

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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ECA LIQUEFACTION, S. DE R.L. DE C.V. )  
(Formerly Energía Costa Azul, S. de R.L. de C.V.) )

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FE DOCKET NO. 18-144-LNG

ORDER GRANTING REQUEST  
TO TRANSFER AUTHORIZATIONS

*MID-SCALE PROJECT*

DOE/FE ORDER NO. 4317-A  
DOE/FE ORDER NO. 4364-A

OCTOBER 7, 2019

## **I. INTRODUCTION AND BACKGROUND**

On August 15, 2019, Energía Costa Azul, S. de R.L. de C.V. (ECA) and ECA Liquefaction, S. de R.L. de C.V. (ECA Liquefaction) (collectively, the Applicants) filed a Transfer Application<sup>1</sup> with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)<sup>2</sup> and section 590.405 of DOE’s regulations.<sup>3</sup> On September 9, 2019, the Applicants submitted a supplement to the Transfer Application.<sup>4</sup> The Applicants request an order from DOE/FE permitting the transfer of two existing authorizations to export natural gas and liquefied natural gas (LNG) currently held by ECA—DOE/FE Orders No. 4317 and 4364—to ECA Liquefaction, as described below. The Applicants further state that the requested transfer of these authorizations “is not a change in control of the Authorization holder,”<sup>5</sup> pursuant to DOE/FE’s Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.<sup>6</sup>

Both authorizations at issue involve the proposed liquefaction and export terminal facilities currently referred to as the “ECA Mid-Scale Project,” to be located north of Ensenada in Baja California, Mexico.<sup>7</sup> The Applicants state that the Transfer Application does not pertain

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<sup>1</sup> Energía Costa Azul, S. de R.L. de C.V. & ECA Liquefaction, S. de R.L. de C.V., Application to Transfer Long-Term, Multi-Contract Authorizations to Export Natural Gas to Mexico and to Export Liquefied Natural Gas from Mexico to Free Trade Agreement and Non-Free Trade Agreement Nations, FE Docket No. 18-144-LNG (Aug. 15, 2019) [hereinafter Transfer App.].

<sup>2</sup> The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04G issued on June 4, 2019.

<sup>3</sup> 10 C.F.R. § 590.405 (Transferability).

<sup>4</sup> Energía Costa Azul, S. de R.L. de C.V. & ECA Liquefaction, S. de R.L. de C.V., Supplemental Info., FE Docket No. 18-144-LNG (Sept. 9, 2019) [hereinafter Supp.].

<sup>5</sup> Transfer App. at 7.

<sup>6</sup> 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 Change in Control Procedures].

<sup>7</sup> See Transfer App. at 2, 4 (describing the Mid-Scale Project).

to the separate authorizations associated with the related “ECA Large-Scale Project,” granted in FE Docket No. 18-145-LNG.<sup>8</sup>

In DOE/FE Order No. 4317, DOE/FE authorized ECA to export U.S.-sourced natural gas by pipeline from the United States to Mexico and, after liquefaction in Mexico, by vessel from the proposed ECA Mid-Scale Project to any country with which the United States has, or in the future enters into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),<sup>9</sup> in a total volume equivalent to 182 billion cubic feet per year (Bcf/yr) of natural gas.<sup>10</sup> Under the terms of that order, ECA is authorized to export this natural gas and LNG, on its own behalf or as agent for other entities, to FTA countries for a 20-year period.<sup>11</sup>

Additionally, in DOE/FE Order No. 4364, DOE/FE authorized ECA to re-export U.S.-sourced natural gas in the form of LNG by vessel from the proposed Mid-Scale Project to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries),<sup>12</sup> in a volume equivalent to 161 Bcf/yr of natural gas.<sup>13</sup> Under the terms of that order, ECA is authorized to export the LNG, on its own behalf or as agent for other entities, to non-FTA countries for a 20-year period.<sup>14</sup>

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<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> 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.

<sup>10</sup> *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4317, FE Docket No. 18-144-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Mexico and to Other Free Trade Agreement Nations (ECA Mid-Scale Project) (Jan. 25, 2019).

<sup>11</sup> *See id.* at 12-13.

<sup>12</sup> 15 U.S.C. § 717b(a).

<sup>13</sup> *Energía Costa Azul, S. de R.L. de C.V.*, DOE/FE Order No. 4364, FE Docket No. 18-144-LNG, Opinion and Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Countries (ECA Mid-Scale Project) (Mar. 29, 2019).

<sup>14</sup> *See id.* at 51-52.

## **II. DESCRIPTION OF THE APPLICANTS**

The current authorization holder, ECA, is a Mexico variable-capital, limited liability company with its principal place of business in Mexico City, Mexico. ECA is owned by Infraestructura Energética Nova, S.A.B. de C.V. (IEnova) and IEnova's subsidiaries. A majority of the ownership interests in IEnova (66.43%) is held by indirect, wholly-owned subsidiaries of Sempra Energy, a publicly-traded California corporation. The remaining shares of IEnova are publicly traded on the Mexican Stock Exchange (*Bolsa Mexicana de Valores*).<sup>15</sup>

ECA Liquefaction is also a Mexico variable-capital, limited liability company with its principal place of business in Mexico City, Mexico. ECA Liquefaction is owned 99.9% by ECA LNG Holdings B.V., with the remainder owned by ECA Minority, S. de R.L. de C.V.<sup>16</sup> ECA LNG Holdings B.V., in turn, is a joint venture owned 50% by Sempra Energy and 50% by IEnova.<sup>17</sup>

The Applicants state that, with the exception of Sempra Energy, no shareholder holds 10% or more of the ownership interests in either IEnova, ECA, or ECA Liquefaction.<sup>18</sup> Charts showing the ownership structure of ECA and ECA Liquefaction are attached to the Transfer Application as Appendix C.

