

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

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JAX LNG, LLC )  
\_\_\_\_\_)

DOCKET NO. 24-73-LNG

ORDER GRANTING REQUEST FOR REHEARING AND CLARIFICATION  
AND MODIFYING ORDER

DOE/FECM ORDER NO. 5233-A

FEBRUARY 25, 2025

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## I. INTRODUCTION

On December 23, 2024, the Department of Energy’s (DOE) Office of Fossil Energy and Carbon Management (FECM) issued DOE/FECM Order No. 5233<sup>1</sup> (Order or Order No. 5233) to JAX LNG, LLC (JAX) under section 3 of the Natural Gas Act (NGA).<sup>2</sup> The Order granted an application filed by JAX on July 25, 2024 (as subsequently clarified) (Application).<sup>3</sup> DOE authorized JAX to export domestically produced liquefied natural gas (LNG) obtained from any of the 14 Facilities listed in Appendix C of the Application, in a volume equivalent to 51.75 billion cubic feet per year of natural gas on a non-additive basis, as follows:

- (i) Under section 3(c) of the NGA, to any country with which the United States has, or in the future may enter into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),<sup>4</sup> and
- (ii) Under section 3(a) of the NGA, to any country with which trade is not prohibited by U.S. law or policy (non-FTA countries).<sup>5</sup>

JAX is authorized to export this LNG “(i) in approved [International Organization for Standardization] ISO containers on vessels, and (ii) loaded into bunkering vessels for transfer as marine fuel to ships in foreign ports” for a term to commence on the date of first commercial export and to extend through December 31, 2050.<sup>6</sup>

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<sup>1</sup> *JAX LNG, LLC*, DOE/FECM Order No. 5233, Docket No. 24-73-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations, and Authorizing Small-Scale Exports of Liquefied Natural Gas (Dec. 23, 2024), [https://www.energy.gov/sites/default/files/2024-12/ord5233\\_0.pdf](https://www.energy.gov/sites/default/files/2024-12/ord5233_0.pdf).

<sup>2</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-FE1-2023, issued on April 10, 2023.

<sup>3</sup> See *JAX LNG, LLC*, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free-Trade Agreement and Non-Free Trade Agreement Nations, Docket No. 24-73-LNG (July 25, 2024); see also Email from J. Patrick Nevins, Counsel for JAX LNG, LLC, to Jennifer Wade, DOE/FECM, Docket No. 24-73-LNG (Dec. 20, 2024) [hereinafter collectively App.].

<sup>4</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>5</sup> *Id.* § 717b(a); see, e.g., *JAX LNG, LLC*, DOE/FECM Order No. 5233, 2-3, 9-10, 14 (Ordering Paras. A, C).

<sup>6</sup> *Id.* at 14 (Ordering Para. A). DOE uses the terms “marine fuel” and “bunker fuel” interchangeably. See, e.g., U.S. Energy Info. Admin., Glossary (defining “bunker fuel,” in relevant part, as fuel supplied to ships) (last visited Feb.

As relevant here, JAX stated in its Application that it has existing operations in which it loads LNG onto bunkering vessels, which it described as “relatively small vessels that perform ship-to-ship transfers of LNG for use as marine fuel.”<sup>7</sup> JAX explained that it may load bunkering vessels “to transfer LNG for marine fuel to cargo ships and cruise ships in foreign ports.”<sup>8</sup> JAX asserted that, “[t]ypically, the transfer by the bunkering vessels occurs in U.S. or international waters – which would not constitute an ‘export’ for purposes of NGA Section 3,” but that, “[i]n the event that the ship-to-ship transfer occurs in international ports of call in a foreign nation ... the potential applicability of Section 3 is less clear.”<sup>9</sup> On this basis, JAX asked DOE, in the requested order, to clarify “whether LNG transferred by a bunkering vessel at an international port of call should be treated as an export, whether such treatment is not required, or otherwise provide guidance regarding how bunkering operations should be reported to DOE.”<sup>10</sup>

