

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

FREEPORT LNG EXPANSION, L.P. AND
FLNG LIQUEFACTION, LLC

)
)
)
)
FE DOCKET NO. 12-06-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE FREEPORT LNG TERMINAL
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3066

FEBRUARY 10, 2012

I. DESCRIPTION OF REQUEST

On January 12, 2012, Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX), 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 domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of 511 billion cubic feet (Bcf) per year of natural gas, equal to 1.4 Bcf/day (Bcf/d), from the Freeport LNG Terminal on Quintana Island, Texas, for a 25-year term. FLEX seeks to export LNG by vessel 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, and that currently has, or in the future develops, the capacity to import LNG via ocean-going carriers.² FLEX contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTA), under which individual customers who hold title to natural gas will have the right to deliver that gas to FLEX and receive LNG. FLEX seeks to export this LNG on its own behalf and also as agent for third parties. FLEX requests that this authorization commence on the earlier of the date of first export or eight years from the date the authorization is issued (February 10, 2020).

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. 00-002.04E issued on April 29, 2011.

²/ The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Jordan, Mexico, Morocco, Oman, Peru, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas. FTAs with Colombia, South Korea, and Panama have been ratified by Congress but have not yet taken effect.

The Application is filed independent of, and in addition to, FLEX's prior application filed with DOE/FE under Docket No. 10-160-LNG to export domestically produced LNG to FTA countries.³

II. BACKGROUND

Freeport LNG Expansion, L.P. (FLNG Expansion) is a Delaware limited partnership, which has its principal place of business in Houston, Texas. It is a wholly owned subsidiary of Freeport LNG Development, L.P. (FLNG Development). FLNG Liquefaction, LLC (FLNG Liquefaction) is a Delaware limited liability company which has its principal place of business in Houston, Texas. It is a wholly owned subsidiary of FLNG Expansion.

FLEX, through one or more of its subsidiaries, intends to develop, own and operate natural gas liquefaction facilities to receive and liquefy domestic natural gas for export (Liquefaction Project) to foreign markets, pursuant to the export sought herein. The Liquefaction Project facilities will be integrated into the existing Freeport Terminal, and is in addition to a separate liquefaction project proposed at the same terminal for substantially the same volume in DOE/FE Docket No's 10-160-LNG and 10-161-LNG. The Freeport Terminal presently consists of a marine berth, two 160,000 cubic meter full containment LNG storage tanks, LNG vaporization systems, associated utilities and a 9.6-mile pipeline and meter station.

FLEX states they intend to expand the terminal to provide natural gas pretreatment, liquefaction, and export capacity of up to 511 Bcf per year, which averages to 1.4 Bcf/d, of natural gas. The facility will be designed so that the addition of liquefaction capability will not

³ On December 17, 2010, FLEX filed two applications to export domestically produced LNG from a proposed liquefaction project at the Freeport Terminal capable of producing LNG from domestic resources up to the equivalent of 1.4 Bcf/d of natural gas. The first of these applications (DOE/FE Docket No. 10-160-LNG), which requested long-term authorization to export LNG to FTA countries, was granted by DOE/FE in Order No. 2913 on February 10, 2011. The second application (DOE/FE Docket No. 10-161-LNG), which requested long-term authorization to export LNG to countries with which the United States does not have an FTA, is still pending before DOE/FE. Both applications sought to each export the entire capacity of the proposed facility.

preclude the Freeport Terminal from operating in vaporization and send-out mode. FLEX states that although this Application requests authorization substantially similar to the application to export domestically produced LNG to FTA countries, approved in DOE/FE Order No. 2913, issued February 10, 2011 in Docket No. 10-160-LNG, this is a wholly separate application.⁴ As a result, the total of the liquefaction capacity at the Freeport Terminal available for export under both this Application and the prior application in Docket 10-160-LNG is 2.8 Bcf/d. FLEX further states that demand for liquefaction capacity has been significant since it filed its initial export application one year ago, and it expects to secure long-term contracts for the additional liquefaction and export of the equivalent of 1.4 Bcf/d of natural gas included in this Application. On December 19, 2011, FLEX filed an application to export the same volumes of domestically produced LNG covered by the instant Application (up to the equivalent of 1.4 Bcf/d) to non-FTA countries. That application is currently pending before DOE/FE in Docket 11-161-LNG.

In support of the instant Application, FLEX states that rather enter into long-term natural gas supply or LNG export contracts, it contemplates that its business model will be based primarily on LTAs, under which individual customers who hold title to natural gas will have the right to deliver that gas to FLEX and receive LNG. FLEX further states that in the current natural gas market, LTAs fulfill the role previously performed by long-term supply contracts, in that they provide stable commercial arrangements between companies involved in natural gas services.

