[6450-01-P]

DEPARTMENT OF ENERGY

[FE Docket No. 12-05-LNG]

Gulf Coast LNG Export, LLC; Application for Long-Term Authorization to Export Domestically Produced Liquefied Natural Gas 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 January 10, 2012, by Gulf Coast LNG Export, LLC (Gulf Coast), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of 1,022 billion cubic feet (Bcf) of natural gas per year, which averages to 2.8 Bcf per day (Bcf/d), up to a total of 25.55 trillion cubic feet (Tcf), 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. Gulf Coast proposes to export LNG from a proposed natural gas liquefaction facility and LNG terminal to be located at the Port of Brownsville in Brownsville, Texas, which Gulf Coast plans to develop, to any country which has 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. Gulf Coast seeks to export this LNG on its own behalf and also as agent for third parties. The 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. 12-05-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
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1000 Independence Avenue, SW
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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Gulf Coast is a Delaware limited liability company with its principal place of business in Houston, Texas. Gulf Coast is owned by Michael Smith, the founder and current Chairman and CEO of Freeport LNG Development, L.P. (97 percent), the Kaily Morgan Smith Irrevocable Trust (1.5 percent), and the Tara Marielle Smith Irrevocable Trust (1.5 percent).

Gulf Coast plans to develop, own and operate a natural gas liquefaction facility and LNG export terminal at the Port of Brownsville, in Brownsville, Texas (Brownsville Terminal). Gulf Coast states that the Brownsville Terminal will include four trains capable of liquefying up to 2.8 Bcf/d of natural gas, a marine berth, full containment LNG storage tanks, a pipeline connection to natural gas transportation lines, and associated utilities.

Current Application

In the instant Application, Gulf Coast seeks long-term, multi-contract authorization to export domestically produced LNG up to the equivalent of 1,022 Bcf of natural gas per year (2.8 Bcf/d), up to a total of 25.55 Tcf, 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. Gulf Coast seeks authorization to export domestically produced LNG to countries from the United States to any country which has 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. In the alternative, Gulf Coast requests authorization for that portion of Gulf Coast's requested authorization quantity or term that DOE/FE determines to be in the public interest.

When submitted in January 2012, the Application did not contain evidence that Gulf Coast had established a business relationship with the Port of Brownsville where the proposed liquefaction facility and LNG export terminal are to be constructed. Absent some credible evidence that an applicant for an LNG export authorization has taken meaningful steps toward establishing the sorts of business relationships essential for performing the services for which authorization is sought from this agency (for example, securing a means of obtaining LNG for export, contracting for capacity at an existing LNG terminal, or initiating the process of securing property to construct such a terminal), DOE/FE will generally consider such an application deficient and, if the deficiency is not corrected in a reasonable time, the application may be dismissed without prejudice to refilling at a later time. *See,* 10 C.F.R. 590.203.

On March 27, 2012, Gulf Coast sent DOE/FE a copy of an option agreement between Gulf Coast and the Brownsville Navigation District of Cameron County, Texas, to demonstrate its commercial relationship with the owner of the property on which the proposed facility would be built. Gulf Coast requested the agreement be afforded confidential treatment and not posted to the public docket. Subsequently, Gulf Coast agreed to allow a redacted version of the option agreement to be placed in the public docket of the proceeding. On May 16, 2012, Gulf Coast submitted the redacted agreement, and DOE/FE deemed the application complete at that time.

Gulf Coast states that rather than entering into long-term natural gas supply or LNG export contracts, it contemplates that its business model will be based primarily on Liquefaction Tolling Agreements (LTAs), under which individual customers who hold title to natural gas will have the right to deliver that gas to Gulf Coast and receive LNG. Gulf Coast 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.

Gulf Coast requests long-term multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. Gulf Coast contemplates that the title holder at the point of export[1] may be Gulf Coast or one of Gulf Coast's LTA customers, or another party that has purchased LNG from an LTA customer pursuant to a long-term contract. Gulf Coast requests authorization to register each LNG title holder for whom Gulf Coast 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 Gulf Coast'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 Gulf Coast seeks to export as agent, Gulf Coast states that it will file under seal with DOE/FE any relevant long-term commercial agreements between Gulf Coast and such LNG title holder, including LTAs, once they have been executed.[2]

Gulf Coast states that the natural gas supply underlying the proposed exports will come from the interconnected and highly liquid domestic market for natural gas. Gulf Coast states that given the size of the traditional natural gas market in Texas, 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. Gulf Coast provides further discussion of the gas supply markets in the Application.

Public Interest Considerations

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[1] 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).

[2] Gulf Coast states that the practice of filing 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).

In the instant Application, Gulf Coast requests authorization to export to any country which has 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. Gulf Coast states that this may include countries with which the United States has an FTA requiring national treatment for trade in natural gas or LNG, as well as non-FTA countries. Gulf Coast acknowledges that in the review of its Application, DOE/FE will be guided by the individual statutory provisions that apply separately to the export of LNG to FTA and non-FTA countries. In either case, Gulf Coast contends that the requested authorization would not be inconsistent with the public interest and should be granted by DOE/FE.