## **III. DESCRIPTION OF REQUEST**

In the Transfer Application, as supplemented, the Applicants request an order from DOE/FE permitting the transfer of: (i) ECA's FTA authorization (DOE/FE Order No. 4317) to ECA Liquefaction, with ECA Liquefaction becoming the sole authorization holder; and (ii)

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<sup>15</sup> Transfer App. at 3; Supp. at 1; *see also* ECA, DOE/FE Order No. 4364, at 20-21.

<sup>16</sup> Transfer App. at 3.

<sup>17</sup> Supp. at 1.

<sup>18</sup> *Id.*

ECA's non-FTA authorization (DOE/FE Order No. 4364) to ECA Liquefaction, with ECA Liquefaction becoming the sole authorization holder.<sup>19</sup>

In support of this request, the Applicants state that the construction and operation of the Mid-Scale Project will require several local, state, and federal permits in Mexico. The Applicants further state that ECA Liquefaction has been formed “for the purpose of owning the Mid-Scale Project separately from ECA’s existing LNG regasification terminal facilities.”<sup>20</sup> According to the Applicants, “the proposed transfer of the Authorizations will permit the Mid-Scale Project to be owned by an entity distinct from ECA’s existing LNG receiving and regasification terminal with a different upstream ownership structure.”<sup>21</sup> This separate ownership structure will “facilitate financing and allow ownership of the Mid-Scale Project apart from ECA.”<sup>22</sup>

The Applicants state that the requested transfer will not affect any terms and conditions or ordering paragraphs of the authorizations, other than the named authorization holder. Specifically, they state that the requested transfer will not modify the facilities or operation of the Mid-Scale Project, nor will it affect the total volume of natural gas and LNG to be exported and re-exported, respectively.<sup>23</sup> For these reasons, the Applicants assert that “[t]here are no facts that would alter the DOE/FE’s previous public interest determination in granting the Authorizations,” and thus the transfer is consistent with NGA section 3 and DOE’s regulations at 10 C.F.R. § 590.405.<sup>24</sup>

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<sup>19</sup> Transfer App. at 5.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.*; *see also id.* at 12.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* Under 10 C.F.R. § 590.405, “[a]uthorizations ... to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary.”

Finally, the Applicants state that the requested transfer does not constitute a change in control under DOE’s Change in Control Procedures. According to the Applicants, “the same entity (Sempra Energy) that exerts ultimate control over the management and policies of ECA will exert ultimate control over the management and policies of [ECA] Liquefaction.”<sup>25</sup> Pointing to their corporate ownership charts and DOE/FE’s precedent in the Port Arthur LNG, LLC proceeding, the Applicants indicate that the authorizations would be transferred solely between subsidiaries within the same corporate umbrella—that of Sempra Energy.<sup>26</sup>

#### **IV. DISCUSSION**

##### **A. Transfer of FTA Order**

Upon review, DOE/FE finds that the requested transfer of DOE/FE Order No. 4317 from ECA to ECA Liquefaction is deemed consistent with the public interest, pursuant to NGA section 3(c), 15 U.S.C. § 717b(c).

##### **B. Transfer of Non-FTA Order**

Pursuant to DOE’s regulation governing the transfer of authorizations (10 C.F.R. § 590.405),<sup>27</sup> DOE/FE finds good cause to grant the requested transfer of DOE/FE Order No. 4364 from ECA to ECA Liquefaction. We agree with the Applicants that this transfer does not alter DOE/FE’s public interest determination in granting the authorization under NGA section 3(a), 15 U.S.C. § 717b(a). No facts associated with ECA’s original application, and no requirements of the current authorization, are affected by this transfer beyond the named authorization holder. We further note that both ECA’s original application and the Transfer Application were uncontested.

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<sup>25</sup> Transfer App. at 7-8.

<sup>26</sup> *Id.* & n.12 (citing *Port Arthur LNG, LLC*, FE Dockets Nos. 15-53-LNG, 18-162-LNG, and 15-96-LNG, Notice of Internal Corporate Reorganization (Apr. 11, 2019) [hereinafter Port Arthur LNG Notice]).

<sup>27</sup> See *supra* note 24.

### **C. No Change in Control**

Upon review of the information provided by the Applicants—including the charts showing the ownership structure for both ECA and ECA Liquefaction—DOE/FE finds that the requested transfer of the authorizations would not constitute a change in control. Previously, in the Port Arthur LNG proceeding, we determined that DOE/FE’s Change in Control Procedures “pertain[] to external transfers or assignments, not purely internal corporate reorganizations.”<sup>28</sup> In this proceeding, Sempra Energy will remain the ultimate parent company of both ECA and ECA Liquefaction after the requested transfer. Therefore, we agree with the Applicants that no change in control will occur as a result of this internal reorganization.

### **ORDER**

Pursuant to section 3 of the Natural Gas Act (15 U.S.C. § 717b) and DOE/FE’s regulations at 10 C.F.R. § 590.405, DOE/FE hereby orders that:

A. The name of the authorization holder of DOE/FE Order Nos. 4317 and 4364 is amended to ECA Liquefaction, S. de R.L. de C.V. The project described in those Orders shall be known as the “Mid-Scale Project.”

B. All obligations arising under DOE/FE Order Nos. 4317 and 4364 no longer apply to Energía Costa Azul, S. de R.L. de C.V., and now apply to ECA Liquefaction, S. de R.L. de C.V.

Issued in Washington, D.C., on October 7, 2019.

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Amy R. Sweeney  
Director, Office of Regulation, Analysis, and Engagement  
Office of Oil and Natural Gas

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<sup>28</sup> Port Arthur LNG Notice, *supra* note 26, at 4.