

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

DOMINION COVE POINT LNG, LP

FE DOCKET NO. 11-98-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS BY VESSEL

DOE/FE ORDER NO. 3055

JANUARY 9, 2012

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 (2011); and applicable delegations and redelegations of authority,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the August 8, 2011, application of Dominion Cove Point LNG, LP (DCP), with terms and conditions as set forth in this Order.

The authorization provided by this Order permits DCP to export liquefied natural gas (LNG) that previously had been imported from foreign sources, in an amount up to the equivalent of 150 billion cubic feet (Bcf) of natural gas on a cumulative basis, over a two-year period commencing on the date that the applicant provides DOE/FE with a copy of the Federal Energy Regulatory Commission (FERC) order authorizing the facility modifications necessary to support the LNG export operations proposed in the application. DCP is authorized to export this LNG 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 allows DCP to act as agent for others who themselves hold title to the LNG, after DCP registers each entity with DOE/FE. This authorization permits such exports on a short-term or spot market basis from the existing Cove Point LNG Terminal (Terminal) facilities located in Calvert County, Maryland. The authorization provided by this Order will not permit the export of domestically produced LNG.

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. §717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04E issued on April 29, 2011.

II. PROCEDURAL HISTORY

DCP filed the “Application of Dominion Cove Point LNG, LP for Blanket Authorization to Re-Export LNG on a Short-Term Basis” (Application) with DOE/FE on August 8, 2011. The Application was submitted pursuant to section 3 of the NGA and part 590 of DOE’s regulations. On September 21, 2011, DOE/FE published a Notice of Application (Notice) in the Federal Register. 76 FR 58488. The Notice stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than October 21, 2011.

On October 19, 2011, DOE received the Motion of Coalition for Responsible Siting of LNG to Intervene in this proceeding. On October 19, 2011, DOE received the Motion of Shell NA LNG LLC to Intervene and Comments on Application to Re-Export LNG.

III. BACKGROUND

DCP is a Delaware limited partnership with its principal place of business in Lusby, Maryland, and offices in Richmond, Virginia. DCP is the current owner of the Cove Point Terminal. DCP is a subsidiary of Dominion Resources, Inc. (DRI), a producer and transporter of energy. DRI is a Virginia corporation with its principal place of business in Richmond, Virginia.

DCP owns the Cove Point Terminal, as well as the 88-mile Cove Point Pipeline connecting the Terminal to the interstate pipeline grid. The construction and operation of the Cove Point Terminal was initially authorized in 1972 as part of a project to import LNG from Algeria and transport natural gas to U.S. markets. Shipments of LNG to the Terminal began in March 1978, but ceased in December 1980. In 2001, the FERC authorized the reactivation of the Terminal and the construction of new facilities to receive imports of LNG. In 2006, the FERC authorized the Cove Point Expansion project, which increased the size of the Terminal to 1.8 Bcf/d send-out capacity, expanded the capacity of the Cove Point Pipeline, and provided for new downstream pipeline and storage facilities. In 2009, the FERC authorized DCP to upgrade,

modify, and expand its existing off-shore pier at the Terminal to accommodate the docking of larger LNG vessels.

On February 9, 2009, DOE/FE granted DCP blanket authorization to import up to 36 Bcf of LNG from various international sources for a two-year term beginning March 1, 2009.² On November 8, 2010, DOE/FE granted DCP authorization to import LNG for a second two-year term beginning March 1, 2011.³

On October 7, 2011, in DOE/FE Order No. 3019, DOE/FE granted DCP authorization to export as agent for others, domestically produced LNG, up to the equivalent of 1 Bcf/day of natural gas from the Terminal for a 25-year term, beginning on the earlier of the date of first export or October 7, 2017, pursuant to one or more long-term contracts that do not exceed the term of the authorization. That LNG may be exported to nations with which the United States presently has in effect a free trade agreement (FTA) providing for the national treatment for trade in natural gas, and to any other nation with which the United States subsequently enters into such an FTA, provided that the destination nation has the capacity to import LNG from ocean going vessels.⁴

On October 3, 2011, in DOE/FE Docket No. 11-128-LNG, DCP filed an application requesting long-term, multi-contract authorization to export up to 7.82 million metric tons per year of domestically produced LNG, equivalent to approximately 365 Bcf per year of natural gas⁵ (an average of 1 Bcf/day) for a 25-year period from the Terminal. DCP requested authorization in that application to export LNG 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 *Dominion Cove Point LNG, LP*, DOE/FE Order No. 2612, issued February 9, 2009.

³ *Dominion Cove Point LNG, LP*, DOE/FE Order No. 2878, issued November 8, 2010.

⁴ *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3019, issued October 7, 2011.

⁵ DCP estimates that 7.82 million metric tons per year is equivalent to approximately 1 Bcf per day of natural gas.

(2) which has 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. On December 8, 2011, DOE/FE published a Notice of application (Notice) in the Federal Register. 76 FR 76698. The Notice stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than February 6, 2012. The December 8 application currently is under review by DOE/FE.

