

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

SOUTHERN LNG COMPANY, L.L.C.

)
)
)
DOCKET NO. 18-15-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE ELBA ISLAND TERMINAL LOCATED
IN CHATHAM COUNTY, GEORGIA, TO
FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4206

JULY 6, 2018

I. DESCRIPTION OF REQUEST

On February 1, 2018, Southern LNG Company, L.L.C. (Southern LNG) filed an application (Application)¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b,² requesting blanket authorization to engage in short-term exports of domestically produced liquefied natural gas (LNG). Southern LNG seeks authorization to export this LNG in a volume up to the equivalent of 255 billion cubic feet (Bcf) of natural gas on a cumulative basis over a two-year period. Southern LNG seeks to export this LNG from the Elba Liquefaction Project, which is being developed at the existing Elba Island Terminal on Elba Island in Chatham County, Georgia.³ Southern LNG anticipates that the requested volume of LNG will be exported prior to full commercial operations at the Elba Liquefaction Project.⁴

Southern LNG requests authorization to export this 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. This includes: (i) 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

¹ *Southern LNG Co., L.L.C.*, Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis, FE Docket No. 18-15-LNG (Jan. 31, 2018) [hereinafter Southern LNG 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 17, 2014.

³ The Elba Island Terminal is currently an LNG import terminal. In 2016, the Federal Energy Regulatory Commission (FERC) authorized Southern LNG and its affiliates to construct and operate natural gas liquefaction and export facilities at the Elba Island Terminal. *See Elba Liquefaction Co., L.L.C., et al.*, Order Granting Section 3 and Section 7 Authorizations, 155 FERC ¶ 61,219 (Jun. 1, 2016), *reh'g denied*, 157 FERC ¶ 61,195 (2016); *see* Southern LNG App. at 2-3. As authorized by FERC, the maximum liquefaction capacity of the Elba Liquefaction Project is approximately 2.5 million metric tons per annum of LNG—equivalent to approximately 130 Bcf per year (Bcf/yr) of natural gas. *See Elba Liquefaction Co., L.L.C., et al.*, 155 FERC ¶ 61,219, at ¶ 10.

⁴ Southern LNG App. at 4.

gas, and with which trade is not prohibited by U.S. law or policy (FTA countries),⁵ and (ii) any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).

Southern LNG seeks to export the LNG over a two-year period “commencing on the date of the initial export from the Elba Island Terminal, which is expected to occur during the third quarter of 2018 and not later than six months thereafter.”⁶ Southern LNG requests to export the LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export.

In this consolidated Order, DOE/FE grants Southern LNG’s Application and authorizes the requested export of 255 Bcf of natural gas over a two-year term to both FTA and non-FTA countries on a non-additive basis.⁷

Specifically, DOE/FE grants the FTA portion of the Application under NGA section § 3(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”⁸ The FTA portion of the Application falls within NGA section 3(c), and therefore DOE/FE approves the requested FTA authorization without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA portion of this authorization.

⁵ 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.

⁶ Southern LNG App. at 4.

⁷ Southern LNG maintains that the requested export volume, “when added to any volumes exported under the DOE Export Orders, will not exceed 130 Bcf in any annual (i.e., consecutive 12 month) period,” so that “the public interest impacts of the total exports will not increase as a consequence of DOE/FE’s approval of the Application” *Id.* at 7.

⁸ 15 U.S.C. § 717b(c).

As to the non-FTA portion of the Application, DOE/FE published a Notice of Application in the *Federal Register* on March 1, 2018.⁹ DOE received three public comments in response to the Notice, as discussed below. DOE/FE has reviewed the record in this proceeding, including the comments received, and finds that it has not been demonstrated that Southern LNG's proposed exports to non-FTA countries are inconsistent with the public interest under NGA section 3(a). Additional terms and conditions are set forth below.

