

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

_____)	
BEAR HEAD ENERGY INC. (formerly)	DOCKET NO. 15-33-LNG
Bear Head LNG Corporation) and)	
BEAR HEAD LNG (USA), LLC)	
_____)	

ORDER GRANTING REQUEST TO VACATE LONG-TERM
AUTHORIZATIONS TO EXPORT U.S.-SOURCED NATURAL GAS BY PIPELINE TO
CANADA FOR LIQUEFACTION AND RE-EXPORT IN THE FORM OF LIQUEFIED
NATURAL GAS TO FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 3681-A
DOE/FECM ORDER NO. 3770-A

JANUARY 20, 2023

I. DESCRIPTION OF REQUEST AND BACKGROUND

Bear Head Energy Inc. (Bear Head) (formerly Bear Head LNG Corporation)¹ and Bear Head LNG (USA), LLC jointly hold two long-term authorizations issued by the Office of Fossil Energy and Carbon Management (FECM)² of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).³ Both entities are jointly authorized to export natural gas from the United States to Canada and, after liquefaction in Canada, to re-export⁴ the U.S.-sourced natural gas in the form of liquefied natural gas (LNG) to other countries as follows:

- Under DOE/FE Order No. 3681,⁵ in a volume equivalent to 440 billion cubic feet per year (Bcf/yr) of natural gas for a 25-year term, 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), pursuant to NGA section 3(c),⁶ and
- Under DOE/FE Order No. 3770,⁷ in a volume equivalent to 296 Bcf/yr of natural gas for a term of 20 years, to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), pursuant to NGA section 3(a).⁸

These orders authorize the respective volumes of natural gas to be exported to Canada at the

¹ Bear Head Energy Inc., Statement of Change in Control, Docket No. 15-33-LNG, at 1, 3 (Aug. 12, 2022) [hereinafter Statement of Change in Control]; *see also* Bear Head Energy Inc., Semi-Annual Report, Docket No. 15-33-LNG, at 2 (Oct. 4, 2021) (stating that, on August 4, 2021, the Nova Scotia Registry of Stock Companies approved Bear Head's corporate name change).

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 For purposes of the orders, "re-export" means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE's jurisdiction under the NGA from one foreign country (*i.e.*, a country other than the United States) to another foreign country.

⁵ *Bear Head LNG Corp. and Bear Head LNG (USA), LLC*, DOE/FE Order No. 3681, Docket No. 15-33-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Canada and to Other Free Trade Agreement Nations (July 17, 2015).

⁶ 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.

⁷ *Bear Head LNG Corp. and Bear Head LNG (USA), LLC*, DOE/FE Order No. 3770, Docket No. 15-33-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 5, 2016).

⁸ 15 U.S.C. § 717b(a).

United States-Canada border on the Maritimes & Northeast (M&N) Pipeline, then re-exported from the proposed Bear Head Project, to be located in Cape Breton, Nova Scotia, Canada. At the time the orders were issued, both authorization holders were wholly-owned indirect subsidiaries of Liquefied Natural Gas Limited (LNG Limited), then a publicly-listed Australian company.⁹

In a Statement of Change in Control submitted on August 12, 2022, Bear Head informed DOE that its parent company, LNG Limited, “entered into voluntary administration in Australia in 2020,” and was later liquidated.¹⁰ Bear Head explained that its co-authorization holder, Bear Head LNG (USA), LLC, “is no longer a direct or indirect owner or participant in the Bear Head project and should be removed as an authorization holder as a result of the LNG Limited transaction”¹¹ Bear Head also stated that it had been acquired by a new owner, Blue Fin LNG Corporation, as part of the liquidation process for LNG Limited.¹²

Subsequently, on December 7, 2022, Bear Head submitted a Request to Vacate Authorizations (Request).¹³ In the Request, Bear Head asks DOE to vacate Order Nos. 3681 and 3770 “effective as of the date of DOE’s approval of this request.”¹⁴ Bear Head states that it “has decided as a commercial matter that it will no longer be pursuing the development of the natural gas liquefaction and export facility proposed in its application submitted in the referenced docket.”¹⁵

⁹ See, e.g., *Bear Head LNG Corp. and Bear Head LNG (USA), LLC*, DOE/FE Order No. 3770, at 14.

¹⁰ Statement of Change in Control at 1-2 (citing authoritative sources); see also *Bear Head Energy Inc.*, Semi-Annual Report, Docket No. 15-33-LNG, at 2 (May 12, 2021) (stating that LNG Limited was placed into liquidation as of February 8, 2021); Notice of the Australian Securities & Investments Commission, <https://publishednotices.asic.gov.au/browsesearch-notices/notice-details/Liquefied-Natural-Gas-Limited-101676779/0bee26ab-d7dc-404f-85a6-7ba6ff955c62> (same).

¹¹ Statement of Change in Control at 1; see also *id.* at 3.

¹² See *id.* at 2; see also *Bear Head Energy Inc.*, Semi-Annual Report, Docket No. 15-33-LNG, at 3 (May 12, 2021).

¹³ See *Bear Head Energy Inc.*, Request to Vacate Authorizations, Docket No. 15-33-LNG (Dec. 7, 2022), <https://www.energy.gov/sites/default/files/2022-12/Vacate%20Request%20Orders%203681%20and%203770.pdf> [hereinafter Request].

¹⁴ *Id.* at 1.

