

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

BP ENERGY COMPANY)
)
)

FE DOCKET NO. 20-102-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS BY VESSEL
TO FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4628

DECEMBER 2, 2020

I. INTRODUCTION

On August 20, 2020, BP Energy Company (BPEC) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA),² requesting authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in a volume equivalent to 30 billion cubic feet (Bcf) of natural gas on a cumulative basis. BPEC seeks to export this LNG by vessel from the Cove Point LNG Terminal, owned by Cove Point LNG, LP (Cove Point) (formerly known as Dominion Energy Cove Point LNG, LP)³ and located in Calvert County, Maryland, on a short-term or spot market basis for a two-year period.⁴

BPEC seeks to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. This includes both countries 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),⁵ and any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁶

BPEC states that it does not seek authorization to export any domestically produced natural gas

¹ *BP Energy Co.*, Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas on a Short-Term Basis, FE Docket No. 20-102-LNG (Aug. 20, 2020) [hereinafter App.].

² The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04G, issued on June 4, 2019.

³ On November 2, 2020, Dominion Energy Cove Point LNG, LP (DECP) amended its Certificate of Limited Partnership with the State of Delaware to change its name to Cove Point LNG, LP (Cove Point or CPL). *See* Dominion Energy Cove Point LNG, LP, Notification of Name Change, FE Docket Nos. 11-115-LNG, *et al.* (Nov. 13, 2020), *available at*: <https://www.energy.gov/sites/prod/files/2020/11/f80/DOE%20Notification%20for%20CPL%20Name%20Change.pdf>. Accordingly, although BPEC refers to “Dominion Energy Cove Point LNG, LP” or “DECP” in its Application filed prior to the name change, we refer to “Cove Point LNG, LP” herein to mean the same entity.

⁴ App. at 2.

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 *Id.* § 717b(a).

or LNG.⁷ BPEC is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export.⁸

In this Order, DOE/FE grants BPEC's Application and authorizes the requested export of previously imported LNG in a volume equivalent to 30 Bcf of natural gas on a cumulative basis over the requested two-year period. Specifically, DOE/FE grants the FTA portion of the Application under NGA section § 3(c), 15 U.S.C. § 717b(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."⁹ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested FTA authorization without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA authorization. As to the non-FTA portion of the Application, DOE/FE has reviewed the record in this proceeding under NGA section 3(a), 15 U.S.C. § 717b(a), and likewise grants that requested authorization as set forth below.

II. BACKGROUND

Applicant. BPEC is a Delaware corporation with its principal place of business in Houston, Texas. BPEC is a wholly owned indirect subsidiary of BP America Inc.¹⁰

BPEC's Contractual Rights at Cove Point LNG Terminal. BPEC states that it has contracted for 0.333 Bcf per day (Bcf/d) of import capacity at the Cove Point LNG Terminal. BPEC states that this contract has a primary term of 20 years, to expire on August 18, 2023.¹¹

⁷ App. at 3.

⁸ *Id.* at 1.

⁹ 15 U.S.C. § 717b(c).

¹⁰ App. at 2.

¹¹ *Id.*

Procedural History. On November 19, 2018, DOE/FE issued Order No. 4302, authorizing BPEC to export LNG previously imported from foreign sources in a volume equivalent to 30 Bcf of natural gas on a cumulative basis over a two-year period commencing on November 19, 2018, and extending through November 18, 2020.¹² BPEC is authorized to export this LNG, on its own behalf or as agent for other entities who hold title to the natural gas at the time of export, by vessel from the Cove Point LNG Terminal to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy (which includes both FTA and non-FTA countries).¹³

Additionally, on July 7, 2020, DOE/FE issued Order No. 4560, authorizing BPEC to import LNG from various international sources by vessel in a total volume equivalent to approximately 1,200 Bcf of natural gas for a two-year term commencing on August 22, 2020, and extending through August 21, 2022.¹⁴ Under the terms of that authorization, BPEC may import the LNG at any LNG receiving facility in the United States and its territories.¹⁵

In this proceeding, BPEC filed its Application on August 20, 2020. On October 22, 2020, DOE/FE published a Notice of Application in the *Federal Register* for the non-FTA portion of the Application.¹⁶ Comments, protests, and motions or notices to intervene on the Application were due by November 23, 2020. DOE/FE received no filings in response to the

¹² *BP Energy Co.*, DOE/FE Order No. 4302, FE Docket No. 18-69-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations, at 18-19 (Nov. 19, 2018).

¹³ *Id.* at 19. In that order, DOE/FE took “no position on the commercial arrangements necessary to effectuate the export of this LNG” from the Cove Point LNG Terminal, and stated that “BPEC and DECP [now Cove Point] ultimately may agree upon contractual terms for export services at the Cove Point Terminal, as they deem appropriate.” *Id.* at 13; *see also id.* at 19.

¹⁴ *BP Energy Co.*, DOE/FE Order No. 4560, FE Docket No. 20-69-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel, at 3 (July 7, 2020).

¹⁵ *Id.*

¹⁶ U.S. Dep’t of Energy, *BP Energy Co.; Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis*, 85 Fed. Reg. 67,344 (Oct. 22, 2020).

Notice of Application, and therefore the non-FTA portion of the Application is uncontested.

III. APPLICANT'S PUBLIC INTEREST ANALYSIS FOR NON-FTA AUTHORIZATION

BPEC maintains that its requested authorization is consistent with NGA section 3(a) and DOE/FE's policy. First, BPEC asserts that the volume of previously imported foreign-sourced LNG that it proposes to export is not necessary to meet domestic needs. In support of this argument, BPEC points to DOE/FE's findings in recent blanket authorizations to export previously imported LNG—including its prior authorization (DOE/FE Order No. 4302)¹⁷ and an authorization issued to Cameron LNG, LLC (Cameron LNG) in 2019¹⁸—and suggests that DOE/FE's findings in these orders should apply to its request.¹⁹ Citing Cameron LNG's authorization granted in DOE/FE Order No. 4425, BPEC notes that DOE/FE took administrative notice of the U.S. Energy Information Administration's (EIA) *Annual Energy Outlook 2019* (AEO 2019) in finding that the volume of foreign-sourced LNG was not needed to meet domestic demand.²⁰ BPEC suggests that this conclusion should also apply to its Application.²¹

IV. DISCUSSION AND CONCLUSIONS FOR NON-FTA AUTHORIZATION

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard for DOE/FE's review of BPEC's requested non-FTA authorization. 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

¹⁷ App. at 4 (discussing *BP Energy Co.*, DOE/FE Order No. 4302).

¹⁸ *Id.* (citing *Cameron LNG, LLC*, DOE/FE Order No. 4425, FE Docket No. 19-62-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Countries (Aug. 21, 2019)).

¹⁹ *Id.*

²⁰ *Id.* (discussing U.S. Energy Info. Admin., *Annual Energy Outlook 2019* (Jan. 24, 2019), available at: <https://www.eia.gov/outlooks/archive/aeo19/pdf/aeo2019.pdf>).

²¹ *Id.*

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.²²

This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest.²³ DOE/FE must grant such an application unless the presumption is overcome by an affirmative showing of inconsistency with the public interest.²⁴

In evaluating an export application under this standard, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111²⁵—which focus primarily on domestic need for the natural gas to be exported, as described in DOE's 1984 Policy Guidelines²⁶—and any other matters determined to be appropriate to a determination of the public interest. In addition, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Domestic Need

BPEC's Application involves a request for authorization to export LNG that was previously imported into the United States from foreign sources. Exporting this proposed volume of LNG will not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG could affect the domestic natural gas market

²² 15 U.S.C. § 717b(a).

²³ *See, e.g., Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (citations omitted).

²⁴ *See id.* (citations omitted).

