

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

VENTURE GLOBAL CALCASIEU PASS, LLC

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FE DOCKET NO. 13-69-LNG
FE DOCKET NO. 14-88-LNG
FE DOCKET NO. 15-25-LNG

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

DOE/FE ORDER NO. 3345-A
DOE/FE ORDER NO. 3520-A
DOE/FE ORDER NO. 3662-A
DOE/FE ORDER NO. 4346-A

OCTOBER 21, 2020

I. DESCRIPTION OF REQUEST

On August 12, 2020, Venture Global Calcasieu Pass, LLC (Calcasieu Pass) 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, Calcasieu Pass asks DOE/FE to extend the export term set forth in its four 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

Calcasieu Pass is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed Venture Global Calcasieu Pass Project (Calcasieu Pass Project), currently under construction and located in Cameron Parish, Louisiana, under the following orders:

- (i) DOE/FE Order Nos. 3345,⁴ 3520,⁵ and 3662,⁶ 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);⁷ and

¹ Venture Global Calcasieu Pass, LLC, Application to Amend Export Term For Existing Long-Term Authorizations Through December 31, 2050, FE Docket Nos. 13-69-LNG, *et al.* (Aug. 12, 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 *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 3345, FE Docket No. 13-69-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Venture Global LNG Project in Cameron Parish, Louisiana, to Free Trade Agreement Nations (Sept. 27, 2013); *see also* App. at 3 n.2 (explaining corporate name change in 2014).

⁵ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 3520, FE Docket No. 14-88-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Venture Global LNG Project in Cameron Parish, Louisiana, to Free Trade Agreement Nations (Oct. 10, 2014); *see also* App. at 3 n.2 (explaining corporate name change in 2014).

⁶ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 3662, FE Docket No. 15-25-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Venture Global Calcasieu Pass LNG Project in Cameron Parish, Louisiana, to Free Trade Agreement Nations (June 17, 2015).

⁷ 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 No. 4346,⁸ 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).⁹

These orders authorize exports of LNG in a total combined volume equivalent to 620 billion cubic feet per year (Bcf/yr) of natural gas to both FTA countries and non-FTA countries on a non-additive basis.¹⁰ Calcasieu Pass is authorized to export the FTA volumes for a 25-year term under DOE/FE Order Nos. 3345, 3520, and 3662, and the non-FTA volume for a 20-year term under DOE/FE Order No. 4346.¹¹ In the Application, Calcasieu Pass asks DOE/FE to amend each order to extend the existing export term through December 31, 2050.¹²

In this Order, DOE/FE grants Calcasieu Pass's Application and authorizes the requested term extension for all four 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."¹³ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension for the FTA authorizations (Order Nos. 3345, 3520, and 3662) without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA portion of this authorization.

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.

⁸ *Venture Global Calcasieu Pass, LLC*, DOE/FE Order No. 4346, FE Docket Nos. 13-69-LNG, *et al.*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Mar. 5, 2019).

⁹ 15 U.S.C. § 717b(a).

¹⁰ App. at 3.

¹¹ *Id.* at 2. Additional information is set forth in each order.

¹² *Id.* at 2-3. 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.

¹³ 15 U.S.C. § 717b(c).

DOE/FE also grants the non-FTA portion of the Application under NGA section 3(a). As discussed below, DOE/FE received two anonymous comments in response to the Application, but they were non-responsive.¹⁴ No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.¹⁵ Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for Order No. 4346 is 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. 3345, 3520, 3662, and 4346 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.¹⁶ These orders remain unchanged in all other respects.

II. APPLICANT'S PUBLIC INTEREST ANALYSIS FOR REQUESTED NON-FTA TERM EXTENSION

Calcasieu Pass 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, 2050.¹⁷ In particular, Calcasieu Pass states that the Calcasieu Pass Project will have an operational life that is expected to extend past the year 2050.¹⁸ Calcasieu Pass states that the Calcasieu Pass Project is currently under construction, with LNG export operations expected to

¹⁴ Comment of Anonymous, FE Docket No. 15-25-LNG (Sept. 16, 2020); Comment of Anonymous, FE Docket No. 15-25-LNG (Sept. 16, 2020).

¹⁵ 10 C.F.R. § 590.102(b).

¹⁶ 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.

¹⁷ App. at 4.

