

[6450-01-P]

DEPARTMENT OF ENERGY

[FE Docket No. 10-161-LNG]

Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC Application for Long-Term Authorization to Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on December 17, 2010, by Freeport LNG Expansion L.P. (FLNG Expansion) and FLNG Liquefaction, LLC (FLNG Liquefaction) (collectively FLEX), requesting long-term, multi-contract authorization to export up to 9 million metric tons per annum (mtpa) of domestic natural gas as liquefied natural gas (LNG) for a 25-year period commencing on the date of the first export or five years from the date of the authorization, whichever is sooner. The LNG would be exported from the Freeport Terminal on Quintana Island near Freeport, Texas, to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES:

U.S. Department of Energy (FE-34)
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
Forrestal Building, Room 3E-042
1000 Independence Avenue, S.W.
Washington, D.C. 20585

FOR FURTHER INFORMATION CONTACT:

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Edward Myers
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Forrestal Building, Room 6B-159
1000 Independence Ave. S.W.
Washington, D.C. 20585
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SUPPLEMENTARY INFORMATION:

Background

FLNG Expansion is a Delaware limited partnership and a wholly owned subsidiary of Freeport LNG Development, L.P. with its principal place of business in Houston, Texas. FLNG Liquefaction is a Delaware limited liability company and a wholly owned subsidiary of FLNG

Expansion with its principal place of business in Houston, Texas. FLEX, through one or more of its subsidiaries, intends to develop, own and operate natural gas liquefaction facilities to receive and liquefy domestic natural gas for export (pursuant to the export authorization sought herein) to foreign markets (Liquefaction Project). The Liquefaction Project facilities will be integrated into the existing Freeport Terminal. The Freeport Terminal presently consists of a marine berth, two 160,000 cubic meter full containment LNG storage tanks, LNG vaporization systems, associated utilities and a 9.6-mile pipeline and meter station.

FLEX intends to expand the terminal to provide natural gas pretreatment, liquefaction, and export capacity of up to 9 mtpa of LNG, which FLEX states is equivalent to 1.4 billion cubic feet of natural gas per day (Bcf/d). The facility will be designed so that the addition of liquefaction capability will not preclude the Freeport Terminal from operating in vaporization and send-out mode. The Liquefaction Project facilities will include the following facilities that were authorized by the Federal Energy Regulatory Commission (FERC) in an order dated September 26, 2006¹: (1) A second marine berthing dock; (2) A third LNG storage tank; and (3) Transfer pipelines between the second marine dock and LNG storage tanks.

Current Application

In the instant Application, FLEX requests that DOE grant long-term, multi-contract authorization for FLEX to export domestic LNG from the Freeport Terminal to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas and LNG, which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy. FLEX requests this authorization for up to 9 mtpa of LNG, up to a total of 225 million metric tons, over a 25-year term

¹ *Freeport LNG Development, L.P.*, 116 FERC § 61,290, Docket No. CP05-361-000 (September 26, 2006).

beginning on the date of the first export or five years from the date the authorization is granted, whichever is sooner.

FLEX states that rather than enter into long-term natural gas supply or LNG export contracts, it contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTA), under which individual customers who hold title to natural gas will have the right to deliver that gas to FLEX and receive LNG. FLEX states that in the current natural gas market, LTAs fulfill the role previously performed by long-term supply contracts, in that they provide stable commercial arrangements between companies involved in natural gas services. FLEX states that the Liquefaction Project will require significant capital expenditures on fixed assets. FLEX further states that although it has not yet entered into long-term LTAs or other commercial arrangements, long-term export authorization is required to attract prospective LTA customers willing to make large-scale, long-term investments in LNG export arrangements. FLEX states that both are required to obtain necessary financing for the Liquefaction Project.

