

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

AMERICAN LNG MARKETING LLC)	DOCKET NO. 14-209-LNG
)	DOCKET NO. 15-19-LNG
)	
)	

ORDER APPROVING CHANGE IN CONTROL

DOE/FECM ORDER NO. 5172

SEPTEMBER 25, 2024

I. INTRODUCTION AND BACKGROUND

On July 1, 2024, American LNG Marketing LLC (American LNG Marketing) submitted a Statement of Change in Control (Statement)¹ to the Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy)² of the Department of Energy (DOE). American LNG Marketing supplemented its Statement eleven days later (Supplement).³ In the Statement, as supplemented, American LNG Marketing provides notice of a change in its upstream ownership, in light of DOE's Change in Control Procedures.⁴

American LNG Marketing is authorized to export domestically produced liquefied natural gas (LNG) in approved International Organization for Standardization (ISO) containers by vessel, under section 3 of the Natural Gas Act (NGA),⁵ as follows:⁶

- (i) DOE/FE Order No. 3601,⁷ as amended, authorizing exports by approved ISO containers from the Hialeah Facility near Medley, Florida,⁸ in a volume

¹ American LNG Marketing LLC, Statement of Change of Control, Docket Nos. 14-209-LNG, 15-19-LNG (July 1, 2024), <https://www.energy.gov/sites/default/files/2024-07/DOE%20Statement%20of%20Change%20in%20Control%20%28Final%207.1.2024%29.pdf> [hereinafter Statement].

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

³ American LNG Marketing LLC, Supplement to Statement of Change in Control, Docket Nos. 14-209-LNG, 15-19-LNG (July 12, 2024), <https://www.energy.gov/sites/default/files/2024-07/Supplement%20to%20DOE%20Statement%20of%20Change%20in%20Control%20%28Final%207.12.24%29.pdf> [hereinafter Statement Supp.].

⁴ 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].

⁵ 15 U.S.C. § 717b. The authority to regulate the imports and exports of natural gas, including LNG, 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.

⁶ Each of the three listed long-term orders was amended in December 2020 to include short-term export authority on a non-additive basis. See DOE/FE Order No. 4641, Docket Nos. 10-85-LNG *et al.*, Order Amending Long-Term Authorizations for the Export of Natural Gas to Include Short-Term Export Authority on a Non-Additive Basis, at 14, 15, 18 (Dec. 18, 2020).

⁷ *Am. LNG Mktg. LLC*, DOE/FE Order No. 3601, Docket No. 14-209-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Proposed Hialeah Facility in Medley, Florida, and Exported by Vessel to Free Trade Agreement Nations (Mar. 18, 2015).

⁸ See Letter from Counsel for American LNG Marketing to DOE Clarifying Location of the Hialeah Facility (by email) (July 10, 2015) (clarifying that the Hialeah Facility's mailing address is "in" Medley, Florida, but that the Facility's physical location is just beyond the Medley city boundary line).

equivalent to 3.02 billion cubic feet (Bcf) per year (Bcf/yr) of natural gas for a term beginning on February 5, 2016, and extending through February 4, 2036,⁹ to any nation with which the United States has entered into, or in the future will have entered into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), pursuant to NGA section 3(c);¹⁰

- (ii) DOE/FE Order No. 3690, as amended,¹¹ authorizing exports in approved ISO containers loaded at the Hialeah Facility, in a volume up to the equivalent of 3.02 Bcf/yr of natural gas for a term beginning on February 5, 2016, and extending through February 4, 2036,¹² to any other country that has, or in the future develops, the capacity to import LNG via approved ISO containers transported on ocean-going carriers, and that has no FTA with the United States but with which trade is not prohibited by U.S. law or policy (non-FTA countries), pursuant to NGA section 3(a);¹³ and

⁹ Order No. 3601 authorized exports “for a 20-year term, beginning on the earlier of the date of first export or seven years from the date the authorization is issued.” *Id.* at 11 (Ordering Para. A). On February 19, 2016, American LNG Marketing notified DOE that its first LNG export took place February 5, 2016. American LNG Marketing LLC, Docket No. 14-209-LNG, Notification of First Export (Feb. 19, 2016). The 20-year FTA authorization term therefore began on that date.

