

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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EXCELERATE LIQUEFACTION SOLUTIONS I, LLC ) FE DOCKET NO. 12-61-LNG  
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ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION  
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL FROM  
THE EXCELERATE LIQUEFACTION SOLUTIONS I, LLC TERMINAL  
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3128

AUGUST 9, 2012

## I. DESCRIPTION OF REQUEST

On May 25, 2012, Excelerate Liquefaction Solutions I, LLC (ELS) 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)<sup>1</sup> for long-term, multi-contract authorization to export up to 10 million metric tons per annum (mtpa) of liquefied natural gas (LNG) produced from domestic sources. The export volume is equivalent to approximately 504 billion cubic feet (Bcf) per year of natural gas (which equates to 1.38 Bcf per day).<sup>2</sup> ELS seeks authorization to export the LNG by vessel from the terminal it intends to construct, own, and operate in Calhoun County, Texas (ELS Terminal), for a 20-year term commencing on the earlier of the date of first export or seven years from the date the authorization is issued (August 9, 2019). ELS seeks to export this LNG to any country which has or in the future develops the capacity to import LNG via ocean-going carrier and with which the United States has, or in the future enters into, a free trade agreement (FTA) requiring national treatment for trade in natural gas.<sup>3</sup> ELS seeks to export this LNG on its own behalf and also as agent for third parties.

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<sup>1</sup> 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.

<sup>2</sup> ELS requests authorization to export up to 10 million metric tons per year of LNG, which, it states, is equivalent to approximately 1.38 Bcf per day (Bcf/d) of natural gas and 504 Bcf/y. Consistent with DOE regulations (10 CFR part 590), applications are to provide volumes in Bcf, and subsequently, DOE/FE will authorize LNG exports equivalent to 504 Bcf/y of natural gas.

<sup>3</sup> The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas. A FTA with Panama has been ratified by Congress but has not yet taken effect.

## II. BACKGROUND

ELS is a Delaware limited liability company with its principal place of business in The Woodlands, Texas. ELS is a wholly owned subsidiary of Excelerate Liquefaction Solutions, LLC.

ELS states that this Application is the first part of a two-part export authorization request. Subsequent to this Application, ELS intends to file a separate application with DOE for long-term authorization to export LNG to those countries with which the United States does not have a FTA and with which trade is not prohibited by U.S. law or policy.

ELS plans to build natural gas processing and liquefaction facilities to receive and liquefy domestic natural gas at the ELS Terminal, a LNG facility ELS proposes to construct and operate on the South Peninsula of Point Comfort, Texas, in Calhoun County (the "Project"). ELS states that the Project facilities will consist of two floating liquefaction, storage and offloading (FLSO) units, each capable of producing up to 5 mtpa of LNG for a total capacity of 10 mtpa of LNG. ELS also states that the units will have an LNG storage capacity of 250,000 cubic meters (m<sup>3</sup>), and that each will be capable of limited natural gas treatment, liquefaction, and will have the ability to export LNG to off-taking LNG carriers utilizing ship-to-ship process. ELS notes that the Project facilities would permit natural gas to be received by pipeline at the ELS Terminal, liquefied, and loaded from the FLISO unit's storage tanks onto LNG carriers berthed alongside. On January 26, 2012, ELS and the Calhoun Port Authority entered into an Option to Lease approximately 85 acres for the development of the LNG facility.<sup>4</sup>

ELS seeks authorization to export natural gas available in the United States natural gas

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<sup>4</sup> Pursuant to a request for supplementary information issued by DOE/FE on June 19, 2012, ELS submitted a copy of the Option to Lease on July 19, 2012.

supply and transmission network. ELS notes that due to the ELS Terminal's potential to access nine major interstate/intrastate natural gas pipelines, and to indirectly access the national gas pipeline grid, the Project's customers will have a wide variety of stable and economical supply options from which to choose. ELS states that the sources of natural gas for the Project will include the vast supplies available from the Texas producing regions, including recent discoveries of shale gas resources. ELS notes that in addition to traditional production, emerging unconventional supply areas, such as the Barnett, Haynesville, and Bossier shale gas formations, will provide additional diversity and reliability of gas supply for the Project.

