTA authorization. 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

³⁰ *Id.* (citing *Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC*, DOE/FECM Order No. 4799, Docket No. 19-124-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Mar. 16, 2022)). We note that Order No. 4799 authorized the export of domestically produced LNG, rather than the foreign-sourced LNG at issue in this proceeding.

³¹ App. at 4.

³² *Id.* (citing *BP Energy Co.*, DOE/FE Order No. 4628, at 7).

³³ *See id.* (discussing U.S. Energy Info. Admin., *Annual Energy Outlook 2022* (Mar. 3, 2022), <https://www.eia.gov/outlooks/aeo/> [hereinafter AEO 2022]).

³⁴ *Id.* (quoting *Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC*, DOE/FECM Order No. 4799, at 46).

³⁵ *See id.* at 4-5.

such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.³⁶

This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest.³⁷ DOE must grant such an application unless the presumption is overcome by an affirmative showing of inconsistency with the public interest.³⁸

In evaluating an export application under this standard, DOE applies the principles described in DOE Delegation Order No. 0204-111³⁹—which focus primarily on domestic need for the natural gas to be exported, as described in DOE’s 1984 Policy Guidelines⁴⁰—and any other matters determined to be appropriate to a determination of the public interest. In addition, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Domestic Need

BPEC requests authorization to export LNG that was previously imported into the United States from foreign sources. Exporting this proposed volume of LNG will not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG could affect the domestic natural gas market because, for the requested two-year period, the proposed exports will reduce the volume of natural gas potentially available for consumption within the United States.

³⁶ 15 U.S.C. § 717b(a).

³⁷ *See, e.g., Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (citations omitted).

³⁸ *See id.* (citations omitted).

³⁹ DOE Delegation Order No. 0204-111 (Feb. 22, 1984), at 1(¶ (b)). DOE Delegation Order No. 0204-111 was later rescinded by DOE Delegation Order No. 00-002.00 (¶ 2) (Dec. 6, 2001), and DOE Redelelegation Order No. 00-002.04 (¶ 2) (Jan. 8, 2002).

⁴⁰ U.S. Dep’t of Energy, New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984) (incorporating DOE Delegation Order No. 0204-111).

DOE has issued numerous blanket authorizations to export previously imported LNG in other proceedings.⁴¹ These orders were based, in part, on authoritative data indicating that United States consumers have access to substantial quantities of natural gas sufficient to meet domestic demand from other competitively-priced sources. For this proceeding, DOE takes administrative notice of the most recent analysis prepared by EIA in AEO 2022.⁴² AEO 2022 projects annual domestic dry natural gas production in 2023 of 36.05 trillion cubic feet (Tcf), with total natural gas consumption projected to be 30.54 Tcf in the same year.⁴³

Because domestic natural gas production levels are projected to reach an amount that well exceeds the amount of natural gas proposed for short-term export in BPEC's Application, we find that United States consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG that BPEC seeks to export.

C. Other Public Interest Factors

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. Consistent with DOE's Policy Guidelines and DOE precedent, DOE considers the potential effects of proposed exports on other aspects of the public interest, including environmental factors (discussed below). As noted above, DOE received no filings in response to the Notice of Application.

⁴¹ DOE maintains a list of its authorizations at <https://www.energy.gov/fecm/articles/electronic-docket-room-e-docket-room>.

⁴² See *supra* note 33, AEO 2022 at https://www.eia.gov/outlooks/aeo/pdf/AEO2022_Narrative.pdf.

⁴³ See AEO 2022 Reference Case, Table 13: Natural Gas Supply, Disposition, and Prices, <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2022&cases=ref2022&sourcekey=0>.

D. Environmental Review

DOE's NEPA procedures provide for a categorical exclusion if neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required—specifically, categorical exclusion B5.7, *Export of natural gas and associated transportation by marine vessel*.⁴⁴ On November 30, 2022, DOE issued a categorical exclusion for the non-FTA portion of BPEC's Application under this provision.⁴⁵

E. Conclusion

Upon review of the record, DOE finds that a grant of the uncontested non-FTA portion of BPEC's Application is not inconsistent with the public interest. In particular, the record shows that there is a sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on BPEC's proposed exports of previously imported LNG during the two-year authorization period. Further, the proposed exports qualify for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE therefore grants the non-FTA portion of BPEC's Application, as set forth below.

VI. 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 the export of natural gas, including LNG, to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas shall be deemed consistent with the public interest and granted without modification or delay.⁴⁶ The FTA portion of BPEC's Application falls within section 3(c), as

⁴⁴ See 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7.

⁴⁵ U.S. Dep't of Energy, Categorical Exclusion Determination, BP Energy Co., Docket No. 22-111-LNG (Nov. 30, 2022).

⁴⁶ 15 U.S.C. § 717b(c).

amended, and therefore, DOE grants the requested authorization without modification or delay.⁴⁷

(2) With respect to the non-FTA portion of the Application, and after due consideration based on all facts and evidence of record, DOE finds that a grant of the export application is not inconsistent with the public interest under NGA section 3(a).

(3) BPEC requests authorization to export LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export. DOE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,⁴⁸ 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*, which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.⁴⁹ We find 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 reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.⁵⁰ 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

⁴⁷ 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.

⁴⁸ *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).

⁴⁹ *The Dow Chemical Co.*, 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.

⁵⁰ *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).

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.⁵¹

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

ORDER

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

A. BP Energy Company (BPEC) is authorized to export LNG previously imported from foreign sources in a volume equivalent to 30 Bcf of natural gas, pursuant to transactions that have terms of not greater than two years. BPEC is authorized to export this LNG on its own behalf or as agent for other entities that hold title to the natural gas at the time of export. This authorization shall be effective for a two-year term beginning on December 2, 2022, and extending through December 1, 2024.

B. This LNG may be exported by vessel from the Cove Point LNG Terminal, which is owned and operated by Cove Point LNG, LP (Cove Point). This LNG may be exported to any country with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy. However, this Order does not give BPEC an independent right to access the Cove Point LNG Terminal facilities. BPEC and Cove Point—the Terminal’s owner and operator—may agree upon contractual terms for BPEC’s export services, as they deem appropriate. Additionally, this Order does not restrict, through volume limitations or otherwise, either Cove Point’s or BPEC’s existing export authorizations issued by DOE.

⁵¹ See *id.* at 8-9.

C. BPEC 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 and the Federal Energy Regulatory Commission. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. BPEC, or others for whom BPEC acts as agent, shall include the following provision in any agreement or 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. 4917, issued December 1, 2022, in Docket No. 22-111-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 BP Energy Company that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that BP Energy Company is made aware of all such countries.

E. BPEC is permitted to use its authorization in order to export previously imported LNG as agent for other entities, after registering the other entities with DOE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply BPEC with all information and copies of contracts necessary in order to permit BPEC 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) an

acknowledgement and agreement by the Registrant to include the provision in Ordering Paragraph D in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. Each registration submitted pursuant to this Order shall have current information on file with DOE. Any changes in company name, contact information, or other relevant modifications shall be filed with DOE within 30 days of such change(s).

G. BPEC shall ensure that all persons required by this Order to register with DOE have done so.

H. Monthly Reports: With respect to the exports authorized by this Order, BPEC shall 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), within 30 days following the last day of each calendar month, a report on Form FE-746R indicating whether exports 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)

I. The first monthly report required by this Order is due not later than January 30, 2023, and should cover the reporting period from December 2, 2022, through December 31, 2022.

J. 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 December 1, 2022.

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