

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

CHENIERE MARKETING, LLC)
_____)

FE DOCKET NO. 10-31-LNG

**ORDER GRANTING AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS AND
VACATING PRIOR AUTHORIZATION**

DOE Opinion and Order No. 2795

JUNE 1, 2010

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GLOSSARY OF TERMS AND ABBREVIATIONS

Applicant	Cheniere Marketing, LLC
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,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the Application of Cheniere Marketing, LLC (CMI) for 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 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 the Sabine Pass LNG terminal owned by CMI's affiliate, Sabine Pass LNG, L.P., in Cameron Parish, Louisiana 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.

Furthermore, this authorization permits CMI 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.

Additionally, CMI requests that DOE/FE Order 2651² (Order 2651), as amended by Order 2651-A,³ be vacated upon the effective date of this Order, since the requested authorization in this docket will supersede the current authorization.

¹ See, DOE Delegation Order No. 00-002.00I (Nov. 10, 2009) and DOE Redelegation Order No. 00-002.04D (Nov. 6, 2007).

² Cheniere Marketing Inc.'s blanket authorization to export up to 64 Bcf of previously imported LNG over a two year period granted in Order No. 2651 on June 8, 2009, extends through June 7, 2011.

³ Order 2651-A amended Order 2651 to reflect Cheniere Marketing Inc's name change to Cheniere Marketing, LLC on July 31, 2009.

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

II. PROCEDURAL HISTORY

CMI filed the “Application for Blanket Authorization to Export Liquefied Natural Gas And To Vacate Existing Blanket Authority” (Application) with FE on March 23, 2010. The Application was submitted pursuant to section 3 of the NGA and Part 590 of DOE’s regulations. CMI seeks blanket authorization for itself, and as agent for third parties, to export LNG that previously had been imported from foreign sources, under DOE/FE Order No. 2606 (Order 2606) as well as previously imported LNG of third parties, 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 export this LNG from the Sabine Pass LNG terminal, owned by Sabine Pass LNG, L.P., in Cameron Parish, Louisiana 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.

In addition, CMI requests that Order 2651, as amended by Order 2651-A, be vacated upon the effective date of this Order, since the requested authorization in this docket will supersede the current authorization

On April 16, 2010, FE published a Notice of Application (Notice) in the Federal Register. 75 FR 19954. The Notice stated that protests, motions and notices to intervene, and requests for additional procedures would be due no later than May 17, 2010.

FE received no filings in response to this notice.

III. BACKGROUND

CMI is a Delaware limited liability company with its principal place of business in Houston, Texas. CMI is a wholly-owned subsidiary of Cheniere Energy, Inc. (Cheniere Energy), which is also a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy is a developer of LNG import terminals and natural gas pipelines on the U.S. Gulf Coast, including the Sabine Pass LNG terminal.

On January 23, 2009, in Order 2606, FE granted Cheniere Marketing, Inc. blanket authorization to import LNG from various international sources for a two-year term beginning on January 29, 2009.⁴ Under the terms of the blanket authorization the LNG may be imported at any LNG receiving facility in the United States and its territories.

On June 8, 2009, in Order 2651, FE granted Cheniere Marketing, Inc. blanket authorization to export on its own behalf or as agent for others LNG that previously had been imported from foreign sources in an amount up to the equivalent of 64 Bcf of natural gas on a cumulative basis.⁵ The authorization permitted such exports on a short term or spot market basis from the Sabine Pass LNG terminal to the United Kingdom, Belgium, Spain, France, Italy, Portugal, Turkey, Brazil, Argentina, Chile, Mexico, the Dominican Republic, Japan, South Korea, India, China, and/or Taiwan over a two-year period commencing on the date of the authorization. On July 31, 2009, the authorization

⁴ Cheniere Marketing, Inc.'s blanket authorization to import and export natural gas from and to Canada and Mexico, to export LNG to Canada and Mexico, and to import LNG from various international sources up to a combined total of 1,500 Bcf over a two year period granted in Order No. 2606 on January 23, 2009, extends through January 28, 2011.

⁵ Cheniere Marketing, Inc., Order No. 2651

was amended to change the name of the holder of the authorization from Cheniere Marketing, Inc. to Cheniere Marketing, LLC.⁶

Current Application

In the instant application, CMI is seeking blanket authorization to export from the Sabine Pass LNG terminal LNG 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. CMI is also concurrently seeking to vacate Order 2651, as amended by Order 2651-A, since the proposed authorization will supersede its current export authorization. CMI states that no additional physical modifications to the Sabine Pass LNG terminal are required to accommodate the export authorization requested.