ELS requests authorization to export LNG on its own behalf (by holding title to the LNG at the time of export) or by acting as agent for others. ELS states that it plans to enter into one or more long-term contractual agreements with customers, with terms up to 20 years in length, which will run concurrently with ELS's requested export authorization. ELS states and it will file under seal with DOE any relevant long-term commercial agreements it enters into with the LNG title holders on whose behalf the exports are performed. ELS also states that it will register with DOE any title holder for whom ELS will act as agent to export LNG. ELS states that it will cause such title holder to comply with all applicable DOE/FE requirements included in ELS's export authorization as well as all DOE/FE requirements related to any subsequent purchase or sale agreement entered into by the title holder.

ELS states that it will initiate the pre-filing review process at the Federal Energy Regulatory Commission (FERC) for the proposed project facilities following issuance of the long-term export authorization requested in this Application. ELS anticipates that FERC will act as the lead agency for the environmental review, with DOE acting as a cooperating agency

and that the environmental review will meet the requirements of the National Environmental Policy Act. Accordingly, ELS requests that DOE/FE issue a conditional order approving the Application pending completion of FERC's environmental review.

### 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 FTA 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 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.<sup>5</sup>

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

(3) The countries with which the United States has an FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, Republic of Korea, and Singapore.

(4) DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 (Order 2913), issued February 10, 2011. In

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<sup>5</sup> DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 CFR Part 590, are applicable only to applications seeking to export natural gas, including LNG, to countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

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 acceptable alternative to the non-binding policy adopted by DOE/FE in *Dow Chemical*,<sup>6</sup> 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 2913 apply here as well. The authorization granted herein shall require that where ELS proposes to export as agent for others, ELS will register those companies in accordance with the procedures and requirements described herein.

### ORDER

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

A. ELS is authorized to export domestically produced LNG by vessel from its proposed ELS Terminal in Calhoun County, Texas, up to the equivalent of 504 Bcf per year of natural gas for a 20-year term, beginning on the earlier of the date of first export or seven years from the date the authorization is issued (August 9, 2019), pursuant to one or more long-term contracts that do not exceed the term of this authorization.

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, Republic of Korea, and Singapore, and to any nation that the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided

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<sup>6</sup> *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.

that the destination nation has the capacity to import ocean going vessels. FTA countries are currently identified by DOE/FE at:

<http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. ELS shall ensure that all transactions authorized by this order are permitted and lawful under U.S. 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. ELS shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts associated with the long-term export of LNG from the ELS Terminal within 30 days of their execution. ELS shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts associated with the long-term supply of natural gas to the ELS Terminal with the intent to process this natural gas into LNG for export within 30 days of their execution.

E. ELS 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 identified in Ordering Paragraph B of DOE/FE Order No.3128, issued August 9, 2012, in FE Docket No. 12-61-LNG, 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 Excelebrate Liquefaction Solutions I, LLC 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 Excelerate Liquefaction Solutions I, LLC is made aware of all such actual destination countries."

F. ELS is permitted to use its authorization in order to export LNG on behalf of or as agent for others, after registering the other party with DOE/FE. Registration materials shall include an acknowledgement and agreement by the registrant to supply ELS with all information necessary to permit ELS 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; (4) within 30 days of execution, a copy, filed with DOE/FE under seal, of any long-term contracts, including processing agreements, that result in the export of LNG; and (5) 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 long-term contracts associated with the long-term supply of natural gas to the ELS Terminal with the intent to process this natural gas into LNG for export pursuant to this authorization.

G. 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).

H. Within two weeks after the first export of domestically produced LNG occurs from the ELS liquefaction facility, ELS shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

I. ELS shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the planned liquefaction facility project. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the ELS Terminal liquefaction facility, the date the facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

J. Monthly Reports: With respect to LNG exports authorized by this Order, ELS 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. The first monthly report required by this Order is due not later than the 30<sup>th</sup> day of the month following the month of first export. In subsequent months, if exports have not occurred, 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 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)

K. 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](mailto:Yvonne.caudillo@hq.doe.gov) or [ngreports@hq.doe.gov](mailto:ngreports@hq.doe.gov), or may be faxed to Ms. Caudillo at (202) 586-6050.

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

A handwritten signature in black ink, appearing to read "John A. Anderson", 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