

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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TEXAS LNG BROWNSVILLE LLC

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) FE DOCKET NO. 15-62-LNG  
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ORDER EXTENDING EXPORT TERM FOR AUTHORIZATIONS  
TO FREE TRADE AND NON-FREE TRADE AGREEMENT  
NATIONS THROUGH DECEMBER 31, 2050

DOE/FE ORDER NO. 3716-A  
DOE/FE ORDER NO. 4489-A

DECEMBER 10, 2020

## **I. DESCRIPTION OF REQUEST**

On September 23, 2020, Texas LNG Brownsville LLC (Texas 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, Texas 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>

Texas LNG Brownsville is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed Texas LNG Brownsville LLC Liquefied Natural Gas Export Project (Project), to be located at the Port of Brownsville, Texas, under the following orders:

- (i) DOE/FE Order No. 3716,<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
- (ii) DOE/FE Order No. 4489,<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>

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<sup>1</sup> Texas LNG Brownsville LLC, Application to Amend Export Term For Existing Long-Term Authorization(s) Through December 31, 2050, FE Docket No. 15-62-LNG (Sept. 23, 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> *Texas LNG Brownsville LLC*, DOE/FE Order No. 3716, FE Docket No. 15-62-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed LNG Terminal at the Port of Brownsville in Brownsville, Texas, to Free Trade Agreement Nations (Sept. 24, 2015).

<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.

<sup>6</sup> *Texas LNG Brownsville LLC*, DOE/FE Order No. 4489, FE Docket No. 15-62-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020).

<sup>7</sup> 15 U.S.C. § 717b(a).

Both orders authorize exports of LNG in a volume equivalent to 204.4 billion cubic feet per year (Bcf/yr) of natural gas on a non-additive basis.<sup>8</sup> Texas LNG is authorized to export these volumes for a 25-year term under DOE/FE Order No. 3716 and for a 20-year term under DOE/FE Order No. 4489.<sup>9</sup> In the Application, Texas 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 Texas 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. 3716 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 opposition to the Application submitted by John Young, and one non-responsive comment submitted by Maria Hernandez.<sup>12</sup> No protests or motions to intervene in opposition to the Application 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

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<sup>8</sup> See 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> See Comment of John Young, FE Docket No. 15-62-LNG (Oct. 19, 2020); Comment of Maria Hernandez, FE Docket No. 15-62-LNG (Oct. 3, 2020); see *infra* § III.

<sup>13</sup> 10 C.F.R. § 590.102(b).

shown that the term extension for Order No. 4489 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. 3716 and 4489 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**

Texas 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> Texas LNG states that it forecasts commissioning of the Project in 2025 and expects the Project to have an operational life past the year 2050.<sup>16</sup> Therefore, according to Texas LNG, the term extension will increase the volume of LNG that Texas LNG is able to export over the life of its authorizations.<sup>17</sup> Texas LNG further asserts that the requested term extension will provide regulatory support for the Project, and thus will “maximize the Project’s ability to secure long-term contracts.”<sup>18</sup>

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<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> See App. at 4.

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

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

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

### **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).<sup>19</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 October 19, 2020.<sup>20</sup> DOE/FE received one comment opposing the Application from John Young, discussed below, and one comment from Maria Hernandez that was non-responsive.<sup>21</sup>

Mr. Young states his objection to the requested term extension,<sup>22</sup> while raising objections to the Project generally. Mr. Young contends there are “increasing uncertainties” over the viability of the Project (and a variety of other LNG export projects), including the fact that Texas LNG has not yet commenced construction of the Project.<sup>23</sup> Mr. Young also expresses doubt about Texas LNG’s ability to receive natural gas from the Valley Crossing Pipeline, given other possible uses of the natural gas to be delivered on that pipeline. According to Mr. Young, “[p]rojects like Texas LNG Brownsville should have a firm, verifiable source of feedgas and customer base before receiving the permits needed to build and operate.”<sup>24</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:

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<sup>19</sup> U.S. Dep’t of Energy, Texas LNG Brownsville LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 62,286 (Oct. 2, 2020).

