

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

THE DOW CHEMICAL COMPANY

FE DOCKET NO. 12-76-LNG

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

DOE/FE ORDER NO. 3162

OCTOBER 11, 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 (2008); and applicable delegations and redelegations of authority,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the July 13, 2012, application of The Dow Chemical Company (Dow).

The authorization permits Dow to export liquefied natural gas (LNG) that previously had been imported from foreign sources, in an amount up to the equivalent of 390 billion cubic feet (Bcf) of natural gas on a cumulative basis, over a two-year period commencing on October 11, 2012.² Dow 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. Dow is also authorized to export this LNG to which it holds title on its own behalf and as agent for others who hold title, after registering the other entity with DOE/FE. This authorization permits such exports on a short-term or spot market basis from the LNG terminal owned and operated by Freeport LNG Development, L.P. (Freeport) in Quintana Island, Texas. The authorization provided by this Order will not permit the export of domestically produced LNG.

¹ See, DOE Delegation Order No. 00-002.00L (Apr. 29, 2011), and DOE Redelegation Order No. 00-002.04E (Apr. 29, 2011).

² Dow's previous blanket authorization to export LNG was granted in DOE/FE Order No. 2859 on October 5, 2010, and extended through October 4, 2012. On September 25, 2012, Dow agreed to an October 11, 2012, effective date of the authorization instead of the Application effective date request of October 5, 2012.

II. PROCEDURAL HISTORY

Dow filed the “Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on July 13, 2012. The Application was submitted pursuant to section 3 of the NGA and part 590 of DOE’s regulations. On September 4, 2012, DOE/FE published a Notice of application (Notice) in the Federal Register. 77 FR 53874. The Notice stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than October 4, 2012. On September 25, 2012, Dow agreed to a revised effective date of October 11, 2012, a one week delay after the comment period closed, after DOE/FE notified Dow that additional time was required to ensure any timely-filed comments, protests, or motions to intervene could be reviewed and addressed in the order.

FE received no filings in response to this Notice.

III. BACKGROUND

Dow is a Delaware corporation with its principal place of business in Midland, Michigan. Dow, an international chemical and plastics manufacturing company, owns and operates a petrochemical manufacturing facility in Freeport, Texas. That manufacturing facility is capable of receiving revaporized LNG via interconnecting natural gas pipelines from Freeport’s Quintana Island LNG facility. Pursuant to DOE/FE Opinion and Order No. 2754, Dow held blanket authority to import LNG from various international sources up to a combined total of the equivalent of 390 Bcf of natural gas pursuant to transactions that have terms of no longer than two years.³ Dow also has contracted for 0.5 Bcf/day of terminal capacity at Freeport’s Quintana Island facility for a twenty-year period that commenced in July 2008.

³ *The Dow Chemical Company*, DOE/FE Order No. 2754 (February 25, 2010) extended through May 31, 2012.

On October 5, 2010, DOE/FE issued DOE/FE Order No. 2859, which granted Dow blanket authorization to export on its own behalf or as agent for others LNG that previously had been imported from foreign sources in an amount up to the equivalent of 390 Bcf of natural gas on a cumulative basis over a two-year period commencing on October 5, 2010.⁴ On April 20, 2012, in DOE/FE Order No. 3083 (Order No 3083), DOE/FE granted Dow blanket authorization to import and export up to a combined total of the equivalent of 390 Bcf of natural gas from and to Canada and Mexico, and to import LNG from various international sources for a two-year term beginning on June 1, 2012.⁵ Under the terms of Order No. 3083, the LNG may be imported at any LNG receiving facility in the United States and its territories.

