UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

FLORIDIAN NATURAL GAS STORAGE COMPANY, LLC	))))	FE DOCKET NO. 15-38-LNG

FINAL OPINION AND ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS IN ISO CONTAINERS LOADED AT THE PROPOSED FLORIDIAN FACILITY IN MARTIN COUNTY, FLORIDA, AND EXPORTED BY VESSEL TO NON-FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3744

NOVEMBER 25, 2015

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I. INTRODUCTION

On February 24, 2015, Floridian Natural Gas Storage Company, LLC (Floridian) filed an application (Application)[1] with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)[2] for long-term, multi-contract authorization to export liquefied natural gas (LNG) produced at Floridian's Facility and transported in approved International Standards Organization (ISO) containers in a volume equivalent to approximately 14.6 billion cubic feet per year (Bcf/yr) of natural gas (0.04 Bcf per day (Bcf/d)), less the portion of that volume that may be under firm contract directly or indirectly to Carib Energy (USA) LLC (Carib).[3] According to Floridian, the volume of the requested authorization is the proposed Floridian Facility's maximum annual send-out capacity of natural gas in its liquefied state via the Facility's truck loading station.

Floridian seeks to export this LNG from a proposed liquefaction and storage facility to be constructed and operated in Martin County, Florida (Floridian Facility) to (i) any nation that currently has, or in the future may enter into, 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 (FTA countries); and (ii) nations with which the United States has not entered into an 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). As discussed below, because DOE/FE has already

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[1] Floridian Natural Gas Storage Company, LLC, Application for Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, FE Docket No. 15-38-LNG (Feb 24, 2015) [hereinafter Floridian App.].

[2] 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. 00-006.02 issued on November 17, 2014.

[3] DOE/FE issued authorization to Carib to export LNG from the Floridian Facility at the "equivalent to the maximum daily send out capacity of natural gas in liquefied state via the FERC-authorized truck loading station at the Floridian facility" (14.6 Bcf/yr, or 0.04 Bcf/d). *Carib Energy (USA) LLC*, DOE/FE Order No. 3487, FE Docket No. 11-141-LNG, Final Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers by Vessel to Non-Free Trade Agreement Nations in Central America, South America, or the Caribbean (Sept. 10, 2014) [hereinafter *Carib*].

addressed the portion of the Application seeking authorization to export LNG to FTA countries, this Order addresses only the portion of the Application that concerns exports to non-FTA countries.

Floridian requests authority to export this LNG on its own behalf and as agent for other entities who may, for purposes of exporting, contract for delivery of a volume of LNG produced and delivered by truck loading at the proposed Floridian Facility. Floridian states that its customers will hold title to the natural gas they deliver to the Facility for liquefaction and to the LNG that they receive at the Facility's truck loading station. Additionally, Floridian states that, during the pendency of this application, it will identify to DOE/FE any prospective customer that concludes negotiations and enters into an agreement for liquefaction and truck loading capacity at its Facility or for delivery by prospective holders of LNG capacity produced at the Facility. Floridian also confirms that it will file the respective contract with DOE/FE within 30 days of its execution, as required by DOE/FE regulations.

Floridian or its customers will take delivery of the LNG in ISO containers, which the customers will transport from the Facility via truck to ports which will be the points of export. According to Floridian, upon arrival by truck at the point of export, the ISO containers will be loaded onto ocean-going marine vessels for transport to the destination countries. Floridian anticipates the points of export will include the Port of Palm Beach, Port Everglades, Port of Miami, Port Canaveral, Port of Tampa, Port Manatee, and the Port of Jacksonville, Florida. Floridian requests this authorization for a term of 20 years, to commence on the earlier of the date of first export or five years from the date of a final order granting the requested authorization.

In support of its request, Floridian notes that, on September 10, 2014, DOE/FE issued a final LNG export order, DOE/FE Order No. 3487, authorizing Carib to export LNG from the same Floridian Facility via the Facility's truck-loading station to non-FTA countries in Central America, South America, or the Caribbean in the same volume proposed for export in the current proceeding (equivalent to 14.6 Bcf/yr of natural gas).[4] Floridian states that, to its knowledge, Carib has not yet contracted with either Floridian or any Floridian customer holding capacity in the proposed Facility for delivery of any volumes of LNG on either a firm or interruptible basis. Nonetheless, by excluding LNG volumes from the Floridian Facility that may come under firm contract to Carib pursuant to DOE/FE Order No. 3487, Floridian states that its requested authorization in the current proceeding would be consistent with DOE/FE's policy—as applied to LNG deliveries via truck loading—not to authorize exports that exceed the liquefaction capacity at an LNG facility that will be used for export operations.

