

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

CRYOPEAK ENERGY SOLUTIONS CORPORATION)
(formerly Cryopeak LNG Solutions Corporation))

DOCKET NO. 22-63-LNG

ORDER RESPONDING TO NOTIFICATION OF CHANGE IN CONTROL
AND GRANTING REQUEST TO AMEND AUTHORIZATION HOLDER

DOE/FECM ORDER NO. 4865-B

JUNE 17, 2024

I. INTRODUCTION AND BACKGROUND

On August 25, 2022, the Department of Energy’s (DOE) Office of Fossil Energy and Carbon Management (FECM) issued DOE/FECM Order No. 4865 (Order)¹ to Cryopeak LNG Solutions Corporation (Cryopeak) under section 3 of the Natural Gas Act (NGA).² Under this consolidated Order, Cryopeak is authorized to export and import liquefied natural gas (LNG) in a total volume equivalent to 51.75 billion cubic feet per year of natural gas on a non-additive basis as follows:

- (i) To import LNG from Canada and Mexico—countries with which the United States has a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries)—under NGA section 3(c);³
- (ii) To export domestically produced LNG purchased from 30 LNG manufacturing facilities in the United States to FTA countries under NGA section 3(c); and
- (iii) To export domestically produced LNG purchased from 30 LNG manufacturing facilities in the United States to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries) under NGA section 3(a),⁴ as qualifying “small-scale natural gas exports.”⁵

The term of this Order extends through December 31, 2050. On October 5, 2022, in Order No. 4865-A, DOE amended Order No. 4865 by expanding the modes of transportation authorized for export.⁶

¹ *Cryopeak LNG Solutions Corp.*, DOE/FECM Order Nos. 4865 and 4825-A, Docket Nos. 22-63-LNG and 22-38-LNG, Order Granting Long-Term Authorization to Import Liquefied Natural Gas from Canada and Mexico, to Export Liquefied Natural Gas to Free Trade Agreement Nations, for Small-Scale Exports of Liquefied Natural Gas, and Vacating Prior Authorization (Aug. 25, 2022), *amended by* Order No. 4865-A (Oct. 5, 2022) (amending modes of transportation for exports). Because DOE vacated Order No. 4825 at Cryopeak’s request, we refer only to Order No. 4865 for purposes of this Order.

² 15 U.S.C. § 717b. 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-FE1-2023, issued on April 10, 2023.

³ 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.

⁴ 15 U.S.C. § 717b(a).

⁵ 10 C.F.R. §§ 590.102(p), 590.208(a).

⁶ *See supra* note 1.

At the time that DOE issued Order No. 4865, Cryopeak stated that it is a Canada corporation with its principal place of business in Richmond, British Columbia, Canada.⁷ Cryopeak further stated that its major shareholder is BP Energy Partners L.L.C. (BP) (a private equity firm based in Dallas, Texas) with a 93.3% ownership stake, and the remaining ownership stakes held by Calum McClure, Cryopeak’s founder and CEO (3.2%); 0943084 BC Ltd (2.3%); two unnamed former executives of the company (0.9% and 0.1%), and the spouse of one former executive (0.2%).⁸

On February 29, 2024, Cryopeak submitted a letter to DOE providing notice that, on February 1, 2024, “Cryopeak LNG Solutions Corporation and Ferus Natural Gas Fuels Inc. ... amalgamated to form Cryopeak Energy Solutions Corporation.”⁹ Cryopeak states that “Cryopeak Energy Solutions Corporation is the successor of both former entities, maintaining the key management personnel and most prior members of the board of directors.”¹⁰ Cryopeak further states that, as a result of the amalgamation, Order No. 4865 should be updated to reflect Cryopeak Energy Solutions Corporation as the authorization holder.¹¹

II. DESCRIPTION OF CHANGE IN CORPORATE OWNERSHIP

Subsequently, on May 17, 2024, Cryopeak submitted a “Notification of Change in Control” (Notification)¹² in which it confirmed that the amalgamation that occurred between

⁷ *Cryopeak LNG Solutions Corp.*, DOE/FECM Order No. 4865, at 4.

⁸ *See id.* at 4-5.

⁹ *See* Letter from Calum McClure, Cryopeak Energy Solutions Corp., to DOE, Docket No. 22-63-LNG (Feb. 29, 2024), https://www.energy.gov/sites/default/files/2024-04/Cryopeak%20Name%20Change%20Request%20Letter.docx_0.pdf [hereinafter Cryopeak Ltr.].

