



Department of Energy
Washington, DC 20585

May 11, 2021

Via Email

Brett A. Snyder
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RE: Statement of Change in Control
ECA Liquefaction, S. de R.L. de C.V.
FE Docket No. 18-144-LNG (ECA Mid-Scale Project)

Dear Mr. Snyder:

This correspondence constitutes the response of the Department of Energy (DOE), Office of Fossil Energy (FE), to the Statement of Change in Control filed on behalf of your client, ECA Liquefaction, S. de R.L. de C.V. (ECA Liquefaction), on January 7, 2021.¹ ECA Liquefaction provides notice of a change in ownership with respect to its majority holder, ECA LNG Holdings B.V. (ECA LNG Holdings), in light of DOE/FE's Change in Control Procedures.²

I. BACKGROUND

ECA Liquefaction is a Mexico variable-capital, limited liability company. Under section 3 of the Natural Gas Act (NGA),³ ECA Liquefaction holds two export authorizations from DOE/FE as follows:

- (i) DOE/FE Order No. 4317,⁴ as amended by Order Nos. 4317-A and 4317-B, authorizing exports of U.S.-sourced natural gas by pipeline from the United States

¹ See ECA Liquefaction, S. de R.L. de C.V., Statement of Change in Control, FE Docket No. 18-144-LNG (Jan. 7, 2021), available at: <https://www.energy.gov/sites/prod/files/2021/01/f82/ECA%20-%20CIC%20Statement.pdf> [hereinafter ECA Liquefaction Statement of Change in Control].

² 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 (Nov. 5, 2014) [hereinafter DOE/FE Change in Control Procedures].

³ 15 U.S.C. § 717b.

⁴ *ECA Liquefaction, S. de R.L. de C.V.*, DOE/FE Order No. 4317, FE Docket No. 18-144-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (ECA Mid-Scale Project) (Jan. 25, 2019), amended by DOE/FE Order No. 4317-A (Oct. 7, 2019) (transferring authorization from Energía Costa Azul, S. de R.L. de C.V. to ECA Liquefaction, S. de R.L. de C.V.), further amended by DOE/FE Order No. 4317-B (Dec. 10, 2020) (extending export term).

to Mexico and, after liquefaction in Mexico, re-exports in the form of liquefied natural gas (LNG) by vessel from the proposed ECA Mid-Scale Project to any country with which the United States has, or in the future will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), in a total volume equivalent to 182 billion cubic feet per year (Bcf/yr) of natural gas, under NGA section 3(c);⁵ and

- (ii) DOE/FE Order No. 4364, as amended by Order Nos. 4364-A and 4364-B,⁶ authorizing re-exports of U.S.-sourced natural gas in the form of LNG by vessel from the proposed ECA Mid-Scale Project to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), in a volume equivalent to 161 Bcf/yr of natural gas, under NGA section 3(a).⁷

The proposed ECA Mid-Scale Project will be located north of Ensenada in Baja California, Mexico.⁸ Under these authorizations, the FTA volumes are not additive to the non-FTA volume.

II. DESCRIPTION OF CHANGE IN CORPORATE OWNERSHIP

ECA Liquefaction states that it is owned approximately 99.99% by ECA LNG Holdings, with the remainder owned by ECA Minority, S. de R.L. de C.V. ECA Liquefaction states that, prior to December 9, 2020, Sempra LNG ECA Liquefaction, LLC (Sempra LNG) and Infraestructura Energética Nova, S.A.B. de C.V. (IEnova) each held a direct 50% ownership interest in ECA LNG Holdings.⁹ Sempra LNG is an indirect, wholly-owned subsidiary of Sempra Energy.¹⁰

On December 9, 2020, Sempra LNG, IEnova, and Total Gaz Electricité Holdings France S.A.S. (Total) entered into an equity issuance and subscription agreement whereby Total acquired a

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 *ECA Liquefaction, S. de R.L. de C.V.*, DOE/FE Order No. 4364, FE Docket No. 18-144-LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries (ECA Mid-Scale Project) (Mar. 29, 2019), *amended by* DOE/FE Order No. 4364-A (Oct. 7, 2019) (transferring authorization from Energía Costa Azul, S. de R.L. de C.V. to ECA Liquefaction, S. de R.L. de C.V.), *further amended by* DOE/FE Order No. 4364-B (Dec. 10, 2020) (extending export term).

