

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

ANDALUSIAN ENERGY, LLC

)
)
) FE DOCKET NO. 20-73-CNG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT COMPRESSED NATURAL GAS
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4616

NOVEMBER 2, 2020

I. DESCRIPTION OF REQUEST

On July 1, 2020, Andalusian Energy, LLC (Andalusian) 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 Andalusian requests long-term, multi-contract authorization to export domestically produced compressed natural gas (CNG) in a volume equivalent to 51.14 billion standard cubic feet (Bcf) per year (Bcf/yr) of natural gas, or 0.14 Bcf per day (Bcf/d).³

Andalusian seeks authorization to export this CNG from a proposed CNG compression and container loading facility (Facility) that it plans to construct, own, and operate within the Port of Brownsville, Texas, at a site near the Brownsville Ship Channel.⁴ Andalusian states that it will export the CNG using approved IMO7/TVAC-ASME CNG (ISO) containers transported by truck from the Facility to a loading dock, then loaded onto ocean-going carriers and shipped from the Port of Brownsville.⁵ Andalusian requests authorization to export the CNG 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 (FTA countries).⁶

Andalusian requests the authorization for a 25-year term, commencing on the earlier of the date of first export or five years from the date the requested authorization is granted.⁷

¹ Andalusian Energy, LLC, Application for Long-Term Authorization to Export Compressed Natural Gas to Free Trade Agreement Countries, FE Docket No. 20-73-CNG (July 1, 2020) [hereinafter App.].

² 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. 00-002.04G, issued on June 4, 2019.

³ App. at 1 & n.3.

⁴ *Id.* at 1, 3.

⁵ *Id.* at 4.

⁶ 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.

⁷ App. at 1.

Additionally, Andalusian requests authority to export this CNG on its own behalf and as agent for other entities who hold title to the CNG at the time of export.⁸

DOE/FE notes that CNG, like liquefied natural gas (LNG), constitutes “natural gas” subject to section 3 of the NGA.⁹ Accordingly, pursuant to NGA section 3(c), 15 U.S.C. § 717b(c), DOE/FE grants Andalusian’s Application.

II. BACKGROUND

Applicant. Andalusian is a Nevada limited liability company with its principal place of business in Houston, Texas. Andalusian is a special purpose entity owned by NBR Global, LLC (NBR) and Nearshore Natural Gas, LLC (Nearshore). According to Andalusian, NBR is a Texas limited liability company, and Nearshore is a Delaware limited liability company.¹⁰

Andalusian states that the following individuals hold an ownership interest of 10% or more in Andalusian through their ownership interests in NBR and Nearshore: Pedro Santos (36%), Aymeric Martinoia (12%), Jonathan Stone (12%), and John Hauser (12%).¹¹

Andalusian Facility. Andalusian states that it plans to construct the Facility on an approximately five-acre inland site within the Port of Brownsville.¹² Andalusian states that it has entered into an option to lease the site from the Brownsville Navigation District for the purpose of constructing and operating the Facility.¹³

⁸ *Id.*

⁹ *See K N Energy, Inc.*, Order Denying Reh’g, 24 FERC ¶ 61,200, at 61,474 (Aug. 2, 1983) (“CNG is natural gas within the meaning of the Natural Gas Act. We see no legal basis ... for treating the subject sales of gas for resale in the form of CNG differently than similar sales of gas for resale in the form of liquefied natural gas, for example The Natural Gas Act contains no basis for such a distinction.”), *aff’g Kansas-Nebraska Natural Gas Co., Inc.*, Order Granting in Part and Denying in Part Petition for Declaratory Order and Denying Untimely Mots. to Intervene, 22 FERC ¶ 61,176 (Feb. 18, 1983), *cited in Emera CNG, LLC*, DOE/FE Order No. 3727, FE Docket No. 13-157-CNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Compressed Natural Gas by Vessel from a Proposed CNG Compression and Loading Facility at the Port of Palm Beach, Florida, to Non-Free Trade Agreement Nations, at 12 n.32 (Oct. 19, 2015).

