

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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DELFIN LNG LLC

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FE DOCKET NO. 13-147-LNG

OPINION AND ORDER  
DENYING REQUEST FOR REHEARING

DOE/FE ORDER NO. 4028-A

APRIL 3, 2018

## I. INTRODUCTION

On June 1, 2017, the Department of Energy's (DOE or the Department) Office of Fossil Energy (DOE/FE) issued DOE/FE Order No. 4028<sup>1</sup> (Order or Order No. 4028) to Delfin LNG LLC (Delfin)<sup>2</sup> under section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. § 717b(a).<sup>3</sup> In that 177-page Order, DOE/FE granted Delfin's application filed on November 12, 2013 (Application),<sup>4</sup> in which Delfin requested long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) by vessel to nations with which the United States has not entered 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 (non-FTA countries).<sup>5</sup>

Order No. 4028 authorizes Delfin to export LNG to non-FTA countries in a volume equivalent to 657.5 billion cubic feet per year (Bcf/yr) of natural gas (1.8 Bcf per day).<sup>6</sup> Delfin's exports will originate from its proposed floating liquefaction facility (Liquefaction Facility), to be located in West Cameron Block 167 in the Gulf of Mexico, offshore of Calcasieu Parish, Louisiana.<sup>7</sup> Delfin intends to construct and operate the Liquefaction Facility for the liquefaction

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<sup>1</sup> *Delfin LNG LLC*, DOE/FE Order No. 4028, FE Docket 13-147-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from a Proposed Floating Liquefaction Project and Deepwater Port 30 Miles Offshore of Louisiana to Non-Free Trade Agreement Nations (June 1, 2017) [hereinafter *Delfin Order*].

<sup>2</sup> Delfin is a Louisiana limited liability company with its principal place of business in Dallas, Texas. Delfin is a wholly-owned subsidiary of Fairwood Peninsula Energy LLC.

<sup>3</sup> The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-006.02 issued on November 17, 2014.

<sup>4</sup> *Delfin LNG LLC*, Application for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries, FE Docket No. 13-147-LNG (Nov. 12, 2013) [hereinafter *Delfin App.*].

<sup>5</sup> 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 (FTA countries). FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>6</sup> See *Delfin Order* at 1-2, 172.

<sup>7</sup> See *id.*

and export of domestically produced natural gas.<sup>8</sup> Under the terms of the Order, Delfin is authorized to export LNG from the Delfin Liquefaction Facility for a term of 20 years.<sup>9</sup>

Delfin states that its floating Liquefaction Facility will be a “deepwater port” within the meaning of the Deepwater Port Act of 1974, as amended.<sup>10</sup> The Deepwater Port Act authorizes the ownership, construction, and operation of LNG terminals in federal waters of the Outer Continental Shelf.<sup>11</sup> As such, Delfin’s Liquefaction Facility will require a deepwater port license from the U.S. Department of Transportation Maritime Administration (MARAD), in conjunction with the U.S. Coast Guard (USCG).<sup>12</sup> In a Record of Decision (ROD) dated March 13, 2017—entitled *The Secretary of Transportation’s Decision on the Deepwater Port License Application of Delfin LNG, LLC*<sup>13</sup>—MARAD authorized the issuance of this license to Delfin subject to conditions, as discussed in DOE/FE Order No. 4028.<sup>14</sup>

Previously, DOE/FE participated as a cooperating agency in MARAD’s and USCG’s review of the Delfin Liquefaction Facility under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*<sup>15</sup> On November 28, 2016, MARAD and the USCG issued a final

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<sup>8</sup> *See id.* at 2, 14-16.

<sup>9</sup> Delfin is authorized to export the LNG on its own behalf and as an agent for other entities that hold title to the LNG, after registering each such entity with DOE/FE. Order No. 4028 contains numerous other terms and conditions. *See Delfin Order* at 165-77.

<sup>10</sup> 33 U.S.C. § 1501 *et seq.*; *see also* 33 C.F.R. Part 148.

