

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

FREEPORT LNG EXPANSION, L.P. AND
FLNG LIQUEFACTION, LLC

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) FE DOCKET NO. 10-160-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION TO
EXPORT LIQUEFIED NATURAL GAS FROM
FREEPORT LNG TERMINAL TO FREE TRADE NATIONS

DOE/FE ORDER NO. 2913

FEBRUARY 10, 2011

I. DESCRIPTION OF REQUEST

On December 17, 2010, Freeport LNG Expansion L.P. (FLNG Expansion) and FLNG Liquefaction, LLC (FLNG Liquefaction) (collectively FLEX), filed an application (Application) with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)¹ for long-term, multi-contract authorization to export up to the equivalent of 9 million metric tons per annum (mtpa) of liquefied natural gas (LNG), which FLEX states is equivalent to 1.4 billion cubic feet of natural gas per day (Bcf/d), by vessel from the Freeport LNG Terminal (Freeport Terminal) on Quintana Island, near Freeport, Texas, for a 25 year term. FLEX requests that this authorization commence on the date of first LNG export, or five years from the date that the authorization is issued (February 10, 2016), whichever is sooner. FLEX seeks to export this LNG to any nation that currently has or develops the capacity to import LNG and with which the United States currently has, or in the future enters into, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas and LNG.² FLEX requests this authorization for itself and in order to act as agent for third parties.

II. 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.

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 Redesignation Order No. 00-002.04D issued on November 6, 2007.

² Currently the United States has FTAs that require national treatment for trade in natural gas with the following countries: Australia, Bahrain, Singapore, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Morocco, Canada, Mexico, Oman, Peru, and Jordan.

FLEX's Application is filed in parallel with FLEX's contemporaneous, separate application with DOE/FE requesting long-term, multi-contract authorization to export LNG to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas and LNG, 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 United States law or policy.

FLEX, through one or more of its subsidiaries, intends to develop, own, and operate natural gas liquefaction facilities to receive and liquefy domestically produced natural gas for export (pursuant to the export authorization sought herein) to foreign markets (Liquefaction Project). The Liquefaction Project facilities will be integrated into the existing Freeport Terminal. 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 9 mtpa of LNG. 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. The Liquefaction Project facilities will include the following facilities that were authorized by the Federal Energy Regulatory Commission (FERC) in an order dated September 26, 2006³: (1) a second marine berthing dock; (2) a third LNG storage tank; and (3) transfer pipelines between the second marine dock and LNG storage tanks.

FLEX requests that DOE grant long-term, multi-contract authorization for FLEX to export domestically produced LNG from the Freeport Terminal to any country with which the United States has an FTA requiring national treatment for trade in natural gas and LNG and

³ *Freeport LNG Development, L.P.*, 116 FERC § 61,290, Docket No. CP05-361-000 (September 26, 2006).

which has developed or in the future develops the capacity to import LNG via ocean-going carrier. FLEX requests this authorization for up to 9 mtpa of LNG (which FLEX states is equivalent to 1.4 Bcf/d, or 511 Bcf per year), up to a total of 225 million metric tons over a 25-year term beginning on the date of the first export or five years from the date the authorization is granted, whichever is sooner.

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. 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 export⁴ 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

⁴ 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).

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.⁵

FLEX states that the source of natural gas supply for the Liquefaction Project will be the general United States natural gas market, including natural gas produced from shale deposits. Specifically, FLEX asserts that natural gas supply will come primarily from the highly liquid Texas market, but may draw upon the interconnected general U.S. natural gas market. FLEX states that while some of the proposed export supply may be secured through long-term contracts, large volumes are likely to be acquired on the spot market. FLEX provides further discussion of the gas supply markets in the Application, as well as public interest considerations.

III. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications to authorize (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without

⁵ 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).

modification or delay. The instant Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the application without modification or delay.⁶

(2) The countries with which the United States has an FTA calling for “national treatment for trade in natural gas” include Australia, Bahrain, Singapore, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Morocco, Canada, Mexico, Oman, Peru, and Jordan. The United States has FTAs that do not require national treatment for trade in natural gas with Costa Rica⁷ and Israel.⁸

(3) In light of DOE’s statutory obligation to grant the Application without delay or modification, there is no need for DOE to review the other arguments posed by FLEX in support of the Application. The instant grant of authority should not be read to indicate DOE’s views on those arguments.

(4) The Application requests authorization to export up to 9 mpta of natural gas for 25 years which, FLEX states, is equivalent to 1.4 Bcf/d, or 511 Bcf per year. DOE/FE is concerned that the conversion factor used by FLEX may overstate the volumes subject to the authorization.⁹ DOE/FE believes that any uncertainty in the volumes subject to the export authorization needs to be promptly clarified. Having a clear understanding of the volumes authorized for export in this and other proceedings could affect the review of future export applications where a public interest determination is based, at least in part, on the availability of sufficient supplies to meet

⁶ DOE further finds that the requirement for granting the application without delay or modification overrides regulatory requirements for public notice and other hearing-type procedures in 10 CFR Part 590.

⁷ Pursuant to Annex 3.2 of the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), Article 3.2 of the CAFTA-DR, which provides for national treatment, shall not apply to certain controls by Costa Rica on the exports of hydrocarbons.

⁸ Under the Israel FTA, the parties “affirm their respective rights and obligations under existing bilateral and multilateral agreements, including . . . the GATT [General Agreement on Tariffs and Trade].”