II. BACKGROUND

Applicant. Southern LNG is a Delaware limited liability company with its principal place of business in Birmingham, Alabama. Southern LNG is a wholly-owned indirect subsidiary of Kinder Morgan, Inc.¹⁰

Procedural History. DOE/FE has issued two long-term, multi-contract orders under NGA section 3 authorizing Southern LNG to export LNG by vessel from the Elba Liquefaction Project at the Elba Island Terminal:

- DOE/FE Order No. 3106, authorizing the export of 182.5 Bcf/yr to FTA countries, issued June 15, 2012;¹¹ and
- DOE/FE Order No. 3956, authorizing the export of 130 Bcf/yr to non-FTA countries, issued December 16, 2016.¹²

These FTA and non-FTA export volumes are not additive to one another.¹³

⁹ Southern LNG Co., L.L.C., Application for Blanket Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis, 83 Fed. Reg. 8860 (Mar. 1, 2018).

¹⁰ Southern LNG App. at 2.

¹¹ *Southern LNG Co., L.L.C.*, DOE/FE Order No. 3106, FE Docket No. 12-54-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Elba Island Terminal to Free Trade Agreement Nations (June 15, 2012).

¹² *Southern LNG Co., L.L.C.*, DOE/FE Order No. 3956, FE Docket No. 12-100-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Elba Island Terminal in Chatham County, Georgia, to Non-Free Trade Agreement Nations (Dec. 16, 2016). Southern LNG had requested authorization to export LNG to non-FTA countries in a volume equivalent to 182.5 Bcf/yr of natural gas, but DOE/FE granted the non-FTA authorization in a lower volume equivalent to 130 Bcf/yr of natural gas. DOE/FE estimated 130 Bcf/yr to be equivalent to the maximum annual liquefaction capacity of the Elba Liquefaction Project, as approved by FERC (*i.e.*, 2.5 mtpa of LNG). *Id.* at 2, 174; *see supra* note 3 (discussing FERC order).

¹³ *See* Southern LNG App. at 3.

Southern LNG notes that, in DOE/FE Order No. 3956, DOE/FE stated that Southern LNG may export “commissioning volumes” (*i.e.*, volumes of LNG produced and exported during the initial start-up of an LNG train) pursuant to a separate short-term export authorization.¹⁴

Source of Natural Gas. Southern LNG anticipates using domestically produced natural gas for its requested exports, to be procured in the “very large and liquid U.S. natural gas market.”¹⁵ Southern LNG states that the Elba Island Terminal is directly and indirectly connected to the nationally integrated interstate pipeline grid, allowing access to a variety of supply options.¹⁶

Southern LNG states that it is also considering the possibility of utilizing LNG that has already been imported and in the storage tanks at the Elba Island Terminal, depending on the timing of its need for natural gas, the availability of pipeline capacity, and market conditions.¹⁷ In light of this possibility, Southern LNG requests that this blanket authorization allow for “the export of LNG produced at the Elba Island Terminal from both domestically produced [natural] gas and [natural] gas that was previously imported as LNG from foreign sources.”¹⁸

Business Model. Southern LNG requests authorization to export LNG on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. Southern LNG states that it will comply with all DOE/FE requirements for both exporters and agents, as set forth in recent DOE/FE orders.¹⁹

¹⁴ *See id.* at 3-4 (citing DOE/FE Order No. 3956 at 169-70 & Ordering Para. B).

¹⁵ *See id.* at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ Southern LNG App. at 5-6.

Environmental Review for Non-FTA Portion of Application. According to Southern LNG, authorization of the requested short-term exports will not require any construction or changes to the Elba Liquefaction Project, as previously authorized by FERC.²⁰ Southern LNG asserts that its requested non-FTA authorization thus qualifies for a categorical exclusion from the preparation of an environmental impact statement (EIS) or environmental assessment (EA) under the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* (NEPA).²¹ Specifically, Southern LNG states that its proposed exports qualify for DOE’s categorical exclusion B5.7, which provides for an exclusion where approvals of authorizations to export natural gas under NGA section 3 involve minor operational changes but no new construction.²² Therefore, Southern LNG asserts, its requested authorization does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA.²³

