

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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FREEPORT LNG EXPANSION, L.P.,)	
FLNG LIQUEFACTION, LLC,)	FE DOCKET NO. 10-161-LNG
FLNG LIQUEFACTION 2, LLC, AND)	FE DOCKET NO. 11-161-LNG
FLNG LIQUEFACTION 3, LLC)	
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ORDER AMENDING DOE/FE ORDER NOS. 3282 AND 3357

DOE/FE ORDER NO. 3282-B

DOE/FE ORDER NO. 3357-A

JUNE 6, 2014

I. BACKGROUND

In 2010 and 2011, Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (FLEX) filed separate applications with the Department of Energy, Office of Fossil Energy (DOE/FE), requesting long-term authorization to export liquefied natural gas to nations with which the United States does not have a free trade agreement (FTA) providing for national treatment for trade in natural gas (non-FTA nations).¹

On May 17, 2013, in FE Docket No. 10-161-LNG, DOE/FE issued Order No. 3282 conditionally granting the first of the two non-FTA applications.² In that order, DOE/FE authorized FLEX to export domestically produced LNG by vessel from the Freeport LNG Terminal on Quintana Island, Texas, up to the equivalent of 511 billion standard cubic feet per year (Bcf/yr) of natural gas for a term of 20 years to commence on the date of first export. DOE/FE Order No. 3282 additionally provided that export operations must commence no later than seven years from that order's date of issuance.³

On November 15, 2013, in FE Docket No. 11-161-LNG, DOE/FE issued Order No. 3357 conditionally granting the second of FLEX's two non-FTA applications in a modified volume.⁴ Specifically, Order No. 3357 authorized FLEX to export domestically produced LNG by vessel up to the equivalent of 146 Bcf/yr of natural gas from the Freeport LNG Terminal for a term of

¹ See Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas, 76 Fed. Reg. 4885 (Jan. 27, 2011) (FE Docket No. 10-161-LNG); Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, Application for Long-Term Authorization to Export Domestically Produced Liquefied Natural Gas to Non Free Trade Agreement Countries, 77 Fed. Reg. 7568 (Feb. 13, 2012) (FE Docket No. 11-161-LNG).

² *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations (May 17, 2013) [hereinafter *Freeport I*].

³ See *id.* at 122 (Ordering Paras. A & B).

⁴ See *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations (Nov. 15, 2013) [hereinafter *Freeport II*].

20 years. It also provided that export operations must commence no later than seven years from that order's date of issuance.⁵

DOE/FE additionally has authorized FLEX to export LNG to FTA nations (*i.e.*, those nations with which the United States currently has, or in the future will have, a FTA requiring the national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy). On February 10, 2011, in DOE/FE Docket No. 10-160-LNG, DOE/FE issued Order No. 2913 authorizing FLEX to export up to the equivalent of 511 Bcf/yr of natural gas to FTA nations for a 25-year term.⁶ On February 10, 2012, in DOE/FE Docket No. 12-06-LNG, DOE/FE issued Order No. 3066 authorizing FLEX to export up to the equivalent of 511 Bcf/yr of natural gas to FTA nations for a 25-year term.⁷ DOE later specified that these FTA export volumes are not additive to the non-FTA export volumes authorized in DOE/FE Order Nos. 3282 and 3357.⁸

On September 19, 2013, FLEX filed an "Amendment and Supplement to Application" (Amendment) in FE Docket No. 11-161-LNG, in which it asked DOE/FE to amend and supplement FLEX's application in that docket to add two new entities in the Freeport corporate family as applicants: FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC. In the Amendment, FLEX stated that FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC are wholly-owned subsidiaries of Freeport LNG Expansion, L.P. (also called FLNG Expansion), and

⁵ See *id.* at 164-65 (Ordering Paras. A & B).

⁶ *Freeport LNG Expansion L.P., et al.*, 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).

⁷ *Freeport LNG Expansion L.P., et al.*, DOE/FE Order No. 3066, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Agreement Nations (Feb. 10, 2012).

⁸ See *Freeport I*, DOE/FE Order No. 3282, at 122 (Ordering Para. C) & *Freeport II*, DOE/FE Order No. 3357, at 165 (Ordering Para. C).

both are authorized to do business in the State of Texas. On the same date, FLEX filed similar amendments and supplements in FE Docket Nos. 10-160-LNG, 10-161-LNG, and 12-06-LNG.⁹

In Order No. 3357, DOE/FE granted FLEX's Amendment to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as applicants, but as to FE Docket No. 11-161-LNG only.¹⁰ DOE/FE also ordered that "all obligations arising under this conditional authorization apply equally to Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC."¹¹ DOE/FE did not rule on FLEX's pending Amendment in FE Docket Nos. 10-160-LNG, 10-161-LNG, and 12-06-LNG.

