

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

BRADFORD COUNTY LNG MARKETING LLC

)
)
) FE DOCKET NO. 20-131-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4670

MARCH 12, 2021

I. DESCRIPTION OF REQUEST

On October 7, 2020, Bradford County LNG Marketing LLC (Bradford) filed an application (Application)¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3(c) of the Natural Gas Act (NGA).² Bradford requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 128 billion cubic feet (Bcf) per year (Bcf/yr) of natural gas,³ which DOE finds is equivalent to 0.35 bcf per day (Bcf/d).

As explained below, Bradford seeks authorization to export this LNG sourced from a proposed natural gas liquefaction and truck and rail loading facility, called the Wyalusing Facility, to be located in Wyalusing Township, Bradford County, Pennsylvania.⁴ Bradford states that its affiliate, Bradford County Real Estate Partners LLC (or BCREP), will construct, own, and operate the Wyalusing Facility.⁵ The LNG will be transported by truck or rail (either loaded in bulk or in approved ISO containers) to a proposed facility, called the Gibbstown Facility, which is being developed by Delaware River Partners LLC (or DRP) and will be located in Gibbstown, New Jersey.⁶ Bradford requests authorization to export the LNG from the Gibbstown Facility to any country with which the United States currently has, or in the future

¹ Bradford County LNG Marketing LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations, FE Docket No. 20-131-LNG (Oct. 7, 2020) [hereinafter App.].

² 15 U.S.C. § 717b(c). 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 App. at 1, 4.

⁴ *Id.* at 1.

⁵ *Id.* at 2.

⁶ *Id.* at 2-3.

will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries).⁷

Bradford requests this authorization for a term ending on December 31, 2050.⁸

Additionally, Bradford requests authority to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export.⁹

As set forth below, Bradford's Application to export domestically produced LNG to FTA countries is being reviewed pursuant to NGA section 3(c) and approved in this Order.

II. **BACKGROUND**

Applicant. Bradford is a Delaware limited liability company with its principal place of business in New York, New York. Bradford is wholly owned by New Fortress Energy Inc. (New Fortress), a publicly traded entity.¹⁰

Wyalusing Facility (Liquefaction and Storage Facility). Bradford states that the Wyalusing Facility will be located on a 219-acre site in Wyalusing Township, Bradford County, Pennsylvania, in the Marcellus Shale play.¹¹ According to Bradford, the Wyalusing Facility will include an LNG storage tank with a capacity of approximately six million gallons.¹² Each of the two liquefaction trains at the Wyalusing Facility will have an average production capacity of approximately 1.8 million gallons per day, for a total average LNG production capacity of

⁷ *Id.* at 1. Pursuant to NGA section 3(c), 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.

⁸ App. at 1, 4.

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 1-2, 4.

¹¹ *Id.* at 2. Bradford provides a depiction of the Wyalusing Facility's location and a copy of the property deed as Appendix C and E to the Application, respectively.

¹² *Id.*

approximately 3.6 million gallons per day.¹³ Bradford states that production of LNG at the Wyalusing Facility is expected to commence approximately in the first quarter of 2022.¹⁴

Bradford states that LNG produced at the Wyalusing Facility will serve both domestic and export markets.¹⁵ Specifically, the Wyalusing Facility will include truck and rail distribution facilities to load and transport LNG directly to domestic end-users in the United States and to various port facilities for export. The rail distribution facilities will load LNG into either tank cars or approved ISO containers to be loaded on to flatbed cars. For the trucking distribution process, LNG loading bays at the Facility will load product to ISO-tanker trucks.¹⁶

Bradford states that the railway tank cars will be DOT-113C120W tank cars, approved for LNG transport by the Pipeline and Hazardous Materials Safety Administration (PHMSA) under: (if) a special permit granted in December 2019 to Bradford County Real Estate Partners LLC's affiliate Energy Transport Solutions LLC, and (ii) a rulemaking published in the *Federal Register* on July 24, 2020.¹⁷ For both the trucking and rail distribution processes, Bradford County Real Estate Partners LLC will coordinate with Energy Transport Solutions LLC. Bradford further states that loading LNG into ISO containers on flatbed railcars will be subject to additional permitting.¹⁸

Gibbstown Facility (Export Facility). Bradford states that, for export purposes, the LNG produced at the Wyalusing Facility will be transported by truck or rail to a proposed “multi-use, deep-water seaport and industrial logistics center” called the Gibbstown Logistics

¹³ *Id.*

¹⁴ App. at 4.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 2 n.2. DOE/FE takes administrative notice that the final rule referenced by Bradford is U.S. Dep't of Transp., Pipeline & Hazardous Materials Safety Admin., Hazardous Materials: Liquefied Natural Gas by Rail; Final Rule, 85 Fed. Reg. 44,994 (July 24, 2020).

