

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

RIO GRANDE LNG, LLC

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FE DOCKET NO. 15-190-LNG

ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL FROM
THE PROPOSED RIO GRANDE LNG TERMINAL IN BROWNSVILLE,
TEXAS, TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3869

AUGUST 17, 2016

I. DESCRIPTION OF REQUEST

On December 23, 2015, Rio Grande LNG, LLC (Rio Grande) 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 equivalent to approximately 1,318 billion cubic feet per year (Bcf/yr) of natural gas (approximately 3.6 billion cubic feet per day (Bcf/d)). Rio Grande seeks to export the LNG by vessel from the Rio Grande Project, a proposed natural gas liquefaction facility and export terminal to be located in Cameron County, Texas. On June 7, 2016, Rio Grande amended the Application.³

In the Application, as amended, Rio Grande seeks authorization to export LNG to: (i) 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 by U.S. law or policy (FTA countries)⁴; and (ii) any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries). The proposed term of the authorization for FTA exports is 30 years, with no make-up period, to commence the earlier of the date of first commercial exports from the Rio Grande Project or 10 years from the date of

¹ Rio Grande LNG, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas, DOE/FE Docket No. 15-90-LNG (December 23, 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 Redelelegation Order No. 00-006.02 issued on November 12, 2014.

³ Rio Grande LNG, LLC, Amendment of Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas, DOE/FE Docket No. 15-90-LNG (June 7, 2016) [hereinafter Amend.].

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.

issuance of this Order.⁵ Rio Grande 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.

The portion of Rio Grande's Application that seeks authorization to export LNG to FTA countries is being reviewed pursuant to NGA section § 3(c), 15 U.S.C. § 717b(c), and approved in this Order. The portion of the Application that seeks authorization to export domestically produced LNG to non-FTA countries will be reviewed pursuant to NGA section 3(a), 15 U.S.C. § 717b(a), and addressed in a separate order.

II. BACKGROUND

Applicant. The Application states that Rio Grande is a Texas limited liability company with its principal place of business in The Woodlands, Texas and a wholly-owned subsidiary of NextDecade, LLC (NextDecade), a Delaware limited liability company also with its principal place of business in The Woodlands, Texas. According to the Application, NextDecade is a U.S. energy project development and management company. Additional details regarding the corporate ownership of NextDecade are provided in the Application.

Liquefaction Project. Rio Grande proposes to locate the Rio Grande Project along the north embankment of the Brownsville Ship Channel (BSC). The Project will be located between the BSC and the Brownsville-Port Elizabeth Highway, approximately 12 miles to the East-Northeast of Brownsville, Texas, on an approximately 1,000-acre site. Rio Grande states that it holds an exclusive option to lease this site.⁶ Rio Grande states that the Project will be capable of processing an average of 1,318 Bcf/yr or approximately 3.6 Bcf/d.

According to the Application, natural gas will be delivered to the Rio Grande Project through a 137-mile long pipeline that Rio Bravo Pipeline Company, LLC (RB), an affiliate of

⁵ Amend. at 2.

⁶ See Appendices A and B within the App. for further description on proof of site control.

Rio Grande, will develop. Rio Grande states that approval of the Rio Grande Project, and the pipeline connecting to the Project, are currently under review by the Federal Energy Regulatory Commission (FERC) in FERC Docket No. CP16-454.⁷ The Rio Grande LNG Project will be comprised of natural gas treatment, compression, and liquefaction facilities. It also will include ancillary facilities required to store and deliver LNG. Construction of the Rio Grande LNG Project will occur in stages. The facilities to be completed during the first stage of construction include two liquefaction trains, each capable of producing approximately 4.5 million tonnes per annum (MTPA), two storage tanks, each with a pumpable capacity of approximately 180,000 cubic meters of LNG, and marine and truck loading facilities. The liquefaction facilities will utilize a closed-loop, mixed-refrigerant, cooling and heat exchange system. At the conclusion of the last stage of construction, the project will have six liquefaction trains with an aggregate production capacity of around 27 MPTA and four storage tanks with aggregate storage capacity of 720,000 cubic meters of LNG. Common facilities will include a control room, gas treatment facilities, natural gas-fired back-up power generation, ground flares, and other ancillary systems. The marine facilities will include two berths with standard Chiksan marine loading arms and a turning basin with a diameter of 1,500 feet. The LNG carriers that Rio Grande expects to load at the Rio Grande LNG Project will likely be of a size that can traverse the new Panama Canal locks currently under construction. Rio Grande estimates that six LNG carriers per week will call on the Rio Grande LNG Project when it is operating at full capacity, resulting in 12 transits per week.

Source of Supply. Rio Grande intends to interconnect the Rio Grande LNG Project with eight interstate and intrastate pipeline systems via the RB pipeline, thereby allowing gas to be

⁷ Amend. at 7, n. 6. See, *Rio Grande LNG, LLC*, FERC Docket No. CP16-454 (May 7, 2016).

supplied through displacement or direct access from a wide variety of supply sources. Rio Grande anticipates that it will have the ability to source gas from almost any point on the U.S. natural gas pipeline grid. According to the Application, the Rio Grande LNG Project's proximity to the Eagle Ford and conventional South Texas natural gas production fields makes those areas good candidates for providing natural gas for export. Additionally, the Application states that the RB Pipeline's interconnects will offer access to the shale plays in the East and Southern regions of the U.S., such as the Marcellus, Haynesville, Utica and Woodford formations as well as conventional Gulf Coast and North American production.