FLEX requests long-term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. FLEX contemplates that the title holder at the point of export² may be FLEX or one of FLEX's LTA customers, or another party that has purchased LNG from an LTA customer pursuant to a long-term contract. FLEX requests authorization to register each LNG title holder for whom FLEX seeks to export as agent, and proposes that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included by DOE/FE in FLEX's export authorization, and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition to its registration of any LNG title holder for whom FLEX seeks to export as agent, FLEX

² LNG exports occur when the LNG is delivered to the flange of the LNG export vessel. See *The Dow Chemical Company*, FE Docket No. 10-57-LNG, Order No. 2859 at p. 7 (October 5, 2010).

states that it will file under seal with DOE/FE any relevant long-term commercial agreements between FLEX and such LNG title holder, including LTAs, once they have been executed.³

FLEX states that the source of natural gas supply for the Liquefaction Project will be the general United States natural gas market, including natural gas produced from shale deposits. Specifically, FLEX asserts that natural gas supply will come primarily from the highly liquid Texas market, but may draw upon the interconnected general U.S. natural gas market. FLEX states that while some of the proposed export supply may be secured through long-term contracts, large volumes are likely to be acquired on the spot market. FLEX provides further discussion of the gas supply markets in the Application.

Public Interest Considerations

In support of its Application, FLEX states that DOE/FE has consistently ruled that section 3(a) of the NGA creates a rebuttable presumption that proposed exports of natural gas are in the public interest. FLEX asserts that unless opponents of an export license make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest, DOE/FE must grant the export application.⁴

FLEX asserts that in evaluating whether the proposed exportation is within the public interest, DOE/FE applies the principles established by the Policy Guidelines⁵, which promote free and open trade by minimizing federal control and involvement in energy markets, and DOE Delegation Order No. 0204-111, which requires “consideration of the domestic need for the gas to be exported.” Flex further states that in determining whether a particular application to export is

³ FLEX states the practice of filing of contracts after the DOE/FE has granted export authorization is well established. See *Yukon Pacific Corporation*, ERA Docket No. 87-68-LNG, Order No. 350 (November 16, 1989); *Distrigas Corporation*, FE Docket No. 95-100-LNG, Order No. 1115, at p. 3 (November 7, 1995).

⁴ DOE/FE Order No. 1473, note 42 at p. 13, citing *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987).

⁵ *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 FR 6684 (Feb. 22, 1984)

within the public interest, the principal focus of DOE/FE's review is an analysis of the domestic need for natural gas proposed to be exported, and any other factors to the extent they are shown to be relevant to a public interest determination.

FLEX states that as a result of technological advances, huge reserves of domestic shale gas that were previously infeasible or uneconomic to develop are now being profitably produced in many regions of the United States. FLEX asserts that the United States is now estimated to have more natural gas resources than it can use in a century.⁶ FLEX also states that large volumes of domestic shale gas reserves and continued low production costs will enable the United States to export LNG while also meeting domestic demand for natural gas for decades to come.

FLEX asserts that as U.S. natural gas reserves and production have risen, U.S. natural gas prices have fallen to the point where they are among the lowest in the developed world.⁷ FLEX states that many natural gas and LNG supply contracts in European and Asian markets are pegged to the price of alternative liquid fuels, such as oil, and global LNG prices have increased significantly during the last decade as the price of oil has risen. FLEX states that domestic natural gas prices are projected to remain low relative to European and Asian markets well into the future, making exports of LNG by vessel a viable long-term opportunity for the United States.

FLEX states that the Liquefaction Project is positioned to provide the Gulf Coast region and the United States with significant economic benefits by increasing domestic natural gas production. FLEX states that these benefits will be obtained with only a minimal effect on domestic natural gas prices. FLEX states that at current and forecasted rates of demand, the United States' natural gas reserves will meet demand for 100 years. FLEX states that the Liquefaction Project allows the

⁶ *The Future of Natural Gas, Interim Report* MIT Energy Initiative at 9 (2010), "For this study, we have assumed a mean remaining [U.S.] resource base of around 2,100 Tcf – about 92 times the annual U.S. consumption of 22.8 Tcf in 2009" (MIT Report)

⁷ *Analysis of Freeport LNG Export Impact on U.S. Markets*, T. Choi, D. Nesbitt, and B. Barnds, at 6, 15 (Altos Management Partners, Inc. 2010). (Altos Report)

United States to benefit now from the natural gas resources that may not otherwise be produced for many decades, if ever. FLEX provides further discussion on why the proposed export authorization is in the public interest.

