

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

BLUE WATER FUELS, LLC

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FE DOCKET NO. 18-27-LNG

ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS IN ISO CONTAINERS OR IN BULK
LOADED AT THE HR NU BLU ENERGY, LLC LIQUEFACTION FACILITY IN
PORT ALLEN, LOUISIANA, AND EXPORTED BY VESSEL
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4202

JUNE 25, 2018

I. DESCRIPTION OF REQUEST

On March 7, 2018, Blue Water Fuels, LLC (Blue Water) filed an application (Application)¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)² for long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG). Blue Water subsequently clarified its Application in several respects.³ In the Application, as clarified, Blue Water requests authority to export LNG in approved IMO7/TVAC-ASME LNG (ISO) containers or in bulk, transported on vessels, to any country 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, and with which trade is not prohibited by U.S. law or policy (FTA countries).⁴ Blue Water seeks to export this LNG in a volume equivalent to approximately 2.715 billion cubic feet (Bcf) per year (Bcf/yr), or 0.007 Bcf per day (Bcf/d), of natural gas.⁵

Blue Water seeks to purchase the LNG for export from an existing LNG liquefaction facility owned and operated by Blue Water's parent company, HR Nu Blue Energy, LLC (Nu Blue Energy). This facility, called the Nu Blue Energy Facility, is located in Port Allen, Louisiana.⁶ As discussed below, the LNG will be loaded at the Nu Blue Energy Facility into

¹ *Blue Water Fuels, LLC*, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in Approved ISO Containers Exported Via Ocean-Going Vessels to Free Trade Agreement Countries, FE Docket No. 18-27-LNG (Mar. 7, 2018) [hereinafter App.].

² Authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-006.02 issued on November 17, 2014.

³ This Order reflects the information provided in Blue Water's Application, as clarified by the email from Robert L. Redfearn, counsel for Blue Water, to Beverly Howard, DOE/FE (Mar. 14, 2018), and by the letter from Robert L. Redfearn, counsel for Blue Water, to Beverly Howard, DOE/FE (June 12, 2018). Both clarifications are posted in the above-captioned docket.

⁴ 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.

⁵ App. at 1.

⁶ *See id.* at 3.

ISO containers or in bulk onto tanker trucks. The LNG will be transported by truck to the port of export, then loaded onto ocean-going vessels for transport to destination countries.⁷

Blue Water requests the authorization for a 25-year term to commence on the earlier of the date of first commercial export or two years from the date the requested authorization is issued.⁸ Blue Water requests authority to export this LNG on its own behalf and as agent for other entities that will hold title to the LNG at the time of export.

In this Order, DOE/FE reviews the Application under NGA section 3(c), 15 U.S.C. § 717b(c), and approves Blue Water's requested exports.

II. BACKGROUND

Applicant. Blue Water states that it is a Texas limited liability corporation with its principal place of business in Center, Texas. Blue Water is a wholly-owned subsidiary of Nu Blue Energy, a Texas limited liability company with its principle place of business in Center, Texas.⁹

Liquefaction Project. Blue Water states that, initially, it will purchase LNG from the Nu Blue Energy Facility.¹⁰ Blue Water states that the Nu Blue Energy Facility has an initial storage capacity of approximately 100,000 gallons of LNG; the capacity to produce 30,000 gallons of LNG per day; and, based on need, the ability to expand to produce 90,000 gallons per day.¹¹ Additionally, the Nu Blue Energy Facility includes a load-out bay with equipment to fill ISO containers loaded on truck trailers pulled by a Class 8-vehicle.¹² According to Blue Water,

⁷ See *id.* at 2-3.

⁸ See *id.*

⁹ See *id.* at 2.

¹⁰ See *id.* at 3, 5.

¹¹ See App. at 3.