On July 31, 2015, DOE/FE issued a Notice of Floridian's Application in the Federal Register.[5] The Notice of Application called on interested persons to submit protests, motions to intervene, notices of intervention, and comments no later than 4:30 p.m., Eastern Time, on October 5, 2015. In response to the Notice of Application, DOE/FE received no motions to intervene, notices of intervention, protests, or comments.

Concurrently with the issuance of the Notice of Application, DOE/FE issued Order No. 3691, which granted that portion of Floridian's Application requesting authorization to export

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[4] *Carib*, *supra* note 3.

[5] Floridian Natural Gas Storage Company, LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations for a 20-Year Period, Notice of Application, 80 Fed. Reg. 46969 (Aug. 6, 2015) [hereinafter Notice of Application].

LNG to FTA countries.[6] The volumes authorized for export in the Order No. 3691 and this Order are not additive to one another.

II. SUMMARY OF FINDINGS AND CONCLUSIONS

This Order presents DOE/FE's findings and conclusions on all issues associated with Floridian's proposed exports under NGA section 3(a) to non-FTA countries, including both environmental and non-environmental issues. This determination follows a review of the entire record in this proceeding with due regard to the findings and conclusions discussed in DOE's 2012 LNG Export Study,[7] as described below. Based on this review, DOE/FE has determined that it has not been demonstrated that the proposed exports will be inconsistent with the public interest, as would be required to deny the Application under NGA section 3(a). Accordingly, DOE/FE is authorizing Floridian's proposed exports of domestically produced LNG from the Floridian Facility to non-FTA countries in a volume equivalent to 14.6 Bcf/yr of natural gas, less the portion of that volume that may be under firm contract directly or indirectly to Carib. Moreover, as discussed below, because Floridian's proposed exports fall within the scope of a categorical exclusion under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the authorization issued by this Order is subject to the Terms and Conditions and Ordering Paragraphs set forth herein, but is not conditioned on additional environmental analysis or review. *See infra* §§ VIII-X.

[6] *Floridian Natural Gas Storage Company, LLC*, DOE/FE Order No. 3691, FE Docket No. 15-38-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Proposed Floridian Facility in Martin County, Florida, and Exported by Vessel to Free Trade Agreement Nations (Jul. 31, 2015).

[7] *See* 2012 LNG Export Study, 77 Fed. Reg. 73,627 (Dec. 11, 2012), *available at* http://energy.gov/sites/prod/files/2013/04/f0/fr_notice_two_part_study.pdf (Federal Register Notice of Availability of the LNG Export Study).

III. PUBLIC INTEREST STANDARD

Section 3(a) of the NGA sets forth the standard for review of Floridian's Application:

> [N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy[8]] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.

15 U.S.C. § 717b(a). This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE must grant such an application unless the presumption is rebutted by an affirmative showing of inconsistency with the public interest.[9]

While Section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define "public interest" or identify criteria that must be considered. In prior decisions, however, DOE/FE has identified a range of factors that it evaluates when reviewing an application for export authorization. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE/FE looks to record evidence developed in the application proceeding.[10]

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[8] The Secretary's authority was established by the Department of Energy Organization Act, 42 U.S.C. § 7172, which transferred jurisdiction over imports and export authorizations from the Federal Power Commission to the Secretary of Energy.

[9] *See, e.g., Sabine Pass*, Order No. 2961, at 28; *Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, at 13 (April 2, 1999), *citing Panhandle Producers & Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987).

[10] *See, e.g., Sabine Pass*, DOE/FE Order No. 2961, at 28-42 (reviewing record evidence in issuing conditional authorization); *Freeport LNG*, DOE/FE Order No. 3282, at 109-14 (discussing same); and *Lake Charles Exports*, DOE/FE Order No. 3324, at 121-27.