FLEX states that the source of natural gas supply will be the general United States natural gas market, including natural gas produced from shale deposits. Service contracts such as LTAs will fulfill the role historically played by long-term supply agreements, and each LTA customer will rely on its own sources within the general United States gas market. FLEX has not yet

⁴ See note 3 *supra*.

entered into LTAs or other long-term supply or export contracts, but FLEX and its LTA customers will file their commercial arrangements under seal with DOE/FE once they have been executed.⁵ DOE/FE has previously found that this commitment conforms to the requirements of 10 C.F.R. § 590.202(b), which calls upon applicants to supply transaction-specific information “to the extent practicable”.⁶

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 to authorize (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a free trade agreement 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. The instant Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the Application without modification or delay.⁷

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

⁵ The practice of filing of contracts after the DOE/FE has granted export authorization is well established. See *Yukon Pacific Corp.*, ERA Docket No. 87-68-LNG, Order No. 350 (November 16, 1989); *Distrigas Corp.*, FE Docket No. 95-100-LNG, Order No. 1115, at 3 (November 7, 1995).

⁶ *Sabine Pass Liquefaction, LLC*, FE Docket 10-85-LNG, Order No. 2833 (September 7, 2010). 10 C.F.R. 590.202(b) requests certain information, “to the extent applicable”, and “supported to the extent practicable by necessary data or documents”, regarding the source and security of the natural gas supply proposed for export, including contract volume and a description of the specific gas reserves supporting the project during the time of the requested export authorization.

⁷ DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 CFR 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 free trade agreement requiring national treatment for trade in natural gas.

(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, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore.

(4) DOE/FE addressed the issue of agency rights in *Freeport LNG 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 *Dow Chemical*,⁸ which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. The same policy considerations that supported DOE/FE's acceptance of the alternative proposal in Order 2913 apply here as well. The authorization granted herein shall be conditioned to require that where FLEX proposes to export as agent for others, FLEX must register those companies in accordance with the procedures and requirements described herein.

ORDER

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

A. FLEX is authorized to export domestically produced LNG by vessel from the Freeport LNG Terminal on Quintana Island, Texas, up to the equivalent of 511 Bcf per year of natural gas for a 25-year term, beginning on the earlier of the date of first export or eight years

⁸ *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.

from the date the authorization is issued (February 10, 2020), pursuant to one or more long-term contracts, including LTAs, with third parties that do not exceed the term of this authorization.

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore, and to any nation that 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 ocean going vessels. FTA countries are currently identified by DOE/FE at: <http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. FLEX shall ensure that all transactions authorized by this order are permitted and lawful under United States 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. FLEX shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts, including LTAs, associated with the long-term export of LNG from the Freeport LNG Terminal within 30 days of their execution. FLEX shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts associated with the long-term supply of natural gas to the Freeport LNG Terminal with the intent to process this natural gas into LNG for export within 30 days of their execution.

E. FLEX 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 identified in Ordering Paragraph B of

DOE/FE Order No. 3066, issued February 10, 2012 in FE Docket No. 12-06-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 FLEX 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 FLEX is made aware of all such actual destination countries."

F. FLEX is permitted to use its authorization in order to export LNG on behalf of or as agent for others, after registering the other party with DOE/FE. Registration materials shall include an acknowledgement and agreement by the registrant to supply FLEX with all information necessary to permit FLEX 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; (4) within 30 days of execution, a copy, filed with DOE/FE under seal, of any long-term contracts, including processing agreements, that result in the export of natural gas, including LNG; and (5) within 30 days of execution by a person or entity required by this Order to register, a copy, filed with DOE/FE under seal, of any long term contracts associated with the long-term supply of natural gas to the Freeport LNG Terminal with the intent to process this natural gas into LNG for export pursuant to this authorization.

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. Within two weeks after the first export of domestically produced LNG occurs from the Freeport LNG Terminal, FLEX shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

I. FLEX shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the planned liquefaction facility 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 FLEX Terminal liquefaction facility, 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.

J. Monthly Reports: With respect to the LNG exports authorized by this Order, FLEX 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. 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 Natural Gas Regulatory Activities, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at Yvonne.caudillo@hq.doe.gov or ngreports@hq.doe.gov, or may be faxed to Ms. Caudillo at (202) 586-6050.

Issued in Washington, D.C., on February 10, 2012.

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

John A. Anderson
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy