

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

OTTER INDUSTRIES, LLC.)
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DOCKET NO. 22-123-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/FECM ORDER NO. 4926

DECEMBER 7, 2022

I. INTRODUCTION

On September 15, 2022, Otter Industries, LLC. (Otter) filed an Application¹ with the Department of Energy’s (DOE) Office of Fossil Energy and Carbon Management (formerly the Office of Fossil Energy)² under section 3 of the Natural Gas Act (NGA),³ requesting long-term authorization⁴ to export domestically produced liquefied natural gas (LNG). Otter submitted a Supplement to the Application on November 15, 2022,⁵ and a Clarification on November 28, 2022.⁶

Otter states that its proposed exports of LNG qualify as “small-scale natural gas exports” under DOE’s regulations at 10 C.F.R. §§ 590.102(p) and 590.208(a).⁷ As a preliminary matter, we note that DOE’s small-scale natural gas regulations apply only to exports to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) under section 3(a) of the Natural Gas Act (NGA).⁸ Therefore, contrary to Otter’s request (*see* App. at 1-3, 6), its proposed exports to any country with which the United States

¹ Otter Industries, LLC., Application for Long-Term and Short-Term Multi-Contract Authorization to Export Small-Scale Liquefied Natural Gas to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, Docket No. 22-123-LNG (Sept. 15, 2022) [hereinafter App.].

² The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

³ 15 U.S.C. § 717b. The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2022, issued on June 13, 2022.

⁴ Otter also requests authority to engage in short-term exports of LNG. Long-term authorizations issued by DOE now include authority to export the same approved volume of LNG pursuant to short-term contracts (*i.e.*, transactions with terms of less than two years) on a non-additive basis. *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); *see also infra* § VII (Ordering Para. A).

⁵ Otter Industries, LLC., Supplement to Application, Docket No. 22-123-LNG (Nov. 15, 2022) (providing an updated Appendix C, “List of Liquefaction Facilities and Ports”) [hereinafter App. Supp.].

⁶ Email Clarification from Adam Pollack, Otter Industries, LLC., to DOE, Docket No. 22-123-LNG (Nov. 28, 2022) (clarifying modes of transport) [hereinafter Clarification].

⁷ 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].

⁸ *See* 10 C.F.R. § 590.102(p).

has, or in the future enters into, a FTA requiring national treatment for trade in natural gas (FTA countries) will be evaluated separately under NGA section 3(c).⁹ The standards of review for both small-scale exports and FTA exports are set forth below.¹⁰

Otter seeks to export LNG to both FTA and non-FTA countries 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.¹¹ Otter proposes to purchase the LNG from existing liquefaction facilities located in the United States. Specifically, in the updated Appendix C provided in the Supplement to the Application, Otter identifies 36 facilities from which it seeks to purchase LNG for export (collectively, the Facilities), as well as their associated ports of export.¹² Otter seeks to export this LNG by means of both approved IMO7/TVAC-ASME LNG (ISO) containers loaded onto vessels and on smaller LNG carriers.¹³

Otter requests that its authorization commence on the date of an order granting its Application and extend through December 31, 2050.¹⁴ Additionally, Otter 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.¹⁵

In this consolidated Order, DOE grants Otter's Application, as supplemented, 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 finds that the FTA portion of the

⁹ 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.

¹⁰ See *infra* § III.

¹¹ App. at 1, 3.

¹² See App. Supp. (updated Appendix C).

¹³ See App. at 5 and Clarification.

¹⁴ App. at 1, 6.

¹⁵ See *id.* at 4.

Application falls within NGA section 3(c), and we therefore grant the requested FTA authorization without modification or delay.¹⁶ DOE 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).

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

II. BACKGROUND

Applicant. Otter is a Delaware limited liability company with its principal place of business in Mineola, New York.¹⁷

Liquefaction Facilities and Transport. Otter states that it intends to purchase LNG for export from the 36 existing Facilities identified in the updated Appendix C provided as a Supplement to the Application.¹⁸ Otter states that it will transport the LNG in approved ISO containers loaded onto vessels, and that it may also transport the LNG on “smaller LNG carriers ... having a maximum capacity of between 5,000 and 50,000 cubic meters.”¹⁹ Otter identifies the potential ports of export in the updated Appendix C.²⁰ Otter states that it intends to export the LNG to a variety of potential markets, including those in the Western Hemisphere and Europe.²¹

Source of Supply. Otter states that the source of the proposed exports will be the natural

¹⁶ 15 U.S.C. § 717b(c).

¹⁷ App. at 2.

¹⁸ See App. Supp.; see also App. at 3 (stating that “[n]o new facilities or facility expansions will be constructed in the United States for the proposed exportation of LNG”).

¹⁹ App. at 5; see also Clarification.

²⁰ See App. Supp.

²¹ App. at 5.

gas supply produced throughout the United States and delivered to the Facilities through the integrated natural gas pipeline grid.²²

Business Model. Otter 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.²³ Otter states that it will file, or cause to be filed, all long-term commercial agreements, once executed, in accordance with DOE’s established policy, and will comply with all DOE requirements for exporters and agents, including registration requirements.²⁴

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 “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”²⁵

B. Small-Scale Authorization

DOE 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.*²⁶

²² *Id.* at 3; *see also* App. Supp. (updated Appendix C identifying the “primary [natural] gas supply basin” associated with each of the Facilities).

²³ *See* App. at 4.

²⁴ *See id.* at 4-5.

²⁵ 15 U.S.C. § 717b(c).

²⁶ 10 C.F.R. § 590.102(p).

Small-scale natural gas exports are deemed to be consistent with the public interest under NGA section 3(a).²⁷ Therefore, DOE will issue an export authorization upon receipt of a complete application to conduct small-scale natural gas exports.²⁸

IV. DISCUSSION AND CONCLUSIONS

A. FTA Authorization

We find that the FTA portion of Otter’s Application, as supplemented, falls within NGA section 3(c), and therefore we grant the requested FTA authorization without modification or delay.²⁹

B. Small-Scale Authorization

We find that the non-FTA portion of the Application, as supplemented, meets the criteria for small-scale natural gas exports, set forth in 10 C.F.R. § 590.102(p). First, Otter requests authority to export LNG to non-FTA countries in a volume equivalent to 51.75 Bcf/yr of natural gas, which is consistent with the limit in the regulation. Second, DOE’s National Environmental Policy Act (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*.³⁰ On December 6, 2022, DOE issued a categorical exclusion for the non-FTA portion of Otter’s Application, as supplemented, under this provision.³¹ Accordingly, pursuant to 10 C.F.R. § 590.208(a), the

²⁷ *Id.* § 590.208(a).

²⁸ *Id.*; *see also* Small-Scale Rule, *supra* note 7.

²⁹ DOE further finds that the requirements 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 an FTA requiring national treatment for trade in natural gas.

³⁰ *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).

³¹ U.S. Dep’t of Energy, Categorical Exclusion Determination, Otter Industries, LLC., Docket No. 22-123-LNG (Dec. 6, 2022).

proposed small-scale exports are deemed to be consistent with the public interest under NGA section 3(a), and DOE grants the requested authorization.

V. FINDINGS

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

VI. TERMS AND CONDITIONS

A. Term of the Authorization

Consistent with DOE's practice, Otter requests that its FTA and small-scale non-FTA authorizations commence on the date that an order granting the requested authorizations is issued and extend through December 31, 2050.³² Accordingly, the term for this authorization will commence on the date this Order is issued and extend through December 31, 2050.

B. Commencement of Operations for Small-Scale Authorization

DOE will add as a condition of the small-scale authorization that Otter 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 Otter should be able to commence small-scale exports of LNG immediately.

C. FTA Countries for FTA Authorization

The countries with which the 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.

³² App. at 1, 6.

D. Transfer, Assignment, or Change in Control

DOE'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 and Carbon Management.³³ DOE has found that this requirement applies to any change in control of the authorization holder. This condition was deemed necessary to ensure that DOE will be given an adequate opportunity to assess the public interest impacts of such a transfer or change.