DOE/FE's prior decisions have also looked to certain principles established in its 1984 Policy Guidelines.[11] The goals of the Policy Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Guidelines provide that:

> The market, not government, should determine the price and other contract terms of imported [or exported] natural gas …. The federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.[12]

While nominally applicable to natural gas import cases, DOE/FE held in Order No. 1473 that the same policies should be applied to natural gas export applications.[13]

In Order No. 1473, DOE/FE also stated that it was guided by DOE Delegation Order No. 0204-111. That delegation order, which authorized the Administrator of the Economic Regulatory Administration to exercise the agency's review authority under section 3 of the NGA, directed the Administrator to regulate exports "based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate."[14] In February 1989, the Assistant Secretary for Fossil Energy assumed the delegated responsibilities of the Administrator of ERA.[15]

Although DOE Delegation Order No. 0204-111 is no longer in effect, DOE/FE's review of export applications has continued to focus on: (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of

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[11] New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984) [hereinafter 1984 Policy Guidelines].
[12] *Id*. at 6685.
[13] *Phillips Alaska Natural Gas*, DOE/FE Order No. 1473, at 14 (citing *Yukon Pacific Corp.*, DOE/FE Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FE ¶ 70,259, 71,128 (1989)).
[14] DOE Delegation Order No. 0204-111, at 1; *see also* 49 Fed. Reg. at 6690.
[15] *See* Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas, 62 Fed. Reg. 30,435, 30,437 n.15 (June 4, 1997) (citing DOE Delegation Order No. 0204-127, 54 Fed. Reg. 11,436 (Mar. 20, 1989)).

domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE/FE's policy of promoting market competition, and (iv) any other factors bearing on the public interest described herein.

IV. BACKGROUND

A. Description of Applicant

Floridian states that it is a Delaware limited liability company with its principal place of business in Houston, Texas. Floridian further states that it is controlled by Tesla Resources LLC, which own 98 percent of Floridian; Tesla Resources LLC is also a Delaware limited liability company with its principal place of business in Houston, Texas; the remaining ownership of Floridian is comprised of individual private investors.

B. Floridian Facility

Floridian states that its Facility is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). The Application describes the Facility's procedural history at FERC. FERC conducted a NEPA review of the proposed Facility, including the preparation and issuance of draft and final environmental impact statements (EIS).[16] In August 2008, FERC issued a certificate of public convenience and necessity authorizing Floridian to build the Facility subject to Floridian's compliance with 97 environmental conditions. FERC determined in the 2008 Certificate Order that if Floridian complied with those 97 conditions, the proposed project would be an environmentally acceptable action.

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[16] A draft EIS was issued on March 21, 2008. Public notice of the availability of the draft EIS was published in the *Federal Register* on March 28, 2008 (73 Fed. Reg. 16,662). On July 11, 2008, the Commission issued the final EIS and a notice of availability of the final EIS. On July 18, 2008, issuance of the final EIS was noticed in the *Federal Register.* 73 Fed. Reg. 41,351. *Notice of Availability of the Final Environmental Impact Statement for the Proposed Floridian Natural Gas Storage Company, LLC* was also published in the *Federal Register* on July 22, 2008 (73 Fed. Reg. 42,562).

More specifically, Floridian proposed to complete the project in two phases.[17] Floridian proposed that each phase would include a 4 Bcf storage tank, two liquefaction trains with a combined capacity of 50 million cubic feet (MMcf) per day (MMcf/d), and a vaporization system sized for 400 MMcf/d. Floridian states in the Application in the current proceeding that the Phase 1 facilities also would include a set of two pipelines, each approximately four miles in length, to connect the Facility with two nearby interstate pipelines, as well as a dual two-bay truck loading station.

Floridian states that, in August 2012, FERC issued an Order Amending Certificate to permit Floridian to use the Facility's truck loading bays in the normal course of business, as well as in emergency circumstances (as originally certificated in 2008).[18] FERC conducted an environmental assessment (EA) of this amendment and concluded that the proposed change in the use of the truck loading bays did not involve the addition of any new facilities to the project and was not expected to have a significant adverse impact on the environment with the conditions imposed in the 2008 Certificate Order.

Floridian also states that it subsequently filed another application with FERC seeking to further amend the certificate to scale back Phase 1 of the project (Project Amendment). According to Floridian, the application for the Project Amendment was pending in FERC Docket No. CP13-541-000 at the time that the Application in this proceeding was filed. Floridian states that, per the proposed Project Amendment, it now proposes to build, as Phase 1, a 1 Bcf storage tank, a vaporization system sized for 100 MMcf/d, and the originally-proposed dual two-bay truck loading station. Floridian further states that, although it is certificated to construct two 25 MMcf/d liquefaction trains for Phase 1, it plans initially to construct only one train. Floridian

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[17] *Floridian Natural Gas Storage Co., LLC,* 124 FERC ¶ 61,214 (2008) [2008 Certificate Order].
[18] *Floridian Natural Gas Storage Co., LLC,* 140 FERC ¶ 61,167 (2012).

also states that it anticipates constructing the modified Phase 1 facilities promptly after FERC issues the requested Project Amendment.

