

[6450-01-P]

DEPARTMENT OF ENERGY

[FE Docket No. 11-59-LNG]

Lake Charles Exports, 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 May 6, 2011, and amended on May 26, 2011, by Lake Charles Exports, LLC (LCE), requesting long-term, multi-contract authorization to export up to 15 million metric tons per annum (mmtpa) of domestic natural gas as liquefied natural gas (LNG) for a 25-year period, commencing the earlier of the date of first export or ten years from the date of issuance of the requested authorization. LCE seeks authorization to export LNG from the terminal in Lake Charles, Louisiana (“Lake Charles Terminal”)¹ to: (1) any country with which the United States currently has, or in the future may enter into, a free trade agreement (FTA) requiring national treatment for trade in natural gas²; and (2) any country with which the United States does not have an FTA requiring national treatment for trade in natural gas with which trade is not prohibited by United States law or policy. The Application was filed under Section 3 of the Natural

¹ The Lake Charles Terminal is an existing LNG import facility located in Cameron Parish, Louisiana, that is owned by Trunkline LNG Company, LLC (Trunkline LNG), a wholly-owned subsidiary of Southern Union Company.

² The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Nicaragua, Mexico, Morocco, Oman, Peru, and Singapore.

Gas Act, as amended by section 201 of the Energy Policy Act of 1992 (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 using procedures detailed in the **Public Comment Procedures** section of this notice no later than 4:30 p.m., eastern time, **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES:

Electronic Filing:

e-mail: fergas@hq.doe.gov

Regular Mail

U.S. Department of Energy (FE-34)
Office of Natural Gas Regulatory Activities
Office of Fossil Energy
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Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE-34)
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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

LCE is a Delaware limited liability company and a jointly-owned subsidiary of BG Group plc (BG) and Southern Union Company (SUG), with its principal place of business in Houston, Texas. BG LNG Services, LLC (BGLS), an affiliate of LCE, is an importer of LNG into the United States. BGLS and Trunkline LNG, a subsidiary of SUG, are jointly developing plans to install liquefaction facilities to enable export of domestically produced LNG at the Lake Charles Terminal.

The Lake Charles Terminal was certificated by the Federal Energy Regulatory Commission (FERC or Commission) in 1977, and original construction was completed in July 1981. In 2001, BGLS entered into a firm terminalling services agreement under which it subscribed all of the capacity of the Lake Charles Terminal to receive, store, and vaporize LNG. In cooperation with BGLS, Trunkline LNG has expanded and enhanced the terminal through the construction of additional storage capacity, additional gas-fired vaporization capacity, an additional marine berth, ambient air vaporization equipment, and natural gas liquids extraction capability. At present, the terminal has a firm sustained sendout capacity of 1.8 billion cubic feet per day (Bcf/d) (13.7 mmtpa) and a peak sendout capacity of 2.1 Bcf/d. The terminal has four LNG storage tanks with a combined capacity of approximately 2.7 million barrels (425,000 cubic meters) of LNG, or

approximately 9.0 Bcf of gas. In addition, the terminal's natural gas liquids processing facilities allow the extraction of ethane and other heavier hydrocarbons from the LNG stream.

Existing Long-Term and Blanket Authorizations

LCE's affiliate, BGLS, currently holds nine active long-term and blanket authorizations from DOE to import LNG at the Lake Charles Terminal and the LNG terminal at Elba Island, Georgia, including: DOE/FE Order No. 2917 (issued February 17, 2011); DOE/FE Order No. 2756 (issued March 8, 2010); DOE/FE Order No. 2527 (issued August 14, 2008); DOE/FE Order No. 2288 (issued November 17, 2006); DOE/FE Order No. 2285 (issued November 17, 2006); DOE/FE Order No. 2199 (issued May 22, 2006); DOE/FE Order No. 1977-B (issued May 22, 2006); DOE/FE Order No. 2286 (issued November 17, 2006); and DOE/FE Order No. 1932 (issued December 30, 2003).

Current Application

In the instant Application, as amended, LCE seeks long-term authorization to export up to 15 mmtpa of LNG for a 25-year period, commencing the earlier of the date of first export or ten years from the date of issuance of the requested authorization. LCE seeks authorization to export LNG from the Lake Charles Terminal to: (1) any country with which the United States currently has, or in the future may enter into, a free trade agreement (FTA) requiring national treatment for trade in natural gas; and (2) any country with which the United States does not have an FTA requiring national treatment for trade in natural gas with which trade is not prohibited by United States law or policy.