⁹ DOE/FE takes note that a more typical LNG conversion factor would be 48.7 Bcf per metric ton, instead of the 56.8 Bcf per metric ton implied in the FLEX equivalent volumes, although actual conversion factors will depend on composition of the natural gas

domestic need.¹⁰ Accordingly, DOE/FE will direct FLEX to submit a statement within 30 days of the date of issuance of this Order clarifying the basis for the conversion factor used in the Application and, if deemed appropriate by FLEX, revising the volume calculation. Upon review, DOE/FE may issue a supplemental order on the volumes eligible for export. Until such supplemental order is issued, DOE/FE will accept the natural gas volume of 1.4 Bcf/d, or 511 Bcf per year, that was set forth in FLEX's Application; this is necessary because the Application is being reviewed under section 3(c) of the Natural Gas Act.

(5) **Act as Agent for Others (Agency Rights).** DOE/FE finds that FLEX has requested an acceptable process by which FLEX can act as an agent for others who want to export LNG from the Freeport Terminal under this authorization. FLEX's requested agency rights and registration procedures are an alternative to the non-binding policy adopted by DOE/FE in DOE Opinion and Order No. 2859 (Order 2859),¹¹ which set forth a non-binding policy that the title for all LNG authorized to be exported shall be held by the authorization holder at the point of export.

Specifically, FLEX requests long-term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others, proposing registration and reporting procedures that address the issues expressed by DOE/FE in Order 2859. DOE/FE accepts FLEX's proposal to register each LNG title holder for whom FLEX seeks to export as agent, with such registration to 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

¹⁰ Section 590.202(b)(1) of DOE's regulations, require that applications for export or import authority set forth "the volumes of natural gas involved, expressed in either Mcf or Bcf and their Btu equivalents."

¹¹ *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.

those requirements in any subsequent purchase or sale agreements entered into by that title holder.

In addition, 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.

By accepting FLEX's requested registration process and contract terms, DOE/FE will ensure that the title holder is aware of all requirements in the Order, including destination restrictions, that DOE will have a record of all authorized exports, and that DOE will have direct contact information and point of contact with the title holder.

This process is responsive to current LNG markets and provides an expedited process by which companies seeking to export LNG can do so.

DOE/FE notes that those entities that hold title or expect to hold title to LNG that is stored in domestic LNG terminals can choose to submit an application to DOE for their own authorization to export such LNG, and are not required to use the agency rights that will be allowed by this Order.

ORDER

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

A. FLEX is authorized to export domestically produced LNG by vessel from the Freeport Terminal, near Freeport, Texas, on its own behalf or acting as agent for others, up to 511 Bcf per year for a 25-year term, beginning on the earlier of the date of first export, or February 10, 2016, pursuant to one or more long-term contracts (greater than two years) with third parties with terms not to exceed the term of the authorization.

B. This LNG may be exported to Australia, Bahrain, Singapore, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Morocco, Canada, Mexico, Oman, Peru, and Jordan, and to any nation which DOE subsequently identifies publicly (currently at http://www.fossil.energy.gov/programs/gasregulation/authorizations/How_to_Obtain_Authorizations.html) as having entered into a free trade agreement providing for national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG.

C. FLEX shall ensure that all transactions authorized by this order are permitted and lawful under United States laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. FLEX shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts to supply natural gas to the Freeport Terminal with the intent to process this natural gas into LNG for export within 30 days of their execution.

E. FLEX is permitted to use its authorization in order to export LNG on its own behalf or on behalf of or as agent for others, after registering the other party with DOE/FE.

F. As a condition of this authorization, FLEX shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by FLEX 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.

G. Registration materials shall include an acknowledgement and agreement by the registrant to supply FLEX with all information and copies of contracts necessary in order to permit FLEX 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, including the name of the registrant's parent company if the registrant is a subsidiary or affiliate; (3) the name, title, post office address, e-mail address, and telephone number of a corporate officer or employee of the registrant to whom inquiries may be directed; (4) an acknowledgement and agreement by the registrant to sell or transfer LNG exported pursuant to this Order only to entities that have agreed in writing to the destination restrictions and reporting requirements set forth in this Order and have agreed to include such terms in all subsequent sales or transfers; (5) within 30 days of execution, a copy, filed with DOE/FE under seal, of any long-term agreements to export natural gas, including LTAs, ; and (6) within 30 days of execution by a person or entity required by this Order to register, a copy, filed with DOE/FE under seal, of any agreement to purchase or receive LNG exported pursuant to this authorization.

H. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, change in term of the long-term contract, termination of the long-term contract, or other relevant modification, shall be filed with DOE/FE within 30 days of such change(s).

I. Within two weeks after the first export of LNG sourced from domestically produced natural gas occurs, FLEX shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

J. Within 30 days of the date of this Order, FLEX shall file with DOE/FE a statement clarifying the basis for the calculation of the volumes subject to this authorization.

K. **Monthly Reports:** With respect to the export of LNG authorized by this Order, FLEX 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(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG tanker; (4) the date of departure from the U.S. export terminal; (5) the country of destination; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export (free on board, FOB) per million British thermal units (MMBtu); (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser(s).

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

L. The first monthly report required by this Order is due not later than March 30, 2011, and should cover the reporting period from February 10, 2011, through February 28, 2011.

M. 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 February 10, 2011.

A handwritten signature in 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