¹⁸ App. at 2 n.2.

Center (Gibbstown Facility).¹⁹ Bradford states that the Gibbstown Facility will be located in Gibbstown, New Jersey, adjacent to the Delaware River on the grounds of the former DuPont Repauno site.²⁰ Bradford further states that the Gibbstown Facility is being developed by Delaware River Partners LLC, which is majority owned by Fortress Transportation and Infrastructure Partners LLC, a publicly traded company and affiliate of New Fortress.²¹ Bradford states that New Fortress has entered into a multi-year agreement with Delaware River Partners LLC to have the exclusive right to transload LNG through the Gibbstown Facility.²²

According to Bradford, LNG delivered from the Wyalusing Facility to the Gibbstown Facility will be exported “solely by means of waterborne vessel” in the following three ways:

- A waterborne vessel will transport LNG from the Gibbstown Facility directly to foreign ports without any intermediary transfer;
- A floating storage unit or shuttle vessel will transport LNG from the Gibbstown Facility to a larger ocean-going waterborne vessel for delivery to foreign ports; and
- Where LNG is delivered to the Gibbstown Facility in ISO containers, the ISO containers will be loaded onto a waterborne cargo vessel and transported to foreign ports, or the LNG delivered in the ISO containers can be transloaded onto a waterborne vessel and transported to foreign ports.²³

Finally, Bradford notes that Bradford County Real Estate Partners LLC and Delaware River Partners LLC have each filed a petition for declaratory order with the Federal Energy Regulatory Commission (FERC) in regard to the Wyalusing Facility and Gibbstown Facility, respectively, “seeking assurance ... that each facility’s proposed commercial activities would not subject it to FERC’s jurisdiction under the NGA.”²⁴

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.* & n.3.

²² *Id.* at 3.

²³ *Id.*

²⁴ App. at 4 & n.4 (citing both FERC proceedings).

Source of Natural Gas. Bradford states that the Wyalusing Facility will receive natural gas through an interconnection with Stagecoach Pipeline, a FERC-jurisdictional pipeline.

Bradford states that, through this upstream interconnection, the Wyalusing Facility will be able to source natural gas from a variety of suppliers in the domestic market.²⁵

Business Model. Bradford requests authorization to export LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export.²⁶ Bradford states that it has not yet entered into long-term natural gas supply or export contracts for the requested exports.²⁷ Bradford states, however, that it will file all long-term, binding contracts associated with the proposed exports of LNG, once executed, in accordance with established policy and precedent, and will comply with all DOE/FE requirements for exporters and agents, including registration requirements.²⁸

IV. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications requesting authority for (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas, and/or (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. Bradford's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested FTA authorization without modification or delay.²⁹

²⁵ App. at 2.

²⁶ *Id.* at 6.

²⁷ *Id.* at 4-6.

²⁸ *Id.* at 5.

²⁹ DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590, are applicable only to applications seeking to export natural gas to countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

(2) In light of DOE's statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review other arguments asserted by Bradford in support of the Application. The instant grant of authority should not be read to indicate DOE/FE's views on those arguments.

(3) The countries with which the United States has a FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

(4) Bradford 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.³⁰ DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,³¹ which granted Freeport LNG Expansion, L.P., *et al.* (collectively, FLEX) authority to export LNG to FTA countries. In that order, DOE/FE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE/FE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *The Dow Chemical Company*,³² which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. DOE/FE finds that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here, as well.

DOE/FE has reiterated its policy on Agency Rights procedures in other authorizations,

³⁰ App. at 4-5.

³¹ *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 Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

³² *The Dow Chemical Co.*, DOE/FE Order No. 2859, FE Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 7-8 (Oct. 5, 2010), discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

including *Cameron LNG, LLC*, DOE/FE Order No. 3680.³³ In that order, DOE/FE 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.³⁴

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

(5) Section 590.202(b) of DOE's regulations requires applicants to supply transaction-specific factual information "to the extent practicable."³⁵ Additionally, DOE regulations at 10 C.F.R. § 590.202(e) allow confidential treatment of the information supplied in support of or in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.

