UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

FREEPORT LNG DEVELOPMENT, L.P.	)	FE DOCKET NO. 08-70-LNG

ORDER GRANTING AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS

DOE Opinion and Order No. 2644

MAY 28, 2009

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GLOSSARY OF TERMS AND ABBREVIATIONS

Applicant	Freeport LNG Development, L.P.
Bcf	Billion cubic feet
Btu	British thermal unit
DOE	Department of Energy
EIA	Energy Information Administration, DOE
LNG	Liquefied Natural Gas
NEPA	National Environmental Policy Act
NGA	Natural Gas Act of 1938
OFE	Office of Fossil Energy, DOE
TBtu	Trillion British thermal units
Tcf	Trillion cubic feet

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 (NGA), and Part 590 of the Department of Energy's (DOE's) regulations, 10 CFR Part 590 (2008), the Office of Fossil Energy (OFE) within DOE is herein granting the application of Freeport LNG Development, L.P. (Freeport LNG), for blanket authorization to export liquefied natural gas (LNG) that previously had been imported from foreign sources on its own behalf or as agent for others. Pursuant to this Order, Freeport LNG is being authorized to export previously imported LNG on a short-term or spot market basis from its facilities on Quintana Island, Texas in an amount up to the equivalent of 24 billion cubic feet (Bcf) of natural gas to the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China, and/or Taiwan over a two-year period commencing on the date of this authorization.

II. PROCEDURAL HISTORY

Freeport LNG filed an "Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis" (Application) with OFE on August 1, 2008. The Application was submitted pursuant to section 3 of the NGA and Part 590 of DOE's regulations. Freeport LNG sought blanket authorization to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 24 Bcf of natural gas on its own behalf or as agent for others on a short-term or spot market basis from Freeport LNG's terminal on Quintana Island, Texas to the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China, and/or Taiwan over a two-year period commencing on the date of the authorization.

On September 10, 2008, FE/DOE published a Notice of Application (Notice) in the Federal Register. 73 FR 52650. The Notice stated that protests, motions and notices to intervene, and requests for additional procedures would be due no later than October 10, 2008.

United States Senator Ron Wyden submitted a letter commenting on the application on September 9, 2008. Senator Wyden asked how DOE intends to apply the statutory standards set forth in section 3 of the NGA and what actions DOE is going to take to ensure that the proceeding is decided on complete and accurate information. Senator Wyden also asked that his letter be placed in the official public record of this proceeding. In response, DOE/OFE placed the Senator's letter in the official public record of this proceeding. However, the Senator did not ask to intervene nor did he file substantive pleadings in this proceeding and, therefore, he is not a party within the meaning of DOE's regulations at 10 CFR 590.102(l).

Shell NA LNG LLC (Shell LNG), an affiliate of Shell Oil Company engaged in the DOE-authorized importation of LNG into the United States, filed a motion to intervene on September 11, 2008. No pleadings in opposition to Shell LNG's motion were filed within 15 days of the filing of the motion and, therefore, pursuant to 10 CFR 590.303(g), that motion was automatically deemed granted.

BG LNG Services, LLC (BGLS), another DOE-authorized importer of LNG, filed a motion to intervene out of time on October 27, 2008. The lateness of BGLS's motion was due to administrative error. DOE/OFE received no pleadings in opposition to the BGLS motion to intervene and, on November 25, 2008, I granted BGLS's motion to intervene out of time for the reasons stated therein.

Neither of the interveners has filed comments or protests in opposition to Freeport LNG's application and the application accordingly is unopposed.

III. BACKGROUND

Freeport LNG is a Delaware limited partnership with one general partner, Freeport LNG-GP, Inc., a Delaware corporation which is owned 50 percent by an individual, Michael S. Smith, and 50 percent by ConocoPhillips Company. Freeport LNG's limited partners are (1) Freeport LNG Investments, LLLP, a Delaware limited liability limited partnership, which owns a 45 percent limited partnership interest in Freeport LNG; (2) Cheniere FLNG, L.P., a Delaware limited partnership, which owns a 30 percent limited partnership interest in Freeport LNG; (3) Texas LNG Holdings LLC, a Delaware limited liability company and wholly-owned subsidiary of The Dow Chemical Company, which owns a 15 percent limited partnership interest in Freeport LNG; and (4) Turbo LNG LLC, a Delaware limited liability company and wholly owned subsidiary of Osaka Gas Co., Ltd., which owns a 10 percent limited partnership interest in Freeport LNG.