In support of its application, CMI states that pursuant to Section 3 of the NGA, FE is required to authorize exports to a foreign country unless there is a finding that such exports “will not be consistent with the public interest.”⁷ CMI states that section 3 thus creates a statutory presumption in favor of approval of this Amendment which opponents bear the burden of overcoming.⁸ CMI states further that in evaluating an export application, FE applies the principles described in DOE Delegation Order No. 0204-111, which focuses primarily on domestic need for the gas to be exported, and the Secretary’s natural gas policy guidelines.⁹ Finally, as detailed below, CMI states that its proposal to

⁶ CMI, Order No. 2651-A

⁷ 15 U.S.C. 717b

⁸ CMI maintains that in *Panhandle Producers and Royalty Owners Associations v ERA*, 822 F.2d 1105, 1111 (DC Circ. 1987), the Court found that Section 3 of the NGA “requires an affirmative showing of inconsistency with the public interest to deny an application” and that a “presumption favoring... authorization...is completely consistent with, if not mandated by, the statutory directive.”

⁹ See 49 FR 6684, February 22, 1984.

export LNG to those countries with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy is consistent with Section 3 of the NGA and FE's policy.

CMI states that in Order No. 2651, which granted CMI blanket authorization to export up to 64 Bcf (cumulative) of previously imported foreign-sourced LNG, FE determined that there was no domestic reliance on the volumes of imported LNG that CMI would seek to export. CMI also states that in November 2009, FE made the same finding in granting ConocoPhillips Company (ConocoPhillips) blanket authority to export up to 500 Bcf of previously imported LNG from the Freeport LNG Development, L.P. Quintana Island terminal.¹⁰ CMI points out that FE stated in the ConocoPhillips order that "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...."¹¹

CMI is requesting authorization, for itself and as agent for third parties, to periodically export LNG imported under Order No. 2606, as well as LNG of third parties, to any other country with the capacity to import LNG via ocean-going vessel and with which trade is not prohibited by U.S. law or policy, should market conditions in the United States not support domestic sale of those supplies. CMI states that granting of CMI's short term blanket authorization as requested herein would provide CMI with the necessary flexibility it requires to respond to changes in domestic and global markets for natural gas and LNG. CMI states that the additional flexibility sought herein would also encourage CMI to obtain and store spot market LNG cargoes and that natural gas derived

¹⁰ ConocoPhillips, DOE/FE Order No. 2731 issued November 30, 2009.

¹¹ ConocoPhillips, DOE/FE Order No. 2731 issued November 30, 2009 at p. 11.

from imported LNG will be available to supply local markets when conditions support it, and will thereby serve to moderate U.S. gas price volatility. As such, CMI states the requested export authorization is consistent with the public interest.

IV. DECISION

A. Standard of Review

Section 3 of the NGA 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 Order No. 2651, as amended by Order No. 2651-A, FE found that the focus of this agency's review of export applications is the domestic need for the natural gas proposed to be exported and any other issue determined to be appropriate. These are accordingly 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 Order No. 2651, as amended by Order No. 2651-A, which this Order will supersede, FE noted that the application involved a request for authorization to export LNG that was not produced in the United States. Accordingly, exporting the gas necessarily could not 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 CMI seeks to export in this case is needed to meet domestic demand. Based on a review of the complete record, I find that the LNG to be exported is not needed in order to meet the domestic 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 domestic demand from multiple other sources at competitive prices without drawing on the LNG which CMI seeks to export. Among these is increasing production from domestic unconventional natural gas resources, and specifically shale gas production, which increased to 2.0 Tcf in 2008 from 1.2 Tcf in 2007.¹² The Annual Energy Outlook 2010 (AEO2010) prepared by the EIA within DOE, forecasts shale gas production to increase to 3.85 Tcf by 2015,¹³ confirming the trend of increasing domestic natural gas supplies from unconventional domestic resources. In addition, we note that no interested person

¹² U.S. Energy Information Administration (EIA), Shale Gas Production, http://tonto.eia.doe.gov/dnav/ng/ng_prod_shalegas_s1_a.htm

¹³ EIA AEO2010, Table A-14, page 135

intervened in this proceeding or otherwise challenged CMI's assertions of sufficient supplies to meet domestic demand if the application is granted.

