

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY



DISTRIGAS LLC

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FE DOCKET NO. 08-155-LNG

**APPLICATION OF DISTRIGAS LLC FOR LONG-TERM AUTHORIZATION
TO IMPORT LIQUEFIED NATURAL GAS AND
REQUEST FOR CONFIDENTIAL TREATMENT**

Pursuant to section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. § 717b, and part 590 of the regulations of the U.S. Department of Energy (“DOE”), 10 C.F.R. Part 590 (2008), Distrigas LLC (“Distrigas”) hereby requests long-term authorization to import liquefied natural gas (“LNG”), effective retroactively as of September 1, 2003 and extending through March 31, 2009. Distrigas also requests confidential treatment for its LNG purchase agreement.

In support thereof, Distrigas states as follows:

**I.
DESCRIPTION OF APPLICANT**

The exact legal name of Distrigas is Distrigas LLC. Distrigas is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Distrigas is a wholly-owned subsidiary of SUEZ LNG NA LLC.

**II.
CORRESPONDENCE AND COMMUNICATIONS**

All correspondence and communications regarding this application, including all service of pleadings and notices, should be directed to the following persons:

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Pursuant to the requirements of 10 C.F.R. § 590.103(a), Distrigas hereby certifies that those persons listed above and undersigned are the duly authorized representatives of Distrigas. Distrigas requests that the Office of Fossil Energy (“FE”) waive 10 C.F.R. § 590.103(a) to the extent necessary to place each of the persons listed above on the official service list.

III. BACKGROUND

Distrigas imports LNG from Trinidad and Tobago under two companion LNG sales agreements with Naturcorp Multiservicios, S.A. (“Naturcorp”), successor to Sociedad de Gas de Euskadi, S.A. Both agreements, the Train 3 LNG Sales Agreement (Conventional) and the Train 3 LNG Sales Agreement (Power), were executed on February 7, 2003. On February 7, 2003, the parties executed two letter agreements setting forth formulas for calculating a component of the price under each agreement, and on April 30, 2004, the parties amended the

pricing provisions of both agreements.¹ The currently effective pricing formulas are set forth in Article II of the February 7, 2003 agreements, the February 7, 2003 letter agreements, and the April 30, 2004 amendments. The initial term of the Train 3 LNG Sales Agreement commenced on approximately September 1, 2003 and was to expire on March 31, 2006.² The term was extended by the April 30, 2004 amendments, and the Train 3 LNG Sales Agreement, as so amended, now terminates on March 31, 2009.

Under the Train 3 LNG Sales Agreement, Distrigas purchases LNG acquired by Naturcorp under its separate LNG Sales Contract with Atlantic LNG 2/3 Company of Trinidad and Tobago Unlimited (“Atlantic 2/3”). Distrigas purchases the LNG from Naturcorp on an FOB basis at the Atlantic 2/3 LNG facilities in Trinidad, then transports the LNG by vessel to the import terminal and regasification facility at Everett, Massachusetts (the “Everett Terminal”), which is owned and operated by Distrigas’s affiliate, Distrigas of Massachusetts LLC (“DOMAC”).³ DOMAC then sells the imported LNG, both in liquid state and in vapor (regasified) state, to customers throughout the northeastern United States, thereby supplying “approximately 20 percent of New England's annual gas demand.” *Distrigas of Massachusetts LLC*, 123 FERC ¶ 61,039 at P 3 (2008).

Distrigas currently holds a short-term blanket authorization to import up to 100 Bcf of LNG from various international sources over a two-year period. *Distrigas LLC*, DOE/FE Order No. 2572 (Oct. 7, 2008). Distrigas has held similar short-term authorizations in the past,

¹ Together, the February 7, 2003 agreements, the February 7, 2003 letter agreements and the April 30, 2004 amendments, most of the terms of which are identical, are referred to as the “Train 3 LNG Sales Agreement” and are attached hereto as Exhibit B.

² See section 1.1 of the Train 3 LNG Sales Agreement.

