Department of Energy
Washington, DC 20585

January 3, 2024

Via Email

David L. Wochner
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RE: **Statement and Notice of Change in Control**
Rio Grande LNG, LLC
Docket No. 15-190-LNG

Dear Mr. Wochner:

This correspondence constitutes the response of the Department of Energy (DOE), Office of Fossil Energy and Carbon Management (FECM),[1] to the Statement and Notice of Change in Control filed on behalf of your client, Rio Grande LNG, LLC (Rio Grande LNG or RGLNG) on August 16, 2023.[2] Rio Grande LNG provides notice of a change in its upstream ownership, in light of DOE's Change in Control Procedures.[3]

I. BACKGROUND

Rio Grande LNG is authorized to export domestically produced liquefied natural gas (LNG) by vessel from the proposed Rio Grande LNG Export Terminal (RGLNG Terminal), to be located in Cameron County, Texas, under the following orders issued by DOE under section 3 of the Natural Gas Act (NGA):[4]

(i) DOE/FE Order No. 3869,[5] authorizing exports in a volume equivalent to 1,318 billion cubic feet per year (Bcf/yr) of natural gas for a 30-year term to any country

[1] The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.
[2] Rio Grande LNG, LLC, Statement and Notice of Change in Control, Docket No. 15-190-LNG (Aug. 16, 2023), https://www.energy.gov/sites/default/files/2023-08/15-190-LNG_RGLNG%20Statement%20and%20Notice%20of%20Change%20in%20Control%20%28Aug.%2016%202023%29.pdf [hereinafter Statement].
[3] *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 Change in Control Procedures].
[4] 15 U.S.C. § 717b.
[5] *Rio Grande LNG, LLC,* DOE/FE Order No. 3869, Docket No. 15-190-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Rio Grande LNG Terminal in Brownsville, Texas, to Free Trade Agreement Nations (Aug. 17, 2016).

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), pursuant to NGA section 3(c);[6] and

(ii) DOE/FE Order No. 4492, as amended,[7] authorizing exports in a volume equivalent to 1,318 Bcf/yr of natural gas through December 31, 2050, 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]

Under these authorizations, the FTA and non-FTA volumes are not additive.

II. RIO GRANDE LNG STATEMENT

A. Description of Change in Corporate Ownership

In the Statement, Rio Grande LNG states that, pursuant to certain subscription agreements and an amended and restated limited liability company agreement (collectively, Investment Agreements), each executed and closed on July 12, 2023 (Transaction), its upstream ownership has changed.

Rio Grande LNG states that it was previously 100% owned by NextDecade LNG, LLC (NextDecade LNG). Rio Grande LNG states that, as a result of the Transaction, several entities will make direct or indirect capital contributions to fund the design, engineering, development, procurement, construction, installation, testing, completion, ownership, operation and maintenance of the first three trains and related common facilities of the RGLNG Terminal and become direct or indirect members of Rio Grande LNG Intermediate Holdings, LLC (RGIH), which will in turn indirectly own 100% of Rio Grande LNG.[9] Following the Transaction, the ownership of RGIH (and thus 100% of the indirect ownership of Rio Grande LNG) will be as follows:

- NextDecade LNG, up to 20.79% economic interest;
- GIP V Velocity Acquisition Partners, L.P., a limited partnership managed by Global Infrastructure Partners (GIP), a minimum of 46.12% economic interest;
- Devonshire Investment Pte. Ltd., a Singapore exempt private company (Devonshire), a minimum of 9.85% economic interest;
- Global LNG North America Corp., a subsidiary of TotalEnergies SE (TotalEnergies), 16.67% economic interest; and

[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] *Rio Grande LNG, LLC,* DOE/FE Order No. 4492, Docket No. 15-190-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020), *amended by* DOE/FE Order No. 4492-A (Oct. 21, 2020) (extending export term).
[8] 15 U.S.C. § 717b(a).
[9] *See* Statement at 2.