Freeport LNG constructed the Quintana Island terminal pursuant to authority granted to it by the Federal Energy Regulatory Commission (FERC) to site, construct and operate an LNG import, storage, and vaporization terminal and an associated 9.6-mile long send-out pipeline for the receipt of up to 1.5 Bcf of natural gas per day. *Freeport LNG Development, L.P.,* Order Granting Authorization Under Section 3 of the Natural Gas Act, 107 FERC ¶ 61,278 (2004); Order Granting Requests for Rehearing and Clarification, 108 FERC ¶ 61,253 (2004); and Order Amending Section 3 Authorization, 112 FERC ¶ 61,194 (2005). On July 1, 2008, FERC issued a letter Order granting Freeport LNG's request to commence the receipt of LNG at the Quintana Island terminal.

While the FERC issued Freeport LNG authority relating to the siting, construction and operation of the Quintana Island terminal for the purpose of receiving and storing LNG, the

authorization to import the associated LNG was issued by DOE/OFE on January 15, 2008. Specifically, DOE/OFE granted Freeport LNG blanket authorization to import up to 30 Bcf of LNG to the Quintana Island terminal from various international sources for a two-year term beginning March 1, 2008. *Freeport LNG Development L.P.*, DOE/FE Order No. 2457, issued January 15, 2008.

On November 19, 2008, Freeport LNG filed an application (the 2008 application) with FERC pursuant to Section 3(a) of the NGA to make physical modifications to the Quintana Island terminal to make it capable of reversing the direction of flow so that the previously imported LNG in storage at the terminal can also be delivered for export. FERC Docket Nos. CP03-75-003 and CP05-361-001.

On January 12, 2009, FERC issued a "Notice of Intent to Prepare an Environmental Assessment for the Proposed Freeport LNG Export Project and BOG Liquefaction and Truck Delivery Facilities Projects and Request for Comments on Environmental Issues" (NOI). The NOI was sent for comment to federal, state, and local agencies; public interest groups; interested individuals and affected landowners; Native American tribes; and newspapers and libraries. The FERC received six letter comments in response to the NOI.

Pursuant to section 1501.6 of the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1501.6, DOE participated as a cooperating agency with FERC in the preparation of the Environmental Assessment (EA). On March 13, 2009, FERC issued a "Notice of Availability of the Environmental Assessment for the Proposed Freeport LNG Export Project and BOG Truck Project." Like the NOI, the Notice of Availability was sent for comment to federal, state, and local agencies, public interest groups; interested individuals and affected

landowners; Native American tribes; and newspapers and libraries. Three letters were submitted in the FERC proceeding in response to the Notice.

The EA found that approval of Freeport LNG's proposal would not constitute a major federal action significantly affecting the quality of the human environment and recommended that FERC include a number of mitigation measures as conditions to any certificate authorizing the Freeport LNG proposal.

As a cooperating agency in the environmental phase of FERC's review of the 2008 application, DOE/OFE has reviewed and supports the EA's conclusions and recommendations. Accordingly, on May 27, 2009, DOE issued a Finding of No Significant Impact in the present docket. As discussed therein, the EA examined potential impacts in the following areas and found that with appropriate mitigating measures, none would constitute a major federal action significantly affecting the quality of the human environment: geology and soils; water resources; wetlands; vegetation and wildlife; endangered, threatened, and other species of concern; land use, recreation, and visual resources; coastal zone management area; cultural resources; air quality, including global climate change; noise; and reliability and safety. Copies of the EA and FONSI will be available on the DOE website at www.gc.energy.gov/NEPA, under DOE NEPA Documents.

On May 6, 2009, the FERC issued an order granting Freeport LNG's application to amend its certificate, thereby permitting it to modify its facilities to make them capable of exporting LNG. In the May 6 order, the FERC reviewed the comments received in response to the NOI and the Notice of Availability and determined that a grant of the Freeport LNG application would have no significant impact on the human environment and, therefore, development of an environmental impact statement was unnecessary. The FERC's May 6 order

thus in effect authorized Freeport LNG to make the modifications to the Quintana Island terminal necessary to support the export of LNG proposed by Freeport LNG in the current proceeding before DOE/OFE.

In support of the current application before DOE/OFE, Freeport LNG asserts that the proposed export authorization is in the public interest. Freeport LNG further states that there is no domestic reliance on the LNG that it seeks to export. It indicates that the LNG which it seeks to export is restricted to foreign sourced LNG. Freeport LNG adds that, due to global LNG market conditions, U.S. natural gas demand and prices do not currently support the importation of LNG into the U.S., and the export authorization sought herein would provide U.S. gas consumers two principal benefits: (1) it would foster the continuing operation of U.S. energy infrastructure by enabling the applicant to economically import LNG for the maintenance and continual operation of the Freeport LNG facilities during periods when market conditions may not otherwise favor deliveries of LNG into the U.S.; and (2) to the extent imported LNG may be needed to meet U.S. gas demand, the authorization would help to ensure that such supply is available and ready for delivery to U.S. markets. Freeport LNG, therefore, asserts in its application that a grant of the proposed authorization would not reduce U.S. natural gas supplies but, in fact, would actually increase domestic supplies because it would encourage Freeport LNG to obtain and store spot-market LNG cargoes, making it available to supply domestic markets when conditions support it, thereby also serving to moderate U.S. natural gas prices.

