



March 24, 2011

Mr. John A. Anderson
Manager, Natural Gas Regulatory Activities
U.S. Department of Energy
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
Forrestal Building FE-34, Room 3E-042
1000 Independence Avenue, S.W.
Washington, D.C. 20585



Re: Encana Corporation's Comments in Support of Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC Joint Application for Long-Term Authorization to Export Liquefied Natural Gas, FE Docket No. 10-161-LNG

Dear Mr. Anderson:

This letter is submitted by Encana Corporation (Encana) in response to the Notice issued by the Office of Fossil Energy of the Department of Energy (DOE/FE) and published in the *Federal Register* on January 27, 2011¹ and pursuant to the rules set forth in 10 C.F.R. Part 590. In that Notice, DOE/FE announced that, on December 17, 2010, Freeport LNG Expansion, L.P. (FLNG Expansion) and FLNG Liquefaction, LLC (FLNG Liquefaction) (collectively, FLEX) filed a joint application under Section 3 of the Natural Gas Act (NGA). FLEX seeks a long-term authorization to export U.S.-produced liquefied natural gas (LNG) from the Freeport Terminal located near Freeport, Texas to any country with which the U.S. does not have a Free Trade Agreement (FTA), 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. As discussed below, Encana supports the relief sought by FLEX.

BACKGROUND

FLEX proposes to expand the Freeport Terminal to provide natural gas pretreatment, liquefaction and export capacity of up to the equivalent of 9 million metric tons per annum (mtpa) of LNG which is equivalent to 1.4 billion cubic feet of natural gas per day (Bcf/d). On January 5, 2011, the Federal Energy Regulatory Commission (FERC) granted the request of FLEX and Freeport LNG Development, L.P. to make use of its pre-filing review process for the modifications to the Freeport Terminal necessary to accommodate liquefaction. FLEX currently plans to file a formal application for

¹ 76 Fed Reg. 4885 (Jan. 27, 2011).

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authorization to site, construct and operate the Liquefaction Project with FERC in the fourth quarter of 2011.

In order to make use of that liquefaction capacity for the purpose for which it is intended, DOE export authority is required. In the instant application, FLEX requests long-term authority to export U.S.-produced LNG on its own behalf and as agent for others. Rather than enter into long-term natural gas supply or LNG export contracts, FLEX contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTAs), under which individual customers who hold title to natural gas will have the right to deliver that natural gas to FLEX and receive LNG in return. Under FLEX's proposal, the title holder at the point of export may be FLEX or one of its LTA customers, or another party that has purchased LNG from an LTA customer pursuant to a long-term contract. FLEX requests authorization to register with DOE/FE each LNG title holder for whom FLEX seeks to export as agent. This registration will include a written statement by the title holder acknowledging and agreeing to comply with the applicable requirements included by DOE/FE in FLEX's export authorization, and a commitment to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. FLEX also 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.

On December 17, 2010, FLEX contemporaneously filed a joint application for long-term authorization to export LNG to foreign countries that are capable of receiving it and with which the U.S. does have a FTA that provides for national treatment of trade in natural gas. That application was granted by order issued by DOE/FE in Docket No. FE-160-LNG on February 10, 2011.² In the order, DOE/FE found FLEX's proposal to act as agent for others who want to export LNG from the Freeport Terminal under the export authorization to be an acceptable process. DOE/FE concluded that FLEX's proposed registration and contract terms will ensure that (1) the title holder is aware of all requirements in DOE/FE Order No. 2913, (2) DOE will have a record of all authorized exports, and (3) DOE will have direct contact information and a point of contact with the title holder. DOE/FE stated that FLEX's proposal is responsive to current LNG markets and provides an expedited process by which companies seeking to export LNG can do so. DOE/FE explained that companies can still choose to submit an application to DOE for their own authorization to export such LNG and are not required to use the agency rights that were authorized by the order.

