

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

POWER LNG LLC

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DOCKET NO. 23-11-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS TO
FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 4994

APRIL 18, 2023

I. DESCRIPTION OF REQUEST

On January 23, 2023, Power LNG LLC (Power) filed an Application¹ with the Department of Energy's (DOE) Office of Fossil Energy and Carbon Management under section 3 of the Natural Gas Act (NGA).² Power requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 7.0445 billion cubic feet per year (Bcf/yr) of natural gas.³

Power requests authorization to export the LNG by vessel from its proposed Newport Galveston Facility (Facility), which it intends to construct, own, and operate, to be located on Galveston Island, Galveston, Texas.⁴ Power requests authorization to export the LNG 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).⁵

Power requests this authorization for a term ending on December 31, 2050.⁶ Additionally, Power 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.⁷

¹ Power LNG LLC, Application of Power LNG LLC for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Countries, Docket No. 23-11-LNG (Jan. 23, 2023) [hereinafter App.].

² 15 U.S.C. § 717b. The authority to regulate the imports and exports of natural gas, including compressed gas liquid, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

³ App. at 1, 4.

⁴ *Id.* at 1, 3.

⁵ *See id.* at 1, 4; 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 *Id.* DOE notes that, effective January 12, 2021, long-term export authorizations contain authority to export the same approved volume of natural gas—including liquefied natural gas—pursuant to transactions with terms of less than two years, including commissioning volumes, on a non-additive basis. *See* U.S. Dep't of Energy Policy Statement, 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).

⁷ App. at 4, 7.

Pursuant to NGA section 3(c), 15 U.S.C. § 717b(c), this Order grants Power's Application.

II. **BACKGROUND**

Applicant. Power is a Texas limited liability company with its principal place of business in Missouri City, Texas.⁸

Proposed Power LNG Facility. Power states that its proposed Newport Galveston Facility will be located on a 55-acre marine and industrial park site on Galveston Island, located on the Texas Gulf Coast, in Galveston, Texas.⁹ According to Power, the Facility is anticipated to “include a natural gas liquefaction plant with a production capacity of up to approximately 7.0445 [bcf] of LNG per annum at 100% capacity, a truck loading facility, a storage area, and dock access.”¹⁰ Power states that it will load the LNG into approved IMO7/TVAC-ASME LNG (ISO) containers at the Facility, then transport the ISO containers by truck from the Facility to a nearby loading dock within the Facility, where it will be loaded onto ocean-going container vessels.¹¹ Additionally, Power states “the Facility will be able to store up to fifty (50) stacked ISO containers for a period of up to one (1) week.”¹²

Power states that it has entered into a long-term lease agreement for the marine and industrial park with its management organization, GCC Supply & Trading LLC.¹³ Power provided correspondence documenting site control as Appendix C to the Application.¹⁴

⁸ *Id.* at 2.

⁹ *See id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ App. at 3.

¹⁴ *Id.* at Appendix C.

Source of Supply. Power states that it intends to enter into a long-term natural gas supply agreement with the Houston Pipeline (HPL) System, a subsidiary of Energy Transfer.¹⁵ Power notes that the HPL System is an extensive network of intrastate natural gas pipelines and related transportation assets; has access to multiple sources of historically significant natural gas supply reserves in Texas and the Gulf of Mexico; and through interconnections, offers access to the market hubs at Katy, Houston Ship Channel, and Ague Dulce in Texas.¹⁶ Therefore, Power states, through this upstream interconnection, the Facility will be able to source natural gas from a variety of suppliers in the domestic market.¹⁷ Power adds that Energy Transfer currently has a 12-inch pipeline directly on its property.¹⁸

Business Model. Power 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.¹⁹ Power states that it anticipates selling LNG to FTA countries in export markets in the Caribbean, Mexico, Central and South America.²⁰

Power further 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.²¹

III. 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 a FTA

¹⁵ *Id.* at 3, 5.

¹⁶ *Id.* at 5-6

¹⁷ *Id.* at 6.

¹⁸ *See id.* at 3.

¹⁹ *App.* at 1, 4.

²⁰ *Id.* at 2.

²¹ *Id.* at 4-5.

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. This Application falls within section 3(c), as amended, and therefore, DOE is charged with granting the requested authorization without modification or delay.²²

(2) In light of DOE's statutory obligation to grant this Application without modification or delay, there is no need for DOE to review other arguments asserted by Power in support of the Application. The instant grant of authority should not be read to indicate DOE's views on those arguments.

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

(4) Power requests authorization to export LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. DOE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,²³ which granted Freeport LNG Expansion, L.P., *et al.* (collectively, FLEX) authority to export LNG to FTA countries. In that order, DOE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE in *The Dow Chemical Company*, which established that the title for all LNG

²² 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.