Trunkline LNG and BGLS are currently developing plans to: (1) modify the existing facilities at the Lake Charles Terminal to permit LNG to be loaded from the terminal's storage tanks onto vessels berthed at the existing marine facility; and (2) install liquefaction facilities that

would permit gas to be received by pipeline at the terminal and liquefied for subsequent export. The liquefaction and export facilities would be subject to an additional services agreement between Trunkline LNG and BGLS. LCE states that it would purchase LNG produced by the proposed liquefaction facility at the Lake Charles Terminal from BGLS prior to export. LCE notes that any modifications to the Lake Charles Terminal would be subject to FERC approval and that, following the modifications, the Lake Charles Terminal would be bi-directional, and its peak and sustained sendout capabilities will not be affected.

LCE stated in the Application that it will enter into a long-term export contract with BGLS on a date that is closer to the date of first export. LCE also stated in the Application that the export contract would have a 20 year term and that it will purchase LNG from BGLS at the point of export at the Lake Charles Terminal for delivery to markets around the world.

In the Amendment to the Application, filed on May 26, 2011, LCE revised its request by specifying that it seeks authority to export LNG on its own behalf or as agent for BGLS. The Amendment also clarified that LCE intends that its long-term LNG export agreement with BGLS will run for 25 years concurrent with the export authority sought in the original Application. Also in the Amendment, LCE stated that it prefers to take title to the LNG destined for export from BGLS at the point of export and that it seeks a waiver by DOE/FE of the non-binding policy announced in *The Dow Chemical Company*, DOE/FE Order No. 2859 (Oct. 5, 2010), which requires the authorization holder to have title of gas at the time of export. In the event that DOE/FE declines to grant a waiver of the non-binding policy, LCE intends to use the requested export authorization on behalf of BGLS.

LCE plans to export natural gas sourced from the Texas and Louisiana producing regions as well as other producing regions in the Lower 48 States.

Public Interest Considerations

LCE contends that the authorization would not be inconsistent with the public interest and should be granted by DOE/FE under the individual statutory provisions that apply separately to exporting LNG to FTA and non-FTA countries. LCE asserts that the portion of the Application that seeks authorization to export LNG to FTA countries should be reviewed pursuant to the public interest standard in Section 3(c) of the Natural Gas Act (NGA).³

With regard to exports of LNG to non-FTA countries, LCE states that Section 3(a) of the NGA sets forth the general standard for review applicable to such export applications⁴ and that DOE 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.⁵ LCE asserts that to overcome this rebuttable presumption, an opponent must affirmatively demonstrate that the proposal is inconsistent with the public interest.⁶ Furthermore, the focus of DOE/FE's public interest analysis, according to LCE, is the projected domestic need for the gas to be exported.

In this regard, LCE states that the portion of its Application to export domestically produced LNG to non-FTA countries is not inconsistent with the public interest as demonstrated by the following:

First, LCE contends that recoverable natural gas resources in the United States are abundant, cheap and sufficient to meet long-term demand for both domestic consumption and LCE's proposed LNG exports. LCE asserts that recent improvements in natural gas exploration and production technology have changed the outlook for the U.S. natural gas market. LCE states that technical and efficiency improvements in horizontal drilling and hydraulic fracturing have

³ 15 U.S.C. 717b(c).

⁴ 15 U.S.C. 717b(a).

⁵ *Sabine Pass Liquefaction, LLC*, FE Docket 10-111-LNG, Opinion and Order Denying Request for Review Under Section 3(c) of the NGA (Oct. 21, 2010) (Sabine Section 3(c) Order)

⁶ Application at 7.

combined to reduce the cost of producing natural gas from shale resources, making shale gas economically viable. LCE asserts that shale gas reached 23% of U.S. total natural gas production in 2010 and that the share of shale gas production is expected to double to 46% by 2035. LCE also contends that the export of domestic LNG, as proposed by LCE, should be considered to be in the public interest since U.S. natural gas available for supply far exceeds demand.

