



[6450-01-P]

DEPARTMENT OF ENERGY

[FE Docket No. 12-76-LNG]

The Dow Chemical Company; Application for Blanket Authorization to Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on July 13, 2012, by The Dow Chemical Company (Dow), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 390 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on October 5, 2012¹. Dow seeks authorization to export this LNG from existing facilities on Quintana Island, Texas, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Dow is requesting this authorization both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the **Public**

¹ The Dow Chemical Company, DOE/FE Order No. 2859 (October 5, 2010) extends through October 4, 2012.

Comment Procedures section no later than 4:30 p.m., eastern time, **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES:

U.S. Department of Energy (FE-34)
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
Forrestal Building, Room 3E-042
1000 Independence Avenue, SW
Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard
U.S. Department of Energy (FE-34)
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
Forrestal Building, Room 3E-042
1000 Independence Avenue, SW
Washington, DC 20585
(202) 586-9478; (202) 586-9387

Edward Myers
U.S. Department of Energy
Office of the Assistant General Counsel for
Electricity and Fossil Energy
Forrestal Building, Room 6B-256
1000 Independence Ave. SW
Washington, DC 20585
(202) 586-3397

SUPPLEMENTARY INFORMATION:

Background

Dow is a Delaware corporation with its principal place of business in Midland, Michigan. Dow is an international chemical and plastics manufacturing company with operations in a number of U.S. states. Dow owns and operates a large petrochemical manufacturing facility in Freeport, Texas, which is in close proximity to the LNG import/export terminal owned and operated by Freeport LNG Development, L.P. (FLNG) on Quintana Island, Texas. Dow contracted 0.5 Bcf per

day of terminal capacity from FLNG for a twenty-year period beginning in July 2008. Dow's petrochemical facility in Freeport has the capability to receive regasified LNG from the FLNG terminal via several pipelines that extend directly to the facility.

On April 20, 2012, FE granted Dow blanket authorization to import and export natural gas from and to Canada and Mexico and to import LNG from various international sources for a two-year term beginning on June 1, 2012.² Under the terms of the blanket authorization, the LNG may be imported to any LNG receiving facility in the United States or its territories.

Current Application

In the instant Application, Dow requests blanket authorization to export previously imported LNG on a short-term or spot market basis in an amount up to the equivalent of 390 Bcf of natural gas. Dow further requests that such authorization extend to LNG supplies imported from foreign sources to which Dow holds title, as well as to LNG supplies imported from foreign sources that Dow may export on behalf of other entities who themselves hold title. Dow requests authorization to export this LNG from the FLNG terminal to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy over a two-year period, on a short-term or spot market basis. Dow states that it does not seek authorization to export domestically-produced natural gas.

Dow states that its interest in renewing its blanket re-export authorization is driven by its desire to optimize the long-term LNG terminalling capacity for which it has contracted at the FLNG terminal and its need for flexibility to respond to periodic changes in domestic and world markets for natural gas and LNG. Dow desires the flexibility either to export the imported LNG to other world markets or to have LNG regasified for sale or use in domestic markets, including at

² *The Dow Chemical Company*, DOE/FE Order No. 3083 (April 20, 2012).

Dow's petrochemical facility in Freeport, a decision that would be based on prevailing market conditions.

Public Interest Considerations

In support of its Application, Dow states that pursuant to section 3 of the NGA, FE is required to authorize natural gas exports to a foreign country unless there is a finding that such exports "will not be consistent with the public interest."³ Dow states that section 3 thus creates a statutory presumption in favor of a properly framed export application.⁴ Dow states further that the public interest determination is guided by DOE Delegation Order No. 0204-111, which provides that the domestic need for natural gas is the principal factor to be considered when evaluating an export application.⁵

As detailed in the Application, Dow states the blanket export authorization requested by Dow satisfies the public interest standard for the following reasons. Dow states that the LNG that may be exported pursuant to the blanket authorization requested in the Application is not needed to meet domestic demand. Dow states that DOE/FE has issued a number of blanket authorizations to export previously-imported LNG, including the one issued to Dow in Order No. 2859, finding that such LNG is not needed to meet domestic demand for natural gas. In addition, Dow states that on July 19, 2011, in Order No. 2986, which renewed FLNG's authorization to export previously imported LNG from its terminal facilities on Quintana Island, Texas, DOE/FE concluded that "the evidence of record indicates that United States consumers continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG seeks to export."

³ 15 U.S.C. 717b.(a). Natural gas is defined to include LNG in 10 C.F.R. Part 590.102(i).

⁴ Phillips Alaska Natural Gas Corp. and Marathon Oil Co., DOE/FE Order No. 1473 (2 FE ¶ 70,317) at 13 (April 2, 1999), citing Panhandle Producers and Royalty Owners Association v. ERA, 822 F.2d 1105, 1111 (DC Cir. 1987)

⁵ Id at 14

Dow further states that granting the requested export authorization will facilitate the importation of LNG into the United States. Further details can be found in the Application.

Environmental Impact

Dow asserts that its requested export authorization does not raise any environmental concerns. Dow states that no new facilities or modifications to any existing facilities at FLNG's Quintana Island terminal would be required in order for Dow to export LNG from the terminal. Dow further states that the environmental impacts of permitting the exportation of LNG from FLNG's Quintana Island terminal were already reviewed by DOE/FE in Order No. 2644⁶ as well as the granting of authority to others exporting previously imported LNG from the FLNG terminal. Dow asserts that consequently, the same conclusion is applicable to this Application insofar as the blanket authorization requested by Dow is substantially identical to its current blanket authorization.

DOE/FE Evaluation

This export Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00-002.00L (April 29, 2011) and DOE Redefinition Order No. 00-002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider domestic need for the 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. Parties that may oppose this Application should comment in their responses on these issues.

⁶ Freeport LNG Development, L.P., Order No. 2644, June 8, 2009 at p. 12.

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) e-mailing the filing to fergas@hq.doe.gov, with FE Docket No. 12-76-LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in ADDRESSES; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in ADDRESSES.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional

written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by Dow is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, 3E-042, 1000 Independence Avenue, SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>.

Issued in Washington, D.C., on August 29, 2012.

John A. Anderson,
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy