

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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FREEPORT LNG EXPANSION, L.P.,)	FE DOCKET NO. 10-160-LNG
FLNG LIQUEFACTION, LLC,)	FE DOCKET NO. 10-161-LNG
FLNG LIQUEFACTION 2, LLC, AND)	FE DOCKET NO. 11-161-LNG
FLNG LIQUEFACTION 3, LLC)	FE DOCKET NO. 12-06-LNG
_____)	FE DOCKET NO. 16-108-LNG

ORDER EXTENDING EXPORT TERM FOR AUTHORIZATIONS
TO FREE TRADE AND NON-FREE TRADE AGREEMENT
NATIONS THROUGH DECEMBER 31, 2050

DOE/FE ORDER NO. 2913-C
DOE/FE ORDER NO. 3066-B
DOE/FE ORDER NO. 3282-D
DOE/FE ORDER NO. 3357-D
DOE/FE ORDER NO. 3957-A

OCTOBER 21, 2020

I. DESCRIPTION OF REQUEST

On September 9, 2020, four entities—Freeport LNG Expansion, L.P.; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC (collectively, FLEX)—filed an application (Application)¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).² As explained below, FLEX asks DOE/FE to extend the export term set forth in its five long-term authorizations, pursuant to DOE/FE’s policy statement entitled, “Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050” (Policy Statement).³

FLEX is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the Liquefaction Project (Trains 1-3) at the Freeport LNG Terminal, located on Quintana Island near Freeport, Texas, under the following orders:

- (i) DOE/FE Order Nos. 2913⁴ and 3066,⁵ authorizing exports to any country with which the United States currently has, or in the future will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), under NGA section 3(c);⁶ and

¹ Freeport LNG Expansion, L.P., *et al.*, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, FE Docket Nos. 10-160-LNG, *et al.* (Sept. 9, 2020) [hereinafter App.].

² 15 U.S.C. § 717b. Authority to regulate the imports and exports of natural gas, including liquefied natural gas, under NGA section 3 has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04G, issued on June 4, 2019.

³ U.S. Dep’t of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 Fed. Reg. 52,237 (Aug. 25, 2020) [hereinafter Policy Statement].

⁴ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 2913, FE Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011), *amended by* DOE/FE Order No. 2913-A (Feb. 7, 2014) (amending authorization to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as applicants and authorization holders), *further amended by* DOE/FE Order No. 2913-B (June 7, 2017) (extending commencement date for export term).

⁵ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3066, FE Docket No. 12-06-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal to Free Trade Agreement Nations (Feb. 10, 2012), *amended by* DOE/FE Order No. 3066-A (Feb. 7, 2014) (amending authorization to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as applicants and authorization holders).

⁶ 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan,

- (ii) DOE/FE Order Nos. 3282-C,⁷ 3357-B,⁸ and 3957,⁹ authorizing exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), under NGA section 3(a).¹⁰

These orders authorize exports of LNG in a total combined volume equivalent to 1,022.0 billion cubic feet per year (Bcf/yr) of natural gas to FTA countries and 782.0 Bcf/yr of natural gas to non-FTA countries on a non-additive basis.¹¹ FLEX is authorized to export the FTA volumes for a 25-year term under DOE/FE Order Nos. 2913 and 3066, and the non-FTA volumes for a 20-year term under DOE/FE Order Nos. 3282-C, 3357-B, and 3957.¹² In the Application, FLEX asks DOE/FE to amend each order to extend the existing export term through December 31, 2050.¹³

In this Order, DOE/FE grants FLEX's Application and authorizes the requested term extension for all five orders. Specifically, DOE/FE grants the FTA portion of the Application under NGA section 3(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications "shall be deemed to be consistent with the public interest" and granted "without modification or delay."¹⁴ The FTA portion of the

Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

⁷ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282-C, FE Docket No. 10-161-LNG, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations (Nov. 14, 2014).

⁸ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357-B, FE Docket No. 11-161-LNG, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations (Nov. 14, 2014), *reh'g denied* DOE/FE Order No. 3357-C (Dec. 4, 2015).

⁹ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3957, FE Docket No. 16-108-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations (Dec. 19, 2016).

¹⁰ 15 U.S.C. § 717b(a).

