

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

DRIFTWOOD LNG LLC

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FE DOCKET NO. 16-144-LNG

ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL FROM
THE PROPOSED DRIFTWOOD LNG FACILITY IN
CALCASIEU PARISH, LOUISIANA,
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3968

FEBRUARY 28, 2017

I. DESCRIPTION OF REQUEST

On September 28, 2016, Driftwood LNG LLC (Driftwood LNG) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)² for long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to approximately 1,496.5 billion cubic feet per year (Bcf/yr) of natural gas (4.1 Bcf per day). Driftwood LNG seeks to export the LNG by vessel from its proposed natural gas liquefaction facility to be located on the west side of the Calcasieu River, near Carlyss in Calcasieu Parish, Louisiana (Driftwood LNG Facility).

Driftwood LNG seeks authorization to export this LNG for (i) a 30-year term from the Driftwood LNG Facility to any country with which the United States currently has, or in the future will have, 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 (FTA countries)³; and (ii) for a 20-year term from the Driftwood LNG Facility to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries). Driftwood LNG also requests a three-year “make-up period” following the end of the respective term of FTA or non-FTA authorization, such that it may continue exporting amounts of LNG as may be necessary to bring total exports up to the full volume authorized, if Driftwood is unable to export all volumes during the original export period.⁴ Driftwood LNG seeks to export this LNG on its own behalf

¹ Driftwood LNG LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Nations, DOE/FE Docket No. 16-144-LNG (Sept. 28, 2016) [hereinafter App.].

² 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 12, 2014.

³ 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.

⁴ App. at 5-6.

and as agent for other entities who will hold title to the LNG at the time of export. Driftwood LNG requests that the authorization commence on the earlier of the date of first export from the proposed Driftwood LNG Facility or seven years from the date the requested authorization is issued.

The portion of Driftwood LNG's Application that seeks authorization to export domestically produced LNG to FTA countries is being reviewed pursuant to NGA section § 3(c), 15 U.S.C. § 717b(c), and approved in this Order. The portion of the Application that seeks authorization to export domestically produced LNG to non-FTA countries will be reviewed pursuant to NGA section 3(a), 15 U.S.C. § 717b(a), and addressed in a separate order.

II. BACKGROUND

Applicant. The Application states that Driftwood LNG is a Delaware limited liability company with its principal place of business in Houston, Texas. At the time Driftwood LNG filed its Application, Driftwood LNG was an indirect wholly-owned subsidiary of Tellurian Investments Inc. (Tellurian Investments). On February 17, 2017, however, Driftwood LNG notified DOE/FE of a change in Driftwood LNG's ownership interests.⁵ In the change of control notice, Driftwood LNG states that, on February 10, 2017, Tellurian Investments merged with a wholly-owned subsidiary of Magellan Petroleum Corporation. Upon close of the merger, Magellan Petroleum Corporation changed its name to Tellurian Inc. (Tellurian). We take administrative notice that Tellurian is a Delaware corporation with its principal place of business in Houston, Texas. Driftwood LNG states that it is now an indirect wholly-owned subsidiary of Tellurian.⁶

⁵ Driftwood LNG LLC, Statement and Notice of Change in Control, FE Docket No. 16-144-LNG (Feb. 17, 2017) [hereinafter Change in Control Notice].

⁶ *See id.* at 2. Pursuant to DOE's regulations and its procedures governing a change in control, DOE/FE will give immediate effect to this amendment of the Application and take no further action. *See* U.S. Dep't of Energy,

Proposed Liquefaction Facility. Driftwood LNG proposes to locate the Driftwood LNG Facility on the west side of the Calcasieu River in Calcasieu Parish, Louisiana, approximately five miles south of the town of Carlyss. The Facility will occupy approximately 720 acres of a 790 acre tract of land that Driftwood LNG has acquired by a combination of purchase (approximately 140 acres) and lease with the right to enter into a long-term lease of up to 50 years (an additional 650 acres).⁷

The Facility will consist of five LNG plants with each plant comprised of one gas pre-treatment unit and four liquefaction units. Each liquefaction unit will consist of a refrigeration compressor driven by aero derivative gas turbines. The Facility will also include three LNG storage tanks, each with a capacity of 235,000 cubic meters (m³) for a combined storage capacity of 705,000 m³ for onsite storage. The marine loading facility will consist of three berths for LNG vessels located along the Calcasieu River.⁸

