

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

GULF LNG LIQUEFACTION COMPANY, LLC

) FE DOCKET NO. 12-47-LNG
) FE DOCKET NO. 12-101-LNG
)

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

DOE/FE ORDER NO. 3104-A
DOE/FE ORDER NO. 4410-A

JANUARY 12, 2021

I. DESCRIPTION OF REQUEST

On December 15, 2020, Gulf LNG Liquefaction Company, LLC (GLLC) 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, GLLC 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

GLLC is currently authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed Gulf LNG Liquefaction Project to be located at the Gulf LNG Energy LLC Terminal in Jackson County, Mississippi, near the city of Pascagoula, under the following orders:

- (i) DOE/FE Order No. 3104,⁴ 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);⁵ and

¹ Gulf LNG Liquefaction Co., LLC, Application to Amend Export Term for Existing Long-Term Authorization(s) Through December 31, 2050, FE Docket Nos. 12-47-LNG, *et al.* (Dec. 15, 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 *Gulf LNG Liquefaction Co., LLC*, DOE/FE Order No. 3104, FE Docket No. 12-47-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Gulf LNG Energy, LLC Terminal to Free Trade Agreement Nations (June 15, 2012).

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.

- (ii) DOE/FE Order No. 4410,⁶ 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).⁷

These orders authorize exports of LNG in a volume equivalent to 547.5 billion cubic feet per year (Bcf/yr) of natural gas to FTA countries and 558.9 Bcf/yr of natural gas to non-FTA countries on a non-additive basis.⁸ GLLC is authorized to export the FTA volume for a 25-year term under DOE/FE Order No. 3104, and the non-FTA volume for a 20-year term under DOE/FE Order No. 4410.⁹ In the Application, GLLC asks DOE/FE to amend each order to extend the existing export term through December 31, 2050.¹⁰

In this Order, DOE/FE grants GLLC'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."¹¹ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension to Order No. 3104 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 anonymous comment in opposition to the Application.¹²

⁶ *Gulf LNG Liquefaction Co., LLC*, DOE/FE Order No. 4410, FE Docket No. 12-101-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (July 31, 2019).

⁷ 15 U.S.C. § 717b(a).

⁸ App. at 2; *see Gulf LNG Liquefaction Co., LLC*, DOE/FE Order No. 4410, at 64-65 (Ordering Para. I).

⁹ Additional information is set forth in each order.

¹⁰ App. at 2. 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.

¹¹ 15 U.S.C. § 717b(c).

¹² *See* Comment of Anonymous, FE Docket No. 12-101-LNG (Dec. 26, 2020); *see infra* § III.

No protests or motions to intervene in opposition to the Application were filed, and therefore the Application is uncontested.¹³ Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for Order No. 4410 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. 3104 and 4410 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.¹⁴ These orders remain unchanged in all other respects.

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

GLLC defers to DOE's conclusions set forth in the Policy Statement—namely, that the requested term extension is in the public interest because the United States will experience economic and energy security benefits associated with exporting LNG through December 31, 2050.¹⁵

III. DOE/FE PROCEEDING

On December 23, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).¹⁶ The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments

¹³ 10 C.F.R. § 590.102(b).

¹⁴ 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.

¹⁵ App. at 3.

¹⁶ U.S. Dep't of Energy, Gulf LNG Liquefaction Co., LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 83,935 (Dec. 23, 2020).

addressing the requested term extension by January 7, 2021.¹⁷ DOE/FE received one anonymous comment that opposes the Application.¹⁸ The commenter recommends that DOE/FE “deny any and all permits for this company to operate” and “implement the new green deal immediately.”¹⁹

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.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

¹⁷ *Id.* at 83,936. 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).

¹⁸ See Comment of Anonymous at 1, *supra* note 12.

¹⁹ *Id.*

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)).

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

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

²³ 42 U.S.C. § 4321 *et seq.*

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).

