

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

SEAONE GULFPORT, LLC

)
)
)

FE DOCKET NO. 16-22-CGL

ORDER DENYING MOTION FOR
OPINION AND ORDER ON APPLICATION

DOE/FE ORDER NO. 3905

OCTOBER 17, 2016

I. BACKGROUND AND DESCRIPTION OF REQUEST

On September 18, 2015, SeaOne Gulfport, LLC (SeaOne)¹ submitted an application (Application)² to the Office of Fossil Energy (FE) of the Department of Energy (DOE) under Section 3 of the Natural Gas Act (NGA)³ requesting long-term, multi-contract authorization to export up to 1.0 billion cubic feet per day (Bcf/d) of domestically produced natural gas contained in Compressed Gas Liquid (CGL) from the United States to any country located in or adjoining the Caribbean Basin and the Gulf of Mexico with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁴ As described in its Application, SeaOne intends to employ a novel technology whereby natural gas is solvated into a mixture of various hydrocarbons at a low temperature and moderate pressure, such that the entire mixture may be transported as a liquid, which SeaOne refers to as CGL.

SeaOne states that it plans to site, own, and operate the proposed Gulfport CGL Production Facility (Gulfport Facility), which is currently being developed on a 36-acre terminal

¹ SeaOne is a Delaware limited liability company with its principal place of business in Houston, Texas, and is a wholly-owned subsidiary of SeaOne Caribbean, LLC.

² Application of SeaOne Gulfport, LLC for Long-Term Authorization to Export Compressed Gas Liquid to Non-Free Trade Agreement Countries in the Caribbean Basin and Gulf of Mexico, FE Docket No. 16-22-CGL (Sept. 18, 2015) [hereinafter SeaOne App.]; *see also* Response of SeaOne Gulfport, LLC to Additional Questions Concerning Application, FE Docket No. 16-22-CGL (Feb. 10, 2016).

³ The authority to regulate the imports and exports of 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.

⁴ In December 2014, DOE/FE approved the separate application of SeaOne (then known as SeaOne Pascagoula, LLC) to export domestically produced CGL to FTA countries. Under the terms of that authorization, SeaOne is currently authorized (on its own behalf and as agent for other entities) to export domestically produced natural gas contained in or mixed with CGL by vessel from SeaOne's proposed facility for a 30-year term. The volume of natural gas contained in or mixed with CGL may not exceed 548 billion cubic feet per year (1.5 Bcf/d), and may be exported to any FTA country located in or adjoining the Caribbean Basin and Gulf of Mexico. *See SeaOne Pascagoula, LLC*, DOE/FE Order No. 3555, FE Docket No. 14-83-CGL, Order Granting Long-Term, Multi-Contract Authorization to Export by Vessel Natural Gas Contained in or Mixed With Compressed Gas Liquid From the Proposed Pascagoula Compressed Gas Liquid Export Facility to be Located at the Port of Pascagoula, Mississippi, to Free Trade Agreement Nations in the Caribbean Basin and Gulf of Mexico (Dec. 2, 2014), *as amended sub nom.* SeaOne Gulfport, LLC, DOE/FE Order No. 3555-A (Sept. 25, 2015).

site within the Port of Gulfport, Mississippi.⁵ In the Application, SeaOne asserts that the Gulfport Facility “can be fully constructed prior to and independently of any authorization [by DOE/FE] to export natural gas to NAFTA [non-FTA] Countries.”⁶ SeaOne further contends that the Application does not require DOE/FE to conduct an environmental review pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, of the potential environmental impacts associated with the proposed Gulfport Facility.⁷ SeaOne maintains that DOE/FE is not required to conduct an environmental review because “DOE/FE’s authorization for export of CGL produced at the Gulfport Facility ... would fall within the DOE/FE’s categorical exclusion B5.7 ...”⁸ Categorical exclusion B5.7 in the Department’s regulations applies to “[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”⁹

Subsequently, on August 5, 2016, SeaOne submitted a Motion for Opinion and Order on Application requesting that DOE/FE issue “expeditiously” a final opinion and order authorizing the requested exports.¹⁰ The Motion asserts that the record in this proceeding is complete and there are no material issues outstanding. According to SeaOne, the record evidence shows, among other things, that the Gulfport Facility “will be built and placed into operation pursuant to

⁵ SeaOne App. at 4-5. SeaOne states that it has executed a lease option agreement for the site jointly with the Mississippi State Port Authority at Gulfport and the Mississippi Development Authority. *See id.* The lease option agreement is attached to the Application as Appendix C.

