

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

FREEPORT-MCMORAN ENERGY LLC

)
)
)
)

FE DOCKET NO. 13-26-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PROPOSED MAIN PASS ENERGY HUB™ DEEPWATER PORT
16 MILES OFFSHORE OF LOUISIANA
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3290

MAY 24, 2013

I. DESCRIPTION OF REQUEST

On February 22, 2013, Freeport-McMoRan Energy LLC (FME) 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 liquefied natural gas (LNG) produced from domestic sources in an amount up to 24 million metric tons per year (mtpa), which FME states is equivalent to approximately 1,176 billion cubic feet per year (Bcf/y) of natural gas, or 3.2 Bcf per day (Bcf/d).² FME seeks authorization to export the LNG for a 30-year term from the proposed Main Pass Energy Hub™ Deepwater Port (MPEH™ Port), to be located in federal waters in Main Pass Block 299, 16 miles offshore of Louisiana.

FME seeks to export LNG by vessel from the proposed MPEH™ Port to 1) 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 gas³, and 2) any country with which the United States does not have a FTA requiring national treatment for trade in natural gas (non-FTA countries) with which trade is not prohibited by U.S. law or policy. FME seeks to export the LNG on its own behalf and as agent for third parties who hold title to the LNG at the time of export. FME requests that this authorization commence on the earlier of the date of first export or 10 years from the date the authorization is issued (*i.e.*, May 24, 2023).

¹ The authority to regulate the import and export of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) was delegated to the Assistant Secretary for FE in Redesignation Order No. 00-002.04E, issued on April 29, 2011.

² Applicants are required to provide volumes of natural gas in Bcf, 10 C.F.R. § 590.202(b)(1), and therefore DOE/FE will address FME's requested authorization in Bcf/y below.

³ 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, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

The portion of FME’s Application that seeks authorization to export domestically produced LNG to FTA countries will be reviewed pursuant to NGA section 3(c), 15 U.S.C. § 717b(c), and approved in this Order. The portion of the 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 addressed in a separate order.

As set forth below, DOE/FE will authorize the requested LNG exports in an amount equivalent to 1,175 Bcf/y of natural gas—the same volume previously authorized to FME’s affiliate, Main Pass Energy Hub LLC (MPEH LLC or Main Pass), for FTA export authorization from the proposed MPEH™ Port.⁴ FME states that these two authorizations are meant to be coincidental rather than cumulative, meaning that no more than 24 mtpa of LNG will be exported in any year from the MPEH™ Port.⁵ DOE/FE is therefore granting FME’s authorization in an amount equivalent to 1,175 Bcf/y of natural gas, not the 1,176 Bcf/y stated in FME’s Application. Because both MPEH LLC and FME requested export authorization in an amount up to 24 mtpa, DOE/FE views this 1 Bcf/y difference in natural gas as *de minimis*.

II. BACKGROUND

Description of Applicant and Liquefaction Project. FME, a subsidiary of McMoRan Exploration Co., is a Delaware limited liability company with its principal place of business in New Orleans, Louisiana. FME is also an initial member of MPEH LLC, which is a Delaware limited liability company with its principal place of business in New Orleans, Louisiana. The other initial member of MPEH LLC is United LNG, LLC, a Delaware limited liability company.

⁴ *Main Pass Energy Hub, LLC*, DOE/FE Order No. 3220, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the MPEH Deepwater Port Located 16 miles Offshore the Louisiana Coast in Federal Waters to Free Trade Agreement Nations (Jan. 4, 2013).

⁵ In the Main Pass application, MPEH LLC stated that 24 mtpa was equal to 1,175 Bcf/y of natural gas and, on that basis, DOE/FE granted export authorization to MPEH LLC in that amount. *See Main Pass Energy Hub, LLC*, DOE/FE Order No. 3220, at 9 (“Main Pass is authorized to export domestically produced LNG by vessel from the proposed MPEH Deepwater Port ... up to the equivalent of 1,175 Bcf/y of natural gas for a 30-year term, ...”).

FME is requesting this authorization to export LNG from the MPEH™ Port which is currently owned by FME. FME and United LNG, LP are parties to a Memorandum of Understanding (MOU) concerning the commercial development of the MPEH™ Port. United LNG, LP is a Texas limited partnership with its principal place of business in Houston, Texas. After execution of the MOU, MPEH LLC was formed.

FME states that the MPEH™ Port is proposed to be located in approximately 210 feet of water at a deepwater site in the Gulf of Mexico on the Outer Continental Shelf (OCS) of the United States, approximately 16 miles offshore from southeast Louisiana at Main Pass Block 299 (Block 299).⁶ FME states that the MPEH™ Port will be configured to receive, store, condition, and liquefy domestic natural gas for export as LNG. Construction of the MPEH™ Port will include modification of existing offshore structures currently owned by FME; construction of new facilities and salt dome storage caverns; and construction, installation, and operation of floating liquefaction storage and offloading vessels (FLVs) to be used for the on-site liquefaction and exportation of LNG from the MPEH™ Port.

