

**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

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CONOCOPHILLIPS COMPANY )  
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**FE DOCKET NO. 09-92-LNG**

**ORDER GRANTING AUTHORIZATION  
TO EXPORT  
LIQUEFIED NATURAL GAS**

**DOE Opinion and Order No. 2731**

**NOVEMBER 30, 2009**

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## **GLOSSARY OF TERMS AND ABBREVIATIONS**

Applicant	ConocoPhillips Company
Bcf	Billion cubic feet
Btu	British thermal unit
DOE	Department of Energy
EIA	Energy Information Administration, DOE
FE	Office of Fossil Energy, DOE
LNG	Liquefied Natural Gas
Mcf	Thousand cubic feet
MMBtu	Million British thermal units
NEPA	National Environmental Policy Act
NGA	Natural Gas Act of 1938
Tcf	Trillion cubic feet

## 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 (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 Application of ConocoPhillips Company (ConocoPhillips) for authorization 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 the date of this authorization.

This authorization permits such exports on a short-term or spot market basis from LNG terminal facilities owned by Freeport LNG Development, L.P. (Freeport) on Quintana Island, TX to the United Kingdom, Belgium, Spain, Portugal, Turkey, Brazil, Argentina, Chile, Mexico, the Dominican Republic, Japan, South Korea, India, China, Taiwan, France, and/or Italy, as well as any country with the capacity to import ocean-going LNG and with which trade is not prohibited by U.S. law or policy.

Furthermore, this authorization permits ConocoPhillips to export natural gas to which it holds title and also to export natural gas on behalf of others who hold title to the natural gas. But, regardless of who holds title, the authorization does not permit the export of domestically produced natural gas.

For the reasons set forth herein, FE finds that the requested authorization will not be inconsistent with the public interest and the application should be granted.

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<sup>1</sup> See, DOE Delegation Order No. 00-002.00H (Dec. 30, 2008) and DOE Redelegation Order No. 00-002.04D (Nov. 6, 2007).

## II. PROCEDURAL HISTORY

ConocoPhillips filed the “Application of ConocoPhillips Company for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on August 31, 2009. The Application was submitted pursuant to section 3 of the NGA and Part 590 of DOE’s regulations. ConocoPhillips seeks blanket authorization to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 500 Bcf of natural gas over a two-year period commencing on the date of the authorization. The applicant seeks authorization to engage in such exports from the United States to the United Kingdom, Belgium, Spain, Portugal, Turkey, Brazil, Argentina, Chile, Mexico, the Dominican Republic, Japan, South Korea, India, China, Taiwan, France, and/or Italy, as well as any country with the capacity to import ocean-going LNG and with which trade is not prohibited by U.S. law or policy. While the Application refers broadly to exports “from the United States,” the applicant states that the authorization be made applicable to exports from Freeport’s Quintana Island terminal facilities. Application at 3.

On September 14, 2009, DOE/FE published a Notice of Application (Notice) in the Federal Register. 74 FR 46990. The Notice stated that protests, motions and notices to intervene, and requests for additional procedures would be due no later than October 14, 2009.

Freeport filed a motion to intervene on September 18, 2009. No pleadings in opposition to Freeport’s motion were filed within 15 days of the filing of the motion and, therefore, pursuant to 10 CFR 590.303(g), that motion was automatically deemed granted.

Freeport has not filed comments or protests in opposition to ConocoPhillips's Application and the Application accordingly is unopposed.

### **III. BACKGROUND**

ConocoPhillips is a Delaware corporation with its executive offices in Houston, TX. ConocoPhillips is an independent producer and seller of natural gas and an importer of LNG into the United States. ConocoPhillips is presently authorized to import LNG up to an amount equivalent to 500 Bcf during a two-year period that took effect on August 30, 2009. See, DOE/FE Order No. 2673 (July 24, 2009). In the instant Application, ConocoPhillips states that it intends to apply to renew the Order No. 2673 import authorization at the end of the two-year period.

