

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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RIO GRANDE LNG, LLC

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) FE DOCKET NO. 15-190-LNG  
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ORDER EXTENDING EXPORT TERM FOR AUTHORIZATION  
TO NON-FREE TRADE AGREEMENT NATIONS  
THROUGH DECEMBER 31, 2050

DOE/FE ORDER NO. 4492-A

OCTOBER 21, 2020

## **I. DESCRIPTION OF REQUEST**

On August 20, 2020, Rio Grande LNG, LLC (Rio Grande LNG) filed an application (Application)<sup>1</sup> with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).<sup>2</sup> As explained below, Rio Grande LNG asks DOE/FE to extend the export term set forth in one of its 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).<sup>3</sup>

Rio Grande LNG is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed Rio Grande LNG Project, to be located in Cameron County, Texas, under the following orders:

- (i) DOE/FE Order No. 3869,<sup>4</sup> 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);<sup>5</sup> and
- (ii) DOE/FE Order No. 4492,<sup>6</sup> 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).<sup>7</sup>

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<sup>1</sup> Rio Grande LNG, LLC, Application to Amend Export Term For Existing Long-Term Authorization Through December 31, 2050, FE Docket No. 15-190-LNG (Aug. 20, 2020) [hereinafter App.].

<sup>2</sup> 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.

<sup>3</sup> 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].

<sup>4</sup> *Rio Grande LNG, LLC*, DOE/FE Order No. 3869, FE Docket No. 15-190-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Rio Grande LNG Terminal in Brownsville, Texas, to Free Trade Agreement Nations (Aug. 17, 2016).

<sup>5</sup> 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>6</sup> *Rio Grande LNG, LLC*, DOE/FE Order No. 4492, FE Docket No. 15-190-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020).

<sup>7</sup> 15 U.S.C. § 717b(a).

Both orders authorize exports of LNG in a volume equivalent to 1,318 billion cubic feet per year (Bcf/yr) of natural gas on a non-additive basis.<sup>8</sup> Rio Grande LNG is authorized to export these volumes for a 30-year term under DOE/FE Order No. 3869 and for a 20-year term under DOE/FE Order No. 4492.<sup>9</sup> In the Application, Rio Grande LNG asks DOE/FE to amend its non-FTA order to extend the existing export term through December 31, 2050.<sup>10</sup> Rio Grande LNG states that it is not applying for a similar amendment to its FTA order “because the term of that authorization is already 30 years.”<sup>11</sup>

In this Order, DOE/FE grants Rio Grande LNG’s Application under NGA section 3(a) and authorizes the requested term extension for Rio Grande LNG’s non-FTA order. As discussed below, DOE/FE received one comment in opposition to the Application, submitted by John Young.<sup>12</sup> No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.<sup>13</sup> Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for Order No. 4492 is inconsistent with the public interest, as would be required to deny the Application under NGA section 3(a).

In sum, DOE/FE is amending DOE/FE Order No. 4492 to extend the 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 the authorization owing to the additional period that exports may occur.<sup>14</sup> The order remains unchanged in all other respects.

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<sup>8</sup> App. at 2-3.

<sup>9</sup> *Id.* Additional information is set forth in each order.

<sup>10</sup> *Id.* at 3-4.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> Comment of John Young, FE Docket No. 15-190-LNG (Sept. 16, 2020); *see infra* § III.

<sup>13</sup> 10 C.F.R. § 590.102(b).

<sup>14</sup> *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

## **II. APPLICANT’S PUBLIC INTEREST ANALYSIS**

Rio Grande LNG 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.<sup>15</sup> In particular, Rio Grande LNG states that the term extension will better match the long-term design and useful life of the Rio Grande LNG Project, which is “well beyond” the current 20-year export term.<sup>16</sup> Further, according to Rio Grande LNG, the extension “is of critical importance for the project and its ability to provide further economic benefits.”<sup>17</sup>

Next, Rio Grande LNG states that the requested term extension will provide “regulatory visibility” for its Project beyond a typical 20-year contract term.<sup>18</sup> According to Rio Grande LNG, this additional visibility will help the Project “compete for customers and mitigate potential risks for customers and capital providers.”<sup>19</sup> Rio Grande LNG also asserts that the term extension will increase certainty for natural gas producers and infrastructure developers in Texas, where the Rio Grande LNG will be constructed.<sup>20</sup>

## **III. DOE/FE PROCEEDING**

On September 1, 2020, DOE/FE published a notice of the Application in the *Federal Register* (Notice of Application).<sup>21</sup> The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments addressing the

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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.

<sup>15</sup> App. at 4-5.

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

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 5.

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

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> U.S. Dep’t of Energy, Rio Grande LNG, LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 54,366 (Sept. 1, 2020).

requested term extension by September 16, 2020.<sup>22</sup> DOE/FE received one comment opposing the Application from John Young.<sup>23</sup>

First, Mr. Young raises objections to the Rio Grande LNG Project generally. He appears to question the commitment of Rio Grande LNG's parent company, NextDecade Corporation (NextDecade), to the Project, as well as NextDecade's financial stability.<sup>24</sup> Mr. Young also argues that the Project is facing legal challenges, including a lawsuit against the Federal Energy Regulatory Commission (FERC) challenging its approval of the Project.<sup>25</sup> For these reasons, Mr. Young contends that Rio Grande LNG is "unworthy" of the requested term extension.<sup>26</sup>

Second, Mr. Young states that DOE's most recent environmental analysis, entitled *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update* (LCA GHG Update),<sup>27</sup> does not support the requested extension.<sup>28</sup> He suggests that the LCA GHG Update, and DOE/FE's analyses generally, should be based on "more up-to-date, scientifically based information."<sup>29</sup>

#### **IV. DISCUSSION**

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

Section 3(a) of the NGA sets forth the applicable standard of review for 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

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

<sup>23</sup> *See infra* note 11.