¹⁰ *Id.*

¹¹ Cryopeak also requested that DOE vacate an authorization held by Ferus Natural Gas Fuels Inc. Concurrently with this Order, DOE is issuing the requested vacatur order in the relevant docket (Docket No. 23-18-LNG). *See* Cryopeak Ltr.; *see also* Emails from Kitty Li and Hardeep Rai, Cryopeak Energy Solutions Corp., to Beverly Howard, DOE, Docket No. 22-63-LNG (Mar. 4, 2024, and Mar. 5, 2024, respectively).

¹² Cryopeak Energy Solutions Corp., Notification of Change in Control, Docket No. 22-63-LNG (May 17, 2024), <https://www.energy.gov/sites/default/files/2024-05/DOE%20Letter%20-%20Change%20in%20Control%20->

Cryopeak LNG Solutions Corporation and Ferus Natural Gas Fuels Inc. on February 1, 2024, constitutes a change in control under DOE’s Change in Control Procedures.¹³

Specifically, Cryopeak states that, “[u]pon the completion of the [amalgamation] transaction, a change of over 10% of ownership was triggered.”¹⁴ According to Cryopeak, BP’s ownership holding decreased from 94.4% to 47.2%, and a new shareholder, EMG Ferus II HC, LLC (EMG) (a private equity firm based in Houston, Texas) obtained a 49.0% ownership stake in the successor entity, Cryopeak Energy Solutions Corporation.¹⁵ Thus, “Cryopeak Energy Solutions Corporation is now majority owned by BP (47.2%) and EMG (49.0%).”¹⁶ The remaining ownership shares totaling 3.8% continue to be held primarily by “current and former executives.”¹⁷

Cryopeak also states that Cryopeak Energy Solutions Corporation is a Canada company with its principal place of business in Richmond, British Columbia, Canada.¹⁸

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

[%20Cryopeak%20Energy%20Solutions%20Corporation%20-%2013th%20May%202024.pdf](#) [hereinafter Notification]. Cryopeak attached two related certificates issued by the Government of Alberta, Canada.

¹³ 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].

¹⁴ Notification at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; see also *supra* at 3.

¹⁸ *Id.* at 1.

indirect means.¹⁹ 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.²⁰

As noted above, Cryopeak acknowledges that the amalgamation that occurred on February 1, 2024, resulted in a change of control in the ownership interests of the successor entity, Cryopeak Energy Solutions Corporation, pursuant to DOE’s Change in Control Procedures.²¹

A. FTA Import and Export Authorizations in Order No. 4865

DOE’s Change in Control Procedures provide that, upon receipt of a statement of change in control relating to existing “FTA long-term natural gas import or export authorizations,” DOE “will give immediate effect to the change in control and take no further action.”²² Accordingly, the change in control described above has taken effect for the portion of Order No. 4865, as amended, that authorizes both imports of LNG from Canada and Mexico and exports of LNG to FTA countries.

B. Small-Scale Natural Gas Export Authorization in Order No. 4865

DOE implemented its Change in Control Procedures in 2014. Four years later, in 2018, DOE revised its regulations to establish a category of “small-scale natural gas exports” to non-FTA countries.²³ Because DOE’s Change in Control Procedures preceded this regulatory change, the Change in Control Procedures establish different processes applicable to FTA and non-FTA proceedings broadly, without any reference to small-scale exports of natural gas, including LNG.

¹⁹ See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

²⁰ See *id.*

²¹ Notification at 2.

²² DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

²³ See 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).

Nonetheless, because qualifying small-scale exports of natural gas are “deemed to be consistent with the public interest”²⁴—as are FTA exports under NGA section 3(c)²⁵—we find good cause to apply the same Change in Control Procedures applicable to FTA export authorizations to small-scale export authorizations. Specifically, having received Cryopeak’s Notification, DOE “will give immediate effect to the change in control and take no further action.”²⁶ The change in control described above thus has taken effect for the portion of Order No. 4865, as amended, that authorizes small-scale exports of LNG to non-FTA countries.

C. Change in Authorization Holder

For the reasons set forth above, we find good cause to grant Cryopeak’s request to amend Order No. 4865 to name Cryopeak Energy Solutions Corporation as the authorization holder.

ORDER

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

A. The authorization holder of DOE/FECM Order No. 4865, as amended by Order No. 4865-A, is amended to Cryopeak Energy Solutions Corporation, effective February 1, 2024.

B. All obligations, rights, and responsibilities established by DOE/FECM Order No. 4865, as amended, no longer apply to Cryopeak LNG Solutions Corporation and now apply to Cryopeak Energy Solutions Corporation.

Issued in Washington, D.C., on June 17, 2024.

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

²⁴ 10 C.F.R. § 590.208(a).

²⁵ 15 U.S.C. § 717b(c).

²⁶ DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.