

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

EOS LNG LLC

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) FE DOCKET NO. 13-115-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PORT OF BROWNSVILLE, TEXAS
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3364

NOVEMBER 26, 2013

I. DESCRIPTION OF REQUEST

On August 23, 2013, Eos LNG LLC (Eos) 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 a volume equivalent to approximately 584 billion cubic feet per year (Bcf/yr) of natural gas, or 1.6 Bcf per day (Bcf/d), from its proposed LNG terminal (Project) located at the Port of Brownsville in Brownsville, Texas, for a 25-year term.

Eos seeks to export LNG by vessel from the proposed Project to 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 gas², and with which trade is not prohibited by U.S. law or policy. Eos seeks to export this LNG on its own behalf and also as agent for third parties. Eos requests that this authorization commence on the earlier of the date of first export or eight years from the date the authorization is issued (November 26, 2021).

II. BACKGROUND

Eos is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Eos states that it qualifies as an African American minority-owned business. The principal executives of Eos are Kent Strong, Eza Gadson, and Andrew Kunian. Eos states that it has recruited an LNG team to manage logistics and commercial operations of the venture.

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. 00-002.04F issued on July 11, 2013.

² 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.

Eos proposes to develop, own, and operate a natural gas liquefaction facility and an LNG export terminal at the Port of Brownsville in Brownsville, Texas. Eos states that the site will be based on a floating liquefaction unit on a barge (FLNG) and an existing LNG tanker (utilized solely for storage) that are anchored to a dock at the Port of Brownsville. Eos states that LNG tankers owned by third parties will be loaded via ship to ship transfer from Eos's LNG storage tanker, then will set sail to buyers in Europe and Asia. Eos states that the FLNG is an autonomous floating structure that does not rely on any shore-based utilities to function. According to Eos, the FLNG will be constructed in a shipyard and towed to its designated site, where it will be integrated with the gas source. Eos states that mooring and connection infrastructure requirements are minimal.

Eos states that the FLNG is able to tap directly into a natural gas source at the Port of Brownsville, liquefy the gas, and offload the LNG to the LNG tanker utilized for storage. Eos states that this process will avoid the complex and costly onshore civil construction works, as well as associated environmental impact, and will enable the LNG to get to the market quicker at a fraction of the cost. Eos states that the FLNG unit will be moored to one of the two jetties during its natural gas liquefaction operations. Offloading of LNG into LNG tankers will be performed via the second jetty. Eos states that the jetties will include the following facilities: 1) Mooring hooks, enabling the FLNG unit to be moored to the jetty by the existing mooring winches on board the LNG tanker for storage; 2) High pressure gas arms or flow lines, for transfer of gas between the jetty and the FLNG unit; 3) LNG transfer arms, enabling over-the-jetty transfer of LNG from the FLNG unit to the LNG tanker; 4) High voltage power cable connection for the supply of electric power to the FLNG unit's liquefaction process; and 5)

Communication and electrostatic discharge link cables for connection to the FLNG unit, designed for integration of the communication and emergency response systems.

Eos states that it has a signed option agreement with Brownsville Navigation District. Eos states that the natural gas supply underlying the proposed exports will come from the interconnected and highly liquid domestic market for natural gas. Eos states that while some of the proposed export supply may be secured through long term contracts, large volumes are likely to be acquired on the spot market. Eos states that given the size and liquidity of the natural gas market in the Gulf Coast region and the exponential growth of unconventional resources in the region, a diverse and reliable source of natural gas will be available to support the requested export authorization. Eos states that natural gas markets are especially liquid in the Gulf Coast region because several key market centers in the area have ready access to incremental gas supplies from a wide variety of sources and readily available price information. Eos states that the biggest market hub in North America, the Henry Hub, is located in southern Louisiana, and the Houston Ship Channel and Katy Hub provide flexibility to natural gas shippers in Texas. Eos states that it will be able to source the gas from these locations. Alternatively, Eos states that it will be able to contract directly with exploration and production companies such as Chesapeake Energy, Anadarko, Devon Energy, Encana, Southwest Energy, EOG Resources, and EQT Resources. Eos anticipates that several natural gas basins will supply the Eos export site, including the Permian, Eagle Ford, Barnett, Woodford, and Haynesville-Bossier basins. Eos states that these basins are served by several pipelines that can transfer the natural gas to the Port of Brownsville.