Along with the Facility, Driftwood LNG Pipeline LLC (DWPL), an affiliate of Driftwood LNG, intends to develop a 96-mile long interstate pipeline (Pipeline) to connect to the Facility. Driftwood LNG states that the Pipeline will connect up to 15 existing interstate pipelines and storage facilities to the Facility, enabling Driftwood LNG to maximize supply flexibility.⁹

Currently, both the Driftwood LNG Facility and the Pipeline are under review by the Federal Energy Regulatory Commission (FERC) in FERC Docket No. PF16-6.¹⁰

Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,541, 65,542 (Nov. 5, 2014) (procedures applicable to a pending application for a long-term FTA export authorization); *see also* 10 C.F.R. §§ 590.204(a), 590.405.

⁷ See App., Appendix D (proof of site control).

⁸ Driftwood LNG estimates that the berths can handle LNG vessels with cargo capacities ranging from 125,000 m³ to 216,000 m³, page 3 of Application.

⁹ App. at 3.

¹⁰ *Driftwood LNG LLC and Driftwood LNG Pipeline LLC*, FERC Docket No. PF16-6-000.

Source of Supply. Driftwood LNG states that natural gas for the Driftwood LNG Facility will include supplies available from various producing regions throughout the eastern United States. Additionally, the Driftwood LNG Facility will have the capability to access the entire national natural gas pipeline grid through various interconnections.

Business Model. Driftwood LNG requests this authorization on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. Driftwood LNG states that, to date, it has not entered into contracts for the proposed exports from the Driftwood LNG Facility. However, Driftwood LNG states that it will file all long-term, binding contracts associated with the export of LNG from its facility, once executed, in accordance with established policy and precedent and will comply with all DOE/FE requirements for exporters and agents, including registration requirements. Driftwood LNG further states that, when acting as agent, it will register with DOE/FE each LNG title holder for which it seeks to export LNG as agent, and will comply with other registration requirements as set forth in recent DOE/FE orders.

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 requesting authority for (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/or (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 requested authorization without modification or delay.¹¹

¹¹ 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.

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

(3) The countries with which the United States has a 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, Driftwood LNG 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. 2913,¹² which granted Freeport LNG Expansion, L.P., *et al.* (collectively, FLEX) authority to 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*,¹³ 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.

¹² *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No 2913, FE Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

¹³ *The Dow Chemical Company*, DOE/FE Order No. 2859, FE Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 7-8 (Oct. 5, 2010), discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

DOE/FE reiterated its policy on Agency Rights procedures in authorizations including in *Cameron LNG, LLC*, DOE/FE Order No. 3680.¹⁴ In that order, DOE/FE determined that, in LNG export orders in which Agency Rights have been granted, DOE/FE 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.¹⁵

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Driftwood LNG proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Driftwood LNG 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."¹⁶ Additionally, DOE regulations at 10 C.F.R. § 590.202(e) allow confidential treatment of the information supplied in support of or 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.

(6) DOE/FE will require that Driftwood LNG file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Driftwood LNG exports LNG as agent for a Registrant once those agreements have been executed. DOE/FE

¹⁴ *Cameron LNG, LLC*, DOE/FE Order No. 3680, FE Docket No. 15-36-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Free Trade Agreement Nations) (July 10, 2015).

¹⁵ See *id.* at 7-8.

¹⁶ 10 C.F.R. § 590.202(b).

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 purchase and sales agreement involving LNG stored or liquefied at the Driftwood LNG Facility.

(7) DOE/FE also will require Driftwood LNG to file any long-term contracts Driftwood LNG enters into providing for the long-term export of LNG on its own behalf from the Driftwood LNG Facility. 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 regulations¹⁷ requires that Driftwood LNG file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Driftwood LNG Facility, whether signed by Driftwood LNG or the Registrant, within 30 days of their execution.

(9) DOE/FE recognizes that some information in Driftwood LNG’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Driftwood LNG Facility, may be commercially sensitive. DOE/FE therefore will provide Driftwood LNG the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Driftwood LNG 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

¹⁷ *Id.* § 590.202(c).

