

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

ECA LIQUEFACTION, S. DE R.L. DE C.V.

)
) FE DOCKET NO. 18-144-LNG
)

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

ECA MID-SCALE PROJECT

DOE/FE ORDER NO. 4317-B
DOE/FE ORDER NO. 4364-B

DECEMBER 10, 2020

I. DESCRIPTION OF REQUEST

On September 18, 2020, ECA Liquefaction, S. de R.L. de C.V. (ECA Liquefaction) 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, ECA Liquefaction 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).³

Both authorizations involve the proposed liquefaction and export terminal facilities referred to as the ECA Mid-Scale Project, to be located north of Ensenada in Baja California, Mexico, approximately 31 miles south of the San Diego-Tijuana/San Ysidro border between the United States and Mexico.⁴ ECA Liquefaction is currently authorized to export domestically produced natural gas from the United States to Mexico by pipeline, and after liquefaction in Mexico, to deliver and consume the liquefied natural gas (LNG) in Mexico and/or to re-export⁵ the LNG as follows:

- (i) Under DOE/FE Order No. 4317, as amended by Order No. 4317-A,⁶ authorizing exports of U.S.-sourced natural gas by pipeline from the United States to Mexico

¹ ECA Liquefaction, S. de R.L. de C.V., Application to Amend Export Term For Existing Long-Term Authorizations Through December 31, 2050, FE Docket No. 18-144-LNG (Sept. 18, 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 App. at 4. DOE/FE takes administrative notice that, on November 17, 2020, ECA Liquefaction reached a final investment decision (FID) for the development, construction, and operation of the ECA Mid-Scale Project. See "Sempra Energy Announces FID for Landmark Energía Costa Azul LNG Export Project" (Nov. 17, 2020), available at: <https://www.sempra.com/sempra-energy-announces-fid-landmark-energia-costa-azul-lng-export-project>.

⁵ For purposes of ECA Liquefaction's orders, "re-export" means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE/FE's jurisdiction under the NGA, 15 U.S.C. § 717b, from one foreign country (*i.e.*, a country other than the United States) to another foreign country.

⁶ *ECA Liquefaction, S. de R.L. de C.V.*, DOE/FE Order No. 4317, FE Docket No. 18-144-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (ECA Mid-Scale Project) (Jan. 25, 2019), amended by DOE/FE Order No. 4317-A (Oct. 7, 2019) (transferring authorization from Energía Costa Azul, S. de R.L. de C.V. to ECA Liquefaction, S. de R.L. de C.V.).

and, after liquefaction in Mexico, by vessel from the proposed ECA Mid-Scale Project 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), in a total volume equivalent to 182 billion cubic feet per year (Bcf/yr) of natural gas, under NGA section 3(c);⁷ and

- (ii) Under DOE/FE Order No. 4364, as amended by Order No. 4364-A,⁸ authorizing re-exports of U.S.-sourced natural gas in the form of LNG by vessel from the proposed ECA Mid-Scale Project to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), in a volume equivalent to 161 Bcf/yr of natural gas, under NGA section 3(a).⁹

These FTA and non-FTA volumes are authorized on a non-additive basis.¹⁰ ECA Liquefaction is authorized to export these volumes for a 20-year term under both orders.¹¹ In the Application, ECA Liquefaction asks DOE/FE to amend each order to extend the existing export term through December 31, 2050.¹²

In this Order, DOE/FE grants ECA Liquefaction'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."¹³ The FTA

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, 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 *ECA Liquefaction, S. de R.L. de C.V.*, DOE/FE Order No. 4364, FE Docket No. 18-144-LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries (ECA Mid-Scale Project) (Mar. 29, 2019), *amended by* DOE/FE Order No. 4364-A (Oct. 7, 2019) (transferring authorization from Energía Costa Azul, S. de R.L. de C.V. to ECA Liquefaction, S. de R.L. de C.V.).

⁹ 15 U.S.C. § 717b(a).