Business Model. Rio Grande is requesting this authorization on its own behalf and as agent for other parties who will hold title to the LNG at the time of export. Rio Grande states that, at present, it does not anticipate entering into any long-term gas supply or long-term export contracts in conjunction with the proposed exports from the Rio Grande LNG Project. Instead, Rio Grande-affiliated and unaffiliated entities will enter into capacity use arrangements with Rio Grande. It is these entities that will enter into long-term gas supply and export contracts. However, Rio Grande states that it will file all long-term, binding contracts associated with the export of LNG from its facility, once executed, in accordance with established policy and precedent and will comply with all DOE/FE requirements for exporters and agents, including registration requirements. Rio Grande 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.

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.⁸

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

(4) As described above, Rio Grande 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. 2913,⁹ 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

⁸ 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.

⁹ *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).

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*,¹⁰ 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 *Cameron LNG, LLC*.¹¹ In *Cameron*, 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 contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.¹²

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Rio Grande proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Rio Grande 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."¹³ Additionally, DOE regulations at 10

¹⁰ *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.

¹¹ *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).

¹² *See id.* at 7-8.

¹³ 10 C.F.R. § 590.202(b).

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 Rio Grande file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Rio Grande 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 Rio Grande Project.

(7) DOE/FE also will require Rio Grande to file any long-term contracts Rio Grande enters into providing for the long-term export of LNG on its own behalf from the Rio Grande 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 regulations¹⁴ requires that Rio Grande file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Rio Grande Project within 30 days of their execution by either Rio Grande or the Registrant.

¹⁴ *Id.* § 590.202(c).

(9) DOE/FE recognizes that some information in Rio Grande'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 Rio Grande Terminal, may be commercially sensitive. DOE/FE therefore will provide Rio Grande the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Rio Grande 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, destination, 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 that future contracts for the sale or transfer of LNG exported pursuant to the Order shall include an acknowledgement of these requirements.

(10) DOE/FE notes that Rio Grande's amendment of the Application changed the requested duration of the authorization for LNG exports to FTA countries from (a) individual 20-year terms for each of the Rio Grande Project's 6 liquefaction trains with separate make-up periods of 3 years for each train such term to commence the earlier of (i) the date of first commercial exports from the Project, or (ii) 7 years from the date of issuance of the export authorization order, to (b) a single 30 year authorization term for the entire Project with no make-up period to commence on the earlier of (i) the date of first commercial exports from the Project, or (ii) 10 years from the date of issuance of the export authorization order. Rio Grande

stated the change would reduce the administrative burdens on both Rio Grande LNG and the DOE/FE because the volume and duration of exports from each train would have to be tracked separately, even though the output of the trains would be commingled in common tanks and exported through facilities at just two marine berths. DOE acknowledges this change will reduce the administrative burden of tracking each train separately, especially in view of the number of trains in the proposed Project.

ORDER

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

A. Rio Grande LNG, LLC is authorized to export domestically produced LNG by vessel from the Rio Grande Project, to be located in Brownsville, Texas. The volume authorized in this Order is equivalent to approximately 1,318 Bcf/yr (approximately 3.6 Bcf/d) of natural gas for a 30-year term, beginning on the earlier of the date of first export or ten years from the date the authorization is issued (August 17, 2026). Rio Grande 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. Rio Grande 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) Rio Grande shall file, or cause others to file, with the Office of Regulation and International Engagement 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 Rio Grande Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Rio Grande 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, Rio Grande 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, Rio Grande shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Rio Grande shall file, or cause others to file, with the Office of Regulation and International Engagement a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Rio Grande Project. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Rio Grande 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, Rio Grande 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, Rio Grande

shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Rio Grande shall include, and require others for whom Rio Grande 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. 3869, issued August 17, 2016, in FE Docket No. 15-90-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 Rio Grande LNG, LLC that identifies the country (or countries) 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 Rio Grande LNG, LLC is made aware of all such countries.

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

J. Rio Grande shall file with the Office of Regulation and International Engagement, on a semi-annual basis, written reports describing the progress of the Rio Grande 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 Rio Grande Project, 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, Rio Grande must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.¹⁵ 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 Rio Grande, 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

¹⁵ 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).

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.¹⁶

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Rio Grande shall file with the Office of Regulation and International Engagement, 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 is 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 the Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, U.S. Department of Energy (FE-34), P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Natural Gas Reports.

¹⁶ See *id.* at 65,542.

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 17, 2016.

A handwritten signature in black ink, appearing to read "John A. Anderson". The signature is written in a cursive style with a horizontal line underneath it.

John A. Anderson
Director, Office of Regulation and International Engagement
Office of Oil and Natural Gas