²⁵ DOE Delegation Order No. 0204-111 (Feb. 22, 1984), at 1(¶ (b)). DOE Delegation Order No. 0204-111 was later rescinded by DOE Delegation Order No. 00-002.00 (¶ 2) (Dec. 6, 2001), and DOE Redelegation Order No. 00-002.04 (¶ 2) (Jan. 8, 2002).

²⁶ U.S. Dep't of Energy, *New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984) (incorporating DOE Delegation Order No. 0204-111).

because, for the requested two-year period, the proposed exports will reduce the volume of natural gas potentially available for consumption within the United States.

DOE/FE has issued numerous blanket authorizations to export previously imported LNG in other proceedings.²⁷ These orders were based, in part, on authoritative data indicating that United States consumers have access to substantial quantities of natural gas sufficient to meet domestic demand from other competitively-priced sources. For example, BPEC points to DOE/FE's discussion of AEO 2019 in Cameron LNG's authorization.²⁸ DOE/FE takes administrative notice of the most recent analysis prepared by EIA in the *Annual Energy Outlook 2020* (AEO 2020).²⁹ AEO 2020 projects annual domestic dry natural gas production in 2021 of 35.70 trillion cubic feet (Tcf),³⁰ with total natural gas consumption projected to be 31.92 Tcf in the same year.³¹

Because domestic natural gas production levels are projected to reach an amount that well exceeds the amount of natural gas proposed for short-term export in BPEC's Application, we find that United States consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG that BPEC seeks to export.

C. Other Public Interest Factors

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. Consistent with DOE's Policy Guidelines and DOE/FE

²⁷ See, e.g., *BP Energy Co.*, DOE/FE Order No. 4302; *Cameron LNG, LLC*, DOE/FE Order No. 4425.

²⁸ App. at 4.

²⁹ U.S. Energy Info. Admin., *Annual Energy Outlook 2020* (Jan. 29, 2020), available at: <https://www.eia.gov/outlooks/aeo/pdf/aeo2020.pdf>.

³⁰ See AEO 2020 Reference Case, Table 60: Lower 48 Natural Gas Production and Supply Prices, by Supply Region, available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=72-AEO2020&cases=ref2020&sourcekey=0>.

³¹ See AEO 2020 Reference Case, Table 13: Natural Gas Supply, Disposition, and Prices, available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2020&cases=ref2020&sourcekey=0>.

precedent, DOE/FE considers the potential effects of proposed exports on other aspects of the public interest, including environmental factors (discussed below). As noted above, DOE/FE received no filings in response to the Notice of Application.

D. Environmental Review

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. BPEC states that the proposed export of previously imported LNG would require no modifications to the Cove Point LNG Terminal.³² Under these circumstances, DOE's NEPA procedures provide for a categorical exclusion for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5).³³ Accordingly, DOE/FE is concurrently issuing a categorical exclusion, dated December 2, 2020, finding that BPEC's proposed exports are categorically excluded from further NEPA review.³⁴

E. Conclusion

Upon review of the record, DOE/FE finds that a grant of the uncontested non-FTA portion of BPEC's Application is not inconsistent with the public interest. In particular, the record shows that there is a sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on BPEC's proposed exports during the two-year authorization period. Further, the proposed exports qualify for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE/FE therefore grants the non-FTA portion of BPEC's Application, as set forth below.

³² App. at 5.

³³ See 10 C.F.R. § 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusion B5.7 (“Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”).

³⁴ U.S. Dep't of Energy, Categorical Exclusion Determination, BP Energy Co., FE Docket No. 20-102-LNG (Dec. 2, 2020).

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 the export of natural gas, including LNG, to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas shall be deemed consistent with the public interest and granted without modification or delay.³⁵ The FTA portion of BPEC's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested authorization without modification or delay.³⁶

(2) With respect to the non-FTA portion of the Application, and after due consideration based on all facts and evidence of record, DOE/FE finds that a grant of the export application is not inconsistent with the public interest under NGA section (a), 15 U.S.C. § 717b(a).

