

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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BP ENERGY COMPANY

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FE 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

DOE/FE ORDER NO. 4302

NOVEMBER 19, 2018

## **I. INTRODUCTION**

On June 15, 2018, BP Energy Company (BPEC) filed an Application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA),<sup>1</sup> requesting authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in a volume equivalent to approximately 30 billion cubic feet (Bcf) of natural gas on a cumulative basis.<sup>2</sup> BPEC seeks to export this LNG by vessel from the Cove Point Terminal, owned by Dominion Energy Cove Point LNG, LP (DECP), in Calvert County, Maryland, on a short-term or spot market basis for a two-year period. BPEC seeks to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. This includes both countries with which the United States has 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 (FTA countries),<sup>3</sup> and any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).<sup>4</sup> BPEC states that it does not seek authorization to export any domestically produced natural gas or LNG. BPEC is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export.

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<sup>1</sup> The 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 Redelelegation Order No. 00-006.02, issued on November 17, 2014.

<sup>2</sup> BP Energy Co., Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis, FE Docket No. 18-69-LNG (June 15, 2018) [hereinafter App.].

<sup>3</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>4</sup> 15 U.S.C. § 717b(a).

In this Order, DOE/FE grants BPEC's Application and authorizes the requested export of previously imported LNG in a volume equivalent to approximately 30 Bcf on a cumulative basis.

Specifically, DOE/FE grants the FTA portion of the Application under NGA section § 3(c), 15 U.S.C. § 717b(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications "shall be deemed to be consistent with the public interest" and granted "without modification or delay."<sup>5</sup> The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested FTA authorization without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA authorization.

As to the non-FTA portion of the Application, DOE/FE has reviewed the record in this proceeding under NGA section 3(a), 15 U.S.C. § 717b(a), and likewise grants that requested authorization. On August 9, 2018, DOE/FE published a Notice of Application for the requested non-FTA authorization in the *Federal Register*.<sup>6</sup> The Notice of Application stated that comments, protests, and motions to intervene would be due no later than September 10, 2018. DECP timely filed a Motion to Intervene and Comments on September 10, 2018,<sup>7</sup> and BPEC filed an Answer to the Comments of DECP on September 20, 2018.<sup>8</sup> As discussed below, DOE/FE finds that it has not been demonstrated that BPEC's proposed exports to non-FTA countries are inconsistent with the public interest under NGA section 3(a).

Nonetheless, we note that neither the FTA nor the non-FTA authorization in this Order provide BPEC with an independent right to access DECP's Terminal facilities. BPEC

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<sup>5</sup> 15 U.S.C. § 717b(c).

<sup>6</sup> BP Energy Co., Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas on a Short-Term Basis, 83 Fed. Reg. 39,431 (Aug. 9, 2018).

<sup>7</sup> Dominion Energy Cove Point LNG, LP, Motion to Intervene and Comments, FE Docket No. 18-69-LNG (Sept. 10, 2018) [hereinafter DECP Mot.].

<sup>8</sup> See BP Energy Co., Answer to Comments of Dominion Energy Cove Point LNG, LP, FE Docket No. 18-69-LNG (Sept. 20, 2018) [hereinafter BPEC Answer].

acknowledges that it does not currently have a contract for LNG export services at the Cove Point Terminal. BPEC and DECP ultimately may agree upon contractual terms for such services. DOE/FE, however, takes no position on the commercial arrangements necessary to effectuate the export of LNG approved in this Order.

## **II. BACKGROUND**

**Applicant.** BPEC is a Delaware corporation with its principal place of business in Houston, Texas. BPEC is a wholly owned indirect subsidiary of BP America Inc.