III. APPLICANT’S PUBLIC INTEREST ANALYSIS FOR NON-FTA AUTHORIZATION

Southern LNG asserts that its requested short-term authorization to export LNG to non-FTA countries is consistent with the public interest under NGA section 3(a).²⁴ First, Southern LNG asserts that DOE/FE has already conducted an “extensive public interest review” of exports from the Elba Liquefaction Project in connection with Southern LNG’s existing long-term non-FTA authorization (DOE/FE Order No. 3956).²⁵ As indicated above, Southern LNG states that the volumes proposed for export, when added to any volumes exported under Southern LNG’s existing long-term export authorizations, will not exceed 130 Bcf in any annual (*i.e.*, consecutive

²⁰ *See id.* at 4, 10; *see also supra* note 3.

²¹ *Id.* at 10.

²² *Id.*; *see* 40 C.F.R. § 1508.4; 10 C.F.R. § 1021.410 & Part 1021, Subpart D, Appendix B.

²³ Southern LNG App. at 10.

²⁴ *See id.* at 6-9.

²⁵ *Id.* at 7.

12 month) period. For this reason, Southern LNG maintains that the associated public interest impacts will not increase as a result of the requested short-term authorization, and that no additional public interest review is warranted.²⁶

Next, Southern LNG asserts that current market trends concerning U.S. natural gas demand and supply “strongly indicate” that exports of LNG are in the public interest.²⁷ Southern LNG contends that recent U.S. Energy Information Administration (EIA) projections confirm the adequacy of domestic natural gas supplies to meet demand during the requested two-year term. Southern LNG notes that EIA’s December 2017 *Short-Term Energy Outlook* forecasts a 6.1 Bcf/d increase in dry natural gas production in 2018 from the 2017 level.²⁸ Southern LNG further notes that, in EIA’s October 2017 *Short-Term Energy Outlook*, EIA stated that “rising natural gas production [is keeping] pace with increasing consumption and demand for exports—particularly for [LNG]”²⁹

According to Southern LNG, EIA’s long-term projections confirm that this trend will continue into the foreseeable future.³⁰ Southern LNG points to EIA’s 2017 *Annual Energy Outlook* (AEO 2017) in stating that natural gas production will account for nearly 40% of U.S. energy production by 2040 in EIA’s Reference case.³¹ Southern LNG further states that, despite projections of increased U.S. natural gas consumption, AEO 2017 confirms that increased

²⁶ *See id.*

²⁷ *Id.* at 8.

²⁸ *Id.* (citing *U.S. Energy Info. Admin.*, Dec. 2017 Short-Term Energy Outlook, at 1 (Dec. 12, 2017) available at: <https://www.eia.gov/outlooks/steo/archives/Dec17.pdf>).

²⁹ Southern LNG App. at 8 (quoting *U.S. Energy Info. Admin.*, *Short-Term Energy Outlook*, at 10 (Oct. 2017), available at: <https://www.eia.gov/outlooks/steo/archives/Oct17.pdf>).

³⁰ *See id.* at 8.

³¹ Southern LNG App. at 8 (citing *U.S. Energy Info. Admin.*, 2017 *Annual Energy Outlook*, at 14 (Jan. 5, 2017), available at: [https://www.eia.gov/outlooks/aeo/pdf/0383\(2017\).pdf](https://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf)).

natural gas production will support both growing domestic demand for natural gas and LNG exports.³²

As additional evidence, Southern LNG states that two macroeconomic studies commissioned by DOE have concluded that exports of domestically produced LNG will provide net economic benefits to the United States.³³ These studies are *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets*, performed by EIA and published in October 2014 (2014 LNG Export Study);³⁴ and *The Macroeconomic Impact of Increasing U.S. LNG Exports*, performed jointly by the Center for Energy Studies at Rice University's Baker Institute and Oxford Economics under contract to DOE/FE (together, Rice-Oxford) and published in October 2015 (2015 LNG Export Study).³⁵ Southern LNG states that, based on the 2014 and 2015 LNG Export Studies, DOE/FE has found that LNG exports are consistent with the public interest.³⁶

IV. DOE/FE PROCEEDING FOR NON-FTA AUTHORIZATION

On March 1, 2018, DOE/FE published a Notice of Application in the *Federal Register* for the non-FTA portion of Southern LNG's Application.³⁷ The Notice of Application called on interested persons to submit protests, motions to intervene, notices of intervention, and comments by April 2, 2018.³⁸

³² Southern LNG App. at 8 (citing *U.S. Energy Info. Admin.*, 2017 *Annual Energy Outlook* (Jan. 5, 2017), available at: [https://www.eia.gov/outlooks/aeo/pdf/0383\(2017\).pdf](https://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf)).

