

[6450-01-P]

DEPARTMENT OF ENERGY

[FE Docket No. 13-30-LNG]

Sabine Pass Liquefaction, LLC; Application for Long-Term Authorization to Export Liquefied Natural Gas Produced from Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-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 February 27, 2013, by Sabine Pass Liquefaction, LLC (SPL), requesting long-term authorization to export liquefied natural gas (LNG) produced from domestic sources in an amount up to 104,250,000 million British thermal units ((MMBtu) per year (the equivalent of 101 billion standard cubic feet (Bcf) of natural gas per year), pursuant to the LNG Sale and Purchase Agreement (FOB) between SPL as seller and Total Gas & Power North America, Inc. (TGPNA) as buyer dated December 14, 2012 (TOTAL SPA). SPL seeks authorization to export LNG from the Sabine Pass LNG Terminal in Cameron Parish, Louisiana, both to : (i) any nation that currently has or in the future 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 national treatment for trade in natural gas and LNG; and (ii) all countries that have not entered into an FTA with the United States requiring national treatment for trade in natural gas, which currently have or in the future develop the capacity to import LNG, and with which trade in not prohibited by U.S. law or policy. In the portion of SPL's Application subject to this Notice,

SPL requests 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 (non-FTA countries) with which trade is not prohibited by U.S. law or policy. SPL requests that this authorization commence on the earlier of the date of first export or eight years from the date the authorization is granted. The Application was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b.

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].

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SUPPLEMENTARY INFORMATION:

Background

SPL, a limited liability company with its principal place of business in Houston, Texas, is an indirect subsidiary of Cheniere Energy Partners, L.P. (Cheniere Partners), a limited partnership majority owned by Cheniere Energy, Inc. (Cheniere Energy). Cheniere Partners is a Delaware limited partnership with its primary place of business in Houston, Texas; Cheniere Energy is a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy is a developer of LNG terminals and natural gas pipelines on the Gulf Coast, including the Sabine Pass LNG Terminal. SPL is authorized to do business in the States of Texas and Louisiana.

SPL and its affiliate, Sabine Pass LNG, L.P., are currently developing a liquefaction project consisting of four LNG production trains at the existing Sabine Pass LNG import, storage and vaporization terminal in Cameron, Parish, Louisiana (Liquefaction Project). On April 16, 2012, the Federal Energy approved the construction and operation of the Liquefaction Project. On August 7, 2012, in Order No. 2961-A, DOE/FE issued final authorization to SPL to export LNG from the Sabine Pass LNG Terminal to non-FTA Nations.¹ On February 27, 2013, concurrent with this Application, SPL filed with the Federal Energy Regulatory Commission (FERC) a request to

¹ DOE/FE Order No. 2961, issued on May 20, 2011, granted conditional authorization to SPL to export domestically produced LNG from the Sabine Pass LNG Terminal to non-FTA nations.

initiate the Commission's pre-filing review² for a proposed expansion of the Liquefaction Project that would consist of two additional liquefaction trains (Trains 5 and 6) totaling approximately 1.3 Bcf per day of natural gas liquefaction capacity (Liquefaction Expansion Project).³

The parties to the TOTAL SPA are SPL and TGPNA. TGPNA is a Delaware corporation with a primary place of business in Houston, Texas. TGPNA is a wholly-owned indirect subsidiary of Total S.A., a multinational energy company based in Paris, France, with operations in numerous sectors, including oil and gas exploration, oil refining, electricity production and chemical manufacturing, among others.

Current Application

SPL requests authorization to export up to 104,250,000 MMBtu per year of natural gas (approximately 101 Bcf per year) as LNG from the proposed fifth train at the Sabine Pass Liquefaction Project in Cameron Parish, Louisiana, to: (i) any country with which the United States currently has, or in the future will have, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas, and (ii) any country with which the United States does not have an FTA requiring national treatment for trade in natural gas (non-FTA countries) with which trade is not prohibited by U.S. law or policy. SPL seeks authorization to export the LNG for a 20-year term, commencing on the earlier of the date of first export or eight years from the date the authorization is issued.

On July 11, 2013, in DOE/FE Order No. 3306, DOE granted the portion of SPL's current Application seeking export authorization to FTA nations.⁴ DOE/FE Order 3306, issued pursuant to

² SPL received FERC approval to commence the mandatory National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, pre-filing review process for the planned Liquefaction Expansion Project on March 8, 2013, in Docket No. PF13-8-000. On June 7, 2013, the FERC published a Notice of Intent to Prepare an Environmental Assessment for SPL's planned expansion.

³ SPL's pre-filing request also includes a request by an affiliated interstate pipeline company, Cheniere Creole Trail Pipeline, L.P. (CCTPL), for a proposed extension and expansion of the existing Cheniere Creole Trail Pipeline system in order to deliver feed-gas to the Liquefaction Expansion Project.

pursuant to NGA section 3(c), 15 U.S.C. § 717b(c), authorizes SPL to export domestically produced LNG by vessel pursuant to the long-term contract with Total Gas & Power North America, Inc. from the Sabine Pass LNG Terminal. The portion of SPL's Application that seeks authorization to export domestically produced LNG to non-FTA countries will be reviewed pursuant to NGA section 3(a), 15 U.S.C. § 717b(a), and is the subject of this Notice.

SPL states that the volume of natural gas to be exported and dates of commencement and completion for the proposed exports from the proposed fifth liquefaction train are set forth in the TOTAL SPA. SPL further states that it will deliver to TGPNA an annual contract quantity consisting of two components: an annual contract tranche of 91,250,000 MMBtu per year, and a seasonal tranche of 13,000,000 MMBtu per year, which together are equivalent to approximately 101 Bcf of natural gas per year. The price of LNG made available under the TOTAL SPA consists of a two-part rate: the first part reimburses SPL for the capital and operating costs of the facilities that will be constructed; and the second part reimburses SPL for the cost of fuel and feed gas purchased to satisfy loading nominations under the contract. The TOTAL SPA has a primary term of 20 years from the date of first commercial delivery from the fifth LNG train, and may be extended for an additional ten year term upon election by TGPNA. SPL states that the remaining terms and conditions of the TOTAL SPA are substantially similar to other sales and purchase agreements in the industry.

SPL states that it will purchase natural gas to be used as fuel and feedstock for LNG production from the interstate and intrastate grid at points of interconnection with other pipelines and with points of liquidity that are both upstream and downstream of the CCTPL system and other systems that interconnect with the Liquefaction Expansion Project. SPL anticipates that the

⁴ *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3306, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Total Gas & Power North America, Inc. from the Sabine Pass LNG Terminal to Free Trade Agreement Nations.

Liquefaction Expansion Project will have access to various other interstate and intrastate pipeline systems that will enable SPL to purchase natural gas from multiple conventional and unconventional basins across the region and state, and throughout the U.S. SPL notes that this supply can be sourced in large volumes in the spot market, or else pursued under long-term arrangements. SPL notes that, to date, it has not entered into any natural gas purchase agreements for the purpose of supplying natural gas feedstock for the exports contemplated by the TOTAL SPA.

SPL requests that DOE/FE issue the FTA Authorization without modification or delay in accordance with the applicable standard of review under Section 3(c) of the NGA, and requests that DOE/FE issue the Non-FTA Authorization prior to March 31, 2014. SPL requests that the non-FTA Authorization be issued as a conditional order, pursuant to Section 590.402 of the DOE regulations, followed by issuance of a final order immediately upon completion of the environmental review of the Liquefaction Expansion Project by FERC.

Public Interest Considerations

SPL states that its proposed non-FTA authorization should be granted by DOE/FE because it is not inconsistent with the public interest, as set forth in NGA section 3(a), and that there is ample evidence in the public record that exports of LNG, such as those requested by SPL in this Application, are in the public interest.

SPL asserts that in granting SPL's request for export authorization in Orders No. 2961 and 2961-A, DOE/FE already has made a favorable public interest determination in the case of LNG exports from the Liquefaction Project. SPL contends that this previous determination made by DOE/FE is equally applicable here. SPL states that the determination in the earlier proceeding was made on the basis of the very robust market studies and other evidence and comments that SPL

submitted and that these items demonstrated the substantial economic and public benefits that are likely to follow from exports of natural gas as LNG. In particular, SPL points to the substantial record that it developed demonstrating the public interest benefits of exports in FE Docket No. 10-111-LNG.

