

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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ENI USA GAS MARKETING LLC )  
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FE DOCKET NO. 12-161-LNG

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

DOE/FE ORDER NO. 3247

MARCH 5, 2013

## 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,<sup>1</sup> the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the November 8, 2012, application of Eni USA Gas Marketing LLC (Eni USA Gas Marketing) (Application).

The authorization permits Eni USA Gas Marketing to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources, in an amount up to the equivalent of 100 billion cubic feet (Bcf) of natural gas on a cumulative basis, over a two-year period commencing on March 3, 2013.<sup>2</sup> Eni USA Gas Marketing 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. Eni USA Gas Marketing 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 Cameron LNG Terminal owned and operated by Cameron LNG, LLC (Cameron Terminal) in Cameron Parish, Louisiana. The authorization provided by this Order will not permit the export of domestically produced LNG.

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

<sup>2</sup> Eni USA Gas Marketing's previous blanket authorization to export LNG was granted in DOE/FE Order No. 2923 on March 3, 2011, and extended through March 2, 2013.

## **II. PROCEDURAL HISTORY**

Eni USA Gas Marketing filed the “Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on November 8, 2012. The Application was submitted pursuant to section 3 of the NGA and part 590 of DOE’s regulations. On January 22, 2013, DOE/FE published a Notice of Application (Notice) in the Federal Register. 78 FR 4400. The Notice stated that comments, protests, motions, and notices to intervene, and requests for additional procedures would be due no later than February 21, 2013.

Pursuant to the Notice and 10 CFR §§590.302 and 590.303, on February 7, 2013, FE received two timely filed comments. One comment filed by K. Denise Rucker Drepp, supports the Application, but requests that DOE condition the authorization on requiring U.S. crew members to man the LNG tankers used to export the LNG. One comment, from Jean Public, opposes the requested authorization primarily because of a concern that these exports will negatively affect the United States’ stability and prosperity.

FE received no other filings in response to the Notice.

## **III. BACKGROUND**

Eni USA Gas Marketing, a Delaware limited liability company with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of Eni Petroleum Co. Inc, a Delaware corporation. Eni USA Gas Marketing states that it is engaged in the business of purchasing and marketing supplies of LNG, and is a customer of the Cameron Terminal. On April 30, 2012, DOE/FE Order No. 3092 granted Eni USA Gas Marketing blanket authorization to import LNG up to the equivalent of 400 Bcf of natural gas from various international sources for a two year

period beginning on May 12, 2012. Under the terms of the blanket authorization, LNG may be imported at any LNG receiving facility in the United States and its territories.

On March 3, 2011, DOE/FE issued DOE/FE Order No. 2923, which granted Eni USA Gas Marketing 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 100 Bcf of natural gas on a cumulative basis over a two-year period commencing on March 3, 2011, to any country not prohibited by U.S. law or policy.

### **Current Application**

In the instant Application, Eni USA Gas Marketing is seeking blanket authorization beginning March 3, 2013, to export for itself, and as agent for other entities, 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 or policy. Eni USA Gas Marketing is seeking to export this LNG from the Cameron Terminal, over a two-year period, in an amount up to the equivalent of 100 Bcf of natural gas. Eni USA Gas Marketing states that it does not seek authorization to export domestically-produced natural gas or LNG.

Eni USA Gas Marketing states that the requested blanket authorization will allow it to sell foreign-sourced, imported LNG in the most competitive market, either by regasifying the imported LNG and selling it in domestic markets where demand warrants, or by storing imported LNG and later selling it in other world markets where demand is higher. Eni USA Gas Marketing states that it will thus be able to better contribute to the efficient allocation of natural gas supplies. Eni USA Gas Marketing states that when gas supplies are in balance with domestic demand, LNG will be imported and used to supplement domestic gas supplies.

In support of its Application, Eni USA Gas Marketing states that section 3 of the NGA provides that applications to export natural gas to foreign countries will be authorized unless there is a finding that they “will not be consistent with the public interest”.<sup>3</sup> Eni USA Gas Marketing states that in reviewing an export application, FE applies the principles set forth in DOE Delegation Order No. 0204-111, which focuses primarily on the domestic need for the gas to be exported and the Secretary of Energy’s natural gas policy guidelines.<sup>4</sup>

Eni USA Gas Marketing states that DOE/FE has issued a number of blanket authorizations, including the blanket authorization recently granted to The Dow Chemical Company (DOE/FE Order No. 3162) on October 11, 2012, which allows the export of previously-imported LNG, finding that such LNG is not needed to meet domestic demand for natural gas.<sup>5</sup>

Eni USA Gas Marketing states that in its existing authorization to export foreign-sourced LNG granted in DOE/FE Order No. 2923, FE noted that the “U.S. 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 Eni USA Gas Marketing seeks to export.”<sup>6</sup> Eni USA Gas Marketing asserts that the relevant circumstances have not changed in the nearly two years since that finding. Eni USA Gas Marketing also provides a detailed discussion of the public interest standard in the Application and states that the requested authorization is consistent with the public interest and the Application, therefore, should be granted.

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<sup>3</sup> 15 U.S.C. 717b. (a). Natural gas is defined to include LNG in 10 C.F.R. Part 590.102(i).

<sup>4</sup> Eni USA Gas Marketing referenced 49 FR 6684, February 22, 1984.

<sup>5</sup> *The Dow Chemical Company*, DOE/FE Order No. 3162 (October 11, 2012).

<sup>6</sup> DOE/FE Order No. 2923 at 5.

