

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

SPOTX ENERGY, LLC

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FE DOCKET NO. 19-104-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION TO EXPORT LIQUEFIED
NATURAL GAS TO FREE TRADE AGREEMENT NATIONS, AND
LONG-TERM AUTHORIZATION FOR SMALL-SCALE EXPORTS
OF LIQUEFIED NATURAL GAS

DOE/FE ORDER NO. 4461

NOVEMBER 8, 2019

I. INTRODUCTION

On August 23, 2019, SpotX Energy, LLC (SpotX) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA), requesting authority to export domestically produced liquefied natural gas (LNG).² In relevant part, SpotX requests a consolidated long-term, multi-contract authorization to export LNG as follows:³

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

SpotX states that its proposed non-FTA exports qualify as “small-scale natural gas exports” under DOE/FE’s regulations at 10 C.F.R. §§ 590.102(p) and 590.208(a), and therefore should be deemed to be consistent with the public interest under NGA section 3(a).⁶

¹ SpotX Energy, LLC, Application for Long-Term and Short-Term Authorization to Export Liquefied Natural Gas to Free Trade and Non-Free Trade Agreement Countries, FE Docket Nos. 19-104-LNG and 19-105-LNG (Aug. 23, 2019) [hereinafter App.].

² 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 Redelegation Order No. 00-002.04G issued on June 4, 2019.

³ Additionally, in the Application (jointly filed in FE Docket No. 99-105-LNG), SpotX requests a consolidated short-term authorization to export LNG to FTA and non-FTA countries. App. at 1. This Order does not authorize any short-term exports. Concurrently with the issuance of this Order, DOE/FE is granting SpotX’s non-additive, short-term authorization in DOE/FE Order No. 4462. *See SpotX Energy, LLC*, DOE/FE Order 4462, FE Docket No. 99-105-LNG, Order Granting Short-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations, and Short-Term Authorization for Small-Scale Exports of Liquefied Natural Gas (Nov. 7, 2019).

⁴ 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.

⁵ 15 U.S.C. § 717b(a); *see* App. at 1.

⁶ *See* 10 C.F.R. § 590.208(a); *see also* U.S. Dep’t of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 Fed. Reg. 35,106 (July 25, 2018).

SpotX seeks to export this LNG in a total volume equivalent to 51.75 billion cubic feet (Bcf) per year (Bcf/yr), or 0.14 Bcf per day (Bcf/d), of natural gas.⁷ SpotX intends primarily to purchase the LNG, and load it into approved IMO7/TVAC-ASME LNG (ISO) containers, at various natural gas liquefaction facilities located on the Gulf Coast. In Appendix C to the Application, SpotX identifies 20 facilities from which it seeks to purchase LNG for export (collectively, the Facilities), as well as their associated ports of export.⁸

SpotX requests the authorizations for a 20-year term, commencing on the earlier of the date of first export or five years from the date the authorizations are granted. Additionally, SpotX requests authority to export the LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export.⁹

In this consolidated Order, DOE/FE grants the long-term portion of SpotX's Application and authorizes the requested combined export volume of 51.75 Bcf/yr (0.14 Bcf/d) to both FTA and non-FTA countries. Specifically, DOE/FE finds that the FTA portion of the Application falls within NGA section 3(c), and we therefore grant the requested FTA authorization without modification or delay.¹⁰ DOE/FE also finds that the proposed non-FTA exports qualify as "small-scale natural gas exports" under the criteria set forth in 10 C.F.R. § 590.102(p). Accordingly, we grant the small-scale portion of the Application under 10 C.F.R. § 590.208(a).

This Order, however, does not provide SpotX with an independent right to purchase or load LNG at any of the Facilities. DOE/FE takes no position on the commercial arrangements that may be necessary for SpotX to effectuate the export of LNG approved in this Order.

⁷ App. at 1.

⁸ See *infra* § II.

⁹ App. at 1-3.

¹⁰ 15 U.S.C. §717b(c).

