

**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

**In the Matter Of:** § **Docket No. 18-69-LNG**  
§  
**BP ENERGY COMPANY** §  
§

**ANSWER OF BP ENERGY COMPANY  
TO COMMENTS OF DOMINION ENERGY COVE POINT LNG, LP**

Pursuant to Rules 302, 303 and 304 of the Administrative Procedures with Respect to the Import and Export of Natural Gas issued by the Office of Fossil Energy of the Department of Energy (DOE/FE), 10 C.F.R. §§ 590.302, .303 and .304 (2018), BP Energy Company (BPEC) hereby submits this answer to the Motion to Intervene and Comments of Dominion Energy Cove Point LNG, LP (DECP) filed in this proceeding on September 10, 2018 (Motion).<sup>1</sup>

**I. BACKGROUND**

BPEC filed an application on June 15, 2018 requesting that the DOE/FE issue an order granting blanket authorization for BPEC for itself and as agent for third parties to engage in short-term re-exports of previously imported liquefied natural gas (LNG) from foreign sources of up to approximately thirty billion cubic feet (30 Bcf). BPEC seeks the authority on a cumulative basis, for a two-year period commencing July 15, 2018 or as soon thereafter as the authorization is granted. BPEC is seeking authorization to export such previously imported LNG from the Dominion Energy Cove Point LNG, LP, liquefied natural

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<sup>1</sup> While DECP captions its pleading as a motion to intervene and comments, it inconsistently cites DOE/FE's procedural rule for filing protests and does in fact express opposition to BPEC's request for re-export authorization. Alternatively DECP requests that the DOE limit any re-export authorization granted to BPEC. For these reasons, BPEC will address DECP's motion as a protest.

gas import terminal (Cove Point) in Calvert County, Maryland to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by Federal law or policy.

On August 1, 2018, DOE/FE published notice of BPEC's June 15, 2018 application. Federal Register. 83 Fed. Reg. 39431 (Aug. 9, 2018) (Notice). As stated in the Notice, DOE will consider the domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. The notice states that parties opposing BPEC's application should comment in their responses on these issues.

## **II. MOTION OF DECP**

On September 10, 2018, DECP filed its Motion. DECP acknowledges that the export of previously-imported LNG from the Cove Point Terminal is fully consistent with the public interest, noting that U.S. consumers have access to substantial quantities of natural gas, and that granting the requested authorization would not reduce the availability of domestically produced natural gas. *Motion* at 2.

DECP does object to BPEC's application, however. Initially DECP notes that BPEC does not have any contractual right to export LNG from the Cove Point terminal. *Id.* DECP also notes that DECP already has the requisite regulatory authority to allow for exports from the Cove Point terminal. *Id.* at 3. DECP notes that if it entered into a contract with BPEC allowing BPEC to export LNG from the Cove Point Terminal that the export would already be authorized under Order No. 4046.<sup>2</sup> *Id.* at 4. DECP also expresses concern that multiple holders of LNG export authority from the Cove Point Terminal might present complications

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<sup>2</sup> *Dominion Cove Point LNG, LP*, DOE/FE Order No. 4046, FE Docket No. 16-205-LNG (June 1, 2017).

and confusion, opining that record-keeping and reporting would “seem simpler” if DECP is responsible for *all* exports from the Cove Point Terminal. *Id.*

DECP concludes by asking that if DOE/FE grants BPEC’s requested export authorization notwithstanding its expressed concerns, that DOE/FE should confirm that the BPEC authorization in no way limits or restricts DECP’s pre-existing export authorizations.

### **III. RESPONSE OF BPEC TO DECP’S MOTION**

BPEC and DECP agree that the export of previously imported LNG from the Cove Point Terminal is fully consistent with the public interest. But DECP objects to anyone other than DECP having re-export authority. Instead DECP prefers to preserve its current monopoly on export authority and force other shippers to negotiate exclusively with DECP to secure their permission to use its authority. BPEC’s experience is that unless and until another party is authorized to re-export volumes, DECP will continue to hold others captive via its export license to prevent exports and use its authorization for its own commercial advantage.

On March 28, 2018, DECP informed BPEC that the export project would be in service March 31 and that BPEC would have 450,000 Dth of inventory on that date. On or around the same date, DECP indicated that it was interested in purchasing BPEC’s LNG in tank. BPEC asked DECP about re-exporting the inventory. DECP’s representative “researched” the issue and later called BP’s representative and stated that DECP did not have a re-export license and could not accommodate BPEC’s request. BPEC representatives made a second call a day later reiterating the re-export request and asking again about DOE/FE export authority. That re-export request was also rebuffed and DECP again indicated it did not have export authority.

