

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

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BIG RIVER ENERGY, LLC)	DOCKET NO. 24-26-LNG
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ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY TRUCK TO MEXICO

DOE/FECM ORDER NO. 5120

MAY 31, 2024

I. INTRODUCTION

On March 14, 2024, Big River Energy, LLC (Big River) filed an application (Application)¹ with the Department of Energy's (DOE) Office of Fossil Energy and Carbon Management (FECM) under section 3 of the Natural Gas Act (NGA).² Big River requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) to Mexico, a country with which the United States has a free trade agreement (FTA) requiring national treatment for trade in natural gas, under NGA section 3(c).³ Big River seeks to export this LNG in a cumulative total volume of 44.7 billion cubic feet (Bcf) of natural gas over a six-year term beginning on August 1, 2024, and extending through July 31, 2030.⁴ Big River requests to export this LNG by truck from four existing natural gas liquefaction and truck facilities (the Facilities) located in the United States, as identified below.⁵ Big River further requests authorization to export the LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export.⁶

DOE finds that Big River's Application falls within NGA section 3(c), and we therefore grant the requested authorization without modification or delay.⁷ This Order, however, does not provide Big River with an independent right to purchase or load LNG at any of the Facilities.

¹ Big River Energy, LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas, Docket No. 24-26-LNG (Mar. 14, 2024) [hereinafter App.].

² 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-FE1-2023, issued on April 10, 2023.

³ 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, and FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas. However, Big River requests to export LNG to Mexico only for use in Mexico, as described herein. *See* App. at 3.

⁴ *Id.* at 2, 4.

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ 15 U.S.C. § 717b(c).

DOE takes no position on the commercial arrangements that may be necessary for Big River to effectuate the export of LNG approved in this Order.

II. BACKGROUND

Applicant. Big River states that it is a Texas limited liability company with its principal place of business in Houston, Texas.⁸ Big River states that it “is in the business of, *inter alia*, marketing LNG in and outside the United States.”⁹

Liquefaction Facilities and Transport. Big River identifies the following four Facilities from which it seeks to purchase and load LNG into trucks for export to Mexico:

- The Ehrenberg Spectrum LNG Plant located in Ehrenberg, Arizona, and owned by Spectrum LNG, LLC, which will provide up to 120,000 gallons per day;
- A facility located in Topock, Arizona, and owned by Applied LNG, which will provide up to 50,000 gallons per day;
- The Ignacio Gas Plant located near Ignacio, Colorado, on the Southern Ute Indian Reservation in La Plata County, Colorado, and owned by Harvest Four Corners, LLC, which will provide up to 45,000 gallons per day; and
- A facility located in Boron, California, and owned by Clean Energy Fuels Corp., which will provide up to 35,000 gallons per day.¹⁰

According to Big River, LNG from the Facilities will serve domestic markets in the United States as well as the requested exports to Mexico.¹¹

Big River states that it intends to transport the LNG “across the Calexico West Border to Mexicali, and the Calexico East Border to Mexicali, points depending on schedules, congestion and other variables.”¹² Big River states that, alternatively, it will transport the LNG at any lawful border crossing point between the United States and Mexico, depending upon local

⁸ App. at 2, 4.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3 & n.3 (stating that it does not have an ownership interest in any of the Facilities). A map showing the location of the Facilities is attached as Appendix C to the Application.

¹¹ *Id.* at 3.

¹² *Id.*

congestion and convenience.¹³ Big River further states that the destination of the LNG will be the Comision Federal de Electricidad (CFE) Gonzalez Ortega Power Plant located in Mexicali, Mexico, and the volumes will be purchased by CFE/CFE International.¹⁴

Business Model. Big River 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.¹⁵ Big River states that, although it has not yet entered into long-term natural gas supply or export agreements for the requested exports, it expects long-term contractual arrangements with CFE will be executed and effective by July 31, 2024, with exports to commence “as soon thereafter as possible.”¹⁶ Big River further states that it will file, or cause to be filed, all long-term commercial agreements, once executed, in accordance with DOE’s established policy, and will comply with all DOE requirements for exporters and agents, including registration requirements.¹⁷

III. DISCUSSION AND CONCLUSIONS

We find that the authorization sought by Big River to export domestically produced LNG to Mexico, a nation with which a FTA requiring national treatment for trade in natural gas is in effect, falls within section 3(c) of the NGA.¹⁸ Therefore, we grant the requested authorization without modification or delay and subject to the Findings and Ordering Paragraphs set forth below.

Additionally, Big River notes that it currently holds a short-term blanket authorization, DOE/FECM Order No. 4938, which authorizes various import and export activities to and from Mexico (and to Canada) in a combined volume equivalent to 13.58 Bcf of natural gas for a two-

¹³ App. at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 4-6.

¹⁸ 15 U.S.C. § 717b(c).

year period that began on December 15, 2022, and extends through December 14, 2024.¹⁹ This short-term authority includes exporting LNG to Mexico by truck.²⁰ Big River suggests that, to the extent its requested authority in the Application overlaps with its existing short-term authority in Order No. 4938—specifically, the export of LNG to Mexico by truck—DOE could vacate that overlapping authority if necessary.²¹ Upon review, however, DOE sees no need to vacate Big River’s authority to export LNG to Mexico by truck in Order No. 4938, as the authorization granted in this Order is for a long-term period extending through July 31, 2030, with the exports designated for a specific purpose (*i.e.*, to be purchased by CFE/CFE International for use at the Gonzalez Ortega Power Plant) that may not overlap with Big River’s exports under Order No. 4938.²² Accordingly, Big River may maintain both this Order and Order No. 4938, and it should report any exports of LNG to Mexico by truck under the appropriate order as required based on the circumstances of the particular export.