³³ See Southern LNG App. at 9.

³⁴ U.S. Energy Info. Admin., *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), available at: <https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf>.

³⁵ Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), available at: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.

³⁶ See Southern LNG App. at 8-9.

³⁷ DOE finds that the requirement for public notice of applications in 10 C.F.R. Part 590 is applicable only to non-FTA applications under NGA section 3(a).

³⁸ See Southern LNG Co., L.L.C., Application for Blanket Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis, 83 Fed. Reg. 8860 (Mar. 1, 2018).

In response to the Notice, DOE/FE received three comments: (i) one comment opposing the Application submitted by Jean Public,³⁹ (ii) one comment supporting the Application filed by Tom Wright,⁴⁰ and (iii) one anonymous comment that appears supportive of the Application and LNG exports generally.⁴¹

Ms. Public opposes the export of U.S. natural gas, particularly “fracked gas,” in any volume.⁴² She contends that allowing the export of natural gas amounts to “profiteering” for corporations, which she asserts is adverse to the interests of U.S. citizens and the environment.⁴³

Mr. Wright, on the other hand, supports Southern LNG’s Application. Mr. Wright states that he has participated in public committees overseeing the Elba Island Terminal for more than 10 years.⁴⁴ He praises Southern LNG’s efforts in developing the Elba Liquefaction Project without causing negative effects in the local community, and he states his appreciation for the Terminal’s “safe and effective operations both on the port and on land.”⁴⁵ He urges DOE to approve the Application, stating that “[a]pproval will benefit our entire community with no increasing environmental or safety effects.”⁴⁶

Finally, the Anonymous Commenter is supportive of LNG exports generally and asserts that there is an ample supply of U.S. natural gas.⁴⁷ The Commenter identifies the benefits of exporting natural gas,⁴⁸ and emphasizes the importance of strengthening the U.S. economy by

³⁹ Public Comment of Jean Public, FE Docket No. 18-35-LNG (Mar. 5, 2018) [hereinafter Comment of Jean Public].

⁴⁰ Public Comment of Tom Wright, FE Docket No. 18-35-LNG (Mar. 2, 2018) [hereinafter Comment of Tom Wright]

⁴¹ Public Comment (Anonymous), FE Docket No. 18-35-LNG (May 3, 2018) [hereinafter Anonymous Comment]. Although DOE received 29 individual anonymous comments, they all appear to be from the same commenter. As such, DOE considers them to be one comment.

⁴² See Comment of Jean Public.

⁴³ See *id.*

⁴⁴ Comment of Tom Wright.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Anonymous Comment (Anonymous 4).

⁴⁸ See *id.* (Anonymous 5).

exporting U.S. natural gas.⁴⁹

V. DISCUSSION FOR REQUESTED NON-FTA AUTHORIZATION

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard of review for Southern LNG's request to export Commissioning Volumes to non-FTA countries. 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). This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest.⁵⁰ DOE/FE must grant such an application unless the presumption is overcome by an affirmative showing of inconsistency with the public interest.

In evaluating an export application under this standard, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111, the principles described in DOE's 1984 Policy Guidelines,⁵¹ and other factors set forth in prior DOE export authorizations. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.

⁴⁹ See *id.* (Anonymous 1).