ConocoPhillips has contracted with Freeport for long-term terminal services, including storage capacity, at the Quintana Island facilities. Freeport is presently authorized to operate the facility both as an import facility for the receipt of LNG and as an export facility for the transfer of LNG to outbound tankers. See, DOE/FE Order No. 2644 (May 8, 2009).

In support of the Application, ConocoPhillips asserts that the proposed export authorization is not inconsistent with the public interest.

A grant of the Application, according to ConocoPhillips, will enable it to "utilize and optimize" the contracted-for capacity that it holds at the Quintana Island terminal facilities and will address its "need for flexibility to respond to periodic changes in domestic and world markets for natural gas and LNG." Application at 3. "Specifically, once LNG has been imported into the U.S. and is in storage at the FLNG [Quintana



Island] import terminal, ConocoPhillips desires the flexibility either to export the imported LNG to other world markets or to have LNG regassified for sale into domestic markets, with this decision based primarily on prevailing market conditions.” Id.

ConocoPhillips maintains that the LNG to be exported is not needed to meet domestic needs. Application at 4. In this regard, ConocoPhillips makes reference to the considerations that supported the decision of DOE/FE to issue export authorization to Freeport in Order No. 2644 (May 28, 2009) and to another authorized LNG exporter, Cheniere Marketing, Inc., in DOE/FE Order No. 2651 (June 8, 2009). Both Freeport and Cheniere presented applications for the export of previously imported LNG. DOE/FE stated in both cited orders that the fundamental question for the export authorizations sought is whether the volumes of LNG to be exported were needed to meet domestic need. Based on a factual rule of publicly available information, including data gathered by the Energy Information Administration, DOE/FE concluded that, as respects the Freeport and Cheniere applications, the previously imported LNG was not needed to meet domestic demand. ConocoPhillips asserts that the same considerations weighed by DOE/FE in Freeport and Cheniere—an upward trend in domestic natural gas supplies and corresponding downward trend in domestic natural gas prices—continue to apply today and can be expected to persist over the two-year time frame of the requested authorization.

ConocoPhillips further states that a grant of the requested authorization will eliminate any concern that imported LNG will become captive to domestic markets and will provide ConocoPhillips with the option of exporting the LNG or selling it into

domestic markets, thereby actually facilitating ConocoPhillips' willingness to continue importation of LNG cargoes into the United States. Application at 6.

Moreover, ConocoPhillips emphasizes that it is seeking only to export previously imported LNG and, therefore, a grant of the requested authorization will not reduce the availability of domestically produced natural gas.

#### IV. DECISION

##### A. Standard of Review

Section 3 of the Natural Gas Act sets forth the statutory criteria for review of the instant export application. 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, Section 3 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 DOE/FE Order No. 1473, FE found that Section 3 creates a rebuttable presumption that a proposed export of natural gas is in the public interest and that DOE must grant such an application unless those who oppose the application overcome that presumption.<sup>2</sup> Also in Order No. 1473, FE stated that the burden on the opponents of the

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<sup>2</sup> As we observed in Order No. 1473, in order to overcome the rebuttable presumption favoring export authorizations, opponents of an export license must make an affirmative showing of inconsistency with the  
*Continued on next page*



requested authority was “heavy” due to the long-standing nature of the authority and the fact that, prior thereto, no party had contested the export. Order No. 1473 at 13.

In implementing section 3 of the NGA, the Department issued a set of policy and regulatory guidelines (Guidelines) at 49 FR 6684 (February 22, 1984). The goals of the Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Guidelines provide that

[t]he market, not government, should determine the price and other contract terms of imported [or exported] natural gas. The federal government’s primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.

*Id.*

While nominally applicable only to natural gas import cases, FE held in Order No. 1473 and in subsequent cases that the same policies will be applied to natural gas export applications.<sup>3</sup>

In reviewing the proposed LNG export under the Guidelines in Order No. 1473, FE indicated that it also was guided by DOE Delegation Order No. 0204-111. That delegation order, which authorized the Administrator of the Economic Regulatory Administration (ERA) to exercise the agency’s review authority under NGA section 3, also directed the Administrator to regulate exports “based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate.”