In Order No. 5233, DOE addressed JAX’s bunkering request, stating that “based on the facts presented by JAX, DOE finds that a ship-to-ship transfer of U.S.-sourced LNG—whether the transfer occurs in U.S. waters, international waters, or at an international port in a foreign country—will constitute an ‘export’ under NGA section 3 if the receiving ship is registered to a foreign country.”<sup>11</sup> DOE further stated that, “to the extent that JAX’s existing operations involve ‘load[ing] LNG onto bunkering vessels ... that perform ship-to-ship transfers of LNG for use as marine fuel,’ this activity falls under DOE’s jurisdiction (and thus would need to be reported

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24, 2025). On January 30, 2025, JAX provided notification of its first export under Order No. 5233. *See* JAX LNG, LLC, Notification of First Export Cargo, Docket No. 24-73-LNG (Jan. 30, 2025).

<sup>7</sup> App. at 6-7; *see also* JAX LNG, LLC, DOE/FECM Order No. 5233, at 3.

<sup>8</sup> App. at 6.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> JAX LNG, LLC, DOE/FECM Order No. 5233, at 3 (quoting App. at 7).

<sup>11</sup> *Id.* at 8 (emphasis in original); *see also id.* at 8 n.45.

pursuant to this Order going forward) if the receiving ship is registered to a foreign country.”<sup>12</sup>

On January 22, 2025, JAX timely filed a “Request for Rehearing and Clarification” of Order No. 5233.<sup>13</sup> JAX states that it disagrees with the portion of the Order in which “DOE has asserted the full panoply of its Section 3 natural gas export regulation over the ship-to-ship transfer of LNG for use as a marine fuel from a bunkering vessel to foreign-flagged ships regardless of the location of the transfer.”<sup>14</sup> JAX identifies the following four alleged errors in the Order:

1. “The DOE erred in concluding that the ship-to-ship transfer of LNG from a bunkering vessel to another ship that will utilize it as marine fuel constitutes an export of natural gas from the United States to a foreign country (the applicable standard in NGA Section 3) regardless of where the transfer occurs.”
2. “The DOE erred in concluding that a ship-to-ship transfer of LNG from a bunkering vessel to another ship, regardless of where the transfer occurs, includes elements of both shipment from the United States and ‘subsequent entry into commerce at the destination, where the destination is a foreign country’ (the standard for an export articulated in the Order).”
3. “The DOE erred in treating a foreign-registered vessel as, in effect, a foreign country for purposes of applying NGA Section 3.”
4. DOE’s decision concerning ship-to-ship transfers “regardless of the location of the transfer” was “arbitrary and capricious, not the product of reasoned decision-making, and unsupported by substantial evidence.”<sup>15</sup>

In sum, JAX urges DOE on rehearing to “reverse its assertion of Section 3 jurisdiction at a minimum with respect to ship-to-ship transfers made in U.S. ports and U.S. waters,” as well as

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<sup>12</sup> *Id.* at 8-9 & n.46 (quoting App. at 6-7).

<sup>13</sup> JAX LNG, LLC, Request for Rehearing and Clarification, Docket No. 24-73-LNG (Jan. 22, 2025), <https://www.energy.gov/sites/default/files/2025-01/JAX%20Rehearing%20Request%20of%20Order%20No.%205233%20%28012225%29.pdf> [hereinafter JAX Rehearing Request]. Previously, on January 15, 2025, JAX submitted a “Request for Clarification of Order No. 5233,” in which JAX sought clarifications of Order No. 5233 while reserving the right to seek rehearing. In response to that filing, DOE “confirm[ed] that the ruling in DOE/FECM Order No. 5233, and any limitations or obligations it creates for JAX, are prospective only.” U.S. Dep’t of Energy, Response to Request for Clarification, Docket No. 24-73-LNG (Jan. 16, 2025). Therefore, “JAX is not required to report to DOE any bunkering activities that took place prior to the issuance of the Order on December 23, 2024.” *Id.*

<sup>14</sup> JAX Rehearing Request at 3.