<sup>11</sup> *See* 33 U.S.C. §§ 1501, 1503(a). The Deepwater Port Act originally applied only to oil import terminals, but was amended in 2002 to include natural gas import terminals. *See* Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064 (section 106 of the Maritime Transportation Security Act amending the Deepwater Port Act to allow the construction of offshore terminals for storing, transporting, and handling natural gas). Additionally, section 312 of the Coast Guard and Maritime Administration Act of 2012 (H.R. 2838) further amended the Deepwater Port Act (33 U.S.C. § 1502(9)(A)) to include natural gas export terminals. *See Delfin App.* at 4 n.3.

<sup>12</sup> *Delfin App.* at 4.

<sup>13</sup> U.S. Dep’t of Transp., *The Secretary’s Decision on the Deepwater Port License Application of Delfin LNG LLC* (Mar. 13, 2017) [hereinafter MARAD ROD].

<sup>14</sup> *See Delfin Order* at 8-9, 126-35.

<sup>15</sup> *See id.* at 128, 145-46.

environmental impact statement (EIS) for Delfin’s proposed Port (*i.e.*, Liquefaction Facility).<sup>16</sup> The EIS evaluated the potential environmental impact of the proposed Port and reviewed alternatives to the proposed action.<sup>17</sup>

As noted above, on March 13, 2017, MARAD issued the ROD approving Delfin’s deepwater port license application, subject to Delfin’s acceptance of MARAD’s conditions.<sup>18</sup> On April 18, 2017, after an independent review, DOE/FE adopted MARAD’s EIS for the proposed Delfin Liquefaction Facility (DOE/EIS-0531).<sup>19</sup> In Order No. 4028, DOE/FE conditioned its export approval upon Delfin’s receipt of all connected local, state and federal permits—including the Federal Energy Regulatory Commission’s (FERC) authorization under section 7 of the NGA for the related Delfin Onshore Facility—as well as meeting all conditions set forth in MARAD’s deepwater port license and the FERC order.<sup>20</sup> Concurrently with its issuance of Order No. 4028 on June 1, 2017, DOE/FE issued a ROD for the proposed Liquefaction Facility.<sup>21</sup> Additional procedural history and information about DOE/FE’s administrative record are discussed in Order No. 4028.

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<sup>16</sup> See U.S. Dep’t of Transp. Maritime Admin., Deepwater Port License Application: Delfin LNG LLC, Delfin LNG Deepwater Port; Final Application, Public Hearing, and Final Environmental Impact Statement, 81 Fed. Reg. 85,678 (Nov. 28, 2016) (notice of availability of final EIS); Delfin Order at 8, 129.

<sup>17</sup> See Delfin Order at 128-29.

<sup>18</sup> See MARAD ROD at 15-16, 67-68; *see also* Delfin Order at 2, 8-9, 130-35.

<sup>19</sup> See U.S. Env’tl. Prot. Agency, Environmental Impact Statements; Notice of Availability, 82 Fed. Reg. 19,715 (April 28, 2017) (providing notice that DOE/FE adopted MARAD’S final EIS for the Delfin Export Project).

<sup>20</sup> See Delfin Order at 9-10, 173 (Ordering Para. H); *see also id.* at 2-3 (describing Delfin’s Onshore Project).

<sup>21</sup> U.S. Dep’t of Energy, Delfin LNG, LLC, Record of Decision and Floodplain Statement of Findings for the Delfin LNG LLC Application to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 13-147-LNG (June 1, 2017) [hereinafter Record of Decision].

On July 3, 2017, Sierra Club—an intervenor-protector in this proceeding<sup>22</sup>—timely filed a Request for Rehearing of Order No. 4028.<sup>23</sup> On July 28, 2017, DOE/FE issued an order granting Sierra Club’s Rehearing Request for the limited purpose of further consideration.<sup>24</sup>

For the reasons set forth herein, DOE/FE denies Sierra Club’s Request for Rehearing, and affirms the findings and conclusions in DOE/FE Order No. 4028.

