

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

SOUTHERN LNG COMPANY, L.L.C.)
_____)

FE DOCKET NO. 20-99-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS BY VESSEL
TO FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4687

MARCH 30, 2021

I. INTRODUCTION

On August 18, 2020, Southern LNG Company, L.L.C. (Southern LNG) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA).² Southern LNG requests authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in a volume equivalent to 182.5 billion cubic feet (Bcf) of natural gas on a cumulative basis.³ Southern LNG seeks to export this LNG by vessel from the Elba Island Terminal (SLNG Terminal) located in Chatham County, Georgia, on a short-term or spot market basis for a two-year period commencing on April 1, 2021.⁴

Southern LNG seeks to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. This includes both countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (FTA countries),⁵ and any other country with which trade is not prohibited

¹ *Southern LNG Co.*, Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas, FE Docket No. 20-99-LNG (Aug. 18, 2020) [hereinafter App.]. Southern LNG subsequently submitted clarifications to the Application. See Email from Margaret G. Coffman, Counsel for Southern LNG, to DOE/FE, FE Docket 20-99-LNG (Oct. 21, 2020) (requesting to hold application in abeyance); Email from Margaret G. Coffman, Counsel for Southern LNG, to DOE/FE, FE Docket 20-99-LNG (Jan. 11, 2021) (clarifying requested authorization); Email from Margaret G. Coffman, Counsel for Southern LNG, to DOE/FE, FE Docket 20-22-LNG (Jan. 21, 2021) (clarifying volume requested).

² 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. 00-002.04G, issued on June 4, 2019.

³ See App. at 4-5; see also Email from Margaret G. Coffman, Counsel for Southern LNG, to DOE/FE, FE Docket 20-22-LNG (Jan. 21, 2021) (confirming requested cumulative volume of 182.5 Bcf), *supra* note 1.

⁴ See App. at 1; see also Email from Margaret G. Coffman, Counsel for Southern LNG, to DOE/FE, FE Docket 20-99-LNG (Jan. 11, 2021) (confirming effective date and authorization sought for exports of previously imported LNG only), *supra* note 1.

⁵ 15 U.S.C. § 717b(c). 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.

by U.S. law or policy (non-FTA countries).⁶ Southern LNG states that it does not seek authorization to export any domestically produced natural gas or LNG.⁷ Southern LNG is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export.⁸

In this Order, DOE/FE grants Southern LNG's Application and authorizes the requested export of previously imported LNG in a volume equivalent to 182.5 Bcf of natural gas on a cumulative basis over the requested two-year period. Specifically, DOE/FE grants the FTA portion of the Application under NGA section § 3(c), 15 U.S.C. § 717b(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications "shall be deemed to be consistent with the public interest" and granted "without modification or delay."⁹ The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested FTA authorization without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA authorization. As to the non-FTA portion of the Application, DOE/FE has reviewed the record in this proceeding under NGA section 3(a), 15 U.S.C. § 717b(a), and likewise grants that requested authorization as set forth below.

II. BACKGROUND

Applicant. Southern LNG is a Delaware limited liability company with its principal place of business in Birmingham, Alabama. Southern LNG is a wholly owned subsidiary of Kinder Morgan, Inc.¹⁰

⁶ *Id.* § 717b(a).

⁷ *See* App. at 4-5.

⁸ *Id.* at 2, 5.

⁹ 15 U.S.C. § 717b(c).

¹⁰ App. at 2.

