

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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DRIFTWOOD LNG LLC

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FE DOCKET NO. 16-144-LNG

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

DOE/FE ORDER NO. 4373-A

DECEMBER 10, 2020

## **I. DESCRIPTION OF REQUEST**

On October 19, 2020, Driftwood LNG LLC (Driftwood) 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, Driftwood 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>

Specifically, in DOE/FE Order No. 4373,<sup>4</sup> Driftwood is currently authorized to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 1,415.3 billion cubic feet per year (Bcf/yr) of natural gas, pursuant to NGA section 3(a).<sup>5</sup> Driftwood is authorized to export this LNG by vessel from the proposed Driftwood LNG Facility to be located in Calcasieu Parish, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas,<sup>6</sup> and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term.<sup>7</sup> In the

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<sup>1</sup> Driftwood LNG LLC, Application to Amend Export Term For Existing Long-Term Authorization Through December 31, 2050, FE Docket No. 16-144-LNG (Oct. 19, 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> *Driftwood LNG LLC*, DOE/FE Order No. 4373, FE Docket No. 16-144-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (May 2, 2019).

<sup>5</sup> 15 U.S.C. § 717b(a).

<sup>6</sup> 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>7</sup> App. at 2-3. Driftwood also holds a long-term authorization to export domestically produced LNG to FTA countries under NGA section 3(c), 15 U.S.C. § 717b(c), but that order is not at issue in the Application. *See id.* at 2 n.7 (citing DOE/FE Order No. 3968, as amended in Order No. 3968-A, and noting that its approved FTA and non-FTA volumes are not additive).

Application, Driftwood asks DOE/FE to amend Order No. 4373 to extend the existing export term through December 31, 2050.<sup>8</sup>

In this Order, DOE/FE grants Driftwood's Application under NGA section 3(a) and authorizes the requested term extension. As discussed below, DOE/FE received one anonymous comment in opposition to the Application.<sup>9</sup> No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.<sup>10</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. 4373 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. 4373 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>11</sup> The order remains unchanged in all other respects.

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

Driftwood 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>12</sup> Citing the Policy Statement, Driftwood states that a 30-year export term is better aligned with the anticipated useful life of LNG export facilities.<sup>13</sup> Driftwood adds that the requested term

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<sup>8</sup> App. at 1, 3.

<sup>9</sup> Comment of Anonymous, FE Docket No. 16-144-LNG (Nov. 12, 2020); *see infra* § III.

<sup>10</sup> 10 C.F.R. § 590.102(b).

<sup>11</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>12</sup> *See* App. at 3-5.

<sup>13</sup> *Id.* at 5.

extension will provide commercial benefits, such as maximizing the ability of authorization holders to enter into natural gas supply and export contracts for a longer period of time, thus allowing U.S. exporters to be more competitive globally.<sup>14</sup>

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

On October 29, 2020, DOE/FE published a notice of the Application in the *Federal Register* (Notice of Application).<sup>15</sup> 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 13, 2020.<sup>16</sup> DOE/FE received one anonymous comment that opposes the Application.<sup>17</sup> The commenter recommends that DOE/FE “not permit this and instead implement the New Green Deal immediately.”<sup>18</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 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>19</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> U.S. Dep’t of Energy, Driftwood LNG LLC; Application to Amend Export Term for Existing Long-Term Authorization Through December 31, 2050, 85 Fed. Reg. 68,569 (Oct. 29, 2020).

<sup>16</sup> *Id.* at 68,570.

<sup>17</sup> See Comment of Anonymous at 1, *supra* note 9.

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

<sup>19</sup> 15 U.S.C. § 717b(a).

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>20</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>21</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>22</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>20</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>21</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>22</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>23</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>24</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>25</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>26</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>27</sup>

In this proceeding, Driftwood asks DOE/FE to amend the export term in its non-FTA order, Order No. 4373, through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Driftwood’s total volume of non-FTA exports over the life of the authorization (by extending the duration of Order No. 4373 through December 31,

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<sup>23</sup> Policy Statement, 85 Fed. Reg. at 52,247.

<sup>24</sup> *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

<sup>25</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>26</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>27</sup> *See id.* at 52,239, 52,247.

2050), but it will not affect the day-to-day liquefaction and export operations of the Driftwood LNG Facility previously approved by DOE and FERC.<sup>28</sup>

As noted above, one anonymous commenter recommends against the requested term extension. The commenter, however, does not provide a basis for this position other than appearing to advocate instead for the Green New Deal (which the commenter refers to as the “New Green Deal”). Upon review of the record, DOE/FE finds that the anonymous commenter has failed to overcome the statutory presumption in NGA section 3(a) that the proposed term extension is in the public interest.

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

Driftwood states that approval of the term extension will not require changes to the Driftwood LNG Facility or any new construction activities.<sup>29</sup> 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.<sup>30</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>31</sup>

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<sup>28</sup> See *id.* at 52,247; see also App. at 3 (citing FERC order).

<sup>29</sup> App. at 6.

<sup>30</sup> U.S. Dep’t of Energy, Categorical Exclusion Determination, *Driftwood LNG LLC*, FE Docket No. 16-144-LNG (Dec. 9, 2020) [hereinafter Categorical Exclusion].

<sup>31</sup> 15 U.S.C. § 717b(a).

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. 4373.

### **ORDER**

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

A. Driftwood LNG LLC's Application to amend the export term set forth in DOE/FE Order No. 4373 is granted.

B. In DOE/FE Order No. 4373, 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 4373.

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>32</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. 4373 are now moot.

D. All other obligations, rights, and responsibilities established by DOE/FE Order No.

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<sup>32</sup> See *supra* at 3; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.

4373 remain in effect.

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

A handwritten signature in black ink, reading "Steven Eric Winberg". The signature is written in a cursive style with a large initial "S" and "W".

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Steven Eric Winberg  
Assistant Secretary  
Office of Fossil Energy