

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

FREEPORT LNG DEVELOPMENT, L.P.

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FE DOCKET NO. 17-23-LNG

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

DOE/FE ORDER NO. 4054

JUNE 27, 2017

I. SUMMARY

Following an examination of the record evidence in this proceeding pursuant to the requirements of section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486); DOE's regulations, 10 C.F.R. Part 590; and applicable delegations and redelegations of authority,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the application of Freeport LNG Development, L.P. (Freeport LNG) filed on February 15, 2017 (Application).²

This authorization grants Freeport LNG's request to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in a volume equivalent to approximately 24 billion cubic feet (Bcf) of natural gas on a cumulative basis. Freeport LNG is authorized to export this LNG by vessel from the Freeport LNG Terminal, located on Quintana Island, Texas, on a short-term or spot market basis for a two-year period commencing on July 19, 2017.³ Freeport LNG is authorized to export the 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 further authorized to export this LNG on its own behalf and as agent for other entities who hold title at the time of export, after registering those entities with DOE/FE. This Order does not authorize Freeport LNG to export domestically produced LNG.

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. 00-006.02, issued on November 17, 2014.

² Freeport LNG Development, L.P., Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis, FE Docket No. 17-23-LNG (February 15, 2017) [hereinafter App.].

³ Freeport LNG's current blanket authorization to export LNG previously imported from foreign sources, granted in DOE/FE Order No. 3717 on September 25, 2015, extends through July 18, 2017. *See Freeport LNG Development, L.P.*, FE Docket No. 15-103-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel (September 25, 2015).

II. BACKGROUND

Applicant. Freeport LNG is a Delaware limited partnership with one general partner, Freeport LNG-GP, LLC, a Delaware limited liability company owned by an individual, Michael S. Smith, and by IFM Investors Midstream, LLC. Freeport LNG's limited partners are: (1) Freeport LNG Investments, LLLP and FLNGI Option Holdco, LLC, a Delaware limited liability limited partnership and limited liability company, respectively, owned by Mr. Smith; (2) GIP II FLNG, L.P. and GIP II FLNG Holdings Partnership 2, LLC, a Delaware limited partnership and Delaware limited liability company, respectively, owned by Global Infrastructure Partners; and (3) Turbo LNG, LLC, a Delaware limited liability company owned by Osaka Gas Company, Ltd. Freeport LNG's principal place of business is in Houston, Texas.

Procedural History. DOE/FE previously issued DOE/FE Order No. 3717, in which it authorized Freeport LNG to export LNG previously imported from foreign sources in a volume equivalent to approximately 24 Bcf of natural gas on a cumulative basis over a two-year period commencing on July 19, 2015, and extending through July 18, 2017.⁴ Freeport LNG was authorized to export this LNG by vessel from the Freeport LNG Terminal 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.

Additionally, on January 19, 2016, DOE/FE issued DOE/FE Order No. 3777, in which it authorized Freeport LNG to import LNG from various international sources by vessel in a total volume equivalent to approximately 30 Bcf of natural gas for a two-year term commencing on March 1, 2016, and extending through February 28, 2018.⁵ Under the terms of that

⁴ *See id.*

⁵ *Freeport LNG Development, L.P.*, DOE/FE Order No. 3777, FE Docket No. 16-102-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel (Jan. 19, 2016).

authorization, Freeport LNG may import the LNG at any LNG receiving facility in the United States and its territories.

In this proceeding, Freeport LNG filed the Application on February 15, 2017. On April 12, 2017, DOE/FE published a Notice of Application in the Federal Register.⁶ The Notice of Application stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than May 12, 2017.

DOE/FE received no filings in response to the Notice.

III. CURRENT APPLICATION

Freeport LNG requests authorization to export, on its own behalf and as agent for other entities, LNG previously imported into the United States from foreign sources in a volume equivalent to approximately 24 Bcf of natural gas on a cumulative basis beginning on July 19, 2017. Freeport LNG notes that it is not seeking authorization to export domestically-produced natural gas or LNG. Freeport LNG states that it plans to export the LNG from the Freeport LNG Terminal to any country with the capacity to import the LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy.

Freeport LNG proposes to export LNG that is surplus to the demands of U.S. markets during the period of the requested authorization, and that is needed primarily to enable Freeport LNG to economically maintain and operate the Freeport LNG Terminal. Freeport LNG states that, because there is no domestic reliance on such supplies, granting the Application will not reduce domestic supplies of natural gas. Freeport LNG asserts that no modifications to any existing facilities will be required to export the LNG from the Freeport LNG Terminal. Freeport

⁶ Freeport LNG Development, L.P., Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas on a Short-Term Basis, 82 Fed. Reg. 17,646 (April 12, 2017).

LNG further asserts that there are no other proceedings related to this Application currently pending before DOE.

