

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

GALVESTON BAY LNG, LLC

)
) FE DOCKET NO. 17-167-LNG
)

ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL FROM
THE PROPOSED GALVESTON BAY LNG PROJECT
TO BE LOCATED IN TEXAS CITY, TEXAS,
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4200

JUNE 13, 2018

I. DESCRIPTION OF REQUEST

On December 22, 2017, Galveston Bay LNG, LLC (Galveston Bay 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 785.7 billion cubic feet per year (Bcf/yr) of natural gas (2.15 Bcf per day). Galveston Bay LNG seeks to export the LNG by vessel from its proposed natural gas liquefaction facility to be located in Texas City, Texas (Galveston Bay LNG Project or Project).³

Galveston Bay LNG seeks authorization to export this LNG for a 20-year term to both: (i) any country with which the United States has entered into 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),⁴ and any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁵

Galveston Bay LNG seeks to export this LNG on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. Galveston Bay LNG requests that the authorization commence on the earlier of the date of first export following the commencement of operations from its proposed Project or seven years from the date this authorization is issued.

¹ Galveston Bay LNG, LLC, Application for Long-Term Authorization to Export LNG from the United States to Both Free Trade and Non-Free Trade Agreement Countries, FE Docket No. 17-167-LNG (Dec. 22, 2017) [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 See App. at 1-2.

⁴ 15 U.S.C. § 717b(c). 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.

⁵ 15 U.S.C. § 717b(a).

The portion of Galveston Bay 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 will be addressed in a separate order.⁶

II. BACKGROUND

Applicant. Galveston Bay LNG states that it is a Texas limited liability company with its principal place of business in The Woodlands, Texas. Galveston Bay LNG is wholly-owned (100%) by NextDecade LNG, LLC (NextDecade), which in turn is owned solely by NextDecade Corporation. Galveston Bay LNG states that NextDecade Corporation is a publicly listed company on the NASDAQ.

Proposed Liquefaction Facility. Galveston Bay LNG proposes to construct, own, and operate the Galveston Bay LNG Project in Texas City, Texas. Galveston Bay LNG states that the Project will include natural gas treatment, compression, liquefaction and storage facilities, as well as ancillary facilities required to receive and liquefy natural gas, and to store, load, and export LNG.⁷

According to Galveston Bay LNG, the Project site is located on the eastern side of the Texas City—within the Texas City Industrial Complex, adjacent to the Port of Texas City, and near the Port of Houston and the Port of Galveston.⁸ Galveston Bay LNG states that the Project will be located at a site situated on Galveston Bay known as Shoal Point, with the northern and western perimeters of the site located adjacent to the Texas City Ship Channel.⁹

⁶ See Galveston Bay LNG, LLC; Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 83 Fed. Reg. 4473 (Jan. 31, 2018).

⁷ App. at 4-5.

⁸ See *id.* at 2, 11.

⁹ See *id.* at 10; see also *id.* at Appendix A (Locator Map and Project Location Information).

Galveston Bay LNG states that the proposed Project will occupy approximately 994 acres of land. Galveston Bay LNG further states that its parent company, NextDecade, has entered into a three-year lease for this site from two landholders: the Texas General Land Office and the City of Texas City, Texas. These two landholders own parcels of land that collectively form the entire Project site.¹⁰ According to Galveston Bay LNG, the short-term leases provide that the Texas General Land Office and the City of Texas City, Texas will each negotiate a long-term agreement with NextDecade for the purpose of constructing and operating a LNG export facility. NextDecade, in turn, will make these leaseholds available for the benefit of Galveston Bay LNG.¹¹

Galveston Bay LNG states that the Project will consist of both land-based and marine components. The Project is anticipated to include four LNG storage tanks (each with a storage capacity of approximately 200,000 cubic meters), three LNG trains, and truck and marine vessel loading facilities.¹² Each of the LNG trains will be capable of producing up to approximately 5.5 metric tonnes per annum (mtpa) of LNG, for a total capacity of 16.5 mtpa of LNG.¹³ According to Galveston Bay LNG, the Project will be capable of processing an average of approximately 785.7 Bcf/yr of pipeline quality natural gas.¹⁴

Galveston Bay LNG states that the natural gas will be delivered to the Galveston Bay LNG Project through an approximately 85-mile long pipeline (SP Pipeline), to be developed by a Galveston Bay LNG affiliate, and run to the Katy Gas Market Hub (Katy Hub).¹⁵ The SP

¹⁰ *See id.* at 10-11.

¹¹ *See id.* at 11; *see also id.* at Appendix B (Evidence of Proposed Site's Availability to Galveston Bay LNG).

¹² App. at 5, 10.

¹³ *See id.* at 10.

¹⁴ *See id.*

¹⁵ *See id.* at 5.

