

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

FREEPORT LNG DEVELOPMENT, L.P.

FE DOCKET NO. 13-51-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS BY VESSEL

DOE/FE ORDER NO. 3317

JULY 19, 2013

I. SUMMARY

Following an examination of all record evidence in this proceeding in conformity with the requirements of section 3 of the Natural Gas Act, 15 USC 717b, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) (NGA); part 590 of DOE's regulations, 10 CFR part 590 (2008); and applicable delegations and redelegations of authority,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the April 19, 2013, application of Freeport LNG Development, L.P. (Freeport LNG).

The authorization permits Freeport LNG to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources, in a cumulative amount up to the equivalent of 24 billion cubic feet (Bcf) of natural gas on a short term or spot market basis over a two-year period commencing on July 19, 2013.² Freeport LNG is authorized to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Freeport LNG is also authorized to export this LNG to which it holds title on its own behalf and as agent for others who hold title at the time of export, after registering the other entity with DOE/FE. This authorization permits such exports on a short-term or spot market basis from the existing Freeport LNG Terminal facilities on Quintana Island, Texas. The authorization provided by this Order will not permit the export of domestically produced LNG.

II. PROCEDURAL HISTORY

Freeport LNG filed the "Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis" (Application) with FE on April 19, 2013. The Application

¹ See, DOE Delegation Order No. 00-002.00L (Apr. 29, 2011), and DOE Redelegation Order No. 00-002.04E (Apr. 29, 2011).

² Freeport LNG's previous blanket authorization to export LNG was granted in DOE/FE Order No. 2986 on July 19, 2011, and extended through July 18, 2013.

was submitted pursuant to section 3 of the NGA and part 590 of DOE's regulations. On June 12, 2013, DOE/FE published a Notice of Application (Notice) in the Federal Register. 78 FR 35263. The Notice stated that comments, protests, motions, and notices to intervene, and requests for additional procedures would be due no later than July 12, 2013. DOE/FE received no filings in response to the Notice.

III. BACKGROUND

Freeport LNG is a Delaware limited partnership with four limited partners: (1) Freeport LNG Investments, LLP, a Delaware limited liability limited partnership, which owns a 20% limited partnership interest in Freeport LNG; (2) ZHA FLNG Purchaser LLC, a Delaware limited liability company, which owns a 55% limited partnership interest in Freeport LNG; (3) Texas LNG Holdings, LLC, a Delaware limited liability company and wholly-owned subsidiary of The Dow Chemical Company, which owns a 15% limited partnership interest in Freeport LNG; and (4) Turbo LNG, LLC, a Delaware limited liability company and wholly-owned subsidiary of Osaka Gas Co., Ltd., which owns a 10% limited partnership interest in Freeport LNG. In addition to the limited partners, Freeport LNG has one general partner that manages the company, Freeport LNG-GP, Inc., a Delaware corporation, which is owned 50% by MS GP Holdco, LLC, an entity owned by an individual, Michael S. Smith, and 50% by ConocoPhillips Company. Freeport LNG has its principal place of business in Houston, Texas. On June 18, 2004, the Federal Energy Regulatory Commission (FERC) authorized Freeport LNG to site, construct and operate the Freeport LNG Terminal on Quintana Island, southeast of the City of Freeport in Brazoria County, Texas. The facilities, completed in June 2008, include an LNG ship marine terminal and unloading dock, LNG transfer lines and storage tanks, high-pressure vaporizers, and a 9.6-mile long send-out pipeline extending to the Stratton Ridge meter station.³

³ See *Freeport LNG Development, L.P.*, 107 FERC ¶ 61,278, (2004), *order granting rehearing and clarification*, 108 FERC ¶ 61,253 (2004), *order amending Section 3 authorization*, 112 FERC ¶ 61,194 (2005), *order issuing authorization*, 116 FERC ¶ 61,290 (2006).