**DECP's Cove Point Terminal.** DECP is the owner and operator of the Cove Point Terminal and an indirect subsidiary of Dominion Resources, Inc. DECP has constructed its Liquefaction Project at the Cove Point Terminal (an existing LNG import terminal) to provide natural gas liquefaction and LNG export services to customers that provide their own natural gas supply.<sup>9</sup> DOE/FE takes administrative notice that the Cove Point Terminal presently has a combined storage capacity of seven tanks with a total capacity of 14.6 Bcf.<sup>10</sup>

DECP holds several export authorizations issued by DOE/FE under NGA section 3.<sup>11</sup> Most relevant here, on June 2, 2017, DOE/FE issued DOE/FE Order No. 4046 in FE Docket No. 16-205-LNG. This blanket authorization allows DECP to export domestically produced LNG and previously imported LNG by vessel from the Cove Point LNG Terminal, in a volume equivalent to 250 Bcf of natural gas. DECP is authorized to export this LNG on its own behalf or as agent for other entities who hold title to the natural gas as the time of export.

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<sup>9</sup> See, e.g., *Dominion Cove Point LNG, LP*, Order Granting Section 3 and Section 7 Authorizations, 148 FERC ¶ 61,244 (Sept. 29, 2014), reh'g denied, 151 FERC ¶ 61,095 (2015), petition for review denied sub nom. *Earth Reports, Inc. v. FERC*, No. 15-1127 (D.C. Cir. 2016).

<sup>10</sup> See *Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244, at ¶¶ 5, 10, 205.

<sup>11</sup> See, e.g., *Dominion Energy Cove Point LNG, LP*, DOE/FE Order Nos. 3019-A, *et al.*, FERC Docket Nos. 11-115-LNG, *et al.*, Order Granting Request to Amend Authorizations to Export Liquefied Natural Gas to Reflect Corporate Name Change, at 1-3 (Aug. 4, 2017) (summarizing DECP's existing DOE/FE authorizations).

**BPEC’s Contractual Rights at Cove Point Terminal.** BPEC states that it has contracted for 0.33 Bcf per day (Bcf/d) of import capacity at the Cove Point Terminal. BPEC states that this contract has a primary term of 20 years, to expire on August 18, 2023.<sup>12</sup>

DECP states (and BPEC does not contest) that BPEC has contracted for rights as a “Firm LNG Tanker Discharging Service” customer under the terms of DECP’s Rate Schedule LTD-1 on file with the Federal Energy Regulatory Commission (FERC).<sup>13</sup> According to DECP, Rate Schedule LTD-1 is an LNG *import* service that provides only for discharging LNG from a tanker, storing it as LNG, then regasifying the LNG for sendout to domestic markets—and thus does not include any LNG export services.<sup>14</sup>

**BPEC’s Import Authorization.** On June 8, 2018, DOE/FE issued DOE/FE Order No. 4199, authorizing BPEC to import LNG from various international sources by vessel in a total volume equivalent to approximately 1,200 Bcf of natural gas for a two-year term commencing on August 22, 2018, and extending through August 21, 2020.<sup>15</sup> Under the terms of that authorization, BPEC may import the LNG at any LNG receiving facility in the United States and its territories.<sup>16</sup>

**Business Model.** BPEC requests the export authorization on its own behalf and as agent for other entities that will hold title to the LNG at the time of export.<sup>17</sup>

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<sup>12</sup> App. at 1-2.

<sup>13</sup> DECP Mot. at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *BP Energy Co.*, DOE/FE Order No. 4199, FE Docket No. 18-64-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel, at 3 (June 8, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> App. at 1, 3.

### **III. DESCRIPTION OF REQUEST**

BPEC requests authorization to export previously imported LNG on a short-term or spot market basis in a volume equivalent to approximately 30 Bcf of natural gas cumulatively for a two-year period commencing on July 15, 2018, or as soon thereafter as the authorization is granted. BPEC seeks to export this LNG from DECP's Cove Point Terminal to FTA and non-FTA countries, both on its own behalf and as an agent for other entities.<sup>18</sup> BPEC's request is based on "its desire to utilize and optimize the long-term LNG capacity it has contracted for at the Cove Point Terminal and its need for flexibility to respond effectively to periodic changes in domestic and world markets for natural gas and LNG."<sup>19</sup>