¹⁰ 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.

¹¹ *Am. LNG Mktg. LLC*, DOE/FE Order No. 3690, Docket No. 14-209-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Hialeah Facility Near Medley, Florida, And Exported by Vessel to Non-Free Trade Agreement Nations (Aug. 7, 2015).

¹² Order No. 3690 authorized exports “for a term of 20 years to commence on the earlier of the date of first commercial export or seven years from the date that this Order is issued.” *Id.* at 138 (Ordering Para. A). On February 19, 2016, American LNG Marketing notified DOE that its first LNG export took place February 5, 2016. American LNG Marketing LLC, Docket No. 14-209-LNG, Notification of First Export (Feb. 19, 2016). The 20-year non-FTA authorization term therefore began on that date.

¹³ 15 U.S.C. § 717b(a).

- (iii) DOE/FE Order No. 3656,¹⁴ as amended, authorizing exports by ISO containers from the Titusville Facility in Titusville, Florida, in a volume equivalent to 30.2 Bcf/yr of natural gas for a 20-year term beginning on the earlier of the date of first export or May 29, 2022, to FTA countries, pursuant to NGA section 3(c).

Under these authorizations, the FTA and non-FTA volumes are not additive within dockets but are additive between dockets. American LNG Marketing is therefore authorized to export a total volume of LNG equivalent to 33.22 Bcf/yr of natural gas—3.02 Bcf/yr under Docket No. 14-209-LNG and 30.2 Bcf/yr under Docket No. 15-19-LNG.

Consistent with DOE's Change in Control Procedures, DOE published a notice of American LNG Marketing's Statement, as supplemented, in the *Federal Register* on August 1, 2024 (Notice).¹⁵ DOE invited protests, motions to intervene, and written comments to be filed no later than August 16, 2024.¹⁶ In response, DOE received one anonymous comment that was non-responsive,¹⁷ dated August 6, 2024, and one filing from Public Citizen, Inc. (Public Citizen),¹⁸ dated August 16, 2024.

Public Citizen's filing moves to intervene and protest in the change in control proceeding and expresses opposition to the American LNG Marketing Statement.¹⁹

Therefore, DOE construes the filing as a motion to intervene and protest the proposed change

¹⁴ *Am. LNG Mktg. LLC*, DOE/FE Order No. 3656, Docket No. 15-19-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Proposed Titusville Facility in Titusville, Florida, and Exported by Vessel to Free Trade Agreement Nations (May 29, 2015).

¹⁵ U.S. Dep't of Energy, Change In Control; American LNG Marketing LLC, 89 Fed. Reg. 62,732 (Aug. 1, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-08-01/pdf/2024-16987.pdf> [hereinafter DOE Notice].

¹⁶ *See id.* at 62,732-33.

¹⁷ Anonymous, Comment On Change in Control: American LNG Marketing LLC (Aug. 6, 2024), <https://www.energy.gov/sites/default/files/2024-08/DOE-HQ-2024-0068-DRAFT-0001.pdf>.

¹⁸ Public Citizen, Inc., Motion to Intervene and Protest, Docket No. 14-209-LNG (Aug. 16, 2024), <https://www.energy.gov/sites/default/files/2024-08/Pennybacker.pdf> [hereinafter Public Citizen Filing].

¹⁹ *See id.*

in control.²⁰ On August 20, 2024, American LNG Marketing filed an “Answer to Motion to Intervene and Protest” (Answer).²¹

As discussed below, DOE grants Public Citizen’s motion to intervene and protest in this portion of the proceedings and finds that American LNG Marketing’s proposed change in control has not been demonstrated to render the underlying non-FTA authorization inconsistent with the public interest under NGA section 3(a). DOE’s actions for American LNG Marketing’s FTA authorizations are also set forth below.

