

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

NOPETRO LNG, LLC

)
)
)
FE DOCKET NO. 20-167-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION TO EXPORT LIQUEFIED
NATURAL GAS TO FREE TRADE AGREEMENT NATIONS, AND
LONG-TERM AUTHORIZATION FOR SMALL-SCALE EXPORTS
OF LIQUEFIED NATURAL GAS

DOE/FE ORDER NO. 4671

MARCH 23, 2021

I. INTRODUCTION

On December 28, 2020, Nopetro LNG, LLC (Nopetro) 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), requesting authority to export domestically produced liquefied natural gas (LNG).² Nopetro requests a long-term authorization to export LNG as follows:

- (i) Under section 3(c) of the NGA, to any country with which the United States has, or in the future enters into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),³ and
- (ii) Under section 3(a) of the NGA, to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁴

As part of this authorization, Nopetro also seeks to engage in short-term exports of LNG to both FTA and non-FTA countries on a non-additive basis.⁵

Nopetro states that its proposed non-FTA exports qualify as “small-scale natural gas exports” under DOE/FE’s regulations at 10 C.F.R. §§ 590.102(p) and 590.208(a), and therefore should be deemed to be consistent with the public interest under NGA section 3(a).⁶

¹ Nopetro LNG, LLC, Application for Long-Term and Short-Term, Multi-Contract Authorizations to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Nations, FE Docket No. 20-167-LNG (Dec. 28, 2020) [hereinafter App.]. Nopetro subsequently submitted a clarification to the Application. See Email from Carol Gosain, Counsel for Nopetro, to DOE/FE, FE Docket No. 20-167-LNG (Jan. 15, 2021) (clarifying mode of transport).

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 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.

⁴ *Id.* § 717b(a); see App. at 1.

⁵ App. at 2 (citing 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, 86 Fed. Reg. 2243 (Jan. 12, 2021)) (announcing that long-term authorizations now contain authority to export the same approved volume of LNG pursuant to transactions with terms of less than two years, including commissioning volumes, on a non-additive basis).

⁶ See 10 C.F.R. §§ 590.102(p), 590.208(a); see also U.S. Dep’t of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 Fed. Reg. 35,106 (July 25, 2018) [hereinafter Small-Scale Rule].

Nopetro seeks to export this LNG in a total volume equivalent to 51.75 billion cubic feet (Bcf) per year (Bcf/yr), or 0.14 Bcf per day (Bcf/d), of natural gas.⁷ Nopetro intends primarily to purchase the LNG and load it into approved IMO7/TVAC-ASME LNG (ISO) containers at small-scale liquefaction and peak shaving facilities located primarily in the southeastern United States.⁸ In Appendix C to the Application, Nopetro identifies 27 facilities from which it seeks to purchase LNG for export at this time (collectively, the Facilities), as well as their associated ports of export.⁹

Nopetro requests that its long-term authorizations commence on the date of first commercial export and end on December 31, 2050.¹⁰ Additionally, Nopetro requests authority to export the LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export.¹¹

In this consolidated Order, DOE/FE grants Nopetro's Application and authorizes the requested export volume of 51.75 Bcf/yr (0.14 Bcf/d) to both FTA and non-FTA countries on a non-additive basis. Specifically, DOE/FE finds that the FTA portion of the Application falls within NGA section 3(c), and we therefore grant the requested FTA authorization without modification or delay.¹² DOE/FE also finds that the proposed non-FTA exports qualify as "small-scale natural gas exports" under the criteria set forth in 10 C.F.R. § 590.102(p).

Accordingly, we grant the small-scale portion of the Application under 10 C.F.R. § 590.208(a).

⁷ App. at 1.

⁸ *Id.* at 2.

⁹ *Id.* (App. C).

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 3.

¹² 15 U.S.C. § 717b(c).

This Order, however, does not provide Nopetro with an independent right to purchase or load LNG at any of the Facilities. DOE/FE takes no position on the commercial arrangements that may be necessary for Nopetro to effectuate the export of LNG approved in this Order.

