

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

DOMINION COVE POINT LNG, LP

DOCKET NO. 16-205-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE COVE POINT TERMINAL LOCATED
IN CALVERT COUNTY, MARYLAND, TO
FREE TRADE AGREEMENT AND
NON-FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4046

JUNE 2, 2017

I. DESCRIPTION OF REQUEST

On November 23, 2016, Dominion Cove Point LNG, LP (DCP) 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), 15 U.S.C. § 717b,² requesting a short-term blanket authorization to engage in exports of liquefied natural gas (LNG) in a volume up to the equivalent of 250 billion cubic feet (Bcf) of natural gas for a period of two years. DCP seeks authorization to export these “Commissioning Volumes” prior to the commencement of commercial operation of DCP’s Liquefaction Project at its Cove Point Terminal in Calvert County, Maryland.³ DCP requests authorization to export the Commissioning Volumes by vessel to countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),⁴ and to all other countries with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁵

DCP seeks to export the Commissioning Volumes over the two-year period commencing on the date of the initial export from the Cove Point Terminal, which is expected to occur during the fourth quarter of 2017 and not later than six months thereafter. DCP intends to source the

¹ Dominion Cove Point LNG, LP, Application for Blanket Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point Terminal in Calvert County, Maryland, FE Docket No. 16-205-LNG (Nov. 23, 2016) [hereinafter DCP 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 17, 2014.

³ DCP is currently constructing its Liquefaction Project at the Cove Point Terminal, which is an existing LNG import terminal. These facilities will provide natural gas liquefaction and LNG export services to customers that provide their own natural gas supply. See DCP App. at 3. In 2014, the Federal Energy Regulatory Commission (FERC) authorized DCP to construct and operate the Liquefaction Project. See *Dominion Cove Point LNG, LP*, Order Granting Section 3 and Section 7 Authorizations, 148 FERC ¶ 61,244 (Sept. 29, 2014), *reh’g denied*, 151 FERC ¶ 61,095 (2015), *petition for review denied sub nom. Earth Reports, Inc. v. FERC*, No. 15-1127 (D.C. Cir. 2016); see also DCP App. at 1, 3.

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 See DCP App. at 1, 5.

Commissioning Volumes from domestically produced natural gas and/or LNG previously imported by vessel at the Cove Point Terminal from foreign sources, and requests authorization allowing for both possibilities. Additionally, DCP 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.⁶

In this Order, DOE/FE grants DCP's Application and authorizes the requested export volume of 250 Bcf/yr on a cumulative basis over a two-year term to both FTA and non-FTA countries on a non-additive basis.⁷

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."⁸ 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 herein.

As to the non-FTA portion of the Application, DOE/FE has reviewed the record in this proceeding and grants that requested authorization, as well. On April 12, 2017, DOE/FE published a Notice of Application for the requested non-FTA export authorization in the *Federal Register*.⁹ The Notice of Application called on interested persons to submit protests, motions to intervene, notices of intervention, and comments by May 12, 2017. Sierra Club timely filed a

⁶ *See id.* at 1-2.

⁷ DCP maintains that the requested export volume, "when added to any volumes exported under DCP's long-term export authorizations, will not exceed 250 Bcf in any annual (12 consecutive month) period, so that the quantity exported in any year shall not exceed the level previously authorized by DOE/FE." DCP App. at 5.

⁸ 15 U.S.C. § 717b(c).

⁹ Dominion Cove Point LNG, LP, Application for Blanket Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations on a Short-Term Basis, 82 Fed. Reg. 17,648 (Apr. 12, 2017).

Motion to Intervene and Protest on May 12, 2017,¹⁰ and DCP filed an Answer Opposing Sierra Club's Protest and Requesting Prompt Issuance of Blanket Authorization on May 26, 2017.¹¹

As discussed below, DOE/FE finds that it has not been demonstrated that DCP's proposed exports to non-FTA countries are inconsistent with the public interest under NGA section 3(a), 15 U.S.C. § 717b(a). Additional terms and conditions are set forth below.

II. BACKGROUND

Applicant. DCP is a Delaware limited partnership with its principal place of business in Lusby, Maryland. DCP states that it is an indirect subsidiary of Dominion Resources, Inc., a Virginia corporation with its principal place of business in Richmond, Virginia.