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public interest. Order No. 1473, note 42 at 13, *citing Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (DC Cir. 1987).

<sup>3</sup> Order No. 1473 at 14, *citing Yukon Pacific*, Opinion and Order No. 350, 1 FE 70,259 at 71,128.

While DOE Delegation Order No. 0204-111 is no longer in effect, the principal focus of this agency's review of export applications in decisions under current delegated authority has continued to be the domestic need for the natural gas proposed to be exported. Therefore, DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements, as the critical legal considerations to be weighed in reviewing the instant application for export authority.

In addition to the review and approvals required under the NGA, 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**

In evaluating domestic need in the context of an application to export natural gas, including LNG, FE typically examines the various domestic impacts arising from a loss of domestically produced natural gas to foreign markets. See, for example, *ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company*, DOE/FE Order No. 2500, Order Granting Authorization To Export Liquefied Natural Gas From Alaska (June 3, 2008).

The current proceeding, however, involves a request for authorization to export LNG that was not produced in the United States. Accordingly, exporting the gas necessarily cannot reduce the availability of domestically produced 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.

The fundamental question, therefore, remains whether the LNG which ConocoPhillips seeks to export in this case is needed to meet domestic demand. Based on a review of the complete record, DOE/FE finds that the LNG to be exported is not needed in order to meet the market demand for natural gas/LNG on a competitively priced basis. Several factors support this determination:

First, uncontroverted evidence of record indicates that United States consumers presently have access to substantial quantities of natural gas sufficient to meet demand from multiple other sources at competitive prices without drawing on the LNG which ConocoPhillips seeks to export.

Second, a significant body of independently produced publicly available data gathered and published by the Energy Information Administration (EIA) within DOE buttresses ConocoPhillips's assertion. DOE/FE hereby takes administrative notice of the following relevant information:

According to the EIA, the United States produced 20.4 trillion cubic feet (Tcf) of dry natural gas and imported 4.0 Tcf of natural gas and 352 Bcf of LNG during 2008. In addition, storage reservoirs in the United States held approximately 3.4 Tcf of natural gas by the commencement of the Winter heating season in October 2008 and 3.8 Tcf in October 2009, the highest volume of natural gas inventory available for winter months' consumption ever recorded. By comparison, natural gas consumption in the United



States during 2008 equaled 23.2 Tcf.<sup>4</sup> It is clear from the foregoing supply and demand figures that United States domestic consumption needs were met in 2008 and that if the export proposed in the current application had been authorized at that time, there would have been no significant impact on the market's ability to meet the demand for natural gas domestically.

Other statistics for calendar year 2008 likewise bear out the availability of natural gas supplies sufficient to meet current demand without the increment of previously imported LNG which ConocoPhillips seeks authority to export. For example, notwithstanding significant interruptions of producing activities in the Gulf of Mexico due to hurricanes in the Fall of 2008, the EIA has reported that "the natural gas market did not show the supply-demand tightness that characterized the market in 2005" when other hurricanes hit the Gulf in significant numbers. The EIA observes that as a consequence, a downward trend in natural gas prices that had begun in July 2008 continued through the end of November 2008.<sup>5</sup>

More recent data confirm that this downward trend has continued to the present day due in large measure to the slowed United States economy. In particular, the estimated average city-gate price for natural gas in August 2009 was \$5.59 per thousand cubic feet (Mcf). This compares to an estimated average annual city-gate price for calendar year 2008 of \$9.18 per Mcf.<sup>6</sup>

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<sup>4</sup> See, [http://www.eia.doe.gov/oil\\_gas/natural\\_gas/ngs/ngs.html](http://www.eia.doe.gov/oil_gas/natural_gas/ngs/ngs.html) and [http://tonto.eia.doe.gov/dnav/ng/ng\\_sum\\_lsum\\_dcus\\_nus\\_a.htm](http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcus_nus_a.htm)

<sup>5</sup> "Impact of the 2008 Hurricanes on the Natural Gas Industry," EIA (Jan. 2009), at [http://www.eia.doe.gov/pub/oil\\_gas/natural\\_gas/feature\\_articles/2009/nghurricanes08/nghurricanes08.pdf](http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/nghurricanes08/nghurricanes08.pdf).