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

In this uncontested proceeding, GLLC asks DOE/FE to amend the export term in its non-FTA order, Order No. 4410, through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase GLLC's total volume of exports over the life of the authorization (by extending the duration of Order No. 4410 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the proposed Gulf LNG Liquefaction Project (or the Gulf LNG Terminal) previously approved by DOE and the Federal Energy Regulatory Commission (FERC).²⁹

As noted above, one anonymous commenter recommends against the requested term extension. The commenter, however, does not provide a basis for this position other than appearing to advocate instead for the Green New Deal (which the commenter refers to as the "new green deal"). Upon review of the record, DOE/FE finds that the anonymous commenter 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

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 environmental assessment or environmental impact statement under NEPA. Categorical exclusion B5.7, *Export of natural gas and associated transportation by marine vessel*, applies to "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of

²⁸ See *id.* at 52,239, 52,247.

²⁹ See *id.* at 52,247; see also App. at 2 (citing FERC order).

the Natural Gas Act and any associated transportation of natural gas by marine vessel.”³⁰ On January 11, 2021, DOE/FE issued a categorical exclusion under this provision.³¹ 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 GLLC’s Application requesting an amendment to its FTA authorization (DOE/FE Order No. 3104) falls within NGA section 3(c), as amended.³² Therefore, DOE/FE is charged with granting the requested term extension for Order No. 3104 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).³³ Additionally, the non-FTA portion of the Application qualifies for a categorical exclusion under NEPA. DOE/FE therefore grants the requested term extension for Order No. 4410.

(3) 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

³⁰ 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7. This categorical exclusion amended the prior B5.7 categorical exclusion, and took effect on January 4, 2021. *See* U.S. Dep’t of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197 (Dec. 4, 2020).

³¹ U.S. Dep’t of Energy, Categorical Exclusion Determination, *Gulf LNG Liquefaction Co., LLC*, FE Docket No. 12-101-LNG (Jan. 11, 2021) [hereinafter Categorical Exclusion].

³² 15 U.S.C. § 717b(c).

³³ *Id.* § 717b(a).

non-additive basis.³⁴ The blanket order amended GLLC's authorizations at issue here.

Accordingly, the amended ordering language set forth below includes both the term extension amendments 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. The Application filed by Gulf LNG Liquefaction Company, LLC (GLLC) to amend the respective export terms set forth in DOE/FE Order Nos. 3104 and 4410 is granted.

B. In DOE/FE Order No. 3104 (FE Docket No. 12-47-LNG), Ordering Paragraph A is amended to state:

GLLC is authorized to export domestically produced LNG by vessel from the Gulf LNG Terminal in Pascagoula, Mississippi, up to the equivalent of 547.5 Bcf per year of natural gas for a term beginning on the earlier of the date of first export or ten years from the date the authorization is issued (June 15, 2022), and extending through December 31, 2050, pursuant to one or more long-term contracts that do not exceed the term of this authorization.

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)

³⁴ 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, 86 Fed. Reg. 2,243 (Jan. 12, 2021).

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. In DOE/FE Order No. 4410 (FE Docket No. 12-101-LNG), Ordering Paragraph A is amended to state:

A. Gulf LNG Liquefaction Company, LLC (GLLC) is authorized to export domestically produced LNG in a volume up to the equivalent of 558.9 Bcf/yr of natural gas. GLLC is authorized to export this LNG by vessel from the proposed Gulf LNG Liquefaction Project to be located at the Gulf LNG Terminal in Jackson County, Mississippi, near the city of Pascagoula. This authorization is for a term to commence from the date of first commercial export and to extend through December 31, 2050. GLLC 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)

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

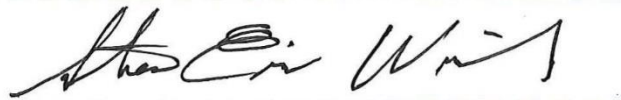
facility (or facilities) named in this authorization, on a non-additive basis.

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. 4410.

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.³⁵ 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. 4410 are now moot.

E. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3104 and 4410 remain in effect.

Issued in Washington, D.C., on January 12, 2021.

A handwritten signature in black ink, appearing to read "Steven Eric Winberg", is centered on the page. The signature is written in a cursive, flowing style.

Steven Eric Winberg
Assistant Secretary
Office of Fossil Energy

³⁵ See *supra* at 4; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.