Procedural History. DOE/FE has issued two long-term, multi-contract orders, and one short-term authorization, under NGA section 3 authorizing Southern LNG to export LNG by vessel from the SLNG Terminal, located in Chatham County, Georgia:

- DOE/FE Order No. 3106, authorizing the export of 182.5 Bcf/yr to FTA countries, issued June 15, 2012;¹¹
- DOE/FE Order No. 3956, authorizing the export of 130 Bcf/yr to non-FTA countries, issued December 16, 2016;¹² and
- DOE/FE Order No. 4206, authorizing the export of 255 Bcf to FTA and non-FTA countries over a two-year term, issued July 6, 2018.¹³

These FTA and non-FTA export volumes are not additive to one another.¹⁴

Additionally, on March 2, 2020, DOE/FE issued Order No. 4511,¹⁵ authorizing Southern LNG's customer, Shell NA LNG LLC (Shell NA LNG), to import LNG from various international sources by vessel, in a volume equivalent to 1,200 Bcf of natural gas on a cumulative basis over a two-year period commencing on March 2, 2020, and extending through March 1, 2022.¹⁶ Under the terms of that authorization, Shell NA LNG may import the LNG at any LNG receiving facility in the United States and its territories.

In this proceeding, Southern LNG filed its Application on August 18, 2020. On February 3, 2021, DOE/FE published a Notice of Application in the *Federal Register* for the non-FTA

¹¹ *Southern LNG Co.*, DOE/FE Order No. 3106, FE Docket No. 12-54-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Elba Island Terminal to Free Trade Agreement Nations (June 15, 2012).

¹² *Southern LNG Co.*, DOE/FE Order No. 3956, FE Docket No. 12-100-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Elba Island Terminal in Chatham County, Georgia to Non-Free Trade Agreement Nations (Dec. 16, 2016).

¹³ *Southern LNG Co.*, DOE/FE Order 4206, FE Docket No. 18-15-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas by Vessel from the Elba Island Terminal located in Chatham County, Georgia, to Free Trade Agreement and Non-Free Trade Agreement Nations (July 6, 2018), *partially vacated by* DOE/FE Order No. 4641 (Dec. 18, 2020) (partially vacating short-term export authorization granted in DOE/FE Order No. 4206, remaining in effect authority to export LNG previously imported from foreign sources).

¹⁴ App. at 4.

¹⁵ *Shell NA LNG LLC*, DOE/FE Order No. 4511, FE Docket No. 20-15-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel (Mar. 2, 2020).

¹⁶ *Id.*; App. at 4.

portion of the Application.¹⁷ Comments, protests, and motions or notices to intervene on the Application were due on March 5, 2021. DOE/FE received no filings in response to the Notice of Application, and therefore the non-FTA portion of the Application is uncontested.

III. APPLICANT'S PUBLIC INTEREST ANALYSIS FOR NON-FTA AUTHORIZATION

Southern LNG maintains that its requested authorization is consistent with NGA section 3(a) and DOE/FE's policy. Southern LNG asserts that the volume of previously imported foreign-sourced LNG that it proposes to export is not necessary to meet domestic needs. In support of this argument, Southern LNG points to DOE/FE's findings in recent blanket authorizations to export previously imported LNG—including an authorization issued to Sabine Pass Liquefaction, LLC (SPL) in 2020¹⁸—and suggests that DOE/FE's findings in these orders should apply to its request.¹⁹ Citing SPL's authorization granted in DOE/FE Order No. 4545, Southern LNG notes that DOE/FE took administrative notice of the U.S. Energy Information Administration's (EIA) *Annual Energy Outlook 2020* (AEO 2020) in finding that the volume of foreign-sourced LNG was not needed to meet domestic demand.²⁰ Southern LNG suggests that this conclusion should also apply to its Application.²¹

¹⁷ U.S. Dep't of Energy, Southern LNG Company, L.L.C.; Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis, 86 Fed. Reg. 8,005 (Feb. 3, 2021).

¹⁸ App. at 7-8 (citing *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4545, FE Docket No. 20-28-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Countries (Jun. 4, 2020)).

¹⁹ *Id.*

²⁰ *Id.* (discussing U.S. Energy Info. Admin., *Annual Energy Outlook 2020* (Jan. 29, 2020), available at: <https://www.eia.gov/outlooks/archive/aeo20>).