Procedural History. As relevant here, DOE/FE has issued two long-term, multi-contract orders under NGA section 3 authorizing DCP to export LNG by vessel from the Liquefaction Project at the Cove Point Terminal.

First, on October 7, 2011, DOE/FE issued Order No. 3019, authorizing DCP, on its own behalf and as agent for other entities, to export domestically produced LNG to FTA countries in a volume up to the equivalent of 365 billion cubic feet per year (Bcf/yr) of natural gas for a period of 25 years.¹²

Second, on May 7, 2015, DOE/FE issued Order No. 3331-A, authorizing DCP, on its own behalf and as agent for other entities, to export domestically produced LNG to non-FTA

¹⁰ Sierra Club, Motion to Intervene and Protest, FE Docket No. 16-205-LNG (May 12, 2017) [hereinafter Sierra Club Mot.].

¹¹ Dominion Cove Point LNG, LP, Answer Opposing Sierra Club Protest and Requesting Prompt Issuance of Blanket Authorization, FE Docket No. 16-205-LNG (May 26, 2017) [hereinafter DCP Answer].

¹² *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3019, FE Docket No. 11-115-LNG, Order Granting Long-Term Multi-Contract Authority to Export Liquefied Natural Gas from Cove Point LNG Terminal to Free Trade Nations (Oct. 7, 2011) [hereinafter FTA Order].

countries, in a volume up to the equivalent of 281 Bcf/yr of natural gas for a period of 20 years.¹³ These FTA and non-FTA export volumes are not additive to one another.¹⁴

DCP notes that, in DOE/FE Order No. 3331-A, DOE/FE stated that DCP may export Commissioning Volumes pursuant to a separate short-term authorization.¹⁵

Source of Natural Gas. DCP anticipates using domestically produced natural gas for the Commissioning Volumes, to be procured in the “very large and liquid U.S. natural gas market.”¹⁶ DCP states that it also may use LNG imported at the Cove Point Terminal as part of its commissioning process. In that event, previously imported LNG would be first regasified, then liquefied, at the Terminal, and some of the resulting volumes (likely combined with domestically produced natural gas received by pipeline) could be exported as Commissioning Volumes. DCP therefore requests that the blanket authorization allow for the export of both domestically produced natural gas and natural gas that was previously imported as LNG from foreign sources.¹⁷

Business Model. DCP anticipates that it will act as agent for other entities that will hold title to the Commissioning Volumes of LNG. To ensure flexibility in how the Commissioning Volumes are exported, however, DCP requests authorization to export the Commissioning Volumes both on its own behalf and when acting as agent for entities that hold title to the LNG

¹³ *Dominion Cove Point LNG, LP*, DOE/FE Order No 3331-A, FE Docket No. 11-128-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal in Calvert County, Maryland to Non-Free Trade Agreement Nations (May 7, 2015) [hereinafter Non-FTA Order]. Previously, in DOE/FE Order No. 3331, DOE/FE had issued a conditional order to DCP that had addressed the record evidence and entered findings on all non-environmental issues considered under NGA section 3(a). See *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331, FE Docket No. 11-128-LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal in Calvert County, Maryland to Non-Free Trade Agreement Nations (Sept. 11, 2013).

¹⁴ See DCP App. at 2.

¹⁵ See *id.* at 4 (citing DOE/FE Order No. 3331-A at 101, 107, & Ordering Para. B).

¹⁶ *Id.*

¹⁷ See *id.* at 6.

at the time of export. DCP states that it will comply with all applicable DOE/FE requirements for both exporters and agents.

Environmental Review. DCP states that, in DOE/FE Order No. 3331-A, DOE/FE independently reviewed and adopted the Federal Energy Regulatory Commission's (FERC) environmental assessment (EA) of DCP's Liquefaction Project (issued in FERC Docket No. CP13-113-000) and issued a Finding of No Significant Impact, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*¹⁸

According to DCP, the export of the Commissioning Volumes will not require the construction of any new or additional facilities, nor any modification of DCP's facilities previously authorized by FERC.¹⁹ DCP asserts that its requested authorization thus qualifies for a categorical exclusion from the preparation of an EA or environmental impact statement under NEPA. Specifically, DCP states that its proposed exports qualify for DOE's categorical exclusion B5.7, which provides for an exclusion where approvals of authorizations to export natural gas under NGA section 3 involve minor operational changes but no new construction.²⁰ Therefore, DCP asserts, its requested authorization does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA.