(3) BPEC requests authorization to export LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,³⁷ which granted Freeport LNG Expansion, L.P. *et al.* (collectively, FLEX) authority to export LNG to FTA countries. In that Order, DOE/FE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE/FE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *The Dow Chemical Company*, which established that the title for all LNG authorized for export must be held by the authorization

³⁵ 15 U.S.C. § 717b(c).

³⁶ DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590 are applicable only to applications seeking to export natural gas, including LNG, to non-FTA countries.

³⁷ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No 2913, FE Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

holder at the point of export.³⁸ We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE/FE reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.³⁹ In that Order, DOE/FE determined that, in LNG export orders in which Agency Rights have been granted, DOE/FE shall require registration materials filed for, or by, an LNG title-holder (Registrant) to include the same company identification information and long-term contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.⁴⁰

To ensure that the public interest is served, the authorization granted herein shall require that where BPEC proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), BPEC must register with DOE/FE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

ORDER

Pursuant to section 3 of the NGA it is ordered that:

A. BP Energy Company (BPEC) is authorized to export LNG previously imported from foreign sources in a volume equivalent to 30 Bcf of natural gas, pursuant to transactions that have terms of no longer than two years. BPEC is authorized to export this LNG on its own behalf or as agent for other entities that hold title to the natural gas at the time of export. This

³⁸ *The Dow Chemical Co.*, DOE/FE Order No. 2859, FE Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 7-8 (Oct. 5, 2010), discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

³⁹ *Cameron LNG, LLC*, DOE/FE Order No. 3680, FE Docket No. 15-36-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Free Trade Agreement Nations (July 10, 2015).

⁴⁰ *See id.* at 8-9.

authorization shall be effective for a two-year term beginning on December 2, 2020, and extending through December 1, 2022.

B. This LNG may be exported by vessel from the Cove Point LNG Terminal, which is owned and operated by Cove Point LNG, LP (Cove Point). This LNG may be exported to any country with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy. However, this Order does not give BPEC an independent right to access the Cove Point LNG Terminal facilities. BPEC and Cove Point—the Terminal’s owner and operator—may agree upon contractual terms for BPEC’s export services, as they deem appropriate. Additionally, this Order does not restrict, through volume limitations or otherwise, either Cove Point’s or BPEC’s existing export authorizations issued by DOE/FE.

C. BPEC shall ensure that all transactions authorized by this Order are permitted and lawful under U.S. laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury and the Federal Energy Regulatory Commission. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. BPEC, or others for whom BPEC acts as agent, shall include the following provision in any agreement or contract for the sale or transfer of LNG exported pursuant to this Order:

Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 4628, issued December 2, 2020, in FE Docket No. 20-102-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to BP Energy Company that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that BP Energy Company is made aware of all such countries.

E. BPEC is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other entities with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply BPEC with all information and copies of contracts necessary in order to permit BPEC to register that person or entity with DOE/FE, including: (1) the Registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 C.F.R. Part 590, including but not limited to destination restrictions; (2) the exact legal name of the registrant, state/location of incorporation/registration, primary place of doing business, and the registrant's ownership structure, including the ultimate parent entity if the Registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the Registrant to whom inquiries may be directed; and (4) an acknowledgement and agreement by the Registrant to include the provision in Ordering Paragraph D in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

G. BPEC shall ensure that all persons required by this Order to register with DOE/FE have done so.

H. Monthly Reports: With respect to the export of LNG authorized by this Order, BPEC shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R indicating whether exports of LNG have been made. Monthly reports must be filed whether or not initial deliveries have begun. If no exports have been made, a report of "no activity" for that month must be filed. If exports of

LNG have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG tanker; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the LNG is actually delivered; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser(s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

I. The first monthly report required by this Order is due not later than January 30, 2021, and should cover the reporting period from December 2, 2020, through December 31, 2020.

J. All monthly report filings on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation, Analysis, and Engagement, according to the methods of submission listed on the Form FE-746R reporting instructions available at <https://www.energy.gov/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on December 2, 2020.



Steven Eric Winberg
Assistant Secretary
Office of Fossil Energy