

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

BLUE WATER FUELS, LLC

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FE DOCKET NO. 19-99-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION
FOR SMALL-SCALE EXPORTS OF LIQUEFIED NATURAL GAS

DOE/FE ORDER NO. 4460

OCTOBER 31, 2019

I. INTRODUCTION

On August 12, 2019, Blue Water Fuels, LLC (Blue Water Fuels) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3(a) of the Natural Gas Act (NGA) requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG).² Blue Water Fuels amended its Application on August 22, 2019,³ September 24, 2019,⁴ and October 25, 2019.⁵ In the Application, as amended, Blue Water Fuels requests authority to export LNG to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁶ As explained below, Blue Water Fuels states that its proposed exports qualify as “small-scale natural gas exports” under DOE/FE’s regulations at 10 C.F.R. §§ 590.102(p) and 590.208(a), and therefore should be deemed to be consistent with the public interest under section 3(a) of the NGA.⁷

¹ Blue Water Fuels, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 19-99-LNG (Aug. 12, 2019) [hereinafter App.].

² 15 U.S.C. § 717b(a). 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.

³ In the first amendment, Blue Water Fuels requested agency rights as part of its Application. *See* Email from Josh Payne, President of NuBlu Energy, to Benjamin Nussdorf, DOE/FE, FE Docket No. 19-99-LNG (Aug. 22, 2019) [hereinafter First Amendment to App.].

⁴ In the second amendment, Blue Water Fuels reduced the volume of LNG it was proposing to export. *See* Blue Water Fuels, LLC, Request to Amend Application, FE Docket No. 19-99-LNG (Sept. 24, 2019) [hereinafter Second Amendment to App.].

⁵ In the third amendment, Blue Water Fuels once again adjusted the volume of LNG it was proposing to export, as reflected herein. *See* Email from Cory Duck, CEO of NuBlu Energy, to Amy Sweeney, DOE/FE, FE Docket No. 19-99-LNG (Oct. 25, 2019) [hereinafter Third Amendment to App.].

⁶ Blue Water Fuels is not seeking to export LNG to FTA countries under NGA section 3(c), 15 U.S.C. § 717b(c), as it already holds a FTA export authorization. *See infra* at 3-4. 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 10 C.F.R. § 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).

Blue Water Fuels seeks to export LNG in a volume equivalent to 3.4 billion cubic feet (Bcf) per year (Bcf/yr), or 0.009 Bcf per day (Bcf/d), of natural gas.⁸ Blue Water Fuels proposes to load the LNG into approved IMO7/TVAC-ASME LNG (ISO) containers at two existing natural gas liquefaction facilities: (i) the Port Allen NuBlu LNG Facility located in Port Allen, Louisiana, and owned by HR NuBlu Energy, LLC (NuBlu), and (ii) the Ehrenberg Spectrum LNG Facility located in Ehrenberg, Arizona, and owned by Spectrum LNG (collectively, the Facilities).⁹ Blue Water Fuels seeks to export this LNG by means of both ocean-going vessels and in ISO containers loaded on container vessels. Blue Water Fuels requests the export authorization for a 20-year term, commencing on the earlier of the date of first export or five years from the date the authorization is granted.¹⁰ Additionally, Blue Water Fuels requests authority to export this LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export.¹¹

Upon review, DOE/FE has determined that the proposed exports qualify as “small-scale natural gas exports” under the criteria set forth in 10 C.F.R. § 590.102(p). Accordingly, we grant the Application in the requested volume of 3.4 Bcf/yr of natural gas, pursuant to 10 C.F.R. § 590.208(a).

Previously, on June 25, 2018, DOE/FE issued Order No. 4202, authorizing Blue Water Fuels to export domestically produced LNG to FTA countries from the Port Allen NuBlu LNG Facility.¹² Concurrently with this Order, DOE/FE is issuing Order No. 4202-A, amending the

⁸ Third Amendment to App.

⁹ See *infra* § II.

¹⁰ App. at 1-2, 4.

¹¹ First Amendment to App.

¹² *Blue Water Fuels, LLC*, DOE/FE Order No. 4202, FE Docket No. 18-27-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers or in Bulk Loaded at the HR NuBlu Energy, LLC Liquefaction Facility in Port Allen, Louisiana, and Exported by Vessel to Free Trade Agreement Nations (June 25, 2018).

FTA order (in relevant part) to add the Ehrenberg Spectrum LNG Facility as a source of LNG for the authorized exports.¹³ Because the LNG for the FTA order, as amended (DOE/FE Order No. 4202-A), and this Order will originate from the same Facilities, the FTA and non-FTA volumes are not additive.