We note that FERC issued an EA for the Project Amendment on June 10, 2015, and an Order Amending Certificate on July 16, 2015.[19] Floridian filed the Order Amending Certificate in the current DOE/FE proceeding on July 31, 2015. That FERC Order Amending Certificate granted the Project Amendment proposed by Floridian subject to 31 environmental conditions. FERC determined that if the Facility were constructed and operated in accordance with Floridian's application and both the 31 environmental conditions identified therein plus the 97 environmental conditions contained in FERC's 2008 Certificate Order, its approval of the Project Amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Floridian states that its export customers will transport LNG away from the Facility in ISO containers. Under normal operating conditions, approximately 48 trucks could be loaded and dispatched in one day, which (according to Floridian) correlates to the maximum daily send-out capacity of natural gas in its liquefied state of approximately 14.6 Bcf/yr (0.04 Bcf/d). Floridian further states that exports of LNG produced at the Facility will be from existing container terminals located in ports in the Southeast United States (primarily ports in Florida, including those ports identified *supra* at § I). According to Floridian, upon arrival by truck at the point of export, pier facilities for loading all cargo containers will be utilized to load the ISO containers of LNG onto ocean-going marine vessels. These vessels will transport the LNG to the destination countries. Floridian states that additional infrastructure will not be required for the proposed exports at the existing container terminals.

[19] 152 FERC ¶ 61,041 (2015).

C. Source of Natural Gas

Floridian states that the proposed Facility will be connected to the domestic natural gas supply market through two existing interstate pipeline systems to which the Facility will be connected (and potentially through a third interstate pipeline currently proposed to be constructed in Martin County). Through these connections, Floridian states that its customers will have access to multiple diverse natural gas sources via the interstate pipeline grid.

D. Business Model

Floridian states that it will produce all of the LNG proposed to be exported under the requested authorization at the Facility for its customers. Floridian states that its customers will hold liquefaction, storage, and delivery capacity in the Facility. As noted above, the stated intent is that these customers will hold title to the natural gas they deliver, as well as to the LNG they receive at the Facility's truck loading station. Floridian's customers (or their customers) will take delivery of the LNG in ISO containers, then will transport the ISO containers by truck to the points of export. While Floridian does not expect to hold title to the LNG at the time of export, it is requesting authorization to export for itself in the event of a change in circumstances.

Floridian states that it will comply with all DOE/FE requirements for exporters and agents, including registration requirements. Floridian further states that, when acting as agent, it will register with DOE/FE each LNG title holder for which it seeks to export LNG as agent, and will comply with other registration requirements set forth in recent DOE/FE orders. Floridian states that it is in negotiations with a number of prospective customers, and will file any relevant contracts and agreements with DOE/FE within 30 days of their execution, as required by DOE/FE regulations.

E. Environmental Review

Floridian notes that DOE/FE issued a categorical exclusion for Carib's application in connection with DOE/FE Order No. 3487, by finding that the construction and operations of the proposed Floridian Facility previously reviewed by FERC will not be changed due to action on Carib's application. Floridian asserts that the construction and operations of its Facility likewise will not be changed by DOE/FE action granting its requested authorization, and therefore states that a categorical exclusion from the requirements of NEPA would be appropriate for its Application.

V. 2012 LNG EXPORT STUDY

In August 2011, with other non-FTA export applications then pending before it, DOE/FE determined that further study of the economic impacts of LNG exports was warranted to better inform its public interest review under section 3 of the NGA.[20] Accordingly, DOE/FE engaged the U.S. Energy Information Administration (EIA) and NERA Economic Consulting (NERA) to conduct a two-part study of the economic impacts of LNG exports.[21]

First, in August 2011, DOE/FE requested that EIA assess how prescribed levels of natural gas exports above baseline cases could affect domestic energy markets. Using its National Energy Modeling System (NEMS), EIA examined the impact of two DOE/FE-prescribed levels of assumed natural gas exports (at 6 Bcf/d and 12 Bcf/d) under numerous scenarios and cases based on projections from EIA's 2011 *Annual Energy Outlook* (AEO 2011), the most recent EIA projections available at the time. The new scenarios and cases examined by EIA included a variety of supply, demand, and price outlooks. EIA published its study, *Effect of*

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[20] DOE/FE stated in *Sabine Pass* that it "will evaluate the cumulative impact of the [Sabine Pass] authorization and any future authorizations for export authority when considering any subsequent application for such authority." DOE/FE Order No. 2961, at 33.