IV. DECISION

A. Standard of Review

Section 3 of the NGA sets forth the statutory criteria for review of the instant export application. 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, and applicable amendments and delegations,[1] Section 3 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 DOE/OFE Order No. 1473, OFE found that Section 3 creates a rebuttable presumption that a proposed export of natural gas is in the public interest and that DOE must grant such an application unless those who oppose the application overcome that presumption.[2] Also in Order No. 1473, OFE stated that the burden on the opponents of the requested authority was "heavy" due to the long-standing nature of the authority and the fact that, prior thereto, no party had contested the export. Order No. 1473 at 13.

In implementing section 3 of the NGA, the Department issued a set of policy and regulatory guidelines (Guidelines) at 49 FR 6684 (February 22, 1984). The goals of the

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[1] See, DOE Delegation Order No. 00-002.00H (Dec. 30, 2008) and DOE Redelegation Order No. 00-002.04D (Nov. 6, 2007).

[2] As we observed in Order No. 1473, 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).

Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Guidelines provide that

> [t]he market, not government, should determine the price and other contract terms of imported [or exported] natural gas. The federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.

Id.

While nominally applicable only to natural gas import cases, OFE held in Order No. 1473 and in subsequent cases that the same policies will be applied to natural gas export applications.[3]

In reviewing a proposed LNG export under the Guidelines in Order No. 1473, OFE indicated that it also was guided by DOE Delegation Order No. 0204-111. That delegation order, which authorized the Administrator of the Economic Regulatory Administration (ERA) to exercise the agency's review authority under NGA section 3, also directed the Administrator to regulate exports "based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate."

While DOE Delegation Order No. 0204-111 is no longer in effect, the principal focus of this agency's review of export applications in decisions under current delegated authority has continued to be the domestic need for the natural gas proposed to be exported. This is consistent with the public interest review required under section 3 of the NGA and with the market-oriented policy established in the Guidelines. Therefore, DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties

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[3] Order No. 1473 at 14, *citing Yukon Pacific*, Opinion and Order No. 350, 1 FE 70,259 at 71,128.

to freely negotiate their own trade arrangements, as the critical legal considerations to be weighed in reviewing the instant application for export authority.

In addition to the review and approvals required under the NGA, 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

In evaluating domestic need in the context of an application to export natural gas, including LNG, OFE typically examines the various domestic impacts arising from a loss of domestically produced natural gas to foreign markets. See, for example, *ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company,* OFE/DOE Order No. 2500, Order Granting Authorization To Export Liquefied Natural Gas From Alaska (June 3, 2008).

The current proceeding is atypical because the gas for which export authority is sought was not produced in the United States. Accordingly, exporting the gas will not reduce the availability of domestically produced gas. On the other hand, exporting previously imported LNG will still affect the domestic market because, for a two-year period, the exports will reduce the volume of natural gas potentially available for domestic consumption.

The fundamental question, therefore, remains whether the LNG which Freeport LNG seeks to export is needed to meet domestic demand. Based on a review of the complete record, DOE/OFE finds that the LNG to be exported is not needed in order to meet market demand for natural gas/LNG on a competitively priced basis. This determination is consistent with Freeport LNG's uncontested representations that United States consumers presently have access to substantial quantities of natural gas sufficient to meet demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG seeks to export.

Additionally, a significant body of independently produced publicly available data gathered and published by the Energy Information Administration (EIA) within DOE buttresses Freeport LNG's assertion. DOE/OFE hereby takes administrative notice of the following relevant information:

According to the EIA, the United States produced 19.1 Tcf of dry natural gas and imported 4.6 Tcf of natural gas and 771 Bcf of LNG during 2007. In addition, storage reservoirs in the United States held approximately 3.6 Tcf of natural gas by the commencement of the Winter heating season in October 2007. By comparison, natural gas consumption in the United States during 2007 equaled 23 Tcf.[4] It is clear from the foregoing supply and demand figures that United States domestic consumption needs were met in 2007 and that if the export proposed in the current application had been authorized at that time, there would have been no significant impact on the market's ability to meet the demand for natural gas domestically.