According to FME, the MPEH™ Port will utilize five large existing interconnected platforms and three smaller satellite platforms. FME states that these platforms will house the gas conditioning facilities, gas metering facilities, quarters for on-site employees, and gas storage and compression equipment. FME further states that, in addition to the platform-based facilities, the MPEH™ Port will consist of six FLVs, each capable of producing up to 4 mtpa of LNG, for a total production capacity at the MPEH™ Port of 24 mtpa of LNG. FME states that each FLV will be moored using a buoy system and will be capable of liquefying 537 million cubic feet per day of natural gas, storing 200,000 cubic meters of LNG, and delivering LNG to off-taking LNG carriers utilizing a ship-to-ship process.

⁶ According to FME, this site is located at latitude 29°15'56" and longitude 88°45'34".

Source of Natural Gas. FME states that the MPEH™ Port will export natural gas available in the U.S. natural gas supply and transmission system. FME states that the sources of natural gas for the MPEH™ Port will include the vast supplies of natural gas available from the Gulf Coast producing regions, including onshore and offshore resources. FME further states that the MPEH™ Port has the potential to access nine major natural gas pipelines, with indirect access to the entire national gas pipeline grid. The MPEH™ Port will draw gas from the domestic market through a pipeline connecting the offshore facilities to the onshore interstate pipeline network and from off-shore gathering and transmission systems in the Gulf of Mexico. FME asserts that it holds a sulphur and salt lease in Block 299, which it will use to construct salt-dome storage caverns to store natural gas prior to liquefaction. FME states that the natural gas intake at the MPEH™ Port will not exceed 4 Bcf/d.

FME asserts that the MPEH™ Port is strategically located on the OCS, which it characterizes as a prolific and highly productive area. According to FME, its parent company (MMR Exploration Co.) is one of the largest acreage holders on the OCS and is engaged in exploration and development activities with the potential to unlock more than 100 trillion cubic feet of natural gas over a 200-mile area in the shallow waters of the Gulf of Mexico and onshore Louisiana.⁷ FME contends that the onshore and offshore resources available to the MPEH™ Port through its numerous potential pipeline interconnections will provide more than sufficient gas quantities to support the proposed LNG exports over the term of the requested authorization.

Business Model. As stated above, FME requests this authorization both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. FME states

⁷ FME notes that exports of natural gas directly from the OCS may be subject to the requirements of the Outercontinental Shelf Lands Act, 43 U.S.C. § 1354(b), and states that FME would conduct any such activities in compliance with those requirements. As discussed below, DOE/FE's authorization makes no judgment as to FME's compliance with this statute.

that it will comply with all DOE/FE requirements for exports and agents, as established in *Freeport LNG Development, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913, including the registration requirements.⁸ FME further states that, when acting as agent, it will register with DOE/FE each LNG title holder for which FME seeks to export LNG as agent.

FME asserts that the long-term authorization requested in this Application is necessary to permit it to incur the substantial capital and other costs of developing the MPEH™ Port and to secure customer contracts. FME states that terms for the use of the liquefaction and other offshore deepwater port facilities will be set forth in agreements with customers of the MPEH™ Port.

As stated above, DOE/FE previously granted FME's affiliate, MPEH LLC, an FTA export authorization to export up to 1,175 Bcf/y of natural gas from the MPEH™ Port.⁹ According to FME, it is now requesting both FTA and non-FTA authorizations for the same quantity of LNG as MPEH LLC's authorization, such that only 24 mtpa of LNG will be exported in any year from the MPEH™ Port (which DOE/FE notes is equivalent to 1,175 Bcf/y of natural gas). FME further states that, before any exports occur, it will inform DOE/FE as to how the 24 mtpa of LNG exports will be allocated between all export authorizations applicable to the MPEH™ Port.

Environmental Review. FME states that the U.S. Maritime Administration (MARAD), in coordination with the U.S. Coast Guard, will act as the lead agency for environmental review of the MPEH™ Port, with DOE acting as a cooperating agency. According to FME, the MPEH™ LNG import project previously underwent an extensive analysis under the National

⁸ *Freeport LNG Development, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

⁹ *Main Pass Energy Hub, LLC*, DOE/FE Order No. 3220, at 9.

Environmental Policy Act (NEPA), 42 U.S.C. § 431 *et seq.*, including preparation of an Environmental Impact Statement and a review by several other federal agencies. This analysis resulted in a favorable Record of Decision issued by MARAD.¹⁰ FME further states that this Application will include a complete environmental review of this project. In October 2012, FME initiated discussions with MARAD regarding development of a deepwater port application for the proposed MPEH™ Port. FME states that it is currently performing scoping studies to determine which federal, state, or local agencies need to be involved and the additional studies that need to be performed in conjunction with the construction of the proposed MPEH™ Port, including the FLVs.