The actual Cove Point facility export in-service date was April 11. On that date BPEC received the LNG inventory that BPEC had sought to re-export. With DECP refusing to allow BP, or any of the exporter shippers, to re-export the LNG, BPEC had limited options and had to sell the LNG at prices equivalent to U.S. domestic gas prices instead of at LNG prices, which were \$4 to \$5/MMBtu higher at that time. If BPEC had its own export authority or if DECP would have allowed BPEC to use DECP's authority, BPEC would have been able to consummate the transaction it was contemplating. Only after BPEC filed the re-export application did DECP acknowledge that it did indeed have the re-export authority BPEC was seeking to use.

DOE/FE's notice specifically requires parties opposing the instant application to address DOE's policy of "promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements." *Notice* at 39,431. Although DECP did not directly address this policy, it is clearly opposed to promoting competition and allowing commercial parties to freely negotiate their own trade arrangements. When BPEC tried to initiate discussions with DECP about re-exporting inventory volumes, it was rebuffed. Now that DECP has apparently discovered it does have re-export authority, DECP objects to any authorization that could compete with its existing exclusive control. DECP's exclusive control allows it to potentially extract monopoly rents and provides it with an advantage in commercial arrangements. Parties cannot freely negotiate their own trade agreements as long as DECP maintains this exclusive control.

DECP asserts that a contractual agreement with DECP is the only way that BPEC can effectively re-export LNG. This simply is not true, as BPEC can also act as an agent for export shippers to re-export LNG that BPEC transfers to them via in-tank sales as it attempted to do earlier before those shippers were told erroneously by DECP that it had no re-export authority.

BPEC is also prepared to negotiate contractual rights for LNG loading services with DECP once it confirms that BPEC would be able to exercise those rights without the need to subsequently secure DECP's approval to utilize its exclusive export authorization.

In any event, DECP cites no precedent requiring that BPEC have contractual rights to export LNG in order to receive regulatory authorization to re-export LNG. ConocoPhillips, which received blanket export authorization from DOE/FE in Order No. 2731<sup>3</sup> limited to exports from a specified LNG import terminal, was not an export shipper at that LNG import terminal at that time. Conoco Phillips, like BPEC, preferred to hold its own DOE export authorization:

Conoco Phillips recognizes that it could negotiate for use of the export authority granted to FLNG to accomplish its purposes. ConocoPhillips prefers, however, not to be forced into having to negotiate for such rights, but, rather to hold its own DOE export authorization for this purpose, and it is no aware of any reason why it should not be equally entitled to do so.

Application for Blanket Authorization to export Liquefied Natural Gas on a Short-Term Basis, *Conoco Phillips Company*, Docket No. 09-92-LNG at 7. DOE/FE granted ConocoPhillips request in Order No. 2731. It was not stated that contractual rights were required, nor were the lack of contractual rights identified as an impediment.<sup>4</sup>

In summary, the blanket export authorization requested by BPEC satisfies the public interest standard of Section 3 of the NGA as construed by the DOE/FE. Pursuant to Section 3 of the NGA, DOE/FE must authorize exports to a foreign country unless there is a finding

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<sup>3</sup> *ConocoPhillips Company*, DOE/FE Order No. 2731, FE Docket No. 09-92-LNG (November 30, 2009).

<sup>4</sup> DOE/FE has also addressed the issue of Agency Rights in *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); and *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). DOE/FE's policy on Agency Rights allows the export holder to register each LNG title holder for whom the export authorization holder seeks to act as agent. Similarly, BPEC should be allowed to register each LNG title holder for whom it seeks to act as agent.

that such exports “will not be consistent with the public interest.”<sup>5</sup> DECP has not borne the burden of overcoming that presumption.<sup>6</sup>

#### IV. CONCLUSION

For the reasons set forth above, BPEC respectfully reiterates its requests that the DOE/FE issue an order granting BPEC a two-year blanket authorization commencing on the date of authorization to engage in short-term exports of up to 30 Bcf, cumulative basis, of previously-imported LNG from foreign sources, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by Federal law or policy.

BPEC further requests that DOE/FE confirm that DECP’s authorization in no way limits or restricts (through volume limitations or otherwise) BPEC’s export authorization.

Respectfully submitted,



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<sup>5</sup> 15 U.S.C. § 717b (2010).

<sup>6</sup> In *Panhandle Producers and Royalty Owners Ass’n v. ERA*, 822 F. 2d 1105, 1111 (D.C. Cir 1987), the court found that Section 3 of the NGA “requires an affirmative showing of inconsistency with the public interest to deny an application” and that a “presumption favoring ...authorization ...is completely consistent with, if not mandated by, the statutory directive.”

**CERTIFICATE OF SERVICE**

I hereby certify that in accordance with the requirements of 10 CFR § 590.107(b), I have this day served the foregoing document upon the intervenor, Dominion Energy Cove Point LNG, LP, and the Office of Fossil Energy of the Department of Energy for inclusion in the FE docket in this proceeding.

Dated at Houston, Texas, this 19<sup>th</sup> day of September, 2018.



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