

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

DELFIN LNG LLC

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DOCKET NO. 13-147-LNG

NOTICE TOLLING EXPIRATION OF
NON-FTA AUTHORIZATION PENDING DOE ACTION

MAY 31, 2024

I. BACKGROUND

On June 1, 2017, in DOE/FE Order No. 4028 (as amended),¹ the Department of Energy’s (DOE) Office of Fossil Energy (now the Office of Fossil Energy and Carbon Management)² authorized Delfin LNG LLC (Delfin) to export domestically produced liquefied natural gas (LNG) by vessel from the proposed Delfin Liquefaction Project (Project), a floating LNG (or FLNG) project, to any countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) under section 3(a) of the Natural Gas Act (NGA).³ Specifically, the LNG will be exported from FLNG vessels to be moored at Delfin’s proposed deepwater port located offshore of Cameron Parish, Louisiana (the Delfin Deepwater Port).⁴ Delfin is authorized to export this LNG in a volume equivalent to 657.5 billion cubic feet per year of natural gas for a term extending through December 31, 2050.⁵ Under Order No. 4028, Delfin is required to “commence export operations using the planned liquefaction facilities no later than seven years from the date of issuance of [the] Order”—*i.e.*, by June 1, 2024.⁶ If Delfin does not meet this deadline, Order No. 4028 will expire.

¹ *Delfin LNG LLC*, DOE/FE Order No. 4028, Docket No. 13-147-LNG (June 1, 2017), *reh’g denied*, Order No. 4028-A (Apr. 3, 2018), *amended by* Order No. 4028-B (Dec. 10, 2020) (extending export term), *further amended by* Order No. 4028-C (May 18, 2021) (correcting location of the FLNG vessels). In addition, Delfin’s export authorization was amended by DOE/FE Order No. 4641 (Dec. 18, 2020) to include short-term export authority on a non-additive basis.

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

³ 15 U.S.C. 717b(a). The authority to regulate the imports and exports of natural gas, including liquefied natural gas (LNG), under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

⁴ *See Delfin LNG LLC*, DOE/FE Order No. 4028-C, at 6-7.

⁵ *Delfin LNG LLC*, DOE/FE Order No. 4028, at 172 (Ordering Para. A); DOE/FE Order No. 4028-B, at 9-10 (Ordering Para. C).

⁶ *Delfin LNG LLC*, DOE/FE Order No. 4028, at 173 (Ordering Para. D) and 166 (Term and Condition B).

On March 1, 2024, Delfin filed a “Request for Supplemental Order Granting Conditional Extension of Time for Long-Term Authorizations to Export Liquefied Natural Gas” (Request).⁷ As relevant here, Delfin acknowledges that it cannot meet the existing export commencement deadline and asks DOE to issue a supplemental order that would modify Order No. 4028 to provide a five-year “conditional extension of time” for Delfin to commence non-FTA export operations—from June 1, 2024, to June 1, 2029.⁸ Delfin asserts that this Request is consistent with DOE’s Policy Statement on Export Commencement Deadlines issued on April 26, 2023.⁹

Delfin asks DOE to grant the Request by Delfin’s export commencement deadline of June 1, 2024. If DOE is unable to act on the Request by this date, Delfin asks DOE to “toll” its export commencement deadline in light of the pending Request, “so that the existing non-FTA authorization would *not* expire and DOE/FECM could subsequently grant the conditional extension notwithstanding passage of the pre-existing deadline.”¹⁰

On March 29, 2024, DOE published a notice of the Request in the *Federal Register* (Notice of Request).¹¹ The Notice of Request invited interested persons to submit protests, motions to intervene, notices of intervention, or comments addressing the Request by April 29,

⁷ Delfin LNG LLC, Request for Supplemental Order Granting Conditional Extension of Time for Long-Term Authorizations to Export Liquefied Natural Gas, Docket Nos. 13-147-LNG, *et al.* (Mar. 1, 2024) [hereinafter Request].

⁸ Request at 2, 5-6, 31-37. Delfin states that it is not seeking to modify any other aspect of its non-FTA authorization. *See id.* at 2.

⁹ U.S. Dep’t of Energy, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25,272 (Apr. 26, 2023), <https://www.energy.gov/sites/default/files/2023-06/Policy%20Statement%20on%20Export%20Commencement%20Deadlines%20in%20Authorizations%20to%20Export%20Natural%20Gas%20to%20Non-Free%20Trade%20Agreement%20Countries.pdf>.

