

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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CONOCOPHILLIPS COMPANY

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FE DOCKET NO. 11-109-LNG

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

DOE/FE ORDER NO. 3038

NOVEMBER 22, 2011

## I. SUMMARY

Following an examination of all record evidence in this proceeding in conformity with the requirements of section 3 of the Natural Gas Act, 15 USC 717b, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) (NGA); part 590 of DOE's regulations, 10 CFR part 590 (2008); and applicable delegations and redelegations of authority,<sup>1</sup> the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the August 22, 2011, application of ConocoPhillips Company (ConocoPhillips).

The authorization permits ConocoPhillips to export liquefied natural gas (LNG) that previously had been imported from foreign sources, in an amount up to the equivalent of 500 billion cubic feet (Bcf) of natural gas on a cumulative basis, over a two-year period commencing on November 30, 2011.<sup>2</sup> ConocoPhillips is authorized 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. ConocoPhillips is also authorized to export this LNG to which it holds title on its own behalf and as agent for others who hold title, after registering the other entity with DOE/FE. This authorization permits such exports on a short-term or spot market basis from the existing facilities owned by Freeport LNG Development, L.P. on Quintana Island near Freeport, Texas. The authorization provided by this Order will not permit the export of domestically produced LNG.

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<sup>1</sup> See, DOE Delegation Order No. 00-002.00L (Apr. 29, 2011), and DOE Redelegation Order No. 00-002.04E (Apr. 29, 2011).

<sup>2</sup> ConocoPhillips' blanket authorization to export LNG granted in DOE/FE Order No. 2731 on November 30, 2009, extends through November 29, 2011.

## **II. PROCEDURAL HISTORY**

ConocoPhillips filed the “Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on August 22, 2011. The Application was submitted pursuant to section 3 of the NGA and part 590 of DOE’s regulations. On October 6, 2011, DOE/FE published a Notice of application (Notice) in the Federal Register. 76 FR 62048. The Notice stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than November 7, 2011.

FE received no filings in response to this Notice.

## **III. BACKGROUND**

ConocoPhillips, a Delaware corporation, has its principal place of business in Houston, Texas. ConocoPhillips is an independent producer and seller of natural gas that imports LNG into the United States and exports foreign-sourced LNG from the United States. On November 30, 2009, DOE/FE Order No. 2731 granted ConocoPhillips blanket authorization to export previously imported LNG up to the equivalent of 500 Bcf of natural gas from the Freeport LNG Terminal on Quintana Island, Texas for a two year period beginning on November 30, 2009. Under the terms of the blanket authorization, the previously imported LNG may be exported 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.

### **Current Application**

In the instant application, ConocoPhillips is seeking blanket authorization commencing on November 30, 2011, to export LNG from the Freeport LNG Terminal on Quintana Island, Texas, that has been previously imported from foreign sources, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law, over a

two-year period, in an amount up to the equivalent of 500 Bcf of natural gas. In addition, ConocoPhillips requests that this authorization extend to LNG supplies imported from foreign sources to which ConocoPhillips holds title, as well as to LNG supplies imported from foreign sources that ConocoPhillips may export as agent on behalf of other entities who themselves hold title.<sup>3</sup>

ConocoPhillips does not herein seek authorization to export domestically-produced LNG. ConocoPhillips only seeks renewed authorization to export LNG that has been previously imported into the U.S. from foreign sources.

#### **IV. DECISION**

##### **A. Standard of Review**

Pursuant to the transfer of authorities under sections 301(b) and 402 of the DOE Organization Act, 42 USC 7151(b) and 42 USC 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 USC 717b(a).

In evaluating an export application under section 3, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111, which focuses primarily on domestic need

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<sup>3</sup> In the Application, ConocoPhillips stated that it is aware that DOE/FE has adopted a more extensive policy for authorizing a permit holder to act as agent for third-parties since issuance of its current LNG re-export authorization. See *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 granted on February 10, 2011. ConocoPhillips stated that it is willing to abide by DOE/FE's currently-applicable agency rights standards.



for the gas to be exported, as described in the Secretary's natural gas policy guidelines,<sup>4</sup> and any other matters determined to be appropriate to a determination of the public interest. In addition, 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**

The instant application involves a request for authorization to export LNG that was not produced in the United States. Accordingly, exporting the natural gas necessarily could not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG will still affect the domestic market because, for a two-year period, the exports will reduce the volume of natural gas potentially available for domestic consumption.

DOE/FE has issued recent blanket authorizations to export previously imported LNG<sup>5</sup> and in each case cited the evidence of record which indicates that United States consumers presently have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which ConocoPhillips seeks to export. DOE takes administrative notice that a review of the most recent data and analysis prepared by the Energy Information Administration (EIA) within DOE shows that over the last several years, domestic natural gas production has increased significantly, primarily due to the development of improved drilling technologies, including the ability to produce natural gas trapped in shale gas geologic formations. The most recent data and analysis prepared by the Energy Information Administration (EIA) within DOE shows domestic gross natural gas production from shale increased to 3.4 trillion cubic feet (Tcf) in 2009,

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<sup>4</sup> See 49 FR 6684, February 22, 1984.

