

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

EAGLE LNG PARTNERS JACKSONVILLE II LLC) FE DOCKET NO. 17-79-LNG
_____)

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

DOE/FE ORDER NO. 4078-A

DECEMBER 30, 2020

I. DESCRIPTION OF REQUEST

On November 30, 2020, Eagle LNG Partners Jacksonville II LLC (Eagle Maxville) 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, Eagle Maxville asks DOE/FE to extend the export terms set forth in its consolidated long-term authorization, 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

In DOE/FE Order No. 4078, DOE/FE authorized Eagle Maxville to export domestically produced liquefied natural gas (LNG) in approved ISO containers loaded at the Eagle Maxville Facility (Maxville Facility), located near Jacksonville, Duval County, Florida.⁴ Under this consolidated order, Eagle Maxville is authorized to export this LNG to: (i) 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);⁵ and (ii) any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), under NGA section 3(a).⁶

¹ Eagle LNG Partners Jacksonville II LLC, Application to Amend Export Term for Existing Long-Term Export Authorizations Through December 31, 2050, FE Docket No. 17-79-LNG (Nov. 30, 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 *Eagle LNG Partners Jacksonville II LLC*, DOE/FE Order No. 4078, FE Docket No. 17-79-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Eagle Maxville Facility in Jacksonville, Florida, and Exported by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations (Sept. 15, 2017).

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).

Eagle Maxville is authorized to export this LNG to both FTA and non-FTA countries in a volume equivalent to 2.8 billion cubic feet per year (Bcf/yr) of natural gas on a non-additive basis for a 20-year term.⁷ In the Application, Eagle Maxville asks DOE/FE to amend Order No. 4078 to extend the existing export term of its FTA and non-FTA authorizations through December 31, 2050.⁸

In this Order, DOE/FE grants Eagle Maxville's Application and authorizes the requested term extension for DOE/FE Order No. 4078. 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."⁹ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension for the FTA portion of Order No. 4078 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 no filings in response to the Application, and therefore the Application is uncontested. Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for the non-FTA portion of Order No. 4078 is inconsistent with the public interest, as would be required to deny the non-FTA portion of the Application under NGA section 3(a).

⁷ App. at 4. Additional information is set forth in the order.

⁸ *Id.* at 5, 9. 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.

⁹ 15 U.S.C. § 717b(c).

In sum, DOE/FE is amending DOE/FE Order No. 4078 to extend the existing FTA and non-FTA export terms 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.¹⁰ DOE/FE Order No. 4078 remains unchanged in all other respects.

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

Eagle Maxville 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 benefits associated with exporting LNG through December 31, 2050.¹¹ Eagle Maxville cites the Policy Statement in stating that the requested term extension will provide “important commercial benefits to existing and future authorization holders” and “long-term regulatory certainty for both authorization holders and foreign buyers of U.S. LNG.”¹² Eagle Maxville also references the record in this docket in stating that the validity of DOE/FE’s prior public interest finding “is not diminished” by the requested term extension.¹³

III. DOE/FE PROCEEDING

On December 7, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).¹⁴ The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, and/or

¹⁰ 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.

¹¹ App. at 7-8.

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ U.S. Dep’t of Energy, Eagle LNG Partners Jacksonville II LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 78,840 (Dec. 7, 2020).

comments addressing the requested term extension by December 22, 2020.¹⁵ DOE/FE received no filings in response to the Notice of Application.

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 such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.¹⁶

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.¹⁷ 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.¹⁸

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

¹⁵ *Id.* at 78,841. 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).

¹⁶ 15 U.S.C. § 717b(a).

¹⁷ *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] a authorization.’”) (quoting *W. Va. Pub. Serv. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

¹⁸ *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)).

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).¹⁹ 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.

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.²⁰ 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.²¹ 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,²² 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.

¹⁹ 42 U.S.C. § 4321 *et seq.*

²⁰ Policy Statement, 85 Fed. Reg. at 52,247.

²¹ *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

²² *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).

Energy Information Administration's (EIA) most recent projections for U.S. natural gas, and relevant environmental issues.²³ 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.²⁴

In this uncontested proceeding, Eagle Maxville asks DOE/FE to amend the export term in the non-FTA portion of Order No. 4078 through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Eagle Maxville's total volume of non-FTA exports over the life of the authorization (by extending the duration of Order No. 4078 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Eagle Maxville Project.²⁵ 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 Eagle Maxville's Application.

C. Environmental Review Under NEPA

Eagle Maxville states that approval of its term extension request will not require any new construction or modification of the Maxville Facility.²⁶ DOE's regulations at 10 CFR 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

²³ See Policy Statement, 85 Fed. Reg. at 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).

²⁴ See *id.* at 52,239, 52,247.

²⁵ See *id.* at 52,247; see also App. at 4 (discussing Maxville Facility).

²⁶ App. at 8.

existing projects.²⁷ On December 23, 2020, DOE/FE issued a categorical exclusion under this provision.²⁸ 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 Eagle Maxville's Application requesting an amendment to its FTA authorization falls within NGA section 3(c), as amended.²⁹ Therefore, DOE/FE is charged with granting the requested term extension for the FTA portion of Order No. 4078 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).³⁰ 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 the non-FTA portion of Order No. 4078.

²⁷ 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).

²⁸ U.S. Dep't of Energy, Categorical Exclusion Determination, *Eagle LNG Partners Jacksonville II LLC*, FE Docket No. 17-79-LNG (Dec. 23, 2020) [hereinafter Categorical Exclusion].

²⁹ 15 U.S.C. § 717b(c).

³⁰ *Id.* § 717b(a).

(3) The Eagle Maxville Facility is currently operational and has not yet executed any export contracts.³¹

(4) 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.³² The blanket order amended Eagle Maxville's authorization at issue here. 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. Eagle LNG Partners Jacksonville II LLC's (Eagle Maxville) Application to amend the FTA and non-FTA export terms set forth in DOE/FE Order No. 4078 is granted.

B. Ordering Paragraph A of Order No. 4078 is amended to state:

Eagle LNG Partners Jacksonville II LLC (Eagle Maxville) is authorized to export domestically produced LNG in approved ISO containers loaded at the Maxville Facility located near Jacksonville, Duval County, Florida, in a volume equivalent to 2.8 Bcf/yr of natural gas. Eagle Maxville is authorized to export this LNG on its own behalf and as agent for other entities that hold title to the natural

³¹ See Eagle LNG Partners Jacksonville II LLC, Semi-Annual Report, FE Docket No. 17-79-LNG (Sept. 24, 2020), available at: https://www.energy.gov/sites/prod/files/2020/09/f79/Eagle%20Maxville_DOE_Semi-Annual%20Report_October%202020.pdf.

³² 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).

gas, pursuant to one or more long-term contracts (a contract greater than two years).

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.

C. Ordering Paragraph C is amended to state:

The term for the FTA and non-FTA authorizations will commence when Eagle Maxville commences commercial export of domestically sourced LNG from the Maxville Facility, and will 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. 4078.

D. These export terms lasting through December 31, 2050, are inclusive of any make-up period 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.³³ Accordingly, any references to make-up periods and make-up volumes in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 4078 are now moot.

³³ 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 No. 4078 remain in effect.

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

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

Steven Eric Winberg
Assistant Secretary
Office of Fossil Energy