¹¹ App. at 4; *see also* App. at Appendix C; *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3957 at 16, 46.

¹² Additional information is set forth in each order.

¹³ App. at 5. Although the Policy Statement does not apply to exports of natural gas to FTA countries under NGA section 3(c), 15 U.S.C. § 717b(c), DOE anticipated that authorization holders would seek to align their long-term FTA and non-FTA export terms through December 31, 2050, for administrative efficiencies. *See* Policy Statement, 85 Fed. Reg. at 52,238 n.3, 52,248.

¹⁴ 15 U.S.C. § 717b(c).

Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension for the FTA authorizations (Order Nos. 2913 and 3066) without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA portion of this authorization.

DOE/FE also grants the non-FTA portion of the Application under NGA section 3(a). As discussed below, DOE/FE received one anonymous comment in response to the Application, but it was non-responsive.¹⁵ No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.¹⁶ Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for the non-FTA authorizations (Order Nos. 3282-C, 3357-B, and 3957) are inconsistent with the public interest, as would be required to deny the non-FTA portion of the Application under NGA section 3(a).

In sum, DOE/FE is amending DOE/FE Order Nos. 2913, 3066, 3282-C, 3357-B, and 3957 to extend each existing export term through December 31, 2050 (inclusive of any make-up period), with an attendant increase in the total export volume over the life of each authorization owing to the additional period that exports may occur.¹⁷ These orders remain unchanged in all other respects.

¹⁵ Comment of Anonymous, FE Docket Nos. 10-160-LNG, *et al.* (Oct. 14, 2020).

¹⁶ 10 C.F.R. § 590.102(b).

¹⁷ *See* Policy Statement, 85 Fed. Reg. at 52,247. In many long-term FTA and non-FTA authorizations, DOE/FE has approved a three-year “make-up period” following the end of the original export term, during which the authorization holder may continue to export any “make-up volume” that it was unable to export during the export term. *See id.* at 52,239.

II. APPLICANTS' PUBLIC INTEREST ANALYSIS FOR REQUESTED NON-FTA TERM EXTENSIONS

FLEX states that the requested term extension is in the public interest for the reasons set forth in the Policy Statement—namely, because the United States will experience economic and energy security benefits associated with exporting LNG through December 31, 2050.¹⁸ In particular, FLEX states that the requested term extension will:

- Better align its authorized export term with the anticipated life of the Liquefaction Project;
- Provide commercial flexibility for FLEX to enter into contracts with customers who request contracts in excess of 20 years;
- Enhance FLEX's "competitive posture in relation to foreign LNG export terminals," which are currently able to offer such contract terms; and
- Offer potential geo-political benefits for the United States generally, as "an energy-dominant America increases U.S. global leadership and international influence."¹⁹

Additionally, FLEX states that it incorporates by reference the record in its non-FTA docket proceedings—which (according to FLEX) establish the public interest benefits of exports from the Freeport LNG Terminal.²⁰

III. DOE/FE PROCEEDING

On September 29, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).²¹ The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments

¹⁸ App. at 5-6.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 5-6.

²¹ U.S. Dep't of Energy, Freeport LNG Expansion, L.P., *et al.*; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 60,986 (Sept. 29, 2020).

addressing the requested term extension by October 14, 2020.²² DOE/FE received one anonymous comment, which was not responsive to the Application.²³

IV. DISCUSSION FOR REQUESTED NON-FTA TERM EXTENSIONS

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard of review for the non-FTA portion of the Application. Section 3(a) provides:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.²⁴

DOE, as affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.²⁵ Accordingly, DOE will conduct an informal adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.²⁶

NGA section 3(a) does not define “public interest” or identify criteria that must be considered in evaluating the public interest. In prior decisions, DOE has identified a range of

²² *Id.* at 60,987. DOE finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590 is applicable only to non-FTA applications under NGA section 3(a).

²³ *See supra* at 4.

²⁴ 15 U.S.C. § 717b(a).

²⁵ *See Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“We have construed [NGA section 3(a)] as containing a ‘general presumption favoring [export] authorization.’”) (quoting *W. Va. Pub. Serv. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

²⁶ *See id.* (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

factors that it evaluates when reviewing an application for export authorization. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.