On December 16, 2013, the four FLEX entities—Freeport Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC—filed a pleading in FE Docket No. 11-161-LNG, entitled "Request for Clarification or Amendment of DOE/FE Order No. 3357 in DOE/FE Docket No. 11-161-LNG" (Request). In the Request, FLEX asked DOE/FE to take the following action:

- Clarify or amend DOE/FE Order Nos. 3282 and 3357 to confirm that the term of those export authorizations shall not commence until the date of the first commercial export of domestically sourced LNG under FLEX's long-term tolling agreements (LTAs) with its customers, and that the export of commissioning volumes¹² of LNG prior to commencement of commercial operations pursuant to short-term contracts will not trigger the commencement of the term of the long-term authorizations.
- Clarify or amend Order Nos. 3282 and 3357 to confirm that the 20-year fixed term of each authorization commences upon the date of the first commercial export of LNG under FLEX's LTAs and continues until expiration of the initial 20-year terms of the LTAs, including any period of time by which the initial terms of those agreements are

⁹ FLEX filed its Amendments pursuant to DOE/FE's regulations governing the amendment of applications, 10 C.F.R. § 590.204(a).

¹⁰ See *Freeport II* at 169 (Ordering Para. Q). Additional detail about FLEX's Amendment and these two new entities is provided in that order at 14-16.

¹¹ *Id.* at 170 (Ordering Para. R).

¹² For purposes of this order, we define "Commissioning Volumes" to mean the volume of LNG that is produced and exported under a short-term authorization during the initial start-up of each LNG train, before each LNG train has reached its full steady-state capacity and begun its commercial exports pursuant to FLEX's long-term contracts or LTAs.

extended to allow for delivery of any Make-Up Volume¹³ not delivered by FLEX during their initial terms.

- Clarify or amend Order No. 3357 to confirm that total exports under FLEX’s non-FTA and FTA authorizations during the term of the authorizations may not exceed the aggregate annual volume multiplied by 20 years.
- If DOE/FE requires that the overall term of the export authorizations be time limited notwithstanding aggregate volume limitations, provide for a total term for FLEX’s non-FTA and FTA authorizations not to exceed 25 years measured from the date of the first commercial export of domestically sourced LNG.
- Clarify or amend Order Nos. 3282 and 3357 to confirm that the commencement of the seven-year period by the end of which exports are required to commence will be the date that the authorizations in FERC Docket No. CP12-509 and the relevant DOE/FE dockets (DOE/FE Docket Nos. 10-161-LNG and 11-161-LNG) have become final and non-appealable.
- Confirm that the addition of FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC granted in Order No. 3357 for DOE/FE Docket No. 11-161-LNG is granted and approved for each of the FLEX long-term export dockets, including DOE/FE Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG, and 12-06-LNG.

FLEX’s Request was unopposed. On January 15, 2014, DOE/FE issued a tolling order in FE Docket No. 11-161-LNG entitled, “Order Granting Motion for Purposes of Further Consideration.” In the tolling order, DOE/FE granted FLEX’s Request solely for purposes of further consideration, stating that the merits of the Request would be determined in a subsequent order.

DOE/FE acted on the merits of FLEX’s Request in part on February 7, 2014, issuing Order Nos. 2319-A, 3066-A, and 3282-A.¹⁴ In that collective order, DOE/FE permitted the addition of FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as additional applicants and authorization holders in DOE/FE Docket Nos. 10-160-LNG, 10-161-LNG, and 12-06-LNG.

¹³ For purposes of this order, we define “Make-Up Volume(s)” to mean the difference between the authorized LNG export volume and the actual LNG export volume during the 20-year export term authorized by DOE/FE.

¹⁴ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order Nos. 2913-A, 3066-A, & 3282-A, Order Amending Applications in Docket Nos. 10-160-LNG, 10-161-LNG, and 12-06-LNG and Granting Request in Docket No. 11-161-LNG to Add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as Applicants and Authorization Holders (Feb. 7, 2014).

DOE/FE did not, however, address FLEX's other grounds for its Request, which remained subject to DOE/FE's tolling order and are addressed below.

II. FINDINGS

Upon consideration, DOE/FE finds good cause for clarifying the terms of the conditional authorizations issued in DOE/FE Order Nos. 3282 and 3357 in the following respects:

(1) The 20-year authorization periods established in Orders 3282 and 3357 will begin on the date when FLEX commences commercial export of domestically sourced LNG from the first liquefaction train at the Freeport LNG Terminal, but not before.

(2) FLEX will be permitted to apply for short-term export authorizations to export Commissioning Volumes prior to the commencement of the first commercial exports of domestically sourced LNG from the Freeport LNG Terminal. The Commissioning Volumes will not be counted against the maximum level of volumes previously authorized in any of FLEX's LNG export orders (DOE/FE Order Nos. 3282, 3357, 2913, and 3066).