⁵⁰ See, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 28 (May 20, 2011); see also *Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, at 13 (April 2, 1999) (citing *Panhandle Producers & Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

⁵¹ New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

In sum, DOE/FE's review of export applications under NGA section 3(a) focuses on: (i) the domestic need for the natural gas proposed to be exported; (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies; (iii) whether the arrangement is consistent with DOE/FE's policy of promoting market competition; and (iv) any other factors bearing on the public interest described herein. In addition, NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Public Interest Review

In DOE/FE Order No. 3956, DOE/FE authorized Southern LNG to export domestically produced LNG from the Elba Island Terminal to non-FTA countries in a volume equivalent to 130 Bcf/yr of natural gas for a period of 20 years.⁵² In that order, DOE conducted a public interest review, including an evaluation of the domestic need for the natural gas proposed for export.⁵³ Based on that review, DOE determined that Southern LNG's long-term exports were not inconsistent with the public interest under NGA section 3(a).⁵⁴

In this proceeding, Southern LNG requests a short-term blanket authorization to export LNG in a volume equivalent to 255 Bcf of natural gas over two years. Provided that the proposed export volume—when added to any volumes exported under Southern LNG's long-term authorization in Order No. 3956—do not exceed 130 Bcf on an annual (*i.e.*, consecutive 12 month) period, the public interest impacts of Southern LNG's exports to non-FTA countries will not increase as a consequence of DOE/FE's approval of this Application.

Accordingly, we agree with Southern LNG that no additional public interest review beyond that conducted in the earlier non-FTA export proceeding is warranted. The comments

⁵² See *Southern LNG Co., L.L.C.*, DOE/FE Order No. 3956, at 2, 175-76.

⁵³ See generally *id.* at 143-54, 163-64.

⁵⁴ *Id.* at 175.

offered by Jean Public, while strongly opposing exports of U.S. natural gas, do not offer factual analysis to counter the record evidence showing that the proposed exports are consistent with the public interest. Further, the two other public comments (submitted by Tom Wright and the Anonymous Commenter, respectively) underscore the positive economic benefits associated with Southern LNG's proposed exports—both to the local community in and around Elba Island, Georgia, and to the United States more broadly.

For these reasons, DOE/FE has determined that it has not been demonstrated that the proposed exports of LNG will be inconsistent with the public interest, as would be required to deny Southern LNG's non-FTA request under NGA section 3(a).

C. Environmental Review

In issuing Southern LNG's long-term non-FTA authorization in DOE/FE Order No. 3956, DOE/FE considered the potential environmental impacts of Southern LNG's proposal to export LNG from the Elba Liquefaction Project.⁵⁵ DOE/FE's environmental review considered both its obligations under NEPA and its obligation under NGA section 3(a) to ensure that the proposal was not inconsistent with the public interest.⁵⁶ In conducting this review, DOE/FE considered a wide range of information, including but not limited to FERC's environmental approval for the Elba Liquefaction Project, DOE's Addendum,⁵⁷ and various intervenor arguments opposing those non-FTA exports.⁵⁸

In addition, as explained above, the requested authorization will not result in an increase of LNG exports previously approved for export under Southern LNG's long-term non-FTA

⁵⁵ See, e.g., *Southern LNG Co., L.L.C.*, DOE/FE Order No. 3956, at 103-11, 154-63.

⁵⁶ See *id.* at 154-63.

⁵⁷ See U.S. Dep't of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 Fed. Reg. 48,132 (Aug. 15, 2014).

⁵⁸ See *Southern LNG Co., L.L.C.*, DOE/FE Order No. 3956, at 103-11, 154-63.

authorization in any 12-month period. Under these circumstances, we find that approval of the Application will not result in any incremental environmental impacts as compared to the environmental impacts previously reviewed by FERC and DOE.

Southern LNG further states that approval of the Application will not require additional construction or modification to its previously approved facilities at the Elba Island Terminal.⁵⁹ The Department's regulations at 10 CFR Part 1021, Subpart D, Appendix B, provide a list of categorical exclusions that do not require preparation of either an environmental assessment or environmental impact statement under NEPA. Categorical exclusion B5.7 applies to natural gas import or export activities requiring minor operational changes to existing projects, but no new construction. On June 28, 2018, DOE/FE issued a categorical exclusion under this provision.⁶⁰ This Order grants the non-FTA portion of the Application, in part, on the basis of this categorical exclusion.