Other statistics for calendar year 2008 likewise bear out the availability of natural gas supplies sufficient to meet current demand without the increment of previously imported LNG which Freeport LNG seeks authority to export. For example, notwithstanding significant interruptions of producing activities in the Gulf of Mexico due to hurricanes in the Fall of 2008, the EIA has reported that "the natural gas market did not show the supply-demand tightness that characterized the market in 2005" when other hurricanes hit the Gulf in significant numbers. The EIA observes that as a consequence, a downward trend in natural gas prices that had begun in July 2008 continued through the end of November 2008.[5]

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[4] See, www.eia.doe.gov/neic/inforsheets/natgassupply.html and www.eia.doe.gov/neic/inforsheets/natgasconsumption.html

[5] "Impact of the 2008 Hurricanes on the Natural Gas Industry," EIA (Jan. 2009), at http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/nghurricanes08/nghurricanes08.pdf .

More recent data confirm that this downward trend has continued to the present day due in large measure to the slowed United States economy. In particular, the estimated average city-gate price for natural gas in January 2009 was $7.93 per thousand cubic feet (Mcf). This compares to an estimated average annual city-gate price for calendar year 2008 of $9.15 per Mcf.[6]

Under these circumstances, I conclude that the current domestic need for natural gas, including LNG, is being met satisfactorily and, therefore, the proposed export is not inconsistent with the public interest. In drawing this conclusion, I am mindful that Freeport LNG has stated in its application that, if market conditions change, it will consider selling the LNG into the domestic market rather than export it. While not a firm commitment to participate in domestic sales of the LNG in question, Freeport LNG's willingness to entertain such sales if market conditions warrant it is in keeping with the market-oriented policy of DOE's prevailing Guidelines.

C. Other Public Interest Considerations

Consistent with DOE's Guidelines and applicable precedent, *e.g.,* Order No. 1473, the Department, in addition to weighing domestic need, as discussed above, considers the potential effects of proposed exports on other relevant aspects of the public interest. These other relevant considerations include international effects and the environment.

1. International Effects

Freeport LNG asserts that the exportation of LNG will help to improve the United States' balance of payments with the destination countries named in the application during the two-year term of the proposed blanket authorization. No intervener disputed the likelihood of this benefit

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[6] "Selected Average National Natural Gas Prices, 2004-2009," Table 3, Natural Gas Monthly (EIA, March 2009) at http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/natural_gas_monthly/current/pdf/table_03.pdf .

and I find that mitigation of balance of payment issues to the benefit of United States interests will result from a grant of the application.

2. The Environment

DOE has considered the National Environmental Policy Act (NEPA) compliance aspects of the requested LNG export authorization. As described above, DOE is a cooperating agency in the development of the EA issued by FERC in response to Freeport LNG's application to modify the Quintana Island terminal. I hereby accept and adopt the recommendations and conclusions contained in the EA and the Finding of No Significant Impact issued by DOE on May 27, 2009. Therefore, I find that the proposed export requires no further environmental review.

D. Conclusion

After due consideration based on all facts and evidence of record, DOE/OFE finds that a grant of the export application is not inconsistent with the public interest. In particular, the record shows there is sufficient domestic supply of natural gas to satisfy local demand through the authorization timeframe. Furthermore, DOE/OFE believes the blanket authorization will benefit the balance of payment interests of the United States in international trade. Therefore, DOE/OFE will grant the application in order to permit Freeport LNG to export previously imported LNG from the Quintana Island terminal to the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China, and/or Taiwan over a two-year period commencing on the date of the authorization.

ORDER

Pursuant to section 3 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

A. Freeport LNG Development, L.P. is authorized to export on its own behalf or as agent for others liquefied natural gas that previously had been imported from foreign sources in an amount up to the equivalent of 24 Bcf of natural gas on a short-term or spot market basis from Freeport LNG's facilities on Quintana Island, Texas to the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China, and/or Taiwan over a two-year period commencing on the date of this authorization.

B. This LNG may only be exported from Freeport LNG's Quintana Island, Texas terminal.

C. Monthly Reports: With respect to the export of LNG authorized by this Order, Freeport LNG 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. 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 of the U.S. export terminal; (2) the name of the LNG tanker; (3) the date of departure from the U.S. export terminal; (4) the country of destination; (5) the name of the supplier/seller; (6) the volume in thousand cubic feet (Mcf); (7) the delivered price per million British thermal units (MMBtu); (8) the duration of the supply agreement (indicate spot sales); and (9) the name(s) of the purchaser(s).

D. The first monthly report required by this Order is due not later than June 30, 2009, and should cover the reporting period from May 28, 2009 through May 31, 2009.

E. 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: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at yvonne.caudillo@hq.doe.gov or ngreports@hq.doe.gov, or may be faxed to Ms. Caudillo at (202) 586-6050.

Issued in Washington, D.C., on May 28, 2009.

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