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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Energía Costa Azul, S. de R.L. de C.V.	)	**FE Docket No. 18-145-LNG**

APPLICATION TO AMEND LONG-TERM, MULTI-CONTRACT AUTHORIZATIONS TO EXPORT NATURAL GAS TO MEXICO AND TO EXPORT LIQUEFIED NATURAL GAS FROM MEXICO TO FREE TRADE AGREEMENT AND NON-FREE TRADE AGREEMENT NATIONS

ECA LARGE-SCALE PROJECT

DESIGN INCREASE

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DESIGN INCREASE

Pursuant to section 3 of the Natural Gas Act ("NGA")[1] and Part 590 of the regulations of the Department of Energy ("DOE"),[2] Energía Costa Azul, S. de R.L. de C.V. ("ECA") hereby submits this application ("Application") requesting that the DOE's Office of Fossil Energy ("DOE/FE") amend the existing long-term, multi-contract authorizations, granted in the above-captioned docket, allowing ECA to export domestically produced natural gas from the United States to Mexico, and after liquefaction in Mexico, to deliver and consume the liquefied natural gas ("LNG") in Mexico and/or to re-export[3] the LNG to various other countries, as follows:

(1) The export of an additional approximately 21 Bcf/yr (0.06 Bcf/d) of natural gas by pipeline to Mexico, through any existing and future cross-border pipeline facilities interconnecting the United States and Mexico, for use as fuel for pipeline transportation or liquefaction in Mexico; and

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1 15 U.S.C. § 717b (2012).
2 10 C.F.R. Part 590 (2020).
3 Pursuant to DOE/FE policy, in the context of this Application, the term "re-export" means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE/FE's jurisdiction under the NGA, 15 U.S.C. § 717b, from one foreign country (*i.e.*, a country other than the United States) to another foreign country.

(2) The export of an additional approximately 161 Bcf/yr of natural gas (0.44 Bcf/d) of natural gas by pipeline to Mexico, through any existing and future cross-border pipeline facilities interconnecting the United States and Mexico, for use in the ECA Large-Scale Project, defined below, where the U.S.-sourced natural gas will be liquefied, then re-exported as LNG by vessel to:

a. any country with which the United States has, or in the future enters into, a free trade agreement ("FTA") requiring national treatment for trade in natural gas ("FTA countries"),[4] and

b. any other country with which trade is not prohibited by U.S. law or policy ("Non-FTA countries").[5]

The volumes being requested in this Application are in addition to the FTA and Non-FTA volumes DOE/FE previously authorized for the ECA Large-Scale Project, defined below, by its orders in FE Docket No. 18-145-LNG on January 25, 2019 ("Large-Scale FTA Order")[6] and on March 29, 2019 ("Large-Scale Non-FTA Order"),[7] respectively. Accordingly, by this Application, ECA requests that it be authorized to export from the ECA Large-Scale Project a total of 727 Bcf/y to FTA countries and 636 Bcf/y to Non-FTA countries.

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4 15 U.S.C. § 717b(c).

5 Natural gas that is consumed in Mexico as fuel for pipeline transportation or liquefaction should be considered to be exported to Mexico, an FTA country. Thus, only the volume being re-exported from Mexico as LNG (161 Bcf/y) should require Non-FTA export authorization.

6 *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4318, FE Docket No. 18-145-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (ECA Large-Scale Project) (Jan. 25, 2019).

7 *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4365, FE Docket No. 18-145-LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries (ECA Large-Scale Project) (Mar. 29, 2019) [hereinafter Large-Scale Non-FTA Order].

Consistent with the policy statement issued by DOE/FE on July 29, 2020,[8] ECA requests a term through December 31, 2050 for the additional volumes requested in this Application.[9]

ECA further requests that the commencement date for the full volumes to be exported from the ECA Large-Scale Project (*i.e.*, the combined volumes authorized under the Large-Scale FTA Order and Large-Scale Non-FTA Order and requested in this Application) begin on the earlier of the date of first export or seven years from the date of issuance of the authorizations requested herein.

ECA requests this authorization both on its own behalf and as agent for other parties who hold title to the gas and/or LNG at the time of export. Moreover, consistent with DOE/FE precedent,[10] ECA requests that DOE/FE neither limit the export locations to a specific set of border-crossing facilities, nor limit the export volumes to the capacity of one or more border-crossing facilities. ECA further requests that the DOE/FE not require ECA to file a subsequent

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[8] *Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050*, 85 Fed. Reg. 52,237 (Aug. 25, 2020) ("Term Extension Policy Statement"). Under the Term Extension Policy Statement, "[f]uture long-term non-FTA export authorizations, if granted, will have a standard export term lasting through December 31, 2050, unless a shorter term is requested by the applicant. Accordingly, all new long-term applications to export domestically produced natural gas from the lower-48 states, including LNG, should request an export term lasting through December 31, 2050 (inclusive of any make-up period)—or state that the applicant requests a shorter export term." *Id.* at 52,247. To the extent that the DOE/FE's policy set forth in the Term Extension Policy Statement is subsequently modified prior to the issuance of the authorization requested in this Application, ECA respectfully requests that the DOE/FE grant the maximum term then permitted by DOE/FE policy.

[9] Pursuant to the Term Extension Policy Statement, ECA is separately filing an application with DOE/FE to amend its existing authorizations granted in the Large-Scale FTA Order and Large Scale Non-FTA Order to extend the export terms of such authorizations through December 31, 2050 ("Term Extension Application"). Should DOE/FE grant the instant Application and the Term Extension Application, all export volumes authorized for the ECA Large-Scale Project would have a term ending on December 31, 2050.

[10] *See Mexico Pacific Limited LLC*, DOE/FE Order No. 4312, FE Docket No. 18-70-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Mexico for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Dec. 14, 2018) [hereinafter *Mexico Pacific*]; *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4364, FE Docket No. 18-144-LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries (ECA Mid-Scale Project) at 32-33 (Mar. 29, 2019) [hereinafter Mid-Scale Non-FTA Order]; Large-Scale Non-FTA Order at 32-33.

application for supplemental authorization if new or expanded U.S. pipelines are constructed in the future that ECA could use to export natural gas up to ECA's requested export volume.

ECA is submitting this Application to request a design increase to the volumes the DOE/FE has previously authorized in connection with development of one of two sets of proposed liquefaction and export terminal facilities (the "Project" or "ECA Large-Scale Project") to be located at the existing Energía Costa Azul terminal facilities located north of Ensenada, Baja California, Mexico, approximately 31 miles south of the San Diego-Tijuana/San Ysidro border between the United States and Mexico.[11] The proposed ECA Large-Scale Project will receive, process, and liquefy natural gas into LNG, which will be stored on location and loaded onto ocean-going vessels for export to various foreign nations. The ECA Large-Scale Project requires various permits from regulatory entities in Mexico, as well as authorization from the DOE/FE for the export of feed gas for the Project and for the re-export of LNG from the Project to FTA and Non-FTA nations. ECA currently anticipates commencing construction activities associated with the ECA Large-Scale Project in the first part of 2024 and commencing commercial operations of the first train no later than 2028-2029.

[11] In addition to the ECA Large-Scale Project, an affiliate of ECA, ECA Liquefaction, S. de R.L. de C.V. ("ECA Liquefaction") is proposing to construct the ECA Mid-Scale Project, which will be composed of separate liquefaction facilities. On September 27, 2018, ECA filed an application with DOE/FE requesting authorization to export volumes associated with the ECA Mid-Scale Project to FTA and Non-FTA countries. On January 25, 2019, the DOE/FE issued an order granting ECA authorization to export the requested volumes from the ECA Mid-Scale Project to FTA countries. *See Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4317, FE Docket No. 18-144-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (ECA Mid-Scale Project) (Jan. 25, 2019) [hereinafter Mid-Scale FTA Order]. On March 29, 2019, DOE/FE issued an order granting ECA authorization to export the requested volumes from the ECA Mid-Scale Project to Non-FTA countries. *See* Mid-Scale Non-FTA Order. On October 7, 2019, DOE/FE issued an order granting approval to transfer the authorizations associated with the ECA Mid-Scale Project from ECA to ECA Liquefaction. *ECA Liquefaction, S. de R.L. de C.V. (Formerly Energía Costa Azul, S. de R.L. de C.V.*), DOE/FE Order Nos. 4317-A & 4364-A, FE Docket No. 18-144-LNG, Order Granting Request to Transfer Authorizations (Oct. 7, 2019). The ECA Mid-Scale Project has commonly been referred to as the "ECA Phase I Project" and the ECA Large-Scale Project has commonly been referred to as the "ECA Phase II Project." However, for the purposes of this Application, ECA will continue to refer to the projects as the "ECA Mid-Scale Project" and the "ECA Large-Scale Project," respectively. The ECA Mid-Scale Project and ECA Large-Scale Project are distinct and independent projects.

On September 27, 2018, ECA filed an application in FE Docket No. 18-145-LNG with the DOE/FE under section 3 of the NGA ("Large-Scale Application"),[12] as supplemented on February 13, 2019,[13] requesting authorization to export natural gas and LNG associated with the ECA Large-Scale Project to FTA and Non-FTA countries. On January 25, 2019, DOE/FE issued the Large-Scale FTA Order granting ECA authorization to export natural gas to Mexico by pipeline and to re-export the resulting LNG from its proposed Large-Scale Project to FTA countries, in a total volume of 545 Bcf/yr. On March 29, 2019, the DOE/FE issued the ECA Large-Scale Non-FTA Order granting ECA authorization to re-export LNG from the ECA Large-Scale Project to Non-FTA countries in a volume of 475 Bcf/yr.[14] These authorizations assumed that the ECA Large-Scale Project would be capable of producing and exporting an equivalent of approximately 9.1 metric tons per annum (MTPA) of LNG from the facility.

ECA has determined that the full design of the ECA Large-Scale Project will be capable of producing an additional 3.3 MTPA of LNG, for a total productive capacity of 12.4 MTPA. This will require an additional authorization of 182 Bcf/yr of exports to FTA countries and 161 Bcf/yr to Non-FTA countries. Approximately 21 Bcf/yr of the requested volumes will be consumed as fuel in Mexico, an FTA country, during the transportation and liquefaction process, with the remaining 161 Bcf/yr re-exported as LNG to FTA and Non-FTA countries. Granting ECA's request will increase the total authorized volumes for the ECA Large-Scale project to 727 Bcf/yr

[12] *Energía Costa Azul, S. de R.L. de C.V.*, Application for Long-Term, Multi-Contract Authorizations to Export Natural Gas to Mexico and to Export Liquefied Natural Gas From Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations (ECA Large-Scale Project), FE Docket No. 18-145-LNG (Sept. 27, 2018).

[13] *Energía Costa Azul, S. de R.L. de C.V.*, Project Update – Information Regarding Permitting and Commercial Developments, FE Docket No. 18-145-LNG (Feb. 13, 2019).

[14] Approximately 70 Bcf/yr is anticipated to be consumed in Mexico, an FTA country, as fuel in the pipeline transportation and liquefaction process. *See* Large-Scale Non-FTA Order at 1-2.

to FTA countries and 636 Bcf/yr to Non-FTA countries. Overall, approximately 91 Bcf/yr would be consumed in Mexico as fuel in the transportation and liquefaction process.

In this Application, ECA is requesting authorization to export natural gas by pipeline from the United States through any of the existing cross-border pipeline facilities interconnecting the United States and Mexico.[15] ECA is also requesting that DOE/FE authorize the exportation of natural gas from facilities that may be constructed in the future. Given the configuration of the U.S. and Mexican pipeline grids, natural gas necessary to serve as feedstock for the ECA Large-Scale Project can be sourced from multiple production basins and purchased at various liquid points throughout the United States, exported from existing and future border-crossing facilities across the U.S./Mexican border, and transported by pipelines in Mexico to the planned ECA Large-Scale Project. ECA is in the process of securing arrangements for its upstream supply; however, at this time, ECA notes that the physical export capacity through existing border-crossing pipeline facilities extending between the United States and Mexico exceeds the amount requested in this application, as discussed below.

The liquefaction facilities associated with the Project will be constructed on or adjacent to the site of ECA's existing regasification terminal in Ensenada, Mexico.[16] The liquefaction facilities will include: (a) two (2) new APCI liquefaction trains, each with its own gas treatment and expected liquefaction capacity of approximately 6.2 MTPA; (b) new ground flare equipment;

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[15] Appendix E attached to the Large-Scale Application contained a listing of the existing cross-border facilities between the United States and Mexico. Throughout the Large-Scale Application and this Application, ECA refers to "existing" capacity to encompass both pipeline projects that have already been built and placed into service, as well as those projects that were proposed and/or authorized by the FERC prior to and independent of the export applications of the ECA Large-Scale Project.

[16] ECA's existing regasification terminal commenced operations in 2008 and consists of two (2) full containment storage tanks with a capacity of 160,000 cubic meters ("m^3") each, regasification facilities with a capacity of approximately 1.0 Bcf/d, one marine berth capable of transferring up to 266,000 m^3 of LNG, and bi-directional interconnections with various Mexican pipeline facilities.

(c) piping & utility tie-ins to ECA's existing regasification terminal; and (d) a marine off-loading facility for the unloading of construction equipment and materials and a heavy haul road.[17] In addition, the existing regasification terminal may include (a) a new full containment tank capable of storing up to 160,000 m^3 of LNG onsite, and (b) gas-fired generation and emission control facilities.

The construction and operation of the necessary LNG and pipeline facilities will require permits from various Mexican agencies. ECA has received the necessary permits for the construction and operation of the ECA Large-Scale Project in Ensenada for a productive capacity of 9.1 MTPA and will initiate the permitting process to increase the authorized production capacity of the facility to a total of 12.4 MTPA. Further, applications for the necessary permits associated with the Mexican pipeline facilities used to transport natural gas to the Project in Mexico will be filed with the appropriate authorities in that country. The permitting process for those pipeline construction permit applications will involve an environmental review undertaken by Mexican authorities, and construction of the pipeline facilities will not proceed until the necessary Mexican permits have been issued.

Because upstream physical pipeline capacity in the United States and across the U.S./Mexican border exceeds the combined export volumes requested in this Application and previously granted in the Large-Scale FTA Order and Large-Scale Non-FTA Order (in total, approximately 2.0 Bcf/d),[18] consistent with its prior practice in other Non-FTA export proceedings,[19] ECA is requesting that the DOE/FE issue a determination that the Application

[17] Under average operational conditions, ECA anticipates that the ECA Large-Scale Project will be capable of producing and re-exporting up to 12.4 MTPA of LNG.

[18] *See* Large-Scale Application, Appendix E (listing existing cross-border facilities with a combined capacity exceeding 14.8 Bcf/d).

[19] *See Mexico Pacific* at 30; Mid-Scale Non-FTA Order at 35-36; Large-Scale Non-FTA Order at 36.

qualifies for a categorical exclusion from review under the National Environmental Policy Act of 1969 ("NEPA").[20] Specifically, consistent with applicable judicial and DOE/FE precedent, ECA submits that the Project qualifies for Categorical Exclusion B5.7 set forth in the DOE's regulations governing the agency's compliance with NEPA, which applies, in relevant part, to "[a]pprovals . . . of new authorizations . . . to . . . 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."[21]

ECA respectfully requests that DOE/FE issue an order granting the requested authorizations to export natural gas from the United States to Mexico for use in Mexico or for liquefaction and re-export to FTA countries as described in this Application without modification or delay pursuant to Section 3(c) of the NGA not later than December 18, 2020. Further, ECA respectfully requests that the DOE/FE issue an order granting the requested authorizations to export natural gas from the United States to Mexico for liquefaction and re-export to Non-FTA countries as described in this Application pursuant to Section 3(a) of the NGA not later than January 18, 2021.

In support of its application, ECA states as follows:

I. COMMUNICATIONS AND CORRESPONDENCE

All communications and correspondence regarding this Application, including all service of pleadings and notice, should be directed to the following persons:[22]

Jerrod L. Harrison
Assistant General Counsel
Sempra LNG, LLC

Brett A. Snyder
Mark R. Haskell
Lamiya Rahman

[20] 42 U.S.C. § 4321 *et seq*. (2012).
[21] 10 C.F.R. Part 1021, Subpart D, app. B § B5.7.
[22] ECA requests waiver of Section 590.202(a) of DOE's regulations, to the extent necessary to include outside counsel on the official service list in this proceeding. *See* 10 C.F.R. § 590.202(a).

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II. DESCRIPTION OF THE APPLICANT

The exact legal name of ECA is Energía Costa Azul, S. de R.L. de C.V. ECA is a variable-capital, limited liability company organized under the laws of Mexico. The principal place of business of ECA is Paseo de la Reforma # 342 Piso 24, Col. Juarez, Del. Cuauhtémoc, Mexico D.F. 06600. ECA is owned by Infrastructura Energetica Nova, S.A.B. de C.V. ("IEnova") and IEnova's subsidiaries. IEnova is one of the largest natural gas infrastructure developers in Mexico and was the first publicly-traded energy infrastructure company listed on the Mexican Stock Exchange (*Bolsa Mexicana de Valores*). A majority of the ownership interests in IEnova (66.43%) is held by indirect, wholly-owned subsidiaries of Sempra Energy, a publicly-traded California corporation.[23] The remaining shares of IEnova are publicly traded on the Mexican Stock Exchange. A chart reflecting the ownership structure of ECA is attached as Appendix B.

III. EXECUTIVE SUMMARY

The purpose of this Application is to obtain an increase in the authorization from the DOE/FE under section 3 of the NGA for the export of surplus natural gas from the United States to Mexico, where it will be liquefied at the ECA Large-Scale Project site, stored, and loaded onto marine vessels for export as LNG to foreign markets. The Project is proposed at the site of the existing ECA regasification terminal in Baja California, Mexico. ECA has already received permits from federal, state, and local authorities in Mexico for the construction and operation of

[23] The remaining shares of IEnova are publicly traded.

the ECA Large-Scale Project and will file for supplemental authorizations to increase the maximum authorized production capacity of the Project from 9.1 to 12.4 MTPA. Abundant supplies of natural gas from the United States are available to serve both domestic natural gas needs and the needs of the ECA Large-Scale Project for the proposed term ending on December 31, 2050. The use of U.S.-sourced natural gas for ECA exports would not significantly reduce the volume of natural gas potentially available for domestic consumption. The forecasts of the U.S. Energy Information Administration ("EIA"), illustrate that there is abundant U.S. natural gas supply currently and during the Project's proposed timeframe for exports. The robust supply of natural gas, largely as a result of increased levels of production from unconventional resources, is forecasted to exceed demand.

As noted in the Large-Scale Application, the Project presents numerous benefits to the public, including increased U.S. economic activity, tax revenues, and job creation during both the construction and operation phases of the Project. On an international level, the ECA Large-Scale Project will favorably influence the balance of trade that the United States has with its international trading partners. Approval of the proposed incremental volumes requested in this Application will supplement these benefits.

Abundant natural gas supplies exist to serve the ECA Large-Scale Project without adversely affecting the availability of competitively-priced natural gas for U.S. consumption during the proposed term of the requested authorization. Furthermore, existing cross-border pipeline capacity between the United States and Mexico (approximately 14.8 Bcf/d) is well in excess of the volumes requested in this Application. Accordingly, ECA respectfully requests that the DOE/FE issue an order approving the requested exports without limiting the locations at which ECA may export gas from the U.S. to a specific set of cross-border facilities, tying the volume of

authorized exports to a particular set of cross-border facilities, or conditioning the authorization upon submission of further applications should ECA choose to export the volumes requested in this Application using U.S. cross-border facilities that are constructed in the future.

IV. AUTHORIZATIONS REQUESTED

ECA respectfully requests that the DOE/FE grant long-term, multi-contract authorizations for ECA to engage in: (1) additional exports of up to 182 Bcf/yr (or an average of approximately 0.5 Bcf/d) of natural gas by pipeline to Mexico (increasing the overall authorized volumes to 727 Bcf/yr or 1.99 Bcf/d); and (2) additional re-exports in the form of LNG up to the equivalent of 161 Bcf/y of natural gas (or an average of approximately 0.44 Bcf/d of natural gas) from Baja California, Mexico, to FTA and Non-FTA countries (increasing the overall authorized volumes to 636 Bcf/yr or 1.74 Bcf/d).

As discussed in greater detail in Part VII of the Application below, ECA respectfully requests that the DOE/FE neither limit the locations at which ECA may export gas from the United States to a specific set of border-crossing pipeline facilities, nor tie the quantity of natural gas that may be exported under the requested authorizations to the capacity of any particular cross-border pipeline facilities. ECA further requests that the DOE/FE not require ECA to file additional applications for authorization if new U.S. pipelines are constructed in the future that would transport the gas authorized under the export authorizations requested herein, but at different locations. Approving ECA's request without imposing such restrictions would be consistent with the public interest and the manner in which the DOE/FE has treated Non-FTA export authorizations issued to LNG export projects located in the United States. Further, this proceeding is distinguishable from the only two proceedings in which the DOE/FE found such restrictions to be necessary, each of which involved the export of U.S. natural gas solely through a pipeline that did not at the time have sufficient physical capacity to transport the requested volumes to and

across the international border. In contrast, the pipeline facilities identified in this Application as capable of transporting gas supplies for the ECA Large-Scale Project currently have the physical capacity to transport the required gas to the U.S./Mexican border, and the total existing cross-border physical capacity substantially exceeds the volumes ECA is requesting to export into Mexico. Further, the ECA Large-Scale Project will have access to a wide range of natural gas supply and transportation options through the integrated grid of multiple interstate and intrastate natural gas pipelines in the U.S., numerous border-crossing facilities, and the Mexican natural gas pipeline grid that may be accessed in the future. Further, given the tendency of gas production profiles and economics to vary over long periods of time, gas supply arrangements for the Project may change over the course of the term requested in this Application, requiring ECA to have some flexibility in the location where gas may be exported from the United States into Mexico. Thus, the restrictions that the DOE/FE has imposed in the past would be inappropriate here.

ECA requests that the export term of the additional volumes requested in this Application extend through December 31, 2050.[24]

ECA requests that the term for the full volumes associated with the ECA Large-Scale Project, as those volumes are amended in this Application (*i.e.*, 727 Bcf/yr to FTA countries and 636 Bcf/y to Non-FTA countries), commence on the earlier of the date of first commercial export or a date seven years from the issuance of an order by the DOE/FE granting the authorizations requested in this Application.

ECA further requests that the term extend until December 31, 2050 or, in the event the DOE's practice as reflected in the Term Extension Policy Statement is modified, the maximum

[24] As previously noted, ECA is separately filing a Term Extension Application requesting that DOE/FE amend the export term for the volumes authorized pursuant to the Large-Scale FTA Order and Large-Scale Non-FTA Order for an extended export term ending on December 31, 2050.

term permitted by DOE/FE policy at the time the order approving the authorizations requested in this Application is issued. ECA requests authorization to export natural gas and LNG on its own behalf and as agent for other parties who will hold title to natural gas at the time it is exported across the U.S./Mexican border and LNG at the time it is re-exported from the ECA terminal, as permitted by DOE/FE policy.[25] ECA will comply with all DOE/FE requirements related to ECA's re-exportation of LNG produced from U.S.-sourced natural gas on behalf of others, including any applicable requirements to register LNG title holders or to file long-term commercial agreements under seal with the DOE/FE.

ECA anticipates entering into one or more long-term export agreements with customers of the Project. Section 590.202(b) of DOE's regulations requires applicants to submit information regarding the terms of certain transactions, which includes long-term supply agreements and long-term export agreements.[26] ECA has not currently entered into any export agreements or finalized supply arrangements for the Project, but will comply with the obligation to file such agreements after they have been executed, consistent with DOE/FE policy.[27]

Accordingly, ECA respectfully requests that the DOE/FE issue an order granting the authorization requested herein to export natural gas and LNG to FTA countries by December 18, 2020. ECA further requests that the DOE/FE issue an order granting the authorization requested herein to export LNG to Non-FTA countries by January 18, 2021, which will allow ECA to move forward with the commercial development, financing, and contracting of the Project.

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[25] *Freeport LNG Expansion, L.P.*, 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).

[26] 10 C.F.R. § 590.202(b)(4).

[27] ECA notes that the on December 13, 2018, the Department of Energy issued a proposed interpretive rule regarding the filing of contracts and purchase agreements associated with the export of natural gas. On January 18, 2019, ECA's affiliate, Sempra LNG & Midstream, LLC (now Sempra LNG, LLC), filed comments on the proposed interpretive rule. As of the date of this filing, the proposed interpretive rule remains pending before the Department of Energy.