<sup>15</sup> *Id.* at 3-4.

“when the ship-to-ship transfer occurs in international waters.”<sup>16</sup> Additionally, JAX requests several clarifications of Order No. 5233 “to the extent relevant depending on DOE’s action on rehearing.”<sup>17</sup>

Upon review of JAX’s arguments, DOE is granting JAX’s Rehearing Request and modifying the Order.<sup>18</sup> Specifically, pursuant to NGA section 3, and in light of Executive Order (E.O.) 14154 issued on January 20, 2025, entitled *Unleashing American Energy*,<sup>19</sup> DOE is: (i) withdrawing its assertion of jurisdiction under NGA section 3 over ship-to-ship transfers of U.S. LNG for use as marine fuel when the receiving ship is located in U.S. ports, U.S. waters, or international waters; and (ii) no longer evaluating, for jurisdictional purposes, the “flag” (or country registration) of the receiving ship.

Additionally, DOE is modifying Order No. 5233 such that the Order (as amended by this Rehearing Order) applies to JAX’s ship-to-ship transfer of U.S. LNG for use as marine fuel when the receiving ship (regardless of the flag or registration of the receiving ship) is located in the territorial sea of a foreign country (including in foreign ports), as determined by that country and recognized by the United States.<sup>20</sup> Upon reconsideration, DOE believes that this modified language presents a more accurate articulation of its jurisdiction under NGA section 3.

In the Appendix to this Rehearing Order, DOE provides amended Ordering Paragraphs

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<sup>16</sup> *Id.* at 8 (adding that “JAX continues to believe that whether ship-to-ship transfer from a bunkering vessel constitutes an export should be a debatable and unclear issue only with respect to transfers in international ports”).

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *See* 15 U.S.C. § 717r(a); 10 C.F.R. § 590.303 (stating that DOE, upon an application for rehearing, “may grant or deny rehearing or may abrogate or modify the final opinion and order”). On February 21, 2025, DOE issued a “Notice Providing for Further Consideration of Request for Rehearing and Clarification,” and this Rehearing Order substantively addresses JAX’s Rehearing Request.

<sup>19</sup> Exec. Order No. 14154 of Jan. 20, 2025, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-01956.pdf>.

<sup>20</sup> *Cf.* 33 C.F.R. § 2.22(b) (U.S. Coast Guard regulation stating that, “[w]ith respect to any other nation, *territorial sea* means the waters adjacent to its coast that have a width and baseline recognized by the United States.”); *see also* U.S. Dep’t of State, Office of Ocean & Polar Affairs, *Limits in the Seas* (updated Jan. 2025), <https://www.state.gov/limits-in-the-seas> (documenting maritime boundaries and/or claims for “coastal States” around the world).

that supersede the Ordering Paragraphs set forth in Order No. 5233 in their entirety.<sup>21</sup>

## II. DISCUSSION

### A. Relevant Background

For export applications to non-FTA countries, NGA section 3(a) states that “no person shall export any natural gas from the United States to a foreign country ... without first having secured an order of [DOE] authorizing it to do so.”<sup>22</sup> The use of U.S. LNG as fuel for marine vessels has been increasing in recent years and is expected to continue increasing,<sup>23</sup> but prior to JAX’s Order issued in December 2024, DOE had not evaluated its statutory jurisdiction over LNG as bunker fuel in an authorization.