Second, a significant body of additional independently produced publicly available data gathered and published by the EIA buttresses this determination. FE hereby takes administrative notice of the following relevant information:

DOE's review of domestic natural gas market data in 2009 versus 2007 shows an increase in domestic dry gas production, a slight decrease in domestic demand, and a decrease in both total LNG imports and net natural gas imports. Specifically, a comparison of 2009 natural gas supply and demand data with 2007 data show that the United States dry natural gas production increased to 21.0 Tcf in 2009 from 19.3 Tcf in 2007, imported LNG decreased from 771 Bcf of LNG during 2007 to 452 Bcf during 2009, while net imports of all natural gas decreased from 3.8 Tcf in 2007 to 2.7 Tcf in 2009. Total consumption declined from 23.1 Tcf in 2007 to 22.8 Tcf in 2009. In addition, FE reviewed natural gas prices and price trends in which the average calendar year 2008 city-gate price was \$9.18 per Mcf. This price declined to \$6.47 per Mcf in calendar year 2009. These data are from the latest available EIA natural gas statistics.¹⁴

Given the above circumstances, including the increased supply of domestic production, flat to declining domestic natural gas consumption, and decreased imports of LNG, I find that the LNG which CMI seeks to export in this case is not needed in order to meet domestic market demand for natural gas on a competitively priced basis and that the exports of LNG authorized by this amendment will have no significant impact on the market's ability to meet the demand for natural gas domestically. Under these circumstances, I conclude that the current domestic need for natural gas, including LNG,

¹⁴ DOE/EIA, Natural Gas Summary, http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm

is being met satisfactorily and, therefore, the proposed export is not inconsistent with the public interest. In drawing this conclusion, I am mindful that CMI 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, CMI'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. The other considerations in this case include the environment.

The Environment

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. In its application, CMI states that no changes to the Sabine Pass LNG facilities will be required for CMI's proposed exportation of LNG. CMI states that, consequently, granting this application will not be a Federal action significantly affecting the human environment within the meaning of NEPA.

In Order 2651, DOE accepted and adopted the recommendations and conclusions contained in the Environmental Assessment (EA) for the Sabine Pass LNG Export Project (February 2009), issued in Federal Energy Regulatory Commission (FERC)

Docket Nos. CP04-47-001 and CP05-396-001; and DOE Docket No. FE-08-77-LNG.

Based on the EA, DOE issued a Finding of No Significant Impact (June 5, 2009). The project reviewed in the EA involved modification of four 24-inch-check valves to allow the Sabine Pass LNG terminal to provide LNG export capability. The EA concluded that:

The only environmental impacts that would be associated with modifying the LNG terminal would be from the introduction of ballast water into the marine berth by the export LNG carriers. However, all ballast water discharge would be in compliance with applicable federal and U.S. Coast [Guard] regulations and no significant impacts on aquatic species would be anticipated. Export activities would not increase the number of LNG carriers that the Sabine Pass LNG terminal is designed and authorized to accommodate. We conclude that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.¹⁵

The authorization sought in the instant application, if granted, similarly will not increase the number of LNG carriers that the Sabine Pass LNG terminal is designed and authorized to accommodate. Also, all ballast water discharges associated with export activities must continue to be in compliance with applicable federal and U.S. Coast Guard regulations. We note in this connection that the EA found that single discharge events associated with tanker export operations represented a de minimis impact on the eco-system. I find that the cumulative impact of export operations likely to result from a grant of the instant application will not affect this finding. Additionally, I note that the applicant is not proposing to perform any new construction but only to increase the volumes of its exports within the design parameters of its existing authorized physical facilities. Under these circumstances, DOE's NEPA procedures provide for a categorical

¹⁵ EA for the Sabine Pass LNG Export Project at 20.

exclusion for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is normally required.¹⁶

Accordingly, I find that the proposed export requires no further environmental review.

D. 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 CMI seeks to export through the authorization timeframe. In addition, the conclusions in the EA for the Sabine Pass LNG Export Project are applicable for the LNG that CMI seeks authorization to export in this authorization. However, for the reasons given above, this application falls under a DOE categorical exclusion and no new EA or EIS will be required. Therefore, FE will grant the application to permit CMI 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 Sabine Pass LNG terminal to 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:

¹⁶ “Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and only requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations.” 10 CFR Part 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusions in B5.

A. CMI 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. The authorization shall be effective for a two-year term beginning on June 1, 2010, and extending through May 31, 2012.

B. This LNG may be exported from the Sabine Pass LNG terminal 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. Monthly Reports: With respect to the export of LNG authorized by this Order, CMI 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).

D. The first monthly report required by this Order is due not later than July 30, 2010, and should cover the reporting period from June 1, 2010 through June 30, 2010.

E. 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 or ngreports@hq.doe.gov, or may be faxed to Ms. Caudillo at (202) 586-6050.

F. The LNG export authorization issued to Cheniere Marketing Inc. in Order 2651 on June 8, 2009, as amended by Order 2651-A on July 31, 2009, is hereby vacated upon issuance of this Order.

Issued in Washington, D.C., on June 1, 2010.

A handwritten signature in dark blue ink, reading "John A. Anderson". The signature is fluid and cursive, with a horizontal line drawn underneath it.

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