<sup>6</sup> "Selected Average National Natural Gas Prices, 2004-2009," Table 3, *Natural Gas Monthly* (EIA, October 2009) at [http://www.eia.doe.gov/pub/oil\\_gas/natural\\_gas/data\\_publications/natural\\_gas\\_monthly/current/pdf/table\\_03.pdf](http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/natural_gas_monthly/current/pdf/table_03.pdf).

Under these circumstances, I conclude that the current domestic need for natural gas, including LNG, is being met satisfactorily and, therefore, the proposed export is not inconsistent with the public interest. In drawing this conclusion, I am mindful that ConocoPhillips has stated in its application that, if market conditions change, it will consider selling the LNG into the domestic market rather than export it. While not a firm commitment to participate in domestic sales of the LNG in question, ConocoPhillips's willingness to entertain such sales if market conditions warrant it is in keeping with the market-oriented policy of DOE's prevailing Guidelines.

**C. Other Public Interest Considerations**

Domestic need is the only explicit public interest consideration identified by DOE 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. These other considerations include international effects and the environment.

**1. International Effects**

The exportation of LNG will help to improve the United States' balance of payments with the destination countries named in the application during the two-year term of the proposed blanket authorization. Accordingly, I find that mitigation of balance of payment issues may result from a grant of the application.

**2. The Environment**

DOE has considered the NEPA compliance aspects of the requested LNG export authorization. The environmental implications of permitting Freeport to export LNG from its Quintana Island terminal facilities were already reviewed and permitted by DOE



in Order No. 2644. A grant of the instant Application will have no additional environmental impact. Therefore, I find that the proposed export requires no further environmental review.

**D. Conclusion**

After due consideration based on all facts and evidence of record, DOE/FE finds 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 LNG which ConocoPhillips seeks to export through the authorization timeframe. Furthermore, DOE/FE believes the blanket authorization will benefit the balance of payment interests of the United States in international trade and will have no significant environmental impact. Therefore, DOE/FE will grant the application to permit ConocoPhillips to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 500 Bcf of natural gas over a two-year period commencing on the date of the authorization from the Freeport's Quintana Island terminal facilities to the United Kingdom, Belgium, Spain, Portugal, Turkey, Brazil, Argentina, Chile, Mexico, the Dominican Republic, Japan, South Korea, India, China, Taiwan, France, and/or Italy, as well as any country with the capacity to import ocean-going LNG and with which trade is not prohibited by U.S. law or policy.

**ORDER**

Pursuant to section 3 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

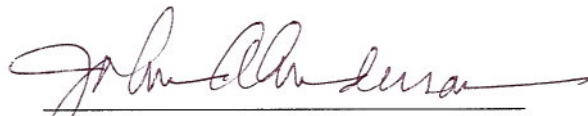
A. ConocoPhillips is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 500 Bcf of natural gas over a two-year period commencing on the date of the authorization from the Freeport's Quintana Island terminal facilities to the United Kingdom, Belgium, Spain, Portugal, Turkey, Brazil, Argentina, Chile, Mexico, the Dominican Republic, Japan, South Korea, India, China, Taiwan, France, and/or Italy, as well as any country with the capacity to import ocean-going LNG and with which trade is not prohibited by U.S. law or policy.

B. 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 thousand cubic feet (Mcf); (7) the delivered price per million British thermal units (MMBtu); (8) the duration of the supply agreement (indicate spot sales); and (9) the name(s) of the purchaser(s).

C. The first monthly report required by this Order is due not later than January 30, 2010, and should cover the reporting period from November 30, 2009 through December 31, 2009.

D. 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 30, 2009.

A handwritten signature in dark ink, appearing to read "John A. Anderson", written over a horizontal line.

John A. Anderson  
Manager, Natural Gas Regulatory Activities  
Office of Oil and Gas Global Security and Supply  
Office of Fossil Energy