¹⁰ Request at 6 & n.9 (emphasis in original) (discussing the practice of the Federal Energy Regulatory Commission to toll its in-service deadlines for LNG export facilities when extension requests are pending before it and to act on such requests after the in-service deadline has passed).

¹¹ Delfin LNG LLC; Request for Supplemental Order Granting Conditional Extension of Time for Long-Term Authorization to Export Liquefied Natural Gas; Notice of Request, 89 Fed. Reg. 22,137 (Mar. 29, 2024), https://www.energy.gov/sites/default/files/2024-03/FR_Notify%20Delfin%20LNG%2013%20147%20LNG_commencement%20extension.pdf.

2024. In response to the Notice of Request, DOE received two motions to intervene and protest the Request (one filed by Public Citizen, Inc., and the other filed jointly by Sierra Club and the Center for Biological Diversity), as well as 22 comments submitted in support of Delfin's Request.¹² On May 14, 2024, Delfin submitted an answer to these filings, in which it opposes Public Citizen, Inc.'s motion to intervene and responds to both protests.¹³

Additionally, on April 17, 2024, the U.S. Department of Transportation's Maritime Administration (MARAD) issued a letter to Delfin (MARAD Letter).¹⁴ MARAD has jurisdiction over the proposed Delfin Deepwater Port from which Delfin is authorized to export LNG under Order No. 4028.¹⁵ In the Letter, MARAD notified Delfin that it was required to submit an amended application for a deepwater port license for the Delfin Deepwater Port.¹⁶ MARAD also stated that Delfin's amended application process would require an updated environmental review under the National Environmental Policy Act.¹⁷ Sierra Club and the Center for Biological Diversity address the MARAD Letter in their pending motion to intervene and protest, and Delfin also addresses the MARAD Letter in its answer.

II. NOTICE OF TOLLED EXPIRATION

In light of this recent development with MARAD that relates to Delfin's non-FTA authorization, DOE is continuing to review Delfin's Request for a conditional extension of the

¹² See Delfin LNG LLC, Docket No. 13-147-LNG, Documents #48-71.

¹³ Delfin LNG LLC, Answer to Interventions, Comments and Protests, Docket Nos. 13-147-LNG, *et al.* (May 14, 2024).

¹⁴ Letter from William Paape, U.S. Dep't of Transp. Maritime Admin., to Dudley Poston, Delfin LNG LLC (Apr. 17, 2024), <https://www.regulations.gov/document/USCG-2015-0472-0121> [hereinafter MARAD Ltr.].

¹⁵ The Secretary of Transportation has delegated authority to MARAD to issue licenses for the construction and operation of deepwater ports under the Deepwater Port Act of 1974, as amended (33 U.S.C. § 1501 *et seq.*). See, e.g., 49 C.F.R. § 1.93(h).

¹⁶ MARAD Ltr. at 1-2.

¹⁷ 42 U.S.C. § 4321 *et seq.*; see MARAD Ltr. at 2. DOE participated as a cooperating agency in the original environmental review of the Delfin Deepwater Port and anticipates that it will do so again in the forthcoming environmental review.

export commencement deadline set forth in Order No. 4028. Accordingly, the expiration of Order No. 4028 on June 1, 2024, is tolled until DOE issues an order on the pending Request. We emphasize that, during this period, Delfin has no reliance interest on this non-FTA authorization. Any actions taken by Delfin prior to the issuance of DOE's order on the Request are at its own risk.¹⁸

Issued in Washington, D.C., on May 31, 2024.

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Director, Office of Regulation, Analysis, and Engagement
Office of Resource Sustainability

¹⁸ Delfin also holds a long-term authorization to export LNG to FTA countries in DOE/FE Order No. 3393, as amended (Docket No. 13-129-LNG), https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3393.pdf. This Notice does not apply to, and has no effect on, Delfin's FTA authorization in Order No. 3393. In the Request, however, Delfin asks DOE to eliminate a different—and now-outdated—requirement of its FTA order, consistent with DOE precedent. *See* Request at 32. Specifically, the seven-year requirement in Order No. 3393 (Ordering Para. A), as amended by Order No. 3393-A (Ordering Para. B), applies to the date by which Delfin's FTA export term will begin, regardless of any action by Delfin. It does not impose an export commencement deadline as set forth in Delfin's non-FTA authorization. Because the term of Delfin's FTA authorization now extends to the fixed date of December 31, 2050, it is no longer necessary to impose a specific date by which the term of the FTA authorization must start. Therefore, DOE will issue an order in Docket No. 13-129-LNG to grant this requested amendment to Order No. 3393, as required by NGA section 3(c), 15 U.S.C. § 717b(c).