<sup>20</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>21</sup> *See supra* note 12.

<sup>22</sup> *See* Comment of John Young at 14.

<sup>23</sup> *See id.* at 3-4. Mr. Young raises other arguments and cites a variety of documents, which DOE/FE finds are not responsive to the Application.

<sup>24</sup> *Id.* at 14.

[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>25</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>26</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>27</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>28</sup> DOE’s environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or

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<sup>25</sup> 15 U.S.C. § 717b(a).

<sup>26</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>27</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>28</sup> 42 U.S.C. § 4321 *et seq.*

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 LNG, from the lower-48 states to non-FTA countries.<sup>29</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>30</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>31</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>32</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>33</sup>

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<sup>29</sup> Policy Statement, 85 Fed. Reg. at 52,247.

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

<sup>31</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>32</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>33</sup> *See id.* at 52,239, 52,247.

In this uncontested proceeding, Texas LNG asks DOE/FE to amend the export term in its non-FTA order, Order No. 4489, through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Texas LNG's total volume of exports over the life of the authorization (by extending the duration of Order No. 4489 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Project previously approved by DOE and the Federal Energy Regulatory Commission (FERC).<sup>34</sup>

Mr. Young opposes the requested term extension. DOE/FE notes that Mr. Young includes comments he previously made in other proceedings, including the Rio Grande LNG proceeding (FE Docket No. 15-190-LNG).<sup>35</sup> Insofar as Mr. Young raises arguments relevant to this proceeding, DOE/FE does not find that his arguments demonstrate that Texas LNG's requested term extension will be inconsistent with the public interest, as would be required to deny the Application. For example, Mr. Young's opinions on alleged uncertainties associated with the Project and the U.S. LNG industry generally do not undermine the evidence cited by Texas LNG and DOE/FE in favor of the term extension. In sum, DOE/FE finds that Mr. Young 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**

Texas LNG states that approval of the term extension will not require operational or physical changes to the Project, and that no new construction is proposed.<sup>36</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

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

<sup>35</sup> See, e.g., Comment of John Young at 3 (stating that he "will be cutting and pasting" his comment in the Rio Grande LNG proceeding into this comment).

<sup>36</sup> See App. at 5.



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.<sup>37</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 Texas LNG's Application requesting an amendment to its FTA authorization (DOE/FE Order No. 3716) falls within NGA section 3(c), as amended.<sup>38</sup> Therefore, DOE/FE is charged with granting the requested term extension for Order No. 3716 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>39</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. 4489.

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<sup>37</sup> U.S. Dep't of Energy, Categorical Exclusion Determination, *Texas LNG Brownsville LLC*, FE Docket No. 15-62-LNG (Nov. 5, 2020) [hereinafter Categorical Exclusion].

<sup>38</sup> 15 U.S.C. § 717b(c).

<sup>39</sup> *Id.* § 717b(a).

## ORDER

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

A. Texas LNG Brownsville LLC's Application to amend the respective export terms set forth in DOE/FE Order Nos. 3716 and 4489 is granted.

B. In DOE/FE Order No. 3716, the relevant sentence in Ordering Paragraph A is amended to state:

The volume authorized in this Order is equivalent to approximately 204.4 Bcf/yr of natural gas for a term beginning on the earlier of the date of first export or 10 years from the date the authorization is issued (September 24, 2025), and extending through December 31, 2050.

C. In DOE/FE Order No. 4489, 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 4489.

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>40</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. 4489 are now moot.

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<sup>40</sup> See *supra* at 4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.

E. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3716 and 4489 remain in effect.

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

A handwritten signature in black ink, reading "Steven Eric Winberg", is centered on a light blue horizontal line. The signature is written in a cursive style with a large initial 'S'.

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Steven Eric Winberg  
Assistant Secretary  
Office of Fossil Energy