II. BACKGROUND

Applicant. SpotX is a Delaware limited liability company with its principal place of business in Houston, Texas. The sole member of Spot Energy, LLC is R2 Capital Assets, LLC, which has two members: the Ravi Bajaj Revocable Trust and Rahul Bajaj.¹¹

Liquefaction Facilities and Transport. SpotX states that it intends to purchase LNG primarily from natural gas liquefaction facilities located on the United States Gulf Coast. As indicated above, SpotX identifies 20 Facilities for this purpose. DOE/FE takes notice that, of the 20 identified Facilities, 14 are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) and have received their final FERC approval under NEPA.¹² The remaining six Facilities are not FERC-jurisdictional and already exist.¹³ Additionally, SpotX states that it may contract with third-party sellers and distributors to purchase LNG for export.¹⁴

SpotX states that it will transport the LNG in ISO containers from the liquefaction facilities to nearby ports, where the ISO containers will be loaded onto container vessels. SpotX states that it also may purchase LNG sourced from facilities on the shoreline and load the LNG directly onto shipping vessels.¹⁵

SpotX states that it intends to export the LNG primarily to emerging markets in the Caribbean, Central America, Latin America, and Africa.¹⁶

Source of Supply. SpotX states that the source of the proposed exports will be the natural gas supply produced throughout the United States and delivered to the Facilities through

¹¹ App. at 3.

¹² See *id.*, Appendix C (Facilities #1-13, 15).

¹³ *Id.* (Facilities #14, 16-20).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 2.

the integrated natural gas pipeline grid.¹⁷

Business Model. SpotX 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.¹⁸ SpotX states that it has not yet executed any contracts to purchase or export LNG. According to SpotX, it is currently in discussions with several existing facilities interested in supplying LNG to SpotX for export.¹⁹ SpotX states that it will file all long-term, binding commercial agreements, once executed, in accordance with DOE/FE's established policy and will comply with all DOE/FE requirements for exporters and agents, including registration requirements.²⁰

III. STANDARD OF REVIEW

A. FTA Authorization

Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). In relevant part, applications to export natural gas, including LNG, to countries with which there is in effect a FTA requiring national treatment for trade in natural gas “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”²¹

B. Small-Scale Authorization

DOE/FE defines a “small-scale natural gas export” as an export of natural gas, including LNG, to a non-FTA country that meets the following two criteria:

- (1) The application proposes to export natural gas in a volume up to and including 51.75 billion cubic feet per year, and
- (2) DOE's approval of the application does not require an environmental impact statement (EIS) or an environmental assessment (EA) under the National

¹⁷ App. at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ 15 U.S.C. § 717b(c).

Environmental Policy Act, 42 U.S.C. 4321 *et seq.*²²

Small-scale natural gas exports are deemed to be consistent with the public interest under NGA section 3(a).²³ Therefore, DOE/FE will issue an export authorization upon receipt of a complete application to conduct small-scale natural gas exports.²⁴

IV. DISCUSSION AND CONCLUSIONS

A. FTA Authorization

We find that the FTA portion of SpotX's Application falls within NGA section 3(c), and we therefore grant the requested FTA authorization without modification or delay.²⁵

B. Small-Scale Authorization

We find that the non-FTA portion of the Application meets the criteria for small-scale natural gas exports, set forth in 10 C.F.R. § 590.102(p)(1) and (2). First, SpotX requests authority to export LNG to non-FTA countries in a volume equivalent to 51.75 Bcf/yr of natural gas, which is consistent with the limit in the regulation. Second, DOE's NEPA procedures provide for a categorical exclusion for which neither an EIS nor an EA is required—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5).²⁶ DOE/FE has issued a categorical exclusion, dated November 7, 2019, finding that the proposed exports are categorically excluded from further NEPA review.²⁷ Accordingly, pursuant to 10 C.F.R.

²² 10 C.F.R. § 590.102(p).

²³ *Id.* § 590.208(a).