II. BACKGROUND

Applicant. Blue Water Fuels is a Texas limited liability corporation with its principal place of business in Center, Texas. Blue Water Fuels is a wholly-owned subsidiary of NuBlu, the owner of the Port Allen NuBlu LNG Facility. NuBlu is owned 33% by First Global NuBlu Innovations, LLC, with the remaining majority interest owned by High Roller LNG, LLC (HR Group). HR Group is a family-owned company located in Center, Texas.¹⁴

Liquefaction Facilities and Transport. Blue Water Fuels states that it will purchase LNG for export from the Port Allen NuBlu LNG Facility and the Ehrenberg Spectrum LNG Facility.¹⁵ More generally, Blue Water Fuels “requests authority to export LNG produced at existing natural gas liquefaction facilities owned and operated by NuBlu, one of its affiliates or any other existing facility contracted with NuBlu.”¹⁶ It identifies the “current facilities under contract” as the Port Allen NuBlu LNG Facility and the Ehrenberg Spectrum LNG Facility.¹⁷ Blue Water Fuels provides a description of these Facilities, including their liquefaction capacity, in Appendix B to the Application.

Blue Water Fuels states that it will take delivery of the LNG at the Facilities. The LNG will be loaded into approved ISO containers and transported by truck to ports of export located in

¹³ *Blue Water Fuels, LLC*, DOE/FE Order No. 4202-A, FE Docket No. 18-27-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations (Oct. 31, 2019).

¹⁴ App. at 1, 3.

¹⁵ *Id.* at 12 (stating that “no new construction at the Facilities would be required ... to export LNG.”).

¹⁶ *Id.*

¹⁷ *Id.*

Alabama, Louisiana, Mississippi, and other states.¹⁸ Blue Water Fuels plans to export the LNG by means of both ocean-going vessels and ISO containers to be loaded onto container vessels.¹⁹

Source of Supply. Blue Water Fuels states that it will purchase LNG from the Facilities, which it states have (and are expected to continue to have) an excess supply of LNG produced from the U.S. natural gas market.²⁰

Business Model. Blue Water Fuels requests authorization to export LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export.²¹ Blue Water Fuels further states that, on January 21, 2016, it entered into a Master LNG Purchase and Sale Agreement with NuBlu to purchase LNG for a 20-year period.²² Blue Water Fuels states that it expects to begin entering into long-term sales agreements with customers worldwide to export LNG, pursuant to individual transaction confirmations.²³

Blue Water Fuels states that it will file all long-term, binding contracts and transaction confirmations, once executed, in accordance with DOE/FE's established policy and will comply with all DOE/FE requirements for exporters and agents, including registration requirements.²⁴

III. STANDARD OF REVIEW

DOE/FE defines a "small-scale natural gas export" as an export of natural gas, including LNG, to a non-FTA country that meets the following two criteria:

- (1) The application proposes to export natural gas in a volume up to and including 51.75 billion cubic feet per year, and
- (2) DOE's approval of the application does not require an environmental impact

¹⁸ See *id.* at 5-6.

¹⁹ App. at 4.

²⁰ *Id.* at 6, 12.

²¹ First Amendment to App.

²² App. at 4-5. A summary of the Master LNG Purchase and Sale Agreement is attached to the Application as Appendix A.

²³ *Id.* at 5.

²⁴ *Id.* at 4-5.

statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*²⁵

Small-scale natural gas exports are deemed to be consistent with the public interest under NGA section 3(a).²⁶ Therefore, DOE/FE will issue an export authorization upon receipt of a complete application to conduct small-scale natural gas exports.²⁷

IV. DISCUSSION AND CONCLUSIONS

We find that the Application, as amended, meets the criteria for small-scale natural gas exports, set forth in 10 C.F.R. § 590.102(p)(1) and (2). First, Blue Water Fuels requests authority to export LNG to non-FTA countries in a volume equivalent to 3.4 Bcf/yr of natural gas, which is below the limit in the regulation. Second, DOE’s NEPA procedures provide for a categorical exclusion for which neither an EIS nor an EA is required—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5).²⁸ DOE/FE is concurrently issuing a categorical exclusion, dated October 31, 2019, finding that the proposed exports are categorically excluded from further NEPA review.²⁹ Accordingly, pursuant to 10 C.F.R. § 590.208(a), the proposed small-scale exports are deemed to be consistent with the public interest under NGA section 3(a), and DOE/FE will issue the requested authorization.

²⁵ 10 C.F.R. § 590.102(p).

²⁶ *Id.* § 590.208(a).

²⁷ *Id.*; *see also* Small-Scale Natural Gas Exports Final Rule, *supra* note 7.

²⁸ *See* 10 C.F.R. § 1021.410, Appendix B to Subpart D of Part 1021, Categorical Exclusion B5.7 (“Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”).

²⁹ U.S. Dep’t of Energy, Categorical Exclusion Determination, Blue Water Fuels, LLC, FE Docket No. 19-99-LNG (Oct. 31, 2019).