⁶ *Id.* at 12.

⁷ *See id.*

⁸ *Id.* (quoting 10 C.F.R. Part 1021, Subpart D, App. B, Exclusion B5.7).

⁹ 10 C.F.R. Part 1021, Subpart D, App. B, Exclusion B5.7.

¹⁰ Motion of SeaOne Gulfport, LLC for Opinion and Order on Application, FE Docket No. 16-22-CGL, at 1 (Aug. 5, 2016) [hereinafter SeaOne Mot.].

existing authority, and is economically sustainable [under the FTA authorization in DOE/FE Order No. 3555-A] whether or not the authorization under consideration here is granted.”¹¹

Upon review of SeaOne’s Application and Motion, DOE/FE concludes that SeaOne has not established that DOE/FE’s approval of the proposed exports from the Gulfport Facility would be eligible for a categorical exclusion under NEPA. SeaOne’s Application is therefore not ready for final decision and the Motion is denied.¹²

II. JURISDICTION

Before responding to SeaOne’s Motion, it is necessary to explain DOE/FE’s jurisdiction to act on the Application. SeaOne’s proposed process of solvating natural gas into CGL is described in a technical appendix to the Application as a method of transporting natural gas or methane. *See e.g.*, SeaOne App., Appendix E (Letter from Dr. Hong-Cai Joe Zhou) (“Compressed Gas Liquid (CGL) is a new technology for the transport of natural gas at -42°C”). This technical appendix demonstrates an expectation that, when the CGL is delivered, the natural gas will be fractionated out of the liquid mixture. Further, we take notice that the abstract of SeaOne’s patent for the CGL system (United States Patent No. 7,607,310)¹³ states that CGL consists of:

¹¹ *Id.* at 2 (reviewing the “uncontroverted evidence in the record”).

¹² On October 7, 2016, SeaOne filed a petition asserting that DOE/FE is required to approve its requested non-FTA authorization. *See* SeaOne Gulfport, LLC, Petition for Agency Action in Conformity with Statutory Requirements, FE Docket No. 16-22-CGL (Oct. 7, 2016). Referencing its Application and Motion discussed herein, SeaOne urges DOE/FE to issue the requested non-FTA authorization in light of DOE/FE’s “nondiscretionary” duty under the Natural Gas Act to approve the Application “[a]t this point” in the proceeding. *Id.* at 4. Without ruling on SeaOne’s arguments, we find that the issuance of this Order moots SeaOne’s Petition.

¹³ *See* SeaOne, “What is CGL?” at <https://seaonecorp.com/what-is-cgl-system/> (last visited Oct. 12, 2016) (referring to “the Morris, Agnew and Hall patent for the Compressed Gas Liquid (CGL[®]) system filed in August 26, 2004”).

[S]ystems and processes that facilitate the absorption of natural gas or methane through the interaction of moderate pressure and low temperature into a liquid or liquid vapor medium for storage and transport, and back into a gas for delivery to market.¹⁴

Similarly, the abstract for SeaOne's patent for bulk transport and storage of gas in a liquid medium (United States Patent No. 7,517,391) describes:

[A]n integrated ship mounted system for loading a gas stream, separating heavier hydrocarbons, compressing the gas, cooling the gas, mixing the gas with a desiccant, blending it with a liquid carrier or solvent, and then cooling the mix to processing, storage and transportation conditions.¹⁵

The abstract further explains that, “[a]fter transporting the product to its destination, a hydrocarbon processing train and liquid displacement method is provided to unload the liquid from the pipeline and storage system, separate the liquid carrier, and transfer the gas stream to a storage or transmission system.”¹⁶

DOE's regulations implementing the NGA state that “[n]atural gas means natural gas and mixtures of natural gas and synthetic natural gas, regardless of physical form or phase, including liquefied natural gas and gels primarily composed of natural gas.”¹⁷ Because natural gas remains natural gas “regardless of physical form or phase,” it follows that the solvation of natural gas into a liquid mixture generally would not change its character as natural gas. Further, the record in this proceeding, including SeaOne's patent materials, presents no basis to conclude more specifically that SeaOne's process of solvating natural gas into CGL changes its character as

¹⁴ See <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi%2FPTO%2Fsearch-bool.html&r=3&f=G&l=50&co1=AND&d=PTXT&s1=7607310&OS=7607310&RS=7607310>.

¹⁵ See <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi%2FPTO%2Fsearch-bool.html&r=4&f=G&l=50&co1=AND&d=PTXT&s1=7517391&OS=7517391&RS=7517391>.