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, destination, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted or non-disclosed 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.

(10) Driftwood LNG will be permitted to continue exporting for a total of three years following the end of the 30-year term established in this Order, solely to export any Make-Up Volume that it was unable to export during the original export period. The three-year term during which the Make-Up Volume may be exported shall be known as the “Make-Up Period.” The Make-Up Period does not affect or modify the total volume of LNG authorized in this Order. Insofar as Driftwood LNG may seek to export additional volumes not previously authorized for export, it will be required to obtain appropriate authorization from DOE/FE.

ORDER

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

A. Driftwood LNG LLC is authorized to export domestically produced LNG by vessel from the Driftwood LNG Facility, to be located in Calcasieu Parish, Louisiana. The volume authorized in this Order is equivalent to approximately 1,496.5 Bcf/yr of natural gas for a 30-year term, beginning on the earlier of the date of first export or seven years from the date the authorization is issued (February 28, 2024). Driftwood LNG is authorized to export this LNG on

its own behalf and 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).

Driftwood LNG may continue exporting for a total of three years following the end of the 30-year export term, solely to export any Make-Up Volume that it was unable to export during the original export period. The three-year Make-Up Period allowing the export of Make-Up Volumes does not affect or modify the maximum volume of LNG authorized for export in this Order (44,895 Bcf total over the 30-year term). Insofar as Driftwood LNG may seek to export additional volumes not previously authorized for export, it will be required to obtain appropriate authorization from DOE/FE.

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. Driftwood LNG 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. (1) Driftwood LNG shall file, or cause others to file, with the Office of Regulation and International Engagement 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 Driftwood LNG Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Driftwood LNG 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, Driftwood LNG shall also file, or cause others to file, for public posting either: a) a redacted version of the contracts described in the preceding sentence, or b) major provisions of the contracts. In these filings, Driftwood LNG shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(2) Driftwood LNG shall file, or cause others to file, with the Office of Regulation and International Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Driftwood LNG Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Driftwood LNG 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, Driftwood LNG shall also file, or cause others to file, for public posting either: a) a redacted version of the contracts described in the preceding sentence, or b) major provisions of the contracts. In these filings, Driftwood LNG shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Driftwood LNG shall include, and require others for whom Driftwood LNG 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. 3968, issued February 28, 2017, in FE Docket No. 16-144-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 Driftwood LNG LLC that identifies the country (or countries) into which the LNG or natural gas was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to ensure that Driftwood LNG LLC is made aware of all such countries.

F. Driftwood LNG is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other parties with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply LNG with all information necessary to permit Driftwood 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 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, length 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, Driftwood LNG shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Driftwood LNG to

ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding the authorization in whole or in part.

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

J. Driftwood LNG shall file with the Office of Regulation and International Engagement, on a semi-annual basis, written reports describing the status of the Driftwood LNG Facility. 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 Driftwood LNG Facility, the date the Driftwood LNG Facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any related long-term supply contracts.

K. With respect to any change in control of the authorization holder, Driftwood LNG must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.¹⁸ For purposes of this Ordering Paragraph, a “change in control” shall include any change, directly or indirectly, of the power to direct the management or policies of Driftwood LNG, 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.¹⁹

¹⁸ See U.S. Dep’t of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,541 (Nov. 5, 2014).

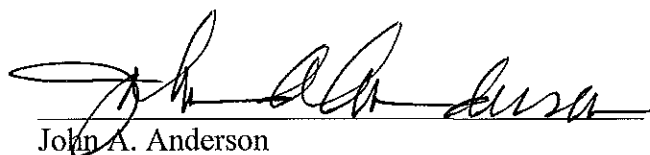
¹⁹ See *id.* at 65,542.

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Driftwood LNG shall file with the Office of Regulation and International Engagement, 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 (or countries) into which the LNG or natural gas is actually delivered and/or received for end use; (6) the name of the supplier/seller; (7) the volume in thousand cubic feet (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)

M. All monthly report filings shall be made to the Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, U.S. Department of Energy (FE-34), 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 28, 2017.



John A. Anderson
Director, Office of Regulation and International Engagement
Office of Oil and Natural Gas