On July 1, 2008, FERC issued a letter Order granting Freeport LNG's request to commence service at its Quintana Island import terminal. On May 6, 2009, FERC authorized certain equipment modifications at the Quintana Island LNG terminal in Brazoria County, Texas as required to enable the loading and export of foreign sourced LNG.⁴

On May 28, 2009, in DOE/FE Order No. 2644, DOE/FE granted Freeport LNG authorization to export previously imported foreign-sourced LNG, on its own behalf or as an agent for others, up to a cumulative total equivalent to 24 Bcf of natural gas from the Freeport LNG Terminal to certain countries in Europe and Asia for a two-year period that extended through May 27, 2011. In amendments set forth in DOE/FE Order Nos. 2644-A and 2644-B, Freeport LNG was authorized to export this LNG to any country not prohibited by U.S. law that has capacity to import LNG via ocean-going carrier.

On July 19, 2011, in DOE/FE Order No. 2986, DOE/FE extended this authorization for an additional two years. Specifically, DOE/FE granted Freeport LNG blanket authorization to export previously imported foreign-sourced LNG, on its own behalf or as agent for others, up to a cumulative total equivalent to 24 Bcf of natural gas from the Freeport LNG Terminal for an additional two-year period that extends through July 18, 2013, to any country with the capacity to import LNG via ocean-going carrier and with which trade was not prohibited by U.S. law or policy.

Current Application

In the current Application, Freeport LNG is seeking blanket authorization beginning July 19, 2013, to export for itself, and as agent for others who hold title to the LNG at the time of export, LNG that has been previously imported from foreign sources to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S.

⁴ Freeport LNG Development, L.P., 127 FERC § 61,105 (May 6, 2009).

law or policy. Freeport LNG is seeking to export this LNG from the Freeport LNG Terminal, over a two-year period, in a cumulative amount up to the equivalent of 24 Bcf of natural gas. Freeport LNG states that it does not seek authorization to export domestically-produced natural gas or LNG.

Freeport LNG asserts that the proposed authorization is in the public interest. In support of its Application, Freeport LNG states that section 3 of the NGA provides that application to export natural gas to foreign countries will be authorized unless there is a finding that such exports “will not be consistent with the public interest.”⁵ Freeport LNG states that Section 3 thus creates a statutory presumption in favor of approval of this application, and that parties opposing the authorization bear the burden of overcoming this presumption.

Freeport LNG states that, in its existing authorization to export foreign-sourced LNG granted in Order 2986, DOE/FE determined that there was no domestic reliance on the volumes of imported LNG that Freeport LNG sought to export. As before, the imported LNG that Freeport LNG seeks to export will be surplus to the demands of U.S. markets during the period of requested authorization, and is needed primarily to enable Freeport LNG to economically maintain and operate its Quintana Island terminal. Freeport LNG asserts that, as there is no reliance on domestic supplies, the requested authorization is not inconsistent with the public interest. Freeport LNG further asserts that this proposed authorization meets the requirements of DOE Delegation Order No. 0204-111, which requires “consideration of the domestic need for the gas to be exported.”⁶

Freeport LNG states that the authorization requested will provide commercial flexibility to help ensure the full and continual operation of its LNG import facilities at the Quintana Island

⁵ 15 U.S.C. § 717b(a). Natural gas is defined to include LNG in 10 C.F.R. § 590.102(i).

⁶ New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

terminal. Freeport LNG further states that the proposed export of foreign-sourced LNG will not reduce local or domestic supplies of natural gas.

Freeport LNG emphasizes that the requested authorization will ensure the operational readiness of essential infrastructure at its Quintana Island terminal. Freeport LNG states that, if the continuous cryogenic operations of the terminal facility were interrupted, it would require several weeks to restore the system to operational readiness. Furthermore, if operations were interrupted, Freeport LNG and its Quintana Island terminal would be unable to respond to changes in U.S. natural gas market conditions should those occur. For these reasons, Freeport LNG asserts that ensuring the continuing operation of essential U.S. energy infrastructure is consistent with the public interest.