- MIC TI Holding Company 2 RSC Limited, an Abu Dhabi Global Market Restricted Scope Company (MIC), a minimum of 6.57% economic interest.[10]

Rio Grande LNG states that, under the Transaction, the RGIH Board of Managers will be comprised of Class A Managers, appointed by NextDecade LNG, and Class B Managers, appointed by GIP, Devonshire, TotalEnergies, and MIC, in proportion to their respective direct and indirect interests in RGIH.[11] Rio Grande states that, except in respect of certain related party transactions, all decisions of the RGIH Board of Managers will require the approval of both Class A and Class B Managers.[12]

Rio Grande LNG further states that the RGLNG Terminal will be operated exclusively by NextDecade LNG for the benefit of Rio Grande LNG, and in accordance with Rio Grande LNG's FTA and non-FTA authorizations, under several agreements executed with Rio Grande LNG (as the owner of the first three trains and the related common facilities at the RGLNG Terminal).[13]

Next, Rio Grande LNG states that, in addition to TotalEnergies' acquisition of interests in connection with the Transaction, TotalEnergies is acquiring a 17.5% common stock position in Rio Grande LNG's publicly traded parent company, NextDecade Corporation (NextDecade Parent). This acquisition will occur in three tranches for a total amount of $219.4 million.[14]

Finally, Rio Grande LNG states that, as part of the Transaction, TotalEnergies' affiliate, TotalEnergies Gas & Power North America, Inc. executed a 20-year sale and purchase agreement (TotalEnergies SPA) with Rio Grande LNG for 5.4 million metric tons per annum (MTPA) of LNG from the RGLNG Terminal. Thus, pursuant to multiple SPAs (including the TotalEnergies SPA), Rio Grande LNG now has 16.2 MTPA of LNG under long-term export contracts with the following entities: TotalEnergies Gas & Power North America, Inc.; Shell NA LNG LLC; ENN LNG Pte Ltd; Engie S.A.; ExxonMobil LNG Asia Pacific; Guangdong Energy Group; China Gas Hongda Energy Trading Co.; Galp Trading S.A.; and Itochu Corporation. Rio Grande LNG states that, consistent with its obligations under its DOE authorizations, it has provided summaries of the major provisions of these SPAs for posting publicly on DOE's website.[15]

In Exhibit A to the Statement, Rio Grande LNG provides organizational charts illustrating the change in ownership structure before and after the Transaction, including details about RGIH's upstream ownership, equity, and voting interests.[16]

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[10] *See* Statement at 3 and nn.11-15). According to Rio Grande LNG, these percentages of economic ownership interests are derived from the distributions of available cash by RGIH allocatable to the direct and indirect holders of such economic interests. *See id*. at n.11.
[11] *See id*.
[12] *See id* at 4 (describing approval required for certain specified "qualified matters," "supermajority matters," and "unanimous matters").
[13] *See id*.
[14] *See id*.
[15] *See id*.
[16] *See also* Statement at 3.

B. Public Interest Considerations for Non-FTA Authorization

Rio Grande LNG asserts that "[n]o aspect of the proposed change in control will impact DOE/FECM's prior public interest finding" for its non-FTA authorization.[17] Rio Grande LNG asserts that, although the change in control will result in a modification to its upstream ownership structure, the change in control will have "no substantive impact" on the terms and conditions of its non-FTA authorization.[18] Rio Grande LNG adds that the majority of RGIH (approximately 67%) will remain economically owned by two U.S. entities—NextDecade Parent and GIP.[19] Further, according to Rio Grande LNG, "the Investment Agreements and project agreements are all purposefully structured to ensure NextDecade LNG and [Rio Grande LNG] have exclusive responsibility for the day-to-day operations of the RGLNG Terminal," including ensuring compliance with Rio Grande LNG's non-FTA authorization.[20]

Rio Grande LNG also discusses the various "foreign ownership interests" arising from the Transaction and the resulting changes in upstream ownership.[21] Specifically, Rio Grande LNG states that the foreign ownership interests will indirectly involve the Government of Singapore (through Devonshire, which will indirectly own a minimum of 9.85% of RGIH) and the Government of Abu Dhabi, United Arab Emirates (through MIC, which will indirectly own a minimum of 6.57% of RGIH).[22] Rio Grande LNG maintains, however, that these resulting upstream ownership changes "will have no impact" on DOE's prior finding that Rio Grande LNG's non-FTA authorization was not inconsistent with the public interest.[23]

III. DISCUSSION AND CONCLUSIONS

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.[24] 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.[25]

A. FTA Export Authorization

DOE's Change in Control Procedures provide that, upon receipt of a statement of change in control relating to existing FTA export authorizations, DOE will give immediate effect to the change in control and will take no further action.[26] Accordingly, the change in control described

[17] *Id*. at 5.
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] *Id*. at 6.
[22] *Id*.
[23] Statement at 6.
[24] *See* DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.
[25] *Id.*
[26] DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

above has taken effect insofar as it relates to Rio Grande LNG's FTA authorization in DOE/FE Order No. 3869.

