

RECEIVED

By Docket Room at 3:03pm, Sept. 13, 2019

Mitsui & Co. Cameron LNG Sales LLC

Post Oak Boulevard, Suite 1900, Houston, TX 77056

September 13, 2019

VIA E-MAIL

Ms. Amy Sweeney
Director, Division of Natural Gas Regulation
Office of Fossil Energy FE-34
U.S. Department of Energy
1000 Independence Avenue, SW
Room 3E-052
Washington, DC 20585

Re: *Cameron LNG, LLC*, FE Docket Nos. 11-145-LNG, 11-162-LNG, 14-204-LNG & 15-67-LNG
TO BE FILED UNDER SEAL

Dear Ms. Sweeney:

Cameron LNG, LLC ("Cameron LNG") has received: (1) long-term, multi-contract authority to export liquefied natural gas ("LNG") to nations with whom the United States has not entered into a Free Trade Agreement requiring the national treatment for trade in natural gas, *Cameron LNG, LLC*, DOE/FE Order No. 3391-A, FE Docket No. 11-162-LNG (Sept. 10, 2014) ("Order No. 3391-A") and *Cameron LNG, LLC*, DOE/FE Order No. 3797, FE Docket No. 15-67-LNG (Mar. 18, 2016) ("Order 3797"); and (2) long-term, multi-contract authority to export LNG to nations with whom the United States has entered into a Free Trade Agreement requiring the national treatment for trade in natural gas, *Cameron LNG, LLC*, DOE/FE Order No. 3059, FE Docket No. 11-145-LNG (Jan. 17, 2012) ("Order No. 3059"), *Cameron LNG, LLC*, DOE/FE Order No. 3059-A, FE Docket No. 11-145-LNG (Aug. 13, 2018) ("Order No. 3059-A") and *Cameron LNG, LLC*, DOE/FE Order No. 3620, FE Docket No. 14-204-LNG (Apr. 9, 2015) ("Order No. 3620"). Under Order Nos. 3391-A, 3797, 3059, 3059-A and 3620 (the "Orders"), Cameron LNG may export LNG on behalf of others who have met certain regulatory requirements, such persons being referred to as "Registrants."

Mitsui & Co. Cameron LNG Sales LLC ("MITCLS") has executed a long-term contract with Cameron LNG for liquefaction and regasification services to be provided by Cameron LNG, LLC and, as such, is a potential Registrant under the Orders. Based on its review of applicable orders and discussions with U.S. Department of Energy ("DOE") Staff, MITCLS understands that, in addition to Cameron LNG filing relevant long-term commercial agreements between Cameron LNG and MITCLS pursuant to which Cameron exports LNG as agent for MITCLS, the following types of contracts need to be filed by MITCLS as part of MITCLS's obligations as a Registrant:

1. Any long-term contracts MITCLS pursuant to which MITCLS exports LNG from the Cameron terminal; and
2. Any long-term contract for the supply of natural gas to MITCLS, where the Cameron LNG terminal is the actual or intended destination of some or all of the natural gas to be purchased.

MITCLS believes that, as a Registrant, only those contracts meeting at least one of the above criteria are required to be filed with the DOE at this time. MITCLS will continue to monitor DOE issuances and engage with DOE Staff to remain current on the scope of contracts that must be filed with DOE.

Request for Confidential Treatment and Filing Under Seal

MITCLS is filing under seal unredacted copies of each of the LNG Sale and Purchase Agreements meeting criteria 1 above (*i.e.*, MITCLS's August 20, 2019 LNG Sale and Purchase Agreement with MITCLS's affiliate Mitsui & Co., Ltd. (such agreement hereinafter referred to as the "Mitsui SPA"). In addition, MITCLS is filing under seal unredacted copies of each long term natural gas supply agreement it has entered into meeting criteria 2 above (*i.e.*, MITCLS's August 15, 2019 Asset Management Agreement with MITCLS's affiliate Mitsui & Co. Energy Marketing Services (USA), Inc. ("MEMS") (such agreement hereinafter referred to as the "Mitsui AMA"). Pursuant to sections 590.202(e) and 1004.11 of DOE's rules, 10 C.F.R. §§ 590.202(e) & 1004.11 (2019), and for the reasons set forth below, the entirety of both the Mitsui SPA and Mitsui AMA (collectively, the "Mitsui Agreements") are exempt from public disclosure pursuant to Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), as mirrored in the DOE's regulations at 10 C.F.R. § 1004.10(b)(4) (2019), and are protected from disclosure under the Trade Secrets Act, 18 U.S.C. § 1905.