V. DESCRIPTION OF THE PROJECT

A. ECA Large-Scale Project

The ECA Large-Scale Project will permit the exportation of U.S. natural gas from various sources to Mexico for liquefaction and re-export to foreign markets. The Project will be constructed at the existing 67.85-acre brownfield site owned by ECA and located approximately 19 miles north of the city of Ensenada, Baja California, Mexico, along the Pacific coast, approximately 31 miles south of the San Diego-Tijuana/San Ysidro border between the United States and Mexico. The Project is a joint effort between Sempra Energy and its Mexican affiliate, IEnova, which owns ECA.

The Project will be located on the site of ECA's existing LNG import terminal in Ensenada, which currently includes one marine berth and breakwater, two LNG tanks of 160,000 m^3 each, LNG vaporizers, nitrogen injection systems, and pipeline interconnections. The major components that will be constructed as part of the ECA Large-Scale Project include: (a) two (2) APCI liquefaction trains, each with a maximum liquefaction capacity of 6.2 MTPA, including a gas pre-treatment unit for removal of Mercury and acid gas, dehydration, and natural gas liquids removal and fractionation; (b) new ground flare equipment; (c) piping & utility tie-ins to the existing terminal facilities; and (d) a marine off-loading facility for the unloading of construction equipment and materials and a heavy haul road. Feed gas will be supplied through a dedicated high-pressure spur pipeline, with pipeline quality gas exported from the United States. New or modified utilities and offsite facilities will be provided for the Project as required. The existing LNG import terminal may include (a) a new full containment tank capable of storing up to 160,000 cubic meters ("m^3") of LNG onsite at the ECA Large-Scale Project, and (b) gas-fired generation and emission control facilities.

The ECA Large-Scale Project is designed to meet the growing global demand for North American-sourced LNG over the next few decades. The location along the West Coast of North America will provide access to markets in the Pacific Basin including Asia, the Middle East, and South America. Following receipt of the approvals requested in this Application, ECA plans to reach a final investment decision and commence construction of the ECA Large-Scale Project.

B. Natural Gas Supply and Transportation

Abundant supplies of natural gas in the United States are available to serve domestic natural gas needs, including the proposed ECA Large-Scale Project. Natural gas for the proposed exports can be sourced from basins throughout the United States, including the Gulf Coast, Mid-Continent, West Texas, and Rocky Mountain regions, providing the ECA Large-Scale Project with supply diversity and optionality for the benefit of its customers. Given the size of traditional natural gas resources available to the Project, as well as the rapid growth in emerging unconventional gas and oil technical resource base throughout the United States, the ECA Large-Scale Project will have a choice of diverse and reliable alternative gas supplies.

The potential sources of natural gas for the Project will include vast supplies available from the producing regions in the Western United States and the Gulf Coast. The EIA reports that, in 2019, these regions collectively produced 18.9 trillion cubic feet ("Tcf") (an average of approximately 52 Bcf/d) of natural gas, which was over half of the U.S. total production for that year.[28] According to the Potential Gas Committee's year-end 2018 assessment, the Gulf Coast,

[28] U.S. Energy Information Administration, *Natural Gas Gross Withdrawals and Production* (Aug. 31, 2020), http://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGM_mmcf_a.htm. For purposes of calculating total marketed production from the Western United States and Gulf Coast, EIA's data has been aggregated for the following categories: TX, LA, MT, WY, CO, NM, UT, CA, and Federal Offshore Gulf of Mexico.

Rocky Mountain, and Mid-Continent regions are estimated to have traditional gas resources of 1,632 Tcf.[29]

Technological improvements in natural gas exploration, drilling, and production have resulted in significant reductions in the costs of developing shale resources and making shale gas production economically viable. The EIA estimates that the total volume of technically recoverable dry natural gas resources in the Gulf Coast, Midcontinent, Southwest, Rocky Mountain, Northern Great Plains, and West Coast regions is 1,520.1 Tcf.[30] Technically recoverable natural gas resources from tight and shale resources for the same regions is estimated at approximately 979 Tcf.[31] Natural gas production from shale and tight resources accounted for approximately 84% (28.35 Tcf) of total U.S. dry production in 2019 (33.81 Tcf).[32] Looking forward, the EIA projects shale gas and associated gas from tight oil plays will account for more than 90% of U.S. dry natural gas production by 2050.[33]

Additionally, abundant supplies of natural gas in regions outside of the Gulf Coast, Midcontinent, Southwest, Rocky Mountain, and West Coast are also available to serve domestic natural gas needs, as well as the needs of export projects. The Appalachian Basin, which encompasses both the Marcellus and Utica supply regions, represents one of the most extensive potential sources of natural gas supply in the United States. According to the EIA, Eastern U.S.

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[29] U.S. Potential Gas Committee, Press Release, *Potential Gas Committee Reports Record Future Supply of Natural Gas in the U.S.* (Sept. 11, 2019), http://www.potentialgas.org/press-release.

[30] U.S. Energy Information Administration, *Assumptions to the Annual Energy Outlook 2020*, Oil and Gas Supply Module, tbl.2 (Jan. 29, 2020) [hereinafter Assumptions to the AEO 2020], https://www.eia.gov/outlooks/aeo/assumptions/pdf/oilgas.pdf. When offshore Gulf Cost and Pacific resources are included, total technically recoverable dry natural gas resources from these regions is approximately 1,729 Tcf.

[31] *Id*. at tbl. 3.

[32] U.S. Energy Information Administration, *Annual Energy Outlook 2020*, tbl. 14 (Jan. 29, 2020) [hereinafter AEO 2020], https://www.eia.gov/outlooks/aeo/data/browser/#/?id=14-AEO2020&cases=ref2018&sourcekey=0.

[33] *Id.* at 49-50, https://www.eia.gov/outlooks/aeo/pdf/AEO2020%20Full%20Report.pdf. *See also id.* at tbl. 14, https://www.eia.gov/outlooks/aeo/data/browser/#/?id=14-AEO2020&cases=ref2018&sourcekey=0.

production of natural gas from shale resources leads growth in the Reference Case, with total U.S. gas production across most cases being driven by the continued development of the Marcellus and Utica shale plays.[34] The EIA estimates total technically recoverable dry natural gas resources in the East alone at 821.4 Tcf.[35] In response to the increased production in the Appalachian Basin region, the natural gas industry has proposed new pipeline projects to transport production out of the Marcellus and Utica Shale Plays, as well as modifying existing systems to allow pipelines originally built and used to move gas into the Northeast to now provide new markets for excess gas out of the Northeast.[36] Appalachian gas production, in addition to Gulf Coast, Midcontinent, Southwest, Rocky Mountain, and West Coast gas production, is therefore well situated to satisfy domestic requirements for natural gas.

When these new resources are added to conventional producing formations, it is evident that the United States has more than sufficient supply to serve domestic needs and accommodate the proposed exports from the ECA Large-Scale Project. In 2020, the EIA estimated total technically recoverable dry natural gas resources in the United States at 2,828.8 Tcf.[37] This growth in U.S. natural gas resources is reflected in other recent academic and industry evaluations. In its year-end 2018 assessment, the Potential Gas Committee determined that the United States possesses future available gas supply (reserves and resources) of 3,838 Tcf, which is an increase of approximately 697 Tcf (+22%) from the Potential Gas Committee's projections in 2016.[38]

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34 *Id.* at 51-52.

35 Assumptions to the AEO 2020, Oil and Gas Supply Module at tbl. 2.

36 *See, e.g.,* U.S. Energy Information Administration, *FERC Certificates Several New Natural Gas Pipelines in 2017* (Mar. 7, 2017), https://www.eia.gov/todayinenergy/detail.php?id=30232; U.S. Energy Information Administration, *Appalachian Basin Infrastructure Growth Will Make Marcellus/Utica Gas Available to Broader Market* (Mar. 18, 2015), https://www.eia.gov/naturalgas/weekly/archivenew_ngwu/2015/03_19/index.php.

37 Assumptions to the AEO 2020, Oil and Gas Supply Module at tbl. 2.

38 U.S. Potential Gas Committee, *supra* note 29.

The ECA Large-Scale Project is well-positioned to access natural gas supplies from the numerous pipelines that are in proximity to the Project. Natural gas to be exported from the Project will be purchased in a market that has sufficient liquidity and capacity to accommodate a variety of purchase arrangements, including spot market transactions and long-term supply arrangements. Natural gas markets are particularly liquid in the Gulf Coast and Western U.S. regions as a result of the key market centers in the area and the availability of readily accessible incremental gas supplies. The ECA Large-Scale Project will have access to market centers providing ample liquidity to accommodate a wide and geographically diverse range of gas supply arrangements. This access to multiple supply options means that the ECA Large-Scale Project will be able to respond to shifts in the economics and production profiles of different gas production areas, which may vary significantly over the term of the requested authorizations. Thus, given the integrated nature of the U.S. and Mexican pipeline system, which yields a broad range of supply and transportation options that the ECA Large-Scale Project currently has at its disposal, it is uncertain where the gas used by the ECA Large-Scale Project will originate.

Moreover, the abundance of cross-border facilities between the United States and Mexico makes it possible for the ECA Large-Scale Project to access gas from several cross-border locations through existing facilities and the future construction of new and expanded pipeline facilities in the U.S. and Mexico. To estimate the level of cross-border capacity available, ECA compiled data in the Large-Scale Application from the EIA and other independent sources.[39] In addition, given the DOE/FE's reliance upon orders issued by the Federal Energy Regulatory Commission ("FERC") in previous proceedings to establish cross-border capacity for the

[39] *See* Large-Scale Application, App. B1, ICF Large-Scale Report, App. A.

administrative record,[40] ECA undertook a review of the orders of the FERC and its predecessor, the Federal Power Commission ("FPC") to compile an index and map of the cross-border facilities that have either already been approved or have been proposed to the FERC prior to and independent of the ECA Large-Scale Project, which were attached to the Large-Scale Application as Appendix E.[41]

The additional average volume of 0.44 Bcf/d for which ECA is seeking Non-FTA export authorization represents a fraction of the nearly 15 Bcf/d of physical cross-border capacity available from existing pipeline facilities.[42] Specifically, as noted in Appendix E to the Large-Scale Application, there is approximately 14.83 Bcf/d of existing physical cross-border pipeline capacity between the United States and Mexico, including approximately 6.67 Bcf/d of capacity in the California, Arizona, and West Texas regions and approximately 8.17 Bcf/d in the South Texas region.

ECA is considering several gas supply options for the ECA Large-Scale Project that could connect in Mexico to any existing or future cross-border facilities along the U.S./Mexican border. While plans for the gas supply arrangements to provide feed gas for the project are still in development, ECA anticipates that it will engage an affiliate or a third-party to construct pipeline facilities in Mexico to interconnect the ECA Large-Scale Project to sources of gas supply in

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[40] *See Pieridae Energy (USA) Ltd.*, DOE/FE Order No. 3768, FE Docket No. 14-179-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries at 196 (Feb. 5, 2016) [hereinafter Pieridae Order]; *Bear Head LNG Corp.*, DOE/FE Order No. 3770, FE Docket No. 15-33-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries at 156 (Feb. 5, 2016) [hereinafter Bear Head Order].

[41] As discussed in note 15 above, this Application refers to such facilities as "existing" facilities. Due to the quality of information available and the different calculation methodologies used, the estimates of total cross-border capacity established in the ICF Large-Scale Report (14,907 MMcf/d) and Appendix E (14,830 MMcf/d) differ, but only very slightly.

[42] As discussed in note 5 above, any volumes consumed in Mexico as fuel for pipeline transportation and in the liquefaction process are consumed in Mexico, an FTA country, and are thus not relevant to the DOE/FE's public interest determination under NGA Section 3(a).

northern Mexico ("Northern Mexico Pipeline"). The Northern Mexico Pipeline can be designed to interconnect with other new or expanded pipelines in Mexico and the U.S. or with existing infrastructure to receive and transport gas exported from cross-border facilities in West or South Texas and points further west along the border for transportation to the liquefaction terminal. For example, the combined cross-border capacity of Comanche Trail Pipeline and Trans-Pecos Pipeline in West Texas, which interconnect to the Mexican pipeline facilities of San Isidro-Samalayuca and Gasoducto Ojinaga, respectively, totals 2.4 Bcf/d. Moving further west of those interconnections, the Northern Mexico Pipeline could also receive gas exported from the Sierrita Pipeline in Arizona, which has a capacity of 0.627 Bcf/d and interconnects at the border to the Gasoducto Aguaprieta / Sonora system in Mexico. The physical capacity at just these three cross-border locations is approximately 3.03 Bcf/d, which is well above the 0.44 Bcf/d Non-FTA export volume requested in this Application.[43]

ECA anticipates that the Northern Mexico Pipeline will be constructed and operated entirely in Mexico.[44] Any issues regarding the takeaway and delivery capacity of the pipeline facilities located in Mexico, including the Northern Mexico Pipeline, will be addressed by ECA and the relevant permitting authorities in Mexico.