²³ *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 Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

authorized for export must be held by the authorization holder at the point of export.²⁴ DOE finds that the same policy considerations that supported DOE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.²⁵ In that order, DOE 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 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.²⁶

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

(5) Section 590.202(b) of DOE's natural gas import/export regulations requires applicants to supply transaction-specific factual information "to the extent practicable."²⁷ Additionally, DOE regulations at 10 C.F.R. § 590.202(e) allow confidential treatment of the information supplied in support of or in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure,

²⁴ *The Dow Chemical Company*, DOE/FE Order No. 2859, Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 7-8 (Oct. 5, 2010), discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

²⁵ *Cameron LNG, LLC*, DOE/FE Order No. 3680, Docket No. 15-36-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Free Trade Agreement Nations (July 10, 2015).

²⁶ *Id.* at 8-9.

²⁷ 10 C.F.R. § 590.202(b).

and DOE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.²⁸

(6) DOE will require that Power file or cause to be filed with DOE any relevant long-term commercial agreements or contracts pursuant to which Power exports LNG as agent for a Registrant once those agreements or contracts have been executed. 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). By way of example and without limitation, a “relevant long-term commercial agreement” would include an agreement with a minimum term of two years.

(7) DOE also will require Power to file any long-term contracts Power enters into providing for the long-term export of LNG on its own behalf from the proposed Facility. DOE finds that the submission of these 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).

(8) In addition, DOE finds that section 590.202(c) of DOE’s regulations²⁹ requires that Power file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Newport Galveston Facility, whether signed by Power or the Registrant, within 30 days of their execution.

(9) DOE recognizes that some information in Power’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 Facility, may be commercially sensitive. DOE therefore will provide Power the option to file or cause to be filed either

²⁸ *Id.* § 590.202(e).

²⁹ *Id.* § 590.202(c).

unredacted contracts, or in the alternative: (A) Power may file, or cause to be filed, long-term contracts under seal, but it also will file for public posting, within 30 days of the contract execution date, 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 or non-disclosed information should be exempted from public disclosure.³⁰

To ensure that DOE destination and reporting requirements included in the 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 the Order shall include an acknowledgement of these requirements.

ORDER

Pursuant to section 3 of the NGA, it is ordered that:

A. Power LNG LLC (Power) is authorized to export domestically produced LNG sourced from the proposed Newport Galveston Facility, to be located on Galveston Island, Galveston, Texas. Power is authorized to export this LNG in approved ISO containers on vessels in a volume equivalent to 7.0445 Bcf/yr of natural gas for a term to commence on the date of first export and extend through December 31, 2050. Power 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.³¹

³⁰ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

³¹ These contracts may include the export of commissioning volumes prior to the start of facility operations 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).

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore, and to any nation with which the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via ocean-going vessels. DOE identifies current FTA countries at <https://www.energy.gov/fecm/how-obtain-authorization-import-andor-export-natural-gas-and-lng>.

C. Power 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 United States Department of the Treasury and Federal Energy Regulatory Commission (FERC) (if applicable). Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (i) Power shall file, or cause others to file, with the U.S. Department of Energy, Office of Fossil Energy and Carbon Management, Office of Resource Sustainability, Office of Regulation, Analysis, and Engagement (FE-34) a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG from the Facility on its own behalf or as agent for other entities. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) Power 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 Facility. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

E. Power is permitted to use its authorization in order to act as agent for other entities, after registering the other entities with DOE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply Power with all information necessary to permit Power 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 doing business, and 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; (4) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE, described in Ordering Paragraph D 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 modification—shall be filed with DOE within 30 days of such change(s).

F. Power, or others for whom Power acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of LNG exported 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 B of DOE/FECM Order No. 4994, issued April 18, 2023 in Docket No. 23-11-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 Power 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 Power LNG LLC is made aware of all such actual destination countries.

G. Within two weeks after the first export of domestically produced LNG from the proposed Facility occurs, Power shall provide written notification of the date of first export to DOE.

H. Power shall file with the Office of Regulation, Analysis, and Engagement, on a semi-annual basis, written reports describing the progress of the proposed Facility. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the Facility, the date the Facility is expected to be operational, and the status of any long-term supply and export contracts associated with the long-term export of LNG.

I. With respect to any change in control of the authorization holder, Power must comply with DOE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.³² For purposes of this Ordering Paragraph, a "change in control" shall include any change, directly or indirectly, of the power to direct the management or policies of Power, 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

J. Monthly Reports: With respect to the exports authorized by this Order, Power 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

³² 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).

³³ See *id.* at 65,542.

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 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)

K. 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 April 18, 2023.

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