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

DCP asserts that its requested authorization to export Commissioning Volumes to non-FTA countries should be granted as consistent with the public interest under NGA section 3(a).²¹ DCP points out that DOE/FE has already engaged in a "robust and thorough analysis of

¹⁸ See DCP App. at 4, 12; *Dominion Cove Point LNG, LP*, DOE/FE Order No 3331-A, at 82.

¹⁹ See DCP App. at 12.

²⁰ See *id.*; see also 40 C.F.R. § 1508.4; 10 C.F.R. § 1021.410 & Part 1021, Subpart D, Appendix B.

²¹ DCP App. at 11.

the public interest in LNG exports by DCP from the Terminal” in DOE/FE Order No. 3331-A and its related conditional order, DOE/FE Order No. 3331.²² DCP incorporates by reference and relies upon that public interest analysis, stating that DOE/FE’s prior analysis justifies the requested short-term authorization in this proceeding. Quoting DOE/FE precedent in a different proceeding for Commissioning Volumes, DCP maintains that ““no additional public interest review beyond that conducted in the earlier non-FTA export proceedings is warranted.””²³

DCP states that, in the event that additional analysis is warranted, two macroeconomic studies commissioned by DOE “continue to show that [domestically produced] LNG exports will provide net economic benefits to the United States and will have minimal impacts on domestic [natural] gas prices.”²⁴ These studies are *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets*, performed by the U.S. Energy Information Administration (EIA) and published in October 2014 (2014 LNG Export Study);²⁵ and *The Macroeconomic Impact of Increasing U.S. LNG Exports*, performed jointly by the Center for Energy Studies at Rice University’s Baker Institute and Oxford Economics under contract to DOE/FE (together, Rice-Oxford) and published in October 2015 (2015 LNG Export Study).²⁶

DCP states that, based on the 2014 and 2015 LNG Export Studies and additional analyses, DOE/FE has found that LNG exports are consistent with the public interest. DCP further argues that there is an ample supply of natural gas available to support its proposed

²² *Id.* at 9.

²³ *Id.* (quoting *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3767, FE Docket No. 15-171-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas by Vessel from the Sabine Pass LNG Terminal Located in Cameron Parish, Louisiana, at 10 (Jan. 13, 2016)).

²⁴ *Id.*

²⁵ U.S. Energy Information Admin., *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), available at: <https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf>.

²⁶ Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), available at: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.

exports without affecting the availability of natural gas to meet domestic demand, and with only a nominal effect on domestic natural gas prices.²⁷

Turning to its proposed export of LNG that was previously imported from foreign sources, DCP asserts that exporting this LNG would not reduce the availability of domestically produced natural gas. DCP states that it will import the LNG expressly for the purposes of commissioning its Liquefaction Project, and therefore this LNG otherwise would not have been imported and made available for domestic consumption. DCP therefore contends that its proposed exports of previously imported LNG “cannot have any greater impact on the domestic market than exports of domestically produced natural gas”—which, as stated above—DCP maintains is consistent with the public interest under NGA section 3(a).²⁸

V. DOE/FE PROCEEDING FOR NON-FTA AUTHORIZATION

A. Sierra Club’s Motion to Intervene and Protest

On May 12, 2017, in response to the Notice of Application published in the *Federal Register*, Sierra Club timely filed a Motion to Intervene and Protest DCP’s Application. Sierra Club first points out that it is an intervenor and has filed a protest in DCP’s non-FTA proceeding in FE Docket No. 11-115-LNG, in which DOE/FE issued Order No. 3331-A to DCP.

Additionally, Sierra Club has filed a petition for review of that authorization in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Case No. 16-1186).²⁹

Sierra Club maintains that its members continue to be concerned and affected by DCP’s Liquefaction Project—specifically, in the economic impacts and environmental consequences of natural gas exports from the Liquefaction Project. Sierra Club contends that, if DOE/FE grants

²⁷ See DCP App. at 11.