Current Application

In the instant Application, DCP is seeking blanket authorization commencing on December 1, 2011, to export LNG from the Terminal 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 or policy, over a two-year period, in an amount up to the equivalent of 150 Bcf of natural gas. This Application seeks authorization to export previously imported LNG in a volume that is in excess of DCP's current authorization which permits it to import up to 36 Bcf per year of LNG from various international sources. However, the Application states that DCP does not intend to hold title to the LNG itself and requests authorization to act as agent on behalf of other entities that hold title to the LNG, after registering each such entity with DOE/FE. Thus, it appears that the volumes to be exported pursuant to the requested authorization will not come solely from the volumes which DCP is currently authorized to import. Pursuant to the instant authorization, DCP either may seek to increase the volumes that it is presently authorized to import or may export volumes previously imported by others on behalf of whom it will act as agent. Moreover, DCP is not requesting authority to export domestically produced natural gas or LNG.

While DCP has requested an effective date of December 1, 2011, DCP also states in the application that the requested authorization cannot, as a practical matter, be utilized until the FERC authorizes certain minor facility modifications (described *infra*) at the Terminal. Accordingly, DCP recognizes that the effective date of the authorization requested in the instant proceeding may be conditioned on FERC's approval of the facility modifications. DCP states that it intends to file an application with the FERC in the near future.

Motions to Intervene

As indicated above, DOE/FE received two motions to intervene in this proceeding. The first motion, submitted by the Coalition for Responsible Siting of LNG (Coalition), states that the Coalition is "a broad based organization fighting against the foolish siting of LNG facilities in heavily populated areas." The Coalition's motion further states that "[a]s a grassroots coalition of 1300 persons and other sister organizations the not for profit goal is to look out for the betterment and safety of the citizens in communities which are targeted and affected in the siting of LNG facilities." The Coalition's motion contains no further information regarding the identity or interest of the Coalition in the outcome of this proceeding nor does the motion further explain the position of the Coalition with regard to the instant application.

The second motion to intervene in this proceeding, filed by Shell NA LNG LLC (Shell LNG) states that the movant is an affiliate of Shell Oil Company. Shell LNG states further that it is an importer of LNG and a potential exporter and that it currently holds firm capacity at the Terminal and on DCP's pipeline. Shell LNG explains further that its firm capacity rights at DCP's facilities extend into 2023 and that Shell LNG consequently has a direct and immediate interest in the outcome of this proceeding which cannot be adequately protected by any other party. Shell LNG states it is intervening in this proceeding to ensure that the services being

provided to it by DCP are not disrupted or degraded by a grant of the Application and that DCP's existing transportation customers do not subsidize the export operations proposed in this proceeding. While Shell LNG does not object in principle to a grant of the Application, it states that it reserves the right to raise any issues related to its concerns with the Application.

Upon consideration, DOE/FE will deny the motion to intervene submitted by the Coalition and will grant the motion to intervene submitted by Shell LNG. In so doing, we observe that the Coalition's filing only expresses a concern over the siting of LNG facilities but this agency has no authority to address issues regarding the siting of LNG facilities. Shell LNG, on the other hand, raises relevant concerns over the potential impact of the proposed export authorization on its current and future business dealings with the applicant. We note, however, that Shell LNG states that it does not oppose a grant of the requested authorization and, accordingly, will not further address the potential impacts described in Shell LNG's submittal.

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, DOE/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,⁶ 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 LNG necessarily could not reduce the availability of domestically produced natural 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.

DOE/FE has issued recent blanket authorizations to export previously imported LNG⁷ and in each case cited published government data which 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 DCP seeks to export. DOE takes administrative notice that a review of the most recent data and analysis prepared by the Energy Information Administration (EIA) within DOE shows that over the last several years, domestic natural gas production has increased significantly, primarily due to the development of improved drilling technologies, including the ability to produce natural gas trapped in shale geologic formations. Recent data and analysis prepared by EIA shows domestic

⁶ See 49 FR 6684, February 22, 1984.

⁷ *ConocoPhillips Company*, DOE/FE Order No. 3038 (November 22, 2011); *Freeport LNG Development, L.P.*, DOE/FE Order No. 2986 (July 19, 2011); *ENI USA Gas Marketing LLC*, DOE/FE Order No. 2923 (March 3, 2011); *Sempra LNG Marketing, LLC*, DOE/FE 2885 (December 3, 2010); *Dow Chemical Company*, DOE/FE Order No. 2859 (October 5, 2010).

gross natural gas production from shale increased to 3.4 trillion cubic feet (Tcf) in 2009, compared to 2.3 Tcf in 2008⁸. Further, in the Annual Energy Outlook 2011 (AEO 2011), EIA projected that, by 2015, annual dry shale gas production will increase to 7.2 Tcf and, by 2035, to 12.2 Tcf. Therefore the evidence of record indicates that United States consumers continue to 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 DCP seeks to export.

