

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

BARCA LNG LLC

)  
) FE DOCKET NO. 13-117-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. 3365

NOVEMBER 26, 2013

## **I. DESCRIPTION OF REQUEST**

On August 23, 2013, Barca LNG LLC (Barca) 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)<sup>1</sup> 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.

Barca 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 gas,<sup>2</sup> and with which trade is not prohibited by U.S. law or policy. Barca seeks to export this LNG on its own behalf and as agent for third parties. Barca 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**

Barca is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Barca's principal executives are Brendan Kelley, Mason Bridges, and Andrew Kunian.<sup>3</sup>

Barca proposes to develop, own, and operate a natural gas liquefaction facility and LNG export terminal at the Port of Brownsville in Brownsville, Texas. Barca states that the site will

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Barca anticipates that it soon will qualify as a Service-Disabled Veteran Owned Business under the Veterans Entrepreneurship and Small Business Development Act of 1999, the Veterans Benefit Act of 2003, and Executive Order 13360.

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. Barca states that LNG tankers owned by third parties will be loaded via ship-to-ship transfer from Barca's LNG storage tanker, then will set sail to buyers in Europe and Asia. Barca further states that the FLNG is an autonomous floating structure that does not rely on shore-based utilities to function. According to Barca, the FLNG will be constructed in a shipyard, then towed to its designated site, where it will be integrated with the gas source. Barca states that mooring and connection infrastructure requirements associated with the FLNG are minimal.

Barca states that the FLNG will be 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. Barca states that this process will avoid complex and costly onshore civil construction works and potential environmental impact, and will enable the LNG to get to the market quicker at a fraction of the cost. Barca 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. Barca 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.

Barca states that it has a signed option agreement with Brownsville Navigation District. Barca states that the natural gas supply underlying the proposed exports will come from the interconnected and highly liquid domestic market for natural gas. Barca 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. Barca 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. According to Barca, 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. Barca 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. Barca states that it will be able to source the gas from these locations. Alternatively, Barca 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. Barca anticipates that several natural gas basins will supply the Barca export site, including the Permian, Eagle Ford, Barnett, Woodford, and Haynesville–Bossier basins. Barca states that these basins are served by several pipelines that can transfer natural gas to the Port of Brownsville.

Barca 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, Barca states that it will maintain the option to convert 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 Barca's terminal at the Port of Brownsville and receive LNG in return.

Barca requests long term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. Barca contemplates that the title holder at the point of export may be Barca or one of Barca's customers, or another party that has purchased LNG from an LTA customer pursuant to a long term contract. Barca requests authorization to register each LNG title holder for whom Barca 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 Barca'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 Barca seeks to export as agent, Barca states that it will file under seal with DOE/FE any relevant long term commercial agreements between Barca and such LNG title holder, including LTAs, once the agreements have been executed. Barca 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.

This Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the Application without modification or delay.<sup>4</sup>

(2) In light of DOE/FE's statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review other arguments asserted by Barca 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) As described above, Barca 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),<sup>5</sup> 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 Dow Chemical Company*,<sup>6</sup> which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. We find

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<sup>4</sup> DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. 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.

<sup>5</sup> *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).

<sup>6</sup> *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.

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*.<sup>7</sup> 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.<sup>8</sup>

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Barca proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Barca 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."<sup>9</sup> Additionally, DOE regulations at 10 C.F.R. 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 C.F.R. § 1004.11.<sup>10</sup>

(6) DOE/FE will require that Barca file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Barca exports LNG as agent for

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<sup>7</sup> *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).

<sup>8</sup> *See id.* at 7-8.

<sup>9</sup> 10 C.F.R. § 590.202(b).

<sup>10</sup> *Id.* § 590.202(e).

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 Barca to file any long-term contracts Barca 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 regulations<sup>11</sup> requires that Barca 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 Barca or the Registrant enters into.

(9) DOE/FE recognizes that some information in Barca’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 Barca the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Barca 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

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<sup>11</sup> *Id.* § 590.202(c).



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. Barca 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). Barca 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. Barca 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) Barca 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 Barca 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, Barca 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, Barca shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Barca 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 Barca 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, Barca 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, Barca shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Barca shall include, and require others for whom Barca 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. 3365, issued November 26, 2013 in FE Docket No. 13-117-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 Barca 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 Barca is made aware of all such actual destination countries.”

F. Barca 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 Barca with all information necessary to permit Barca 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, Barca shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Barca 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, Barca shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

J. Barca 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, 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, Barca 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 Barca, 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.

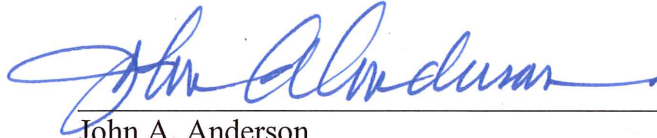
L. Monthly Reports: With respect to the LNG exports authorized by this Order, Barca shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30<sup>th</sup> 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](mailto: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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John A. Anderson

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