C. Mexican Regulatory Review of Large-Scale Project and Pipelines in Mexico

As discussed more fully in Part VII below, the ECA Large-Scale Project does not involve construction in the United States. Given the location of the ECA Large-Scale Project in Mexico, the facility will not be subject to the review of the FERC under the NGA or NEPA. Instead, the ECA Large-Scale Project and any pipeline facilities that may be constructed in Mexico are subject

[43] *See* Large-Scale Application, Appendix E.

[44] ECA notes in this regard that its parent, IEnova, is one of the largest and most experienced developers of energy infrastructure in Mexico.

to review and approval by Mexican agencies under the state and federal laws of that nation. In the Large-Scale Application at Appendix C, ECA provided a summary of the Mexican regulatory framework applicable to the siting, construction, and operation of the ECA Large-Scale Project, including any liquefaction and Mexican pipeline facilities associated with the Project. As explained more fully in the Large-Scale Application, the Mexican permitting process includes a thorough environmental review under Mexican state and federal legislation similar to the review conducted by U.S. agencies under NEPA.

D. Commercial Structure

ECA is currently in discussions with customers regarding the proposed commercial structure of the ECA Large-Scale Project (*e.g.*, whether the facilities will sell LNG under sales purchase agreements, provide liquefaction services under tolling agreements, *etc.*). As noted above, ECA has not yet entered into long-term export contracts in connection with the export authorizations requested herein or finalized gas supply arrangements for the Project. However, once executed, ECA will file any such contracts with the DOE/FE in accordance with the DOE/FE's filing requirements.

VI. PUBLIC INTEREST ANALYSIS

A. Applicable Legal Standards

Pursuant to sections 301(b) and 402 of the Department of Energy Organization Act,[45] and delegations of authority issued thereunder, the DOE/FE is responsible for evaluating applications to export natural gas and LNG from the United States under section 3 of the NGA.[46] As discussed below, to the extent that this Application requests authority to export natural gas produced in the

[45] 42 U.S.C. §§ 7151(b), 7172 (2012).
[46] 15 U.S.C. § 717b. This authority is delegated to the Assistant Secretary for Fossil Energy pursuant to Redelegation Order No. 00-002.04G (June 4, 2019).

United States to Mexico for consumption in that country, and for re-export to other FTA nations, that request should be deemed in the public interest and granted without modification or delay, as required by NGA section 3(c).[47] As clarified in the *Bear Head* and *Pieridae* orders,[48] the applicable legal standard for the portion of the Application that requests authorization to re-export U.S. natural gas from Mexico to Non-FTA countries is set forth in section 3(a) of the NGA.[49]

1. Exports to FTA Countries

Section 3(c) was added to the NGA by section 201 of the Energy Policy Act of 1992.[50] That section provides in relevant part that applications to the DOE/FE requesting authority for the export of natural gas, including LNG, to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas shall be deemed consistent with the public interest and granted without modification or delay.[51] Accordingly, the portion of this Application requesting authority to export U.S. natural gas to Mexico for liquefaction and re-export to FTA countries is deemed by statute to be consistent with the public interest and must be approved without modification or delay.

2. Exports to Non-FTA Countries

The general standard for review of applications to export to Non-FTA countries is established by section 3(a) of the NGA, which provides that:

> [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] authorizing it to do so. The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Secretary] may find

47 15 U.S.C. § 717b(c).
48 Pieridae Order at 3-4; Bear Head Order at 154-55.
49 15 U.S.C. § 717b(a).
50 Energy Policy Act of 1992, Pub. L. No. 102-486, § 201, 106 Stat. 2776, 2866 (1992).
51 15 U.S.C. § 717b(c).

> necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.[52]

In applying this provision, the DOE/FE has consistently found that section 3(a) creates a rebuttable presumption that proposed exports of natural gas are in the public interest.[53] The DOE/FE will grant a Non-FTA export application unless opponents of the application make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest.[54]

The DOE/FE's prior decisions have looked to the 1984 Policy Guidelines setting out the criteria to be employed in evaluating applications for natural gas imports.[55] While nominally applicable to natural gas import cases, the DOE/FE has found these Policy Guidelines applicable to natural gas export applications, as well.[56] The goals of the Policy Guidelines are to minimize

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[52] *Id*. § 717b(a).

[53] *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017). *See also, e.g., Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A, FE Docket No. 11-59-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel From the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations at 13 (July 29, 2016); *Lake Charles LNG Export Co.*, DOE/FE Order No. 3868, FE Docket No. 13-04-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal in Calcasieu Parish, Louisiana to Non-Free Trade Agreement Nations at 11 (July 29, 2016); *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 in Cameron and Calcasieu Parishes, Louisiana, to Non-Free Trade Agreement Nations at 10 (July 15, 2016); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792, FE Docket No. 15-63-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Sabine Pass LNG Terminal Located in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations at 13 (Mar. 11, 2016).

[54] *Phillips Alaska Nat. Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, at 13 n.42 (Apr. 2, 1999) (citing *Panhandle Producers & Royalty Owners Ass'n v. ERA,* 822 F.2d 1105, 1111 (D.C. Cir. 1987)); *see also Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 13; *Lake Charles LNG Export Co.*, DOE/FE Order No. 3868 at 11; *Cameron LNG, LLC*, DOE/FE Order No. 3846 at 10; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 at 13-14.

[55] New Policy Guidelines and Delegation Orders From Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984) [hereinafter Policy Guidelines].

[56] *Phillips Alaska Nat. Gas Corp.*, at 14, 42; *see also Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 14; *Lake Charles LNG Export Company, LLC*, DOE/FE Order No. 3868 at 12; *Cameron LNG, LLC*, DOE/FE Order No. 3846 at 11; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 at 15.

federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Policy Guidelines provide that:

> The market, not government, should determine the price and other contract terms of imported [or exported] gas. . . . The federal government's primary responsibility in authorizing imports [or exports] should be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.[57]

The DOE/FE's analysis has also been guided by DOE Delegation Order No. 0204-111.[58] According to the Delegation Order, exports of natural gas are to be regulated primarily "based on a consideration of the domestic need for the gas to be exported and such other matters [found] in the circumstances of a particular case to be appropriate."[59] Although the Delegation Order is no longer in effect, the DOE/FE's review of export applications continues to focus on: (i) the domestic need for natural gas proposed to be exported; (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies; (iii) whether the arrangement is consistent with the DOE/FE's policy of promoting market competition; and (iv) any other factors bearing on the public interest.[60]

The DOE/FE has indicated that the following additional considerations are relevant in determining whether proposed exports are in the public interest: whether the exports will be beneficial for regional economies, the extent to which the exports will foster competition and

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[57] Policy Guidelines at 6,685.

[58] U.S. Department of Energy, Delegation Order No. 0204-111 (Feb. 22, 1982).

[59] *Id.* at para. (b).

[60] *See, e.g., Lake Charles Exports, LLC*, DOE/FE Order No. 3324-A at 15; *Cameron LNG, LLC*, DOE/FE Order No. 3846 at 11-12; *Cameron LNG, LLC*, DOE/FE Order No. 3391-A, FE Docket No. 11-162-LNG, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Cameron LNG Terminal in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations at 9-10 (Sept. 10, 2014); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations at 29 (May 20, 2011).

mitigate trade imbalances with the foreign recipient nations, and the degree to which the exports would encourage efficient management of U.S. domestic natural resources.[61]

As demonstrated below, the exports of natural gas and LNG proposed herein satisfy each of these considerations.

B. Domestic Need for the Gas to be Exported

The ECA Large-Scale Project is being proposed in light of the rapid growth in U.S. natural gas resources and production. In particular, drilling productivity gains and extraction technology enhancements have enabled significant growth in supplies from unconventional gas-bearing shale formations in the United States. In addition, estimates of recoverable natural gas resources have increased by approximately 1,081 Tcf (62%) between 2009 and 2020.[62] In light of the substantial addition of resources and the comparatively minor increases in domestic natural gas demand, there are more than sufficient natural gas resources to accommodate both domestic demand and the exports proposed in this Application throughout the term of the requested authorization.

As U.S. natural gas resources and production have increased, U.S. natural gas prices have fallen significantly. The annual average Henry Hub spot price for natural gas fell from $8.86 per MMBtu in 2008 to $2.56 per MMBtu in 2019.[63] In its most recently calculated reference case, the EIA estimates that Henry Hub prices will remain lower than $4 per MMBtu throughout the projection period.[64] Prices for natural gas in the U.S. market continue to be lower than those of

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[61] *See, e.g., Cameron LNG, LLC*, DOE/FE Order No. 3846 at 105-125; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 at 162-191, *Cameron LNG, LLC*, DOE/FE Order No. 3391-A at 84-86; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 34-38.

[62] *Compare* Assumptions to the AEO 2020, Oil and Gas Supply Module, at tbl. 2 *with* U.S. Energy Information Administration, *Assumptions to the Annual Energy Outlook 2009*, tbl. 9.2 (Mar. 2009) [hereinafter Assumptions to the AEO 2009], http://www.eia.gov/forecasts/archive/aeo09/assumption/pdf/0554(2009).pdf.

[63] U.S. Energy Information Administration, *Henry Hub Natural Gas Spot Price* (Sept. 16, 2020), https://www.eia.gov/dnav/ng/hist/rngwhhda.htm. The average Henry Hub spot price for January through July of 2020 was approximately $1.80. *Id.*

[64] AEO 2020 at 48.

most other major gas-consuming countries.[65] The result is that domestic gas can be exported, liquefied, and re-exported to foreign markets on a competitive basis. As discussed below, such exports can be expected to have only a nominal effect on U.S. prices.

1. Domestic Natural Gas Supply

As the EIA has noted, domestic "[n]atural gas production from tight and shale gas formations has grown rapidly in recent years."[66] The EIA estimates that natural gas production over the 2020-2025 period will grow at 1.9% a year, and will outpace consumption in most cases.[67] The EIA further estimates that U.S. dry gas production increased from 21.3 Tcf in 2010 to 33.7 Tcf in 2019.[68]

This growth trend is expected to continue over the next several decades. Total U.S. dry gas production is projected to grow to 45 Tcf by 2050, with a 0.9% annual growth rate between 2019 and 2050.[69] Much of the future natural gas production growth is expected to come from unconventional production of shale resources, including horizontal drilling and multi-stage hydraulic fracturing. Specifically, the EIA found that production from shale gas and associated gas from tight oil plays would be the largest contributor to natural gas production growth, comprising 78% of total U.S. production by 2050.[70] In its 2020 Annual Energy Outlook, the EIA has also significantly increased its estimates of shale gas production through 2050 as compared to

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[65] *See, e.g.,* The World Bank, *World Bank Commodities Price Data (The Pink Sheet)* (Sept. 2, 2020), http://pubdocs.worldbank.org/en/451141599073982216/CMO-Pink-Sheet-September-2020.pdf (the average natural gas price in August 2020 was $2.29 per MMBtu in the United States, while the average price in Europe was $2.86 per MMBtu and the average LNG price was $7.79 per MMBtu in Japan).

[66] U.S. Energy Information Administration, *Annual Energy Outlook 2016* at IF-29 (Aug. 2016), https://www.eia.gov/outlooks/aeo/pdf/0383(2016).pdf.

[67] AEO 2020 at 45-46.

[68] U.S. Energy Information Administration, *U.S. Dry Natural Gas Production* (Aug. 31, 2020), https://www.eia.gov/dnav/ng/hist/n9070us2A.htm.

[69] AEO 2020 at tbl. 13, https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2020&cases=ref2020&sourcekey=0.