[21] *See* 2012 LNG Export Study, 77 Fed. Reg. 73,627 (Dec. 11, 2012), *available at* http://energy.gov/sites/prod/files/2013/04/f0/fr_notice_two_part_study.pdf (Federal Register Notice of Availability of the LNG Export Study).

Increased Natural Gas Exports on Domestic Energy Markets (EIA Study), in January 2012.[22] EIA generally found that LNG exports will lead to higher domestic natural gas prices, increased domestic natural gas production, reduced domestic natural gas consumption, and increased natural gas imports from Canada via pipeline.

Second, DOE contracted with NERA to assess the potential macroeconomic impact of LNG exports by incorporating EIA's then-forthcoming case study output from the NEMS model into NERA's general equilibrium model of the U.S. economy. NERA analyzed the potential macroeconomic impacts of LNG exports under a range of global natural gas supply and demand scenarios, including scenarios with unlimited LNG exports. DOE published the NERA Study, *Macroeconomic Impacts of LNG Exports from the United States*, in December 2012.[23] Among its key findings, NERA projected that the United States would gain net economic benefits from allowing LNG exports. For every market scenario examined, net economic benefits increased as the level of LNG exports increased.[24]

VI. APPLICANT'S PUBLIC INTEREST ANALYSIS

Floridian states that its requested authorization is wholly consistent with the public interest standard under NGA section 3(a), for several reasons:

First, Floridian notes that DOE/FE already found in *Carib* (DOE/FE Order No. 3487) that exports from the Floridian Facility in an amount equal to the maximum annual send-out capacity of the truck loading station will not be inconsistent with the public interest. Since Floridian's proposal in the current proceeding is not duplicative of or additive to the volumes authorized for export from the same Facility addressed in *Carib*, Floridian maintains that the requested authorization in this proceeding is likewise not inconsistent with the public interest.

[22] *See* 2012 LNG Export Study – Related Documents, *available at* http://energy.gov/fe/downloads/lng-export-study-related-documents (EIA Analysis (Study - Part 1)).
[23] *Id*. (NERA Economic Consulting Analysis (Study - Part 2)).
[24] *Id*.

Second, Floridian maintains that ample natural gas supplies exist to serve U.S. domestic gas needs and also accommodate the proposed LNG exports. In this regard, Floridian contends that the volumes covered by the Application are minor relative to the exports that DOE/FE has approved from large LNG terminal projects. Floridian observes that in *Carib,* DOE/FE found that exports of the same volume equivalent of natural gas from the Facility was "of a different magnitude" and "unlikely to have a significant impact on domestic natural gas markets or on the domestic economy generally".

Third, Floridian states that its export proposal is "a market-driven response" to the availability of abundant natural gas supplies and the need for access to more and cleaner energy alternatives in neighboring countries. Floridian maintains that arrangements for its services and for the sale of LNG owned by its customers to customers in non-FTA countries will be freely negotiated. This activity, according to Floridian, will be consistent with DOE/FE's policy of promoting market competition and minimizing regulatory impediments to a freely operating market.

Fourth, although the volume of proposed exports is relatively small, Floridian maintains that the exports will result in economic benefits, particularly in the economically depressed communities surround the Facility. Additionally, Floridian states that exports from the Facility will create environmental benefits by enabling hemispheric neighbors to switch form oil or coal to cleaner natural gas while providing some positive international trade impacts for the United States.

VII. DISCUSSION AND CONCLUSIONS

In reviewing Floridian's Application to export LNG to non-FTA countries, DOE/FE has considered both its obligation under NGA section 3(a) to ensure that the proposed LNG exports are not inconsistent with the public interest and its obligations under NEPA. To accomplish these purposes, DOE/FE has examined a wide range of information addressing non-environmental and environmental factors, including:

- Floridian's Application;
- The 2012 LNG Export Study, including comments received in response to the Study; and
- The Order Amending Certificate, issued by FERC on July 16, 2015.

