

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

GULF COAST LNG EXPORT, LLC

)
)
)

FE DOCKET NO. 12-05-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PROPOSED BROWNSVILLE TERMINAL
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3163

OCTOBER 16, 2012

I. DESCRIPTION OF REQUEST

On January 10, 2012, Gulf Coast Export, LLC (Gulf Coast) 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 2.8 billion cubic feet per day (Bcf/d) of natural gas produced from domestic sources as liquefied natural gas (LNG), a volume equal to 1,022 billion cubic feet per year of natural gas. Gulf Coast seeks authorization to export the LNG by vessel from the proposed LNG export terminal located at the Port of Brownsville in Brownsville, Texas (Brownsville Terminal), for a 25-year term commencing on the earlier of the date of first export or eight years from the date the authorization is issued (October 16, 2020). Gulf Coast 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 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. On September 11, 2012, Gulf Coast filed a letter with DOE/FE in FE Docket No. 12-05-LNG, requesting DOE/FE process the free trade agreement (FTA) portion of Gulf Coast's Application as expeditiously as possible. This Order will authorize the FTA² portion of the Application. DOE will address the non-FTA portion of the Application in a future order.

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.

² 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

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 proposed 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 association utilizes.

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. 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. On May 16, 2012, Gulf Coast submitted a redacted version of the agreement for posting to the public docket of the proceeding, and DOE/FE deemed the application complete at that time. On September 11, 2012, Gulf Coast filed a letter with DOE/FE, requesting DOE/FE process the FTA portion of Gulf Coast's Application as expeditiously as possible.

Gulf Coast states that rather than entering into long-term natural gas supply or 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 then 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 export of LNG on its own behalf or as agent for others. Gulf Coast anticipates that the title holder at the point of export 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. Gulf Coast 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 that such requirements will be included 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 title holder, including LTAs, once they have been executed.

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 states that it requests authorization for 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 further states that this includes countries with which the United States has a 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.

Gulf Coast asserts that applications submitted to DOE/FE that seek to export LNG to FTA countries should be reviewed pursuant to the standard established by section 3 of the NGA, under which applications for export to FTA countries are deemed to be in the public interest, and must be granted without modification or delay.³ Gulf Coast acknowledges that with regard to export of LNG to non-FTA countries, DOE/FE has consistently ruled that section 3(a) of the NGA creates a rebuttable presumption that proposed export 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 acknowledges that its proposal to export LNG 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 a DOE/FE order approving this Application. Accordingly, Gulf Coast requests that DOE/FE issue a conditional order approving the

³ 15 U.S.C. §717b(c).

⁴ 15 U.S.C. §717b(a).

Application conditioned on completion of the environmental review and subsequent authorization by the FERC.

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 FTA portion of the instant Application falls within section 3(c) as amended, and therefore, DOE/FE is charged with granting that portion of the Application without modification or delay.⁵

(2) In light of DOE's statutory obligation to grant the FTA portion of the Application without modification or delay, there is no need for DOE to review the other arguments posed by Gulf Coast in support of the Application. The instant grant of authority should not be read to indicate DOE's views on those arguments. For the same reason, this grant of authority will not be conditioned on completion of FERC's environmental review and Gulf Coast's request for such a condition will be dismissed as regards the FTA portion of the Application.

(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.

⁵ 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.

(3) The balance of the export Application, which seeks authorization to export domestically produced LNG to non-FTA nations, will be reviewed pursuant to Section 3(a) of the NGA, as amended; DOE Delegation Order No. 00-002.00L (April 28, 2011); and DOE Redelelegation Order No. 00-002.04E (April 29, 2011). In reviewing the non-FTA portion of the Application, DOE will consider any issues required by law or policy. DOE/FE issued a Notice of Application on June 4, 2012, (77 FR 32962) seeking protests, motions to intervene, notices of intervention, and comments by August 3, 2012. A separate order shall be issued for the non-FTA portion of the Application once a public interest determination has been completed by DOE/FE.

(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 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*,⁶ which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.

We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in Order 2913 apply here as well. Accordingly, the authorization granted herein shall require that where Gulf Coast proposes to export as agent for others, Gulf Coast will register those companies in accordance with the procedures and requirements described herein.

⁶ *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.