Before reaching a final decision, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA).²⁷ DOE's environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or environmental assessment (EA) describing the potential environmental impacts associated with the application. In other cases, DOE may determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA, pursuant to DOE's regulations implementing NEPA.

B. Public Interest Review Under NGA Section 3(a)

In the Policy Statement, DOE/FE discontinued its practice of granting a standard 20-year export term for long-term authorizations to export domestically produced natural gas, including LNG, from the lower-48 states to non-FTA countries.²⁸ On the basis of the record evidence, DOE/FE adopted a term through December 31, 2050, as the standard export term for long-term non-FTA authorizations.²⁹ DOE/FE implemented this policy change after considering its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement,³⁰ and a wide range of information bearing on the public interest—including the 2018 LNG Export Study that analyzed exports of U.S. LNG through the year 2050, the U.S.

²⁷ 42 U.S.C. § 4321 *et seq.*

²⁸ Policy Statement, 85 Fed. Reg. at 52,247.

²⁹ *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

³⁰ *See* U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Proposed Policy Statement and Request for Comments, 85 Fed. Reg. 7,672 (Feb. 11, 2020).

Energy Information Administration's (EIA) most recent projections for U.S. natural gas, and relevant environmental issues.³¹ DOE/FE stated that, for applications to amend existing authorizations submitted pursuant to this Policy Statement, DOE/FE would provide notice and an opportunity for comment on the requested term extension. DOE/FE further stated that, following the notice and comment period, it would conduct a public interest analysis under NGA section 3(a) limited to the requested term extension.³²

In this uncontested proceeding, FLEX asks DOE/FE to amend the export term in its non-FTA authorizations—Order Nos. 3282-C, 3357-B, and 3957—through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase FLEX's total volume of exports over the life of the authorizations (by extending the duration of each authorization through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Liquefaction Project at the Freeport LNG Terminal previously approved by DOE and the Federal Energy Regulatory Commission (FERC).³³ Upon review, DOE/FE has determined that it has not been demonstrated that the requested term extension will be inconsistent with the public interest, as would be required to deny the non-FTA portion of FLEX's Application.

C. Environmental Review Under NEPA

FLEX states that approval of the term extension will not require any new construction or modifications to the Liquefaction Project, the Freeport LNG Terminal generally, or any other related facilities.³⁴ DOE's regulations at 10 CFR Part 1021, Subpart D, Appendix B provide a

³¹ See Policy Statement, 85 Fed. Reg. 52,247; see also *id.* at 52,240 (discussing the 2018 LNG Export Study and DOE's most recent life cycle analysis of greenhouse gas emissions associated with exports of U.S. LNG), 52,243-44 (discussing EIA's *Annual Energy Outlook 2020*), 52,244-45 (discussing additional environmental issues).

³² See *id.* at 52,239, 52,247.

³³ See *id.* at 52,247; see also App. at 5 (citing FERC orders).

³⁴ App. at 8-9.

list of categorical exclusions from preparation of either an EA or EIS under NEPA. Categorical exclusion B5.7 applies to natural gas import or export approvals that do not involve new construction but may require minor operational changes to existing projects. On October 20, 2020, DOE/FE issued a categorical exclusion under this provision.³⁵ This Order grants the non-FTA portion of the Application, in part, on the basis of this categorical exclusion.

V. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications requesting authority for (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas, and/or (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. The portion of FLEX's Application requesting an amendment to its FTA authorizations (DOE/FE Order Nos. 2913 and 3066, both as subsequently amended) falls within NGA section 3(c), as amended.³⁶ Therefore, DOE/FE is charged with granting the requested term extension for these orders without modification or delay.

(2) Upon a review of the record, DOE/FE finds that a grant of the non-FTA portion of the Application has not been shown to be inconsistent with the public interest under NGA section 3(a).³⁷ Additionally, the non-FTA portion of the Application qualifies for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE/FE therefore grants the requested term extension for FLEX's non-FTA authorizations (Order Nos. 3282-C, 3357-B, and 3957).

³⁵ U.S. Dep't of Energy, Categorical Exclusion Determination, *Freeport LNG Expansion, L.P., et al.*, FE Docket Nos. 10-160-LNG, *et al.* (Oct. 20, 2020) [hereinafter Categorical Exclusion].