¹⁶ *Id.*

¹⁷ 10 C.F.R. 590.102(i) (emphasis added).

natural gas for purposes of section 3 of the Natural Gas Act. While in solution, the solvated methane molecules do not bond with the surrounding hydrocarbons or otherwise undergo chemical change. Upon arrival at the destination, the methane is readily separable from the liquid carrier or solvent back into a gas.¹⁸ Therefore, based on the evidence in this proceeding, DOE/FE will consider natural gas that has been solvated into CGL to be natural gas for purposes of section 3 of the Natural Gas Act.

To date, SeaOne has presented no evidence to DOE/FE demonstrating that the process of solvating natural gas into CGL substantially transforms the natural gas into a new product with fundamentally different characteristics or uses, or that certain formulations of its product contain such *de minimis* quantities of natural gas so as to no longer implicate the purposes of section 3 of the Natural Gas Act. SeaOne is welcome to amend its Application or otherwise supplement the record in this proceeding. Presented with additional evidence, DOE/FE may reconsider this determination.

III. ENVIRONMENTAL REVIEW

SeaOne's Motion requests an expeditious final decision on its Application. That request is premised on SeaOne's argument that DOE/FE's authorization for the proposed exports of CGL produced at the Gulfport Facility fall within categorical exclusion B5.7 of DOE's NEPA regulations. For this reason, SeaOne contends, DOE/FE is not required to undertake an environmental review under NEPA before reaching a final decision on the Application.¹⁹

Categorical exclusion B5.7 applies where an authorization involves minor operational changes but not new construction.²⁰ SeaOne does not deny that the Gulfport Facility has yet to

¹⁸ See U.S. Patent No. 7,607,310, Abstract, *supra* note 14.

¹⁹ See *supra* at 3-4; SeaOne App. at 12-14, 21-22; SeaOne Mot. at 2.

²⁰ See *supra* at 3 (citing 10 C.F.R. Part 1021, Subpart D, App. B, Exclusion B5.7).

be constructed, but argues that the B5.7 categorical exclusion nevertheless applies because SeaOne will construct the Gulfport Facility even if DOE/FE denies the Application. That is, the Facility will be constructed and operated, according to SeaOne, for purposes of exporting “natural gas liquids and ... natural gas/gas liquid blends ... to U.S. territories and Free Trade Agreement (‘FTA’) Countries [pursuant to DOE/FE Order No. 3555-A],” regardless of whether DOE/FE authorizes the requested exports to non-FTA countries in this proceeding.²¹

Even assuming that a decision on a non-FTA LNG export application would be eligible for a categorical exclusion on the grounds that authorized exports to FTA countries provide a sufficient commercial basis to finance and construct the proposed export facility (an issue we need not decide in this Order), SeaOne has provided no evidence that would allow DOE/FE to make that determination here. Indeed, SeaOne’s most recent semi-annual report to DOE/FE on September 30, 2016 (submitted in compliance with its existing FTA authorization, *see supra* note 4) indicates that SeaOne has neither entered into contracts with buyers in FTA countries, nor made a final investment decision to construct the Gulfport Facility.²² These facts do not provide a basis to conclude that the Gulfport Facility will be constructed regardless of whether the pending non-FTA Application is granted.

For these reasons, we find that an environmental review under NEPA of SeaOne’s Application is a prerequisite to a final decision on the proposed exports. If the proposed Gulfport Facility is an export facility subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), then FERC will be the lead agency for NEPA purposes and SeaOne should

²¹ SeaOne App. at 14; *see also* SeaOne Mot. at 2.

²² *See* SeaOne Gulfport, LLC, Semi-Annual Report, October 2016, FE Docket No. 14-83-CGL, at 1 (Sept. 30, 2016).

initiate pre-filing procedures there.²³ SeaOne's Application contends, however, that the Gulfport Facility is *not* an export facility within FERC's jurisdiction.²⁴ That question is for FERC to decide and DOE/FE will not address it in this proceeding. If the Gulfport Facility falls outside FERC's jurisdiction, DOE will be the lead agency for the environmental review required by NEPA. We stand ready to begin that process at SeaOne's initiative.

ORDER

For the foregoing reasons and pursuant to section 3 of the Natural Gas Act, 15 U.S.C. § 717b, it is ordered that SeaOne's Motion for Opinion and Order on Application is denied.

Issued in Washington, D.C., on October 17, 2016.



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

²³ See 15 U.S.C. § 717n.

²⁴ See SeaOne App. at 12, 16-20.