Current Application

In the instant application, Dow is seeking blanket authorization beginning October 11, 2012, to export for itself, and as agent for other entities, from the Quintana Island facility LNG 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, over a two-year period, in an amount up to the equivalent of 390 Bcf of natural gas. This requested export volume is the equivalent of Dow's current import authorization. Dow states that Freeport has previously received authorization from the Federal Energy Regulatory Commission (FERC) to modify its Quintana Island facility in order to handle exports as well as imports of LNG. Dow further states that there are no other proceedings related to this Application currently pending before DOE or any other federal agency. Dow is not seeking authorization to export domestically produced natural gas or LNG.

⁴ *The Dow Chemical Company*, DOE/FE Order No. 2859 (October 5, 2010) extended through October 4, 2012.

⁵ *The Dow Chemical Company*, DOE/FE Order No. 3083 (April 20, 2012) extends through May 31, 2014.

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 natural gas 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.

⁶ See 49 FR 6684, February 22, 1984.

DOE/FE has issued recent blanket authorizations to export previously imported LNG⁷ and in each case cited the evidence of record 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 Dow 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 in the Annual Energy Outlook 2012 issued in June 2012 (*AEO 2012*) show annual domestic dry natural gas production increasing from 20.58 trillion cubic feet (Tcf) in 2009 to 21.58 Tcf in 2010, to a projection of 23.65 Tcf by 2015⁸. In addition, the EIA projects a decrease of net natural gas imports from 2.58 Tcf in 2010 to 1.73 Tcf in 2015. In the *AEO2012* Henry Hub natural gas prices were \$4.39 per million Btu in 2010 and \$4.29 per million Btu in 2015 (in 2010 dollars). 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 Dow seeks to export. In addition, DOE/FE notes that no interested person intervened in this proceeding or otherwise challenged Dow's assertions of sufficient supplies to meet domestic demand if the application is granted.

C. Agency Rights

As described above, Dow requests authorization to export LNG on its own behalf or as agent for others. 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 Order 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG

⁷ *Cheniere Marketing, LLC*, DOE/FE Order No. 3102 (June 7, 2012); *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3055 (January 9, 2012); *Conoco Phillips Company*, DOE/FE Order No. 3038 (November 22, 2011).

⁸ EIA *AEO 2012*, Table A14, p. 159.

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*,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 2913 apply here as well. The authorization granted herein shall require that where Dow proposes to export as agent for others, Dow will register those companies in accordance with the procedures and requirements described herein.

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.

E. The Environment

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the Application, Dow states that no new facilities or modifications to any existing facilities at the Sabine Pass LNG Terminal would be required in order for Dow to export LNG from that facility. Under these circumstances, DOE's NEPA procedures provide for a categorical exclusion for which neither an environmental assessment (EA) nor an environmental

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.

impact statement (EIS) is required.¹⁰ Accordingly, DOE issued a Categorical Exclusion Determination, dated October 2, 2012, which found that the Dow proposed action is categorically excluded from further NEPA review.

F. Conclusion

After due consideration based on all facts and evidence of record, DOE/FE finds 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 Dow seeks to export through the authorization timeframe; and this application falls under DOE categorical exclusion such that no new EA or EIS will be required. Therefore, DOE/FE will grant the application.

ORDER

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

A. Dow is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 390 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 October 11, 2012, and extending through October 10, 2014.

B. This LNG may be exported from Freeport's Quintana Island terminal 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.

¹⁰ "Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction." 10 CFR Part 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusions in B5.7.

C. Dow 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.

D. Dow, or others for whom Dow 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 Dow 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 Dow is made aware of all such actual destination countries."

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

F. Registration materials shall include an acknowledgement and agreement by the registrant to supply Dow with all information and copies of contracts necessary in order to permit Dow 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 Ordering Paragraph D provision in any contract for the sale or transfer of LNG exported pursuant to this Order.

G. 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).

H. **Monthly Reports:** With respect to the export of LNG authorized by this Order, Dow 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 delivered price per 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)

I. The first monthly report required by this Order is due not later than November 30, 2012, and should cover the reporting period from October 11, 2012, through October 31, 2012.

J. 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 October 11, 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