Freeport LNG states that DOE/FE has issued a number of blanket authorizations, including the blanket authorization recently granted to Eni USA Gas Marketing, LLC (DOE/FE Order No. 3247) on March 5, 2013, which allows the export of previously-imported LNG, finding that such LNG is not needed to meet domestic demand for natural gas.⁷

Freeport LNG provides a further detailed discussion of the public interest standard in the Application and asserts that the requested authorization is consistent with the public interest and the Application, therefore, should be granted.

IV. DECISION

A. Standard of Review

Pursuant to the transfer of authorities under sections 301(b) and 402 of the DOE Organization Act, 42 USC 7151(b) and 42 USC 7172, DOE/FE is responsible for evaluating the instant application under section 3 of the NGA. Section 3(a) provides:

⁷ *EniUSA Gas Marketing LLC*, DOE/FE Order No. 3247 (March 5, 2013).

[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] 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 USC 717b(a).

In evaluating an export application under section 3, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111, which focuses primarily on domestic need for the gas to be exported, as described in the Secretary's natural gas policy guidelines,⁸ and any other matters determined to be appropriate to a determination of the public interest. Section 3(a) creates a rebuttable presumption that a proposed export of natural gas is in the public interest, and DOE must grant such an application unless those who oppose the application overcome that presumption.⁹ In addition, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Domestic Need

The instant application involves a request for authorization to export LNG that was not produced in the United States. Accordingly, exporting the natural gas will not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG will still affect the domestic market because, for a two-year period, the exports will reduce the volume of natural gas potentially available for domestic consumption.

⁸ See 49 FR 6684, February 22, 1984.

⁹ As we observed in Order No. 1473, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, 2 FE ¶70,317, in order to overcome the rebuttable presumption favoring export authorizations, opponents of an export license must make an affirmative showing of inconsistency with the public interest. Order No. 1473, note 42 at 13, citing *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (DC Cir. 1987).

DOE/FE has issued recent blanket authorizations to export previously imported LNG¹⁰ and in each case cited authoritative data that indicates that United States consumers presently have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices. DOE takes administrative notice that an analysis prepared by the Energy Information Administration (EIA) within DOE in the Annual Energy Outlook 2013, issued in May 2013 (*AEO 2013*), shows annual domestic dry natural gas production increasing from 21.33 trillion cubic feet (Tcf) in 2010, to a projection of 26.61 Tcf by 2020¹¹, an annual increase of 5.28 Tcf. Consumption over this period increases only 2.54 Tcf annually (from 23.78 to 26.32 Tcf). As a result, the EIA shows that while the United States experienced net natural gas imports of 2.60 Tcf in 2010, by 2020 the United States will be experiencing net exports of 0.14 Tcf. The *AEO2013* also shows that Henry Hub natural gas prices were \$4.46 per million Btu in 2010 but this price is projected to decline to \$4.13 per million Btu in 2020 (in 2011 dollars). Inasmuch as domestic natural gas production levels are projected to increase by an amount that well exceeds the amount of gas proposed for export in the Application, even while the level of imports and domestic gas prices are both projected to fall, we find that United States consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG seeks to export.

C. Agency Rights

As described above, Freeport LNG requests authorization to export LNG on its own behalf or as agent for others. DOE/FE addressed the issue of agency rights in *Freeport LNG*

¹⁰ *Sempra LNG Marketing, LLC*, DOE/FE Order No. 3231 (February 13, 2013); *Chevron U.S.A. Inc.*, DOE/FE Order No. 3221 (January 4, 2013); *The Dow Chemical Company*, DOE/FE Order No. 3162 (October 11, 2012); *Cheniere Marketing, LLC*, DOE/FE Order No. 3102 (June 7, 2012).

¹¹ EIA *AEO 2013*, Table A13, p. 147.