¹² See *id.*

the Nu Blue Energy Facility is an existing operational facility that is currently producing LNG. Therefore, no additional plant infrastructure will be required as a result of the proposed exports.¹³

Blue Water indicates that the LNG will be loaded into ISO containers or tanker trucks at the Nu Blue Energy Facility, then transported by truck to the port of export.¹⁴ At the port, the LNG will be loaded either in ISO containers or in bulk onto ocean-going vessels for transport to destination countries.¹⁵ Blue Water anticipates the points of export to include various ports in Louisiana and Mississippi, as well as other U.S. ports in the future.¹⁶

Source of Supply. Blue Water states that the natural gas to be liquefied at the Nu Blue Energy Facility will be sourced from Enterprise Products Partners, L.P. (Enterprise Products). According to Blue Water, Enterprise Products is a leading North American provider of midstream energy services, and provides the gathering of natural gas in several states including Louisiana.¹⁷ Blue Water further states that the Nu Blue Energy Facility will be utilizing natural gas from the existing Acadian intrastate pipeline located in Port Allen, Louisiana.¹⁸

Business Model. Blue Water requests this authorization on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. Blue Water states that, to date, it has not entered into long-term supply agreements or export agreements.¹⁹ However, Blue Water states that it will file all long-term, binding contracts associated with the export of LNG from the Nu Blue Energy Facility, once executed, in accordance with DOE's established policy and will comply with all DOE/FE requirements for exporters and agents, including registration requirements. Blue Water further states that, when acting as agent, it will register with DOE/FE

¹³ See *id.* at 14.

¹⁴ See *id.* at 3.

¹⁵ See *id.* at 3-4.

¹⁶ See *id.*

¹⁷ See App. at 5.

¹⁸ See *id.*

¹⁹ See *id.* at 4.

each LNG title holder for which it seeks to export LNG as agent, and will comply with other registration requirements as set forth in recent DOE/FE orders.²⁰

III. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications requesting authority for (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas, and/or (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. This Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the requested FTA authorization without modification or delay.²¹

(2) In light of DOE's statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review other arguments asserted by Blue Water in support of the Application. The instant grant of authority should not be read to indicate DOE/FE's views on those arguments.

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

(4) As described above, Blue Water requests authorization to export LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. DOE/FE

²⁰ *See id.*

²¹ 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 countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,²² which granted Freeport LNG Expansion, L.P., *et al.* (collectively, FLEX) authority to export LNG to FTA countries. In that order, DOE/FE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE/FE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE 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.²³ We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE/FE reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.²⁴ In that order, DOE/FE determined that, in LNG export orders in which Agency Rights have been granted, DOE/FE shall require registration materials filed for, or by, an LNG title-holder (Registrant) to include the same company identification information and long-term contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.²⁵

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

²² *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No 2913, FE 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).

²³ *The Dow Chemical Company*, DOE/FE Order No. 2859, FE 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.

²⁴ *Cameron LNG, LLC*, DOE/FE Order No. 3680, FE 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).

²⁵ *See id.* at 7-8.

(5) Section 590.202(b) of DOE’s regulations requires applicants to supply transaction-specific factual information “to the extent practicable.”²⁶ Additionally, DOE regulations at 10 C.F.R. § 590.202(e) allow confidential treatment of the information supplied in support of or in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.

(6) DOE/FE will require that Blue Water file or cause to be filed with DOE/FE any relevant long-term commercial agreements or contracts pursuant to which Blue Water exports LNG as agent for a Registrant once those agreements or contracts have been executed. DOE/FE finds that the submission of all such agreements or contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b). By way of example and without limitation, a “relevant long-term commercial agreement” would include an agreement with a minimum term of two years, such as a long-term purchase and sales agreement involving LNG stored or liquefied at the Nu Blue Energy Facility.

(7) DOE/FE also will require Blue Water to file any long-term contracts Blue Water enters into providing for the long-term export of LNG on its own behalf from the Nu Blue Energy Facility. DOE/FE finds that the submission of these contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations²⁷ requires that Blue Water file, or cause to be filed, all long-term contracts associated with the

²⁶ 10 C.F.R. § 590.202(b).

²⁷ *Id.* § 590.202(c).

long-term supply of natural gas to the Nu Blue Energy Facility within 30 days of their execution to which either Blue Water or the Registrant is a party.

(9) DOE/FE recognizes that some information in Blue Water'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 Nu Blue Energy Facility, may be commercially sensitive. DOE/FE therefore will provide Blue Water the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Blue Water may file, or cause to be filed, long-term contracts under seal, but it also will file either: i) a copy of each long-term contract with commercially sensitive information redacted, or ii) a summary of all major provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destination, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted or non-disclosed information should be exempted from public disclosure.

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

ORDER

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

A. Blue Water Fuels, LLC is authorized to export domestically produced LNG loaded into ISO containers or tanker trucks at the HR Nu Blu Energy, LLC liquefaction facility located in Port Allen, Louisiana, and transported by truck to be loaded onto ocean-going vessels. The volume authorized in this Order is equivalent to approximately 2.715 Bcf/yr of natural gas (0.007 Bcf/d). This authorization is for a 25-year term, beginning on the earlier of the date of first

export or two years from the date the authorization is issued. Blue Water is authorized to export this LNG on its own behalf and as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore, and to any nation with which the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via bulk transport barge, ship, or in a floating storage terminal. FTA countries are currently identified by DOE/FE at: <http://www.fossil.energy.gov/programs/gasregulation/index.html>

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

D. (1) Blue Water shall file, or cause others to file, with the Office of Regulation and International Engagement a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for other entities from the Nu Blu Energy Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Blue Water has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Blue Water shall also file, or cause others to file, for public posting either: a) a redacted version of the contracts described in the preceding sentence, or b) major provisions of

the contracts. In these filings, Blue Water shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(2) Blue Water shall file, or cause others to file, with the Office of Regulation and International Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Nu Blu Energy Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Blue Water has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Blue Water shall also file, or cause others to file, for public posting either: a) a redacted version of the contracts described in the preceding sentence, or b) major provisions of the contracts. In these filings, Blue Water shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Blue Water shall include, and require others for whom Blue Water acts as agent to include, the following provision in any agreement or other contract for the sale or transfer of LNG exported pursuant to this Order:

Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 4202, issued June 25, 2018, in FE Docket No. 18-27-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 Blue Water Fuels, LLC that identifies the country (or countries) into which the LNG or natural gas was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to ensure that Blue Water Fuels, LLC is made aware of all such countries.

F. Blue Water is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other parties with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply LNG with all information necessary to permit Blue Water to register that person or entity with DOE/FE, 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; (4) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE/FE, described in Ordering Paragraph D of this Order.

G. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, length of the long-term contract, termination of the long-term contract, or other relevant modification, shall be filed with DOE/FE within 30 days of such change(s).

H. As a condition of this authorization, Blue Water shall ensure that all persons required by this Order to register with DOE/FE have done so.

I. Within two weeks after the first export of domestically produced LNG occurs from the Nu Blu Energy Facility, Blue Water shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

J. Blue Water shall file with the Office of Regulation and International Engagement, on a semi-annual basis, written reports describing the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the operation of the Nu Blue Energy Facility.

K. With respect to any change in control of the authorization holder, Blue Water must comply with DOE/FE Procedures for Change in Control Affecting Applications and

Authorizations to Import or Export Natural Gas.²⁸ 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 Blue Water, whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.²⁹

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Blue Water shall file with the Office of Regulation and International Engagement, within 30 days following the last day of each calendar month, a report 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 of LNG in ISO containers by vessel have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the vessel; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the LNG is actually delivered and/or received for end use; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the name and location (city/state) of the facility where the ISO container is loaded with LNG; (10) the mode(s) of transport used to move the loaded ISO container from the loading facility to the

²⁸ 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).

²⁹ See *id.* at 65,542.

export port or terminal; (11) the duration of the supply agreement (indicate spot sales); and (12) the name(s) of the purchaser(s).

If exports of LNG in bulk by vessel have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the vessel; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the exported LNG or natural gas is actually delivered and/or received for end use; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the name and location (city, state) of the facility where the transport barge, carrier, or floating storage is loaded with LNG; (10) the mode(s) of transport used to move bulk LNG from the loading facility to the export port or terminal; (11) the duration of the supply agreement (indicate spot sales); and (12) the name(s) of the purchaser(s).

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

M. All monthly report filings shall be made to the Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, U.S. Department of Energy (FE-34), P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Natural Gas Reports. Alternatively, reports may be e-mailed to ngreports@hq.doe.gov, or may be faxed to Natural Gas Reports at (202) 586-6050.

Issued in Washington, D.C., on June 25, 2018.

Shawn Bennett
Deputy Assistant Secretary for Oil and Natural Gas
Office of Fossil Energy