¹⁰ App. at 3.

¹¹ *Id.* at n.5 (also discussing Andalusian’s Board of Managers).

¹² *Id.*

¹³ *Id.* Andalusian has provided a copy of the Lease Option as Attachment C to its Application.

According to Andalusian, the Facility is anticipated to include natural gas compression facilities with a production capacity of up to approximately 0.14 Bcf/d of natural gas; a truck loading facility; and an approximately five-mile long interconnect with the Valley Crossing Pipeline (or VCP), an intrastate pipeline that transports natural gas within the State of Texas.¹⁴ Andalusian states that the Facility will be capable of storing CNG in the ISO container fill piping in an amount equal to approximately 1.5 time the production capacity (approximately 0.23 Bcf/d).¹⁵

Andalusian states that the Facility will receive natural gas by pipeline from the Valley Crossing Pipeline.¹⁶ At the Facility, the natural gas will be compressed and loaded into ISO containers. The ISO containers will be transported by truck to a nearby loading dock on the Brownsville Ship Channel, which is owned and operated by the Port of Brownsville. At the Brownsville Ship Channel, the ISO containers will be loaded onto ocean-going vessels and shipped to various destinations.¹⁷

Source of CNG. Andalusian states that the Valley Crossing Pipeline originates near the Agua Dulce hub and connects with multiple intrastate and interstate pipelines.¹⁸ Therefore, Andalusian states that the Facility will have indirect access to the national natural gas pipeline system and, in turn, a variety of stable, economic supply options.¹⁹

Business Model. Andalusian requests authorization to export CNG on its own behalf and as agent for other entities who will hold title to the CNG at the time of export.²⁰ Andalusian states that it anticipates selling CNG to export markets in FTA countries in the Caribbean and on

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4.

¹⁶ App. at 2, 6.

¹⁷ *Id.* at 2, 4.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.* at 5.

the eastern coast of Central America and Mexico.²¹ Andalusian states that, to date, it has entered into a Memorandum of Understanding for the sale of CNG for export to a Central American textile manufacturer.²²

Andalusian further states that it will file all long-term, binding contracts associated with the export of CNG from the 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.²³

IV. 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 and CNG, 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. Andalusian's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested FTA authorization without modification or delay.²⁴

(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 Andalusian in support of the Application. The instant grant of authority should not be read to indicate DOE/FE's views on those arguments.

²¹ *Id.* at 4.

²² *App.* at 4.

²³ *Id.* at 4-6.

²⁴ 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 to countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

(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) Andalusian requests authorization to export CNG on its own behalf and as agent for other entities who hold title to the CNG at the time of export.²⁵ DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,²⁶ 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*,²⁷ which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. DOE/FE finds 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 has reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.²⁸ In that order, DOE/FE determined that, in LNG export orders in which Agency Rights have been granted, DOE/FE shall require

²⁵ App. at 5.

²⁶ *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).

²⁷ *The Dow Chemical Co.*, 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.

²⁸ *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).

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.²⁹

To ensure that the public interest is served, the authorization granted herein shall require that, where Andalusian proposes to export CNG as agent for other entities who hold title to the CNG (Registrants), Andalusian must register with DOE/FE those entities on whose behalf it will export CNG 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."³⁰ 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 Andalusian file or cause to be filed with DOE/FE any relevant long-term commercial agreements or contracts pursuant to which Andalusian exports CNG 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.

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

²⁹ *Id.* at 8-9.

³⁰ 10 C.F.R. § 590.202(b).

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 10 C.F.R. § 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations³¹ requires that Andalusian file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Facility, whether signed by Andalusian or the Registrant, within 30 days of their execution.