(3) FLEX will be permitted to continue exporting for a total of three years following the end of the 20-year terms established in DOE/FE Order Nos. 3282 and 3357, solely to export any Make-Up Volume that it was unable to export during the original export period (Make-Up Period).¹⁵

(4) Total exports under FLEX's orders for non-FTA countries (DOE/FE Order Nos. 3282 and 3357) may not exceed the aggregate annual volume authorized in those orders multiplied by 20 years. For Order No. 3282 (511 Bcf/yr), this volume is 10,220 Bcf. For Order No. 3357 (146 Bcf/yr), this volume is 2,920 Bcf. In total, the aggregate volume authorized for export under both orders for their respective 20-year term is 13,140 Bcf.

¹⁵ For purposes of this order, we define "Make-Up Period" to mean the three-year period following the 20-year export term authorized by DOE/FE, during which the Make-up Volume may be exported.

(5) The three-year Make-Up Period does not affect or modify the total volume of LNG authorized for export in any of FLEX's LNG export orders (DOE/FE Order Nos. 3282, 3357, 2913, and 3066). Insofar as FLEX may seek to export additional volumes not previously authorized for export, it will be required to obtain appropriate authorization from DOE/FE.

(6) For the following reasons, we decline to clarify that the commencement of the seven-year period established in DOE/FE Orders 3282 and 3357—by the end of which exports are required to commence—will be the date that the authorizations in FERC Docket No. CP12-509 and the relevant DOE/FE dockets (Docket Nos. 10-161-LNG and 11-161-LNG) have become final and non-appealable.

First, based on the information contained in FLEX's Request, it appears that as a practical matter, FLEX must undertake a commissioning process before commercial export operations commence. Our intent in establishing a 20-year term was to limit the duration of commercial operations only. Accordingly, the commissioning process will not be counted against the 20-year terms in Order Nos. 3282 and 3357.

Second, we believe it is reasonable to grant a three-year Make-Up Period to allow FLEX to export any Make-Up Volumes, due to FLEX's need to bring liquefaction trains on-line sequentially or for any other reason.

On the other hand, we decline to clarify that the commencement of the seven-year period by the end of which exports are required to commence will be the date that the authorizations in FERC Docket No. CP12-509 and the relevant DOE/FE dockets (Docket Nos. 10-161-LNG and 11-161-LNG) have become final and non-appealable. Our intent in Order Nos. 3282 and 3357 was that the seven-year period for commencement of export operations, specifically commercial export operations, be seven years from the date that the conditional authorizations were issued.

We see no reason to grant the clarification requested. If the seven-year period did not commence until issuance of final and non-appealable orders, the seven-year period might not commence for several years later than necessary. This would defeat the purpose of the seven-year period, which is to incentivize the commencement of export operations in a timely manner and to ensure that authorization holders do not sit on their authorizations without using them. Additionally, obtaining a final, non-appealable authorization is not a condition precedent to the construction of the Freeport LNG Terminal. Likewise, the docketing of an application for rehearing or a petition for review does not operate as a stay of the authorizations permitting construction and the commencement of export operations. In sum, FLEX's authority to commence construction is unlikely to be hindered by the fact that the orders authorizing construction of the Terminal and commencement of export operations are not final and non-appealable.

ORDER

Pursuant to section 3 of the Natural Gas Act, 15 U.S.C. § 717b, it is ordered that:

A. The conditional authorizations issued in DOE/FE Order Nos. 3282 and 3357 are clarified to reflect that the 20-year term established in those orders will commence when FLEX commences commercial export of domestically sourced LNG from the Freeport LNG Terminal, but not before.

B. FLEX may export Commissioning Volumes prior to the commencement of the terms of its authorizations in DOE/FE Order Nos. 3282 and 3357, pursuant to a separate short term export authorization. The Commissioning Volumes will not be counted against the maximum level of volumes previously authorized in each order for export.

C. FLEX may continue exporting for a total of three years following the end of the 20-year export term established in DOE/FE Order Nos. 3282 and 3357, solely to export any Make-Up Volume that it was unable to export during the original export period.

D. The three-year Make-Up Period allowing the export of Make-Up Volumes does not affect or modify the total volume of LNG authorized for export in any of FLEX's LNG export orders. Insofar as FLEX may seek to export additional volumes not previously authorized for export, it will be required to obtain appropriate authorization from DOE/FE.

E. DOE/FE declines FLEX's request to clarify that the commencement of the seven-year period established in DOE/FE Order Nos. 3282 and 3357—by the end of which exports are required to commence—will be the date that the authorizations in FERC Docket No. CP12-509 and the relevant DOE/FE dockets (Docket Nos. 10-161-LNG and 11-161-LNG) have become final and non-appealable.

Issued in Washington, D.C., on June 6, 2014.



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