## II. DISCUSSION

### A. Sierra Club’s Arguments

In protesting Delfin’s Application, Sierra Club asserted that the Delfin Liquefaction Facility is not in the public interest under NGA section 3(a) and is not supported by adequate economic and environmental analysis, as is required to satisfy the NGA and NEPA.<sup>25</sup> On review, however, DOE/FE found in Order No. 4028 that “the evidence . . . showing that the proposed exports would be in the public interest outweighs the concerns expressed by the intervenors.”<sup>26</sup>

More specifically, Sierra Club argued that, under NEPA, the agencies must consider the potential for increased domestic natural gas production and associated increased environmental impacts resulting from the proposed Delfin Liquefaction Facility.<sup>27</sup> In Order No. 4028, DOE/FE rejected this argument, concluding that “MARAD’s environmental review covered all reasonably foreseeable environmental impacts of the proposed Delfin Liquefaction Facility, and that NEPA does not require the review to include induced upstream natural gas production.”<sup>28</sup> DOE/FE

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<sup>22</sup> Sierra Club, Motion to Intervene, Protest, and Comments, FE Docket No. 13-147-LNG (May 27, 2014).

<sup>23</sup> Sierra Club, Request for Rehearing, FE Docket No. 13-147-LNG (July 3, 2017) [hereinafter Sierra Club Rehearing Request].

<sup>24</sup> *Delfin LNG, LLC*, Order Granting Request for Rehearing for the Purpose of Further Consideration, FE Docket No. 13-147-LNG (July 28, 2017).

<sup>25</sup> See Delfin Order at 32-44 (summarizing Sierra Club’s arguments).

<sup>26</sup> *Id.* at 138.

<sup>27</sup> See *id.*, e.g., at 33-42, 146-51.

<sup>28</sup> *Id.* at 147 (internal citation omitted).

provided a detailed rebuttal to this and other environmental arguments raised by Sierra Club,<sup>29</sup> citing (among other considerations) the findings presented in DOE/FE's *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*.<sup>30</sup>

In its Request for Rehearing of the Order, Sierra Club reiterates its position that DOE/FE violated NEPA by approving the Delfin Liquefaction Facility without an EIS that adequately considered the direct, indirect, and cumulative effects of Delfin's proposed exports.<sup>31</sup> Sierra Club asserts that MARAD'S EIS for the Liquefaction Facility was deficient, and that DOE/FE failed to cure the deficiencies in the EIS or to supplement the EIS to address the effects of DOE's export approval.<sup>32</sup> In particular, Sierra Club maintains that DOE/FE violated NEPA by authorizing Delfin's exports without taking a "hard look" at the effects of induced natural gas production.<sup>33</sup> Additionally, Sierra Club argues that, in issuing Order No. 4028, DOE/FE violated NGA section 3(a) by failing to adequately weigh economic and environmental impacts in evaluating the public interest.<sup>34</sup>

## **B. D.C. Circuit Precedent**

Before seeking rehearing in this case, Sierra Club petitioned the D.C. Circuit for review of five long-term LNG export authorizations issued by DOE/FE under NGA section 3(a)—the same type of authorization as Order No. 4028. In those individual cases, Sierra Club challenged DOE/FE's approval of U.S. LNG exports from projects proposed or operated by the following authorization holders: Freeport LNG Expansion, L.P., *et al.*; Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*

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<sup>29</sup> *See id.* at 145-60.

<sup>30</sup> U.S. Dep't of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014); *see also* Delfin Order at 7, 90-100.

<sup>31</sup> Sierra Club Rehearing Request at 2-3.

<sup>32</sup> *See id.* at 3.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> *See id.* at 19-21.