BPEC states that it is not seeking to export domestically-produced natural gas or LNG. According to BPEC, the LNG proposed for export will be supplied solely from foreign sources and stored at the Cove Point Terminal.<sup>20</sup> BPEC states that no modifications to the Cove Point Terminal will be required to accommodate the requested authorization.<sup>21</sup> BPEC further states that there are no other proceedings related to this Application currently pending before DOE or any other federal agency.<sup>22</sup>

### **IV. APPLICANT'S PUBLIC INTEREST ANALYSIS FOR NON-FTA AUTHORIZATION**

BPEC maintains that its requested authorization is consistent with NGA section 3(a) and DOE/FE's policy. First, BPEC asserts that the volume of previously imported foreign-sourced LNG that it proposes to export is not necessary to meet domestic needs, nor will it reduce supplies of domestically-produced natural gas. BPEC points to DOE/FE's findings in recent

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<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 2-3.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.* at 3.

blanket authorizations to export previously imported LNG—including for Cheniere Marketing, LLC<sup>23</sup>—and suggests that DOE/FE’s findings in these orders should apply to its request.<sup>24</sup>

Citing the prior authorizations, BPEC notes that DOE/FE took administrative notice of the then-most recent U.S. Energy Information Administration’s (EIA) *Annual Energy Outlook* in finding that those volumes of foreign-sourced LNG were not needed to meet domestic demand.<sup>25</sup> BPEC suggests that this conclusion should also apply to its Application. As further support, BPEC cites EIA’s *Annual Energy Outlook 2018* in stating that U.S. dry natural gas is projected to increase through 2050 across a wide variety of alternative assumptions about the future.<sup>26</sup>

Next, BPEC states that granting its requested non-FTA authorization would provide BPEC with market flexibility to respond to changes in domestic and global markets for natural gas and LNG.<sup>27</sup> According to BPEC, the requested authorization would enable it to either export the foreign-sourced LNG or to regasify it for sale in domestic markets.<sup>28</sup> BPEC also contends that the requested authorization will facilitate the importation of LNG into the United States by BPEC, without concern that the cargoes would become “captive” to the U.S. market if market conditions change.<sup>29</sup>

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<sup>23</sup> App. at 5 (citing DOE/FE Order No. 3825).

<sup>24</sup> See *id.* at 4-5.

<sup>25</sup> See *id.* at 5.

<sup>26</sup> *Id.* (citing U.S. Energy Info. Admin., *Annual Energy Outlook 2018* (Feb. 6. 2018), available at: <https://www.eia.gov/outlooks/aeo/pdf/AEO2018.pdf>).

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

## V. DOE/FE PROCEEDING FOR NON-FTA AUTHORIZATION

### A. DECP's Motion to Intervene and Comments

In its Motion to Intervene and Comments on the Application,<sup>30</sup> DECP agrees with BPEC's statement that the export of previously imported LNG from the Cove Point Terminal is consistent with the public interest.<sup>31</sup> Nevertheless, DECP raises two principal "reservations" about BPEC's requested authorization.<sup>32</sup>

First, DECP emphasizes that "BPEC does not have any contractual right to export LNG from the Cove Point Terminal."<sup>33</sup> DECP disagrees with BPEC's statement that granting the requested authorization "would assist [BPEC] in optimizing its long-term LNG terminal capacity."<sup>34</sup> As noted above, DECP states that BPEC's only contractual right to the Cove Point Terminal is as a "Firm LNG Tanker Discharging Service" customer under the terms of DECP's Rate Schedule LTD-1 on file with FERC.<sup>35</sup> DECP argues that Rate Schedule LTD-1 is an LNG import service, such that "BPEC has no contractual right—and DECP has no contractual obligation to BPEC—to load a tanker for [the] export of LNG or to schedule an export cargo under Rate Schedule LTD-1, or otherwise."<sup>36</sup> Therefore, DECP asserts that BPEC "may not export LNG from the Cove Point Terminal unless and until BPEC and DECP mutually agree upon contractual terms allowing it to do so ...."<sup>37</sup> DECP further asserts that it has no obligation to enter into any such export agreement with BPEC.<sup>38</sup>

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<sup>30</sup> Because DECP's motion to intervene is unopposed, it is deemed granted. 10 C.F.R. § 303(g).