²⁴ *Id.*; *see also* Small-Scale Natural Gas Exports Final Rule, *supra* note 6.

²⁵ 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.

²⁶ *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.”).

²⁷ U.S. Dep't of Energy, Categorical Exclusion Determination, SpotX Energy, LLC, FE Docket No. 19-104-LNG (Nov. 7, 2019).

§ 590.208(a), the proposed small-scale exports are deemed to be consistent with the public interest under NGA section 3(a), and DOE/FE will issue the requested authorization.

V. FINDINGS

On the basis of the findings and conclusions set forth above, DOE/FE grants the Application subject to the Terms and Conditions and Ordering Paragraphs set forth below.

VI. TERMS AND CONDITIONS

A. Term of the Authorization

SpotX requests a 20-year term for the authorizations. The requested 20-year term is consistent with DOE/FE's practice in the non-FTA export authorizations issued to date. The 20-year term will begin on the date when SpotX commences commercial export of domestically produced LNG, but not before.

B. Commencement of Operations

As requested by SpotX, and consistent with NGA section 3(c), DOE/FE will add as a condition of the FTA authorization that SpotX must commence commercial LNG export operations to FTA nations no later than five years from the date of issuance of this Order.

However, DOE/FE will add as a condition of the small-scale authorization that SpotX must commence commercial LNG export operations no later than two years from the date of issuance of this Order. Because this Order allows for exports to begin from existing facilities, we find that SpotX should be able to commence small-scale exports of LNG immediately.

C. FTA Countries for FTA Authorization

The countries with which 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.

D. Transfer, Assignment, or Change in Control

DOE/FE's natural gas regulations prohibit authorization holders from transferring or assigning authorizations to import or export natural gas without specific authorization by the Assistant Secretary for Fossil Energy.²⁸ DOE/FE has found that this requirement applies to any change in control of the authorization holder. This condition was deemed necessary to ensure that DOE/FE will be given an adequate opportunity to assess the public interest impacts of such a transfer or change.

DOE/FE construes a change in control to mean a change, directly or indirectly, of the power to direct the management or policies of an entity 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 A rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, 10% or more of the voting securities of such entity.³⁰

²⁸ 10 C.F.R. § 590.405.

²⁹ 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, 65,542 (Nov. 5, 2014).

³⁰ See *id.*

E. Agency Rights

SpotX requests authorization to export LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export, pursuant to long-term contracts. DOE/FE previously has 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.³¹

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

F. Contract Provisions for the Sale or Transfer of LNG to be Exported

DOE/FE will require that SpotX file or cause to be filed with DOE/FE any relevant long-term commercial agreements associated with the export of LNG, including agreements pursuant to which SpotX intends to export LNG as agent for a Registrant. 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).³²

³¹ See, e.g., *Cameron LNG, LLC*, DOE/FE Order No. 3846, FE Docket No. 15-90-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from Trains 4 and 5 of the Cameron LNG Terminal to Non-Free Trade Agreement Nations, at 128-29 (July 15, 2016); *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 the Freeport LNG Terminal to Free Trade Agreement Nations, at 7-8 (Feb. 10, 2011).

³² 10 C.F.R. § 590.202(b).

In addition, DOE/FE finds that section 590.202(c) of DOE/FE's regulations³³ requires that SpotX file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Facilities, whether signed by SpotX or the Registrant, within 30 days of their execution.

DOE/FE recognizes that some information in SpotX's or a Registrant's long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Facilities, may be commercially sensitive. DOE/FE therefore will provide SpotX the option to file or cause to be filed either unredacted contracts, or in the alternative (A) SpotX 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, destinations, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted information should be exempted from public disclosure.³⁴

To ensure that DOE/FE destination and reporting requirements included in this 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 this Order shall include an acknowledgement of these requirements.

G. Export Quantity

This Order grants SpotX's Application in the full volume of LNG requested, up to the equivalent of 51.75 Bcf/yr of natural gas for FTA and non-FTA countries.