Expansion, L.P. and FLNG Liquefaction, LLC, DOE/FE Order No. 2913 (Order 2913), issued February 10, 2011. In Order 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to register each LNG title holder for whom FLEX sought to export LNG as agent. This proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *The Dow Chemical Company*,¹² 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 reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*, DOE/FE Order No. 3163 (Order 3163).¹³ In Order No. 3163, , DOE/FE confirmed that in LNG export orders in which agency rights have been granted that it 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.

We find that the same policy considerations that supported DOE/FE's acceptance of alternative registration in Order 2913 and Order 3163 apply here as well. Accordingly, the authorization granted herein shall require that where Freeport LNG proposes to export as agent for others, Freeport LNG will register those companies in accordance with the procedures and requirements described herein.

D. Other Public Interest Considerations

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. However, consistent with DOE's Guidelines and applicable precedent, *e.g.*, Order No. 1473, the Department considers the potential effects of proposed

¹² *The Dow Chemical Company*, DOE/FE Opinion and Order No. 2859 (FE Docket No. 10-57-LNG), October 5, 2010, at p. 7 and 8.

¹³ *Gulf Coast LNG Export, LLC (Gulf Coast)*, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Proposed Brownsville Terminal to Free Trade Agreement Nations, DOE/FE Order No. 3163, FE Docket No. 12-05-LNG, October 16, 2012.

exports on other relevant aspects of the public interest. The other considerations in this case include the environment.

E. The Environment

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the Application, Freeport LNG states that no changes to the Freeport LNG Terminal on Quintana Island would be required in order for Freeport LNG to export LNG from that facility. Under these circumstances, DOE's NEPA procedures provide for a categorical exclusion for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.¹⁴ Accordingly, DOE issued a Categorical Exclusion Determination, dated June 26, 2013, which found that the Freeport LNG proposed action is categorically excluded from further NEPA review.

F. Conclusion

After due consideration based on all facts and evidence of record, DOE/FE finds that a grant of the Application is not inconsistent with the public interest. In particular, the record shows there is sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on the previously imported LNG which Freeport LNG seeks to export through the authorization timeframe; and this Application falls under a DOE categorical exclusion such that no new EA or EIS will be required. Therefore, DOE/FE will grant the Application.

¹⁴ "Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction." 10 CFR Part 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusions in B5.7.

ORDER

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

A. Freeport LNG is authorized to export LNG that previously had been imported from foreign sources in a cumulative amount up to the equivalent of 24 Bcf of natural gas pursuant to transactions that have terms of no longer than two years. This authorization shall be effective for a two-year term beginning on July 19, 2013, and extending through July 18, 2015.

B. This LNG may be exported from the Freeport LNG Terminal to any country with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy.

C. Freeport LNG is permitted to use its authorization in order to export LNG on its own behalf or on behalf of or as agent for others, after registering the other party with DOE/FE.

D. Freeport LNG, or others for whom Freeport LNG acts as agent, shall include the following provision in any 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 with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy, 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 Freeport LNG that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Freeport LNG is made aware of all such actual destination countries."

E. As a condition of this authorization, Freeport LNG shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Freeport LNG 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.

F. Registration materials shall include an acknowledgement and agreement by the registrant to supply Freeport LNG with all information and copies of contracts necessary in order to permit Freeport LNG 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 CFR 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) an acknowledgement and agreement by the registrant to include the Ordering Paragraph D provision in any contract for the sale or transfer of LNG exported pursuant to this Order.

G. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

H. **Monthly Reports:** With respect to the export of LNG authorized by this Order, Freeport LNG shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. Monthly reports must be filed whether or not initial deliveries have begun. If no exports have been made, a report of "no activity" for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the

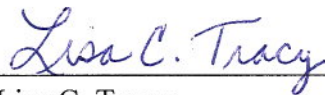
name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG tanker; (4) the date of departure from the U.S. export terminal; (5) the country of destination into which the exported LNG was actually delivered; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser (s).

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

I. The first monthly report required by this Order is due not later than August 30, 2013, and should cover the reporting period from July 19, 2013, through July 31, 2013.

J. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, 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 July 19, 2013.



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