II. BACKGROUND

Applicant. Nopetro is a Florida limited liability company with its principal place of business in Miami, Florida. Nopetro states that it is a wholly-owned subsidiary of Nopetro-CH4 Holdings, LLC (Nopetro-CH4 Holdings), which is also a Florida limited liability company. Nopetro-CH4 Holdings is owned by CH4 Venture, LLC (38.1759%), Nopetro, LLC (36.8241%) and TLW CNG, LLC (25%), all Florida limited liability companies. Nopetro states that CH4 Venture, LLC is jointly/majority owned by two individuals, Jay Demetree and Hawley Smith. Nopetro further states that Nopetro, LLC is jointly/majority owned by two individuals, Jorge Herrera and Jonathan “Jack” Locke, and that TLW CNG, LLC is owned by an individual named Tom Ward.¹³

Liquefaction Facilities and Transport. Nopetro states that it intends to source LNG primarily from small-scale liquefaction and peak shaving facilities located in the southeastern United States.¹⁴ Nopetro identifies 27 Facilities for this purpose, which include those that: (i) are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), and have either received FERC approval or their application is pending before FERC; (ii) are not FERC-jurisdictional; or (iii) have been reviewed and approved by FERC but are not yet operational.¹⁵ Additionally, Nopetro states that it may contract with third-party sellers and distributors to purchase LNG for export.¹⁶

¹³ App. at 4.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at App. C.

¹⁶ *Id.* at 3.

Nopetro states that it will transport the LNG in approved ISO containers from the Facilities to ports located on the U.S. Gulf Coast, where the ISO containers will be loaded onto ocean-going container vessels.¹⁷ Nopetro states that it intends to export the LNG primarily to emerging markets, including in the Caribbean, Central America, and South America.¹⁸

Source of Supply. Nopetro states that the source of the proposed exports will be the natural gas supply produced throughout the United States and delivered to the Facilities through the integrated natural gas pipeline grid.¹⁹

Business Model. Nopetro requests authorization to export LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export.²⁰ Nopetro states that it has not yet executed any contracts to purchase or export LNG.²¹ According to Nopetro, it is currently in discussions with several existing inland liquefaction facilities interested in supplying LNG to Nopetro for export.²² Nopetro states that it will file all long-term, binding commercial agreements, once executed, in accordance with DOE/FE's established policy, and will comply with all DOE/FE requirements for exporters and agents, including registration requirements.²³

III. STANDARD OF REVIEW

A. FTA Authorization

Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). In relevant part, applications to export natural gas, including LNG, to countries with which there is a FTA in effect requiring national treatment for trade in natural gas

¹⁷ *Id.* at 2; *see also* Email from Carol Gosain, Counsel for Nopetro, to DOE/FE, FE Docket No. 20-167-LNG (Jan. 15, 2021) (clarifying transport for export in ISO containers only), *supra* note 1.

¹⁸ *Id.*

¹⁹ *App.* at 2.

²⁰ *Id.* at 3.

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* at 3-4.

“shall be deemed to be consistent with the public interest” and granted “without modification or delay.”²⁴

B. Small-Scale Authorization

DOE/FE defines a “small-scale natural gas export” as an export of natural gas, including LNG, to a non-FTA country that meets the following two criteria:

- (1) The application proposes to export natural gas in a volume up to and including 51.75 billion cubic feet per year, and
- (2) DOE’s approval of the application does not require an environmental impact statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*²⁵

Small-scale natural gas exports are deemed to be consistent with the public interest under NGA section 3(a).²⁶ Therefore, DOE/FE will issue an export authorization upon receipt of a complete application to conduct small-scale natural gas exports.²⁷

IV. DISCUSSION AND CONCLUSIONS

A. FTA Authorization

We find that the FTA portion of Nopetro’s Application falls within NGA section 3(c), and therefore we grant the requested FTA authorization without modification or delay.²⁸

B. Small-Scale Authorization

We find that the non-FTA portion of the Application meets the criteria for small-scale natural gas exports, set forth in 10 C.F.R. § 590.102(p). First, Nopetro requests authority to export LNG to non-FTA countries in a volume equivalent to 51.75 Bcf/yr of natural gas, which

²⁴ 15 U.S.C. § 717b(c).

²⁵ 10 C.F.R. § 590.102(p).

²⁶ *Id.* § 590.208(a).

²⁷ *Id.*; *see also* Small-Scale Rule, *supra* note 6.

²⁸ 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 countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

is consistent with the limit in the regulation. Second, DOE’s NEPA procedures provide for a categorical exclusion if neither an EIS nor an EA is required—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5), *Export of natural gas and associated transportation by marine vessel*.²⁹ On March 22, 2021, DOE/FE issued a categorical exclusion for the non-FTA portion of Nopetro’s Application under this provision.³⁰ Accordingly, pursuant to 10 C.F.R. § 590.208(a), the proposed small-scale exports are deemed to be consistent with the public interest under NGA section 3(a), and DOE/FE grants the requested authorization.