<sup>31</sup> DECP Mot. at 2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 2-3 (quoting App. at 3-4).

<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.*

<sup>37</sup> DECP Mot. at 3.

<sup>38</sup> *See id.*

Second, DECP references its existing two-year blanket authorization, DOE/FE Order No. 4046, which gives DECP the authority to export previously imported LNG to FTA and non-FTA countries, both on its own behalf and as agent for other entities that hold title to the natural gas at the time of export.<sup>39</sup> DECP argues that, if DECP were to enter into a contract with BPEC, BPEC’s proposed exports “would already be authorized under Order No. 4046, with DECP acting as BPEC’s agent.”<sup>40</sup> For this reason, DECP contends that BPEC has not shown a “need for separate export authorization.”<sup>41</sup>

DECP argues that this use of its agency rights would be the “simpler approach,” and would avoid “complications and confusion” that may arise if there are multiple holders of authorization for LNG exports from the Cove Point Terminal.<sup>42</sup> DECP maintains, for example, that record-keeping and reporting “would seem simpler if DECP is responsible for all exports from its Terminal.”<sup>43</sup>

Finally, DECP states that, if DOE/FE grants BPEC’s Application notwithstanding these concerns, DOE/FE should “confirm that the BPEC authorization in no way limits or restricts (through volume limitations or otherwise) DECP’s pre-existing export authorizations.”<sup>44</sup>

## **B. BPEC’s Answer to DECP’s Comments**

In responding to DECP’s arguments, BPEC asserts that “DECP objects to anyone other than DECP having re-export authority” from the Cove Point Terminal.<sup>45</sup> In BPEC’s experience, “unless and until another party is authorized to re-export volumes, DECP will continue to hold

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.*

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

<sup>43</sup> DECP Mot. at 4.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> BPEC Answer at 3.

others captive via its export license to prevent exports and will use its authorization for its own commercial advantage.”<sup>46</sup>

BPEC asserts that DECP’s “monopoly” position runs counter to DOE/FE’s long-standing policy of “promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements,” as noted in DOE/FE’s Notice of Application.<sup>47</sup>

According to BPEC, parties “cannot freely negotiate their own trade agreements as long as DECP maintains this exclusive control.”<sup>48</sup>

Next, BPEC points to DOE/FE Order No. 2731, a blanket authorization issued to ConocoPhillips Company on November 30, 2009, authorizing ConocoPhillips to export LNG that previously had been imported from foreign sources.<sup>49</sup> BPEC states that ConocoPhillips was not an export shipper at LNG terminal facilities owned by Freeport LNG Development, L.P. (the Freeport Terminal), yet DOE/FE granted ConocoPhillips’ request to export the previously-imported LNG from the Freeport Terminal. According to BPEC, “[i]t was not stated [in Order No. 2731] that contractual rights were required, nor were the lack of contractual rights identified as an impediment.”<sup>50</sup> BPEC states that it, like ConocoPhillips, “prefer[s] to hold its own DOE export authorization.”<sup>51</sup>

Finally, should DOE/FE grant its Application, BPEC asks DOE/FE to confirm that “DECP’s existing export authorization in no way limits or restricts (through volume limitations or otherwise) BPEC’s export authorization.”<sup>52</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (citing BPEC Notice of Availability, 83 Fed. Reg. at 39,431).

<sup>48</sup> *Id.*

<sup>49</sup> BPEC Answer at 5 (citing *ConocoPhillips Co.*, DOE/FE Order No. 2731, FE Docket No. 09-92-LNG, Order Granting Authorization to Export Liquefied Natural Gas (Nov. 30, 2009)).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 6.