The Mitsui SPA sets forth the highly confidential rates, terms, and conditions agreed between MITCLS and Mitsui & Co., Ltd. Similarly, the Mitsui AMA sets forth the highly confidential rates, terms, and conditions agreed between MITCLS and MEMS. MITCLS, Mitsui & Co., Ltd. and MEMS do not provide the information contained in the Mitsui Agreements to third parties in the ordinary course of business and such information is not available from public sources. Such information is exempt from FOIA disclosure under FOIA Exemption 4.

"Congress realized that legitimate governmental and private interests could be harmed by release of certain types of information." *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 872 (D.C. Cir. 1992) (*en banc*), *cert denied*, 507 U.S. 984 (1993) (quoting *FBI v. Abramson*, 456 U.S. 615 (1982)). As the D.C. Circuit has noted, the FOIA exemptions serve both a governmental interest in efficient operation and a private interest of maintaining the secrecy of information provided to the government. *Critical Mass*, 975 F.2d at 873.

Exemption 4 to the FOIA excludes from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential ..." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.11 (2019). This exemption serves both a governmental and private purpose. With respect to the governmental purpose, as the D.C. Circuit recognized, "unless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials, and the ability of the Government to make intelligent, well informed decisions will be impaired." *Critical Mass*, 975 F.2d at 873 (quoting *Nat'l Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974)). With respect to the private purpose, Exemption 4 "protects persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication." *Id.* In short, [u]nless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials, and the ability of the Government to make intelligent, well informed decisions will be impaired." *Id.* at 878.

Under *National Parks*, documents that are required to be supplied to the government may be withheld from disclosure as confidential if “either (1) disclosure of the information sought would likely impair the government’s ability to obtain necessary information in the future; or (2) disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

Information may be withheld under Exemption 4 not only when actual competitive harm is established, but also when there is evidence that the submitter of information actually faces competition and that substantial injury likely will result if the sensitive commercial information is disclosed. See *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987). Actual competition may be evidenced by as few as two entities providing the same product into the same market. Cf. *Gulf & Western Industries, Inc. v. United States*, 615 F.2d 527, 530-31 (D.C. Cir. 1979). Both MITCLS and Mitsui & Co., Ltd. (collectively, the “Mitsui Entities”) are LNG sellers competing in the global LNG market and, in particular, the nascent U.S. LNG export market. Given the number of approved and pending LNG export applications filed at DOE/FE for new liquefaction projects and the global LNG demand, it is indisputable that the Mitsui Entities face competition in the sale of such services in the marketplace. Similarly, MITCLS is a natural gas purchaser and MEMS is a natural gas supplier competing in the U.S. natural gas market. Given the number of purchasers and sellers in such market and the obvious impacts supply and demand has on pricing throughout this market, it is indisputable that MITCLS is in competition with numerous other natural gas purchasers and MEMS is in competition with numerous other natural gas suppliers.

“A competitive injury is one flowing from the affirmative use of proprietary information by competitors.” *Gilda Industries, Inc. v. U.S. Border & Protection Bureau*, 457 F. Supp. 2d 6, 9 (D.D.C. 2006) (citing *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1291 n.30 (D.C. Cir. 1983)). “In assessing whether the second element is met, ‘the Court need only ‘exercise its judgment in view of the nature of the material sought and competitive circumstances in the submitter does business,’ but ‘no actual adverse effect on competition need be shown.’” *Id.* (quoting *Changzhou Laosan Group v. U.S. Customs Border Prot. Bureau*, No. 04-1919, 2005 WL 913268, at *5 (D.D.C. Apr. 20, 2005) (in turn, quoting *Nat’l Parks Conservation Ass’n v. Kleppe*, 547 F.2d 673, 675 (D.C. Cir. 1976))).