DOE 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.³⁴ 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.³⁵

E. Agency Rights

Otter 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 previously has determined that, in LNG export orders in which Agency Rights have been granted, DOE shall require registration materials filed for, or by, an LNG title-holder (Registrant) to include the same company

³³ 10 C.F.R. § 590.405.

³⁴ 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).

³⁵ See *id.*

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.³⁶

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

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

DOE will require that Otter file or cause to be filed with DOE any relevant long-term commercial agreements associated with the export of LNG, including agreements pursuant to which Otter intends to export LNG as agent for a Registrant. DOE 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) of DOE’s regulations.³⁷

In addition, DOE finds that section 590.202(c) of DOE’s regulations³⁸ requires that Otter 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 Otter or the Registrant, within 30 days of their execution.

DOE recognizes that some information in Otter’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 therefore

³⁶ See, e.g., *Cameron LNG, LLC*, DOE/FE Order No. 3846, 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, 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).

³⁷ 10 C.F.R. § 590.202(b).

³⁸ *Id.* § 590.202(c).

will provide Otter the option to file or cause to be filed either unredacted contracts, or in the alternative (A) Otter 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 relevant provisions; and (B) the filing must demonstrate why the redacted information or non-disclosed information should be exempted from public disclosure.³⁹

To ensure that DOE destination and reporting requirements included in this Order are conveyed to subsequent title holders, DOE 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 Otter'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 DOE's small-scale export regulations, Otter 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. Otter Industries, LLC. (Otter) is authorized by DOE to export domestically produced LNG purchased from any of the 36 Facilities listed in the updated Appendix C provided in the

³⁹ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

Supplement to the Application.⁴⁰ Otter is authorized to export this LNG on smaller LNG carriers and 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 this Order and extend through December 31, 2050. Otter 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.⁴¹

B. This Order does not give Otter an independent right to purchase or load LNG from any of the identified Facilities. Otter and each Facility may agree upon contractual terms for Otter'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 for any of the Facilities.⁴²

C. 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.

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

E. Otter 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,

⁴⁰ If, in the future, Otter wishes to purchase LNG for export from facilities other than these 36 Facilities, it will be required to file with DOE a request to amend this Order to add those facilities. DOE will evaluate that request under the same standards of review discussed above.

⁴¹ 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).

⁴² See *BP Energy Co.*, DOE/FE Order No. 4302, 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).

the Federal Energy Regulatory Commission, and the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, as applicable. Failure to comply with these requirements could result in rescission of this authorization and/or other civil or criminal penalties.

F. (i) Otter 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) Otter 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. Otter is permitted to use its authorization to export LNG as agent for other LNG title-holders (Registrants), after registering those entities with DOE. Registration materials shall include an agreement by the Registrant to supply Otter with all information necessary to permit Otter to register that person or entity with DOE, including: (1) the Registrant's agreement to comply with this Order and all applicable requirements of DOE'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, 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 within 30 days of such change(s).

H. Otter, or others for whom Otter 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 C of DOE/FECM Order No. 4926, issued December 7, 2022, in Docket No. 22-123-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 Otter Industries, 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 Otter Industries, LLC. is made aware of all such actual destination countries.

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

J. With respect to any change in control of the authorization holder, Otter must comply with DOE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.⁴³

K. Monthly Reports: With respect to the exports authorized by this Order, Otter 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

⁴³ See 79 Fed. Reg. at 65,541-42.

occurred, a report of “no activity” for that month must be filed. If exports have occurred, the report must provide the information specified for each applicable activity and mode of transportation, as set forth in the Guidelines for Filing Monthly Reports. These Guidelines are available at: <https://www.energy.gov/fecm/guidelines-filing-monthly-reports>.

(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 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/fecm/regulation>.

Issued in Washington, D.C., on December 7, 2022.

Amy R. Sweeney
Director, Office of Regulation, Analysis, and Engagement
Office of Resource Sustainability