

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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VENTURE GLOBAL PLAQUEMINES LNG, LLC )

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FE DOCKET NO. 16-28-LNG

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

DOE/FE ORDER NO. 3866-A  
DOE/FE ORDER NO. 4446-A

OCTOBER 21, 2020

## **I. DESCRIPTION OF REQUEST**

On August 12, 2020, Venture Global Plaquemines LNG, LLC (Plaquemines 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, Plaquemines LNG asks DOE/FE to extend the export term set forth in its two 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>

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

- (i) DOE/FE Order No. 3866,<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

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<sup>1</sup> Venture Global Plaquemines LNG, LLC, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, FE Docket No. 16-28-LNG (Aug. 12, 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> *Venture Global Plaquemines LNG, LLC*, DOE/FE Order No. 3866, FE Docket No. 16-28-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Plaquemines LNG Terminal in Plaquemines Parish, Louisiana, to Free Trade Agreement Nations (July 21, 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.

- (ii) DOE/FE Order No. 4446,<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>

Both orders authorize exports of LNG in a volume equivalent to 1,240 billion cubic feet per year (Bcf/yr) of natural gas on a non-additive basis.<sup>8</sup> Plaquemines LNG is authorized to export these volumes for a 25-year term under DOE/FE Order No. 3866 and for a 20-year term under DOE/FE Order No. 4446.<sup>9</sup> In the Application, Plaquemines LNG asks DOE/FE to amend each order to extend the existing export term through December 31, 2050.<sup>10</sup>

In this Order, DOE/FE grants Plaquemines LNG's Application and authorizes the requested term extension for both 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."<sup>11</sup> The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension to Order No. 3866 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.<sup>12</sup> No protests or motions to intervene in opposition to the Application

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<sup>6</sup> *Venture Global Plaquemines LNG, LLC*, DOE/FE Order No. 4446, FE Docket No. 16-28-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Oct. 16, 2019).

<sup>7</sup> *Id.* § 717b(a).

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

<sup>9</sup> *Id.* at 2. Additional information is set forth in each order.

<sup>10</sup> *Id.* at 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.

<sup>11</sup> 15 U.S.C. § 717b(c).

<sup>12</sup> Comment of Anonymous, FE Docket No. 16-28-LNG (Sept. 16, 2020).

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. 4446 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. 3866 and 4446 to extend the existing export term in each authorization 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.<sup>14</sup> These orders remain unchanged in all other respects.

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

Plaquemines 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, Plaquemines LNG states that the Plaquemines LNG Project will have an operational life that is expected to extend past the year 2050.<sup>16</sup> Plaquemines LNG states that it intends to begin mobilization and early site preparation activities for the Project in the second half of 2020, with LNG export operations expected to commence in 2023.<sup>17</sup> According to

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<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 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 3-4.

<sup>16</sup> *Id.* at 4.

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

Plaquemines LNG, the term extension will increase the volume of LNG that Plaquemines LNG is able to export over the life of its authorizations.<sup>18</sup>

Additionally, Plaquemines LNG states that the requested term extension will provide greater certainty about the long-term regulatory support for its non-FTA exports. Therefore, Plaquemines LNG asserts that the term extension will “assist the project in its commercial efforts to contract capacity on a very long-term basis.”<sup>19</sup>

### **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).<sup>20</sup> The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, and/or comments addressing the requested term extension by September 16, 2020.<sup>21</sup> DOE/FE received one anonymous comment, which was not responsive to the Application.<sup>22</sup>

### **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 such application, in whole or part, with such modification and upon

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

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

<sup>20</sup> U.S. Dep’t of Energy, Venture Global Plaquemines LNG, LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 54,365 (Sept. 1, 2020).

<sup>21</sup> *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).

<sup>22</sup> *See supra* at 3.

such terms and conditions as the [Secretary] may find necessary or appropriate.<sup>23</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>24</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>25</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>26</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 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.

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<sup>23</sup> 15 U.S.C. § 717b(a).

<sup>24</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>25</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>26</sup> 42 U.S.C. § 4321 *et seq.*

## **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>27</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>28</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>29</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>30</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>31</sup>

In this uncontested proceeding, Plaquemines LNG asks DOE/FE to amend the export term in its non-FTA order, Order No. 4446, through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Plaquemines LNG’s total volume of exports over the life of the authorization (by extending the duration of Order No. 4446

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<sup>27</sup> Policy Statement, 85 Fed. Reg. at 52,247.

<sup>28</sup> *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

<sup>29</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>30</sup> *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).

<sup>31</sup> *See id.* at 52,239, 52,247.

through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Plaquemines LNG Project previously approved by DOE and the Federal Energy Regulatory Commission (FERC).<sup>32</sup> 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 Plaquemines LNG's Application.

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

Plaquemines LNG states that approval of the term extension will not require operational or physical changes to the Plaquemines LNG Project, and that no new construction is proposed.<sup>33</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>34</sup> 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 Plaquemines LNG's Application requesting an

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<sup>32</sup> See *id.* at 52,247; see also App. at 3 (citing FERC order).

<sup>33</sup> App. at 4.

<sup>34</sup> U.S. Dep't of Energy, Categorical Exclusion Determination, *Venture Global Plaquemines LNG, LLC*, FE Docket No. 16-28-LNG (Sept. 17, 2020) [hereinafter Categorical Exclusion].



amendment to its FTA authorization (DOE/FE Order No. 3866) falls within NGA section 3(c), as amended.<sup>35</sup> Therefore, DOE/FE is charged with granting the requested term extension for Order No. 3866 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).<sup>36</sup> 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. 4446.

### **ORDER**

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

A. Venture Global Plaquemines LNG, LLC's Application to amend the respective export terms set forth in DOE/FE Order Nos. 3866 and 4446 is granted.

B. In DOE/FE Order No. 3866, the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is equivalent to approximately 1,240 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 (July 21, 2023), and extending through December 31, 2050.

C. In DOE/FE Order No. 4446, 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.

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<sup>35</sup> 15 U.S.C. § 717b(c).

<sup>36</sup> *Id.* § 717b(a).

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. 4446.

D. 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.<sup>37</sup> 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. 4446 are now moot.

E. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3866 and 4446 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>37</sup> See *supra* at 4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.