

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

EMERA CNG, LLC

FE DOCKET NO. 13-157-CNG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT COMPRESSED NATURAL GAS BY VESSEL
FROM A PROPOSED CNG COMPRESSION AND LOADING FACILITY
AT THE PORT OF PALM BEACH, FLORIDA,
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3447

JUNE 13, 2014

I. DESCRIPTION OF REQUEST

On November 20, 2013, Emera CNG, LLC (Emera) 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 compressed natural gas (CNG) produced from domestic sources in a volume equivalent to approximately 9.125 billion cubic feet per year (Bcf/yr) of natural gas, or 0.025 Bcf per day (Bcf/d). Emera seeks authorization to export the CNG by vessel² from a proposed CNG compression and loading facility (Facility)³ to be located at the Port of Palm Beach, in Riviera Beach, Florida. Emera seeks to export the CNG solely on its own behalf for a 20-year term, commencing on the earlier of the date of first export or five years from the date the authorization is issued (*i.e.*, June 13, 2019).

Emera seeks to export this CNG from the proposed Facility to: i) 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, and with which trade is not prohibited by U.S. law or policy (FTA countries),³ and ii) any other country with which the United States does not have a FTA requiring national treatment in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).

The portion of Emera's Application that seeks authorization to export CNG to FTA countries will be reviewed pursuant to NGA section 3(c), 15 U.S.C. § 717b(c), and approved in

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 As discussed below, Emera informed DOE/FE by letter dated May 2, 2014, that it seeks authority to export CNG by waterborne vessel only, not also by truck, as the Application stated. *See* Ltr. from Dan Muldoon, President of Emera, to John Anderson, U.S. Dep't of Energy, FE Docket No. 13-157-CNG (May 2, 2014) [hereafter Emera Ltr.].

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.

this Order. The portion of the Application that seeks authorization to export CNG to non-FTA countries will reviewed separately pursuant to NGA section 3(a), 15 U.S.C. § 717b(a), and addressed in a separate order.

II. **BACKGROUND**

Description of Applicant. Emera is a Delaware limited liability company with its principal place of business in West Palm Beach, Florida. Emera is a wholly-owned indirect subsidiary of Emera Incorporated (Emera Inc.), a corporation formed under the laws of the province of Nova Scotia, Canada, with its principal place of business in Nova Scotia, Canada. According to Emera, Emera Inc. is a publicly traded energy and services company that, in relevant part, owns and operates or has an interest in electric utilities in four Caribbean countries: the Bahamas, Barbados, Dominica, and St. Lucia.

CNG Export Project. Emera proposes to develop, own, and operate a CNG compression and loading facility to be located at the Port of Palm Beach, Florida. Emera states that the Facility will be located off of the Rivera Lateral, an intrastate pipeline owned and operated by Peninsula Pipeline Company, Inc. (a subsidiary of Chesapeake Utilities Corporation). Emera states that its affiliate, Emera Utility Services Incorporated (EUS), has entered into a reservation agreement with the Port of Palm Beach District, giving EUS exclusive negotiating rights to lease the site on which Emera intends to construct the Facility.⁴ Emera expects construction of the Facility to be completed in 2015.

According to Emera, the proposed Facility will consist of dehydration, compression, and filling equipment with nominal loading capacity of 0.025 Bcf/d of CNG, as well as staging and loading facilities for CNG trailers, associated utilities, infrastructure, and support systems. Emera states that pressure vessels with an open ISO container frame will be filled with CNG

⁴ A copy of the reservation agreement and related documents is appended to the Application at Appendix C.

under high pressure and loaded onto a roll on/roll off ocean-going carrier. In the Application, Emera states that it is seeking authorization to export the CNG “via truck and ocean-going carrier” (App. at 1, 2), but Emera subsequently clarified that “all exports will be by waterborne vessel,” and that it “will not export CNG from the Facility by truck alone.”⁵

According to Emera, the Facility initially will be capable of loading 0.008 Bcf/d of CNG (2.92 Bcf/yr). Once completed, the Facility will be capable of expanding to load and deliver CNG in a volume equivalent to approximately 0.025 Bcf/d of natural gas (9.125 Bcf/yr), the requested export volume.