A. Non-Environmental Issues

Floridian's proposal in the current proceeding tracks the same ground covered by the authorization issued previously to Carib in DOE/FE Order No. 3487. Both applications seek export authority for the equivalent of 14.6 Bcf/yr (0.04 Bcf/d) of natural gas from the proposed Floridian Facility. Yet the volumes covered in *Carib* and the volumes covered in the current Application are not additive, *i.e.* the export authorization requested by Floridian will be reduced by the portion of the total of 14.6 Bcf/yr that may be under firm contract directly or indirectly to Carib. Consequently, approval of the current Application will not increase the total volumes of natural gas that DOE/FE has approved for export in this and previous orders in other non-FTA proceedings.

Nor will this authorization affect the potential economic impacts resulting from this and previous non-FTA export authorizations. In fact, in *Carib*, we determined that export of 14.6 Bcf/yr was relatively small and unlikely to have a significant impact on domestic natural gas markets or the domestic economy generally. We also noted that the statutory presumption places the burden on opponents of an export application to show that the application is inconsistent with the public interest but the application in *Carib*, like the current Application, was unopposed. Accordingly, we found in *Carib* and again find in this proceeding that as to non-environmental issues, it has not been shown that the proposed authorization is inconsistent with the public interest.

B. Environmental Issues—Issuance of a Categorical Exclusion

In reviewing the potential environmental impacts of Floridian's proposal to export LNG, DOE/FE has considered its obligations under NEPA and its separate obligation under NGA section 3(a) to ensure that the proposal is not inconsistent with the public interest.

FERC completed its environmental review of the Floridian Facility pursuant to an application for a certificate of public convenience and necessity under section 7 of the NGA, 15 U.S.C. § 717f. That review included both an environmental impact statement (EIS) and two EAs. The EIS (in 2008) addressed the construction and operation of the Floridian Facility, including its operation as a natural gas liquefaction and storage facility. The first EA (in 2012) addressed truck operations, including traffic flow and other impacts associated with the arrival at and departure of trucks from the Floridian Facility in the course of normal business operations. The second EA (in 2015) addressed Floridian's plan to scale back the size of the Facility but that plan did not alter the previously considered operations of the truck loading station.

We find that the FERC's environmental review documents addressed all of the reasonably foreseeable activities likely to arise from Floridian's proposed exports of LNG in the current Application. While the construction and commencement of operations of the Floridian Facility have not yet occurred, no further construction or change in operations beyond those addressed in the EIS and two EAs is likely.

The Department's regulations at 10 C.F.R. Part 1021, Subpart D, Appendix B, list categorical exclusions that apply to DOE actions. Item B5.7 provides a categorical exclusion where approvals or disapprovals of authorizations to import or export natural gas under NGA section 3 involve minor operational changes, but not new construction. Floridian's proposed exports from the Facility fall within the scope of the B5.7 categorical exclusion because the contemplated construction and operations reviewed by FERC will not be changed due to action on Floridian's Application. Accordingly, on November 24, 2015, DOE/FE issued a Categorical Exclusion Determination applying a categorical exclusion under NEPA for the current Application.[25]

The issuance of the Categorical Exclusion supports a determination that no further environmental review of Floridian's Application is required under NEPA. Other factors supporting this determination include: (i) the relatively small volume authorized for export under the Application, and (ii) the fact that no parties in the proceeding have raised environmental concerns associated with the proposed exports. In light of the issuance of the Categorical Exclusion, we find that no environmental conditions need to be imposed on this authorization.

C. Conclusion

We have reviewed the evidence in the record and have not found an adequate basis to conclude that Floridian's proposed export of LNG to non-FTA countries will be inconsistent with the public interest. For that reason, we are authorizing Floridian's proposed exports to non-FTA countries subject to the limitations and conditions described in this Order.

VIII. 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. The reasons for each term or condition are explained below. Floridian must abide by each term and condition or may face rescission of its authorization or other appropriate sanction.

[25] Categorical Exclusion Determination, *Floridian Natural Gas Storage Company, LLC*, DOE/FE Docket No. 15-38-LNG (November 24, 2015).

A. Term of the Authorization

Floridian requests a 20-year term for the authorization commencing on the earlier of the date of first export or five years from the date of a final order granting the requested authorization. However, consistent with our practice in the final and conditional non-FTA export authorizations issued to date,[26] the 20-year term granted in this Order will commence on the date when Floridian commences commercial export of domestically sourced LNG from the Floridian Facility, but not before.