²⁸ *Id.*

²⁹ See Sierra Club Mot. at 1-2.

the requested non-FTA exports, Sierra Club's members will be exposed to increased air emissions, shipping traffic, and other economic and environmental harms.³⁰ DCP further asserts that, because DOE has already determined that Sierra Club has interests in DCP's Liquefaction Project sufficient to warrant intervention in DCP's existing non-FTA docket, intervention should similarly be granted in this docket.³¹

Next, Sierra Club protests the portion of the Application that requests authorization to export domestically produced natural gas to non-FTA countries. Sierra Club argues that the proposed exports are contrary to the public interest under NGA section 3(a), and that DOE cannot approve such exports without environmental analysis that has yet to be provided in this or any other docket.³²

Sierra Club rejects DCP's argument that "DOE has already determined ... that exports from this facility are consistent with the public interest."³³ Sierra Club counters that it has challenged the validity of DOE/FE's prior orders authorizing DCP's non-FTA exports, and this challenge remains pending before the D.C. Circuit.

According to Sierra Club, the only additional material cited or discussed by DCP in this Application is the report commissioned by DOE entitled *The Macroeconomic Impact of Increasing U.S. LNG Exports* (the 2015 LNG Export Study).³⁴ Sierra Club states that, as it has explained in its comments on this Study and prior analyses, the 2015 LNG Export Study "paints an incomplete and therefore misleading picture of the economic impact of LNG exports, and further fails to address numerous environmental impacts that are contrary to the public

³⁰ *See id.*

³¹ *See id.*

³² *See id.*

³³ *Id.*

³⁴ *See id.* at 3.

interest.”³⁵ Sierra Club maintains that DOE’s Environmental Addendum³⁶ demonstrates that increasing natural gas exports causes increases in domestic natural gas production, with potentially significant environmental impacts. Sierra Club further argues that EIA’s analyses also demonstrate that increasing natural gas exports increases the amount of coal used in the United States, causing additional harmful impacts. According to Sierra Club, DOE has never provided an adequate assessment of these and related environmental harms, nor a reasoned basis for concluding that the purported benefits of the proposed exports outweigh the adverse environmental impacts.³⁷

For these reasons, Sierra Club asks DOE/FE to deny the portion of DCP’s Application seeking to export domestically produced natural gas to non-FTA countries.

B. DCP’s Answer to Sierra Club’s Motion and Protest

DCP does not contest Sierra Club’s Motion to Intervene in this proceeding, but rather opposes Sierra Club’s Protest.³⁸ According to DCP, Sierra Club has not raised any new arguments, and DOE/FE already has rejected Sierra Club’s arguments in the existing non-FTA docket, FE Docket No. 11-115-LNG. DCP further contends that “[t]he fact that Sierra Club has appealed the DOE/FE’s decisions ... is no basis for DOE/FE to change course.”³⁹

DCP maintains that granting the requested blanket authorization is “unquestionably consistent” with the public interest, as well as consistent with DOE/FE precedent in prior orders granting Commissioning Volumes.⁴⁰ DCP points out that the requested volumes of exports are

³⁵ Sierra Club. Mot. at 3.

³⁶ See U.S. Dep’t of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 Fed. Reg. 48,132 (Aug. 15, 2014); see also <http://energy.gov/fe/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states>.

³⁷ See Sierra Club Mot. at 3.

³⁸ See DCP Answer at 1.

³⁹ *Id.*

⁴⁰ *Id.* at 1-2 (citations omitted).

less than the volume that DOE/FE found to be consistent with the public interest in DOE/FE Order Nos. 3331 and 3331-A. Additionally, DCP states that the export of Commissioning Volumes will not result in any new construction, and thus is categorically excluded from review under NEPA.

Finally, DCP asserts that the date of initial exports of LNG from the Liquefaction Project is fast approaching, and urges DOE/FE to grant the requested authorization without further delay.

VI. DISCUSSION FOR REQUESTED NON-FTA AUTHORIZATION

A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard of review for DCP's request to export Commissioning Volumes to non-FTA countries. 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, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.