Source of Natural Gas. Emera states that the natural gas supplying the proposed exports will come from domestic natural gas markets. As noted above, the Facility will be directly connected to the Riviera Lateral—the intrastate natural gas pipeline owned and operated by Peninsula Pipeline Company, Inc. which, in turn, is regulated by the Florida Pipeline Service Commission. Emera states that Peninsula Pipeline Company, Inc. is connected to Florida Gas Transmission Corporation, an interstate pipeline regulated by the Federal Energy Regulatory Commission (FERC). Emera asserts that, through the combination of Peninsula Pipeline Company, Inc. and Florida Gas Transmission Corporation, it will have access to gas supplies available throughout the Gulf Coast region and beyond.

According to Emera, it intends for the Facility to be the only source of CNG for export. In the Application, Emera states that, during times of maintenance at the Facility or at the Port of Palm Beach, CNG may be sourced from other facilities in Florida and transported to the Port or other general use port facilities (including Port Everglades, Port of Miami, Port Canaveral, or Port of Jacksonville) for export. Subsequently, however, Emera clarified that “the Facility will

⁵ Emera Ltr. at 1.

be the only source and supply of CNG to be exported” pursuant to this authorization.⁶ Emera further clarified that any purchases of CNG from other facilities during maintenance periods for the Facility will be short-term (*i.e.*, pursuant to contracts of less than two years in duration), and therefore Emera intends to apply separately for blanket authorization to export CNG from those facilities, as appropriate.⁷

Business Model. Emera requests long-term authorization to engage in the proposed exports solely on its own behalf, and asserts that it will have title to the CNG at the point of export. As relevant here, Emera states that it seeks authorization to export CNG to any permitted FTA destination, although the primary purpose of the project is to fuel power generation facilities owned by an Emera affiliate, Grand Bahama Power Company (GBPC), located on the island of Grand Bahama, a non-FTA country.

Emera commits to observing all DOE/FE reporting requirements for exports. Citing DOE/FE precedent,⁸ Emera commits to filing a copy of any relevant long-term commercial agreements (including the anticipated contract with GBPC) within 30 days of the agreement(s) being executed, including both a non-redacted copy for filing under seal and either a redacted version of the contract or major provisions of the contract for public posting.

Environmental Review. Emera asserts that the proposed Facility is not subject to FERC’s jurisdictional authority under NGA section 3, and therefore Emera is not required to seek FERC approval of the Facility’s construction under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* Additionally, Emera asserts that the export of CNG via vessel is outside of FERC’s regulatory jurisdiction. For these reasons, Emera states that it does not

⁶ *Id.*

⁷ *Id.*

⁸ *See, e.g., Dominion Cove Point, LNP, LP*, DOE/FE Order No. 3331, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal to Non-Free Trade Agreement Nations (Sept. 11, 2013).

intend to file with FERC for any authorizations in connection with activities contemplated by this Application.

Emera instead requests that DOE/FE review the potential environmental impacts of the Facility under NEPA. A description of the Facility's potential environmental impacts is set forth in Appendix D to the Application. Emera states that, based on the Facility's location, scope, and other factors, it expects the environmental impacts associated with the Facility to be minimal. Finally, Emera states that, if DOE/FE determines that a different agency should conduct the NEPA review, Emera will comply with that agency's NEPA regulations.

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 authorizing (a) the import and export of natural gas, which includes CNG, 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 falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the requested FTA authorization without modification or delay.⁹

(2) In light of DOE/FE's statutory obligation to grant the FTA portion of the Application without modification or delay, there is no need for DOE/FE to review other arguments asserted by Emera in support of the Application. The instant grant of authority should not be read to indicate DOE's views on those arguments or its request for non-FTA authorization.