To further support the Application, SPL provides discussion of U.S. domestic production and consumption of natural gas, which, according to SPL, concludes that the sale of LNG to TGPNA pursuant to the TOTAL SPA is in the public interest and that such exports do not reduce the amount of natural gas available for domestic uses. Specifically, SPL provides further discussion with the following:

- (1) SPL states that the TOTAL SPA was specifically constructed to respect the competitive natural gas market and to ensure that TGPNA has the opportunity to respond to price signals as well. SPL further states that the export agreement functions in concert with the market, so that if additional gas supplies are required from participants that would otherwise consume gas, those supplies can be released to consumers that value it more. SPL further notes that because the TOTAL SPA is constructed with a market mechanism that responds to the competitive natural gas market, it never results in consumption of gas that would otherwise be required by the market.
- (2) SPL states that it previously commissioned a report from Advanced Resources International (ARI), titled *U.S. Natural Gas Resources and Productive Capacity: Mid-2012* (ARI Resource Report), to assess the scope of domestic natural gas resources and their potential for future recovery. SPL states that the ARI Resource Report demonstrates that the U.S. has significant natural gas resources available to meet projected future domestic needs, including the quantities contemplated for export under

this Application. SPL further states that the ARI Resource Report establishes that the availability of new natural gas reserves is likely to continue expanding into the future as new unconventional formations are discovered and the oil and gas industry continues to improve drilling and extraction techniques.

(3) SPL states that the Reference Case of EIA's *Annual Energy Outlook 2013 Early Release* (AEO 2013) supports the proposition that the domestic natural gas resource base continues to expand rapidly. SPL states that the AEO 2013 Reference Case forecasts that domestic dry natural gas production will increase by an average of 1.3% per year through 2040 and that U.S. dry natural gas production will total 33.14 Tcf by 2040, an increase of 44% from production levels of 23.0 Tcf in 2011. SPL further notes that the AEO 2013 Reference Case projects that domestic demand growth for natural gas will average 0.7% annually over the next 30 years, leading to a domestic market of 29.54 Tcf by 2040. SPL states that AEO 2013 projects that over this same period of time, domestic natural gas production is projected to grow by 1.3% per year on average, or approximately twice the rate of growth in domestic natural gas demand. SPL further states that the EIA anticipates that the U.S. will become a net exporter of natural gas after 2020.

In summary, SPL states that the abundant U.S. natural gas supplies and the overwhelmingly positive economic benefits of the Liquefaction Project and associated LNG exports, coupled with the competitive pricing mechanism in the TOTAL SPA, unequivocally establish that SPL's proposal satisfies the public interest standard as set forth in DOE's Policy Guidelines.⁵

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

Further details can be found in Appendix C of the Application, which has been posted at http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/13_30_lng_2.pdf.

Environmental Impact

SPL states that the potential environmental impact of the Sabine Pass Expansion Project will be reviewed by FERC as the lead agency for the purposes of coordinating all applicable federal authorizations and complying with NEPA. SPL anticipates that DOE/FE will participate as a cooperating agency in FERC's environmental review process for the Liquefaction Expansion Project. SPL maintains that DOE/FE has adopted regulations of the Council on Environmental Quality (CEQ) that govern its role as a cooperating agency in the NEPA process. DOE's regulations provide that DOE shall cooperate with the other agencies in developing environmental information. Finally, SPL states that CEQ's regulations further provide for DOE/FE to adopt FERC's findings so long as FERC has satisfactorily addressed any comments raised by DOE/FE in its role as a cooperating agency.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. § 717b(a), and the authority contained in DOE Delegation Order No. 00-002.00L (April 29, 2011) and DOE Redelelegation 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 on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand

fundamentals. DOE will also consider any other relevant 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 address these issues in their comments and/or protests, 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 environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, 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 C.F.R. Part 590.

Filings may be submitted using one of the following methods: (1) e-mailing the filing to fergas@hq.doe.gov with FE Docket No. 13-30-LNG in the title line; (2) mailing an original and

three paper copies of the filing to the Office Oil and Gas Global Security and Supply at the address listed in ADDRESSES; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in ADDRESSES before 4:30 p.m. EST. All filings must include a reference to FE Docket No. 13-30-LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

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 C.F.R. § 590.316.

The Application is available for inspection and copying in the Office of Oil and Gas Global Security and Supply 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>.

Issued in Washington, D.C., on July *18*, 2013.



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