Based on an internal analysis of potential exports of domestically produced LNG from various U.S. LNG terminals that could have liquefaction capacity installed, LCE estimated both the impact of the proposed exports and also the effect of other U.S. LNG exports from 2015 through 2035. LCE prepared two scenarios. In a base export case, LCE shows the impact of LNG reaching a total of 6 Bcf/d; in a high (stress) export case, it reaches a total of 12 Bcf/d. LCE asserts that EIA's current estimate of 2,251 trillion cubic feet of technically recoverable dry gas resources in the Lower 48 States indicates that recoverable resources are more than adequate in the long run to meet domestic demand as well as LNG exports as high as 12 Bcf/d. LCE concludes that the natural gas to be exported pursuant to this Application will not be needed to meet U.S. demand, and its permitting would not be inconsistent with the public interest.

Second, LCE states that its analysis shows that the proposed export, as well as the likely level of total LNG exports during the term of the proposed authorization, will not have a significant impact on domestic natural gas prices. LCE states that the surge in shale gas production and recoverable resource estimates has had a bearish effect on domestic natural gas prices over the last two years. LCE considers LNG exports from the United States as an additional demand element in the market. To fully understand the impact of future long-term gas prices, LCE performed internal and external assessments that examined the recoverable resource potential and production costs of

natural gas for 2011 through 2035⁷. LCE's conclusion is that the LNG exports in the requested authorization will not have a material impact on domestic natural gas prices, and that accordingly, the proposed export is not inconsistent with the public interest.

Third, LCE contends that the requested authorization will benefit local, regional, and national economies, and is in the public interest. LCE asserts that the development of new resources creates new jobs and new opportunities for American workers and is consistent with President Obama's National Export Initiative signed in 2010⁸. LCE asserts that the construction of modifications to the terminal would directly benefit the local economy by supporting high paying construction and engineering jobs. LCE asserts that granting the requested authorization would also positively impact the U.S. balance of trade and would help to improve economic trade and ties between the United States and the destination countries, which could include key industrialized nations in Europe and Asia as well as developing nations in Asia, South America, the Middle East and the Caribbean. LCE contends that it would be inconsistent with U.S. obligations under World Trade Organization Agreements to restrict exports of LNG to other WTO countries except in certain narrow circumstances not applicable here.

Fourth, LCE contends that LNG exports can have significant environmental benefits due to the cleaner burning qualities of natural gas, and that an increased supply of natural gas made possible through LNG export can help countries break their dependence on less environmentally friendly fuels.

Environmental Impact

LCE states that, currently, the Lake Charles Terminal is equipped for and authorized only to receive imports of LNG. LCE further states that Trunkline LNG will file an application with FERC

⁷ Application at 16.

⁸ Executive Order No. 13534, 75 FR 12433 (March 11, 2010).

for authorization to modify the existing authorized facilities for exports in accordance with NGA Section 3 and subpart B of part 153 of the Commission's Regulations, 18 CFR Sec. 153.4, *et seq.* Regarding the proposed exports to FTA countries, LCE notes that these exports fall within NGA Section 3(c), as amended, and therefore, must be granted without delay or modification. With regard to the proposed export to non-FTA countries, LCE requests that DOE/FE issue the authorization conditioned on FERC's review under the National Energy Policy Act (NEPA) and approval of the facility construction.

DOE/FE Evaluation

Pursuant to NGA Section 3(a), the portion of the Application seeking authorization to export LNG to countries that have entered into FTAs with the United States calling for national treatment of trade in natural gas is deemed to be in the public interest and, as requested by LCE, shall be granted without modification or delay. A separate order shall be issued to this end.

The balance of the export Application, which seeks authorization to export LNG to non-FTA nations, will be reviewed pursuant to Section 3(c) of the Natural Gas Act, as amended; DOE Delegation Order No. 00-002.00L (Apr. 29, 2011); and DOE Redelelegation Order No. 00-002.04E (Apr. 29, 2011). In reviewing this non-FTA portion of the Application, DOE will consider any issues required by law or policy. To the extent determined to be necessary or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed to be exported, energy security, and any other issues, including the impact on U.S. gross domestic product, consumers, industry, U.S. balance of trade, jobs creation, 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 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

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding 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 will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) e-mailing the filing to fergas@hq.doe.gov, with FE Docket No. 11-59-LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in ADDRESSES; (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in ADDRESSES; or (4) submitting comments in electronic form on the Federal eRulemaking Portal at <http://www.regulations.gov>, by

following the on-line instructions and submitting such comments under FE Docket No. 11-59-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.

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 LCE is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E-042, 1000 Independence Avenue, S.W., Washington, DC 20585. 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, DC, on June 7, 2011.

A handwritten signature in black ink, appearing to read "John A. Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

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