15 U.S.C. § 717b(a). This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE must grant such an application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest.⁴¹

⁴¹ See, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 28 (May 20, 2011); see also *Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, FE Docket No. 96-99-LNG, Order Extending Authorization to

In evaluating an export application under this standard, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111; the principles described in DOE's 1984 Policy Guidelines;⁴² and other factors set forth in prior DOE export authorizations. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.

In sum, DOE/FE's review of export applications under NGA section 3(a) focuses on: (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE/FE's policy of promoting market competition, and (iv) any other factors bearing on the public interest described herein. In addition, NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Motion to Intervene

DCP filed an Answer in response to Sierra Club's Protest, but DCP did not oppose Sierra Club's Motion to Intervene. Therefore, Sierra Club's unopposed Motion is granted by operation of law. 10 C.F.R. § 590.303(g).

C. Public Interest Review

In DOE/FE Order No. 3331-A, DOE/FE authorized DCP to export domestically produced LNG from the Cove Point Terminal to non-FTA countries in a volume equivalent to 281 Bcf/yr of natural gas for a period of 20 years. In that order (and the related conditional order, DOE/FE Order No. 3331), DOE conducted a public interest review for those non-FTA exports, including an evaluation of the domestic need for the natural gas proposed for export.

Export Liquefied Natural Gas from Alaska, at 13 (April 2, 1999), citing *Panhandle Producers & Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987).

⁴² New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984).

Based on that review, DOE determined that DCP's long-term exports were not inconsistent with the public interest under NGA section 3(a).⁴³

In this proceeding, DCP requests a short-term blanket authorization to export LNG in a volume equivalent to 250 Bcf of natural gas over two years, which averages to 125 Bcf/yr each year. This volume is significantly less than the 281 Bcf/yr of exports for a 20-year period that DOE/FE authorized in Order No. 3331-A. Provided that the proposed Commissioning Volumes—when added to any volumes exported under DCP's long-term authorization in Order No. 3331-A—do not exceed 281 Bcf on an annual (*i.e.*, consecutive 12 month) basis, the public interest impacts of DCP's exports to non-FTA countries will not increase as a consequence of DOE/FE's approval of this Application.

Accordingly, we agree with DCP that no additional public interest review beyond that conducted in the earlier non-FTA export proceeding is warranted. Although Sierra Club notes that it has challenged the validity of DCP's non-FTA export authorization (DOE/FE Order No. 3331-A), that appeal remains pending before the D.C. Circuit and thus does not alter DOE/FE's prior findings in that proceeding. For these reasons, DOE/FE has determined that it has not been demonstrated that the proposed exports of LNG will be inconsistent with the public interest, as would be required to deny DCP's non-FTA request under NGA section 3(a).

D. Environmental Review

In issuing DOE/FE Order No. 3331-A, DOE/FE considered the potential environmental impacts of DCP's proposal to export LNG from the Liquefaction Project. DOE/FE considered both its obligations under NEPA and its obligation under NGA section 3(a) to ensure that the proposal was not inconsistent with the public interest. In conducting this review, DOE/FE

⁴³ See, e.g., *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331-A, at 8-9, 106-07.

considered a wide range of information, including but not limited to FERC's EA for DCP's Liquefaction Project, DOE's Addendum, and Sierra Club's intervenor arguments opposing those non-FTA exports.⁴⁴

In its Application in this proceeding, DCP states that approval of the Application will not require additional construction or modification to its previously approved facilities at the Cove Point Terminal. Sierra Club has not disputed that statement. Rather, Sierra Club continues to argue that DOE/FE has failed to adequately assess the environmental harm associated with DCP's proposed exports, including those potential impacts associated with increases in domestic natural gas production. As discussed in DOE/FE Order No. 3331-A, both FERC⁴⁵ and DOE found no merit to that argument.⁴⁶ Sierra Club's pending appeal of DOE/FE Order No. 3331-A provides no basis for DOE to alter that conclusion.

In addition, as explained above, the requested authorization will not result in an increase of LNG exports previously approved for export under DCP's long-term non-FTA authorization (DOE/FE Order No. 3331-A) in any 12-month period. Under these circumstances, we find that approval of the Application will not result in any incremental environmental impacts as compared to the environmental impacts previously reviewed by FERC and DOE.