B. Non-FTA Export Authorization

DOE's Change in Control Procedures state that, with respect to existing non-FTA authorizations, DOE will give effect to the change in control and will publish a notice of the change in the *Federal Register*.[27] 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*.[28]

Consistent with these procedures, DOE published a notice of Rio Grande LNG's change in control in the *Federal Register* on September 5, 2023 (Notice).[29] DOE invited protests, motions to intervene, and written comments to be filed no later than September 20, 2023.[30]

DOE received one comment in opposition to the Notice, submitted by John Young.[31] No protests or motions to intervene in opposition to the Statement were filed, and therefore the Statement is uncontested.

Mr. Young states that he and his wife live and have two rental properties approximately an hour away from the proposed site of the RGLNG Terminal at the Port of Brownsville, Texas. Mr. Young discusses numerous objections to the RGLNG Terminal project. We note, however, that almost all of Mr. Young's objections involve matters that are beyond the scope of the current change in control proceeding, including his opinions on Rio Grande LNG's proceedings before the Federal Energy Regulatory Commission (FERC) and his general opposition to the RGLNG Terminal project.

As relevant here, Mr. Young appears to disagree with the foreign ownership interests, described above, arising from the Transaction and the resulting changes in upstream ownership. Mr. Young argues that, "[a]fter the Change In Control, RGLNG will remain in Houston TX USA," but "Rio Grande LNG Intermediate Holdings LLC (RGIH) will be a conglomerate representing a variety of interests, not all of which will necessarily be compatible with US interests in terms of the global LNG markets."[32] DOE has previously held that "[a] commenter's indiscriminate opposition to foreign controlling interests does not support a determination that the change in

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27 *See id.*
28 *Id.*
29 U.S. Dep't of Energy, Change in Control; Rio Grande LNG, LLC, 88 Fed. Reg. 60,669 (Sept. 5, 2023).
30 *Id.*
31 Comment of John Young, Docket No. 15-190-LNG (Sept. 18, 2023), https://www.energy.gov/sites/default/files/2023-09/%5BEXTERNAL%5D%20Regarding%20Docket%20Number%2015-190-LNG%20%28Rio%20Grande%20LNG%29%2008-16-2023%20Statement%20and%20Notice%20of%20Change%20in%20Control_0.pdf.
32 *Id*. at 2.

control … is inconsistent with the public interest."[33] Upon review of Rio Grande LNG's Statement and Mr. Young's comment, we reach the same conclusion here.

Because more than 30 days have passed since the Notice was published in the *Federal Register*, the change in control with respect to Rio Grande LNG's non-FTA authorization, DOE/FE Order No. 4492, as amended, is deemed granted. No further action is required.[34]

Sincerely,

Amy R. Sweeney Digitally signed by Amy R. Sweeney
Date: 2024.01.03 21:25:50 -05'00'

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

[33] *Freeport LNG Expansion, L.P., et al*., Letter Order, Docket Nos. 10-161-LNG, et al., at 4 (June 17, 2016); *see also Cameron LNG, LLC*, *et al.*, DOE/FECM Order No. 4815, Docket Nos. 11-145-LNG, *et al.*, Order Approving Change in Control, at 8-9 (May 3, 2022); *Jordan Cove Energy Project L.P.*, DOE/FE Order No. 3413-A, Docket No. 12-32-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 94 (July 6, 2020) (stating that "DOE/FE has never required an applicant to have domestic ownership under NGA section 3(a) ….") (order vacated at Jordan Cove's request).

[34] Due to the foreign economic interests resulting from the Transaction, Rio Grande LNG's change in control may require the approval of the Committee on Foreign Investment in the United States (CFIUS). DOE expresses no opinion regarding the need for review by CFIUS. Additional information may be obtained at: https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.