<sup>5</sup> *Freeport LNG Development, L.P.* DOE/FE Order No. 2986 (July 19, 2011); *ENI USA Gas Marketing LLC*, DOE/FE Order No. 2923 (March 3, 2011); *Sempra LNG Marketing, LLC*, DOE/FE 2885 (December 3, 2010); *Dow Chemical Company*, DOE/FE Order No. 2859 (October 5, 2010).

compared to 2.3 Tcf in 2008.<sup>6</sup> Further, in the Annual Energy Outlook 2011 (AEO 2011), EIA projected that, by 2015, annual dry shale gas production will increase to 7.2 Tcf and, by 2035, to 12.2 Tcf. Therefore the evidence of record indicates that United States consumers continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which ConocoPhillips seeks to export. In addition, I note that no interested person intervened in this proceeding or otherwise challenged ConocoPhillips' assertions of sufficient supplies to meet domestic demand if the application is granted.

**C. Agency Rights**

As described above, ConocoPhillips requests authorization to export LNG on its own behalf or as agent for others. DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Order No. 2913, issued February 10, 2011. In Order No. 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to register each LNG title holder for whom FLEX sought to export LNG as agent. FLEX also proposed that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included in its export authorization and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In the FLEX application (FE Docket No. 10-160-LNG), FLEX also stated that it would file under seal with DOE/FE any relevant long-term commercial agreements that it reached with the LNG title holders on whose behalf the exports were performed.

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<sup>6</sup> EIA, *Natural Gas Gross Withdrawals and Production*, Release Date: October 29, 2011  
[http://www.eia.gov/dnav/ng/ng\\_prod\\_sum\\_dcu\\_NUS\\_a.htm](http://www.eia.gov/dnav/ng/ng_prod_sum_dcu_NUS_a.htm)

In Order No. 2913, DOE/FE found that such a proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *Dow Chemical*, 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 there agreed to accept the FLEX alternative because it would ensure that the title holder was aware of all DOE/FE requirements applicable to the proposed export and would provide DOE with a record of all authorized exports and direct contact information and a point of contact with the title holder. Moreover, DOE/FE found that the registration process was responsive to current LNG markets and provided an expedited process by which companies seeking to export LNG can do so. Additionally, in Order No. 2913, DOE/FE noted that those entities that hold title or expect to hold title to LNG that is stored in domestic LNG terminals can choose to submit an application to DOE for their own authorization to export LNG, and are not required to use the agency rights held by others.

The same policy considerations that supported DOE/FE's acceptance of the alternative proposal in Order No. 2913 apply here as well. In order to ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where ConocoPhillips proposes to export as agent for others, ConocoPhillips must register the other entity with DOE/FE 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 Guidelines and applicable precedent, *e.g.*, Order No. 1473, the Department considers the potential effects of proposed exports on other aspects of the public interest. The other considerations in this case include the environment.



## **The Environment**

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the application, ConocoPhillips states that no new facilities or modifications to any existing facilities at the Freeport LNG Terminal would be required in order for ConocoPhillips to export LNG from that facility. 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.<sup>7</sup> Accordingly, DOE issued a Categorical Exclusion Determination, dated October 14, 2011, which found that the ConocoPhillips proposed action is categorically excluded from further NEPA review.

### **E. Conclusion**

After due consideration based on all facts and evidence of record, I find that a grant of the export application is not inconsistent with the public interest. In particular, the record shows there is sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on the previously imported LNG which ConocoPhillips seeks to export through the authorization timeframe; and this application falls under DOE categorical exclusion such that no new EA or EIS will be required. Therefore, I will grant the application.

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<sup>7</sup> "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." 10 CFR Part 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusions in B5.7.



ORDER

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

A. ConocoPhillips is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 500 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 November 30, 2011, and extending through November 29, 2013.

B. This LNG may be exported from the Freeport LNG Terminal located on Quintana Island, Texas, 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. ConocoPhillips is permitted to use its authorization in order to export LNG on its own behalf or on behalf of or as agent for others, after registering the other party with DOE/FE.

D. ConocoPhillips, or others for whom ConocoPhillips acts as agent, shall include the following provision in any 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 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 ConocoPhillips that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that ConocoPhillips is made aware of all such actual destination countries."

E. As a condition of this authorization, ConocoPhillips shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by ConocoPhillips 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.

F. Registration materials shall include an acknowledgement and agreement by the registrant to supply ConocoPhillips with all information and copies of contracts necessary in order to permit ConocoPhillips 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 CFR 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 Ordering Paragraph D provision in any contract for the sale or transfer of LNG exported pursuant to 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, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

H. **Monthly Reports:** With respect to the export of LNG authorized by this Order, ConocoPhillips shall file with the Office of Natural Gas Regulatory Activities, 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 of the U.S. export terminal; (2) the name of the LNG tanker; (3) the date of departure from the U.S. export terminal; (4) the country of destination; (5) the name of the supplier/seller; (6) the volume in Mcf; (7) the delivered price per MMBtu; (8) the duration of the supply agreement (indicate spot sales); and (9) the name(s) of the purchaser(s).

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

I. The first monthly report required by this Order is due not later than January 30, 2012, and should cover the reporting period from November 30, 2011, through December 31, 2011.

J. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at [Yvonne.caudillo@hq.doe.gov](mailto:Yvonne.caudillo@hq.doe.gov) or [ngreports@hq.doe.gov](mailto:ngreports@hq.doe.gov), or may be faxed to Ms. Caudillo at (202) 586-6050.

Issued in Washington, D.C., on November 22, 2011.



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