<sup>24</sup> Comment of John Young at 1-2, 4-5.

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *See* U.S. Dep't 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) [hereinafter *LCA GHG Update Response to Comments*] (discussing *LCA GHG Update*).

<sup>28</sup> Comment of John Young at 5-7.

<sup>29</sup> *Id.* at 8. Mr. Young raises other arguments and cites a variety of documents, which DOE/FE finds are not responsive to the Application.

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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup>

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 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).<sup>33</sup> 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

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<sup>30</sup> 15 U.S.C. § 717b(a).

<sup>31</sup> 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)).

<sup>32</sup> 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)).

<sup>33</sup> 42 U.S.C. § 4321 *et seq.*

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.<sup>34</sup> 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.<sup>35</sup> 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,<sup>36</sup> 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. Energy Information Administration's (EIA) most recent projections for U.S. natural gas, and relevant environmental issues.<sup>37</sup> 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.<sup>38</sup>

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<sup>34</sup> Policy Statement, 85 Fed. Reg. at 52,247.

<sup>35</sup> *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

<sup>36</sup> *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).

<sup>37</sup> *See* Policy Statement, 85 Fed. Reg. 52,247; *see also id.* at 52,240 (discussing the 2018 LNG Export Study and the LCA GHG Update), 52,243-44 (discussing EIA's *Annual Energy Outlook 2020*), 52,244-45 (discussing additional environmental issues).

<sup>38</sup> *See id.* at 52,239, 52,247.

In this proceeding, Rio Grande LNG asks DOE/FE to amend the export term in its non-FTA order, Order No. 4492, through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Rio Grande LNG's total volume of exports over the life of the authorization (by extending the duration of Order No. 4492 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Rio Grande LNG Project previously approved by DOE and FERC.<sup>39</sup>

Mr. Young, the only commenter in this proceeding, opposes the requested term extension. DOE/FE notes that Mr. Young previously commented in both the original Rio Grande LNG application proceeding and in the LCA GHG Update proceeding, and DOE/FE addressed his comments in those proceedings.<sup>40</sup> Insofar as Mr. Young raises new arguments in this proceeding, DOE/FE does not find that his arguments demonstrate that Rio Grande LNG's requested term extension will be inconsistent with the public interest, as would be required to deny Rio Grande LNG's Application. For example, neither Mr. Young's opinions on NextDecade nor any pending legal challenges to the Rio Grande LNG Project undermine the evidence cited by Rio Grande LNG and DOE/FE in favor of the term extension. As to Mr. Young's concerns about the LCA GHG Update, DOE/FE stated in the Policy Statement that the LCA GHG Update was based on "the most current available science, methodology, and data from the U.S. natural gas system to assess emissions of [GHGs] associated with exports of U.S. LNG."<sup>41</sup> In sum, DOE/FE finds that Mr. Young has failed to overcome the statutory presumption in NGA section 3(a) that the proposed term extension is in the public interest.

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<sup>39</sup> See *id.* at 52,247; see also App. at 3 (citing FERC order).

<sup>40</sup> See *Rio Grande LNG*, DOE/FE Order No. 4492, at 2, 36-37, 40, 44-45, 48; LCA GHG Update Response to Comments, 85 Fed. Reg. at 80.

<sup>41</sup> Policy Statement, 85 Fed. Reg. at 52,240; see also, *e.g.*, LCA GHG Update Response to Comments, 85 Fed. Reg. at 75, 85.



### **C. Environmental Review Under NEPA**

Rio Grande LNG states that approval of the term extension will not require operational changes to the Rio Grande LNG Project and that no new construction is proposed.<sup>42</sup> DOE's regulations at 10 CFR Part 1021, Subpart D, Appendix B provide a 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 September 17, 2020, DOE/FE issued a categorical exclusion under this provision.<sup>43</sup> This Order grants the Application, in part, on the basis of this categorical exclusion.

### **V. FINDINGS**

Upon a review of the record, DOE/FE finds that a grant of the uncontested Application has not been shown to be inconsistent with the public interest under NGA section 3(a).<sup>44</sup> Additionally, 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 Order No. 4492.

### **ORDER**

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

A. Rio Grande LNG, LLC's Application to amend the export term set forth in DOE/FE Order No. 4492 is granted.

B. In DOE/FE Order No. 4492, the relevant sentence in Ordering Paragraph A is amended to state:

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<sup>42</sup> App. at 5.

<sup>43</sup> U.S. Dep't of Energy, Categorical Exclusion Determination, *Rio Grande LNG, LLC*, FE Docket No. 15-190-LNG (Sept. 17, 2020) [hereinafter Categorical Exclusion].

<sup>44</sup> 15 U.S.C. § 717b(a).

This authorization is for a term to commence on the date of first commercial export and to 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. 4492.

C. This export term lasting through December 31, 2050, is inclusive of any make-up period previously authorized in the order, during which the authorization holder may continue to export any make-up volume that it was unable to export during the original export term.<sup>45</sup> Accordingly, any references to make-up periods and make-up volumes in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 4492 are now moot.

E. All other obligations, rights, and responsibilities established by DOE/FE Order No. 4492 remain in effect.

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

*Steven E. Winberg*

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Steven E. Winberg  
Assistant Secretary  
Office of Fossil Energy

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<sup>45</sup> See *supra* at 3-4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.