II. DESCRIPTION OF CHANGE IN CORPORATE OWNERSHIP

In the Statement, as supplemented, American LNG Marketing states that it is a wholly-owned direct subsidiary of LNG Holdings (Florida) LLC, which is a wholly-owned direct subsidiary of LNG Holdings LLC (LNG Holdings), which is a wholly-owned indirect subsidiary of New Fortress Energy, Inc. (Fortress).²² American LNG Marketing states that Fortress entered into a Membership Interest Purchase Agreement (MIPA) “with Miami LNG Acquirorco, LLC, a Delaware limited liability company and a subsidiary of certain funds and investment vehicles of Pennybacker Capital Management, LLC (Pennybacker).”²³ Under the MIPA, Pennybacker will acquire 100% control of LNG Holdings (Florida) LLC, the immediate upstream parent of American LNG Marketing, and thus will indirectly acquire 100% control of American LNG

²⁰ See 10 C.F.R. §§ 590.303, 590.304.

²¹ American LNG Marketing LLC, Answer of American LNG Marketing to Motion to Intervene and Protest of Public Citizen, Inc. (Aug. 20, 2024), <https://www.energy.gov/sites/default/files/2024-08/American%20LNG%20Marketing%20Answer%20to%20Motion%20to%20Intervene%20of%20Public%20Citizen.pdf> [hereinafter Answer].

²² Statement at 2 (explaining that, “[i]n contemplation of, but prior to executing the [Membership Interest Purchase Agreement], . . . LNG Holdings (Florida) LLC, a wholly owned subsidiary of Fortress, acquired 100% of the membership interests in American LNG Marketing” through an internal corporate reorganization, whereby “LNG Holdings (Florida) LLC became the immediate upstream parent of American LNG Marketing.”). See also Statement Supp. at Appendix A.

²³ Statement at 1.

Marketing (the Transaction).²⁴ American LNG Marketing states that, “[a]s a result of the Transaction, American LNG Marketing will no longer be controlled by [Fortress] and will be controlled by Pennybacker.”²⁵

Upon and following the closing of the Transaction, and under the MIPA, LNG Holdings (Florida) LLC would become a wholly-owned direct subsidiary of Miami LNG Acquirorco, LLC, and the Transaction would make Miami LNG Acquirorco, LLC a wholly-owned indirect subsidiary of Pennybacker.²⁶ The Transaction has not yet occurred.²⁷

American LNG Marketing provides charts showing the proposed pre- and post-Transaction change in ownership structure as Appendices to the Supplement.²⁸

III. PROCEDURAL MATTERS

In its filing, timely submitted to DOE, Public Citizen expresses concern about American LNG Marketing’s proposed change in control. Specifically, Public Citizen alleges that American LNG Marketing’s proposal is “deficient” because “it fails to reveal what investors, individuals or entities hold ‘power to direct the management or policies of [Pennybacker].’”²⁹ Public Citizen states that “Pennybacker itself is controlled and owned by unnamed entities that are omitted from the change in control filing,” and that DOE “must therefore compel disclosure of the investors, individuals and entities that own, direct and control” Pennybacker.³⁰ Additionally, Public Citizen asserts that it has a direct interest in

²⁴ *Id.*; see also Statement Supp. at Appendix B.

²⁵ *Statement at 1.*

²⁶ *See id.*; see also Statement Supp. at Appendix B.

²⁷ American LNG Marketing contends that the proposed Transaction would not disturb DOE’s public interest consistency finding in Order No. 3690, nor would it “result in any substantive changes in the terms and conditions of the initial authorization.” *Statement at 3-4.* More specifically, according to American LNG Marketing, the Transaction “also will have no effect on the scope of the project, the amount of gas exported, the sources of the gas supply, or the prices or other transactional terms.” *Id.* at 4.

²⁸ *Statement Supp. at Appendices A & B.*

²⁹ *Public Citizen Filing at 1.*

³⁰ *Id.*

American LNG Marketing’s ownership structure because “record gas exports are profoundly disrupting domestic energy markets, straining the availability of domestic gas supplies, and exposing families to increased energy price burdens.”³¹