C. Agency Rights

As described above, DCP requests authorization to export LNG on behalf of or as agent for others. DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Order No. 2913 (Order 2913), issued February 10, 2011. In Order 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to register each LNG title holder for whom FLEX sought to export LNG as agent. This proposal was an alternative to the non-binding policy adopted by DOE/FE in *Dow Chemical*,⁹ which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. The same policy considerations that supported DOE/FE's acceptance of the alternative proposal in Order No. 2913 apply here as well. The authorization granted herein shall be conditioned to require that where DCP proposes to export as agent for others, DCP must register those companies in accordance with the procedures and requirements described herein.

⁸ EIA, *Natural Gas Gross Withdrawals and Production*, Release Date: December 29, 2011
http://www.eia.gov/dnav/ng/ng_prod_sum_dcu_NUS_a.htm

⁹ *The Dow Chemical Company*, DOE/FE Opinion and Order No. 2859 (FE Docket No. 10-57-LNG), October 5, 2010, at p. 7 and 8.

D. 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. In the Application, DCP states that modifications at the Terminal would involve the conversion of six check valves located on the unloading arms on the offshore pier to flow-through valves. This conversion will support the loading and unloading of LNG from ships at the Terminal. DCP also states that there will be no additional ship traffic as a result of the proposed re-export operations beyond the number already stated in the U.S. Coast Guard Letter of Recommendation and Waterway Suitability Report issued for the Terminal. DCP states that approval of the Application would not constitute a federal action significantly affecting the human environment under NEPA. DCP states that it plans to file in the near future an application with the FERC for the necessary authorization to allow for the re-export of LNG from the Terminal. Accordingly, DCP requests that DOE/FE issue a conditional order authorizing export of previously imported LNG pending completion of FERC's environmental review.

E. Effective Date of Order

The requested authorization will be effective upon the receipt by DOE/FE of a copy of a FERC order authorizing the facility modifications necessary to support the LNG export operations proposed in the application. Because it is uncertain when or whether FERC will issue an order granting DCP's planned facility modifications, the export authorization granted herein will automatically terminate if FERC does not issue an order approving the facility modifications within one year from the issuance of this order unless, within 30 days before the expiration of the one year period, DCP submits good cause for extending the term of the instant conditional authorization. DCP shall file such order within two weeks of the receipt of such authorization from the FERC.

F. 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 DCP seeks to export through the authorization timeframe. Therefore, I will grant the application.

ORDER

Pursuant to section 3 of the NGA it is ordered that:

- A. The Motion of Coalition for Responsible Siting of LNG to Intervene is denied.
- B. The Motion of Shell NA LNG LLC to Intervene is granted.

C. DCP is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 150 Bcf of natural gas, pursuant to transactions that have terms of no longer than two years. This authorization shall be effective for a two-year term beginning on the date that the applicant provides DOE/FE with a copy of the FERC order authorizing the facility modifications necessary to support the LNG export operations proposed in the application.

D. DCP shall provide DOE a copy of the FERC order authorizing the facility modifications necessary to support the LNG export operations proposed in the application within two weeks of the receipt of such authorization from the FERC.

E. The export authorization granted herein will automatically terminate if FERC does not issue an order approving the facility modifications necessary to support the proposed LNG exports within one year from the issuance of this order unless, within at least 30 days before the expiration of the one year period, DCP submits good cause for extending the term of the instant conditional authorization.

F. The LNG authorized for export in this order may be exported from DCP's Cove Point LNG Terminal located in Calvert County, Maryland, 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.

G. DCP is permitted to use its authorization on behalf of or as agent for others, after DCP registers the other party with DOE/FE.

H. Entities for whom DCP acts as agent shall include the following provision in any contract for the sale or transfer of LNG exported pursuant to this Order:

"Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries with the capacity to import ocean-going LNG

carriers and with which trade is not prohibited by U.S. law or policy, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Dominion Cove Point LNG, LP that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Dominion Cove Point LNG, LP is made aware of all such actual destination countries."

I. As a condition of this authorization, DCP shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by DCP to ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding in whole or in part the authorization.

J. Registration materials shall include an acknowledgement and agreement by the registrant to supply DCP with all information necessary in order to permit DCP to register that person or entity with DOE/FE, including: (1) the registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 CFR Part 590, including but not limited to destination restrictions; (2) the exact legal name of the registrant, state/location of incorporation/registration, primary place of doing business, and the registrant's ownership structure, including the ultimate parent entity if the registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the registrant to whom inquiries may be directed; and (4) an acknowledgement and agreement by the registrant to include the Order Paragraph H. provision in any contract for the sale or transfer of LNG exported pursuant to this Order.

K. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

L. Within two weeks after the first export of domestically produced LNG occurs from the Dominion Cove Point Terminal, DCP shall provide written notification of the date that the first export of LNG authorized in Order Paragraph C above occurred.

M. Monthly Reports: With respect to the export of LNG authorized by this Order, DCP 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 Mcf; (7) the price at point of export 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.)

N. The first monthly report required by this Order is due not later than February 29, 2012, and should cover the reporting period from January 9, 2012, through January 31, 2012.

O. 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.

Issued in Washington, D.C., on January 9, 2012.

A handwritten signature in black ink, appearing to read "John A. Anderson", is written over a horizontal line.

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