(8) DOE/FE recognizes that some information in Andalusian’s or a Registrant’s long-term commercial agreements associated with the export of CNG, and/or long-term contracts associated with the long-term supply of natural gas to the Facility, may be commercially sensitive. DOE/FE therefore will provide Andalusian the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Andalusian 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.³²

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 CNG exported pursuant to the Order shall include an acknowledgement of these requirements.

³¹ *Id.* § 590.202(c).

³² *Id.* § 590.202(e) (allowing confidential treatment of information in accordance with 10 C.F.R. § 1004.11).

ORDER

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

A. Andalusian Energy, LLC (Andalusian) is authorized to export domestically produced CNG loaded into ISO containers and transported by ocean-going carrier from a proposed CNG compression and container loading facility (Facility) to be located within the Port of Brownsville, Texas. The volume authorized in this Order is equivalent to 51.14 Bcf/yr of natural gas for a 25-year term, commencing on the earlier of the date of first export or five years from the date the authorization is granted. Andalusian is authorized to export this CNG on its own behalf and as agent for other entities who hold title to the CNG, pursuant to one or more long-term contracts (a contract greater than two years).

B. This CNG 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 CNG via ocean-going vessels. FTA countries are currently identified by DOE/FE at:

<https://www.energy.gov/fe/services/natural-gas-regulation/how-obtain-authorization-import-andor-export-natural-gas-and-lng>.

C. Andalusian 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. (i) Andalusian shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated with the long-term export of CNG from the Facility as agent for other entities. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

(ii) Andalusian shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Facility. The non-redacted copies must be filed within 30 days of their execution and may be filed under seal, as described above.

E. Andalusian is permitted to use its authorization to export CNG as agent for other CNG title-holders (Registrants), after registering those entities with DOE/FE. Registration materials shall include an agreement by the Registrant to supply Andalusian with all information necessary to permit Andalusian 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) 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.

Any change in the registration materials—including 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).

F. Andalusian, or others for whom Andalusian acts as agent, shall include the following provision in any agreement or other contract for the sale or transfer of CNG exported pursuant to this Order:

Customer or purchaser acknowledges and agrees that it will resell or transfer CNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 4616, issued November 2, 2020, in FE Docket No. 20-73-CNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such CNG to such countries. Customer or purchaser further commits to cause a report to be provided to Andalusian Energy, LLC that identifies the country (or countries) into which the CNG was actually delivered, and to include in any resale contract for such CNG the necessary conditions to ensure that Andalusian Energy, LLC is made aware of all such actual destination countries.

G. Within two weeks after the first export of domestically produced CNG occurs from the Facility, Andalusian shall provide written notification of the date of first export to DOE/FE.

H. Andalusian shall file with the Office of Regulation, Analysis, and Engagement, on a semi-annual basis, written reports describing the status of the proposed Facility. Reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the proposed Facility, the date the Facility is expected to commence first exports of CNG, and the status of any long-term supply and export contracts associated with the long-term export of CNG.

I. With respect to any change in control of the authorization holder, Andalusian must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.³³ For purposes of this Ordering Paragraph, a

³³ 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 Andalusian, 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.³⁴

J. Monthly Reports: With respect to the exports authorized by this Order, Andalusian shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R indicating whether exports of CNG 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 CNG in ISO containers by vessel have occurred, the report must give the following details of each CNG 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 vessel; (4) the date of departure from the U.S. export terminal; (5) the country (or countries) into which the CNG was actually delivered; (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 name and location (city/state) of the facility where the ISO container is loaded with CNG; (10) the mode(s) of transport used to move the loaded ISO container from the loading facility to the export port or terminal; (11) the duration of the supply agreement; and (12) the name(s) of the purchaser(s).

³⁴ See *id.* at 65,542.

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

K. All monthly report filings on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation, Analysis, and Engagement, according to the methods of submission listed on the Form FE-746R reporting instructions available at <https://www.energy.gov/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on November 2, 2020.

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