## **VI. DISCUSSION AND CONCLUSIONS FOR NON-FTA AUTHORIZATION**

### **A. Standard of Review**

Section 3(a) of the NGA sets forth the applicable standard for DOE/FE's review of BPEC's requested non-FTA authorization. Section 3(a) provides:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.

15 U.S.C. § 717b(a). This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest.<sup>53</sup> DOE/FE must grant such an application unless the presumption is overcome by an affirmative showing of inconsistency with the public interest.<sup>54</sup>

In evaluating an export application under this standard, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111—which focus primarily on domestic need for the natural gas to be exported, as described in the Secretary's natural gas policy guidelines<sup>55</sup>—and any other matters determined to be appropriate to a determination of the public interest. In addition, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

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<sup>53</sup> See, e.g., *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (citations omitted).

<sup>54</sup> See *id.*

<sup>55</sup> New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

## **B. Domestic Need**

BPEC's Application involves a request for authorization to export LNG that was previously imported into the United States from foreign sources. Exporting this proposed volume of LNG will not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG could affect the domestic natural gas market because, for the requested two-year period, the proposed exports will reduce the volume of natural gas potentially available for import and consumption within the United States.

DOE/FE has issued numerous blanket authorizations to export previously imported LNG in other proceedings.<sup>56</sup> These orders were based, in part, on authoritative data indicating that United States consumers have access to substantial quantities of natural gas sufficient to meet domestic demand from other competitively-priced sources. DOE takes administrative notice of the most recent analysis prepared by the U.S. Energy Information Administration (EIA) in the *Annual Energy Outlook 2018*, released in February 2018, showing projected annual domestic dry natural gas production in 2020 of 32.66 trillion cubic feet (Tcf), with total natural gas consumption projected to be 29.03 Tcf in the same year.<sup>57</sup>

Inasmuch as domestic natural gas production levels are projected to reach an amount that well exceeds the amount of natural gas proposed for short-term export in BPEC's Application, we find that United States consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG that BPEC seeks to export.

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<sup>56</sup> See, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4197, FE Docket No. 18-35-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations (June 4, 2018).

<sup>57</sup> See U.S. Energy Info. Admin., *Annual Energy Outlook 2018 Reference Case*, Table 13: Natural Gas Supply, Disposition, and Prices, available at: [https://www.eia.gov/outlooks/aeo/tables\\_ref.php](https://www.eia.gov/outlooks/aeo/tables_ref.php).

### **C. Other Public Interest Factors**

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. However, consistent with DOE's natural gas policy guidelines and DOE/FE precedent,<sup>58</sup> DOE/FE considers the potential effects of proposed exports on other aspects of the public interest. In this proceeding, those considerations include DECP's comments received on the Application and environmental factors (discussed *infra* § VI.D).

#### **1. Contractual Rights**

BPEC appears to concede that it “does not have any contractual right to export LNG from the Cove Point Terminal.”<sup>59</sup> Rather, BPEC argues that DECP is holding potential exporters “captive via its export license” and exercising “exclusive control” over exports from its Terminal.<sup>60</sup>

Insofar as BPEC is seeking to obtain from DOE/FE an express right to export services at Cove Point Terminal, DOE/FE declines to do so. DOE/FE finds that DECP, as the owner and operator of the Cove Point Terminal, has sole discretion in the normal course of business to determine whether and with whom it wishes to enter into export services at its Terminal. The ConocoPhillips proceeding, DOE/FE Order No. 2731, does not suggest otherwise. There, the owner and operator of the Freeport Terminal did not oppose or otherwise raise concerns about ConocoPhillips' proposed exports from its Terminal.<sup>61</sup>

Accordingly, BPEC and DECP ultimately may agree upon contractual terms for export services at the Cove Point Terminal, as they deem appropriate (*see supra* Ordering Para. B).<sup>62</sup>

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<sup>58</sup> *See supra* at 6-7.

<sup>59</sup> DECP Mot. at 2.

<sup>60</sup> BPEC Answer at 3.

<sup>61</sup> *See ConocoPhillips*, DOE/FE Order No. 2731, at 2-3.