V. FINDINGS

On the basis of the findings and conclusions set forth above, DOE/FE grants the Application, as amended, subject to the Terms and Conditions and Ordering Paragraphs set forth below.

VI. TERMS AND CONDITIONS

To ensure that the authorization issued by this Order is not inconsistent with the public interest, DOE/FE has attached the following Terms and Conditions to the authorization. Blue Water Fuels must abide by each Term and Condition or face appropriate sanction.

A. Term of the Authorization

Blue Water Fuels requests a 20-year term for the authorization. The requested 20-year term is consistent with DOE/FE's practice in the non-FTA export authorizations issued to date. The 20-year term will begin on the date when Blue Water Fuels commences commercial export of domestically produced LNG, but not before.

B. Commencement of Operations

Blue Water Fuels requests that this authorization commence on the earlier of the date of first export or five years from the date the requested authorization is granted. However, because the identified Facilities do not require new construction to accommodate the export of LNG, we find that Blue Water Fuels should be able to commence commercial export of LNG within two years. Accordingly, DOE/FE will add as a condition of the authorization that Blue Water Fuels must commence commercial LNG export operations no later than two years from the date of issuance of this Order.

C. Transfer, Assignment, or Change in Control

DOE/FE's natural gas regulations prohibit authorization holders from transferring or assigning authorizations to import or export natural gas without specific authorization by the

Assistant Secretary for Fossil Energy.³⁰ DOE/FE has found that this requirement applies to any change in control of the authorization holder. This condition was deemed necessary to ensure that DOE/FE will be given an adequate opportunity to assess the public interest impacts of such a transfer or change.

DOE/FE 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.³¹ 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.³²

D. Agency Rights

Blue Water Fuels requests authorization to export LNG on its own behalf and as agent for other entities that hold title to the LNG at the time of export, pursuant to long-term contracts. DOE/FE previously has determined that, in LNG export orders in which Agency Rights have been granted, DOE/FE shall require registration materials filed for, or by, an LNG title-holder (Registrant) to include the same company identification information and long-term contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.³³

³⁰ 10 C.F.R. § 590.405.

³¹ 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, 65,542 (Nov. 5, 2014).

³² See *id.*

³³ See, e.g., *Cameron LNG, LLC*, DOE/FE Order No. 3846, FE Docket No. 15-90-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from Trains 4 and 5

To ensure that the public interest is served, this authorization shall be conditioned to require that where Blue Water Fuels proposes to export LNG as agent for other entities that hold title to the LNG (Registrants), it must register with DOE/FE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

E. Contract Provisions for the Sale or Transfer of LNG to be Exported

DOE/FE will require that Blue Water Fuels file or cause to be filed with DOE/FE any relevant long-term commercial agreements associated with the export of LNG. These agreements include, but are not limited to, the transaction confirmations described in the Application, pursuant to which Blue Water Fuels intends to export LNG as agent for a Registrant. DOE/FE finds that the submission of all such agreements or contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).³⁴

In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations³⁵ requires that Blue Water Fuels file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Facilities, whether signed by Blue Water Fuels or the Registrant, within 30 days of their execution.

DOE/FE recognizes that some information in Blue Water Fuels’ or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Facilities, may be commercially sensitive. DOE/FE therefore will provide Blue Water Fuels the option to file or cause to be filed

of the Cameron LNG Terminal to Non-Free Trade Agreement Nations, at 128-29 (July 15, 2016); *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 2913, FE Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from the Freeport LNG Terminal to Free Trade Agreement Nations, at 7-8 (Feb. 10, 2011).

³⁴ 10 C.F.R. § 590.202(b).

³⁵ *Id.* § 590.202(c).

either unredacted contracts, or in the alternative (A) Blue Water Fuels may file, or cause to be filed, long-term contracts under seal, but it also will file either: (i) a copy of each long-term contract with commercially sensitive information redacted, or (ii) a summary of all major provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destinations, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted information should be exempted from public disclosure.³⁶

To ensure that DOE/FE destination and reporting requirements included in this Order are conveyed to subsequent title holders, DOE/FE will include as a condition of this authorization that future contracts for the sale or transfer of LNG exported pursuant to this Order shall include an acknowledgement of these requirements.

F. Export Quantity

This Order grants Blue Water Fuels' Application, as amended, in the full volume of LNG requested, up to the equivalent of 3.4 Bcf/yr of natural gas.

G. Combined FTA and Non-FTA Export Authorization Volumes

Because the LNG for the FTA order, as amended (DOE/FE Order No. 4202-A), and this Order will originate from the same Facilities, Blue Water Fuels may not treat the FTA and non-FTA export volumes as additive to one another.