[70] AEO 2020 at tbl. 14, https://www.eia.gov/outlooks/aeo/data/browser/#/?id=14-AEO2020&cases=ref2020&sourcekey=0.

its projections in prior years. For example, the EIA revised its projection of shale gas production in 2040 from 32.54 in its 2020 Annual Energy Outlook, up from 19.58 Tcf in its 2015 Annual Energy Outlook.[71] This growth in shale production has been accompanied by an increase in the overall volume of U.S. natural gas resources. The EIA's estimates of recoverable natural gas resources have increased by 1,081 Tcf (62%) between 2009 and 2020.[72]

2. Domestic Natural Gas Demand

Although domestic demand for natural gas is anticipated to grow, the rate of demand increase will continue to be outpaced by the growth of available supply. For example, though demand for natural gas has increased since 2009, production of natural gas has increased faster due to the shale gas revolution.[73] According to data published by the EIA, U.S. natural gas consumption only increased 29% from 2010 to 2019.[74] In its Annual Energy Outlook 2020, the EIA estimates long-term annual U.S. demand growth of only 0.5%, with demand expected to reach 36.50 Tcf in 2050.[75] In contrast, total U.S. dry gas production during the same period is projected to grow at an annual rate of 0.9%, with dry gas production estimated to reach 45 Tcf in 2050, as compared to 33.81 Tcf in 2019.[76]

The EIA forecasts that energy consumption in the electric power sector will increase to 12.20 Tcf in 2050 from 11.40 Tcf in 2019 in the Reference case.[77] The EIA estimates that energy

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[71] *Compare* AEO 2020 at tbl. 14, https://www.eia.gov/outlooks/aeo/data/browser/#/?id=14-AEO2020&cases=ref2020&sourcekey=0 *with* U.S. Energy Information Administration, *Annual Energy Outlook 2015* at tbl. A14 (Apr. 2015), https://www.eia.gov/outlooks/aeo/pdf/0383(2015).pdf.

[72] *Compare* Assumptions to the AEO 2020, Oil and Gas Supply Module at tbl. 2 *with* Assumptions to the AEO 2009 at tbl. 9.2.

[73] The Brattle Group, Understanding Natural Gas Markets, at 3 (Sep. 2014), https://www.api.org/~/media/Files/Oil-and-Natural-Gas/Natural-Gas-primer/Understanding-Natural-Gas-Markets-Primer-High.pdf.

[74] U.S. Energy Information Administration, *U.S. Natural Gas Total Consumption* (Aug. 31, 2020), https://www.eia.gov/dnav/ng/hist/n9140us2a.htm.

[75] AEO 2020 at tbl. 13.

[76] *Id.* at tbl. 14.

[77] *Id.* at tbl. 13.

consumption in the industrial sector will increase by an average of 1.1% per year to 14.70 Tcf in 2050 from 10.35 Tcf in 2019 in the Reference case.[78] Natural gas consumption in the commercial sector will increase only by 0.2% per year to 3.74 Tcf in 2050 from 3.50 Tcf in 2019 in the EIA Reference case.[79] The residential sector is forecasted to experience a decrease in consumption, with a -0.3% growth in natural gas consumption down to 4.55 Tcf in 2050 from 5.03 Tcf in 2019.[80]

3. Effects on Domestic Prices of Natural Gas

Analyses performed and commissioned by the DOE/FE demonstrate that LNG exports from the United States would not result in adverse economic outcomes for U.S. consumers. In 2012, the DOE released a two-part study evaluating the effects on the U.S. economy of LNG exports to Non-FTA countries in volumes up to 12 Bcf per day. In 2014 and 2015, DOE/FE released an updated two-part study assessing the economic effects of higher levels of U.S. LNG exports–*i.e.*, between 12 and 20 Bcf per day.

The first part of the 2012 studies consisted of an EIA report evaluating how LNG exports would affect domestic energy consumption, production, and prices under various scenarios involving either 6 Bcf per day or 12 Bcf per day (the "2012 EIA Study").[81] The 2012 EIA Study projected that natural gas prices would rise over time, even without additional LNG exports.[82] In the second part of the 2012 studies, NERA Economic Consulting ("NERA") assessed the macroeconomic effects of increased LNG exports under a range of global natural gas supply and

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78 *Id.*
79 *Id.*
80 *Id.*
81 U.S. Energy Information Administration, *Effect of Increased Natural Gas Exports on Domestic Energy Markets, as Requested by the Office of Fossil Energy* (Jan. 2012), https://www.energy.gov/sites/prod/files/2013/04/f0/fe_eia_lng.pdf.
82 *Id.* at 6.

demand scenarios, including scenarios with unlimited LNG exports ("2012 NERA Study").[83] In each of the scenarios analyzed, NERA found that the United States would experience net economic benefits from increased LNG exports.[84] With regard to the effect of natural gas prices, NERA further projected that "price changes attributable to LNG exports remain in a relatively narrow range across the entire range of scenarios."[85] NERA also indicated that the peak natural gas export levels and resulting price increases analyzed by the 2012 EIA Study are "not likely,"[86] namely because U.S. exports would fall far short of the levels of exports assumed in the 2012 EIA Study.[87] Even in the export scenarios that led to the most significant theoretical price increases projected by the 2012 EIA Study, the 2012 NERA Study found net benefits to U.S. consumers.[88] The 2012 NERA Study further found that the net positive economic results became greater with higher levels of exports.[89]

The DOE/FE's updated studies consisted of a 2014 domestic market analysis by EIA ("2014 EIA Study"), and a 2015 macroeconomic analysis conducted by the Center for Energy Studies at Rice University's Baker Institute and Oxford Economics ("2015 LNG Export Study").[90] The 2014 EIA Study evaluated the effects on U.S. energy markets of increased LNG exports, ranging from 12 Bcf per day to 20 Bcf per day.[91] The 2014 EIA Study projected that, under the Annual Energy Outlook 2014 Reference Case, the increased LNG export levels analyzed would

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83 NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 2012), https://www.energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf.
84 *Id.* at 6.
85 *Id.* at 2.
86 *Id.* at 9.
87 *Id.* at 12.
88 *Id.* at 6.
89 *Id.* at 12.
90 U.S. Energy Information Administration, *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf; Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), https://www.energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.
91 2014 EIA Study.

lead to a 2% to 5% increase in residential natural gas prices between 2015 and 2040 compared to baseline projections.[92] This forecast is less than the predicted 3% to 7% average increase between 2015 and 2035 that EIA had previously projected for a lower level of exports under the Annual Energy Outlook 2011 Reference Case. The 2014 EIA Study found that, even if exports of LNG are greater than forecasted, increased energy production spurs investment, which more than offsets the adverse effects of somewhat higher energy prices when the export scenarios are applied.[93] EIA further noted that the model it relied upon is focused on the domestic U.S. energy system and economy, and does not address several key international linkages that may further increase economic benefits.[94] That limitation notwithstanding, the EIA 2014 Study estimated that higher LNG exports would result in gross domestic product ("GDP") increases across all scenarios.[95]

The 2015 LNG Export Study similarly evaluated the macroeconomic effects of LNG exports ranging from 12 Bcf per day to 20 Bcf per day, and confirmed that increased LNG exports would yield net positive macroeconomic results.[96] The 2015 LNG Export Study found that LNG exports would raise domestic prices and lower international prices.[97] The 2015 LNG Export Study also found that increased exports would lead to small declines in output at the margin for some energy-intensive industries (albeit declines that are offset by positive effects to industries that benefit from increased exports).[98] Nevertheless, the 2015 LNG Export Study found that these potentially adverse outcomes would be offset by the overall net macroeconomic benefits of increased LNG exports, finding that "[a]cross the domestic cases, the positive impacts of higher

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92 *Id.* at 12.
93 *Id.*
94 *Id.*
95 *Id.* at 24-25.
96 2015 LNG Export Study at 82.
97 *Id.* at 8.
98 *Id.*

U.S. gas production, greater investment in the U.S. natural gas sector, and increased profitability of U.S. gas producers typically exceeds the negative impacts of higher domestic natural gas prices associated with increased LNG exports."[99] Moreover, the 2015 LNG Export Study concluded that rising exports would result in GDP increases between 0.03 and 0.07 percent over the period from 2026 to 2040, equating to $7 to $21 billion USD annually in today's prices.[100] DOE/FE has recognized that the 2014 EIA Study and 2015 LNG Export Study are "fundamentally sound" and "provide substantial support" for authorizing LNG exports.[101] Indeed, the DOE/FE has noted that the 2015 LNG Export Study demonstrates that "the United States will experience net economic benefits from the issuance of authorizations to export domestically produced LNG."[102]

Most recently, NERA published another study ("2018 NERA Study") examining the probability and macroeconomic impact of various lower-48 sourced LNG export scenarios.[103] Like the prior studies the DOE/FE has commissioned, the 2018 NERA Study examines the impacts of varying levels of LNG exports on domestic energy markets. However, the 2018 NERA Study also assesses the likelihood of different levels of "unconstrained" LNG exports (defined as market determined levels of exports) and analyzes the outcomes of different LNG export levels on the U.S. natural gas markets and the U.S. economy as a whole, over the 2020 to 2050 time period. Specifically, the 2018 NERA Study develops 54 scenarios by identifying various assumptions for domestic and international supply and demand conditions to capture a wide range

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99 *Id.* at 16.
100 *Id.* at 8, 17.
101 *See Cameron LNG*, DOE/FE Order No. 3846 at 109-10.
102 *Id.* at 110.
103 NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports*, at 14 (June 7, 2018), https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.

of uncertainty in the natural gas markets.[104] "Throughout the entire range of scenarios, [the 2018 NERA Study found] that overall U.S. economic output is higher whenever global markets call for higher levels of LNG exports, assuming that exports are allowed to be determined by market demand."[105] Further, the 2018 NERA Study found that "[f]or each of the supply scenarios, higher levels of LNG exports in response to international demand consistently lead to higher levels of GDP. . . . Consumer welfare, expressed in dollar terms, is also higher when there is greater domestic oil and gas supply" and higher levels of LNG exports.[106]

As demonstrated above, the overall balance between the domestic supply and demand forecasts for the U.S. natural gas market demonstrates that the volumes proposed to be exported in this Application are not needed by the domestic market. This lack of domestic need, combined with the minimal impacts to U.S. prices that exports to Non-FTA countries are projected to have, likewise demonstrates that the export of such volumes is not inconsistent with the public interest.

C. Other Public Interest Considerations

Approval of the additional volumes requested in this Application will further the benefits of the ECA Large-Scale Project. As noted in the Large-Scale Application, the Project will stimulate local, regional, and national economies through direct, indirect, and induced job creation, increased economic activity, and tax revenues.[107] The construction and operation of the Project will result in significant employment benefits across several industries in both the United States and Mexico on a local and nationwide basis and will make a significant contribution to the national

[104] The 2018 NERA Study analyzed "the robustness of unlimited market level determined LNG exports by examining different scenarios that reflect a wide range of natural gas market conditions, where robustness is measured using key macroeconomic metrics such as GDP, aggregate household income, and consumer welfare." *Id*. at 13.
[105] *Id.* at 14.
[106] *Id*. at 18, 20.
[107] *See* Large-Scale Application at 42-43.

economy.[108] Further, exports from the ECA Large-Scale Project will increase tax revenues on both the state and federal level.[109]

Increased LNG imports will favorably influence the balance of trade that the United States has with its international trading partners and will increasingly diversify the global supply of energy resources, which will support the geopolitical security interests of the United States by providing energy supply alternatives to its allies.[110] The export of domestically produced LNG will promote liberalization of the global gas market by fostering increased liquidity and trade at prices established by market forces.[111] By introducing additional market-based price structures, the Project will help to reduce premiums charged to economies which do not currently have sufficient energy supply alternatives and reduce gas price volatility around the world.

LNG exports can have significant environmental benefits as natural gas is cleaner burning than other fossil fuels. For example, the DOE's Life Cycle Analysis Greenhouse Gas ("GHG") Report ("2014 GHG Report") noted that under most scenarios analyzed in the report, "generation of power from imported natural gas [into both Europe and Asia] has lower life cycle GHG emissions than power generation from regional coal."[112] In 2018, the Department of Energy commissioned an update to its 2014 GHG Report, entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update ("2019 GHG Report Update").[113] As with the 2014 GHG Report, the 2019 GHG Report Update compared life cycle

[108] *Id.*
[109] *Id.*
[110] *Id.* at 44-45.

[111] *Id.*
[112] U.S. Department of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* at 9 (May 29, 2014), https://energy.gov/sites/prod/files/2014/05/f16/Life%20Cycle%20GHG%20Perspective%20Report.pdf.
[113] U.S. Department of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update—Response to Comments*, 85 Fed. Reg. 72 (Jan. 2, 2020).