<sup>62</sup> BPEC likewise states: “BPEC is ... prepared to negotiate contractual rights for LNG loading services with DECP once it confirms that BPEC would be able to exercise those rights without the need to subsequently secure DECP's approval to utilize its exclusive export authorization.” BPEC Answer at 5.

DOE/FE, however, takes no position on the commercial arrangements necessary to effectuate the export of this LNG. On the record before us, we find that this approach is consistent with DOE/FE's long-standing policy of promoting market competition and allowing commercial parties to freely negotiate their own arrangements. As DOE/FE has observed, "[t]he market, not government, should determine the price and other contract terms of imported [or exported] natural gas."<sup>63</sup>

## 2. Agency Rights

In 2011, in response to a request by Freeport LNG Expansion, L.P., *et al.* (FLEX), DOE/FE first established its procedures for agency rights in Order No. 2913.<sup>64</sup> DOE/FE determined that agency rights were an acceptable alternative to its traditional policy, whereby the title for all LNG authorized for export was held by the authorization holder at the point of export.<sup>65</sup> On this basis, DOE permitted FLEX to "act as agent for others who want to export LNG from the Freeport Terminal under this authorization."<sup>66</sup>

In crafting these procedures, DOE/FE observed that agency rights "provide[] an expedited process by which companies seeking to export LNG can do so."<sup>67</sup> DOE/FE further stated:

[T]hose entities that hold title or expect to hold title to LNG that is stored in domestic LNG terminals can choose to submit an application to DOE for their own authorization to export such LNG,

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<sup>63</sup> New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

<sup>64</sup> *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, at 7-8 (Feb. 10, 2011).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 7.

<sup>67</sup> *Id.* at 8.

and are not required to use the agency rights that will be allowed by this Order.<sup>68</sup>

Here, DECP asserts that, because DECP could act as BPEC’s agent under its own existing blanket authorization (DOE/FE Order No. 4046, *supra* at 4), BPEC has “no need for separate export authorization.”<sup>69</sup> However, as the quoted language makes clear, agency rights are intended to provide operational flexibility to facilitate LNG exports—not to prevent a potential applicant from obtaining its own export authorization. Accordingly, BPEC is not required to use DECP’s agency rights; rather, BPEC may apply for its own authorization, as it has chosen to do.<sup>70</sup>

DECP argues that having multiple holders of authorizations for LNG exports from a single terminal (here, the Cove Point Terminal) might complicate record-keeping and reporting obligations—particularly if BPEC *also* uses its requested authorization as agent for other entities.<sup>71</sup> Although it may be true that requiring BPEC to avail itself of DECP’s agency rights would be a “simpler approach” in some respects,<sup>72</sup> we do not find that argument persuasive enough to overcome the presumption in favor of granting BPEC’s requested authorization under NGA section 3(a). We further note that in the ConocoPhillips order discussed above (DOE/FE Order No. 2731), DOE/FE expressly permitted “ConocoPhillips to export natural gas to which it holds title and also to export natural gas on behalf of others who hold title to the natural gas.”<sup>73</sup> Thus, ConocoPhillips was authorized not only to export from the Freeport Terminal, but also to

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<sup>68</sup> *Id.* (emphasis added).

<sup>69</sup> DECP Mot. at 4.

<sup>70</sup> Additionally, if BPEC were required to use DECP’s agency rights, it would not have a full two-year export term. DECP’s existing order to export previously-imported LNG (DOE/FE Order No. 4046) will expire on or around March 2, 2020, whereas BPEC is requesting a two-year order to commence on today’s date.

<sup>71</sup> DECP Mot. at 4.

<sup>72</sup> *Id.*

<sup>73</sup> *ConocoPhillips*, DOE/FE Order No. 2731, at 1.

use its authorization as agent for other entities. For these reasons, we decline to adopt DECP's position concerning agency rights.