³ The Train 3 LNG Sales Agreement also permits Distrigas to deliver the LNG to any other receiving terminal in the United States (including Puerto Rico), the Caribbean region, or, with the consent of Naturcorp, Spain. Train 3 LNG Sales Agreement § 5.1.

beginning in 1998.⁴ Distrigas also holds a 40-year authorization to import 100 Bcf per year from Trinidad and other countries. *Distrigas Corporation*, 1 FE ¶ 71,175, DOE/FE Order No. 1115 (Nov. 7, 1995).

Distrigas inadvertently did not obtain additional long-term authorization to import LNG under the Train 3 LNG Sales Agreement. Nevertheless, throughout the term of the Train 3 LNG Sales Agreement, Distrigas has reported to FE all relevant information regarding its importation of LNG. Specifically, Distrigas has filed the required quarterly and monthly reports setting forth volumes purchased and imported by Distrigas at the Everett Terminal, and, as required in the monthly reports, has reported the estimated duration of the Train 3 LNG Sales Agreement (and its other LNG purchase agreements).⁵

Pursuant to 10 C.F.R. § 590.103(c), Distrigas states that it is filing contemporaneously herewith two additional applications for long-term authorization to import liquefied natural gas related to other LNG sales agreements. Other than those applications, there are no other proceedings related to this application currently pending before DOE or any other Federal agency.

IV. LEGAL STANDARD

Section 3 of the NGA requires the DOE to authorize an import or export of natural gas unless it finds that “the proposed exportation or importation will not be consistent with the public interest.” 15 U.S.C. § 717b(a). Section 3(c) states that the importation of LNG

⁴ *Distrigas Corporation*, 2 FE ¶ 70,214, DOE/FE Order No. 1405 (Aug. 13, 1998); *Distrigas LLC*, 2 FE ¶ 70,564, DOE/FE Order No. 1646 (Nov. 15, 2000); *Distrigas LLC*, 2 FE ¶ 70,808, DOE/FE Order No. 1833 (Dec. 3, 2002); *Distrigas LLC*, 2 FE ¶ 71,099, DOE/FE Order No. 2079 (Mar. 17, 2005); *Distrigas LLC*, 2 FE ¶ 71,379, DOE/FE Order No. 2294 (Nov. 22, 2006).

⁵ Distrigas incorrectly referenced its short-term blanket authorization on the reports of the Train 3 LNG volumes.

“shall be deemed to be consistent with the public interest, and applications for such importation . . . shall be granted without modification or delay.” 15 U.S.C. § 717b(c).

FE has granted several applications requesting retroactive authorization of LNG imports. In *St. Lawrence Gas Co.*, 1 FE ¶ 71,291, DOE/FE Order No. 1190 (July 26, 1996), the applicant inadvertently had allowed its authorization to expire and had continued to import natural gas without authorization. FE granted a long-term authorization effective approximately three and one-half years prior to the date of the application. Similarly, FE has granted retroactive short-term authorization where the applicant inadvertently had failed to obtain or renew its authorization, *St. Lawrence Gas Co.*, 2 FE ¶ 70,283, DOE/FE Order No. 1449 (Dec. 28, 1998) (inadvertently failed to file in a timely manner); *Anadarko Trading Co.*, 1 FE ¶ 61,272, DOE/FE Order No. 1175 (June 24, 1996) (inadvertently failed to renew authorization); *Eastex Hydrocarbons Inc.*, 1 FE ¶ 71,222, DOE/FE Order No. 1137 (Dec. 21, 1995) (mutual misunderstanding between applicant and natural gas seller as to which entity required import authorization); *BridgeGas U.S.A. Inc.*, 1 FE ¶ 70,793, DOE/FE Order No. 800 (May 7, 1993) (inadvertently failed to obtain authorization prior to importing natural gas).

In *Bridgegas*, FE noted favorably that the applicant “reported to DOE the total monthly unauthorized volumes which previously were imported, giving the specific details of each transaction.” *Bridgegas*, Order No. 800 at 1. The same is true here of *Distrigas*.