GHG emissions of exports of domestically produced LNG to Europe and Asia, compared with alternative fuel sources (such as regional coal and other imported natural gas) for electric power generation in the destination countries. The 2019 GHG Report Update demonstrated that the conclusions of the 2014 GHG Report remained the same—*i.e.*, that the use of U.S. LNG exports for power production in European and Asian markets will not increase global GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.[114] Accordingly, an increased supply of natural gas made possible through LNG exports can help countries move away from less environmentally friendly fuels by displacing the current consumption of coal in power generation and deterring the construction of additional coal-fired generation capacity.

VII. REVIEW OF ENVIRONMENTAL EFFECTS

A. Review of the Application is Subject to a Categorical Exclusion under NEPA

ECA respectfully requests that the DOE/FE determine that under the circumstances, a categorical exclusion from the requirement to produce an environmental assessment and/or an environmental impact statement ("EIS") is both applicable and appropriate for DOE/FE's review of the incremental volumes requested in this application in association with the ECA Large-Scale Project. Application of a categorical exclusion in this case is appropriate because the ECA Large-Scale Project will be located in Mexico, beyond the scope of the DOE/FE's jurisdiction. Further, as relevant to the DOE/FE's analysis under established practice, the existing physical pipeline capacity in the U.S. exceeds the volumes ECA is requesting to export to Mexico, and the nature of any expansions of U.S. pipelines that might later be made to support exports of natural gas via the ECA Large-Scale Project are currently uncertain. Accordingly, under the relevant DOE

[114] *See id*. at 78, 85.

regulations and DOE/FE precedent, ECA's construction of the ECA Large-Scale Project should not be considered relevant for the purposes of the Categorical Exclusion under NEPA. In addition, the requested exports associated with the ECA Large-Scale Project are not expected individually or cumulatively to have significant environmental impacts in the United States.[115] The DOE/FE has no obligation to perform a NEPA analysis of potential future natural gas pipeline expansions in connection with exercising its jurisdiction to approve exports of natural gas under section 3 of the NGA. Finally, ECA submits that the imposition of a condition similar to the conditions that were imposed in the *Bear Head*/*Pieridae* proceedings would be inconsistent with the public interest because it would place an obligation upon ECA that would be unreasonably vague and unworkable.

The regulations adopted by the Council on Environmental Quality ("CEQ") state that the application of categorical exclusions to certain categories of actions is appropriate where the implementing agency has determined such actions are not expected to have individually or cumulatively significant environmental impacts.[116] The DOE regulations implementing NEPA recognize such an exemption applicable in this situation. Specifically, Categorical Exclusion B5.7 generally exempts "[a]pprovals . . . of new authorizations . . . to . . . 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."[117] ECA's Application would qualify for this exclusion since the construction of the Project facilities will occur entirely in Mexico. Furthermore, the physical capacity of the existing cross-border pipeline

[115] Categorical exclusions apply in the case of actions the implementing agency has determined are not expected to have individually or cumulatively significant environmental impacts. *See* 40 C.F.R. § 1508.4.
[116] *See id.*
[117] 10 C.F.R. Part 1021, Subpart D, app. B § B5.7

facilities along the U.S./Mexican border exceeds the proposed export volumes and any potential future pipeline facilities that may be used to serve the Project are uncertain at this time.

As the courts have recognized, NEPA is generally construed so as not to require the consideration of extraterritorial impacts (*i.e.*, impacts beyond the United States), except under a few defined circumstances not present here. Absent evidence of Congressional intent to the contrary, a federal statute should be construed as applying only within the territorial jurisdiction of the United States.[118] The primary purpose of this presumption is "to protect against unintended clashes between our laws and those of other nations which could result in international discord."[119] Reviewing courts have found that there is no explicit Congressional discussion directing the extraterritorial application of NEPA.[120]

The environmental effects of construction and operation of the ECA Large-Scale Project facilities are already being reviewed by Mexican regulators. The DOE/FE has served as a cooperating agency in FERC's NEPA review process associated with the construction of LNG export projects located in the United States. In those proceedings, the DOE/FE has relied upon the NEPA analysis prepared by FERC and has adopted FERC's environmental analysis for purposes of meeting DOE/FE's NEPA obligations. However, in the case of the ECA Large-Scale Project, the construction and operation of the LNG facilities will occur in Mexico. As such, the construction and operation of the Project and associated Mexican pipeline facilities have been or will be reviewed and approved by regulatory authorities within the nation of Mexico. As part of this process, the Mexican agencies with jurisdiction over the Project and associated pipelines

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[118] *See Equal Emp. Opportunity Comm'n v. Arabian Am. Oil Co.,* 499 U.S. 244 (1991).

[119] *Id.* at 248; *see also NEPA Coal. v. Aspin*, 837 F. Supp. 466, 467-68 (D.D.C. 1993) (holding that NEPA does not apply to U.S. bases in Japan).

[120] *Greenpeace USA v. Stone,* 748 F. Supp. 749, 758-59 (D. Haw. 1990); *see also Nat. Res. Def. Council v. Nuclear Reg. Comm'n,* 647 F.2d 1345, 1367 (D.C. Cir. 1981).

conduct their own environmental review of the ECA Large-Scale Project, assuring that the environmental impacts connected to the Project in Mexico have been considered by the appropriate Mexican authorities.

A finding that Categorical Exclusion B5.7 applies to exempt the Application from review under NEPA is consistent with the conclusion that the DOE/FE reached in other instances where it has reviewed proposals to export U.S. gas to a foreign country for re-export to Non-FTA countries. In its decisions in *Bear Head* and *Pieridae*, DOE found that Categorical Exclusion B5.7 was applicable because the only construction proposed would occur outside of the United States, which was "beyond the scope of [DOE's] environmental review under NEPA."[121] In the *Pieridae* decision, the DOE/FE confirmed that an environmental analysis of construction outside of the United States "is outside the scope of [DOE's] environmental review under NEPA . . . which necessarily focuses on potential environmental impacts within the United States."[122]

In addition to determining whether a proposed action falls within the classes of actions qualifying for a categorical exclusion, DOE/FE must also consider whether the proposal has been segmented to meet the definition of a categorical exclusion.[123] Segmentation occurs when "a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. The scope of a proposal must include the consideration of connected and cumulative actions, that is, the proposal is not connected to other actions with potentially significant impacts

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[121] Pieridae Order at 202; Bear Head Order at 162.

[122] Pieridae Order at 190.

[123] 10 C.F.R. § 1021.410(b)(3). DOE/FE is also required to consider whether there are any extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. *Id.* § 1021.410(b)(2). Extraordinary circumstances are defined as "unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources." *Id.* As noted above, the ECA Large-Scale Project involves no construction of facilities in the United States and will therefore have no environmental effects requiring NEPA review. Accordingly, there can be no extraordinary circumstances affecting the significance of environmental effects.

(40 CFR 1508.25(a)(1)) [and] is not related to other actions with individually insignificant but cumulatively insignificant impacts (40 CFR 1508.27(b)(7)) . . . ."[124]

Connected actions, in turn, are actions that are "closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

> (i) Automatically trigger other actions which may require environmental impact statements.
>
> (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
>
> (iii) Are interdependent of a larger action and depend on the larger action for their justification."[125]

With respect to actions with "individually insignificant but cumulatively significant impacts," DOE regulations explain that "[s]ignificance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts."[126]

Under the relevant DOE regulations and DOE/FE precedent, there are no connected actions that have been improperly segmented from the ECA Large-Scale Project for the purposes of NEPA—the Project will not automatically trigger other actions requiring NEPA review, does not depend on actions occurring in the United States in order to proceed, and is not dependent on a larger action in the United States for its justification. Nor does the Project involve any actions with individually insignificant but cumulatively significant impacts. As discussed in Part V.B above, and as reflected in Appendix E to the Large-Scale Application, the physical capacity of the existing cross-border pipeline facilities is well in excess of the full volumes requested in this Application.

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[124] *Id.* § 1021.410(b)(3).
[125] 40 C.F.R. § 1508.25(a)(1).
[126] *Id.* § 1508.27(b)(7).

Finally, the DOE/FE has no obligation to perform a NEPA analysis of potential future FERC-jurisdictional gas pipeline expansions in connection with exercising its jurisdiction to approve exports of natural gas under section 3 of the NGA. The U.S. Court of Appeals for the D.C. Circuit has held[127] that the FERC need not consider the alleged indirect effects of LNG exports in certificating LNG export facilities because those alleged effects are caused by the DOE/FE's decision to authorize the underlying export:

> The [FERC's] NEPA analysis did not have to address the indirect effects of the anticipated *export* of natural gas . . . because [DOE/FE], not the [FERC], has sole authority to license the export of any natural gas going through [the applicant's U.S. LNG terminal] facilities. In the specific circumstances where, as here, any agency "has no ability to prevent a certain effect due to" that agency's "limited statutory authority over the relevant action[]," then that action "cannot be considered the legally relevant 'cause' of the effect" for NEPA purposes.[128]

In this case, the FERC, not the DOE/FE, has exclusive jurisdiction over the siting and approval of natural gas pipeline facilities under the NGA. Under the rationale of *Public Citizen, Sierra Club (Freeport)*, and *EarthReports,* the DOE/FE should not be required to include in a NEPA analysis the consequences of future actions over which it has no jurisdiction. The DOE/FE cannot be said to be the proximate cause of such alleged effects. While *Bear Head* and *Pieridae* appear to conflict with this position to some degree, both decisions **predate** the relevant D.C. Circuit opinions that were issued regarding the scope of NEPA review.

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[127] *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016) [hereinafter *Sierra Club (Freeport)*] (FERC did not have to consider the indirect effects of the anticipated export of natural gas because DOE/FE has sole authority to authorize such exports); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (same); *EarthReports, Inc. v. FERC,* 828 F.3d 949, 952 (D.C. Cir. 2016) (same).

[128] *Sierra Club (Freeport)*, 827 F.3d at 47 (quoting *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004)) (emphasis in original).

B. DOE/FE Should Not Impose Point-of-Export or Future Construction Restrictions

1. Volume and Facility Point-of-Export Restrictions Are Unnecessary

Given the existence of abundant physical cross-border pipeline capacity to export U.S. gas to the ECA Large-Scale Project, ECA respectfully requests that the DOE/FE issue the authorizations sought in this Application without imposing any restriction upon the points of export and/or facilities along the U.S./Mexican border that ECA may utilize to export gas destined for the ECA Large-Scale Project from the United States. If, in the future, the ECA Large-Scale Project or any other projects proposed at the ECA facility require an aggregate amount of exported U.S. gas in excess of the volumes for which ECA is requesting authorization in this Application, the appropriate applications will be filed with the DOE/FE for any additional or supplemental authorizations that may be necessary with respect to those incremental volumes. However, a requirement to obtain additional DOE/FE approval before exporting natural gas in amounts authorized by the order requested by this Application from specific existing or future cross-border facilities is unnecessary and would be inconsistent with the DOE/FE's treatment of other natural gas export applications.

Although in two previous cases the DOE/FE has imposed conditions limiting the scope of an applicant's Non-FTA export authorization in the "unusual circumstances" discussed below, this Application does not involve such unusual circumstances and is materially distinguishable from the situation considered in those proceedings. Accordingly, the DOE/FE should not impose the same conditions on any order approving ECA's proposed exports. Rather, ECA respectfully requests that DOE/FE issue an order without such a restriction tied to future upstream and/or cross-border developments, consistent with the way DOE/FE has treated exports from U.S. LNG facilities.

