

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

CONOCOPHILLIPS COMPANY

FE DOCKET NO. 13-97-LNG

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

DOE/FE ORDER NO. 3359

NOVEMBER 7, 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,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the August 7, 2013, application of ConocoPhillips Company (ConocoPhillips).

The authorization permits ConocoPhillips to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources, in a cumulative amount up to the equivalent of 500 billion cubic feet (Bcf) of natural gas on a short term or spot market basis over a twenty-five month period commencing on November 30, 2013.²

ConocoPhillips 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.

ConocoPhillips is also authorized to export this LNG to which it holds title on its own behalf and as agent for others who hold title at the time of export, after registering the other entity with DOE/FE. This authorization permits such exports on a short-term or spot market basis from the existing terminal facilities owned by Freeport LNG Development, L.P. (Freeport LNG) on Quintana Island, Texas. The authorization provided by this Order will not permit the export of domestically produced LNG.

¹ See, DOE Delegation Order No. 00-002.00N (July 11, 2013), and DOE Redelegation Order No. 00-002.04F (July 11, 2013).

² ConocoPhillips's previous blanket authorization to export LNG was granted in DOE/FE Order No. 3038 on November 22, 2011, and extended through November 29, 2013.

II. PROCEDURAL HISTORY

ConocoPhillips filed the “Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on August 7, 2013. The Application was submitted pursuant to section 3 of the NGA and part 590 of DOE’s regulations. On August 30, 2013, DOE/FE published a Notice of Application (Notice) in the Federal Register. 78 FR 53737. The Notice stated that comments, protests, motions, and notices to intervene, and requests for additional procedures would be due no later than September 30, 2013. DOE/FE received no filings in response to the Notice.

III. BACKGROUND

ConocoPhillips is a Delaware corporation with its principal place of business in Houston, Texas. ConocoPhillips is an independent producer and seller of natural gas that imports LNG into the United States and exports foreign-sourced LNG from the United States. On November 22, 2011, in DOE/FE Order No. 3038, DOE/FE granted ConocoPhillips authorization to export previously imported foreign-sourced LNG, on its own behalf or as an agent for others, up to a cumulative total equivalent to 500 Bcf of natural gas from the Freeport LNG terminal to any country with the capacity to import LNG via ocean-going carrier and with which trade was not prohibited by U.S. law or policy.

Current Application

In the current Application, ConocoPhillips is seeking blanket authorization beginning November 30, 2013, to export for itself, and as agent for others who hold title to the LNG at the time of export, 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. ConocoPhillips is seeking to export this LNG from the Freeport LNG

terminal, over a twenty-five month period, in a cumulative amount up to the equivalent of 500 Bcf of natural gas.³ ConocoPhillips states that it does not seek authorization to export domestically-produced natural gas or LNG.

ConocoPhillips asserts that the proposed authorization is in the public interest. In support of its Application, ConocoPhillips 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 such exports “will not be consistent with the public interest.”⁴ ConocoPhillips states that Section 3 thus creates a statutory presumption in favor of approval of this application, and that parties opposing the authorization bear the burden of overcoming this presumption.

ConocoPhillips asserts that there is no domestic need for the LNG to be exported by ConocoPhillips pursuant to the blanket authorization requested. In support, ConocoPhillips states that in recent years, DOE/FE has issued a number of blanket authorizations to export previously-imported LNG, including, most recently, Freeport LNG in DOE/FE Order No. 3317, on July 19, 2013, and the one previously issued to ConocoPhillips in DOE/FE Order No. 3038, finding that such LNG is not needed to meet domestic demand for natural gas. ConocoPhillips states that DOE/FE concluded in the Freeport LNG authorization that, “the evidence of record indicates that United States’ consumers continue to 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 Freeport LNG Development L.P. seeks to export.”⁵ Conoco Phillips states that this record evidence also supports the conclusion that the foreign-sourced LNG that ConocoPhillips may export from the Freeport LNG terminal facilities pursuant to the blanket authorization requested herein is not needed to meet domestic demand.

³ The twenty-five month period coincides with a commercial terminalling arrangement entered into by ConocoPhillips at the Freeport LNG terminal, which ConocoPhillips does not anticipate continuing beyond December 31, 2015 due to planned changes in the terminal’s use announced by the owner.

⁴ 15 U.S.C. § 717b(a). Natural gas is defined to include LNG in 10 C.F.R. § 590.102(i).

⁵ *Freeport LNG Development, L.P.*, DOE/FE Order No. 3317 (July 19, 2013) at p. 8.