³⁶ 15 U.S.C. § 717b(c).

³⁷ *Id.* § 717b(a).

(3) In connection with FLEX's five long-term authorizations discussed herein, FLEX commenced commercial exports of LNG from the Liquefaction Project at the Freeport LNG Terminal as follows: from Train 1 in the fourth quarter of 2019, from Train 2 in the first quarter of 2020, and from Train 3 in the third quarter of 2020.³⁸

ORDER

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

A. The Application filed by Freeport LNG Expansion, L.P.; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC (collectively, FLEX) is granted.

B. In DOE/FE Order No. 2913, as amended by Order Nos. 2913-A and 2913-B (FE Docket No. 10-160-LNG), Ordering Paragraph A is amended to state:

FLEX is authorized to export domestically produced LNG by vessel from the Freeport Terminal, near Freeport, Texas, on its behalf or acting as agent for others, up to 511 Bcf per year for a term beginning on the earlier of the date of first export, or February 10, 2020, and extending through December 31, 2050, pursuant to one or more long-term contracts (greater than two years) with third parties with terms not to exceed the term of the authorization.

C. In DOE/FE Order No. 3066, as amended by Order No. 3066-A (FE Docket No. 12-06-LNG), Ordering Paragraph A is amended to state:

FLEX is authorized to export domestically produced LNG by vessel from the Freeport LNG Terminal on Quintana Island, Texas, up to

³⁸ See Freeport LNG Expansion, L.P., *et al.*, Semi-Annual Report, FE Docket Nos. 10-161-LNG, *et al.*, at 2 (Oct. 1, 2020), available at: <https://www.energy.gov/sites/prod/files/2020/10/f79/FLEX%20DOE%20Semi-Annual%20Report%20October%202020.pdf>.

the equivalent of 511 Bcf per year of natural gas for a term beginning on the earlier of the date of first export or eight years from the date the authorization is issued (February 10, 2020), and extending through December 31, 2050, pursuant to one or more long-term contracts, including LTAs, with third parties that do not exceed the term of this authorization.

D. In DOE/FE Order No. 3282-C (FE Docket No. 10-161-LNG), the relevant sentence in Ordering Paragraph A is amended to state:

FLEX is authorized to export domestically produced LNG by vessel from the Freeport LNG Terminal in Brazoria County, Texas, up to the equivalent of 511 Bcf/yr of natural gas for a term to commence on the earlier of the date of first commercial export or seven years from the date that this Order is issued (November 14, 2021), and extending through December 31, 2050.

This term extension supersedes any references to a 20-year export term in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 3282-C.

E. In DOE/FE Order No. 3357-B (FE Docket No. 11-161-LNG), the relevant sentence in Ordering Paragraph A is amended to state:

FLEX is authorized to export domestically produced LNG by vessel from the Freeport LNG Terminal in Brazoria County, Texas, up to the equivalent of 146 Bcf/yr of natural gas for a term to commence on the earlier of the date of first commercial export or seven years

from the date that this Order is issued (November 14, 2021), and extending through December 31, 2050.

This term extension supersedes any references to a 20-year export term in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 3357-B.

F. In DOE/FE Order No. 3957 (FE Docket No. 16-108-LNG), the relevant sentence in Ordering Paragraph B is amended to state:

The authorization period will commence when FLEX commences commercial export of domestically sourced LNG from the Freeport Terminal and will extend through December 31, 2050.

This term extension supersedes any references to a 20-year export term in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 3957.

G. These export terms lasting through December 31, 2050, are inclusive of any make-up period previously authorized in the orders, during which the authorization holder may continue to export any make-up volume that it was unable to export during the original export term.³⁹ Accordingly, as relevant here, any references to make-up periods and make-up volumes in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order Nos. 3282-C, 3357-B, and 3957 are now moot.

H. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 2913, 3066, 3282-C, 3357-B, and 3957 (and any subsequent amendments, as applicable) remain

³⁹ See *supra* at 4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.

in effect.

Issued in Washington, D.C, on October 21, 2020.

Steven E. Winberg

Steven E. Winberg
Assistant Secretary
Office of Fossil Energy