



Department of Energy
Washington, DC 20585

July 16, 2018

BY EMAIL

Lisa Tonery
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019-6142

RE: Shipment of Liquefied Natural Gas from the United States to Naval Station Guantanamo Bay

Dear Ms. Tonery:

This letter responds to your inquiry of May 23, 2018, on behalf of Pivotal LNG, Inc. (Pivotal), concerning the Department of Energy's (DOE) jurisdiction under section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. § 717b(a).¹ Section 3(a) regulates the import and export of natural gas, including liquefied natural gas (LNG), to non-free trade agreement countries, including Cuba.

Your correspondence sets forth the following facts. The Defense Logistics Agency Energy (in conjunction with the Department of the Navy) has issued a solicitation to procure volumes of U.S. LNG over a five-year period to support activities at the U.S. Naval Station Guantanamo Bay Cuba (NSGB).² Specifically, the LNG "will be delivered to NSGB in support of an anticipated natural gas combined cycle power plant."³ Because the LNG subject to this procurement would be shipped from the United States to NSGB, the question arises whether a successful offer by Pivotal in response to the solicitation would constitute an "export" subject to DOE's jurisdiction under NGA section 3(a).

The information that you have provided includes two material facts. First, under the terms of the solicitation, Pivotal's contemplated shipment of LNG would not be introduced into commerce in Cuba. Instead, the U.S. LNG would be shipped to Cuba solely for consumption and use by a federal installation (NSGB) that occupies a leasehold over which the United States exercises exclusive jurisdiction. As noted above, NGA section 3(a) concerns the "export" of LNG.⁴

¹ See Ltr. from L. Tonery, Counsel for Pivotal, to A. Sweeney, DOE Office of Fossil Energy, Re: Request for Advisory Opinion Under Section 3 of the Natural Gas Act – Transfer of Liquefied Natural Gas to U.S. Naval Station at Guantanamo Bay (May 23, 2018).

² Defense Logistics Agency Energy, Request for Proposal No. SPE604-18-R-0406.

³ *Id.* at 3 (A.1.6).

⁴ 15 U.S.C. § 717b(a).

Because the statute does not define “export” as a term of art,⁵ Congress is presumed to have intended the ordinary usage of that term. The definition of “export” ordinarily contains both the elements of shipment from the United States and subsequent entry into commerce at the destination, where the destination is a foreign country.⁶

Second, the contemplated shipment of LNG under the solicitation is structured entirely for the use and benefit of the United States Government, including its forces and facilities at NSGB. Section 3(a) of the NGA provides for DOE to regulate exports by any “person.”⁷ In this case, the “person” bringing about the shipment of LNG from the United States would be the United States itself, acting through the solicitation issued by the Defense Logistics Agency Energy, not “an individual or a corporation” as contemplated by the statute.⁸

In sum, based on the information you have provided, there would be no basis for DOE to assert regulatory jurisdiction over shipment of this LNG under section 3(a) of the Natural Gas Act.

Sincerely,

Shawn Bennett
Deputy Assistant Secretary for Oil and Natural Gas
Office of Fossil Energy

cc: Harry Clark

⁵ *Id.* § 717a.

⁶ *See, e.g.*, Webster’s Revised Unabridged Dictionary (1913), *available at*: <https://www.websters1913.com/words/Export> (defining “export” as “[t]o carry or send abroad, or out of a country, especially to foreign countries, as merchandise or commodities in the way of commerce”).

⁷ 15 U.S.C. § 717b(a).

⁸ *Id.* § 717a(1).