UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

ANNOVA LNG COMMON INFRASTRUCTURE, LLC	)	FE DOCKET NO. 19-34-LNG

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

DOE/FE ORDER NO. 4491-A

DECEMBER 30, 2020

I. DESCRIPTION OF REQUEST

On November 24, 2020, Annova LNG Common Infrastructure, LLC (Annova) 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, Annova 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).[3]

Specifically, in DOE/FE Order No. 4491,[4] Annova is currently authorized to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 360 billion cubic feet per year (Bcf/yr) of natural gas, pursuant to NGA section 3(a).[5] Annova is authorized to export this LNG by vessel from the proposed Annova LNG Brownsville Project (or Project), to be located on the Brownsville Ship Channel in Cameron County, Texas, 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,[6] and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term.[7]

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[1] Annova LNG Common Infrastructure, LLC, Application to Amend Export Term for Existing Long-Term Authorization Through December 31, 2050, FE Docket No. 19-34-LNG (Nov. 24, 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] *Annova LNG Common Infrastructure, LLC*, DOE/FE Order No. 4491, FE Docket No. 19-34-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020).

[5] 15 U.S.C. § 717b(a).

[6] 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.

[7] App. at 4. Annova 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 4 n.4 (citing

In the Application, Annova asks DOE/FE to amend Order No. 4491 to extend the existing export term through December 31, 2050.[8]

In this Order, DOE/FE grants Annova's Application under NGA section 3(a) and authorizes the requested term extension. As discussed below, DOE/FE received one comment in opposition to the Application, submitted by John Young.[9] No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.[10] Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for Order No. 4491 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. 4491 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.[11] The order remains unchanged in all other respects.

II. APPLICANT'S PUBLIC INTEREST ANALYSIS

Annova 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.[12] Citing the Policy Statement, Annova states that a 30-year export term will better match the operational

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DOE/FE Order No. 3394, as amended by Order No. 3394-A); *see also id.* at 5 (noting that its approved FTA and non-FTA export volumes are not additive).

[8] *Id.*

[9] Comment of John Young, FE Docket No. 19-34-LNG (Dec. 16, 2020); *see infra* § III.

[10] 10 C.F.R. § 590.102(b).

[11] *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.

[12] App. at 7-11.

life of LNG export facilities.[13] Annova adds that the requested term extension will provide commercial benefits, such as facilitating 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.[14]

III. DOE/FE PROCEEDING

On December 1, 2020, DOE/FE published a notice of the Application in the *Federal Register* (Notice of Application).[15] The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments addressing the requested term extension by December 16, 2020.[16] DOE/FE received one comment opposing the Application from John Young.[17]

Mr. Young states his objection to the requested term extension,[18] while raising objections to the Project and exports of U.S. LNG generally. Specifically, Mr. Young expresses doubt about Annova'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.[19]

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]

[13] *Id.* at 9.
[14] *Id.*
[15] U.S. Dep't of Energy, Annova LNG Common Infrastructure, LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 77,200 (Dec. 1, 2020).
[16] *Id.*
[17] *See infra* note 9.
[18] *See* Comment of John Young at 1.
[19] *Id.* at 3-4.

> 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.[20]

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.[21] 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.[22]

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).[23] 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

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[20] 15 U.S.C. § 717b(a).

[21] *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)).

[22] *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)).

[23] 42 U.S.C. § 4321 *et seq*.

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.[24] 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.[25] 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,[26] 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.[27] 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.[28]

[24] Policy Statement, 85 Fed. Reg. at 52,247.
[25] *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).
[26] *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).
[27] *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).
[28] *See id.* at 52,239, 52,247.

In this uncontested proceeding, Annova asks DOE/FE to amend the export term in its non-FTA order, Order No. 4491, through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Annova's total volume of non-FTA exports over the life of the authorization (by extending the duration of Order No. 4491 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).[29]

Mr. Young, the only commenter in this proceeding, opposes the requested term extension. Mr. Young raises a variety of general arguments about the Project and other U.S. LNG projects, including that the Valley Crossing Pipeline may not have capacity to provide natural gas to Annova's Project in the future due to competing demands for the Pipeline's service.[30] Upon review of this issue, DOE/FE is guided by its long-standing policy of promoting market competition and allowing commercial parties to freely negotiate their own arrangements, including the source of supply and pipeline routing for a project.[31] As DOE/FE has observed, "[t]he market, not government, should determine the price and other contract terms of imported [or exported] natural gas."[32] In sum, upon review of the public interest factors previously considered in Order No. 4491,[33] and Mr. Young's new assertions in this proceeding, we do not find that concerns about the current or future capacity of the Valley Crossing Pipeline overcome the statutory presumption in NGA section 3(a) that the proposed term extension is in the public interest.

