

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

DOWNEAST LNG, INC. _____

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)
) FE DOCKET NO. 14-172-LNG

ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PROPOSED DOWNEAST LNG TERMINAL
IN ROBBINSTON, MAINE,
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3600

MARCH 6, 2015

I. DESCRIPTION OF REQUEST

On October 15, 2014, Downeast LNG, Inc. (DELNG) filed an application (Application)¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)² for long-term, multi-contract authorization to export liquefied natural gas (LNG) produced from domestic sources in a volume equivalent to approximately 168 billion cubic feet per year (Bcf/yr) of natural gas (0.46 Bcf/day). DELNG seeks authorization to export the LNG by vessel from the proposed Downeast LNG Import-Export Project, to be located in Robbinston, Maine (Project). DELNG seeks authorization to export this LNG for a 20-year term from the Project to any country with which the United States currently has, or in the future will have, a free trade agreement (FTA) providing for national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (FTA countries).³ DELNG seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. DELNG requests that this authorization commence on the earlier of the date of first export or eight years from the date the authorization is issued (*i.e.*, March 6, 2023).⁴

II. BACKGROUND

Applicant. DELNG states that it is a Delaware corporation with its principal places of business in Washington, D.C., and Robbinston, Maine.

¹ Downeast LNG, Inc., Application of Downeast LNG, Inc. for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Countries, FE Docket No. 14-172-LNG (Oct. 15, 2014) [hereinafter DELNG App.].

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. 00-006.02 issued on November 12, 2014.

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.

⁴ DELNG filed a separate application requesting authorization to export the same volume of LNG to any country with which the United States does not have a FTA requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries). That application is pending in FE Docket No. 14-173-LNG, and will be reviewed separately under NGA section 3(a), 15 U.S.C. § 717b(a).

Liquefaction Project. DELNG states that it plans to develop a natural gas liquefaction, storage, and export facility to be located in Robbinston, Maine, on the western shore of Passamaquoddy Bay and south of the City of Calais, Maine. DELNG anticipates exporting up to a total of 3.3 million metric tons per annum (mtpa) on an annual basis from the Project in a volume equivalent to approximately 168 Bcf/yr of natural gas (0.46 Bcf/day). DELNG states that the Project is being developed by DELNG together with Downeast Liquefaction, LLC, and Downeast Pipeline, LLC, at the same general locations proposed for the previously-reviewed DELNG import terminal and associated pipeline.⁵

According to DELNG, the LNG terminal site will occupy approximately 80 acres of land immediately to the South of Mill Cove in Robbinston, Maine.⁶ DELNG states that, on August 9, 2013, it notified the Federal Energy Regulatory Commission (FERC) that it had exercised a purchase option and purchased the entire parcel for the proposed Project site.⁷

DELNG states that the Project will include 3 mtpa of nominal liquefaction capacity.⁸ DELNG states that it expects the Project to consist of one LNG liquefaction train, and that the LNG transfer lines will transport the LNG to a 160,000 m³ full containment type tank.⁹ A 3,862-foot-long pier equipped with mooring systems and accessories will be constructed for the berthing and unloading of LNG vessels.¹⁰ In addition, DELNG proposes to construct and operate a 29.8-mile-long, 30-inch-diameter natural gas sendout pipeline extending from the

⁵ DELNG App. at 1 n.6 (citing Downeast LNG Project Final Environmental Impact Statement, FERC/EIS: 0231F, *Downeast LNG, Inc. & Downeast Pipeline, LLC*, FERC Docket Nos. CP07-52-000, CP07-53-000 & CP07-53-001 (May 15, 2014) [hereinafter DELNG FEIS]). For purposes of this Order, we take notice of facts relating to the proposed Terminal contained in the DELNG FEIS.

⁶ See DELNG FEIS at 2-17.

⁷ *Id.*

⁸ DELNG states that with debottlenecking, total potential production is 3.3 mtpa. DELNG App. at 6 n.18.

⁹ See Supplemental Notice of Intent to Prepare an Environmental Impact Statement for the Planned Downeast LNG Import-Export Project and Request For Comments on Environmental Issues, *Downeast Liquefaction, LLC*, FERC Docket No. PF14-19-000, at 2-3 (Oct. 29, 2014).

¹⁰ DELNG FEIS at 2-26. Based on vessel simulations, DELNG has proposed using LNG vessels with cargo capacities no greater than 165,000 m³.

Project to the existing Maritimes and Northeast pipeline system at the Baileyville Compressor Station.¹¹

Source of Natural Gas. DELNG proposes to source natural gas to be used as feedstock for LNG production at the Project from the interstate grid interconnection with the Maritimes and Northeast Pipeline and other pipelines and points upstream of the Project. DELNG states that the Project is located in relatively close proximity to the gas fields in Pennsylvania and West Virginia, an area that (according to DELNG) represents one of the most prolific potential sources of physical natural gas supply available for export. In addition, DELNG anticipates that the Project could access Canadian gas from either the Western Canadian Sedimentary Basin in Alberta, or future incremental gas production in the provinces of New Brunswick and Nova Scotia, Canada.

