

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

ANNOVA LNG, LLC

)
)
)
FE DOCKET NO. 13-140-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PROPOSED ANNOVA LNG TERMINAL
IN BROWNSVILLE, TEXAS, TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3394

FEBRUARY 20, 2014

I. DESCRIPTION OF REQUEST

On October 9, 2013, Annova LNG, LLC (Annova) filed an application (Application) with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)¹ for long-term, multi-contract authorization to export liquefied natural gas (LNG) produced from domestic sources in a volume equivalent to approximately 342 billion cubic feet per year (Bcf/yr) of natural gas, or 0.94 Bcf per day (Bcf/d). Annova seeks authorization to export the LNG for a 30-year term from a proposed greenfield LNG liquefaction project to be located at the Port of Brownsville in Brownsville, Texas (Annova Terminal or Project). On October 29, 2013, Annova filed a Supplement to its Application (Supplement) providing additional information, as discussed below.

Annova seeks to export this LNG by vessel from the proposed Annova Terminal to any country with which the United States currently has, or in the future will have, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas,² and with which trade is not prohibited by U.S. law or policy (FTA countries).³ Annova seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. Annova requests that this authorization commence on the earlier of the date of first export or eight years from the date the authorization is issued (*i.e.*, February 20, 2022).

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04F, issued on July 11, 2013.

² The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

³ In its Application and Supplement, Annova states that it also intends to file an application seeking authorization to export LNG from the Project to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. § 717b(a), but as of the date of this Order, it has not yet requested that separate authorization.

II. BACKGROUND

Description of Application and Liquefaction Project. Annova is a Delaware limited liability company with its principal place of business in Houston, Texas. In the Supplement to its Application, Annova states that it owns 100% of the membership interests in Annova, and is not affiliated with any other entity.

Annova states that, on September 4, 2013, Annova and the Brownsville Navigation District of Cameron County, Texas, executed an “Option to Lease” 295 acres of land with the Port of Brownsville, Texas, for the development of the Annova Terminal.⁴ In the Supplement to its Application, Annova provided DOE/FE with a copy of the Option to Lease in both a non-redacted form under seal and a redacted copy for public posting.

Annova states that, through one or more affiliates, it intends to develop the Annova Terminal in three stages. Each stage will be capable of producing up to 2.33 metric tons per annum (mtpa) of LNG, for a total production capacity of 7.0 mtpa of LNG across all three stages.

Annova states that the Project’s liquefaction trains will be connected to floating storage units, each capable of storing up to 178,000 cubic meters of LNG and delivering LNG to off-taking carriers utilizing a ship-to-ship transfer process. According to Annova, the floating storage units will be harbored in an on-site marine basin that will provide berthing and loading for LNG carrier ships. Annova states that the proposed Terminal will be connected to the domestic market through a header pipeline approximately 60 miles long, to be constructed by a third party or possibly an affiliate of Annova. The pipeline is expected to interconnect with multiple interstate and intrastate pipeline grids, which Annova states may include Texas Eastern Transmission, LP; Tennessee Gas Pipeline Company, L.L.C.; Enterprise Products Partners L.P.; and Kinder Morgan Tejas Pipeline LLC.

⁴ The proposed location of the Annova Terminal is depicted in Annova’s Application, Appendix C.

Source of Natural Gas. Annova seeks authorization to export natural gas available in the United States natural gas supply and transmission system. Annova states that the sources of natural gas for the Project will include the vast supplies of gas available from the Gulf Coast producing regions. Annova states that the Annova Terminal will have the potential to access the four major natural gas pipelines described above, with indirect access to the entire national gas pipeline grid. Annova states that the region's resources will provide more than sufficient quantities of natural gas to support the proposed LNG exports over the term of the requested authorization.

Business Model. As stated above, Annova requests this authorization on its own behalf and as agent for other entities who hold title to the LNG at the time of export pursuant to long-term tolling agreements (LTAs) with Annova. Annova states that it will comply with all DOE/FE requirements for exports and agents, including registration requirements. Annova further states that, when acting as agent, it will register with DOE/FE each LNG title holder for which Annova seeks to export LNG as agent, and will comply with other registration requirements as set forth in recent DOE/FE orders, such as *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331.⁵

Annova asserts that the long-term authorization requested in its Application is necessary to permit it to incur the substantial capital and other costs of developing the Annova Terminal and to secure customer contracts. Annova further states that the terms for the use of the liquefaction and other facilities will be set forth in agreements with customers of the Project.

⁵ App. at 3-4 (citing *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Cove Point LNG Terminal to Non-Free Trade Agreement Nations, at 152-54 (Sept. 11, 2013)).

III. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications authorizing (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas, and (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. This Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the Application without modification or delay.⁶

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

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

(4) As described above, Annova requests authorization to export LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,⁷ which granted Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) authority to

⁶ DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590, are applicable only to applications seeking to export natural gas, including LNG, to countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

⁷ *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

export LNG to FTA countries. In that order, DOE/FE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE/FE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *The Dow Chemical Company*,⁸ which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE/FE reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*.⁹ 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 titleholder (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.¹⁰

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

(5) Section 590.202(b) of DOE's regulations requires applicants to supply transaction specific factual information "to the extent practicable."¹¹ Additionally, DOE regulations at 10 C.F.R. Part 590.202(e) allow confidential treatment of the information supplied in support of or

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

⁹ *Gulf Coast LNG Export, LLC*, DOE/FE Order No. 3163, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Proposed Brownsville Terminal to Free Trade Agreement Nations (Oct. 16, 2012).

¹⁰ See *id.* at 7-8.

¹¹ 10 C.F.R. § 590.202(b).

in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.¹²

(6) DOE/FE will require that Annova file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Annova exports LNG as agent for a Registrant once they have been executed. DOE/FE finds that the submission of all such agreements or contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” 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, such as a long-term contract involving LNG stored or liquefied at the Project.

(7) DOE/FE also will require Annova to file any long-term contracts Annova enters into providing for the long-term export of LNG on its own behalf from the Project. DOE/FE finds that the submission of these contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations¹³ requires that Annova file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Project within 30 days of their execution that either Annova or the Registrant enters into.

(9) DOE/FE recognizes that some information in Annova’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts

¹² *Id.* § 590.202(e).

¹³ *Id.* § 590.202(c).

associated with the long-term supply of natural gas to the Project may be commercially sensitive. DOE/FE therefore will provide Annova the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Annova 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.

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

ORDER

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

A. Annova is authorized to export domestically produced LNG by vessel from the proposed Annova Terminal, to be located in Brownsville, Texas. The volume authorized in this Order is equivalent to approximately 342 Bcf/yr of natural gas for a 30-year term, beginning on the earlier of the date of first export or eight years from the date the authorization is issued (*i.e.*, February 20, 2022). Annova is authorized to export this LNG on its own behalf or as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore, and to any nation with which the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via ocean going vessels. FTA countries are currently identified by DOE/FE at:

<http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. Annova shall ensure that all transactions authorized by this Order are permitted and lawful under U.S. laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (i) Annova shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for other entities from the Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Annova 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, Annova 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, Annova shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Annova shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Annova 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, Annova 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, Annova shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Annova shall include, and require others for whom Annova acts as agent to include, the following provision in any agreement or other contract for the sale or transfer of LNG exported pursuant to this Order:

“Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 3394, issued February 20, 2014 in FE Docket No. 13-140-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 Annova 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 Annova LNG, LLC is made aware of all such actual destination countries.”

F. Annova is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other entities with DOE/FE. Registration materials shall include an

acknowledgement and agreement by the Registrant to supply Annova with all information necessary to permit Annova to register that person or entity with DOE/FE, including: (1) the Registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 C.F.R. Part 590, including but not limited to destination restrictions; (2) the exact legal name of the Registrant, state/location of incorporation/registration, primary place of doing business, and the Registrant's ownership structure, including the ultimate parent entity if the Registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the Registrant to whom inquiries may be directed; (4) within 30 days of execution, a copy, of any long-term contracts, not previously filed with DOE/FE, described in Ordering Paragraph D of this Order.

G. 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).

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

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

J. Annova shall file with the Office of Oil and Gas Global Security and Supply, on a semi-annual basis, written reports describing the progress of the Project. The reports shall be

filed on or by April 1 and October 1 of each year, and shall include information on the progress of the Project, the date the facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

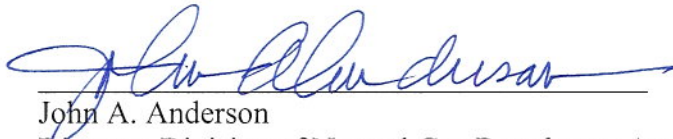
K. Prior to any change in control of the authorization holder, Annova must obtain the approval of the Assistant Secretary for Fossil Energy. For purposes of this Ordering Paragraph, a “change of control” shall include any change, directly or indirectly, of the power to direct the management or policies of Annova, 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.

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Annova shall file with the Office of Oil and Gas Global Security and Supply, 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 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; (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)

K. 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 February 20, 2014.

A handwritten signature in blue ink, appearing to read "John A. Anderson", written over a horizontal line.

John A. Anderson
Director, Division of Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Oil and Natural Gas