

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

PORT ARTHUR LNG, LLC

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FE DOCKET NO. 15-53-LNG

ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE PROPOSED PORT ARTHUR LNG PROJECT
IN PORT ARTHUR, TEXAS, TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3698

AUGUST 20, 2015

I. DESCRIPTION OF REQUEST

On March 20, 2015, Port Arthur LNG, LLC (Port Arthur LNG) 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 domestically produced liquefied natural gas (LNG) in a volume of 10 million metric tons per annum (mtpa), which it states is equivalent to approximately 517 billion cubic feet per year (Bcf/yr) of natural gas (1.42 Bcf/day). Port Arthur LNG filed a Supplement to the Application on April 9, 2015, as discussed below and incorporated herein.³ Port Arthur LNG seeks authorization to export the LNG by vessel from the proposed Port Arthur Liquefaction Project, a natural gas processing, liquefaction, and LNG export terminal that it intends to construct, own, and operate in Port Arthur, Texas (Project). The Project will be located at a site owned in fee by an affiliate of Port Arthur LNG, known as Port Arthur LNG Holdings, LLC (Port Arthur Holdings). Port Arthur LNG states that another affiliate—Port Arthur Pipeline, LLC (Port Arthur Pipeline)—plans to construct, own, and operate natural gas pipeline facilities to support the Project.

Port Arthur LNG seeks authorization to export this LNG from the Project to any country with which the United States currently has, or in the future will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited

¹ Port Arthur LNG, LLC, Application of Port Arthur LNG, LLC for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Countries, FE Docket No. 15-53-LNG (Mar. 20, 2015) [hereinafter 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 Port Arthur LNG, LLC, Supplement to Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement Countries, FE Docket No. 15-53-LNG (Apr. 9, 2015) [hereinafter Supp.].

by U.S. law or policy (FTA countries).⁴ Port Arthur LNG seeks to export this LNG on its own behalf and as agent for other entities who will hold title to the LNG at the time of export. Port Arthur LNG requests this authorization for a term of 25 years, to commence on the earlier of the date of first commercial export or seven years from the date the authorization is issued (August 20, 2022). The Application will be reviewed pursuant to NGA section 3(c), 15 U.S.C. § 717b(c).

II. BACKGROUND

Applicant. Port Arthur LNG states that it is a Delaware limited liability company and a wholly-owned, indirect subsidiary of Sempra Energy, a California corporation. Port Arthur LNG states that its two affiliates—Port Arthur Holdings and Port Arthur Pipeline—are also Delaware limited liability companies and wholly-owned, indirect subsidiaries of Sempra Energy. All of these companies, including Sempra Energy, have their principal place of business in San Diego, California.

Liquefaction Project. Port Arthur LNG proposes to construct, own, and operate the Project on a 2,842-acre site located in Port Arthur, Texas (Site). Port Arthur LNG states that Port Arthur Holdings owns the Site,⁵ and that it intends to lease the Site from Port Arthur Holdings. According to Port Arthur LNG, the Federal Energy Regulatory Commission (FERC) previously approved the Site for use as an LNG import and re-gasification terminal, although Port Arthur LNG ultimately elected not to proceed with construction of that terminal.⁶

Port Arthur LNG states that the Project facilities are anticipated to include feed gas pre-treatment facilities, two natural gas liquefaction trains, two 160,000 cubic meter LNG storage

⁴ 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.

⁵ A copy of the deed for the Site is attached to the Supplement as Exhibit 1.

⁶ App. at 3 n.6 (citing *Port Arthur LNG, LP*, 115 FERC ¶ 61,344 (2006) and *Port Arthur LNG, LP*, 136 FERC ¶ 61,196 (2011)).

tanks, marine facilities for vessel berthing and loading, refrigerant make-up and condensate product storage, truck loading and unloading areas, and combustion turbine generators for self-generation of electrical power.⁷ Each of the liquefaction trains will be capable of producing up to five mtpa of LNG, for a total capacity of up to 10 mtpa. According to Port Arthur LNG, the Project facilities will permit natural gas to be delivered by pipeline to the Project, liquefied, stored, and loaded from the LNG storage tanks into LNG vessels berthed at the marine facilities.

Source of Natural Gas. Port Arthur LNG seeks authorization to export natural gas from the United States natural gas pipeline and transmission system. Port Arthur LNG's affiliate, Port Arthur Pipeline, intends to construct, own and operate new natural gas pipeline facilities that will connect the Project to multiple interstate and intrastate pipelines. Port Arthur LNG states that, through such pipeline interconnections, the Project will have access to the major U.S. natural gas supply basins.⁸

Business Model. Port Arthur LNG requests this authorization on its own behalf and as agent for other entities who will hold title to the LNG at the time of export. Port Arthur LNG states that it will comply with all DOE/FE requirements for exporters and agents, including registration requirements. Port Arthur LNG further states that, when acting as agent, it will register with DOE/FE each LNG title holder for which it seeks to export LNG as agent, and will comply with other registration requirements as set forth in recent DOE/FE orders.