B. Commencement of Operations Within Five Years

Floridian, as indicated above, requested this authorization to commence on the earlier of the date of first export or five years from the date of the issuance of this Order. Consistent with the request, DOE/FE will add as a condition of the authorization that Floridian must commence commercial LNG export operations no later than five years from the date of issuance of this Order.

C. Transfer, Assignment, or Change in Control

DOE/FE's natural gas import/export 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.[27] As a condition of the similar authorization issued to Sabine Pass in Order No. 2961, DOE/FE found that the requirement for prior approval by the Assistant Secretary under its regulations applies to any change of effective control of the authorization holder either through asset sale or stock transfer or by other means. This condition was deemed necessary to ensure that, prior to any transfer or change in control,

[26] *See, e.g.*, *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357-B, at 100-01.
[27] 10 C.F.R. § 590.405.

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. A rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, 10 percent or more of the voting securities of such entity.[28]

D. Agency Rights

Floridian 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. DOE/FE previously addressed the issue of Agency Rights in Order No. 2913,[29] which granted Freeport LNG Expansion, L.P. (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 *Dow Chemical*, which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.[30] We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in

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[28] For information on DOE/FE's procedures governing a change in control, 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. 65,641 (Nov. 5, 2014).

[29] *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) [hereinafter *Freeport LNG*].

[30] *Dow Chem. 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.

Order No. 2913 apply here as well. DOE/FE reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*.[31] In *Gulf Coast*, DOE/FE confirmed 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.[32]

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Floridian 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's regulations require applicants to supply transaction-specific factual information "to the extent practicable."[33] Additionally, DOE/FE regulations 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/FE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.[34]

DOE/FE will require that Floridian file or cause to be filed with DOE/FE any relevant long-term commercial agreements, including sale and purchase agreements, pursuant to which Floridian exports LNG as agent for a Registrant.

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[31] *Gulf Coast LNG Export, LLC,* DOE/FE Order No. 3163, FE Docket No. 12-05-LNG, Order Granting Long-Term Multi-Contract Authority to Export LNG by Vessel from the Proposed Brownsville Terminal to Free Trade Agreement Nations (Oct. 16, 2012).
[32] *See id*. at 7-8.
[33] 10 C.F.R. § 590.202(b).
[34] *Id*. § 590.202(e).

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). By way of example and without limitation, a "relevant long-term commercial agreement" would include an agreement with a minimum term of two years, an agreement to provide gas processing or liquefaction services at the Floridian Facility, a long-term sales contract involving natural gas or LNG stored or liquefied at the Facility, or an agreement to provide long-term export services from the Facility.

In addition, DOE/FE finds that section 590.202(c) of DOE/FE's regulations[35] requires that Floridian file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Floridian Facility, whether signed by Floridian or the Registrant, within 30 days of their execution.

DOE/FE recognizes that some information in Floridian'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 Floridian Facility, may be commercially sensitive. DOE/FE therefore will provide Floridian the option to file or cause to be filed either unredacted contracts, or in the alternative (A) Floridian 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.

[35] *Id*. § 590.202(c).

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

Floridian seeks export authorization in a total volume of LNG equivalent to 14.6 Bcf/yr of natural gas, which is the maximum liquefaction and truck send-out capacity of the Floridian Facility.[36] This Order authorizes the export of LNG in the full amount requested, up to the equivalent of 14.6 Bcf/yr of natural gas, less the portion of the total of 14.6 Bcf/yr that may be under firm contract directly or indirectly to Carib Energy (USA) LLC.

G. Combined FTA and Non-FTA Export Authorization Volumes

Floridian is currently authorized in DOE/FE Order No. 3691 to export domestically produced LNG to FTA countries in the same volume authorized in this Order, equivalent to approximately 14.6 Bcf/yr of natural gas. Because the source of LNG proposed for export for both export authorizations is from the Floridian Facility, Floridian may not treat the volumes authorized for export in the two proceedings as additive to one another. Additionally, as requested in the Application, the volumes authorized for export in this Order will be reduced by the portion of the total of 14.6 Bcf/yr that may be under firm contract directly or indirectly to Carib Energy (USA) LLC.

H. Environmental Review

As explained above, the Application qualifies for a categorical exclusion, which DOE/FE issued on November 24, 2015. No additional environmental review or environmental conditions are necessary.