However, in 2018, DOE issued an advisory opinion to JAX’s co-owner, Pivotal LNG, Inc. (Pivotal).<sup>24</sup> This advisory opinion did not address U.S. LNG as bunker fuel, but rather considered the shipment of U.S. LNG to support activities at the U.S. Naval Station Guantanamo Bay in Cuba. DOE concluded that “there would be no basis ... to assert regulatory jurisdiction” over the LNG as an “export” under NGA section 3(a) because (as relevant here) Pivotal’s contemplated shipment of LNG would be consumed and used at Naval Station Guantanamo Bay (a U.S. military installation), and thus not introduced into commerce in Cuba.<sup>25</sup> DOE observed:

Because the [NGA] does not define ‘export’ as a term of art, Congress is presumed to have intended the ordinary usage of that term. The definition of ‘export’ ordinarily contains both the elements of shipment from the United States and subsequent entry into commerce at the destination, where the destination is a foreign

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<sup>21</sup> DOE’s amendments to the Ordering Paragraphs also seek to address relevant clarifications sought by JAX in its Rehearing Request. *See infra* note 60.

<sup>22</sup> 15 U.S.C. § 717b(a) (emphasis added).

<sup>23</sup> *See* Int’l Energy Agency, *Gas Market Report, Q1-2025*, at 6, 18 (Jan. 2025), <https://www.iea.org/reports/gas-market-report-q1-2025> (download PDF).

<sup>24</sup> Letter to Lisa Tonery, Counsel for Pivotal LNG, Inc., from Shawn Bennett, DOE, re: Shipment of Liquefied Natural Gas from the United States to Naval Station Guantanamo Bay (July 16, 2018), [https://www.energy.gov/sites/prod/files/2018/07/f53/Pivotal\\_Advisory%20Opinion07\\_16\\_18.pdf](https://www.energy.gov/sites/prod/files/2018/07/f53/Pivotal_Advisory%20Opinion07_16_18.pdf) [hereinafter Pivotal Advisory Ltr.].

<sup>25</sup> *Id.* at 1-2; *see also* JAX Rehearing Request at 5.

country.<sup>26</sup>

In a footnote supporting this paragraph, DOE cited the definition of “export” set forth in Webster’s Revised Unabridged Dictionary (1913): “[t]o carry or send abroad, or out of a country, especially to foreign countries, as merchandise or commodities in the way of commerce.”<sup>27</sup> In Order No. 5233, DOE referenced these points, as did JAX in its Rehearing Request.<sup>28</sup>

### **B. LNG Used as Marine Fuel by a Receiving Ship**

As a preliminary matter, JAX argues that “LNG used as marine fuel to power a vessel” does not constitute an “export” under NGA section 3 (and the Pivotal advisory opinion discussed above) because LNG for this purpose “is *not* merchandise or a commodity being exported in commerce, for sale to others.”<sup>29</sup> JAX also points to various sources, including opinion letters of the U.S. Customs and Border Protection, that generally distinguish between LNG used as marine fuel for the receiving vessel (*i.e.*, as “bunker fuel”), and LNG transported as a commodity and thus not necessary to the operation of the vessel that is carrying it (*i.e.*, “commercial cargo”).<sup>30</sup>

Although we recognize the distinction made by the U.S. Customs and Border Protection between bunker fuel and commercial cargo,<sup>31</sup> we decline to interpret the statutory phrase “export any natural gas” in NGA section 3(a) as excluding this bunker fuel category—*i.e.*, LNG transferred from a bunkering vessel to a receiving ship for the ship’s own consumption and use.

First, we disagree with the contention that U.S. LNG purchased and used as fuel by

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<sup>26</sup> Pivotal Advisory Ltr. at 2.

<sup>27</sup> *Id.* at 2 n.6 (quoting Webster’s Revised Unabridged Dictionary (1913), <https://www.websters1913.com/words/Export>).

<sup>28</sup> See *JAX LNG, LLC*, DOE/FECM Order No. 5233, at 8; JAX Rehearing Request at 5, 8-9.

<sup>29</sup> JAX Rehearing Request at 8 (emphasis in original).

<sup>30</sup> See *id.* at 8-9 (citations omitted).

<sup>31</sup> *Id.* at 8. Indeed, unlike DOE’s regulations, the relevant regulations of the U.S. Customs and Border Protection expressly recognize this distinction. See 19 C.F.R. § 24.24(b)(2), (c)(1) (in assessing harbor maintenance fees, the definition of *commercial cargo* excludes “bunker fuel”).