DELNG states that gas supply can be sourced in large volumes in the spot market, or more likely through a long-term arrangement. DELNG further states that, given the increases in reported reserves and technically recoverable resources in the United States (particularly the increased production associated with emerging unconventional resources), the proposed exports are not expected to have any adverse impact on the availability or pricing of natural gas. DELNG states that, to the contrary, increased demand resulting from its proposed exports will have the beneficial effect of supporting gas production and facilitating the delivery of a competitive source of gas to the New England region.

Business Model. DELNG requests authorization to engage in exports of LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. DELNG further states that it is actively engaged in commercial discussions with potential LNG buyers to sell all of the available liquefaction capacity at the Project. DELNG states that it is currently

¹¹ See *id.* at 2-1.

engaged in negotiations with gas producers for long-term gas supply, and with pipeline companies for long-term transportation capacity on the transmission systems connecting the Project to gas supply basins. DELNG states that it will comply with all DOE/FE requirements for exporters and agents, including registration requirements, and will file copies or summaries of any long-term gas supply or long-term export contracts with DOE/FE pursuant to DOE's regulations.

Environmental Review. According to DELNG, the Project will be located within areas that were evaluated in conjunction with FERC's review of the Downeast LNG Import Project proposed in 2006. DELNG notes that, on May 15, 2014, FERC published a Final Environmental Impact Statement in which it concluded that the Downeast LNG Import Project "would result in some adverse environmental impacts," but that "most of these impacts would be reduced to less-than-significant levels with the implementation of ... mitigation measures."¹²

DELNG states that, together with Downeast Liquefaction, LLC and Downeast Pipeline, LLC, it has initiated FERC's pre-filing process for the Project pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.* DELNG further states that, on October 3, 2014, FERC published a Notice of Intent to Prepare an Environmental Impact Statement for the DELNG Project that will supplement FERC's prior NEPA review.

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 requesting authority for (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/or (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without

¹² DELNG App. at 10 (quoting DELNG FEIS).

modification or delay. This Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the requested authorization without modification or delay.¹³

(2) In light of DOE's statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review other arguments asserted by DELNG in support of the Application. The instant grant of authority should not be read to indicate DOE'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, DELNG 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. 2913,¹⁴ 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*,¹⁵ 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 that the same policy

¹³ 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.

¹⁴ *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).

¹⁵ *The Dow Chemical Company*, 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.

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 *Gulf Coast LNG Export, LLC*.¹⁶ 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.¹⁷

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where DELNG proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), DELNG 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."¹⁸ 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.

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

¹⁶ *Gulf Coast LNG Export, LLC*, DOE/FE Order No. 3163, FE Docket No. 12-05-LNG, 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).

¹⁷ *See id.* at 7-8.

¹⁸ 10 C.F.R. § 590.202(b).

for 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 Liquefaction Project.

(7) DOE/FE also will require DELNG to file any long-term contracts DELNG 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 regulations¹⁹ requires that DELNG file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Liquefaction Project within 30 days of their execution that either DELNG or the Registrant enters into.

(9) DOE/FE recognizes that some information in DELNG’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 proposed DELNG Project, may be commercially sensitive. DOE/FE therefore will provide DELNG the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) DELNG 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

¹⁹ *Id.* § 590.202(c).

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 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. DELNG is authorized to export domestically produced LNG by vessel from the proposed DELNG Project, to be located in Robbinston, Maine. The volume authorized in this Order is equivalent to approximately 168 Bcf/yr of natural gas for a 20-year term, beginning on the earlier of the date of first export or eight years from the date the authorization is issued (March 6, 2023). DELNG is authorized to export this LNG on its own behalf and 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. DELNG 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) DELNG 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 DELNG Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if DELNG 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, DELNG 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, DELNG shall state why the redacted or non-disclosed information should be exempted from public disclosure.

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

E. DELNG shall include, and require others for whom DELNG 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. 3600, issued March 6, 2015, in FE Docket No. 14-172-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 Downeast LNG, Inc. 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 Downeast LNG, Inc. is made aware of all such actual destination countries.

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

J. DELNG 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 DELNG Project. 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 DELNG 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, DELNG must obtain the approval of the Assistant Secretary for Fossil Energy. For purposes of this Ordering Paragraph, a “change in control” shall include any change, directly or indirectly, of the power to direct the management or policies of DELNG, 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.²⁰

L. Monthly Reports: With respect to the LNG exports authorized by this Order, DELNG 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 LNG 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 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) of destination into which the LNG was actually delivered; (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).

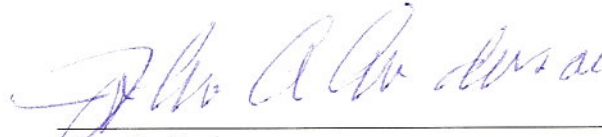
(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

M. 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

²⁰ See U.S. Dep’t of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,641 (Nov. 5, 2014).

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 March 6, 2015.



John A. Anderson
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Office of Oil and Natural Gas