Citing DOE/FE's findings in its prior blanket authorization (DOE/FE Order No. 3717) as well as findings in similar proceedings, Freeport LNG asserts that the proposed export of previously imported foreign-sourced LNG is consistent with section 3 of the NGA and with DOE/FE policy.

IV. DECISION

A. Standard of Review

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

[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 U.S.C. § 717b(a).

In evaluating an export application under this standard, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111, which focus primarily on domestic need for the gas to be exported, as described in the Secretary's natural gas policy guidelines,⁷ and any other matters determined to be appropriate to a determination of the public interest. In addition,

⁷ New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

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

Freeport LNG's Application involves a request for authorization to export LNG that was previously imported into the United States from foreign sources. Exporting this proposed volume of LNG will not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG could affect the domestic natural gas market because, for the requested two-year export period, the proposed exports will reduce the volume of natural gas potentially available for consumption within the United States.

DOE/FE has issued numerous blanket authorizations to export previously imported LNG in other proceedings.⁸ These orders were based, in part, on authoritative data indicating that United States consumers have access to substantial quantities of natural gas sufficient to meet domestic demand from other competitively-priced sources. Specifically, DOE takes administrative notice of an analysis prepared by the U.S. Energy Information Administration (EIA) in the *Annual Energy Outlook 2017*, released in January 2017, showing projected annual domestic dry natural gas production in 2020 of 30.79 trillion cubic feet (Tcf), with total natural gas consumption projected to be 27.32 Tcf in the same year.⁹

Inasmuch as domestic natural gas production levels are projected to reach an amount that well exceeds the amount of natural gas proposed for short-term export in Freeport LNG's Application, we find that United States consumers will continue to have access to substantial

⁸ See, e.g., *Chevron U.S.A., Inc.*, DOE/FE Order No. 4007, FE Docket No. 16-141-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel (March 28, 2017).

⁹ See *Annual Energy Outlook 2017 Reference Case*, Table 13: Natural Gas Supply, Disposition, and Prices, available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2017&cases=ref2017&sourcekey=0>.

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 and as agent for other entities who will hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,¹⁰ which granted Freeport LNG's subsidiaries 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*,¹¹ 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*.¹² 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

¹⁰ *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).

¹¹ *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.

¹² *Gulf Coast LNG Export, LLC*, DOE/FE Order No. 3163, FE Docket No. 12-05-LNG, 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).

contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.¹³

To ensure that the public interest is served, this authorization shall be conditioned to require that where Freeport LNG proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Freeport LNG must register with DOE/FE those entities on whose behalf it will export LNG 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 natural gas policy guidelines and DOE/FE precedent,¹⁴ DOE/FE considers the potential effects of proposed exports on other aspects of the public interest. In this proceeding, those considerations include environmental factors.

E. Environmental Review

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. As noted above, Freeport LNG states that the proposed export of previously imported LNG would require no new construction or modifications to the Freeport LNG Terminal. 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—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5).¹⁵ Accordingly, DOE issued a categorical exclusion, dated June 26,

¹³ See *id.* at 7-8.

¹⁴ *E.g.*, *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 2913, *supra* at 7 n.10.

¹⁵ See 10 C.F.R. § 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusion B5.7 (“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.”).

2017, which found that Freeport LNG's proposed exports are categorically excluded from further NEPA review.¹⁶

E. Conclusion

After due consideration based on all facts and evidence of record, DOE/FE finds that a grant of the export application is not inconsistent with the public interest. In particular, the record shows that there is a sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on Freeport LNG's proposed exports during the two-year authorization period. Further, the proposed exports qualify for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE/FE therefore grants Freeport LNG's Application, as set forth below.

ORDER

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

A. Freeport LNG is authorized to export LNG previously imported from foreign sources in a volume equivalent to 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, 2017, and extending through July 18, 2019.

B. This LNG may be exported by vessel 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, 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:

¹⁶ U.S. Dep't of Energy Categorical Exclusion Determination, Freeport LNG Development, L.P., FE Docket No. 17-23-LNG (June 26, 2017).

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 Development, L.P. that identifies the country (or countries) into which the exported LNG was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to insure that Freeport LNG Development, L.P. is made aware of all such countries.

D. 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.

E. 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 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; and (4) an acknowledgement and agreement by the Registrant to include the provision in Ordering Paragraph C in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. 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).

G. Monthly Reports: With respect to the export of LNG authorized by this Order, Freeport 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. 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 (or countries) into which the LNG is actually delivered and/or received for end use; (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)

H. The first monthly report required by this Order is due not later than August 30, 2017, and should cover the reporting period from July 19, 2017, through July 31, 2017.

I. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Regulation and International Engagement, Office of Fossil Energy, 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 June 27, 2017.

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

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