²¹ *Id.*

IV. DISCUSSION AND CONCLUSIONS FOR NON-FTA AUTHORIZATION

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard for DOE/FE's review of Southern LNG's requested non-FTA authorization. Section 3(a) 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, [she] 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.²²

This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest.²³ DOE/FE must grant such an application unless the presumption is overcome by an affirmative showing of inconsistency with the public interest.²⁴

In evaluating an export application under this standard, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111²⁵—which focus primarily on domestic need for the natural gas to be exported, as described in DOE's 1984 Policy Guidelines²⁶—and any other matters determined to be appropriate to a determination of the public interest. In addition, 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.

²² 15 U.S.C. § 717b(a).

²³ *See, e.g., Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (citations omitted).

²⁴ *See id.* (citations omitted).

²⁵ DOE Delegation Order No. 0204-111 (Feb. 22, 1984), at 1(¶ (b)). DOE Delegation Order No. 0204-111 was later rescinded by DOE Delegation Order No. 00-002.00 (¶ 2) (Dec. 6, 2001), and DOE Redelelegation Order No. 00-002.04 (¶ 2) (Jan. 8, 2002).

²⁶ U.S. Dep't of Energy, *New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984) (incorporating DOE Delegation Order No. 0204-111).

B. Domestic Need

Southern LNG's Application involves a request for authorization to export LNG that was previously imported into the United States from foreign sources. Exporting this proposed volume of LNG will not reduce the availability of domestically produced natural gas. On the other hand, exporting previously imported LNG could affect the domestic natural gas market because, for the requested two-year period, the proposed exports will reduce the volume of natural gas potentially available for consumption within the United States.

DOE/FE has issued numerous blanket authorizations to export previously imported LNG in other proceedings.²⁷ These orders were based, in part, on authoritative data indicating that United States consumers have access to substantial quantities of natural gas sufficient to meet domestic demand from other competitively-priced sources. For example, Southern LNG points to DOE/FE's discussion of AEO 2020 in SPL's authorization.²⁸ DOE/FE takes administrative notice of the most recent analysis prepared by EIA in the *Annual Energy Outlook 2021* (AEO 2021).²⁹ AEO 2021 projects annual lower-48 domestic dry natural gas production in 2022 of 32.45 trillion cubic feet (Tcf),³⁰ with total natural gas consumption projected to be 29.13 Tcf in the same year.³¹

Because domestic natural gas production levels are projected to reach an amount that well exceeds the amount of natural gas proposed for short-term export in Southern LNG's

²⁷ See, e.g., *BP Energy Co.*, DOE/FE Order No. 4628, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations (Dec. 2, 2020); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 4545.

²⁸ App. at 7-8.

²⁹ U.S. Energy Info. Admin., *Annual Energy Outlook 2021* (Feb. 3, 2021), available at: <https://www.eia.gov/outlooks/aeo>.

³⁰ See AEO 2021 Reference Case, Table 59: Lower 48 Natural Gas Production and Supply Prices by Supply Region, available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=72-AEO2021&cases=ref2021&sourcekey=0>.

³¹ See AEO 2021 Reference Case, Table 13: Natural Gas Supply, Disposition, and Prices, available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2021&cases=ref2021&sourcekey=0>.

Application, we find that United States consumers will continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG that Southern LNG seeks to export.

C. Other Public Interest Factors

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. Consistent with DOE's Policy Guidelines and DOE/FE precedent, DOE/FE considers the potential effects of proposed exports on other aspects of the public interest, including environmental factors (discussed below). As noted above, DOE/FE received no filings in response to the Notice of Application.

D. Environmental Review

DOE's NEPA procedures provide for a categorical exclusion if neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5), *Export of natural gas and associated transportation by marine vessel*.³² On March 30, 2021, DOE/FE issued a categorical exclusion for the non-FTA portion of Southern LNG's Application under this provision.³³

E. Conclusion

Upon review of the record, DOE/FE finds that a grant of the uncontested non-FTA portion of Southern LNG's Application is not inconsistent with the public interest. In particular, the record shows that there is a sufficient supply of natural gas to satisfy domestic demand from

³² See 10 C.F.R. Part 1021, Subpt. D, App. B, Categorical Exclusion B5.7. This categorical exclusion amended the prior B5.7 categorical exclusion, which was in place at the time Southern LNG submitted its Application. See U.S. Dep't of Energy, National Environmental Policy Act Implementing Procedures; Final Rule, 85 Fed. Reg. 78,197 (Dec. 4, 2020).