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 Application qualifies for treatment under NGA section 3(c) and, therefore, DOE/FE is charged with granting the Application without modification or delay.¹¹

(2) In light of DOE's statutory obligation to grant the Application without modification or delay, this grant of authority will not be conditioned on completion of an environmental review and issuance of a license by MARAD for the proposed MPEH™ Port. Likewise, there is

¹⁰ FME states that, in January 2007, MARAD approved the MPEH™ Port as a Deepwater Port for the importation and regasification of LNG, conditioning of natural gas to produce natural gas liquids, and storage of natural gas in salt caverns.

¹¹ DOE/FE further finds that the requirements governing public notice of applications and other procedures set forth in 10 C.F.R. Part 590 apply only to applications seeking to export natural gas, including LNG, to non-FTA countries, and therefore do not apply here.

no need for DOE/FE to review the other arguments presented by FME in support of the Application. The instant grant of authority should not be read to indicate DOE/FE'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 previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,¹² which granted authority for Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to export LNG to FTA countries. In that order, DOE/FE approved a proposal by 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*, which established that the title for LNG authorized for export must be held by the authorization holder at the point of export.¹³

DOE/FE reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*, DOE/FE Order No. 3163.¹⁴ In *Gulf Coast*, DOE/FE confirmed that, in LNG export orders in which Agency Rights have been granted, DOE/FE 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.

¹² See *supra* page 5 n.8.

¹³ *Dow Chem. Co.*, DOE/FE Order No. 2859, Order Granting Blanket Authorization to Export Liquefied Natural Gas (Oct. 5, 2010).

¹⁴ *Gulf Coast LNG Export, LLC*, DOE/FE Order No. 3163, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Brownsville Terminal to Free Trade Agreement Nations (Oct. 16, 2012).

We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in Order Nos. 2913 and 3163 apply here as well. Accordingly, the authorization granted herein shall be conditioned to require that where FME proposes to export as agent for others, FME must register the other entity with DOE/FE in accordance with the procedures and requirements described herein.

(5) DOE/FE's regulations require applicants to supply transaction-specific factual information "to the extent practicable."¹⁵ Additionally, DOE/FE regulations 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/FE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.¹⁶

DOE/FE will require that FME file with DOE/FE any relevant long-term commercial agreements, including Liquefaction Tolling Agreements (LTAs), between FME and a third party, including a Registrant, once they have been executed. In addition, DOE/FE will require that FME 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 MPEH™ Port, a long-term sales contract

¹⁵ 10 C.F.R. § 590.202(b).

¹⁶ *Id.* § 590.202(e).

involving natural gas or LNG stored or liquefied at the MPEH™ Port, or an agreement to provide export services from the MPEH™ Port.

DOE/FE also will require FME to file any long-term contracts FME enters into providing for the long-term export of LNG on its own behalf from the MPEH™ Port. 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).

In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations¹⁷ requires that FME file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the MPEH™ Port within 30 days of their execution that either FME or the Registrant enters into.

DOE/FE recognizes that some information in FME’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 MPEH™ Port, may be commercially sensitive. DOE/FE therefore will provide FME the option to file or cause to be filed either unredacted contracts, or in the alternative (A) FME may file, or cause to be filed, long-term contracts under seal, but it also will 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.

¹⁷ *Id.* § 590.202(c).

To ensure that DOE/FE destination and reporting requirements included in this Order are conveyed to subsequent title holders, DOE/FE will include as a condition of this authorization that future contracts for the sale or transfer of LNG exported pursuant to this Order shall include an acknowledgement of these requirements.

ORDER

Pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c), it is ordered that:

A. FME is authorized to export domestically produced LNG by vessel from the proposed MPEH™ Port, to be located in federal waters in Main Pass Block 299, 16 miles offshore of Louisiana, up to the equivalent of 1,175 Bcf/y of natural gas for a 30-year term, beginning on the earlier of the date of first export or 10 years from the date the authorization is issued (*i.e.*, May 24, 2023), 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://energy.gov/fe/services/natural-gas-regulation>.

C. FME 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 U.S. Department of the Treasury.¹⁸

¹⁸ DOE/FE notes that the Outer Continental Shelf Lands Act provides: “Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President

Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. FME 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 MPEH™ Port 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, FME 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 MPEH™ Port both unredacted 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, FME shall show why the redacted or non-disclosed information should be exempted from public disclosure.

E. FME 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. 3290, issued May 24, 2013, in FE Docket No. 13-26-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 FME that identifies the country of destination, upon delivery, into which the exported LNG

shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.” 43 U.S.C. § 1354(b). DOE/FE expresses no opinion regarding the applicability of this statutory provision to any export operations that FME is planning to undertake, and DOE/FE’s authorization should not be read to indicate that this provision has been satisfied.

was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that FME is made aware of all such actual destination countries.”

F. FME is permitted to use its authorization 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 FME with all information necessary to permit FME 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 C.F.R. 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 MPEH™ Port, FME shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

I. FME 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 at the proposed MPEH™ Port. 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 liquefaction project at the proposed MPEH™ Port, 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, FME 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 May 24, 2013.

A handwritten signature in black ink, appearing to read "John A. Anderson", with a long horizontal flourish extending to the right.

John A. Anderson
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy