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May 23, 2018

Via E-Mail and Express Mail

Ms. Amy Sweeney
Director, Division of Natural Gas Regulation
Office of Oil and Gas
U.S. Department of Energy
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

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Re: Request for Advisory Opinion Under Section 3 of Natural Gas Act – Transfer of Liquefied Natural Gas to U.S. Naval Station at Guantanamo Bay

Dear Ms. Sweeney:

On behalf of Pivotal LNG, Inc. (“Pivotal LNG”), this letter is to request confirmation that Pivotal LNG would not need Department of Energy, Office of Fossil Energy (“DOE/FE”) authorization under Section 3 of the Natural Gas Act (“NGA Section 3”) to transfer Liquefied Natural Gas (“LNG”) to the United States (“U.S.”) Navy at Naval Station Guantanamo Bay (“NSGB”) pursuant to a supply contract with the U.S. Department of Defense.

LNG Transfers

The Department of the Navy (the “Navy”) and the Defense Logistics Agency are cooperating under an intra-agency agreement to request proposals from LNG suppliers and vendors for delivery of LNG to NSGB. The agencies would then award a contract for supply of LNG for delivery to NSGB (the “Contract”).

Pivotal LNG is exploring submission of a proposal for the Contract. As a supplier, Pivotal LNG would arrange for and execute shipment of LNG from a site in the continental United States to NSGB (the “LNG Transfers”). Title to LNG likely would transfer from Pivotal LNG to the Navy upon the Navy’s receipt of LNG at NSGB.

NGA Section 3

NGA Section 3 provides 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.” 15 U.S.C. § 717b(a).

Request for Confirmation That Pivotal LNG Will Not be Required to Obtain DOE/FE Authorization Under NGA Section 3 for LNG Transfers

Pivotal LNG requests confirmation that DOE/FE would not require authorization under NGA Section 3 for the LNG Transfers. It appears to Pivotal LNG that its or another company’s supply of LNG to NSGB

under the Contract would not involve a “person . . . export[ing]” natural gas “to a foreign country” within the meaning of NGA Section 3.

First, it would not appear that the LNG Transfers would be “to a foreign country.” While NSGB is on a site that is technically part of Cuba, the United States exercises dominion over the site under a lease arrangement to the exclusion of any exercise of jurisdiction by the Cuban government. At the request of the U.S. government, Pivotal LNG or another supplier would deliver the LNG directly to the NSGB without the gas coming within Cuban jurisdiction in any meaningful sense.

Second, in the federal procurement regulatory context in which the LNG Transfers would occur, it would not appear that the transfers would be executed by a “person” within the meaning of NGA Section 3. As with all contracts for the federal government’s acquisition of goods and services, the U.S. government’s award and administration of the Contract would be governed by the Federal Acquisition Regulation (the “FAR”), 48 C.F.R. Parts 1-53. Procurement regulations promulgated by the Defense Department, *id.* Parts 200-253, the Navy, *id.* Parts 5215-5252, and the Defense Logistics Agency, *id.* Parts 5416-5452, would also apply to the award.

The FAR specifies that “acquisitions” to which the regulations apply “begin[] at the point when agency needs are established and include[] the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.” *Id.* § 2.101(b). So the LNG Transfers would be part of an “acquisition” that is governed by federal procurement requirements. As a result, under NGA Section 3 Pivotal LNG would not, in effecting the LNG Transfers, be a “person” executing an export on the grounds that the federal government would have cognizance over the LNG.

Finally, we see no policy reason why DOE/FE would want to interpret NGA Section 3 to encompass the LNG Transfers since the transfers would be at the behest and direction of the U.S. government.

For these reasons, Pivotal LNG respectfully asks that DOE/FE confirm that it would not require authorization under NGA Section 3 for the LNG Transfers.

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Thank you for your assistance in this matter. Should you require additional information or clarification regarding this request, please contact Lisa Toney at 212.506.3710 or ltoney@orrick.com or Harry Clark at 202.339.8400 or hclark@orrick.com.

Respectfully submitted,

/s/ Lisa Toney
Lisa Toney
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Attorneys for Pivotal LNG, Inc.