¹⁸ *Id.*

commence in late 2022.¹⁹ According to Calcasieu Pass, the term extension will increase the volume of LNG that Calcasieu Pass is able to export over the life of its authorizations.²⁰

Additionally, Calcasieu Pass states that the requested term extension will provide greater certainty about the long-term regulatory support for its non-FTA exports. Therefore, Calcasieu Pass asserts that the requested term extension will “assist the project in its commercial efforts to contract capacity on a very long-term basis.”²¹

III. DOE/FE PROCEEDING

On September 1, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).²² The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments addressing the requested term extension by September 16, 2020.²³ DOE/FE received two anonymous comments, which were not responsive to the Application.²⁴

IV. DISCUSSION FOR REQUESTED NON-FTA TERM EXTENSION

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

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² U.S. Dep’t of Energy, Venture Global Calcasieu Pass, LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 54,368 (Sept. 1, 2020).

²³ *Id.* 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).

²⁴ *See supra* at 4.

such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.²⁵

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.²⁶ 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.²⁷

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).²⁸ 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

²⁵ 15 U.S.C. § 717b(a).

²⁶ 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)).

²⁷ 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)).

²⁸ 42 U.S.C. § 4321 *et seq.*

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.²⁹ 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.³⁰ 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,³¹ 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.³² 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.³³

In this uncontested proceeding, Calcasieu Pass asks DOE/FE to amend the export term in its non-FTA order, Order No. 4346, through December 31, 2050, pursuant to the Policy

²⁹ Policy Statement, 85 Fed. Reg. at 52,247.

³⁰ *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

³¹ *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).

³² *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).

³³ *See id.* at 52,239, 52,247.

Statement. DOE/FE notes that this term extension will increase Calcasieu Pass's total volume of exports over the life of the authorization (by extending the duration of Order No. 4346 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Calcasieu Pass Project previously approved by DOE and the Federal Energy Regulatory Commission (FERC).³⁴ 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 Calcasieu Pass's Application.

C. Environmental Review Under NEPA

Calcasieu Pass states that approval of the term extension will not require operational or physical changes to the Calcasieu Pass Project, and that no new construction is proposed.³⁵ 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.³⁶ 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

³⁴ See *id.* at 52,247; see also App. at 3 (citing FERC order).

³⁵ App. at 4-5.

³⁶ U.S. Dep't of Energy, Categorical Exclusion Determination, *Venture Global Calcasieu Pass, LLC*, FE Docket Nos. 13-69-LNG, *et al.* (Sept. 17, 2020) [hereinafter Categorical Exclusion].

international sources, be deemed consistent with the public interest and granted without modification or delay. The portion of Calcasieu Pass's Application requesting an amendment to its FTA authorizations (DOE/FE Order Nos. 3345, 3520, and 3662) falls within NGA section 3(c), as amended.³⁷ Therefore, DOE/FE is charged with granting the requested term extension for these three 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).³⁸ 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 Order No. 4346.

ORDER

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

A. Venture Global Calcasieu Pass, LLC's Application to amend the respective export terms set forth in DOE/FE Order Nos. 3345, 3520, 3662, and 4346 is granted.

B. In DOE/FE Order No. 3345 (FE Docket No. 13-69-LNG), Ordering Paragraph A is amended to state:

Venture Global Calcasieu Pass, LLC (Calcasieu Pass) is authorized to export domestically produced LNG by ocean-going vessel from the Project to be located in Cameron Parish, Louisiana, in a volume up to the equivalent of 243.6 Bcf/yr 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 (September 27, 2021), and

³⁷ 15 U.S.C. § 717b(c).

³⁸ *Id.* § 717b(a).

extending through December 31, 2050. Calcasieu Pass is authorized to export the LNG on its own behalf and as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

C. In DOE/FE Order No. 3520 (FE Docket No. 14-88-LNG), the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is equivalent to approximately 243.6 Bcf/yr of natural gas for a term beginning on the earlier of the date of first export or seven years from the date the authorization is issued (*i.e.*, October 10, 2021), and extending through December 31, 2050.

D. In DOE/FE Order No. 3662 (FE Docket No. 15-25-LNG), the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is equivalent to approximately 132.8 Bcf/yr of natural gas for a term beginning on the earlier of the date of first export or seven years from the date the authorization is issued (June 17, 2022), and extending through December 31, 2050, and is additive to the volumes authorized for export in DOE/FE Order No. 3345 (FE Docket No. 13-69-LNG) and DOE/FE Order No. 3520 (FE Docket No. 14-88-LNG).

E. In DOE/FE Order No. 4346 (FE Docket Nos. 13-69-LNG, 14-88-LNG, and 15-25-LNG), the relevant sentence in Ordering Paragraph A is amended to state:

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. 4346.

F. 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 No. 4346 are now moot.

G. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3345, 3520, 3662, and 4346 remain in effect.

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

Steven E. Winberg

Steven E. Winberg
Assistant Secretary
Office of Fossil Energy

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