V.

AUTHORIZATION REQUESTED

Distrigas requests long-term authorization to import LNG from Trinidad and Tobago under the Train 31 LNG Sales Agreement. *Distrigas* requests that the authorization commence effective September 1, 2003 and extend through March 31, 2009, concomitant with the term of the Train 3 LNG Sales Agreement. *Distrigas* requests authorization to import a total

of up to 204 Bcf over that period.⁶ Approval of this Application will not increase the LNG that Distrigas has anticipated importing for delivery to the Everett Terminal.

There is good cause for retroactive authorization here because Distrigas's failure to obtain long-term authorization is due to inadvertent oversight. Distrigas has fully reported to FE the details of its imports under the Train 3 LNG Sales Agreement throughout the term of the Agreement. Those data have been available to, and used by, FE to compile its periodic analyses and reports. No harm has resulted from Distrigas's inadvertent error.

Distrigas's imports under the Train 3 LNG Sales Agreement and other agreements constitute a significant portion of New England's gas demand. Moreover, Congress has expressly found that the importation of LNG is consistent with the public interest. *See* 15 U.S.C. § 717b(c). Pursuant to this statutory directive, FE should find that Distrigas's LNG imports under the Train 3 LNG Sales Agreement are not inconsistent with the public interest and retroactively authorize those imports.

VI. **REQUEST FOR CONFIDENTIAL TREATMENT**

Distrigas respectfully requests confidential treatment for the Train 3 LNG Sales Agreement, attached hereto as Exhibit B. The Train 3 LNG Sales Agreement is a privileged and confidential trade secret and is exempt from disclosure under Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).

In accordance with 10 C.F.R. § 1004.11, Distrigas provides the following explanation of the exempt status of the Train 3 LNG Sales Agreement. The Train 3 LNG Sales

⁶ The quantities of Naturcorp Train 3 LNG that have been and will be imported and delivered to the Everett Terminal are more than 65% less than this figure because the majority of cargoes have been, and will continue to be, delivered to other terminals and imported by the receiving parties. *See supra* note 3. All Naturcorp Train 3 LNG imported by Distrigas, however, has been and will continue to be delivered to the Everett Terminal.

Agreement contains a confidentiality provision, which requires Distrigas and Naturcorp to “treat the contents of [the] Agreement . . . as confidential and . . . not disclose any such Confidential Information to any third party without the prior written consent of the other party; provided, however, that disclosure of Confidential Information shall be permitted by either party . . . to the extent necessary to comply with any court, arbitral or governmental directive or order or other legal requirement” Train 3 LNG Sales Agreement § 10.8. Distrigas has maintained the confidentiality of the Train 3 LNG Sales Agreement. Agreements such as the Train 3 LNG Sales Agreement are customarily held in confidence to protect the parties from competitive harm. The disclosure of the Train 3 LNG Sales Agreement could cause Distrigas competitive harm. Moreover, because the volume of imports and essential terms of these imports are set forth in Distrigas’s periodic reports to FE, there is no compelling reason for other provisions of the Train 3 LNG Sales Agreement to be publicly disclosed. However, in the event that FE determines that the Train 3 LNG Sales Agreement should be publicly disclosed, Distrigas requests an opportunity to submit to FE a copy of the Agreement with pricing and other commercially sensitive provisions redacted that could be made publicly available.

VII. **EXHIBITS**


The following appendices are attached hereto:


- Exhibit A:** Opinion of Counsel
- Exhibit B:** Train 3 LNG Sales Agreement (Confidential Treatment Requested)
- Exhibit C:** Verification

VIII.
CONCLUSION

For the foregoing reasons, Distrigas respectfully requests that FE grant this request for long-term authorization to import LNG, effective retroactively as of September 1, 2003 and extending through March 31, 2009, as expeditiously as possible. Distrigas further requests that FE accord confidential treatment to the Train 3 LNG Sales Agreement.

Respectfully submitted,


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Dated: December 8, 2008