First, FLEX contends that the project will cause direct and indirect job creation through construction (1,000 onsite jobs over 2-3 years) and operation (20 to 30 permanent jobs) of the Liquefaction Project, and indirect jobs as a result of increased drilling for and production of natural gas (17,000 to 23,000 jobs).⁸

Second, FLEX maintains that the Liquefaction Project would create significant economic stimulus, with the total economic benefits to the American economy estimated to be between \$3.6 and \$5.2 billion per year from 2015 to 2040.⁹

Third, FLEX contends that there will be a material improvement in the U.S. balance of trade. FLEX states that assuming an average value of \$7 per million Btu, exporting approximately 1.4 Bcf/d of LNG through the Liquefaction Project will improve the U.S. balance of payments by approximately \$3.9 billion per year.

Fourth, FLEX states the project will have significant environmental benefits by reducing global greenhouse gas emissions if the natural gas exported is used as a substitute for coal and fuel oil.

Fifth, FLEX states the Liquefaction Project supports American energy security. To support this statement, FLEX states that the United States has developed a massive natural gas resource base that is sufficient to supply domestic demand for a century, even with significant exports of LNG. FLEX states the Liquefaction Project will not adversely affect U.S. Energy security. FLEX references the MIT Report (footnote 6), which recommends policies the United States should

⁸ Altos Report, footnote 7, at 12 (2010).

⁹ Id.

pursue to “encourage an efficient integrated global gas market”,¹⁰ and further that the United States “should not erect barriers to gas imports or exports”.¹¹

Finally, FLEX provides a further discussion of the Altos Report, which FLEX commissioned (see footnote 7).

Based on the reasoning provided in the Application, FLEX requests that the DOE/FE determine that FLEX’s request for long-term, multi-contract authorization to export LNG to non-FTA countries is not inconsistent with the public interest.

Environmental Impact

FLEX states that the Liquefaction Project improvements will be contained within the previously authorized operational area of the Freeport Terminal on Quintana Island, that the potential air impacts of the Liquefaction Project will be reviewed by the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA), and other environmental impacts of the Liquefaction Project will be reviewed by FERC under the National Environmental Protection Act (NEPA). FLEX states that FERC authorization will be conditioned upon issuance of air quality permits from TCEQ and EPA. Accordingly, FLEX requests that DOE/FE issue a conditional order authorizing export of domestically produced LNG pending completion of FERC’s environmental review.

DOE/FE Evaluation

This export Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00-002.00J (Sept. 17, 2010) and DOE Redelelegation Order No. 00-002.04D (Nov. 6, 2007). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be necessary

¹⁰ MIT Report, footnote 6, at xvii (2010).

¹¹ Id. at 71.

or appropriate, these issues will include domestic need for the gas, the impact on U.S. gross domestic product, consumers, industry, U.S. balance of trade, jobs creation, and other issues, as well as 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. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Due to the complexity and novelty of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

You may submit comments in electronic form on the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, written comments can be submitted using the procedures discussed below. If using electronic filing, follow the on-line instructions and submit such comments under FE Docket No. 10-161-LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions, and include only information that is intended to be publicly disclosed.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention or written comments, by hardcopy, as provided in DOE's regulations at 10 CFR part 590.

Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the Application must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties may be considered in determining the appropriate action to be taken on the Application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Except where comments are filed electronically, as described above, comments, protests, motions to intervene, notices of intervention, and requests for additional procedures shall be filed with the Office of Oil and Gas Global Security and Supply at the address listed in the “**ADDRESSES**” section .

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by FLEX is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E-042, at the above address listed in **ADDRESSES**. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>. In addition, any electronic comments filed will also be available at: <http://www.regulations.gov>.

Issued in Washington, D.C., on January 21, 2011.

A handwritten signature in blue ink, appearing to read "John A. Anderson", with a horizontal line extending to the right.

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