IV. 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

¹⁹ *Big River Energy, LLC*, DOE/FECM Order No. 4938, Docket No. 22-151-NG, Order Granting Blanket Authorization to Export Natural Gas to Mexico, to Export Liquefied Natural Gas to Canada and Mexico by Truck, to Import Liquefied Natural Gas from Mexico by Truck, and to Export Liquefied Natural Gas to Mexico by Vessel (Dec. 15, 2022), <https://www.energy.gov/sites/default/files/2022-12/ord4938.pdf>.

²⁰ *Id.*

²¹ *See* App. at 6.

²² *See supra* at 3.

modification or delay. This Application falls within section 3(c), as amended, and therefore, DOE is charged with granting the requested authorization without modification or delay.²³

(2) Big River 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. 2913,²⁴ 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.²⁵ 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 reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.²⁶ 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

²³ DOE further finds that the requirements 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 countries with which the United States does not have an FTA requiring national treatment for trade in natural gas.

²⁴ *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).

²⁵ *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.

²⁶ *Cameron LNG, LLC*, DOE/FE Order No. 3680, Docket No. 15-36-LNG, Order Granting Long-Term MultiContract 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.²⁷

To ensure that the public interest is served, this authorization requires that, where Big River proposes to export LNG as agent, it must register the Registrants with DOE in accordance with the procedures and requirements described herein.

(3) Section 590.202(b) of DOE's natural gas import/export regulations requires applicants to supply transaction-specific factual information "to the extent practicable."²⁸ 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. § 1004.11.²⁹

(4) DOE will require that Big River file or cause to be filed with DOE any relevant long-term commercial agreements or contracts pursuant to which Big River 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" includes an agreement with a minimum term of two years.

(5) DOE also will require Big River to file any long-term contracts Big River enters into providing for the long-term export of LNG on its own behalf. DOE finds that the submission of

²⁷ *Id.* at 8-9.

²⁸ 10 C.F.R. § 590.202(b).

²⁹ *Id.* § 590.202(e).

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).

(6) In addition, DOE finds that section 590.202(c) of DOE’s regulations³⁰ requires that Big River file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Facilities, whether signed by Big River or the Registrant, within 30 days of their execution.

(7) DOE recognizes that some information in Big River’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 Facilities, may be commercially sensitive. DOE therefore will provide Big River the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Big River may file, or cause to be filed, long-term contracts under seal, but it also will file for public posting, within 30 days of the contract execution date, either: i) a copy of each long-term contract with commercially sensitive information redacted, or ii) a summary of all major 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, destinations, 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.³¹

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.

³⁰ *Id.* § 590.202(c).

³¹ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

ORDER

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

A. Big River Energy, LLC (Big River) is authorized by DOE to export domestically produced liquefied natural gas (LNG) in a cumulative volume equivalent to 44.7 Bcf of natural gas for a term beginning on August 1, 2024, and extending through July 31, 2030. This LNG may be exported from the four Facilities listed in the Application and identified herein, to Mexico, solely for use in Mexico.³² Big River is authorized to export this LNG on its own behalf and as agent for other entities that hold title to the natural gas, pursuant to one or more contracts of any duration.³³

B. This LNG may be exported by truck at any lawful border crossing point between the United States and Mexico.

C. This Order does not give Big River an independent right to purchase or load LNG from any of the identified Facilities. Big River and each Facility may agree upon contractual terms for Big River's export services, as they deem appropriate. Additionally, this Order does not restrict, through volume limitations or otherwise, any existing or future authorizations issued by DOE for any of the Facilities.³⁴

D. Big River 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

³² If, in the future, Big River wishes to purchase LNG for export from facilities other than the Facilities listed herein (and in the Application at 2), it will be required to file with DOE a request to amend this Order to add those facilities. DOE will evaluate that request under the same standard of review discussed above.

³³ 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, 86 Fed. Reg. 2243 (Jan. 12, 2021).

³⁴ See *BP Energy Co.*, DOE/FE Order No. 4302, Docket No. 18-69-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 13-14, 19 (Nov. 19, 2018).

Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

E. (i) Big River shall file, or cause others to file, with U.S. Department of Energy (FE-34), Office of Fossil Energy and Carbon Management, Office of Regulation, Analysis, and Engagement an unredacted copy of all executed long-term contracts associated with the long-term export of LNG from the Facilities on its own behalf or as agent for other entities. The unredacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) Big River shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement an unredacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Facilities. The unredacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

F. Big River 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 Big River with all information necessary to permit Big River 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 E 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 modifications—shall be filed with DOE within 30 days of such change(s).

G. Big River, or others for whom Big River 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 Paragraphs A and B of DOE/FECM Order No. 5120, issued May 31, 2024, in Docket No. 24-26-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 Big River Energy, LLC 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 Big River Energy, LLC is made aware of all such actual destination countries.

H. Within two weeks after the first export authorized in Ordering Paragraph A occurs, Big River shall provide written notification of the date of first export to DOE.

I. With respect to any change in control of the authorization holder, Big River must comply with DOE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.³⁵ 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 Big River, whether such power is exercised through one or more intermediary companies or pursuant to an agreement,

³⁵ 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).

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.³⁶

J. Monthly Reports: With respect to the LNG exports authorized by this Order, Big River 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 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 May 31, 2024.

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

³⁶ See *id.* at 65,542.