In this Order, DOE/FE is clarifying its policy on Agency Rights procedures. It has been DOE's intent in all previously issued LNG export orders in which Agency Rights have been granted since FLEX, to require that registration materials filed for or by an LNG title-holder (Registrant) shall include the same company identification information and long-term contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.

(5) Section 590.202(b) of DOE's regulations requires applicants to supply transaction specific factual information "to the extent practicable." Additionally, DOE regulations at 10 CFR part 590.202(e) allow confidential treatment of the information supplied in support of or in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE determines it will be afforded confidential treatment in accordance with 10 CFR 1004.11.

(6) In the Application, Gulf Coast states it will file under seal with DOE/FE any relevant long-term commercial agreements between Gulf Coast and a Registrant, including LTAs, once they have been executed. In addition, DOE/FE will require that Gulf Coast will cause to be filed with DOE/FE any subsequent relevant long-term commercial agreements entered into by a Registrant, once they have been executed. DOE/FE finds that the submission of these contracts within 30 days of their execution using the procedures described below will be consistent with the "to the extent practicable" requirement of section 590.202(b). By way of example and without limitation, a "relevant long-term commercial agreement" would include an agreement with a minimum term of two years such as an LTA, an agreement to provide gas processing or liquefaction services at the Brownsville Terminal, a long-term sales contract involving natural

gas or LNG stored or liquefied at the Brownsville Terminal, or an agreement to provide export services from the Brownsville Terminal.

(7) DOE/FE also will require Gulf Coast to file any long-term contracts Gulf Coast enters into providing for the long-term export of LNG on its own behalf from the Brownsville Terminal. DOE/FE finds that the submission of these contracts within 30 days of their execution using the procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) requires that Gulf Coast file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Brownsville Terminal within 30 days of their execution that either Gulf Coast or the Registrant enters into.

(9) DOE/FE recognizes that some information in Gulf Coast’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and long-term contracts associated with the long-term supply of natural gas to the Brownsville Terminal may be commercially sensitive. DOE will therefore require that (A) when Gulf Coast files, or causes to be filed, such a long-term contract under seal, that it also file either: i) a copy of each long-term contract with commercially sensitive information redacted, or ii) a summary of all major provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destinations, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted information should be exempted from public disclosure.

ORDER

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

A. Gulf Coast is authorized to export domestically produced LNG by vessel from its proposed terminal at the Port of Brownsville in Brownsville, Texas, up to the equivalent of 1,022 Bcf per year of natural gas for a 25-year term, beginning on the earlier of the date of first export or eight years from the date the authorization is issued (October 16, 2020), 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 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. Gulf Coast 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. Gulf Coast shall file, or cause to be filed, with the Office of Natural Gas Regulatory Activities, all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for or on behalf of others from the Brownsville Terminal, including both

a non-redacted copy filed under seal and either: i) a redacted version of the contract, or ii) major provisions of the contract, for public posting, within 30 days of their execution. Applying the same procedures, Gulf Coast shall file, or cause to be filed, with the Office of Natural Gas Regulatory Activities all executed long-term contracts associated with the long-term supply of natural gas to the Brownsville Terminal, both un-redacted under seal, and either: i) a redacted version of the contract, or ii) major provisions of the contract, for public posting within 30 days of their execution. In these filings, Gulf Coast shall show why the redacted or non-disclosed information should be exempted from public disclosure.

E. Gulf Coast 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. 3163, issued October 16, 2012, in FE Docket No. 12-05-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 Gulf Coast LNG Export, 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 Gulf Coast LNG Export, LLC is made aware of all such actual destination countries."

F. Gulf Coast 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 Gulf Coast with all

information necessary to permit Gulf Coast 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, of any long-term contracts, not previously filed with DOE/FE, described in Ordering paragraph (D) of this Order, including both a non-redacted copy for filing under seal and either: i) a redacted version of the contract, or ii) major provisions of the contract, for public posting.

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 proposed Gulf Coast liquefaction facility, Gulf Coast shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

I. Gulf Coast 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 proposed LNG terminal and liquefaction facility at the Port of

Brownsville, Texas, 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. The first such report shall be filed on or by April 1, 2013.

J. Monthly Reports: With respect to LNG exports authorized by this Order, Gulf Coast 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 30th 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 or ngreports@hq.doe.gov, or may be

faxed to Ms. Caudillo at (202) 586-6050.

Issued in Washington, D.C., on October 16, 2012.

A handwritten signature in black ink, reading "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