³³ U.S. Dep't of Energy, Categorical Exclusion Determination, Southern LNG Co., FE Docket No. 20-99-LNG (Mar. 30, 2021).

multiple other sources at competitive prices without drawing on Southern LNG's proposed exports during the two-year authorization period. Further, the proposed exports qualify for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE/FE therefore grants the non-FTA portion of Southern LNG's Application, as set forth below.

V. 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 requesting authority for the export of natural gas, including LNG, to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas shall be deemed consistent with the public interest and granted without modification or delay.³⁴ The FTA portion of Southern LNG's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested authorization without modification or delay.³⁵

(2) With respect to the non-FTA portion of the Application, and after due consideration based on all facts and evidence of record, DOE/FE finds that a grant of the export application is not inconsistent with the public interest under NGA section (a), 15 U.S.C. § 717b(a).

(3) Southern LNG requests authorization to export LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,³⁶ which granted Freeport LNG Expansion, L.P. *et al.* (collectively, FLEX) authority to export LNG to FTA countries. In

³⁴ 15 U.S.C. § 717b(c).

³⁵ 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 non-FTA countries.

³⁶ *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No 2913, FE Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

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*, which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export.³⁷ We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE/FE reiterated its policy on Agency Rights procedures in other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.³⁸ In that Order, DOE/FE determined that, in LNG export orders in which Agency Rights have been granted, DOE/FE shall require registration materials filed for, or by, an LNG title-holder (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.³⁹

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

ORDER

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

³⁷ *The Dow Chemical Co.*, DOE/FE Order No. 2859, FE Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas, at 7-8 (Oct. 5, 2010), discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

³⁸ *Cameron LNG, LLC*, DOE/FE Order No. 3680, FE Docket No. 15-36-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Cameron LNG Terminal in Cameron and Calcasieu Parishes, Louisiana, to Free Trade Agreement Nations (July 10, 2015).

³⁹ *See id.* at 8-9.

A. Southern LNG Company, L.L.C. (Southern LNG) is authorized to export LNG previously imported from foreign sources in a volume equivalent to 182.5 Bcf of natural gas, pursuant to transactions that have terms of not greater than two years. This authorization shall be effective for a two-year term beginning on April 1, 2021, and extending through March 31, 2023.

B. This LNG may be exported by vessel from the SLNG Terminal to any country with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy.

C. Southern LNG 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 and the Federal Energy Regulatory Commission. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. Southern LNG, or others for whom Southern LNG acts as agent, shall include the following provision in any agreement or 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. 4687, issued March 30, 2021, in FE Docket No. 20-99-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 Southern LNG Company, L.L.C. that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Southern LNG Company, L.L.C. is made aware of all such countries.

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

information and copies of contracts necessary in order to permit Southern LNG 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; and (4) an acknowledgement and agreement by the Registrant to include the provision in Ordering Paragraph D in any contract for the sale or transfer of LNG exported pursuant to this Order.

F. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

G. Southern LNG shall ensure that all persons required by this Order to register with DOE/FE have done so.

H. Monthly Reports: With respect to the export of LNG authorized by this Order, Southern LNG shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R 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(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 (or countries) into which the LNG is actually delivered; (6) the name of the supplier/seller; (7) the volume in thousand cubic feet (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)

I. The first monthly report required by this Order is due not later than May 30, 2021, and should cover the reporting period from April 1, 2021, through April 30, 2021.

J. All monthly report filings on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation, Analysis, and Engagement, according to the methods of submission listed on the Form FE-746R reporting instructions available at <https://www.energy.gov/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on March 30, 2021.

Amy R. Sweeney
Director, Office of Regulation, Analysis, and Engagement
Office of Oil and Natural Gas