In its Answer, American LNG Marketing contends that its Statement is not deficient, and that “[n]othing . . . suggests that the proposed change in control . . . would render American LNG Marketing’s Non-FTA Export Authorization inconsistent with the public interest.”³² American LNG Marketing maintains that it “has satisfied the procedural requirements of the [DOE Change in Control] Procedures” and notes its “disagree[ment] that there is an implicit obligation [for] the Statement to include” the disclosure Public Citizen urges DOE to compel.³³ American LNG Marketing states that Pennybacker is “an investment adviser regulated by the Securities and Exchange Commission,” and that “Pennybacker publicly identifies in its Form ADV filed with [that agency] the individuals that own or control the power to direct the management or policies of Pennybacker.”³⁴ American LNG Marketing therefore argues that “there is no need to ‘compel disclosure’ of such entities [because] all persons that own or control the power to direct the management or policies of Pennybacker are already publicly disclosed.”³⁵

On review, we find that the proposed change in control could affect the interests of Public Citizen and its members, insofar as DOE must determine whether the Transaction renders American LNG Marketing’s existing non-FTA order inconsistent with the public

³¹ *Id.*

³² Answer at 1.

³³ *Id.* at 2.

³⁴ *Id.* The Answer also provides a link to the Form ADV, which it says identifies “the parties that hold any direct ownership or control interest in Pennybacker [and the] parties that hold indirect interest in Pennybacker.” *Id.* at 2 n.8.

³⁵ *Id.* at 2.

interest. Accordingly, we grant Public Citizen’s motion to intervene in this change in control portion of the proceedings.³⁶

IV. DISCUSSION AND CONCLUSIONS REGARDING CHANGE IN CONTROL

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.³⁷ 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.³⁸

In this proceeding, American LNG states that the Transaction would give Pennybacker a 100% indirect ownership interest in American LNG Marketing.³⁹ We find that this Transaction would constitute a change in control.⁴⁰

A. FTA Export Authorizations

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.⁴¹ Accordingly, American LNG Marketing’s change in control described above has taken effect insofar as it relates to the FTA export

³⁶ See DOE Notice, 89 Fed. Reg. at 62,733 n.5 (“Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings.”).

³⁷ See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

³⁸ See *id.*

³⁹ See Statement at 1-3; see also Statement Supp. at Appendix B.

⁴⁰ See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

⁴¹ See *id.*

authorizations in DOE/FE Order Nos. 3601 and 3656 (and any amendments to these orders, as applicable).

B. Non-FTA Export Authorizations

DOE's Change in Control Procedures state that, with respect to existing non-FTA export authorizations issued under NGA section 3(a), DOE will give effect to the change in control and will publish a notice of the change in the *Federal Register*.⁴² 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(s) will be deemed granted 30 days after publication in the *Federal Register*.⁴³

DOE complied with this notice procedure for non-FTA authorizations, as described above. As noted above, Public Citizen has opposed American LNG Marketing's Statement, expressing its concern about unnamed ownership and control of Pennybacker.⁴⁴ Additionally, Public Citizen contends that high natural gas exports are straining supply and raising prices for U.S. consumers.⁴⁵

As a preliminary matter, the issue before us is not whether any exports are in the public interest under NGA section 3(a). This portion of the proceedings is limited to American LNG Marketing's proposed change in upstream ownership. Public Citizen's challenge to U.S. exports generally, along with any related arguments concerning natural gas prices, are therefore beyond the scope of this proceeding.

Further, Public Citizen's contention that American LNG has failed to disclose who controls and owns Pennybacker is unsubstantiated. As American LNG's correctly notes in its

⁴² *See id.*

⁴³ *Id.*

⁴⁴ *See* Public Citizen Filing at 1.

⁴⁵ *Id.*

Answer, all direct and indirect owners of Pennybacker are publicly disclosed in its Form ADV that it files with the Securities and Exchange Commission. Thus, we see no basis to conclude that the transfer of indirect ownership of American LNG Marketing from Fortress to Pennybacker would render American LNG Marketing's existing non-FTA order inconsistent with the public interest under NGA section 3(a).

Accordingly, the change in control described above with respect to the non-FTA export authorization as it relates to DOE/FE Order No. 3690 (and any amendments to that order, as applicable) is granted, effective immediately.

ORDER

Pursuant to NGA section 3, DOE's regulations at 10 C.F.R. Part 590, and DOE's Change in Control Procedures, it is ordered that:

- A. The motion to intervene and protest submitted by Public Citizen is granted.
- B. The proposed change in control is approved, as set forth in the body of this Order.

Issued in Washington, D.C., on September 25, 2024.

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