The Mitsui Entities would suffer substantial competitive harm from public disclosure of the Mitsui SPA and MITCLS and MEMS would be similarly damaged by public disclosure of the Mitsui AMA. Among other things, the Mitsui Agreements include confidential pricing and other terms of sale.

Access to the terms of the Mitsui Agreements would give any competitor an unfair advantage in the relevant markets that would substantially harm the Mitsui Entities and MEMS. A competitor with knowledge of pricing and risk allocation under the Mitsui SPA could certainly use that information to such competitor’s benefit and the Mitsui Entities’ detriment when competing with the Mitsui Entities. Similarly, a competitor with knowledge of pricing and risk allocation under the Mitsui AMA could employ that information to such competitor’s benefit and MITCLS’s and MEMS’s detriment. In particular, competitors could use the information to undercut the Mitsui Entities’ or MEMS’s prices, to restructure their transaction to match or undercut those of the relevant Mitsui Agreement, and to adjust their marketing strategies. Further, the Mitsui Entities and MEMS’s would be placed at a disadvantage with future potential buyers if such companies knew of the Mitsui Agreements provisions.

Further, disclosure could create potentially significant dissension among downstream buyers from Mitsui & Co., Ltd. who might dispute their pricing arrangements when provided the ability to compare their pricing with the pricing employed in the Mitsui SPA.

In addition, public disclosure of the Mitsui SPA would result in substantial competitive harm to the Mitsui Entities' buyers now and in the future. Such buyers either will be remarketing the LNG produced by the Cameron LNG Project to the third parties in the global LNG market or consuming the LNG. In the case of subsequent sales, they will likely be made under short-term agreements. Public disclosure of the Mitsui SPA would substantially disadvantage such buyers' future remarketing efforts. In particular, their competitors in the global LNG market could use the information contained in the Mitsui SPA to undercut the buyers' prices and to otherwise restructure their transactions. Where a buyer is consuming LNG rather than reselling it, similar harms would apply where such buyers are subject to competition, except that, rather than a buyer having its LNG sales prices and terms undercut, the Mitsui SPA would provide the buyer's competitors with price information with respect to a key input to the products and services provided by such buyer, allowing such competitors to better estimate the buyer's price point.

While not as directly useful to downstream LNG purchasers, disclosure of the Mitsui AMA would also reveal confidential information to both buyers from Mitsui & Co., Ltd. and purchasers from such buyers, by helping them to determine the costs and other details of upstream entities in the value chain.

In addition, if DOE/FE requests this highly confidential commercial information and then releases it to third parties, persons seeking export authorizations will be more likely to resist providing such information in the future and may take steps to avoid providing such information. This will inhibit the free flow of information between government and the public and could result in DOE/FE having access to less information.

The Mitsui Entities and MEMS also note that the Mitsui Agreements are protected from disclosure by the Trade Secrets Act, 18 U.S.C. § 1905, which provides in pertinent part as follows:

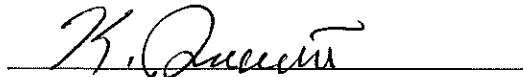
Whoever, being an officer or employee of the United States or of any department or agency thereof, ... publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association ... shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

As demonstrated above, the Mitsui Agreements are exempt from public disclosure. While the Mitsui Agreements are being filed under seal and are not subject to disclosure, MITCLS is also filing, as required by DOE, a summary of the key provisions of the Mitsui Agreements, which summaries are suitable for public disclosure.

MITCLS, on behalf of itself, as well as its affiliates -- Mitsui & Co., Ltd. and MEMS -- requests that, if DOE/FE receives any request for the full version of any of the Mitsui Agreements or is otherwise considering making such material public, the Mitsui Entities and MEMS be afforded an additional

opportunity (prior to any otherwise applicable release date) to further demonstrate why neither the relevant Mitsui Agreement, nor any portion thereof, should be released beyond the public summary provided herewith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Amano", is written over a horizontal line.

