

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

GASFIN DEVELOPMENT USA, LLC)
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FE DOCKET NO. 13-06-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PROPOSED GASFIN LNG EXPORT PROJECT
IN CAMERON PARISH, LOUISIANA,
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3253

MARCH 7, 2013

I. DESCRIPTION OF REQUEST

On January 11, 2013, Gasfin Development USA, LLC (Gasfin), 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 74 billion cubic feet (Bcf) per year (or 0.2 Bcf per day) of natural gas. Gasfin states the requested export amount is equivalent to approximately 1.5 million metric tons per annum (mtpa) of liquefied natural gas (LNG). Gasfin seeks authorization to export the LNG by vessel from the proposed Gasfin LNG Export Project in Cameron Parish, Louisiana, for a 25-year term commencing on the earlier of the date of first export or 7 years from the date the authorization is issued (March 7, 2020). Gasfin seeks to export this LNG to any nation that currently has or 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.² Gasfin seeks to export this LNG on its own behalf and also as agent for third parties.

II. BACKGROUND

Gasfin is a Delaware limited liability company with its principal place of business in Strassen, Luxembourg. Gasfin is a wholly owned subsidiary of Gasfin Development S.A. (Gasfin Development), a Luxembourg company that develops, owns and manages mid-scale LNG infrastructure around the globe. Gasfin Development is management controlled by Roland

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 free trade agreements 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, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

Fisher (CEO) and Vladimir Puklavec (Chairman). Gasfin Development's affiliated operating group companies are TGE Gas Engineering GmbH (TGE Gas) and TGE Marine Gas Engineering GmbH (TGE marine). TGE gas and TGE Marine are limited companies set up in Bonn, Germany. Gasfin Development management holds 40 percent and 50 percent of the share capital of TGE Gas and TGE marine, respectively. China International Marine Containers (Group) Co., Ltd. (CIMC), a publicly traded Chinese manufacturing group listed on the Shenzhen Stock Exchange is a 60 percent shareholder of TGE Gas. Caledonia Investments plc, a publicly traded UK Investment Trust listed on the London Stock Exchange, is a 50 percent shareholder of TGE Marine.

Gasfin seeks authority to export domestically produced LNG in conjunction with its proposal to construct, own and operate the Gasfin LNG Export Project to be located on an approximately 35-acre site along the Calcasieu River in Cameron Parish, Louisiana.³ Gasfin states that construction of the project will occur in three phases, with each phase capable of producing 0.5 mtpa of LNG for a total of 1.5 mtpa. Gasfin states that the initial storage capacity will be approximately 50,000 cubic meters (m³) of LNG that will increase to 100,000 m³ when all three phases have been completed. Gasfin notes that it will construct a single berth to accommodate mid-scale LNG carriers ranging from 10,000 to 35,000 m³ and that the facility will also include control and administration buildings, utilities and flare.

Gasfin states that the proposed project site is located in close proximity to various major interstate and intrastate pipeline systems, including those of Tennessee Gas Pipeline Company, ANR Pipeline Company and Bridgeline Holdings, L.P., Columbia Gulf Transmission Company, and Natural Gas Pipeline Company of America. Gasfin states that construction of a short

³ Gasfin states that it has executed an option agreement for the exclusive right to lease approximately 35 acres for the proposed project site. Gasfin further notes that the agreement envisages Gasfin having the right to lease contiguous property for expansion of the facility.

pipeline will allow the project to interconnect with major pipeline systems that span large regions of the Continental U.S. and cross multiple conventional and unconventional gas plays. Gasfin states that the project will have the ability to source gas from almost any point on the U.S. natural gas pipeline grid through direct physical delivery, by displacement on the spot market, or pursuant to long-term supply arrangements. Gasfin asserts that the vast size of total available U.S. gas reserves provide adequacy of supply for the project.⁴ Gasfin contends that the proposed exports are not anticipated to have any meaningful impact on the availability of natural gas in the United States as a whole, or, in particular, the Gulf Coast region.

Gasfin states it is requesting this authorization in order to act on its own behalf and in order to act on behalf of or as agent for third parties. Gasfin states that it will comply with all DOE/FE requirements for exporters and agents, including registering with DOE/FE each LNG title holder for whom Gasfin seeks to export LNG.⁵

Gasfin states that it has not yet entered into long-term supply and long-term LNG purchase and sale or export agreements. Gasfin states that it currently is engaged in commercial discussions with various large industrial customers and utility companies in the Caribbean and Central America that are seeking LNG produced from the proposed project. Gasfin states that it has not yet determined whether Gasfin or the customer will bear the responsibility for sourcing gas supplies for delivery to the project. Gasfin states that as commercial discussions with potential customers progress, it will commence negotiations with nearby pipelines for transportation capacity, interconnection points, and development of a three- to seven-mile-long

⁴ Gasfin states that the U.S. Energy Information Administration's *Annual Energy Outlook 2012 (AEO 2012)* employs as its reference case estimated proved and unproved gas resources of 542 trillion cubic feet (Tcf), out of a total U.S. resource of 2,203 Tcf. See *EIA, AEO 2012* at p. 93, [http://www.eia.gov/forecasts/archive/aeo12/pdf/0383\(2012\).pdf](http://www.eia.gov/forecasts/archive/aeo12/pdf/0383(2012).pdf).