VI. 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 an 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. The FTA portion of Southern LNG's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested FTA authorization without

⁵⁹ Southern LNG App. at 4, 10.

⁶⁰ U.S. Dep't of Energy, Categorical Exclusion Determination, *Southern LNG Company, L.L.C.*, FE Docket No. 18-15-LNG (June 28, 2018).

modification or delay.⁶¹

(2) The countries with which the United States has an 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.

(3) Upon a review of the record, DOE/FE finds that a grant of the non-FTA portion of Southern LNG's Application has not been shown to be inconsistent with the public interest under NGA section 3(a). Additionally, the proposed exports qualify for a categorical exclusion under NEPA, such that no EIS or EA will be required. DOE/FE therefore grants the non-FTA portion of Southern LNG's Application.

(4) As described above, Southern LNG requests authorization to export LNG on its own behalf and as agent for other entities who may or may not hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,⁶² 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*,⁶³ 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

⁶¹ 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 non-FTA countries.

⁶² *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).

⁶³ *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.

considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE/FE has reiterated its policy on Agency Rights procedures in authorizations including *Cameron LNG, LLC*, DOE/FE Order No. 3680.⁶⁴ 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, a 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.⁶⁵

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Southern LNG proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Southern LNG must register with DOE/FE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Southern LNG Company, L.L.C. is authorized to export domestically produced LNG and previously imported LNG⁶⁶ by vessel from the Elba Liquefaction Project at the Elba Island Terminal, in a volume equivalent to 255 Bcf of natural gas, pursuant to transactions that have terms of no longer than two years. Southern LNG is authorized to export this LNG on its own

⁶⁴ *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).

⁶⁵ *See id.* at 8-9 (citation omitted).

⁶⁶ We note that Southern LNG currently does not have an authorization to import LNG into the United States from foreign countries. Should Southern LNG wish to export previously imported LNG under the terms of this authorization, it first will need to request a blanket import authorization from DOE/FE. Alternatively, an approved importer may import LNG into the Elba Liquefaction Project at the Elba Island Terminal under a separate DOE/FE blanket import authorization.

behalf or as agent for other entities who hold title to the natural gas at the time of export. This authorization shall be effective for a two-year term, commencing on the earlier of the date of the initial export from the Elba Island Terminal or March 31, 2019.

B. The volume of LNG authorized for export in this Order, when combined with the volume of LNG approved for export to FTA and non-FTA countries in Southern LNG's long-term export authorizations, shall not exceed the total of long-term approved exports of 182.5 Bcf to FTA countries and 130 Bcf to non-FTA countries during any consecutive 12-month period.⁶⁷ Under the terms of Southern LNG's prior authorizations, its long-term LNG export authorizations to FTA and non-FTA countries are not additive to one another.

C. This LNG may be exported by vessel from the Elba Liquefaction Project at the Elba Island 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.

D. Southern 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 FERC. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

E. Southern LNG shall include, and require others for whom Southern 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 with the capacity to import ocean-going LNG carriers and identified in Ordering Paragraph C of DOE/FE Order No. 4206, issued July 6, 2018, in FE Docket No. 18-15-LNG, and/or to

⁶⁷ Southern LNG's long-term FTA and non-FTA orders authorize different volumes of LNG for export. *See supra* at 4-5 & notes 11-12.

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 Southern LNG Company, L.L.C., 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 Southern LNG Company, L.L.C. is made aware of all such countries.

F. Southern LNG is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other entities with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply Southern LNG with all information necessary to permit Southern 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; and (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.

G. 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 modification shall be filed with DOE/FE within 30 days of such change(s).

H. Southern 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 Elba Island Terminal, Southern LNG shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

J. Monthly Reports: With respect to the LNG exports authorized by this Order, Southern 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; (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)

K. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation and International Engagement, 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 (202) 586-6050.

Issued in Washington, D.C., on July 6, 2018.

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