The D.C. Circuit subsequently denied four of the five petitions for review: one in a published decision issued on August 15, 2017 (*Freeport*),<sup>35</sup> and three in a consolidated, unpublished opinion issued on November 1, 2017.<sup>36</sup> In the unpublished opinion, the Court stated that its “decision in *Freeport* largely governs the resolution of the instant cases,” leaving “three narrow issues” raised by Sierra Club that it likewise rejected in DOE’s favor.<sup>37</sup> Sierra Club did not seek further judicial review of either decision. In January 2018, Sierra Club voluntarily withdrew its fifth and remaining petition for review.<sup>38</sup>

In *Freeport*, the D.C. Circuit concluded that DOE/FE complied with both NEPA and the NGA in issuing the LNG export authorization in that case. First, in rejecting Sierra Club’s principal NEPA argument, the Court found that DOE “offered a reasonable explanation as to why it believed the indirect effects pertaining to increased [natural] gas production were not reasonably foreseeable.”<sup>39</sup> The Court thus held that, “[u]nder our limited and deferential review, we cannot say that the Department failed to fulfill its obligation under NEPA by declining to make specific projections about environmental impacts stemming from specific levels of export-induced [natural] gas production.”<sup>40</sup>

Second, in reviewing Sierra Club’s claims under the NGA, the Court found that Sierra Club “repeats the same argument it made to support its NEPA claim—namely, that the Department arbitrarily failed to evaluate foreseeable indirect effects of exports.”<sup>41</sup> Having

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<sup>35</sup> *Sierra Club vs. U.S. Dep’t of Energy*, 867 F.3d 189 (Aug. 15, 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., *et al.*).

<sup>36</sup> *Sierra Club v. U.S. Dep’t of Energy*, Nos. 16-1186, 16-1252, 16-1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*, respectively).

<sup>37</sup> *Id.* at 2.

<sup>38</sup> *See Sierra Club v. U.S. Dep’t of Energy*, No. 16-1426, Per Curiam Order (Jan. 30, 2018) (granting Sierra Club’s unopposed motion for voluntarily dismissal).

<sup>39</sup> *Sierra Club*, 867 F.3d at 198.

<sup>40</sup> *Id.* at 201.

<sup>41</sup> *Id.* at 203.

“already rejected this argument” under NEPA, the Court determined that “Sierra Club offers no basis for reevaluating the scope of DOE’s evaluation for purposes of the Natural Gas Act.”<sup>42</sup> In sum, the Court held that “Sierra Club has given us no reason to question the Department’s judgment that the [*Freeport*] application is not inconsistent with the public interest.”<sup>43</sup>

In its Request for Rehearing of Order No. 4028, Sierra Club presents substantially the same arguments that it raised in the *Freeport* case and in its other petitions for review described above. Accordingly, in light of the D.C. Circuit’s decision in *Freeport*, as well as the Court’s consolidated, unpublished opinion issued on November 1, 2017, we have determined that the Court’s conclusions and reasoning control Sierra Club’s arguments in this proceeding.<sup>44</sup>

### III. CONCLUSION

We find that it has not been shown that a grant of the requested authorization is inconsistent with the public interest. We further find the D.C. Circuit’s decisions in *Freeport* and the related cases are controlling precedent in this proceeding. We therefore dismiss Sierra Club’s arguments, and affirm our previous finding that Delfin’s Application should be granted subject to the terms and conditions set forth in DOE/FE Order No. 4028.

### IV. ORDER

Pursuant to sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, in DOE/FE Order No. 4028, the Record of Decision, and *Sierra Club v. U.S. Dep’t of Energy*,

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> The D.C. Circuit cases involved liquefaction facilities and export terminals subject to FERC jurisdiction under the NGA. In this case, MARAD has jurisdiction over Delfin’s proposed Liquefaction Facility under the Deepwater Port Act of 1974, but we find that the Court’s conclusions and reasoning are equally applicable based on both DOE’s decision-making under NGA section 3(a) and the arguments raised by Sierra Club in this proceeding.

it is ordered that Sierra Club's Request for Rehearing is denied.

Issued in Washington, D.C., on April 3, 2018.

A handwritten signature in black ink, appearing to read "Steve Winberg", is written above a horizontal line. To the right of the signature, the number "101" is written.

Steven E. Winberg  
Assistant Secretary  
Office of Fossil Energy