JAX’s bunkering customers—including in “cruise ships, car carriers, petroleum tankers, and container ships”<sup>32</sup>—is not a commodity because it is consumed by those ships for operational purposes. Like any commodity, LNG bunkering fuel is traded every day, with the price tracked in commodity markets around the world.<sup>33</sup> Further, unlike the unique limitation presented in the Pivotal example pertaining to the shipment of U.S. LNG solely for use at Naval Station Guantanamo Bay (a U.S. military installation),<sup>34</sup> JAX acknowledges that it hires bunkering vessels to transport LNG from its facility “for delivery to its domestic and international customer vessels.”<sup>35</sup>

DOE’s discussion in both the JAX Order and the Pivotal advisory letter makes clear that this context matters, with DOE stating that the definition of “export” “ordinarily” contains both the elements of shipment from the United States and subsequent entry into commerce at the destination, where the destination is a foreign country.<sup>36</sup> Here, even though the LNG used for bunkering activities is consumed by the receiving ship and thus is not introduced on *terra firma* in another country for domestic energy use, for example, it is specious to contend that this bunkering activity is not “commercial” or a part of global commerce. Indeed, the 1913 definition of “export” cited by DOE (“to carry ... or [send] out of a country, especially to foreign countries”) shows that the principal determinant of an “export” is the product leaving the country.<sup>37</sup> Today, the U.S. Department of Commerce’s Export Administration Regulations

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<sup>32</sup> JAX Rehearing Request at 2.

<sup>33</sup> See, e.g., S&P Global, Commodity Insights, “Platts global bunker fuel cost calculator,” <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/crude-oil/060324-interactive-platts-global-bunker-fuel-cost-calculator> (last updated Feb. 11, 2025) (select “LNG” for “fuel” to view the monthly average cost of LNG bunker fuel in several locations around the world).

<sup>34</sup> See Pivotal Advisory Ltr. at 1 (DOE’s conclusion resting, in part, on the fact that “the U.S. LNG would be shipped to Cuba solely for consumption and use by a federal installation [Naval Station Guantanamo Bay] that occupies a leasehold over which the United States exercises exclusive jurisdiction”).

<sup>35</sup> JAX Rehearing Request at 1-2.

<sup>36</sup> *JAX LNG, LLC*, DOE/FECM Order No. 5233, at 8 (emphasis added); Pivotal Advisory Ltr. at 2.

<sup>37</sup> *JAX LNG, LLC*, DOE/FECM Order No. 5233, at 8 n.44; see also *supra* at 6.

similarly define “export” in terms of the product leaving the country: “[a]n actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner.”<sup>38</sup>

Finally, the use of the word “any” in NGA section 3(a)—“no person shall export any natural gas from the United States to a foreign country” without an order from DOE<sup>39</sup>—indicates that DOE’s jurisdiction over exports of natural gas should be interpreted expansively in the face of any ambiguity.<sup>40</sup>

We therefore find that the ship-to-ship transfer of bunker fuel may constitute an “export” under the NGA in certain circumstances, as discussed below.

### C. Withdrawal and Modification of Jurisdiction Under NGA Section 3

JAX asks DOE to reverse its ruling in Order No. 5233 on the grounds that “[t]he LNG involved in a ship-to-ship transfer in U.S. or international waters is destined only for the fuel tank of a vessel for the purpose of generating power for ship services and propulsion,” and thus “does *not* reach any foreign country and certainly does not ‘enter into commerce’ in a foreign country” as would be required for DOE to assert jurisdiction over these bunkering activities under NGA section 3.<sup>41</sup> Further, JAX argues that DOE “erred in treating a foreign-registered vessel as, in effect, a foreign country for purposes of applying NGA Section 3.”<sup>42</sup>

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<sup>38</sup> 15 C.F.R. § 734.13(a)(1) (emphasis added); *see also* 22 C.F.R. § 120.50(a)(1) (U.S. State Dep’t similarly defining “export” in the International Traffic in Arms Regulations, controlling the export of defense-related items, as “[a]n actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner”).