V. FINDINGS

Based on the findings and conclusions herein, DOE/FE grants the Application subject to the Terms and Conditions and Ordering Paragraphs set forth below.

VI. TERMS AND CONDITIONS

A. Term of the Authorization

Consistent with DOE/FE’s practice, Nopetro requests that its FTA and small-scale non-FTA authorizations commence on the date of first commercial export and end on December 31, 2050.³¹ Accordingly, the term for this authorization will commence on the date of first commercial export and extend through December 31, 2050.

²⁹ See 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7. This categorical exclusion amended the prior B5.7 categorical exclusion. See U.S. Dep’t of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197 (Dec. 4, 2020).

³⁰ U.S. Dep’t of Energy, Categorical Exclusion Determination, Nopetro LNG, LLC, FE Docket No. 20-167-LNG (Mar. 22, 2021).

³¹ App. at 1-2.

B. Commencement of Operations

Consistent with DOE/FE's precedent, DOE/FE will add as a condition of the FTA authorization that Nopetro must commence commercial LNG export operations to FTA nations no later than five years from the date of issuance of this Order.

Additionally, DOE/FE will add as a condition of the small-scale authorization that Nopetro must commence commercial LNG export operations no later than two years from the date of issuance of this Order. Because this Order allows for exports to begin from existing facilities, we find that Nopetro should be able to commence small-scale exports of LNG immediately.

C. FTA Countries for FTA Authorization

The countries with which United States has a FTA requiring national treatment for trade in natural gas are currently: Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

D. Transfer, Assignment, or Change in Control

DOE/FE's natural gas regulations prohibit authorization holders from transferring or assigning authorizations to import or export natural gas without specific authorization by the Assistant Secretary for Fossil Energy.³² DOE/FE has found that this requirement applies to any change in control of the authorization holder. This condition was deemed necessary to ensure that DOE/FE will be given an adequate opportunity to assess the public interest impacts of such a transfer or change.

³² 10 C.F.R. § 590.405.

DOE/FE construes a change in control to mean a change, directly or indirectly, of the power to direct the management or policies of an entity whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.³³ A rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, 10% or more of the voting securities of such entity.³⁴

E. Agency Rights

Nopetro requests authorization to export LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export. DOE/FE previously has 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.³⁵

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

³³ See U.S. Dep't of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,541, 65,542 (Nov. 5, 2014).

³⁴ See *id.*

³⁵ See, e.g., *Cameron LNG, LLC*, DOE/FE Order No. 3846, FE Docket No. 15-90-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from Trains 4 and 5 of the Cameron LNG Terminal to Non-Free Trade Agreement Nations, at 128-29 (July 15, 2016); *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 the Freeport LNG Terminal to Free Trade Agreement Nations, at 7-8 (Feb. 10, 2011).

F. Contract Provisions for the Sale or Transfer of LNG to be Exported

DOE/FE will require that Nopetro file or cause to be filed with DOE/FE any relevant long-term commercial agreements associated with the export of LNG, including agreements pursuant to which Nopetro intends to export LNG as agent for a Registrant. DOE/FE finds that the submission of all such agreements or contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).³⁶

In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations³⁷ requires that Nopetro file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Facilities, whether signed by Nopetro or the Registrant, within 30 days of their execution.

DOE/FE recognizes that some information in Nopetro’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Facilities, may be commercially sensitive. DOE/FE therefore will provide Nopetro the option to file or cause to be filed either unredacted contracts, or in the alternative (A) Nopetro may file, or cause to be filed, long-term contracts under seal, but it also will file either: (i) a copy of each long-term contract with commercially sensitive information redacted, or (ii) a summary of all major provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destinations, re-sale provisions, and other

³⁶ 10 C.F.R. § 590.202(b).

³⁷ *Id.* § 590.202(c).

relevant provisions; and (B) the filing must demonstrate why the redacted information should be exempted from public disclosure.³⁸

To ensure that DOE/FE destination and reporting requirements included in this Order are conveyed to subsequent title holders, DOE/FE will include as a condition of this authorization that future contracts for the sale or transfer of LNG exported pursuant to this Order shall include an acknowledgement of these requirements.

G. Export Quantity

This Order grants Nopetro's Application in the full volume of LNG requested, up to the equivalent of 51.75 Bcf/yr of natural gas for FTA and non-FTA countries.