ENCANA'S INTERESTS

Encana Corporation is one of the world's leading natural gas companies, active in the exploration, development, production, and marketing of natural gas and natural gas liquids. Through its subsidiary, Encana Marketing (USA) Inc., Encana sells and purchases natural gas and provides natural gas and energy-related services to customers throughout the United States.

Encana's interest in the instant FLEX application is as a major, geographically-diverse North American natural gas producer interested in supporting a competitive international market for natural gas.

² *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 (Feb. 10, 2011).

COMMENTS IN SUPPORT

Under Section 3 of the NGA, DOE/FE must authorize an export of natural gas from the U.S States to a foreign country unless there is a finding that the export will not be consistent with the public interest. DOE/FE has found that Section 3 of the NGA creates a statutory presumption in favor of approval of a properly-framed export application, which opponents bear the burden of overcoming. DOE/FE's public interest determination is guided by DOE Delegation Order No. 0204-111, which designates domestic need for the natural gas proposed to be exported as the only explicit criterion that must be considered in determining the public interest.

Since 1992, when Section 3 of the NGA was amended to provide for fast-track approval of exports to FTA partner countries, the only exports in which the full NGA Section 3 legal standard has been applied have been those of Alaskan LNG by ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company. In that series of export authorization orders, the "needs" examination has been confined largely to what was essential to meet the natural gas requirements of the geographically-isolated market in South-Central Alaska.

FLEX's application comes on the heels of a similar application for export authorization filed by Sabine Pass Liquefaction, LLC (Sabine) in September 2010 in Docket No. FE-111-LNG, and is thus the second instance in which DOE/FE is being asked to address the question of whether the supply needs of American consumers in the lower 48 states generally can be adequately protected if the markets to which U.S.-produced natural gas can be exported are expanded to include non-FTA countries that can only be reached via the worldwide LNG trade. Encana submitted comments to DOE/FE in Docket No. FE-111-LNG in support of Sabine's export application and, by this letter, is offering similar support for FLEX's proposal.

FLEX's application, like Sabine's, contains data which demonstrate favorable supply-demand balance projections during the requested term of this export. FLEX's proposal will provide producers such as Encana with an additional outlet for their North American natural gas production which will in turn provide producers an incentive to expand their natural gas production activities in the U.S. Any incremental production activity that is undertaken by producers in connection with the export of U.S.-produced LNG will provide benefits to the local, regional and national economy by creating jobs, growing the tax base, and increasing overall economic activity. Encana specifically supports FLEX's request for authority to export U.S.-produced LNG on its own behalf and as agent for others under the LTA business model discussed in its application. As DOE/FE has already recognized, FLEX's proposal to act as agent for others will provide producers with an additional mechanism to export LNG, especially when they do not hold their own export authorization.

DOE/FE has consistently expressed a desire to promote competition in the natural gas marketplace by allowing commercial parties to negotiate arrangements with minimal government interference. Encana believes that the U.S. and North American natural gas markets have reached a state of maturity where there should be little fear on the part of regulators that the needs of U.S. consumers will be compromised if market access is not artificially restricted. The data filed by FLEX demonstrate that the natural gas needed to supply FLEX's proposal over the next 25 years will not be needed in the U.S. and may never otherwise be produced.

CONCLUSION

As noted, DOE/FE is statutorily charged with approving proposed exports unless it is shown that to do so would be inconsistent with public interest. Encana is aware of no basis upon which an "inconsistency" finding could be made in response to FLEX's application for export authorization. Encana therefore urges approval of that application.

Sincerely,

ENCANA CORPORATION



Randy Eresman
President & Chief Executive Officer

cc: Douglas F. John, John & Hengerer
Eric Marsh, Executive Vice President, Natural Gas Economy
Renee Zemljak, Executive Vice President, Midstream, Marketing and Fundamentals
Jeff Jarvis, Senior Counsel, Encana Marketing (USA) Inc.