<sup>39</sup> 15 U.S.C. § 717b(a) (emphasis added).

<sup>40</sup> *See, e.g., Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219-20 (2008) (“We have previously noted that ‘[r]ead naturally, the word ‘any’ has an expansive meaning ....’”) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)). We also note that, when NGA section 3(a) (then NGA section 3) was enacted in 1938, Congress likely did not foresee a scenario whereby natural gas could be liquefied and transported in ships from the United States, across global waters, to be transferred as marine fuel into other ships while still on the water. It would be nearly 80 years before this activity became technologically possible.

<sup>41</sup> JAX Rehearing Request at 4-5 (emphasis in original); *see also id.* at 3-4.

<sup>42</sup> *Id.* at 4.

DOE has reviewed JAX's arguments and other relevant legal precedent and policy considerations, including the newly issued E.O. 14154, *Unleashing American Energy*, which requires DOE to review orders "that impose an undue burden on the identification, development, or use of domestic energy resources," including natural gas.<sup>43</sup> DOE notes that a country (referred to as a "State" in the maritime context) has jurisdiction over a vessel that is registered with the State and flying its flag. For example, under the U.S. Coast Guard's regulations, a "flag state" is defined as "the authority under which a country exercises regulatory control over the commercial vessel which is registered under its flag."<sup>44</sup> Similarly, under the U.N. Convention on the Law of the Sea (UNCLOS), "[e]very State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."<sup>45</sup> Nonetheless, DOE acknowledges on rehearing that a foreign-flag ship is not equivalent to, or part of, the country's (or flag state's) sovereign territory for purposes of DOE's jurisdiction under NGA section 3.<sup>46</sup> The U.S. Coast Guard definition of "flag state" referenced above, for example, speaks to the regulatory authority applicable to the flagged commercial vessel, without suggesting that a flag state's sovereignty extends to any or all commercial vessels by virtue of their registration.<sup>47</sup>

For these reasons, DOE withdraws its exercise of jurisdiction over JAX's ship-to-ship

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<sup>43</sup> See Exec. Order No. 14,154, 90 Fed. Reg. at 8354 (§ 3(a)).

<sup>44</sup> 33 C.F.R. § 156.405 (stating that this authority "involves the inspection, certification, and issuance of safety and pollution prevention documents").

<sup>45</sup> U.N. Convention on the Law of the Sea, Art. 94 (Duties of the Flag State). The United States signed the UNCLOS 1994 Agreement, but the Senate has not yet ratified it and thus the United States is not a party to the treaty. However, the United States generally treats the UNCLOS provisions as customary international law.

<sup>46</sup> See, e.g., JAX Rehearing Request at 6 (quoting *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 123 (1923)) (the Supreme Court rejecting the notion that a "ship is a part of the territory of the country whose flag she flies," and stating that the applicable jurisdiction "arises out of the nationality of the ship, as established by her domicile, registry, and use of the flag, and partakes more of the characteristics of personal than of territorial sovereignty").

<sup>47</sup> 33 C.F.R. § 156.405. See also U.N. Convention on the Law of the Sea, Art. 236 (recognizing sovereign immunity for warships and other marine vessels only when such vessels are on "government non-commercial service").

transfer of U.S. LNG for use as marine fuel when the receiving ship is located at a U.S. port, in U.S. waters, or in international waters. Any discussion of bunkering activities occurring in these locations involving the flag (or registration) of the ship, and any related legal obligations, set forth in DOE/FECM Order No. 5233 are no longer in effect and shall not apply going forward.<sup>48</sup>