¹⁵ *Id.*

Additionally, Bear Head reiterates that it “is no longer affiliated with the co-authorization holder Bear Head LNG (USA), LLC”¹⁶ Bear Head states that, “[u]pon information and belief, Bear Head understands that Bear Head LNG (USA) may no longer exist due to the liquidation process for LNG Limited.”¹⁷ Bear Head concludes by stating that, “if DOE determines that it is unable to vacate the orders in full as requested, Bear Head respectfully requests that DOE vacate the orders with respect to Bear Head only such that Bear Head holds no rights, interests, or liabilities thereunder.”¹⁸

As discussed below, DOE finds good cause to grant Bear Head’s Request and vacate Order Nos. 3681 and 3770 in their entirety.

II. FINDING CONCERNING BEAR HEAD LNG (USA), LLC

The issue before us is whether to vacate Orders No. 3681 and 3770 in their entirety under NGA section 3(c) and 3(a), respectively, as requested by Bear Head,¹⁹ or instead to vacate the authorizations only with respect to Bear Head, leaving intact both authorizations with respect to Bear Head LNG (USA), LLC.

On November 2, 2022, counsel for Bear Head informed DOE by telephone that, based on its research, it appears that Bear Head LNG (USA), LLC was eliminated during the liquidation process. Bear Head documented this finding in its Request, as noted above. Moreover, we note that Bear Head’s statements about Bear Head LNG (USA), LLC’s corporate status in its recent filings in this proceeding remain un rebutted.

Regardless of Bear Head LNG (USA), LLC’s corporate status, however, DOE finds that Bear Head LNG (USA), LLC has not actively maintained its joint authorizations in Order Nos.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See* Request at 1.

3681 and 3770 for many years. For example, Bear Head LNG (USA), LLC has not participated in filing the semi-annual reports required under both orders since April 2016.²⁰ Only Bear Head, filing alone, has submitted the semi-annual reports since that time.²¹ In those reports, Bear Head has made clear that it “continues to determine all commercial arrangements related to the project.”²² Indeed, Bear Head LNG (USA), LLC’s last communication with DOE appears to have been more than seven years ago, on October 8, 2015, when it (together with Bear Head) provided new contact information for their counsel.²³

DOE previously vacated a long-term FTA export authorization where (in relevant part) the authorization holder, Louisiana LNG Energy LLC, failed to comply with the semi-annual reporting requirements set forth in the FTA order, among other inaction.²⁴ In that proceeding, “all evidence indicated that the company [Louisiana LNG Energy LLC] was no longer pursuing its proposed LNG export project and had, in fact, ceased to exist as a commercial operation.”²⁵ We find that the same conclusion applies to Bear Head LNG (USA), LLC in this proceeding.

Accordingly, DOE grants Bear Head’s request to vacate Order Nos. 3681 and 3770 in their entirety.²⁶

²⁰ See *Bear Head LNG Corp. and Bear Head LNG (USA), LLC*, DOE/FE Order No. 3681, at 15 (Ordering Para. J); *Bear Head LNG Corp. and Bear Head LNG (USA), LLC*, DOE/FE Order No. 3770, at 192 (Ordering Para. N); see also 10 C.F.R. §§ 590.406 (Compliance with Orders), 590.407 (Reports of Changes).

²¹ See generally Semi-Annual Reports, Docket No. 15-33-LNG, <https://www.energy.gov/fecm/articles/semi-annual-reports-bear-head-lng-corporation-and-bear-head-usa-llc-fe-dkt-no-15-33>.

²² E.g., Bear Head Energy Inc., Semi-Annual Report, Docket No. 15-33-LNG, at 2 (June 16, 2022) (emphasis added).

²³ Bear Head LNG Corp. and Bear Head LNG (USA), LLC, Change in Company Contact, Docket No. 15-33-LNG (Oct. 8, 2015).

²⁴ See *Louisiana LNG Energy LLC*, DOE/FE Order No. 3482-A, Docket Nos. 14-19-LNG & 14-29-LNG, Order Vacating Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel to Free Trade Agreement Nations and Dismissing Application to Export Liquefied Natural Gas by Vessel to Non-Free Trade Agreement Nations, at 2-4 (July 24, 2017).

²⁵ U.S. Dep’t of Energy, Policy Statement Regarding Long-Term Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 83 Fed. Reg. 28,841, 28,843 (June 21, 2018).

²⁶ DOE notes that the volume authorized for export in the Bear Head non-FTA order (DOE/FE Order No. 3770) is shared by Pieridae Energy (USA) Ltd. (Pieridae) under Pieridae’s own non-FTA order (DOE/FE Order No. 3768) in

ORDER

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

- A. DOE/FE Order No. 3681 is vacated, pursuant to NGA section 3(c);
- B. DOE/FE Order No. 3770 is vacated, pursuant to NGA section 3(a);
- C. The administrative record for this docket is closed, effective immediately.

Issued in Washington, D.C., on January 20, 2023.

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

Docket No. 14-179-LNG. DOE previously explained that the Bear Head and Pieridae non-FTA orders were not additive “[b]ecause both Pieridae US and Bear Head LNG propose to use the M&N US Pipeline to transport U.S.-sourced natural gas to Canada,” and thus the total non-FTA export volume (equivalent to 0.81 Bcf per day) is limited to the capacity of the M&N Pipeline at the U.S.-Canadian border. *Bear Head LNG Corp. and Bear Head LNG (USA), LLC*, DOE/FE Order No. 3770, at 5 n.17; *see also id.* at 155-58, 178-79, 189 (Ordering Para. E). Even though DOE is granting Bear Head’s Request to vacate its orders, Pieridae’s FTA and non-FTA authorizations in Docket No. 14-179-LNG remain active as of the date of this Order.