³³ *Id.* § 590.202(c).

³⁴ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

H. Non-Additive Export Volumes

Consistent with SpotX's request in the Application and DOE/FE's small-scale export regulations, SpotX may not treat the FTA and small-scale export volumes in this Order as additive to one another. Additionally, SpotX may not treat the volumes authorized in this Order and its short-term authorization (DOE/FE Order No. 4462) as additive to one another.³⁵

VII. ORDER

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

A. SpotX Energy, LLC (SpotX) is authorized to export domestically produced LNG purchased from any of the 20 Facilities listed in Appendix C of the Application.³⁶ SpotX is authorized to export this LNG in ISO containers on vessels, in a volume equivalent to 51.75 Bcf/yr of natural gas. The FTA and small-scale authorizations are each for a term of 20 years to commence from the date of first commercial export, but not before. SpotX 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 long-term contracts (a contract greater than two years).

B. This Order does not give SpotX an independent right to purchase or load LNG from any of the identified Facilities. SpotX and each Facility may agree upon contractual terms for SpotX'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/FE for any of the Facilities.³⁷

C. For the FTA authorization, SpotX must commence export operations using the

³⁵ See *supra* note 3.

³⁶ If, in the future, SpotX wishes to purchase LNG for export from any other facilities other than the 20 Facilities listed in Appendix C (*see* App. at 2), it will be required to file with DOE/FE a request to amend this Order to add those facilities. DOE/FE will evaluate that request under the same standards of review discussed above.

³⁷ See *BP Energy Co.*, DOE/FE Order No. 4302, 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, at 13-14, 19 (Nov. 19, 2018).

Facilities no later than five years from the date of issuance of this Order. For the small-scale authorization, SpotX must commence export operations using the Facilities no later than two years from the date of issuance of this Order.

D. This LNG 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.

E. SpotX 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, FERC, and the Pipeline and Hazardous Materials Safety Administration, as applicable. Failure to comply with these requirements could result in rescission of this authorization and/or other civil or criminal penalties.

F. (i) SpotX 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 export of LNG. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) SpotX 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. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

G. SpotX is permitted to use its authorization to export LNG as agent for other LNG title-holders (Registrants), after registering those entities with DOE/FE. Registration materials shall include an agreement by the Registrant to supply SpotX with all information necessary to permit SpotX 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/FE's regulations at 10 C.F.R. Part 590, including but not limited to destination restrictions; (2) the exact legal name of the Registrant, state/location of incorporation/registration, primary place of doing business, and the Registrant's ownership structure, including the ultimate parent entity if the Registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the Registrant to whom inquiries may be directed; and (4) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE/FE, described in Ordering Paragraph F of this Order.

Any change in the registration materials—including changes in company name, contact information, length of the long-term contract, termination of the long-term contract, or other relevant modification—shall be filed with DOE/FE within 30 days of such change(s).

H. SpotX, or others for whom SpotX acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of LNG 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 D of DOE/FE Order No. 4461, issued November 8, 2019, in FE Docket No. 19-104-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 SpotX Energy, LLC that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that SpotX Energy, LLC is made aware of all such actual destination countries.

I. Within two weeks after the first export authorized in Ordering Paragraph A occurs, SpotX shall provide DOE/FE written notification of the date that the first export occurred.

J. With respect to any change in control of the authorization holder, SpotX must comply with DOE/FE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.³⁸

K. Monthly Reports: With respect to the exports authorized by this Order, SpotX shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30th day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of "no activity" for that month must be filed.

If exports 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 was actually delivered; (6) the name of the supplier/seller; (7) the volume in thousand cubic feet (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 export port or terminal; (11) the duration of the supply agreement; and (12) the name(s) of the purchaser(s).

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

³⁸ See 79 Fed. Reg. at 65,541-42.

L. All monthly report filings on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy, 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/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on November 8, 2019.



Kenneth K. Humphreys
Principal Deputy Assistant Secretary
Office of Fossil Energy