#### **D. Environmental Review**

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. As noted above, BPEC states that the proposed export of previously imported LNG would require no new construction or modifications to the Cove Point Terminal.<sup>74</sup> Under these circumstances, DOE's NEPA procedures provide for a categorical exclusion for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5).<sup>75</sup> Accordingly, DOE is concurrently issuing a categorical exclusion, dated November 19, 2018, finding that BPEC's proposed exports are categorically excluded from further NEPA review.<sup>76</sup>

#### **E. Conclusion**

After due consideration based on all facts and evidence of record, DOE/FE finds that a grant of the non-FTA portion of BPEC's Application is not inconsistent with the public interest. In particular, the record shows that there is a sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on BPEC's proposed exports during the two-year authorization period. Further, the proposed exports qualify for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE/FE therefore grants BPEC's Application, as set forth below.

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<sup>74</sup> See App. at 7.

<sup>75</sup> See 10 C.F.R. § 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusion B5.7 ("Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.").

<sup>76</sup> U.S. Dep't of Energy Categorical Exclusion Determination, BP Energy Co., FE Docket No. 18-69-LNG (Nov. 19, 2018).

## VII. 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 the export of natural gas, including LNG, to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas shall be deemed consistent with the public interest and granted without modification or delay.<sup>77</sup> The FTA portion of BPEC's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested authorization without modification or delay.<sup>78</sup>

(2) With respect to the non-FTA portion of the Application, and after due consideration based on all facts and evidence of record, DOE/FE finds that a grant of the export application is not inconsistent with the public interest under NGA section (a), 15 U.S.C. § 717b(a).

(3) DOE finds that it is appropriate to apply DOE/FE's policy on Agency Rights procedures to BPEC's Application. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,<sup>79</sup> which granted 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*,

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<sup>77</sup> 15 U.S.C. § 717b(c). The countries with which the United States has an 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.

<sup>78</sup> 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 non-FTA countries.

<sup>79</sup> *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).

which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup>

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

### **ORDER**

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

A. BP Energy Company (BPEC) is authorized to export LNG previously imported from foreign sources in a volume equivalent to 30 Bcf of natural gas pursuant to transactions that have terms of no longer than two years. BPEC is authorized to export this LNG on its own behalf or as agent for other entities that hold title to the natural gas at the time of export. This

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<sup>80</sup> *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.

<sup>81</sup> *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).

<sup>82</sup> *See id.* at 7-8.

authorization shall be effective for a two-year term beginning on November 19, 2018, and extending through November 18, 2020.

B. This LNG may be exported by vessel from the Cove Point Terminal, which is owned and operated by Dominion Energy Cove Point LNG, LP (DECP). This LNG may be exported to any country with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy. However, this Order does not give BPEC an independent right to access the Cove Point Terminal facilities. BPEC and DECP—the Terminal’s owner and operator—may agree upon contractual terms for BPEC’s export services, as they deem appropriate. Additionally, this Order does not restrict, through volume limitations or otherwise, either DECP’s or BPEC’s existing export authorizations issued by DOE/FE.

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

D. BPEC, or others for whom BPEC acts as agent, shall include the following provision in any 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 with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy, 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 BP Energy Company that identifies the country (or countries) into which the exported LNG was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to insure that BP Energy Company is made aware of all such countries.

E. BPEC is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other entities with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply BPEC with all information and copies of contracts necessary in order to permit BPEC 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; and (4) an acknowledgement and agreement by the Registrant to include the provision in Ordering Paragraph D in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

G. As a condition of this order, BPEC shall ensure that all persons required by this Order to register with DOE/FE have done so.

H. Monthly Reports: With respect to the export of LNG authorized by this Order, BPEC shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. Monthly reports must be filed whether or not initial deliveries have begun. If no exports have

been made, a report of “no activity” for that month must be filed. If exports of LNG 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 LNG tanker; (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 duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser(s).

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

I. The first monthly report required by this Order is due not later than December 30, 2018, and should cover the reporting period from November 19, 2018, through November 30, 2018.

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

Issued in Washington, D.C., on November 19, 2018.

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Shawn Bennett  
Deputy Assistant Secretary  
Office of Oil and Natural Gas