(6) DOE/FE will require that Bradford file or cause to be filed with DOE/FE any relevant long-term commercial agreements or contracts pursuant to which Bradford exports LNG as agent for a Registrant once those agreements or contracts have been executed. 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"

³³ *Cameron LNG, LLC*, DOE/FE Order No. 3680, FE Docket No. 15-36-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Free Trade Agreement Nations (July 10, 2015).

³⁴ *Id.* at 4-5.

³⁵ 10 C.F.R. § 590.202(b).

requirement of section 590.202(b). By way of example and without limitation, a “relevant long-term commercial agreement” would include an agreement with a minimum term of two years.

(7) DOE/FE also will require Bradford to file any long-term contracts Bradford enters into providing for the long-term export of LNG on its own behalf, where that LNG is sourced from the Wyalusing Facility and exported from the Gibbstown Facility. DOE/FE finds that the submission of these contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of 10 C.F.R. § 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations³⁶ requires that Bradford file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Wyalusing Facility, whether signed by Bradford or the Registrant, within 30 days of their execution.

(8) DOE/FE recognizes that some information in Bradford’s 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 Wyalusing Facility, may be commercially sensitive. DOE/FE therefore will provide Bradford the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Bradford 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, destination, re-sale

³⁶ *Id.* § 590.202(c).

provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted or non-disclosed information should be exempted from public disclosure.³⁷

To ensure that DOE/FE destination and reporting requirements included in the 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 the Order shall include an acknowledgement of these requirements.

ORDER

Pursuant to section 3 of the NGA, it is ordered that:

A. Bradford County LNG Marketing LLC (Bradford) is authorized to export domestically produced LNG sourced from the proposed Wyalusing Facility to be located in Wyalusing Township, Bradford County, Pennsylvania. The LNG will be transported by rail or truck from the Wyalusing Facility to the proposed Gibbstown Facility in Gibbstown, New Jersey, for export by waterborne vessel—either in bulk or in approved ISO containers. The volume authorized in this Order is equivalent to 128 Bcf/yr of natural gas for a term to commence on the date of first commercial export and to extend through December 31, 2050. Bradford is authorized to export this LNG on its own behalf and as agent for other entities who hold title to the LNG, pursuant to one or more contracts of any duration.³⁸

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore, and to any nation with which the

³⁷ *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

³⁸ These contracts may include the export of commissioning volumes prior to the start of facility operations on a non-additive basis. *See* U.S. Dep't of Energy, Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis; Policy Statement, 86 Fed. Reg. 2,243, 2,245 (Jan. 12, 2021).

United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via ocean-going vessels.

FTA countries are currently identified by DOE/FE at:

<https://www.energy.gov/fe/services/natural-gas-regulation/how-obtain-authorization-import-and-export-natural-gas-and-lng>.

C. Bradford 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 United States Department of the Treasury, FERC (if applicable), and PHMSA. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (i) Bradford 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 export of LNG sourced from the Wyalusing Facility as agent for other entities. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) Bradford 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 Wyalusing Facility. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

E. Bradford 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 Bradford with all information necessary to permit Bradford 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'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 D 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).

F. Bradford, or others for whom Bradford acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of LNG exported 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 B of DOE/FE Order No. 4670, issued March 12, 2021, in FE Docket No. 20-131-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 Bradford County LNG Marketing 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 Bradford County LNG Marketing LLC is made aware of all such actual destination countries.

G. Within two weeks after the first export of domestically produced LNG sourced from the Wyalusing Facility occurs, Bradford shall provide written notification of the date of first export to DOE/FE.

H. Bradford shall file with the Office of Regulation, Analysis, and Engagement, on a semi-annual basis, written reports describing the status of the proposed Gibbstown and Wyalusing Facilities. Reports shall be filed on or by April 1 and October 1 of each year. The Reports shall include information on the progress of the proposed Gibbstown and Wyalusing Facilities, the date the Wyalusing Facility is expected to commence producing LNG for export, the date the Gibbstown Facility is expected to commence first exports of LNG, and the status of any long-term supply and export contracts associated with the long-term export of LNG.

I. With respect to any change in control of the authorization holder, Bradford must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.³⁹ For purposes of this Ordering Paragraph, a “change in control” shall include any change, directly or indirectly, of the power to direct the management or policies of Bradford, 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.⁴⁰

J. Monthly Reports: With respect to the exports authorized by this Order, Bradford 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

³⁹ 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).

⁴⁰ See *id.* at 65,542.

occurred, a report of “no activity” for that month must be filed.

If exports of LNG 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 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 exported LNG is 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 March 12, 2021.

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