Port Arthur LNG anticipates that it will enter into one or more long-term agreements with customers of the Project. Port Arthur LNG asserts that it has not yet entered into any such agreements, but that it will file copies or summaries of any long-term gas supply or long-term export agreements with DOE/FE pursuant to DOE's regulations.

⁷ App. at 3.

⁸ Port Arthur LNG provides a map indicating the proposed route for the pipeline, which it states was submitted by Port Arthur Pipeline to FERC as part of Port Arthur Pipeline's pre-filing review process. *See* Supp., Exh. 2.

Environmental Review. In the Application, Port Arthur LNG states that the proposed Project is subject to authorization by FERC, and that it intends to initiate the pre-filing process at FERC for the proposed Project facilities. We note that Port Arthur LNG initiated the pre-filing process on March 20, 2015, and FERC subsequently approved the pre-filing request. Port Arthur LNG further states that it will seek the necessary permits from, and consultations with, other federal, state, and local agencies as appropriate.

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 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.⁹

(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 Port Arthur LNG in support of the Application. The instant grant of authority should not be read to indicate DOE/FE's views on those arguments or on Port Arthur LNG's request for non-FTA export authorization.

(3) The countries with which the United States has a FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Colombia, Dominican

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.

Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

(4) As described above, Port Arthur LNG 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. 2913,¹⁰ which granted Freeport LNG Expansion, L.P., *et al.* (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*,¹¹ 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 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*.¹² 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 title-holder (Registrant) to include the same company identification information and long-term

¹⁰ *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).

¹¹ *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.

¹² *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).

contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.¹³

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Port Arthur LNG proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Port Arthur LNG 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."¹⁴ 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 Port Arthur LNG file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Port Arthur LNG exports LNG as agent for a Registrant once those agreements 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 purchase and sales agreement involving LNG stored or liquefied at the Project.

¹³ See *id.* at 7-8.

¹⁴ 10 C.F.R. § 590.202(b).

(7) DOE/FE also will require Port Arthur LNG to file any long-term contracts Port Arthur LNG 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 regulations¹⁵ requires that Port Arthur LNG file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Project within 30 days of their execution by either Port Arthur LNG or the Registrant.

(9) DOE/FE recognizes that some information in Port Arthur LNG’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 Project, may be commercially sensitive. DOE/FE therefore will provide Port Arthur LNG the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Port Arthur LNG 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 take or pay or equivalent provisions/conditions, destinations, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted or non-disclosed 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

¹⁵ *Id.* § 590.202(c).

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. Port Arthur LNG, LLC is authorized to export domestically produced LNG by vessel from the proposed Port Arthur LNG Project, to be located in Port Arthur, Texas. The volume authorized in this Order is equivalent to approximately 517 Bcf/yr of natural gas for a 25-year term, beginning on the earlier of the date of first export or seven years from the date the authorization is issued (August 20, 2022). Port Arthur LNG 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. Port Arthur 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. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

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

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

E. Port Arthur LNG shall include, and require others for whom Port Arthur LNG 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. 3698, issued August 20, 2015, in FE Docket No. 15-53-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 Port Arthur LNG, LLC that identifies the country of destination, upon delivery, into which the LNG or natural gas was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to ensure that Port Arthur LNG, LLC is made aware of all such countries.

F. Port Arthur LNG 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 Port Arthur LNG with all information necessary to permit Port Arthur 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; (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, length 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, Port Arthur LNG shall ensure that all persons

required by this Order to register with DOE/FE have done so. Any failure by Port Arthur LNG to ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding the authorization in whole or in part.

I. Within two weeks after the first export of domestically produced LNG occurs from the Port Arthur LNG Project, Port Arthur LNG shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

J. Port Arthur LNG 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 proposed Port Arthur LNG 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 Project, the date the Project is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any related long-term supply contracts.

K. Prior to any change in control of the authorization holder, Port Arthur LNG must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.¹⁶ 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 Port Arthur LNG, 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.¹⁷

¹⁶ 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. 65,541 (Nov. 5, 2014).

¹⁷ See *id.* at 65,542.

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Port Arthur LNG 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) into which the LNG or natural gas was actually delivered and/or received for end use; (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)

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 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 August 20, 2015.



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