⁵ See *Freeport LNG Development, L.P.*, DOE/FE Order No. 2913 (Feb. 10, 2011); *Main Pass Energy Hub, LLC*, DOE/FE Order No. 3220 (Jan. 4, 2013).

pipeline to transport gas to the project. Gasfin further states that it will submit transaction-specific information when such contracts are executed.

Gasfin recognizes that it must also obtain regulatory approval from the Federal Energy Regulatory Commission (FERC) under Section 3 of the NGA for the siting, construction and operation of the proposed project. Gasfin anticipates requesting authorization from the Director of the Office of Energy Projects to commence the FERC's mandatory National Environmental Policy Act (NEPA) pre-filing review process shortly after DOE/FE issues the authorization request herein. Gasfin acknowledges that the potential environmental impact of the project will be reviewed by FERC in conjunction with that proceeding.

Gasfin states that it is not submitting a detailed public interest analysis in support of this Application. Gasfin asserts that it is evident from the current supply/demand balance of natural gas in the United States that its request for authorization to export domestic natural gas production from the Project is not inconsistent with the public interest.

Gasfin requests waiver of Section 590.202(a) of DOE's regulations, 10 CFR part 590.202(a), to the extent necessary to include outside counsel on the official service list in this proceeding.

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.⁶

(2) In light of DOE's statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review the other arguments posed by Gasfin 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, Panama, 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 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*,⁷ 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 Gasfin proposes to export as agent for

⁶ 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.

⁷ *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.

others, Gasfin 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*.⁸ 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.

(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) DOE/FE will require that Gasfin file under seal with DOE/FE any relevant long-term commercial agreements between Gasfin and a Registrant, including LTAs, once they have been executed. In addition, DOE/FE will require that Gasfin 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

⁸ *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.

of two years such as an LTA, an agreement to provide gas processing or liquefaction services at the Gasfin LNG Export Project, a long-term sales contract involving natural gas or LNG stored or liquefied at the Gasfin LNG Export Project, or an agreement to provide export services from the Gasfin LNG Export Project.

(7) DOE/FE also will require Gasfin to file any long-term contracts Gasfin enters into providing for the long-term export of LNG on its own behalf from the Gasfin LNG Export Project. 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 Gasfin file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Gasfin LNG Export Project within 30 days of their execution that either Gasfin or the Registrant enters into.

(9) DOE/FE recognizes that some information in Gasfin’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 Gasfin LNG Export Project may be commercially sensitive. DOE will therefore require that (A) when Gasfin 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. Gasfin is authorized to export domestically produced LNG by vessel from the proposed Gasfin LNG Export Project in Cameron Parish, Louisiana, up to the equivalent of 74 Bcf per year of natural gas for a 25-year term, beginning on the earlier of the date of first export or 7 years from the date the authorization is issued (March 7, 2020), pursuant to one or more long-term contracts with third parties 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, Panama, 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. Gasfin 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. Gasfin 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 proposed Gasfin LNG Export Project in Cameron Parish, Louisiana, 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, Gasfin 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 proposed Gasfin LNG Export Project in Cameron Parish, Louisiana, 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, Gasfin shall show why the redacted or non-disclosed information should be exempted from public disclosure.

E. Gasfin 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 countries identified in Ordering Paragraph B of DOE/FE Order No. 3253, issued March 7, 2013, in FE Docket No. 13-06-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 Gasfin Development USA, 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 Gasfin Development USA, LLC is made aware of all such actual destination countries."

F. Gasfin 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 Gasfin with all

information necessary to permit Gasfin 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 Gasfin LNG Export Project in Cameron Parish, Louisiana, Gasfin shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

I. Gasfin shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the proposed 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 Gasfin LNG Export Project in Cameron Parish,

Louisiana, 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 the LNG exports authorized by this Order, Gasfin 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: Natural Gas Reports. Alternatively, reports may be e-mailed to ngreports@hq.doe.gov, or may be faxed to Natural Gas Reports at (202) 586-6050.

Issued in Washington, D.C., on March 7, 2013.



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