## 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,<sup>7</sup> and any other matters determined to be appropriate to a determination of the public interest. Section 3(a) creates a rebuttable presumption that a proposed export of natural gas is in the public interest, and DOE must grant such an application unless those who oppose the application overcome that presumption.<sup>8</sup> 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.

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<sup>7</sup> See 49 FR 6684, February 22, 1984.

<sup>8</sup> As we observed in Order No. 1473, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, 2 FE ¶70,317, in order to overcome the rebuttable presumption favoring export authorizations, opponents of an export license must make an affirmative showing of inconsistency with the public interest. Order No. 1473, note 42 at 13, citing *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (DC Cir. 1987).

**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 will 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.

DOE/FE has issued recent blanket authorizations to export previously imported LNG<sup>9</sup> and in each case cited authoritative data that 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. DOE takes administrative notice that an analysis prepared by the Energy Information Administration (EIA) within DOE in the Annual Energy Outlook 2012, issued in June 2012 (*AEO 2012*), shows annual domestic dry natural gas production increasing from 21.58 trillion cubic feet (Tcf) in 2010, to a projection of 23.65 Tcf by 2015<sup>10</sup>, an annual increase of 2.07 Tcf. Consumption over this period increases only 1.46 Tcf annually (from 24.13 to 25.59 Tcf). As a result, the EIA shows 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). Inasmuch as domestic natural gas production levels are projected to increase by an amount that well exceeds the amount of gas proposed for export in the Application, even while the level of imports and domestic gas prices are both projected to fall, we find that United States consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic

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<sup>9</sup> *Sempra LNG Marketing, LLC*, DOE/FE Order No. 3231 (February 13, 2013); *Chevron U.S.A. Inc.*, DOE/FE Order No. 3221 (January 4, 2013); *The Dow Chemical Company*, DOE/FE Order No. 3162 (October 11, 2012); *Cheniere Marketing, LLC*, DOE/FE Order No. 3102 (June 7, 2012).

<sup>10</sup> EIA *AEO 2012*, Table A14, p. 159.

demand from multiple other sources at competitive prices without drawing on the LNG which Eni USA Gas Marketing seeks to export.

In addition, only one commenter, Jean Public, contested a grant of the requested authorization. Those comments expressed general concern that the proposed exports would affect United States stability and prosperity. But the comments did not provide supporting factual information and the assertions contained in the comments do not overcome the rebuttable presumption under section 3 of the NGA that a proposed export is consistent with the public interest. Nor do the comments in any respect cast doubt on the information from *AEO2012* which, as discussed above, supports a grant of the requested authorization.

**C. Agency Rights**

As described above, Eni USA Gas Marketing 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 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 *The Dow Chemical Company*,<sup>11</sup> 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 Eni USA Gas

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<sup>11</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.

Marketing proposes to export as agent for others, Eni USA Gas Marketing will register those companies in accordance with the procedures and requirements described herein.

DOE/FE reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*.<sup>12</sup> In *Gulf Coast*, DOE/FE confirmed that in LNG export orders in which Agency Rights have been granted that it shall require registration materials filed for, or by, an LNG title-holder (Registrant) to 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.

**D. Other Public Comments**

As indicated above, the comments received from K. Denise Rucker Drepp requested that DOE condition the authorization on a requirement that U.S. crew members man the LNG tankers used to export the LNG. The requirement requested in the comments could have far-reaching consequences and may be beyond this agency's authority. Yet the comments do not provide any analysis of the implications of such a requirement; the consistency of such a requirement with trade policy and law; or an explanation of the jurisdiction of this agency to (directly or indirectly) impose such a condition on the owners or operators of LNG tankers. On the record before us, DOE/FE finds inadequate support for the requested condition.

**E. 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

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<sup>12</sup> *Gulf Coast LNG Export, LLC (Gulf Coast)*, 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, FE Docket No. 12-05-LNG, October 16, 2012.

exports on other relevant aspects of the public interest. The other considerations in this case include the environment.

**F. The Environment**

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the Application, Eni USA Gas Marketing states that no new facilities or modifications to any existing facilities at the Cameron Terminal would be required in order for Eni USA Gas Marketing 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 impact statement (EIS) is required.<sup>13</sup> Accordingly, DOE issued a Categorical Exclusion Determination, dated February 6, 2013, which found that the Eni USA Gas Marketing proposed action is categorically excluded from further NEPA review.

**G. Conclusion**

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

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<sup>13</sup> "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.

**ORDER**

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

A. Eni USA Gas Marketing is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 100 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 March 3, 2013, and extending through March 2, 2015.

B. This LNG may be exported from the Cameron 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.

C. Eni USA Gas Marketing 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. Eni USA Gas Marketing, or others for whom Eni USA Gas Marketing 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 Eni USA Gas Marketing 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 Eni USA Gas Marketing is made aware of all such actual destination countries."

E. As a condition of this authorization, Eni USA Gas Marketing shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Eni USA Gas Marketing 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 Eni USA Gas Marketing with all information and copies of contracts necessary in order to permit Eni USA Gas Marketing 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, Eni USA Gas Marketing 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(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)

I. The first monthly report required by this Order is due not later than April 30, 2013, and should cover the reporting period from March 3, 2013, through March 31, 2013.

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: Natural Gas Reports. Alternatively, reports may be e-mailed to [ngreports@hq.doe.gov](mailto:ngreports@hq.doe.gov), or may be faxed to Natural Gas Reports at (202) 586-6050.

Issued in Washington, D.C., on March 5, 2013.



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