¹⁰ App. at 4; *see also id.* at 4 n.13 (stating that the difference between the FTA and non-FTA volumes—an additional 21 Bcf/yr authorized for FTA exports—will be used in Mexico as fuel for pipeline transportation or LNG liquefaction).

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

¹² *Id.* at 3, 12. 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).

portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension to Order No. 4317, as amended by Order No. 4317-A, 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 comment in response to the Application, but it was 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. 4364 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 No. 4317, as amended by Order No. 4317-A, and DOE/FE Order No. 4364, as amended by Order No. 4364-A, 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.¹⁶ These orders remain unchanged in all other respects.

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

ECA Liquefaction 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,

¹⁴ Comment of Maria Hernandez, FE Docket No. 18-144-LNG (Oct. 2, 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.

2050.¹⁷ Citing the Policy Statement, ECA Liquefaction states that a 30-year export term would better match the operational life of LNG export facilities, would enhance authorization holders' ability to finance their facilities, and would facilitate authorization holders' ability to enter into longer-term natural gas supply and export contracts.¹⁸ ECA Liquefaction adds that the requested amendment to its order will further the international trade and geopolitical benefits associated with increased exports of U.S. LNG, as recognized by DOE/FE in the Policy Statement.¹⁹

III. DOE/FE PROCEEDING

On October 2, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).²⁰ 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 October 19, 2020.²¹ DOE/FE received one comment, which was not responsive to the Application.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

¹⁷ App. at 7-11.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 11.

²⁰ U.S. Dep't of Energy, ECA Liquefaction, S. de R.L. de C.V.; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 62,289 (Oct. 2, 2020).

²¹ *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).

²² *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.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 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

²³ 15 U.S.C. § 717b(a).

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.*

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.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, ECA Liquefaction asks DOE/FE to amend the export term in its non-FTA order, Order No. 4364, as amended by Order No. 4364-A, through

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.

December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase ECA Liquefaction's total volume of exports over the life of the authorization (by extending the duration of DOE/FE Order No. 4364 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the ECA Mid-Scale Project.³² 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 ECA Liquefaction's Application.

C. Environmental Review Under NEPA

ECA Liquefaction states that approval of the term extension will not require the construction or modification of facilities and does not affect DOE/FE's previous determination that a categorical exclusion applies for the ECA Mid-Scale Project.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 November 5, 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

³² See *id.* at 52,247.

³³ App. at 12.

³⁴ U.S. Dep't of Energy, Categorical Exclusion Determination, *ECA Liquefaction, S. de R.L. de C.V.*, FE Docket No. 18-144-LNG (Nov. 5, 2020) [hereinafter Categorical Exclusion].

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 ECA Liquefaction's Application requesting an amendment to its FTA authorization (DOE/FE Order No. 4317, as amended by Order No. 4317-A) falls within NGA section 3(c), as amended.³⁵ Therefore, DOE/FE is charged with granting the requested term extension for this order 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. 4364, as amended by Order No. 4364-A.

ORDER

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

A. ECA Liquefaction, S. de R.L. de C.V.'s Application to amend the respective export terms set forth in DOE/FE Order Nos. 4317 and 4364 (both as amended) is granted.

B. In DOE/FE Order No. 4317, as amended by Order No. 4317-A, the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is up to the equivalent of 182 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 (January 25, 2026), and extending through December 31, 2050.

³⁵ 15 U.S.C. § 717b(c).

³⁶ *Id.* § 717b(a).

This term extension supersedes any references to a 20-year export term in the Ordering Paragraphs of DOE/FE Order No. 4317.

C. In DOE/FE Order No. 4364, as amended by Order No. 4364-A, 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 re-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 4364.

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 or Ordering Paragraphs of DOE/FE Order Nos. 4317 and 4364 are now moot.

E. All other obligations, rights, and responsibilities established by DOE/FE Order No. 4317, as amended by Order No. 4317-A, and DOE/FE Order No. 4364, as amended by Order No. 4364-A, 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.