

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

_____)	
DELFIN LNG LLC)	FE DOCKET NO. 13-129-LNG
_____)	FE DOCKET NO. 13-147-LNG

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

DOE/FE ORDER NO. 3393-A
DOE/FE ORDER NO. 4028-B

DECEMBER 10, 2020

I. DESCRIPTION OF REQUEST

On October 7, 2020, Delfin LNG LLC (Delfin) 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, Delfin asks DOE/FE to extend the export term set forth in 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).³

Delfin is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed floating Delfin Liquefaction Facility to be located in West Cameron Block 327 in the Gulf of Mexico, offshore of Cameron Parish, Louisiana, under the following orders:

- (i) DOE/FE Order No. 3393,⁴ 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);⁵ and
- (ii) DOE/FE Order No. 4028,⁶ authorizing exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), under NGA

¹ Delfin LNG LLC, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, FE Docket Nos. 13-129-LNG, *et al.* (Oct. 7, 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 *Delfin LNG LLC*, DOE/FE Order No. 3393, FE Docket No. 13-129-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from a Proposed Floating Liquefaction Project and Deepwater Port 30 Miles Offshore of Louisiana to Free Trade Agreement Nations (Feb. 20, 2014).

⁵ 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.

⁶ *Delfin LNG LLC*, DOE/FE Order No. 4028, FE Docket No. 13-147-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from a Proposed Floating Liquefaction Project and Deepwater Port 30 Miles Offshore of Louisiana to Non-Free Trade Agreement Nations (June 1, 2017), *reh’g denied* DOE/FE Order No. 4028-A (Apr. 3, 2018).

section 3(a).⁷

Both orders authorize exports of LNG in a volume equivalent to 657.5 billion cubic feet per year (Bcf/yr) of natural gas on a non-additive basis.⁸ Delfin is authorized to export LNG under both orders for a 20-year term.⁹ In the Application, Delfin asks DOE/FE to amend each order to extend the existing export term through December 31, 2050.¹⁰

In this Order, DOE/FE grants Delfin'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."¹¹ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension to Order No. 3393 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 opposing exports of natural resources generally.¹² No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.¹³ Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for Order No. 4028

⁷ 15 U.S.C. § 717b(a).

⁸ App. at 2.

⁹ *Id.* at 3. Additional information is set forth in each order.

¹⁰ *Id.* 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.

¹¹ 15 U.S.C. § 717b(c).

¹² Comment of Anonymous, FE Docket No. 13-147-LNG (Oct. 31, 2020); *see infra* § III.

¹³ 10 C.F.R. § 590.102(b).

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. 3393 and 4028 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.¹⁴ These orders remain unchanged in all other respects.

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

Delfin 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 benefits associated with exporting LNG through December 31, 2050.¹⁵ Additionally, Delfin states that it has commenced the Newbuild Front End Engineering Design (FEED) work for the Facility's liquefaction vessels. Delfin states that the Newbuild FEED work is scheduled to be completed this year, which will enable Delfin to enter into a final EPC contract this year—conditional on Delfin entering into an initial offtake agreement.¹⁶ Delfin states that, once built, the Delfin Liquefaction Facility will have an operational life that extends beyond 2050.¹⁷ Accordingly, Delfin asserts that the requested term extension will provide “stronger regulatory support” for the planned Facility and thus “better position Delfin to negotiate long-term sales agreements.”¹⁸

¹⁴ 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.

¹⁵ App. at 3-4.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.*

III. DOE/FE PROCEEDING

On October 16, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).¹⁹ The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments addressing the requested term extension by November 2, 2020.²⁰ DOE/FE received one anonymous comment opposing exports of natural resources generally.²¹ The commenter asserts that any exportation of U.S. natural resources should not be permitted, as extraction of these resources adversely affects Americans' health.²²

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 such terms and conditions as the [Secretary] may find necessary or appropriate.²³

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

¹⁹ U.S. Dep't of Energy, Delfin LNG LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 65,797 (Oct. 16, 2020).

²⁰ *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).

²¹ *See infra* note 12.

²² *Id.*

²³ 15 U.S.C. § 717b(a).

export of natural gas is in the public interest.²⁴ 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.²⁵

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).²⁶ 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

²⁴ 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)).

²⁵ 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)).

²⁶ 42 U.S.C. § 4321 *et seq.*

LNG, from the lower-48 states to non-FTA countries.²⁷ 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.²⁸ 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,²⁹ 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.³⁰ 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.³¹

In this uncontested proceeding, Delfin asks DOE/FE to amend the export term in its non-FTA authorization—Order No. 4028—through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Delfin’s total volume of exports over the life of the authorization (by extending the duration of Order No. 4028 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Delfin Liquefaction Facility previously approved by DOE and the U.S. Department of

²⁷ Policy Statement, 85 Fed. Reg. at 52,247.

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

²⁹ *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).

³⁰ *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).

³¹ *See id.* at 52,239, 52,247.

Transportation Maritime Administration (MARAD).³² Upon review, DOE/FE has determined that it has not been demonstrated that the requested term extension to each order will be inconsistent with the public interest, as would be required to deny the non-FTA portion of Delfin's Application.

C. Environmental Review Under NEPA

Delfin states that approval of the term extension will not involve any change in the facilities or operation of the Delfin Liquefaction Facility.³³ DOE's regulations at 10 C.F.R. 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 December 9, 2020, DOE/FE issued a categorical exclusion under this provision.³⁴ 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 Delfin's Application requesting an amendment to its FTA

³² See *id.* at 52,247; see also App. at 4-5 (discussing MARAD's environmental review in issuing a deepwater port license for the Delfin Liquefaction Facility).

³³ App. at 5.

³⁴ U.S. Dep't of Energy, Categorical Exclusion Determination, *Delfin LNG LLC*, FE Docket No. 13-147-LNG (Dec. 9, 2020) [hereinafter Categorical Exclusion].

authorization (DOE/FE Order No. 3393) falls within NGA section 3(c), as amended.³⁵

Therefore, DOE/FE is charged with granting the requested term extension for Order No. 3393 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).³⁶ 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. 4028.

ORDER

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

A. Delfin LNG LLC's Application to amend the respective export terms set forth in DOE/FE Order Nos. 3393 and 4028 is granted.

B. In DOE/FE Order No. 3393 (FE Docket No. 13-129-LNG), the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is up to the equivalent of 657.5 Bcf/yr of natural gas for a term beginning on the earlier of the date of first export or 7 years from the date the authorization is issued (February 20, 2021), and extending through December 31, 2050.

C. In DOE/FE Order No. 4028 (FE Docket No. 13-132-LNG), the relevant sentence in Ordering Paragraph B is amended to state:

³⁵ 15 U.S.C. § 717b(c).

³⁶ *Id.* § 717b(a).

The authorization period will commence when Delfin commences commercial export of domestically sourced LNG from the Delfin Liquefaction Facility 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. 4028.

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.³⁷ 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. 4028 are now moot.

E. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3393 and 4028 remain in effect.

Issued in Washington, D.C., on December 10, 2020.



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³⁷ See *supra* at 4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.