[29] *See id.* at 52,247; *see also* App. at 5 (citing FERC order).
[30] *See* Comment of John Young, at 2.
[31] *See Annova LNG Common Infrastructure, LLC*, DOE/FE Order No. 4491, at 20-23 (public interest standard).
[32] New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).
[33] *See generally Annova LNG Common Infrastructure, LLC*, DOE/FE Order No. 4491.

C. Environmental Review Under NEPA

Annova states that approval of the term extension will not require new construction, operational changes, or other modifications to the Project.[34] 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.[35] On December 22, 2020, DOE/FE issued a categorical exclusion under this provision.[36] This Order grants the Application, in part, on the basis of this categorical exclusion.

V. FINDINGS

(1) 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).[37] 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. 4491.

(2) On December 18, 2020, DOE/FE issued a blanket order, DOE/FE Order No. 4641, amending existing long-term authorizations to include short-term export authority on a non-additive basis.[38] The blanket order amended Annova's authorization at issue here.

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[34] App. at 11.

[35] DOE/FE notes that, on January 4, 2021, an amended form of this B5.7 categorical exclusion will take effect. *See* U.S. Dep't of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197 (Dec. 4, 2020) (effective date of Jan. 4, 2021).

[36] U.S. Dep't of Energy, Categorical Exclusion Determination, *Annova LNG Common Infrastructure, LLC*, FE Docket No. 19-34-LNG (Dec. 22, 2020) [hereinafter Categorical Exclusion].

[37] 15 U.S.C. § 717b(a).

[38] U.S. Dep't of Energy, DOE/FE Order No. 4641, FE Docket Nos. 10-85-LNG, *et al.*, Order Amending Long-Term Authorizations for the Export of Natural Gas to Include Short-Term Export Authority on a Non-Additive Basis, and Vacating Related Short-Term Authority in Separate Orders (Dec. 18, 2020), *available at:* https://www.energy.gov/sites/prod/files/2020/12/f82/ord4641.pdf; *see also* U.S. Dep't of Energy, Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis; Policy Statement, __ Fed. Reg. __ (forthcoming) (signed on Dec. 18, 2020).

Accordingly, the amended ordering language set forth below includes both the term extension amendment requested in the Application and the amendment granted in Order No. 4641.

ORDER

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

A. Annova LNG Common Infrastructure, LLC's Application to amend the export term set forth in DOE/FE Order No. 4491 is granted.

B. Ordering Paragraph A of DOE/FE Order No. 4491 is amended to state:

> Annova LNG Common Infrastructure, LLC (Annova) is authorized to export domestically produced LNG by vessel from the proposed Annova LNG Brownsville Project (Project) to be located on the Brownsville Ship Channel in Cameron County, Texas, in a volume up to the equivalent of 360 Bcf/yr of natural gas. This authorization is for a term to commence on the date of first commercial export and to extend through December 31, 2050. Annova is authorized to export the LNG on its own behalf and as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).
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> As of December 18, 2020, this authorization also includes: (i) authority to export the same approved volume pursuant to transactions of any duration—including but not limited to transactions of less than two years—on a non-additive basis; and (ii) authority to export commissioning volumes (in the same approved volume) prior to the commercial operations of the LNG export

facility (or facilities) named in this authorization, on a non-additive basis.

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. 4491.

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.[39] Accordingly, any references to make-up periods and make-up volumes in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 4491 are now moot.

D. All other obligations, rights, and responsibilities established by DOE/FE Order No. 4491 remain in effect.

Issued in Washington, D.C., on December 30, 2020.

Steven Eric Winberg
Assistant Secretary
Office of Fossil Energy

[39] *See supra* at 3; *see also* Policy Statement, 85 Fed. Reg. at 52,239, 52,247.