Eos states that rather than enter into Liquefaction Tolling Agreements (LTAs), its planned business model is to buy natural gas at the domestic price of the Henry Hub futures

contract and sell it internationally at the prevailing market rate. However, if the profitability of this model declines, Eos states that it will maintain the option to convert the business model to an LTA model, under which individual customers who hold title to the domestic natural gas will have the right to deliver that gas to Eos's terminal at the Port of Brownsville and receive LNG in return.

Eos requests long term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. Eos contemplates that the title holder at the point of export may be Eos or one of Eos's customers, or another party that has purchased LNG from an LTA customer pursuant to a long term contract. Eos requests authorization to register each LNG title holder for whom Eos seeks to export as agent, and proposes that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included in Eos's export authorization, and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition to its registration of any LNG title holder for whom Eos seeks to export as agent, Eos will file under seal with DOE/FE any relevant long term commercial agreements between Eos and such LNG title holder, including LTAs, once they have been executed. Eos states that DOE/FE has previously found that this commitment conforms to the requirements of 10 C.F.R. § 590.202(b), which calls upon applicants to supply transaction information "to the extent practicable."

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.³

(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 Eos 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) As described above, Eos requests authorization to export LNG on its own behalf and as agent for other entities who 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),⁴ 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-binding policy adopted by DOE/FE in *The*

³ 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.

⁴ *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).

Dow Chemical Company,⁵ 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*.⁶ 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.⁷

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

(5) Section 590.202(b) of DOE's regulations requires applicants to supply transaction specific factual information "to the extent practicable."⁸ Additionally, DOE regulations at 10 CFR § 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.

⁵ *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.

⁶ *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).

⁷ See *id.* at 7-8.

⁸ 10 C.F.R. § 590.202(b).

(6) DOE/FE will require that Eos file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Eos exports LNG as agent for a Registrant once they have been executed. DOE/FE finds that the submission of all such agreements or 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 a long-term sales contract involving LNG stored or liquefied at the Project.

(7) DOE/FE also will require Eos to file any long-term contracts Eos enters into providing for the long-term export of LNG on its own behalf from the 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) of DOE/FE’s regulations⁹ requires that Eos file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Project within 30 days of their execution that either Eos or the Registrant enters into.

(9) DOE/FE recognizes that some information in Eos’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the Project may be commercially sensitive. DOE/FE therefore will provide Eos the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Eos 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

⁹ *Id.* § 590.202(c).

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.

To ensure that DOE/FE destination and reporting requirements included in the 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 the Order shall include an acknowledgement of these requirements.

ORDER

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

A. Eos is authorized to export domestically produced LNG by vessel from the Project, in a volume equivalent to approximately 584 Bcf/yr of natural gas for a 25-year term, beginning on the earlier of the date of first export or 8 years from the date the authorization is issued (November 26, 2021). Eos is authorized to export this LNG on its own behalf or as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

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 with which 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 LNG via ocean going vessels.

FTA countries are currently identified by DOE/FE at:

<http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. Eos 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. (i) Eos shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for other entities from the Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Eos has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Eos shall also file, or cause others to file, for public posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Eos shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Eos shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Eos has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Eos shall also file, or cause others to file, for public

posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Eos shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Eos shall include, and require others for whom Eos acts as agent to include, the following provision in any agreement or other 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. 3364, issued November 26, 2013 in FE Docket No. 13-115-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 Eos 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 Eos is made aware of all such actual destination countries.”

F. Eos is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other parties with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply Eos with all information necessary to permit Eos 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.

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

I. Within two weeks after the first export of domestically produced LNG occurs from the Project, Eos shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

J. Eos shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the proposed Project in Brownsville, Texas. 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 Project in Brownsville, Texas, 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.

K. Prior to any change in control of the authorization holder, Eos must obtain the approval of the Assistant Secretary for Fossil Energy. For purposes of this Ordering Paragraph, a "change of control" shall include any change, directly or indirectly, of the power to direct the

management or policies of Eos, whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Eos 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 November 26, 2013.



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