VII. ORDER

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

A. Blue Water Fuels, LLC (Blue Water Fuels) is authorized to export domestically produced LNG loaded into ISO containers at the Port Allen NuBlu LNG Facility in Port Allen,

³⁶ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

Louisiana, and at the Ehrenburg Spectrum LNG Facility in Ehrenburg, Arizona (collectively, the Facilities).³⁷ Blue Water Fuels is authorized to export the LNG by vessel and in ISO containers on vessels, in a total volume up to the equivalent to 3.4 Bcf/yr of natural gas. This authorization is for a term of 20 years to commence from the date of first commercial export, but not before. Blue Water Fuels is authorized to export this LNG on its own behalf and as agent for other entities that hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

B. Blue Water Fuels must commence export operations using the Facilities no later than two years from the date of issuance of this Order.

C. This LNG may be exported to any country with which the United States does not have a FTA requiring national treatment for trade in natural gas, which currently has or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy.

D. Blue Water Fuels shall ensure that all transactions authorized by this Order are permitted and lawful under U.S. laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the U.S. Department of the Treasury and the Pipeline and Hazardous Materials Safety Administration. Failure to comply with these requirements could result in rescission of this authorization and/or other civil or criminal penalties.

E. (i) Blue Water Fuels shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated

³⁷ If, in the future, Blue Water Fuels wishes to load LNG from any other facilities (as indicated in its Application at 4), it will be required to file with DOE/FE a request to amend this Order to add those facilities. DOE/FE will evaluate that request under the small-scale standard of review discussed above. See 10 C.F.R. § 590.208(a).

with the long-term export of LNG. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) Blue Water Fuels shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Facilities. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

F. Blue Water Fuels is permitted to use its authorization to export LNG as agent for other LNG title-holders (Registrants), after registering those entities with DOE/FE. Registration materials shall include an agreement by the Registrant to supply Blue Water Fuels with all information necessary to permit Blue Water Fuels to register that person or entity with DOE/FE, including: (1) the Registrant's agreement to comply with this Order and all applicable requirements of DOE/FE's regulations at 10 C.F.R. Part 590, including but not limited to destination restrictions; (2) the exact legal name of the Registrant, state/location of incorporation/registration, primary place of doing business, and the Registrant's ownership structure, including the ultimate parent entity if the Registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the Registrant to whom inquiries may be directed; and (4) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE/FE, described in Ordering Paragraph E of this Order.

Any change in the registration materials—including changes in company name, contact information, length of the long-term contract, termination of the long-term contract, or other relevant modification—shall be filed with DOE/FE within 30 days of such change(s).

G. Blue Water Fuels, or others for whom Blue Water Fuels acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of LNG pursuant to this Order:

Customer or purchaser acknowledges and agrees that it will resell or transfer LNG, purchased hereunder for delivery only to countries identified in Ordering Paragraph C of DOE/FE Order No. 4460, issued October 31, 2019, in FE Docket No. 19-99-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Blue Water Fuels, LLC that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Blue Water Fuels, LLC is made aware of all such actual destination countries.

H. Within two weeks after the first export authorized in Ordering Paragraph A occurs, Blue Water Fuels shall provide DOE/FE written notification of the date that the first export occurred.

I. With respect to any change in control of the authorization holder, Blue Water Fuels must comply with DOE/FE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.³⁸

J. Monthly Reports: With respect to the exports authorized by this Order, Blue Water Fuels shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30th day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of "no activity" for that month must be filed.

If exports of LNG by ocean-going vessel have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with

³⁸ See 79 Fed. Reg. at 65,541-42.

DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG tanker; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the LNG was actually delivered; (6) the name of the supplier/seller; (7) the volume in thousand cubic feet (Mcf); (8) the price at point of export per million British thermal units (MMBtu); (9) the duration of the supply agreement; and (10) the name(s) of the purchaser(s).

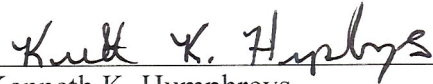
If exports of LNG in ISO containers by vessel have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the vessel; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the LNG was actually delivered; (6) the name of the supplier/seller; (7) the volume in thousand cubic feet (Mcf); (8) the price at point of export per million British thermal units (MMBtu); (9) the name and location (city/state) of the facility where the ISO container is loaded with LNG; (10) the mode(s) of transport used to move the loaded ISO container from the loading facility to the export port or terminal; (11) the duration of the supply agreement; and (12) the name(s) of the purchaser(s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294.)

K. All monthly report filings on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation, Analysis, and Engagement, according to the methods of submission listed on the Form FE-746R reporting instructions

available at <https://www.energy.gov/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on October 31, 2019.

A handwritten signature in black ink, reading "Kenneth K. Humphreys". The signature is written in a cursive style and is positioned above a horizontal line.

Kenneth K. Humphreys
Principal Deputy Assistant Secretary
Office of Fossil Energy