Pipeline will be designed to have sufficient capacity to supply all of the proposed Project's natural gas requirements, with a modest amount of firm service to third parties.¹⁶

Source of Supply. Galveston Bay LNG states that the Project will interconnect with several interstate and intrastate pipeline systems via the SP Pipeline, allowing natural gas to be supplied from almost any point on the U.S. natural gas pipeline grid through displacement or direct access.¹⁷ According to Galveston Bay LNG, the Project's proximity to the Eagle Ford and conventional South Texas natural gas production makes those production areas "good candidates" for its natural gas supply.¹⁸ Additionally, Galveston Bay LNG states that the SP Pipeline's interconnects will offer access to the Marcellus, Haynesville, Utica, and Woodford production areas.¹⁹

Business Model. Galveston Bay 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. Galveston Bay LNG states that, to date, it has not entered into contracts for the proposed exports from the proposed Project. However, Galveston Bay LNG states that it will file all long-term, binding contracts associated with the export of LNG from the Project, once executed, in accordance with DOE's established policy and will comply with all DOE/FE requirements for exporters and agents, including registration requirements. Galveston Bay 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.²⁰

¹⁶ *See id.*

¹⁷ *See id.* at 12-13.

¹⁸ *App.* at 14.

¹⁹ *Id.* at 15.

²⁰ *See id.* at 8-10.

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 FTA authorization without modification or delay.²¹

(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 Galveston Bay 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 Galveston Bay 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, Galveston Bay 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.

²¹ 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.

DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,²² 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*, which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.²³ 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 other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.²⁴ 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.²⁵

To ensure that the public interest is served, the authorization granted herein shall require that where Galveston Bay LNG proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Galveston Bay LNG must register with DOE/FE those entities on

²² *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).

²³ *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.

²⁴ *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).

²⁵ *See id.* at 7-8.

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."²⁶ 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 should be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.

(6) DOE/FE will require that Galveston Bay LNG file or cause to be filed with DOE/FE any relevant long-term commercial agreements or contracts pursuant to which Galveston Bay LNG exports LNG as agent for a Registrant once those agreements or contracts 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 purchase and sales agreement involving LNG stored or liquefied at the Galveston Bay LNG Project.

(7) DOE/FE also will require Galveston Bay LNG to file any long-term contracts Galveston Bay LNG enters into providing for the long-term export of LNG on its own behalf from the Galveston Bay LNG 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).

²⁶ 10 C.F.R. § 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) of DOE/FE's regulations²⁷ requires that Galveston Bay LNG file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Galveston Bay LNG Project, whether signed by Galveston Bay LNG or the Registrant, within 30 days of their execution.

(9) DOE/FE recognizes that some information in Galveston Bay 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 Galveston Bay LNG Project, may be commercially sensitive. DOE/FE therefore will provide Galveston Bay LNG the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Galveston Bay 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 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) Galveston Bay LNG will be permitted to continue exporting for a total of three years following the end of the 20-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

²⁷ *Id.* § 590.202(c).

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 Galveston Bay 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. Galveston Bay LNG, LLC is authorized to export domestically produced LNG by vessel from the Galveston Bay LNG Project, to be located in Texas City, Texas. The volume authorized in this Order is equivalent to approximately 785.7 Bcf/yr of natural gas for a 20-year term, beginning on the earlier of the date of first export or seven years from the date the authorization is issued. Galveston Bay 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).

Galveston Bay LNG may continue exporting for a total of three years following the end of the 20-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. Insofar as Galveston Bay 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. Galveston Bay 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 and the Federal Energy Regulatory Commission. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (1) Galveston Bay 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 Galveston Bay LNG Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Galveston Bay 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, Galveston Bay 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, Galveston Bay LNG shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(2) Galveston Bay 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 Galveston Bay LNG Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Galveston Bay 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, Galveston Bay 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, Galveston Bay LNG shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Galveston Bay LNG shall include, and require others for whom Galveston Bay 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. 4200, issued June 13, 2018, in FE Docket No. 17-167-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 Galveston Bay 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 Galveston Bay LNG, LLC is made aware of all such countries.

F. Galveston Bay 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 Galveston Bay LNG with all information necessary to permit Galveston Bay 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, Galveston Bay LNG shall ensure that all persons required by this Order to register with DOE/FE have done so.

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

J. Galveston Bay LNG shall file with the Office of Regulation and International Engagement, on a semi-annual basis, written reports describing the status of the Galveston Bay LNG 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 Galveston Bay LNG Project, the date the Galveston Bay LNG Project is expected to be operational, and the status of the long-term agreements or 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, Galveston Bay LNG must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.²⁸ For purposes of this Ordering Paragraph, a

²⁸ 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).

“change in control” shall include any change, directly or indirectly, of the power to direct the management or policies of Galveston Bay 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.²⁹

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Galveston Bay 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

²⁹ See *id.* at 65,542.

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 June 13, 2018.

Shawn Bennett
Deputy Assistant Secretary for Oil and Natural Gas
Office of Fossil Energy