The Department's regulations at 10 CFR Part 1021, Subpart D, Appendix B provide a list of categorical exclusions from preparation of either an environmental assessment or environmental impact statement under NEPA. Categorical exclusion B5.7 applies to natural gas import or export activities requiring minor operational changes to existing projects, but no new construction. On May 31, 2017, DOE/FE issued a categorical exclusion under this provision to

⁴⁴ See generally *id.* at 21-100.

⁴⁵ See *supra* note 3.

⁴⁶ See *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331-A, at 85-87.

DCP's requested non-FTA authorization.⁴⁷ This Order grants the non-FTA portion of the Application, in part, on the basis of this Categorical Exclusion.

VI. 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. The FTA portion of DCP's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested FTA authorization without modification or delay.⁴⁸

(2) 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

(3) Upon a review of the record, DOE/FE finds that a grant of the non-FTA portion of the Application has not been shown to be inconsistent with the public interest under NGA section 3(a). Additionally, the proposed exports qualify for a categorical exclusion under NEPA, such that no environmental assessment or environmental impact statement will be required. DOE/FE therefore grants the non-FTA portion of DCP's Application.

⁴⁷ U.S. Dep't of Energy, Categorical Exclusion Determination, *Dominion Cove Point LNG, LP*, FE Docket No. 16-205-LNG (May 31, 2017) [hereinafter Categorical Exclusion].

⁴⁸ 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.

(4) As described above, DCP 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. 2913,⁴⁹ 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*,⁵⁰ 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 has reiterated its policy on Agency Rights procedures in authorizations including *Cameron LNG, LLC*, DOE/FE Order No. 3680.⁵¹ 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, a 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.⁵²

⁴⁹ *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).

⁵⁰ *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.

⁵¹ *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).

⁵² *See id.* at 8-9 (citation omitted).

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where DCP proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), DCP 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 Natural Gas Act, it is ordered that:

A. Dominion Cove Point LNG, LP is authorized to export domestically produced LNG and previously imported LNG by vessel from the Cove Point Terminal, in a volume equivalent to 250 Bcf of natural gas, pursuant to transactions that have terms of no longer than two years. DCP is authorized to export this LNG on its own behalf or as agent for other entities who hold title to the natural gas at the time of export. This authorization shall be effective for a two-year term, commencing on the date of the initial export from the Cove Point Terminal.

B. The volume of LNG authorized for export in this Order, when combined with the volume of LNG approved for export to FTA and non-FTA countries in DCP's long-term export authorizations, shall not exceed the total of long-term approved exports of 365 Bcf to FTA countries⁵³ and 281 Bcf to non-FTA countries⁵⁴ during any consecutive 12-month period. Under the terms of prior authorizations, long-term LNG export authorizations to FTA and non-FTA countries are not additive to one another.

C. The LNG authorized for export in this Order may be exported by vessel from the Cove Point LNG 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.

⁵³ See *supra* note 12.

⁵⁴ See *supra* note 13.

D. DCP 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 FERC. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

E. DCP shall include, and require others for whom DCP 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 with the capacity to import ocean-going LNG carriers and identified in Ordering Paragraph C of DOE/FE Order No. 4046, issued June 2, 2017, in FE Docket No. 16-205-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 Dominion Cove Point LNG, LP 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 Dominion Cove Point LNG, LP is made aware of all such countries.

F. DCP 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 DCP with all information necessary to permit DCP 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; and (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.

G. 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 modification shall be filed with DOE/FE within 30 days of such change(s).

H. DCP shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by DCP 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 Cove Point LNG Terminal, DCP shall provide written notification of the date that the first export of LNG authorized in Ordering Paragraph A above occurred.

J. Monthly Reports: With respect to the LNG exports authorized by this Order, DCP 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; (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)

K. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation and International Engagement, 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 (202) 586-6050.

L. Sierra Club's unopposed Motion to Intervene is granted. 10 C.F.R. § 590.303(g).

Issued in Washington, D.C., on June 2, 2017.



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Office of Oil and Natural Gas