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[36] Floridian App. at 1.

IX. FINDINGS

On the basis of the findings and conclusions set forth above, we find that it has not been shown that a grant of the requested authorization will be inconsistent with the public interest, and we further find that Floridian's Application should be granted subject to the Terms and Conditions set forth herein. The following Ordering Paragraphs reflect current DOE/FE practice.

X. ORDER

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

A. Floridian Natural Gas Storage Company, LLC is authorized to export domestically produced LNG in approved ISO containers loaded at the Floridian Facility located in Martin County, Florida, and exported by vessel in a volume up to the equivalent of 14.6 Bcf/yr of natural gas. This authorization is for a term of 20 years to commence on the date of first commercial export. Floridian is authorized to export this LNG on its own behalf and as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract having a term greater than two years).

B. Floridian must commence export operations using the planned liquefaction facilities no later than five years from the date of issuance of this Order (November 25, 2020).

C. The LNG export quantity authorized in this Order is equivalent to 14.6 Bcf/yr of natural gas. This quantity is not additive to the export volume in Floridian's FTA authorization in this docket, set forth in DOE/FE Order No. 3601, and will be reduced by the portion of the total approved export volume of 14.6 Bcf/yr that is under firm contract directly or indirectly to Carib Energy (USA), LLC.

D. This LNG may be exported to any country which presently has, or in the future develops, the capacity to import LNG via approved ISO containers transported on ocean-going carriers, provided that the country does not have an FTA with the United States requiring the national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy.

E. Floridian 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 U.S. Department of Transportation. Additionally, Floridian shall ensure that any third parties with which Floridian (or others on Floridian's behalf) will be contracting to handle truck transport of LNG in ISO containers will obtain and comply with any required federal, state, or local permits relating to hazardous materials and cryogenic handling. Failure to comply with these requirements could result in rescission of this authorization and/or other civil or criminal remedies.

F. (i) Floridian shall file, or cause others to file, with the Office of Regulation and International Engagement a non-redacted copy of <u>all executed long-term contracts associated with the long-term export of LNG</u> as agent for other entities from the Floridian Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Floridian has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Floridian shall also file, or cause others to file, for public posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Floridian shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Floridian shall file, or cause others to file, with the Office of Regulation and International Engagement a non-redacted copy of <u>all executed long-term contracts associated</u>

with the long-term supply of natural gas to the Floridian Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Floridian has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Floridian shall also file for public posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Floridian shall state why the redacted or non-disclosed information should be exempted from public disclosure.

G. Floridian, or others for whom Floridian 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 D of DOE/FE Order No. 3744, issued November 25, 2015, in FE Docket No. 15-38-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 Floridian Natural Gas Storage Company, LLC that identifies the country (or countries) into which the exported LNG was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to insure that Floridian Natural Gas Storage Company, LLC is made aware of all such countries.

H. Floridian is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other parties with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply Floridian with all information necessary to permit Floridian 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 F of this Order.

I. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, change in term 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).

J. As a condition of this authorization, Floridian shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Floridian to ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding in whole or in part the authorization.

K. Within two weeks after the first export of domestically produced LNG by Floridian occurs from the Floridian Facility, Floridian shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

L. Floridian shall file with the Office of Regulation and International Engagement, on a semi-annual basis, written reports describing the status of the Floridian Facility. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the status of the Floridian Facility, the date the Floridian Facility is expected to commence first exports of LNG, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

M. Prior to any change in control of the authorization holder, Floridian must comply with DOE/FE's Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.[37] 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 Floridian, 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.[38]

N. Monthly Reports: With respect to the LNG exports authorized by this Order, Floridian shall file with the Office of Regulation and International Engagement, within 30 days following the last day of each calendar month, a report 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 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 is actually delivered and/or received for end use; (6) the name of the supplier/seller; (7) the volume in 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

[37] *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).
[38] *See id*. at 65,542.

the loaded ISO container from the loading facility to the export port or terminal; (11) the duration of the supply agreement (indicate spot sales); and (12) the name(s) of the purchaser(s). (Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

O. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation and International Engagement, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Natural Gas Reports. Alternatively, reports may be e-mailed to ngreports@hq.doe.gov or may be faxed to Natural Gas Reports at (202) 586-6050.

Issued in Washington, D.C., on November 25, 2015.

Christopher A. Smith
Assistant Secretary
Office of Fossil Energy