ConocoPhillips states that the monthly reports that it has filed with DOE/FE pursuant to Order No. 3038 confirm that it has used its currently effective blanket authorization to export previously-imported LNG from the United States. ConocoPhillips states that the Order No. 3038 blanket export authorization has also facilitated the importation of LNG cargos into the United States by enabling it to import LNG cargos without fear that such cargos will become captive to the U.S. market if, in ConocoPhillips' view, market conditions ultimately do not support delivering regassified LNG into the U.S. market. ConocoPhillips states that it has also sold LNG to Freeport LNG to replace boil off, thereby contributing to the operational stability of the Freeport LNG terminal facilities.

ConocoPhillips provides a further detailed discussion of the public interest standard in the Application and asserts that the requested authorization is consistent with the public interest and the Application, therefore, should be granted.

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,⁶ 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.⁷ 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.

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 twenty-five month 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 LNG⁸ 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 2013, issued in May 2013 (*AEO 2013*), shows annual domestic dry natural gas

⁶ See 49 FR 6684, February 22, 1984.

⁷ 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).

⁸ *Freeport LNG Development, L.P.* DOE/FE Order No. 3317 (July 19, 2013); *ENI USA Gas Marketing LLC*, DOE/FE Order No. 3247 (March 5, 2013); *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).

production increasing from 21.33 trillion cubic feet (Tcf) in 2010, to a projection of 26.61 Tcf by 2020⁹, an annual increase of 5.28 Tcf. Consumption over this period increases only 2.54 Tcf annually (from 23.78 to 26.32 Tcf). As a result, the EIA shows that while the United States experienced net natural gas imports of 2.60 Tcf in 2010, by 2020 the United States will be experiencing net exports of 0.14 Tcf. The *AEO2013* also shows that Henry Hub natural gas prices were \$4.46 per million Btu in 2010 but this price is projected to decline to \$4.13 per million Btu in 2020 (in 2011 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 demand from multiple other sources at competitive prices without drawing on the LNG which ConocoPhillips seeks to export.

C. Agency Rights

As described above, ConocoPhillips requests authorization to export LNG on its own behalf and as agent for other entities who themselves hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913 (Order 2913),¹⁰ which granted Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) authority 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. DOE/FE found that this proposal was an acceptable alternative to the non-

⁹ EIA *AEO 2013*, Table A13, p. 147.

¹⁰ *Freeport LNG Expansion, 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).

binding policy adopted by DOE/FE in *The Dow Chemical Company*,¹¹ 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.

DOE/FE reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*.¹² 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 titleholder (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.¹³

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where ConocoPhillips proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), ConocoPhillips must register with DOE/FE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

D. 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

¹¹ *The Dow Chemical Company*, DOE/FE Order No. 2859, Order Granting Blanket Authorization to Export Liquefied Natural Gas (Oct. 5, 2010), at 7-8, discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

¹² *Gulf Coast LNG Export, LLC*, 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 (Oct. 16, 2012).

¹³ *See id.* at 7-8.

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

E. The Environment

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the Application, ConocoPhillips states that no changes to the Freeport LNG terminal facilities on Quintana Island would be required in order for ConocoPhillips 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.¹⁴ Accordingly, DOE issued a Categorical Exclusion Determination, dated September 18, 2013, which found that the ConocoPhillips proposed action is categorically excluded from further NEPA review.

F. 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 ConocoPhillips 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.

ORDER

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

¹⁴ "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.

A. ConocoPhillips is authorized to export LNG that previously had been imported from foreign sources in a cumulative amount up to the equivalent of 500 Bcf of natural gas pursuant to transactions that have terms of no longer than twenty five months. This authorization shall be effective for a twenty-five month term beginning on November 30, 2013, and extending through December 31, 2015. ConocoPhillips is authorized to export this LNG as agent for other entities who hold title to the natural gas

B. This LNG may be exported from the Freeport LNG Development, L.P. terminal facilities on Quintana Island, Texas, 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. ConocoPhillips, or others for whom ConocoPhillips 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 ConocoPhillips 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 ConocoPhillips is made aware of all such actual destination countries."

D. As a condition of this authorization, ConocoPhillips shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by ConocoPhillips 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.

E. Registration materials shall include an acknowledgement and agreement by the Registrant to supply ConocoPhillips with all information necessary to permit ConocoPhillips 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 C provision in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. 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).

G. **Monthly Reports:** With respect to the export of LNG authorized by this Order, ConocoPhillips shall file with the Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, 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 (or countries) of destination into which the exported LNG was actually delivered; (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)

H. The first monthly report required by this Order is due not later than January 30, 2014, and should cover the reporting period from November 30, 2013, through December 31, 2013.

I. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, 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 November 7, 2013.

A handwritten signature in dark ink, appearing to read "John A. Anderson", is written over a horizontal line.

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