In *Bear Head* and *Pieridae*, the Non-FTA export authorizations issued in connection with two terminals to be located in Nova Scotia, Canada, were limited to volumes equal to the existing capacity of the Maritimes & Northeast ("M&N") US Pipeline at the border of the United States and Canada. In those proceedings, it was clear that the M&N US Pipeline, which would transport the gas to the U.S. border for export, was physically incapable of transporting the full volume requested by either applicant. The DOE/FE approved both applications based upon Categorical Exclusion B5.7 but limited the scope of the authorizations only to exports using the existing physical capacity of the M&N US Pipeline facilities that had been authorized by the FERC at the time. Specifically, the DOE/FE stated that its authorization and the categorical exclusion upon which it relied did "not apply to any future construction or operational changes to expand the capacity of the M&N US Pipeline or other facilities located within the United States **caused either in whole or in part by [the applicant's] export operations.**"[129] The DOE/FE emphasized that if either applicant in *Bear Head* or *Pieridae* proposed to export volumes using "new" or "upgraded" pipeline capacity, *i.e.*, "new capacity not presently in existence on [M&N US Pipeline], or if it proposes to use capacity on newly constructed or upgraded cross-border pipelines," it would be required to apply to the DOE/FE for new export authorization "[t]o ensure that DOE/FE has an opportunity to review the public interest and environmental impacts of any such capacity additions or the use of other existing pipelines."[130] The DOE/FE stated that pipeline capacity would be considered "new" or "upgraded" for purposes of the limitation it placed on both authorizations "if it is the result of physical changes that increase the northbound capacity of such a pipeline and any such changes require an amendment to the pipeline's certificate issued by FERC

[129] Pieridae Order at 10 (emphasis added); *see also* Bear Head Order at 10 (emphasis added).
[130] Bear Head Order at 5; *see* Pieridae Order at 5.

under NGA section 7."[131] The DOE/FE noted that it "may participate in the FERC-led NEPA review, as it typically does in proceedings involving LNG export facilities pursuant to NGA section 15, 15 U.S.C. §717n" for any such new Non-FTA export application filed in connection with a Section 7 certificate.[132]

The ECA Large-Scale Project is not similarly situated to the *Bear Head* and *Pieridae* projects. First, both Canadian projects were geographically remote on the Nova Scotia peninsula and served by only one interstate pipeline: M&N US Pipeline. In those cases, the DOE/FE found that transportation on the M&N US Pipeline was "**essential**" to the project but noted in each case that the record had not demonstrated that the M&N US Pipeline was capable of physically transporting the full volume of gas requested to be exported. While there was some discrepancy between the *Bear Head* and *Pieridae* applications as to the actual cross-border capacity of the M&N US Pipeline,[133] neither applicant claimed that the existing cross-border capacity was sufficient to transport its full requested volume. In addition, the DOE/FE noted in both proceedings that the applicants had not demonstrated that the capacity on the M&N US Pipeline mainline facilities from the receipt point in Dracut, Massachusetts, to the U.S./Canadian border was sufficient to transport the full volume of either project. In contrast to the M&N US Pipeline discussed in *Bear Head* and *Pieridae*, in this case, the physical capacity of the cross-border

[131] Pieridae Order at 5.

[132] *Id*. *See* NGA § 15, 15 U.S.C. § 717n(b) (designating the FERC as the "lead agency" with respect to NEPA reviews associated with projects constructed under NGA Sections 3 and 7 and directing "[e]ach Federal and State agency considering an aspect of an application for Federal authorization [to] cooperate with the [FERC] and comply with the deadlines established by the [FERC]").

[133] The *Bear Head* application claimed it was 833,317 Dth/d and the *Pieridae* application claimed it was 440,000 Dth/d. *Compare* Bear Head Order at 4 (citing *Bear Head LNG Corporation*, Application for Long-Term Authorizations to Export Natural Gas to Canada and to Export Liquefied Natural Gas from Canada to Free Trade Agreement and Non-Free Trade Agreement Nations, FE Docket No. 15-33-LNG at 5 n.18 (Feb. 25, 2015)) *with* Pieridae Order at 4 (citing *Pieridae Energy (USA) Ltd.*, Application for Long-Term, Multi-Contract Authorization to Export Natural Gas into Canada for Consumption and Through Canada to Free Trade and Non-Free Trade Agreement Nations after Conversion into LNG, FE Docket No. 14-179-LNG at 17 n.22 (Oct. 24, 2014)).

facilities that could be accessed by the Project, as established in Appendix B1 and Appendix E to the Large-Scale Application, substantially exceeds the export volumes requested in this Application. There is approximately 15 Bcf/d of cross-border capacity from existing facilities, making it possible for the ECA Large-Scale Project to access gas from several cross-border locations for the export of its requested 0.44 Bcf/d volume of natural gas through pipeline construction conducted in Mexico that may occur in the future.

ECA asserts and the DOE/FE has conceded that in prior Non-FTA export proceedings, the DOE/FE "has not afforded weight in its public interest review to the capacity of the interstate pipelines delivering natural gas for export."[134] The DOE/FE recognized an exception to this practice in the cases of *Bear Head* and *Pieridae*, reasoning that the applicants should be treated differently from other Non-FTA LNG export applicants because they "identifie[d] only a single pipeline capable of transporting natural gas to an LNG terminal for export and **that pipeline may not presently have the capacity to meet the anticipated demand for export volumes.**"[135] The DOE/FE specifically noted that the *Bear Head* and *Pieridae* proceedings involved the "unusual circumstance of an applicant proposing to export volumes that **exceed** the capacity of the single pipeline essential to completing the transportation central to the re-export proposal."[136]

This Application does not involve the "unusual circumstance" presented to the DOE/FE in *Bear Head* and *Pieridae* because the existing physical pipeline capacity exceeds the full requested volumes for export. Thus, the DOE/FE should treat the authorizations requested by ECA in this Application similarly to the way in which it has treated other Non-FTA export applications. Unlike

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[134] Bear Head Order at 157. ECA considers "upstream facilities" to include any pipeline facilities that are upstream of the pipeline that is directly interconnected with and necessary to transport gas to the facilities of an LNG terminal. In this case, the pipeline directly interconnected to the ECA terminal is a 42-inch, 2.6 Bcf/d facility known as the "LNG Spur."

[135] *Id*. (emphasis added).

[136] *Id.* at 4 (emphasis added); *see also* Pieridae Order at 195.

the applicants in *Bear Head* and *Pieridae*, the physical capacity of existing cross-border facilities identified this Application exceeds the volumes for which ECA is requesting Non-FTA export authorization.

Accordingly, because the ECA Large-Scale Project does not involve exports through a pipeline that is physically incapable of transporting its requested volumes, as was the case in *Bear Head* and *Pieridae,* the ECA Large-Scale Project is not similarly situated to the applicants in those proceedings and the DOE/FE should not impose the same manner of restriction on the location and specific facilities that can be used to export the natural gas for the ECA Large-Scale Project.

2. Future Capacity Restrictions Are Unnecessary

With regard to future pipeline construction or expansion, in both *Bear Head* and *Pieridae*, the DOE/FE stated that a NEPA and an NGA public interest review would be required when new capacity "result[s] proximately" from the issuance of the export authorization.[137] This would "ensure that no U.S.-based pipeline facilities **essential** to [the applicant's] export operations are put into service for those purposes without an opportunity for the necessary environmental review, including opportunity for public participation."[138] The DOE/FE, however, did not define what it meant by a future project being "proximate[ly]" caused or "essential" to an export project. ECA asserts that the DOE/FE should interpret this precedent narrowly to encompass only those situations where proposed exports cannot be physically accomplished without some new construction—*i.e.*, where the proposed "export volumes . . . **exceed** the capacity of the single pipeline essential to completing the transportation central to the re-export proposal," as was the case with *Bear Head* and *Pieridae.*[139] As discussed below, imposing the same future capacity

[137] Pieridae Order at 197.
[138] *Id*. at 191-92 (emphasis added).
[139] Bear Head Order at 4 (emphasis added); *see also* Pieridae Order at 195-96.

conditions that it applied to *Bear Head* and *Pieridae* under different circumstances would be unnecessary, unworkable, and inconsistent with the way in which DOE/FE treats other applicants.[140]

Like all pipeline facilities, upstream facilities in the U.S. natural gas pipeline grid that will transport gas destined for the ECA Large-Scale Project may be expanded and new facilities may be constructed in the future, and some of those new or expanded facilities may be used to transport natural gas that is ultimately destined for export at the ECA Large-Scale Project. However, for the purposes of review under NEPA, this does not mean that any future pipeline construction is either "essential" or caused "proximately" by a particular export authorization that the DOE/FE may have issued. Neither is the DOE/FE required by NEPA or the NGA to condition its export authorization orders to require submission of a new application to ensure the DOE/FE can participate in the FERC proceeding to consider the environmental impacts of such facilities. NEPA requires a "reasonably close causal relationship between the environmental effect and the alleged cause" "akin to proximate cause in tort law."[141] Given the inherent variability of gas supply arrangements in a well-functioning, liquid, and ever-shifting upstream natural gas market and the DOE/FE's lack of authority to permit or deny any particular pipeline facilities, the export authorization requested in this Application cannot be said to be the proximate cause of potential future expansion of pipeline facilities for the purposes of NEPA.

The FERC, not the DOE/FE, is responsible for authorizing the siting and construction of interstate pipeline facilities under Section 7 of the NGA and cross-border facilities under Section

[140] Further, as discussed in Part VII.A above, the continued vitality of the reasoning underpinning the DOE's conclusions in the *Bear Head* and *Pieridae* proceedings regarding the scope of the agency's obligations under NEPA with respect to the construction of upstream facilities solely within the jurisdiction of the FERC is doubtful in light of the D.C. Circuit's recent conclusions in *Sierra Club (Freeport)* and *EarthReports*.

[141] *Public Citizen*, 541 U.S. at 754, 767.

3 of the NGA and through the grant of Presidential Permits. It is the primary responsibility of the FERC to ensure that the impacts of such facilities are considered under NEPA and the NGA, which it will do if and when such facilities are proposed. There is no requirement under either statute for the DOE/FE to continue to be involved in every such future proceeding over which the DOE/FE neither has statutory authority nor control, merely because the construction of such upstream facilities may have some connection to a previously-granted export authorization. The DOE/FE cannot be said to be the proximate cause of such alleged effects.[142] Further, even though it is possible or even likely that pipeline facilities in the United States may be constructed in the future and those facilities may be used to transport gas to be exported in connection with the ECA Large-Scale Project, the DOE/FE would not engage in improper segmentation by approving the export of the requested volumes in this Application.[143]

Imposing a condition limiting the export of natural gas destined for the ECA Large-Scale Project to the use of existing facilities similar to the condition that the DOE/FE imposed on the exports in the *Bear Head* and *Pieridae* proceedings would be both unnecessary and unworkable. Such a broad condition would require ECA to project and submit a new application for every possible upstream capacity expansion that could conceivably transport gas associated with its proposed project.[144] This interpretation would also be burdensome on the DOE/FE, requiring it to

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[142] *See Sierra Club v. FERC (Freeport)*, 827 F.3d at 47 ("The [FERC's] NEPA analysis did not have to address the indirect effects of the anticipated export of natural gas . . . because [DOE/FE], not the [FERC], has sole authority to license the export of any natural gas going through [the applicant's U.S. LNG terminal] facilities. In the specific circumstances where, as here, any agency 'has no ability to prevent a certain effect due to' that agency's 'limited statutory authority over the relevant action[],' then that action 'cannot be considered the legally relevant "cause" of the effect' for NEPA purposes.") (quoting *Public Citizen*, 541 U.S. at 771).

[143] *See O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 237-38 (5th Cir. 2007) (rejecting the argument "that the current project is wrongly piecemealed [(*i.e.*, improperly segmented)] because [subsequent phases of construction not presently proposed before the agency] are reasonably foreseeable").

[144] Like all LNG export projects, it is not necessarily foreseeable if, when, and where specific upstream facilities in the robust North American natural gas pipeline grid will be constructed or expanded and whether particular volumes of gas destined for export will be transported on those facilities. This is particularly true given the potential for the sources of supply for a project to shift over the course of the life of the project.

institute a new proceeding associated with exports using each new upstream facility and participate in every FERC proceeding involving those facilities. Where, as here, the physical capacity of existing facilities exceeds the requested volumes for export, that should be the end of the inquiry, and the DOE/FE should issue an order approving the Non-FTA exports associated with the ECA Large-Scale Project under Categorical Exclusion B5.7 without restricting the use of facilities to export gas under that authorization as it did in *Bear Head* and *Pieridae*.

3. The ECA Large-Scale Project Should Not Be Treated Differently From Other LNG Export Projects

In other proceedings involving U.S. LNG export terminals, the DOE/FE has not conditioned the export of volumes to the use of capacity on specific upstream or interconnecting pipeline facilities.[145] Instead, authorized volumes have been tied to the liquefaction capacity of the LNG terminal, without regard to the upstream facilities necessary to transport the natural gas from the production area to the terminal.[146] Neither has DOE/FE required authorization holders to obtain additional export authority when new pipeline facilities are constructed that directly interconnect with the LNG export terminal. Several pipeline facilities have been approved and/or constructed to interconnect directly with LNG terminals with existing Non-FTA export authorizations, and the DOE/FE has not required any of the relevant authorization holders to obtain

[145] *See* Bear Head Order at 157.

[146] *See, e.g., Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 (approving LNG export volumes incremental to previously-authorized volumes in order to align authorized volumes to the maximum liquefaction production capacity of the liquefaction facilities); *Cameron LNG, LLC*, DOE/FE Order No. 3797, FE Docket No. 15-67-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Cameron Terminal Located in Cameron and Calcasieu Parishes, Louisiana to Non-Free Trade Agreement Nations (Mar. 18, 2016) (authorizing LNG export volumes incremental to previously-authorized volumes to match the peak capacity of the relevant liquefaction trains under optimal conditions); *Lake Charles LNG Export Company, LLC*, DOE/FE Order No. 4010, FE Docket No. 16-109-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Lake Charles, Louisiana, to Free Trade Agreement and Non-Free Trade Agreement Nations (June 29, 2017) (authorizing additional export volumes to align volumes authorized for export with the project's liquefaction production capacity).

additional authorization from the DOE/FE prior to utilizing such new pipeline capacity.[147] Applying a different requirement to a similarly situated applicant, such as ECA, would be arbitrary and capricious.[148] Further, treating the ECA Large-Scale Project differently from the way it has treated other U.S. applications would be inconsistent with DOE/FE's stated commitment to Congress to treat Mexican and Canadian projects fairly.[149] Accordingly, ECA respectfully requests that any order issued by the DOE/FE not be conditioned on any restriction upon the points of export and/or facilities that ECA may utilize now or in the future to export gas destined for the ECA Large-Scale Project from the United States.

C. A Condition Similar to *Bear Head*/*Pieridae* Would be Vague and Unworkable

It would be inconsistent with the public interest for the DOE/FE to impose a condition, similar to the condition it imposed in the *Bear Head* and *Pieridae* Non-FTA authorization orders, that would require ECA to file a new application if facilities that may be used to export natural gas are constructed in the future. The scope of ECA's obligations to comply with such a condition

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[147] *See, e.g.*, *Transcon. Gas Pipe Line Co.*, 153 FERC ¶ 61,077 (2015) (approving Transco's Gulf Trace Expansion Project, which would provide transportation of up to 1,200,000 Dth/d of incremental firm transportation service from Transco's existing facilities at St. Helena Parish, Louisiana, to the Sabine Pass LNG terminal in Cameron Parish, as well as Sabine Pass's proposal to construct piping and valves at its Section 3 liquefaction terminal to receive the gas from Transco's project); *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137 (2013) (original feed gas pipeline for Sabine Pass); *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214 (2015) (approving Columbia Gulf Transmission's Cameron Access Project, which would provide transportation of up to 800,000 Dth/d of incremental firm transportation service from new and looped facilities in Jefferson Davis, Cameron, and Calcasieu Parishes, Louisiana); *Tenn. Gas Pipeline Co.*, 161 FERC ¶ 61,265 (2017) (approving Tennessee's Lone Star Project to provide up to 300,000 Dth/d of firm transportation service to a new interconnection with the Corpus Christi LNG terminal on Tennessee's 100 Line in San Patricio County, Texas).

[148] *Indep. Petroleum Ass'n of Am. v. Babbitt*, 92 F.3d 1248, 1258 (D.C. Cir. 1996) ("An agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so."); *Westar Energy, Inc. v. Fed. Energy Reg. Comm'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) ("[A] fundamental norm of administrative procedure requires an agency to treat like cases alike."); *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 776 (D.C. Cir. 2005) (noting that an agency "must provide an adequate explanation to justify treating similarly situated parties differently").

[149] *See, e.g.*, *Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency: Hearing Before the Subcomm. on Energy and Power of the H. Comm. on Energy & Commerce*, 114 Cong. 36 (Apr. 30, 2015) (statement of Assistant Secretary for Fossil Energy Christopher Smith stating "[T]he commitment that we have made is that we are going to treat applicants in Canada, applicants in Mexico, and applicants in the United States in a way that is open, . . . transparent, . . . fair, [and] . . . consistent.").

would be unreasonably vague. Specifically, if such an order were to require ECA to submit a new or amended application for Non-FTA export authorization, it would be unclear how ECA must determine the type of pipeline construction to which such a condition would apply. In the *Bear Head* and *Pieridae* orders, because the physical capacity of the identified pipeline was less than the export volume requested for the geographically isolated LNG terminals on the Nova Scotia peninsula, it was a logical certainty that some construction was necessary just to move the full volumes to and across the U.S./Canadian border. It was clear from those orders that the condition requiring the submission of a new application would apply to any new capacity that would make up the difference between the export volumes requested and the physical capacity of the M&N US Pipeline, allowing the full volumes to be exported. The ECA Large-Scale Project does not involve these "unusual circumstances." Given that today the physical capacity on the existing cross-border facilities exceeds the volume requested, it is unclear the circumstances under which ECA would be obliged to file a new application.

Further, compliance with such a condition would be practically unworkable. If the order granting ECA authorization to export natural gas to Non-FTA countries limits ECA's exports to only those using "existing" facilities, it is unclear how ECA could ensure compliance with this requirement if those facilities are expanded for reasons unrelated to the ECA Large-Scale Project—*e.g.*, to serve other projects and/or load growth in Mexico. In light of the integrated nature of pipelines and the fungibility of gas streams on a natural gas pipeline, compliance with a directive requiring ECA to limit its exports only to those that can be accomplished using facilities and/or capacity that was "existing" at the time of the export authorization would be difficult, if not impossible in most cases. For example, in the case of an expansion to an existing pipeline facility, it would be impossible to determine which molecules of gas were transported on "existing"

capacity and which were transported using the expanded facilities.[150] Consequently, because such an obligation would be vague and unworkable, ECA submits that it would not be consistent with the public interest for DOE/FE to impose conditions on ECA's requested export authorization similar to those imposed in the *Bear Head* and *Pieridae* proceedings.

VIII. APPENDICES

The following attachments and appendices are included with this Application:

Verification

Appendix A: Opinion of Counsel

Appendix B: ECA Ownership Structure

IX. CONCLUSION

For the reasons set forth above, ECA respectfully requests that the DOE/FE issue an order amending the Large-Scale FTA Order and Large-Scale Non-FTA Order, authorizing ECA to export, on its own behalf and as agent for others: (1) an additional 181 Bcf/y of natural gas by pipeline to Mexico; and (2) the equivalent of an additional 161 Bcf/y as LNG from Baja California, Mexico to FTA and Non-FTA countries, as described herein. ECA requests that DOE/FE grant for such additional volumes an export term extending through December 31, 2050. ECA further requests that the commencement date for the combined volumes under the Large-Scale FTA Order and Large-Scale Non-FTA Order, as amended by this Application, commence on the earlier of the

[150] This unworkability is yet another reason why a narrow interpretation of the condition placed on the applicants in *Bear Head* and *Pieridae* (*i.e.*, an interpretation requiring a new application only where the requested volume exceeds existing physical capacity) makes more logical sense.

date of first export or seven years from the date DOE/FE issues an order granting the authorizations requested herein.

Respectfully submitted,

/s/ Jerrod L. Harrison_____

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Counsel for Energía Costa Azul, S. de R.L. de C.V.

Dated September 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at Washington, D.C. this 18th day of September, 2020.

/s/ Lamiya Rahman

Lamiya Rahman
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VERIFICATION

I, Tania Ortiz Mena, declare that I am the Director General for Energía Costa Azul, S. de R.L. de C.V. and am duly authorized to make this Verification; that I have read the foregoing instrument and that the facts therein stated are true and correct to the best of my knowledge, information and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Mexico City, Mexico on September 18, 2020.

DS

DocuSigned by:
Tania Ortiz Mena
675E2B1B967B46A...

Tania Ortiz Mena
Director General
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Paso de la Reforma # 342, Piso 24
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APPENDIX A

Opinion of Counsel

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OPINION OF COUNSEL

September 18, 2020

Ms. Amy Sweeney
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RE: *Energía Costa Azul, S. de R.L. de C.V.*
Application to Amend Long-Term, Multi-Contract Authorizations to Export Natural Gas to Mexico and to Export Liquefied Natural Gas from Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations

Dear Ms. Sweeney:

This opinion of counsel is submitted pursuant to Section 590.202(c) of the regulations of the United States Department of Energy, 10 C.F.R. $ 590.202(c) (2020). I am counsel to Energía Costa Azul, S. de R.L. de C.V. ("ECA").

I have reviewed the organizational and internal governance documents of ECA and it is my opinion that the proposed export of natural gas as described in the application filed by ECA, to which this Opinion of Counsel is attached as Appendix B, is within the company powers of ECA.

Respectfully submitted,

DocuSigned by:
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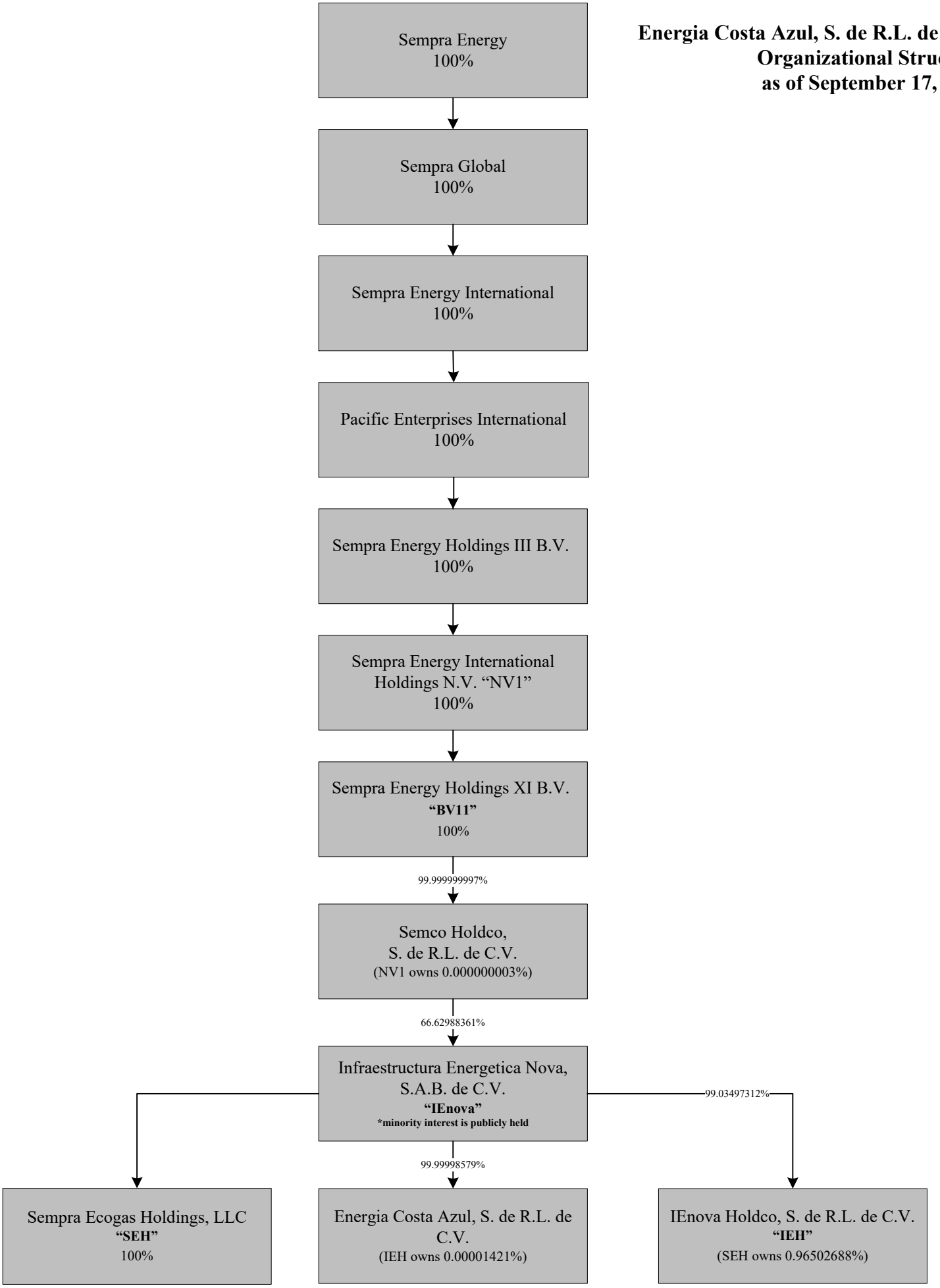
On Behalf of Energía Costa Azul, S. de R.L. de C.V.

APPENDIX B

ECA Ownership Structure

Energia Costa Azul, S. de R.L. de C.V.
Organizational Structure
as of September 17, 2020



* Ownership is 100% unless otherwise specified.