DOE, however, is modifying Order No. 5233 such that the Order (as amended by this Rehearing Order) applies to JAX's ship-to-ship transfer of U.S. LNG for use as marine fuel when the receiving ship is located in the territorial sea of a foreign country (including in foreign ports), as determined by that country and recognized by the United States—without regard to the flag of the receiving ship.<sup>49</sup> The purpose of this modification is to clarify that DOE has jurisdiction over LNG transferred to a receiving ship for use as marine fuel when the receiving ship is not only located in an international port, but more broadly when the receiving ship is located anywhere in a foreign country's territorial sea (which is considered part of that country's sovereign territory).<sup>50</sup> Through this exercise of jurisdiction under NGA section 3, DOE is maintaining jurisdiction over exports of natural gas and has visibility into bunkering activities occurring globally involving U.S. LNG, to the extent permitted by law.

### **III. FINDINGS AND CONCLUSION**

For the reasons set forth above, DOE grants JAX's Request for Rehearing. DOE is modifying Order No. 5233 to narrow the type of bunkering activities subject to that Order, consistent with NGA section 3. The Ordering Paragraphs of Order No. 5233 applicable to JAX,

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<sup>48</sup> To be clear, DOE will not make a jurisdictional determination regarding the transfer of LNG as marine fuel based on the flag (or registration) of the receiving ship. Likewise, companies other than JAX are not required to seek authorization from DOE to conduct ship-to-ship transfers of U.S. LNG for use as marine fuel when the receiving ship is located at a U.S. port, in U.S. waters, or in international waters.

<sup>49</sup> See *supra* note 20.

<sup>50</sup> See U.N. Convention on the Law of the Sea, Art. 2(1) (establishing that “[t]he sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea”) (emphasis added); see also 33 C.F.R. § 2.22 (describing both the U.S. territorial sea and the territorial sea of any other nation).

as amended consistent with this Rehearing Order, are provided in the Appendix hereto.<sup>51</sup>

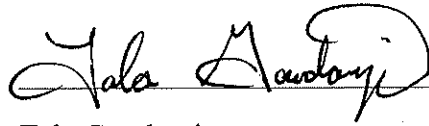
#### IV. ORDER

Pursuant to sections 3 and 19(a) of the Natural Gas Act,<sup>52</sup> DOE's regulations at 10 C.F.R. § 590.503, and for the reasons set forth above, it is ordered that:

A. JAX LNG, LLC's (JAX) Request for Rehearing and Clarification is granted.

B. JAX's Order, DOE/FECM Order No. 5233, issued on December 23, 2024, remains in effect, as amended by this Rehearing Order (including the Appendix).

Issued in Washington, D.C., on February 25, 2025.



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Tala Goudarzi  
Acting Principal Deputy Assistant Secretary  
Office of Fossil Energy and Carbon Management

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<sup>51</sup> DOE is not amending the Terms and Conditions of Order No. 5233 (§ VI). However, to the extent Terms and Conditions E and F of Order No. 5233 are affected by the amendments arising under this Rehearing Order, the instructions provided by DOE in amended Ordering Paragraphs F and G of this Rehearing Order control (*see infra* Appendix).

<sup>52</sup> 15 U.S.C. §§ 717b, 717r(a).

## APPENDIX

Below are the Ordering Paragraphs set forth in *JAX LNG, LLC*, DOE/FECM Order No. 5233 (Order), as amended by DOE/FECM Order No. 5233-A (Rehearing Order).

### ORDER

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

A. JAX LNG, LLC (JAX) is authorized by DOE to export domestically produced LNG obtained from any of the 14 Facilities listed in Appendix C of the Application.<sup>53</sup> JAX is authorized to export this LNG in a volume equivalent to 51.75 billion cubic feet per year of natural gas in two ways: (i) in approved ISO containers on vessels, and (ii) loaded into bunkering vessels for transfer as marine fuel to ships located within the territorial sea of a foreign country (including in foreign ports).<sup>54</sup> The FTA and small-scale authorizations will commence on the date of first commercial export and extend through December 31, 2050. JAX 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.<sup>55</sup>

B. This Order does not give JAX an independent right to purchase or load LNG from any of the identified Facilities. JAX and each Facility may agree upon contractual terms for JAX'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.<sup>56</sup>

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<sup>53</sup> If, in the future, JAX wishes to obtain LNG for export from facilities other than the 14 Facilities listed in Appendix C, 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 standards of review discussed above.