⁷ 15 U.S.C. § 717b(a).

⁸ ECA Liquefaction Statement of Change in Control at 2. DOE/FE takes administrative notice that, on November 17, 2020, ECA Liquefaction reached a final investment decision (FID) for the development, construction, and operation of the ECA Mid-Scale Project. *See* “Sempra Energy Announces FID for Landmark Energía Costa Azul LNG Export Project” (Nov. 17, 2020), *available at*: <https://www.sempra.com/sempra-energy-announces-fid-landmark-energia-costa-azul-lng-export-project>.

⁹ ECA Liquefaction Statement of Change in Control at 2. ECA Liquefaction states that approximately 70% of IEnova’s ownership interests are held by indirect, wholly-owned subsidiaries of Sempra Energy, while the remainder of IEnova shares are currently publicly traded on the Mexican Stock Exchange (*Bolsa Mexicana de Valores*). *See id.* at 2 n.4.

¹⁰ DOE/FE notes that, on April 30, 2021 (as supplemented on May 3, 2021), counsel for ECA Liquefaction filed a Statement of Change in Control in this and other proceedings involving a different transaction involving a Sempra entity whose parent company is Sempra Energy. DOE/FE will review that Statement of Change in Control separately. *See Cameron LNG, LLC, et al.*, Statement of Change in Control, FE Docket Nos. 11-145-LNG, *et al.*, (Apr. 30, 2021).

16.6% equity interest in ECA LNG Holdings (Transaction).¹¹ ECA Liquefaction states that Total is owned 100% by Total Holdings, S.A.S., which in turn is wholly owned by Total SE, a French energy company. Following the Transaction, Sempra LNG and IEnova each have retained a 41.7% ownership interest in ECA LNG Holdings.¹²

ECA Liquefaction states that it will continue to be the holder of the FTA and non-FTA authorizations described above. ECA Liquefaction further states that, other than the change in upstream ownership, no aspects of the FTA or non-FTA authorizations or the operations of the ECA Mid-Scale Project will change as a result of the Transaction.¹³

III. DISCUSSION AND CONCLUSIONS

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.¹⁴ 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.¹⁵

A. FTA Export Authorizations

DOE/FE's Change in Control Procedures provide that, upon receipt of a statement of change in control relating to existing FTA long-term natural gas export authorizations, DOE will give immediate effect to the change in control and will take no further action.¹⁶ Accordingly, the change in control described above has taken effect insofar as it relates to ECA Liquefaction's FTA authorization, DOE/FE Order No. 4317, as amended.

B. Non-FTA Export Authorization

DOE/FE's Change in Control Procedures state that, with respect to existing non-FTA authorizations, DOE/FE will give effect to the change in control and will publish a notice of the change in the *Federal Register*.¹⁷ If no interested person protests the change in control and DOE takes no action on its own motion, the amendment to the existing non-FTA authorization will be deemed granted 30 days after publication in the *Federal Register*.¹⁸

¹¹ ECA Liquefaction Statement of Change in Control at 2. ECA Liquefaction further states that an affiliate of Total, Total Gas & Power Asia Private Limited, is an existing customer of ECA Liquefaction.

¹² *Id.* ECA Liquefaction provides charts showing this change in ownership structure. *See id.* (Appendices A and B).

¹³ ECA Liquefaction Statement of Change in Control at 2.

¹⁴ *See* DOE/FE Change in Control Procedures, 79 Fed. Reg. at 65,542.

¹⁵ *See id.*

¹⁶ *See Id.*

¹⁷ *See id.*

¹⁸ *Id.*

Consistent with these procedures, DOE published a notice of ECA Liquefaction's Notice of Change in Control in the *Federal Register* on February 3, 2021 (Notice).¹⁹ DOE/FE invited protests, motions to intervene, and written comments to be filed no later than February 18, 2021.²⁰ DOE/FE received no filings in response to the Notice. Because more than 30 days have passed since the Notice was published in the *Federal Register*, the change in control with respect to DOE/FE Order No. 4364, as amended, is deemed granted.

Sincerely,

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

¹⁹ U.S. Dep't of Energy, Notice of Change in Control; ECA Liquefaction, S. de R.L. de C.V., 86 Fed. Reg. 8,004 (Feb. 3, 2021).

²⁰ *Id.*