[6450-01-P]

DEPARTMENT OF ENERGY

[FE Docket No. 11-161-LNG]

Freeport LNG Expansion, L.P and FLNG Liquefaction, LLC; Application for Long-Term Authorization to Export Domestically Produced Liquefied Natural Gas to Non Free Trade Agreement Countries for a 25-year Period

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 19, 2011, by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of 511 Billion cubic feet (Bcf) of natural gas per year, which averages to 1.4 Bcf per day (Bcf/d), over a 25-year period, commencing on the earlier of the date of first export or eight years from the date the requested authorization is granted. The LNG would be exported from the Freeport LNG Terminal on Quintana Island near Freeport, Texas, to any country (1) with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, (2) which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. The Application is filed independent of, and in addition to, FLEX's prior application filed with DOE/FE under Docket No. 10-161-LNG. This 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 using procedures detailed in the **Public Comment Procedures** section no later than 4:30 p.m., eastern time, [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES:

Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 11-161-LNG:
http://www.regulations.gov

Electronic Filing by email:
fergas@hq.doe.gov

Regular Mail
U.S. Department of Energy (FE-34)
Office of Natural Gas Regulatory Activities
Office of Fossil Energy
P.O. Box 44375
Washington, DC 20026-4375

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)
U.S. Department of Energy (FE-34)
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Office of Fossil Energy
Forrestal Building, Room 3E-042
1000 Independence Avenue, SW
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FOR FURTHER INFORMATION CONTACT:

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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 (Liquefaction Project) to foreign markets, pursuant to the export authorization sought herein. The Liquefaction Project facilities will be integrated into the existing Freeport Terminal, and is in addition to a separate liquefaction project proposed at the same terminal for substantially the same volume. 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 511 Bcf per year, which averages to 1.4 Bcf/d[1]. 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. FLEX states that although this Application requests authorization substantially similar to the pending application in DOE/FE Docket No. 10-161-LNG,

[1] When added to the first proposed liquefaction project associated with applications received by DOE/FE in 2010, the combined proposed projects would have the capacity to produce LNG for export from domestic sources equivalent to 2.8 Bcf/d of natural gas.

this is a wholly separate Application.[2] As a result, the total of the liquefaction capacity at the Freeport Terminal of both this Application and the prior application in Docket 10-161-LNG is 2.8 Bcf/d. FLEX further states that demand for liquefaction capacity has been significant since it filed its initial export applications a year ago, and it expects to secure long-term contracts for the liquefaction and export of the equivalent of an additional 1.4 Bcf/d of natural gas.

Current Application

In the instant application, FLEX seeks long-term, multi-contract authorization to export domestically produced LNG up to the equivalent of 511 Bcf of natural gas per year, 1.4 Bcf/d, for a period of twenty-five years beginning on the earlier of the date of first export or eight years from the date the authorization is granted by DOE/FE. FLEX requests that such long-term authorization provide for export from the Freeport LNG Terminal on Quintana Island, Texas to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, 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 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.

[2] On December 17, 2010, FLEX filed two applications to export domestically produced LNG from a proposed liquefaction project at the Freeport Terminal capable of producing LNG from domestic resources up to the equivalent of 1.4 Bcf/d of natural gas. The first of these applications, which requested long-term authorization to export LNG to FTA countries, was granted by DOE/FE in Order No. 2913 on February 10, 2011. The second application (DOE/FE Docket No. 10-161-LNG), which requested long-term authorization to export LNG to countries with which the United States does not have an FTA, is still pending before DOE/FE. Both applications sought to each export the entire capacity of the proposed facility.

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 export[3] 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 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.[4] FLEX provides further discussion of the gas supply markets in the Application.

FLEX states that the natural gas supply underlying the proposed exports will come primarily from the highly liquid Texas market, but may draw upon the interconnected general U.S. natural gas market. FLEX states that given the size of the traditional natural gas market in close

[3] 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).

[4] 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); See also Freeport LNG Expansion and FLNG Liquefaction, LLC, FE Docket No. 10-160-LNG, Order No. 2913 at 9-10 (February 10, 2011).

proximity to the Freeport Terminal, and the exponential growth of unconventional resources in the region, a diverse and reliable source of natural gas will be available to support the requested authorization.

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.[5]

FLEX asserts that in evaluating whether the proposed exportation is within the public interest, DOE/FE applies the principles established by the Policy Guidelines[6], 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 refers to DOE/FE Order No. 2961[7], in which DOE/FE stated that its public interest review of applications to export natural gas to countries with which the United States does not have an FTA "has continued to focus on the domestic need for the natural gas proposed to be exported; whether the proposed exports pose a threat to the security of domestic natural gas supplies; and any other issue determined to be appropriate…".

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

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[5] 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).

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

[7] *Sabine Pass Liquefaction LLC,* DOE/FE Docket No. 10-110 LNG (DOE/FE Order No. 2961), May 20, 2011.

more natural gas resources than it can use in a century.[8] 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. FLEX states that LNG supply contracts in Asian markets are pegged to crude oil prices. FLEX asserts that while Europe receives pipeline gas from various sources, the long supply chains and relative inflexibility of markets have made diversification of supply a high priority. 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 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 (3,000 onsite jobs over 3-4 years) and operation (20 to 30 permanent jobs) of the

[8] FLEX states that domestic natural gas reserves, including both Alaska and the Lower 48, are estimated to total about 2,100 trillion cubic feet (Tcf), which is about 92 times the annual U.S. consumption of 22.8 Tcf in 2009. MIT Energy Initiative Study on *The Future of Natural Gas* Massachusetts Institute of Technology Report (MIT Report), at 30 (2011).

Liquefaction Project, and indirect jobs as a result of increased drilling for and production of natural gas (17,000 to 21,000 jobs).[9]

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, or $90 to $130 billion over the requested 25-year export term.[10]

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, or $97.5 billion over the requested 25-year export term.

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 *supra* note 8, which concludes that "[t]he U.S. should sustain North American energy market integration and support development of a global 'liquid' natural gas market with diversity of supply. A corollary is that the U.S. should not erect barriers to gas imports or exports."[11]

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[9] *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Docket 10-161-LNG, Appendix B: *Analysis of Freeport LNG Export Impact on U.S. Markets,* 12 (Altos Management Partners, Inc. 2010)
[10] Id.
[11] MIT Report *supra* note 8, at 157.

Finally, FLEX provides further discussion of various studies that allegedly support FLEX's public interest analysis.

Based on the reasoning provided in the Application, FLEX requests that 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 Federal Energy Regulatory Commission (FERC) has already authorized the Phase II expansion of the Freeport LNG Terminal. FLEX also states that the Liquefaction Project improvements, including those required to conduct operations under the current Application will be contained within the previously authorized operational area of the Freeport LNG Terminal on Quintana Island, Texas. FLEX states that the potential air impacts of the Liquefaction Project, including the facilities required to support the Export Authorization, will be reviewed by the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA). FLEX states that other environmental impacts of the Liquefaction Project will be reviewed by FERC under the National Environmental Policy Act (NEPA). FLEX states that the 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

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00-002.00L (April 29, 2011) and DOE Redelegation Order No. 00-002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant 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 for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and 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) 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. 11-161-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; (2) e-mailing the filing to fergas@hq.doe.gov with FE Docket No. 11-161-LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in ADDRESSES; or (4) 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.

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 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, D.C., on February 7, 2012.

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