H. Non-Additive Export Volumes

Consistent with Nopetro's request in the Application and DOE/FE's small-scale export regulations, Nopetro may not treat the FTA and small-scale non-FTA volumes in this Order as additive to one another.

VII. ORDER

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

A. Nopetro LNG, LLC (Nopetro) is authorized by DOE/FE to export domestically produced LNG purchased from any of the 27 Facilities listed in Appendix C of the Application.³⁹ Nopetro is authorized to export this LNG in approved ISO containers on vessels, in a volume equivalent to 51.75 Bcf/yr of natural gas. The FTA and small-scale authorizations will commence on the date of first commercial export and extend through December 31, 2050.

³⁸ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

³⁹ If, in the future, Nopetro wishes to purchase LNG for export from facilities other than the 27 Facilities listed in Appendix C, it will be required to file with DOE/FE a request to amend this Order to add those facilities. DOE/FE will evaluate that request under the same standards of review discussed above.

Nopetro is authorized to export this LNG on its own behalf and as agent for other entities that hold title to the natural gas, pursuant to one or more contracts of any duration.⁴⁰

B. This Order does not give Nopetro an independent right to purchase or load LNG from any of the identified Facilities. Nopetro and each Facility may agree upon contractual terms for Nopetro's export services, as they deem appropriate. Additionally, this Order does not restrict, through volume limitations or otherwise, any existing or future authorizations issued by DOE/FE for any of the Facilities.⁴¹

C. For the FTA authorization, Nopetro must commence export operations using the Facilities no later than five years from the date of issuance of this Order. For the authorization to non-FTA countries under the Small-Scale Rule, Nopetro must commence export operations using the Facilities no later than two years from the date of issuance of this Order.

D. Exports of LNG under this Order may be exported by vessel to any country with the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy.

E. Nopetro 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 U.S. Department of the Treasury, FERC, and the Pipeline and Hazardous Materials Safety Administration, as applicable. Failure to comply with these requirements could result in rescission of this authorization and/or other civil or criminal penalties.

⁴⁰ See 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, 86 Fed. Reg. 2243 (Jan. 12, 2021).

⁴¹ See *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 13-14, 19 (Nov. 19, 2018).

F. (i) Nopetro shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement an unredacted copy of all executed long-term contracts associated with the long-term export of LNG. The unredacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) Nopetro shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Facilities. The unredacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

G. Nopetro is permitted to use its authorization to export LNG as agent for other LNG title-holders (Registrants), after registering those entities with DOE/FE. Registration materials shall include an agreement by the Registrant to supply Nopetro with all information necessary to permit Nopetro 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/FE'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 business, 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) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE/FE, described in Ordering Paragraph F of this Order.

Any change in the registration materials—including changes in company name, contact information, length of the long-term contract, termination of the long-term contract, or other relevant modifications—shall be filed with DOE/FE within 30 days of such change(s).

H. Nopetro, or others for whom Nopetro acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of LNG 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 D of DOE/FE Order No. 4671, issued March 23, 2021, in FE Docket No. 20-167-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 Nopetro LNG, LLC 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 Nopetro LNG, LLC is made aware of all such actual destination countries.

I. Within two weeks after the first export authorized in Ordering Paragraph A occurs, Nopetro shall provide DOE/FE written notification of the date on which the first export occurred.

J. With respect to any change in control of the authorization holder, Nopetro must comply with DOE/FE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.⁴²

K. Monthly Reports: With respect to the exports authorized by this Order, Nopetro 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. The first monthly report required by this Order is due not later than the 30th day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of "no activity" for that month must be filed.

If exports of LNG in ISO containers by vessel 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 vessel; (4) the date of

⁴² See 79 Fed. Reg. at 65,541-42.

departure from the U.S. export terminal; (5) the country (or countries) into which the LNG was actually delivered; (6) the name of the supplier/seller; (7) the volume in thousand cubic feet (Mcf); (8) the price at point of export per million British thermal units (MMBtu); (9) the name and location (city/state) of the facility where the ISO container is loaded with LNG; (10) the mode(s) of transport used to move the loaded ISO container from the loading facility to the export port or terminal; (11) the duration of the supply agreement; and (12) the name(s) of the purchaser(s).

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

L. 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 March 23, 2021.

Amy R. Sweeney
Director, Office of Regulation, Analysis, and Engagement
Office of Oil and Natural Gas