<sup>54</sup> As discussed in the Rehearing Order (*see supra* at 4 & note 20, 10), DOE defers to each country's determination of its own territorial sea for this purpose, as recognized by the United States.

<sup>55</sup> *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).

<sup>56</sup> *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).

C. Exports of LNG under this Order may be exported by vessel to any country with the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy. This encompasses ships receiving exports of LNG for use as marine fuel via ship-to-ship transfer, when the ship is located within the territorial sea of such a foreign country (including in a foreign port).

D. For the authorization to non-FTA countries under the Small-Scale Rule, JAX must commence export operations using the Facilities no later than two years from the date of issuance of this Order.

E. JAX 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 U.S. Department of the Treasury, the Federal Energy Regulatory Commission, and the U.S. Department of Transportation, as applicable. Failure to comply with these requirements could result in rescission of this authorization and/or other civil or criminal penalties.

F. (i) JAX 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) an unredacted copy of all executed long-term contracts associated with the long-term export of LNG.

(ii) JAX 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 Facilities.

Any pre-existing contracts associated with the long-term supply of natural gas to the Facilities and/or the long-term export of LNG that are still in effect must be filed within 30 days

of the date of issuance of the Rehearing Order (Order No. 5233-A), and may be filed under seal as described in the Terms and Conditions. Additionally, following the date of issuance of the Rehearing Order, any unredacted copies of such contracts must be filed within 30 days of their execution and may be filed under seal as described in the Terms and Conditions.

G. JAX is permitted to use its authorization to export LNG as agent for other LNG titleholders (Registrants), after registering those entities with DOE. Registration materials shall include an agreement by the Registrant to supply JAX with all information necessary to permit JAX 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 business, 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 F of this Order.

For exports of LNG for use as marine fuel, registration requirements apply at the point of ship-to-ship transfer of such fuel, provided such transfer occurs within the territorial sea of a foreign country (including in foreign ports), as discussed in the Rehearing 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).

H. JAX, or others for whom JAX acts as agent, shall include the following provision in any agreement or contract for the sale or transfer of LNG in approved ISO containers 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 C of DOE/FECM Order No. 5233-A issued February 25, 2025, in Docket No. 24-73-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 JAX LNG, 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 JAX LNG, LLC is made aware of all such countries.<sup>57</sup>

I. With respect to any change in control of the authorization holder, JAX must comply with DOE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.<sup>58</sup>

J. Monthly Reports: With respect to the exports authorized by this Order, as amended by the Rehearing Order (Order No. 5233-A), JAX 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.<sup>59</sup> Monthly reports must be filed whether or not deliveries have been made. If no exports have 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/guidelinesfiling-monthly-reports>.

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<sup>57</sup> As indicated, this requirement applies only to the authorized export of LNG in approved ISO containers under the Rehearing Order, not to the transfer of LNG for use as marine fuel.

<sup>58</sup> See Procedures for Changes in Control Affecting Applications and Authorizations To Import or Export Natural Gas, 79 Fed. Reg. 65,541, 65,541-42 (Nov. 5, 2014).

<sup>59</sup> Consistent with DOE's Response to Request for Clarification on January 16, 2025 (*see supra* note 13), this monthly reporting requirement applies prospectively only.

(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>.<sup>60</sup>

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<sup>60</sup> DOE believes that it has addressed JAX's clarification requests that are still relevant under the Rehearing Order. Nonetheless, because the Rehearing Order presents DOE's final opinion and order on issues of law, as well as revised Ordering Paragraphs, JAX may seek rehearing (and/or clarification) pursuant to NGA section 19(a), 15 U.S.C. § 717r(a), and 10 C.F.R. § 590.501.