⁹ 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.

(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, Emera requests authorization to export CNG on its own behalf, holding title to the CNG at the time of export. Section 590.202(b) of DOE's regulations requires applicants to supply transaction specific factual information "to the extent practicable."¹⁰ Additionally, DOE regulations at 10 C.F.R. § 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. § 1004.11.¹¹

(5) DOE/FE also will require Emera to file any long-term contracts Emera enters into providing for the long-term export of CNG on its own behalf from the Facility. 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).

(6) DOE/FE finds that section 590.202(c) of DOE/FE's regulations¹² requires that Emera file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Facility within 30 days of their execution.

(7) DOE/FE recognizes that some information in Emera's long-term commercial agreements associated with the export of CNG, and/or long-term contracts associated with the

¹⁰ 10 C.F.R. § 590.202(b).

¹¹ *Id.* § 590.202(e).

¹² *Id.* § 590.202(c).

long-term supply of natural gas to the Facility, may be commercially sensitive. DOE/FE therefore will provide Emera the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Emera may file 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.

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 CNG 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. Emera is authorized to export domestically produced CNG by vessel from a proposed CNG compression and loading facility to be located at the Port of Palm Beach, in Riviera Beach, Florida. The volume of CNG authorized in this Order is equivalent to approximately 9.125 Bcf/yr of natural gas for a 20-year term, beginning on the earlier of the date of first export or five years from the date the authorization is issued (*i.e.*, June 13, 2019). Emera is authorized to export this CNG on its own behalf, pursuant to one or more long-term contracts (a contract greater than two years).

B. This CNG 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 CNG via ocean going vessels.

FTA countries are currently identified by DOE/FE at:

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

C. Emera 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) Emera shall 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 CNG from the Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Emera 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, Emera shall also 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, Emera shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Emera shall 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 Facility. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Emera 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, Emera shall also 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, Emera shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Emera shall include the following provision in any agreement or other contract for the sale or transfer of CNG exported pursuant to this Order:

Customer or purchaser acknowledges and agrees that it will resell or transfer CNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 3447, issued June 13, 2014 in FE Docket No. 13-157-CNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such CNG to such countries. Customer or purchaser further commits to cause a report to be provided to Emera CNG, LLC that identifies the country of destination, upon delivery, into which the exported CNG was actually delivered, and to include in any resale contract for such CNG the necessary conditions to ensure that Emera CNG, LLC is made aware of all such actual destination countries.

F. Within two weeks after the first export of domestically produced CNG occurs from the Facility, Emera shall provide written notification of the date that the first export of CNG authorized in Ordering Paragraph A above occurred.

G. Emera shall file with the Office of Oil and Gas Global Security and Supply, on a semi-annual basis, written reports describing the progress of the Facility. 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 Facility, the date the Facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of CNG and any long-term supply contracts.

H. Prior to any change in control of the authorization holder, Emera 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 Emera, 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.

I. Monthly Reports: With respect to the CNG exports authorized by this Order, Emera shall file with the Office of Oil and Gas Global Security and Supply, within 30 days following the last day of each calendar month, a report indicating whether exports of CNG 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 CNG have occurred, the report must give the following details of each CNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the date of departure from the U.S. export port or terminal; (3) the country (or countries) of destination into which the exported CNG was actually delivered; (4) the name of the supplier/seller; (5) the volume in thousand cubic feet (Mcf); (6) the CNG container loading facility and location; (7) the mode(s) of transport from the CNG container loading facility to the U.S. export port or terminal; (8) the name of the U.S. export port or terminal; (9) the price at the point of export in U.S. dollars per million British thermal units (MMBtu); (10) the name of the ocean going vessel; (11) the name(s) of the purchaser(s); and (12) the duration of the supply agreement.

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

J. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, 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 June 13, 2014.

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

John A. Anderson
Director, Division of Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Oil and Natural Gas