Koji Amano

President & CEO

MITSUI & CO. CAMERON LNG SALES LLC

Mitsui & Co. Cameron LNG Sales LLC

1300 Post Oak Boulevard, Suite 1900, Houston, TX 77056

LONG TERM CONTRACT – LNG EXPORTS MAJOR PROVISIONS SUMMARY OF LNG SALE AND PURCHASE AGREEMENT (FOB)

1. DOE/FE Order No(s): 3059, 3059-A, 3391-A, 3620 and 3797

DOE/FE Docket No(s): 11-145-LNG, 11-162-LNG, 14-204-LNG and 15-67-LNG

2. LNG Liquefaction/Export Facility and Location:

Cameron LNG, LLC (located in and around Cameron Parish, Louisiana)

3. Describe affiliation with LNG Liquefaction Export Facility (e.g., owner, capacity holder, etc.):

The contract has been entered into by MITSUI & CO. CAMERON LNG SALES LLC, as tolling customer of the Cameron LNG located in and around Cameron Parish, Louisiana. MITSUI & CO. CAMERON LNG SALES LLC is an indirect, wholly-owned, subsidiary of Mitsui & Co., Ltd., a publicly-traded Japanese company listed on the Tokyo, Nagoya, Sapporo, Fukuoka stock exchanges. Mitsui & Co., Ltd. has a 16.6% equity interest in Cameron LNG Holdings, LLC, Cameron LNG, LLC's holding company, through its 100% subsidiary

4. Exact Legal Name of Parties/Counterparties to Contract:

Seller: MITSUI & CO. CAMERON LNG SALES LLC

Buyer: MITSUI & CO., LTD.

5. 5a. Contract Type (e.g. Purchase and Sale Agreement; Liquefaction Tolling Agreement, etc.):

LNG Sale and Purchase Agreement.

5b. Firm or Interruptible Contract:

Firm

6. Effective Date of the Contract:

August 20, 2019

7. Contract Term:

Initial term commencing on the execution date and ending on the 20th anniversary of the gas day immediately preceding the date that DOE/FE export authorizations commence, subject to the terms and conditions of the contract.

8. Quantity (Annual and Total, if appropriate, include +/- % flexibility):

Up to 239.72 billion standard cubic feet per year, subject to the terms and conditions of the contract

9. Take or Pay (or equivalent) Provisions/Conditions:

During any contract year, Seller shall make available for delivery to Buyer the scheduled

cargo quantity, or compensate Buyer if not made available, unless otherwise excused under the contract. Buyer shall take and pay for the scheduled quantity, or compensate the Seller if not taken, unless otherwise excused under the contract.

10. Supplier (title holder) of Natural Gas to Liquefaction Facility (include whether long or short-term supply, or both), if appropriate:

Not applicable.

11. Legal Name of Entity (ies) that has(have) Title to the Natural Gas and LNG through the LNG Facility until Export (at the Flange of the Vessel):

The title of the LNG will be transferred from MITSUI & CO. CAMERON LNG SALES LLC to MITSUI & CO., LTD. at the flange of the vessel.

12. Export Destination Restrictions in the Contract:

The contract restricts exports of LNG received by Buyer from Cameron LNG facility to destination countries permitted and lawful under (i) the applicable DOE/FE export authorizations and (ii) US laws.

13. Resale Provisions:

The contract provides for the Seller and Buyer to agree to comply with the applicable export authorizations, including incorporating into any resale contract for LNG sold under the contract the necessary conditions to ensure compliance with the applicable export authorizations.

14. Other Major Non-proprietary Provisions, if applicable:

None.

I affirm that the foregoing is true and accurate to the best of my knowledge.

DATED: September 13, 2019

Submitted by:



Koji Amano, President & CEO

MITSUI & CO. CAMERON LNG SALES LLC