

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

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**THE DOW CHEMICAL COMPANY**

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**FE DOCKET NO. 10-57-LNG**

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

**DOE Opinion and Order No. 2859**

**OCTOBER 5, 2010**

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## 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, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) (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 The Dow Chemical Company (Dow) for authorization to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 390 Bcf of natural gas on a cumulative basis over a two-year period commencing on the date of this authorization 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.

This authorization permits such exports on a short-term or spot market basis from the LNG import/export terminal owned and operated by Freeport LNG Development, L.P. (Freeport) in Quintana Island, Texas.

Furthermore, this authorization permits Dow to export natural gas to which it holds title, but does not permit Dow to export natural gas on behalf of others who themselves hold title. For reasons provided herein, as a matter of policy, DOE will require that title to all LNG authorized to be exported by this Order shall be held by Dow at the point of export. LNG exports occur when the LNG is delivered to the flange of the LNG export vessel. In addition, the authorization provided by this Order will not permit the export of domestically produced LNG.

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<sup>1</sup> See, DOE Delegation Order No. 00-002.001 (Nov. 10, 2009) and DOE Redelegation Order No. 00-002.04D (Nov. 6, 2007).

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

## **II. PROCEDURAL HISTORY**

Dow filed the “Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on May 26, 2010. The Application was submitted pursuant to section 3 of the NGA<sup>2</sup> and part 590 of DOE’s regulations. On July 1, 2010, FE published a Notice of Application (Notice) in the Federal Register. 75 FR 38092. The Notice stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than August 2, 2010.

FE received no filings in response to this notice.

## **III. BACKGROUND**

Dow, an international chemical and plastics manufacturing company, owns and operates a petrochemical manufacturing facility in Freeport, Texas. That manufacturing facility is capable of receiving revaporized natural gas via interconnecting natural gas pipelines from Freeport’s Quintana Island LNG facility. Pursuant to DOE/FE Opinion and Order No. 2754, Dow presently holds blanket authority to import LNG from various international sources up to a combined total of the equivalent of 390 Bcf of natural gas pursuant to transactions that have terms of no longer than two years. Dow also has contracted for 0.5 Bcf/day of terminal capacity at Freeport’s Quintana Island facility for a twenty-year period that commenced in July 2008.

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<sup>2</sup> 15 USC 717b.

## **Current Application**

In the instant unopposed application, Dow is seeking blanket authorization commencing on the date of this Order, to export for itself, and as agent for other entities, from the Quintana Island facility 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 390 Bcf of natural gas. This requested export volume is the equivalent of Dow's current import authorization. Dow states that Freeport has previously received authorization from the Federal Energy Regulatory Commission (FERC) to modify its Quintana Island facility in order to handle exports as well as imports of LNG.

## **IV. DECISION**

### **A. Standard of Review**

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, DOE/FE is responsible for evaluating the instant application under section 3 of the NGA. Section 3(a) 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 evaluating an export application under section 3, FE applies the principles described in DOE Delegation Order No. 0204-111, which focuses primarily on domestic



need for the gas to be exported, as described in the Secretary's natural gas policy guidelines,<sup>3</sup> and any other matters determined to be appropriate to a determination of the public interest. In addition, 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**

The instant application involves 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, is whether the LNG which Dow seeks to export 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, 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 Dow 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

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<sup>3</sup> See 49 FR 6684, February 22, 1984.

2008 from 1.2 Tcf in 2007.<sup>4</sup> The *Annual Energy Outlook 2010 (AEO2010)* prepared by the EIA within DOE, forecasts shale gas production to increase to 3.85 Tcf by 2015,<sup>5</sup> confirming the trend of increasing domestic natural gas supplies from unconventional domestic resources. In addition, I note that no interested person intervened in this proceeding or otherwise challenged Dow'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.<sup>6</sup>

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<sup>4</sup> U.S. Energy Information Administration (EIA), Shale Gas Production, [http://tonto.eia.doe.gov/dnav/ng/ng\\_prod\\_shalegas\\_sl\\_a.htm](http://tonto.eia.doe.gov/dnav/ng/ng_prod_shalegas_sl_a.htm).

<sup>5</sup> EIA *AEO2010*, Table A-14, page 135.

<sup>6</sup> DOE/EIA, Natural Gas Summary, [http://tonto.eia.doe.gov/dnav/ng/ng\\_sum\\_lsum\\_dcu\\_nus\\_a.htm](http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm).

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 Dow 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, is being met satisfactorily and, therefore, the proposed export is not inconsistent with the public interest.

**C. Other Public Interest Considerations**

Domestic need is the only explicit public interest consideration identified by DOE in 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**

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. From Dow's application, it appears that no physical modifications to Freeport's Quintana Island facilities or other facilities will be required for Dow's proposed exportation of LNG and, as noted, no person has submitted contrary information. Under these circumstances, DOE's NEPA procedures provide for a categorical exclusion for which neither an environmental assessment (EA) nor an



environmental impact statement (EIS) is required.<sup>7</sup> Accordingly, I find that granting this application will not be a Federal action significantly affecting the human environment within the meaning of NEPA and the proposed export requires no further environmental review.

**D. Export on Behalf of Other Entities**

The Dow application requests export authorization to extend not only to LNG supplies imported from foreign sources to which Dow acquires title, but also to LNG supplies imported from foreign sources that Dow may export on behalf of other entities who themselves hold title. DOE/FE has reviewed its policy with respect to exports of LNG on behalf of other entities and denies the request for Dow to export on behalf of other entities who themselves hold title, as discussed below.

In this Order, DOE is adopting a non-binding policy that the title for all LNG authorized to be exported shall be held by the authorization holder (in this case, Dow) at the point of export. LNG exports occur when the LNG is delivered to the flange of the LNG export vessel. By adopting a non-binding policy limiting exports to the authorization holder (Dow in this case), DOE will ensure that the exporter is aware of all requirements in the Order, DOE will have a record of all authorized exporters, and DOE will have direct contact information and point of contact with the exporter who has title. Regardless of who assumes title after the LNG has been exported from the United States, Dow, as authorization holder, shall ensure that all exports authorized by this Order are permitted and lawful under United States laws and policies, including the rules,

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<sup>7</sup> “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.

regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Although DOE denies Dow from using its export authority to export LNG on behalf of entities that hold title, those entities who hold title or expect to hold title to previously imported LNG that is stored in domestic LNG terminals that have capability to export this LNG may submit an application to DOE for their own authorization to export such LNG.

Because the policy adopted herein does not create an impediment to any entity seeking export authorization from applying for it, DOE does not believe that the requirement that the exporter hold title is a substantive restriction on the free movement of international trade and commerce. Such a requirement therefore is not inconsistent with DOE's Policy Guidelines that favor allowing market forces rather than regulatory actions to guide the export of natural gas from the United States.

**E. 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 Dow seeks to export through the authorization timeframe; and this application falls under a DOE categorical exclusion such that no new EA or EIS will be required. Therefore, I will grant the application, although I deny the request for Dow to export LNG on behalf of other entities who themselves hold title to the LNG for the reasons set forth above.

**ORDER**

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

A. Dow is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 390 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 October 5, 2010, and extending through October 4, 2012.

B. This LNG may be exported from Freeport's Quintana Island 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, Dow 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).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294.)

D. The first monthly report required by this Order is due not later than November 30, 2010, and should cover the reporting period from October 5, 2010 through October 31, 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](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 October 5, 2010.



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