Gulf Coast asserts that applications submitted to DOE/FE that seek 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] Gulf Coast maintains that these exports are deemed to be in the public interest and must be granted without modification or delay.

With regard to exports of LNG to non-FTA countries, Gulf Coast 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. Gulf Coast 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.[4]

Gulf Coast asserts that in evaluating whether the proposed exportation is within the public interest, DOE/FE applies the principles established by the Policy Guidelines,[5] 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

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[3] 15 U.S.C. 717b(c).

[4] 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).

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

be exported." Gulf Coast cites DOE/FE Order No. 2961,[6] 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…".

Gulf Coast 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. Gulf Coast asserts that the United States is now estimated to have more natural gas resources than it can use in a century.[7] Gulf Coast 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.

Gulf Coast 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. Gulf Coast states that LNG supply contracts in Asian markets are pegged to crude oil prices. Gulf Coast 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. Gulf Coast states that domestic natural gas prices are projected to remain low relative to European and Asian markets well into the future, thereby making exports of LNG by vessel a viable long-term opportunity for the United States.

Gulf Coast states the project is positioned to provide the Gulf Coast region and the United States with significant economic benefits by increasing domestic natural gas production. Gulf

[6] *Sabine Pass Liquefaction LLC,* DOE/FE Docket No. 10-110 LNG (DOE/FE Order No. 2961), May 20, 2011.
[7] Gulf Coast states that total U.S. recoverable natural gas reserves equal about 2,543 trillion cubic feet (Tcf), which Gulf Coast states is more than 105 times the total domestic consumption of 24.1 Tcf in 2010. U.S. Energy Information Administration, *Annual Energy Outlook 2011*, at 79 (April 26, 2011).

Coast states that these benefits will be obtained with only a minimal effect on domestic natural gas prices. Gulf Coast states that at current and forecasted rates of demand, the United States' natural gas reserves will meet demand for 100 years. Gulf Coast states that the project allows the United States to benefit now from the natural gas resources that may not otherwise be produced for many decades, if ever. Gulf Coast provides further discussion on why the proposed export authorization is in the public interest.

First, Gulf Coast contends that the project will cause direct and indirect job creation through construction (3,000 onsite jobs over five to six years) and operation (more than 250 permanent jobs) of the planned project, and indirect jobs as a result of increased drilling for and production of natural gas (34,000 to 42,000 jobs).[8]

Second, Gulf Coast maintains the project would create significant economic stimulus, with the total economic benefits to the American economy estimated to be between \$7.2 and \$10.4 billion per year from 2018 to 2043, or \$90 to \$130 billion over the requested 25-year export term.[9]

Third, Gulf Coast contends that there will be a material improvement in the U.S. balance of trade. Gulf Coast states that assuming an average value of \$7 per million Btu, exporting approximately 2.8 Bcf/d of LNG through the project will improve the U.S. balance of payments by approximately \$7.3 billion per year, or \$183 billion over the requested 25-year export term.

Fourth, Gulf Coast states that 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.

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[8] Gulf Coast cites to the following: Baumann, Robert H., D.E. Dismukes, D.V. Mesyanzhinov, and A.G. Pulsipher, *Analysis of the Economic Impact Associated with Oil and Gas Activities on State Leases*, Louisiana State University Center for Energy Studies (2002); Snead, Mark C., *The Economic Impact of Oil and Gas Production and Drilling on the Oklahoma Economy*, Oklahoma State University (2002); Considine, Timothy J., *The Economic Impacts of the Marcellus Shale: Implications for New York, Pennsylvania and West Virginia*, A Report to the American Petroleum Institute (2010).

[9] *Id.*

Fifth, Gulf Coast states that the project supports American energy security. Gulf Coast maintains 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. Gulf Coast contends that the project will not adversely affect U.S. energy security. Gulf Coast references a report by the Massachusetts Institute of Technology's Energy Initiative, 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."[10]

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Based on the reasoning provided in the Application, Gulf Coast requests that DOE/FE determine that Gulf Coast's request for long-term, multi-contract authorization to export LNG is not inconsistent with the public interest.

Environmental Impact

Gulf Coast states that its proposed LNG exports will require the siting, construction and operation of the proposed Brownsville Terminal, subject to environmental review and authorization by the FERC. Gulf Coast states that it will initiate the FERC authorization process within 180 days of DOE/FE's order approving this Application. Accordingly, Gulf Coast requests that DOE/FE issue a conditional order authorizing the export of domestically produced LNG from the planned Brownsville Terminal conditioned on completion of the environmental review and subsequent authorization by the FERC.

DOE/FE Evaluation

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[10] MIT Energy Initiative, *MIT Study on the Future of Natural Gas*, at 157 (2011).

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. 12-05-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. 12-05-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 Gulf Coast 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 May 29, 2012.

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