

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

COMMONWEALTH LNG, LLC

)
)
) FE DOCKET NO. 19-134-LNG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS TO
FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 4521

APRIL 17, 2020

I. DESCRIPTION OF REQUEST

On October 16, 2019, Commonwealth LNG, LLC (Commonwealth) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).² Commonwealth filed a supplement to its Application on April 14, 2020.³ Commonwealth requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume up to 9.5 million metric tons per annum (mtpa), which it states is equivalent to approximately 441.4 billion cubic feet per year (Bcf/yr) of natural gas (1.21 Bcf per day). Commonwealth seeks to export this LNG by vessel from its proposed natural gas liquefaction facility (the Commonwealth LNG Project or Project) to be located in Cameron Parish, Louisiana.⁴

Commonwealth seeks authorization to export this LNG for: (i) a 25-year term to any country with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries),⁵ and (ii) a 20-year term to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁶ Additionally, Commonwealth requests authorization to continue exporting for a total of three years following the end of each respective export term, solely to export any Make-Up Volumes that it was unable to export during the export term.⁷

¹ Commonwealth LNG, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, FE Docket No. 19-134-LNG (Oct. 16, 2019) [hereinafter Commonwealth 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 Redlegation Order No. 00-002.04G issued on June 4, 2019.

³ Ltr. from Lisa M. Tonery and Mariah T. Johnston, Attorneys for Commonwealth, to Amy Sweeney, DOE/FE, FE Docket No. 19-134-LNG (Apr. 14, 2020) [hereinafter Supp.].

⁴ See Commonwealth App. at 1.

⁵ 15 U.S.C. § 717b(c). 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.

⁶ 15 U.S.C. § 717b(a).

⁷ Commonwealth App. at 4.

Commonwealth seeks to export this LNG on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. Commonwealth requests that the authorization commence on the earlier of the date of first commercial export from the proposed Commonwealth LNG Project or seven years from the date this authorization is issued.⁸

The portion of Commonwealth's Application that seeks authorization to export domestically produced 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.⁹

II. BACKGROUND

Applicant. Commonwealth states that it is a Texas limited liability company with its principal place of business in Houston, Texas. Commonwealth is a wholly-owned subsidiary of Commonwealth Projects, LLC, which in turn is wholly-owned by a private individual, Paul Varello.¹⁰

Proposed Liquefaction Facility. According to Commonwealth, the proposed Commonwealth LNG Project will be located on a 393-acre site in Cameron Parish, Louisiana, on the west side of the Calcasieu Ship Channel near its entrance to the Gulf of Mexico.¹¹ Commonwealth states that it has entered into lease agreements for this site, which it has submitted to DOE/FE.¹²

⁸ *See id.* at 2, 4.

⁹ *See* U.S. Dep't of Energy, Commonwealth LNG, LLC; Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 84 Fed. Reg. 65,144 (Nov. 26, 2019).

¹⁰ Commonwealth App. at 2.

¹¹ *See id.* at 3.

¹² Supp. at 1.

Commonwealth states that the Project will encompass the construction of one LNG plant (including six liquefaction trains and appurtenant facilities), six LNG storage tanks, and one marine loading berth.¹³ Each train will have a liquefaction design capacity of approximately 65.1 Bcf of natural gas per year (equivalent to approximately 1.4 mtpa of LNG) for a total nominal liquefaction and production capacity of 390.3 Bcf per year (equivalent to approximately 8.4 mtpa of LNG). Commonwealth states that, under optimal operating conditions, the Project will have a peak capacity of up to 441.4 Bcf per year (equivalent to approximately 9.5 mtpa of LNG).¹⁴

Commonwealth states that natural gas will be delivered to the Project through a proposed 3.04-mile long, 30-inch diameter pipeline. According to Commonwealth, this feed gas pipeline will include interconnections with an existing interstate pipeline owned by Kinetica Partners, LLC, and two existing intrastate pipelines owned by EnLink Bridgeline Holdings LP.¹⁵

Source of Supply. Commonwealth states that the Project will have access to natural gas produced in the United States through the feed gas pipeline and its interconnections.¹⁶

Business Model. Commonwealth requests this authorization on its own behalf and as agent for other entities that will hold title to the LNG at the time of export. Commonwealth states that, to date, it has not yet entered into long-term natural gas supply or export contracts for the requested exports. Commonwealth states that it will file all long-term, binding contracts associated with the export of LNG from the Commonwealth LNG Project, once executed, in accordance with established policy and precedent, and will comply with all DOE/FE requirements for exporters and agents, including registration requirements.¹⁷

¹³ App. at 3; *see also* Supp. at 1.

¹⁴ App. at 3.

¹⁵ Supp. at 1.

¹⁶ App. at 3; *see also* Supp. at 1.

¹⁷ App. at 4-5.

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. The FTA portion of Commonwealth's Application falls within section 3(c), as amended, and therefore, DOE/FE grants the requested FTA authorization without modification or delay.¹⁸

(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 Commonwealth 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 Commonwealth'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) Commonwealth 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

¹⁸ 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.

the issue of Agency Rights in DOE/FE Order No. 2913,¹⁹ 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*,²⁰ 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 other authorizations, including *Cameron LNG, LLC*, DOE/FE Order No. 3680.²¹ 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, 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.²²

To ensure that the public interest is served, the authorization granted herein shall require that, where Commonwealth proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Commonwealth must register with DOE/FE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

¹⁹ *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).

²⁰ *The Dow Chem. Co.*, 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.

²¹ *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).

²² *See id.* at 8-9.

(5) Section 590.202(b) of DOE’s regulations requires applicants to supply transaction-specific factual information “to the extent practicable.”²³ Additionally, DOE regulations at 10 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 Commonwealth file or cause to be filed with DOE/FE any relevant long-term commercial agreements or contracts pursuant to which Commonwealth exports LNG as agent for a Registrant once those agreements or contracts 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.

(7) DOE/FE also will require Commonwealth to file any long-term contracts Commonwealth enters into providing for the long-term export of LNG on its own behalf from the Commonwealth LNG 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 regulations²⁴ requires that Commonwealth file, or cause to be filed, all long-term contracts associated with the

²³ 10 C.F.R. § 590.202(b).

²⁴ *Id.* § 590.202(c).

long-term supply of natural gas to the Project, whether signed by Commonwealth or the Registrant, within 30 days of their execution.

(9) DOE/FE recognizes that some information in Commonwealth'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 Project, may be commercially sensitive. DOE/FE therefore will provide Commonwealth the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Commonwealth 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.

ORDER

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

A. Commonwealth LNG, LLC (Commonwealth) is authorized to export domestically produced LNG by vessel from the Commonwealth LNG Project, to be located in Cameron Parish, Louisiana. The volume authorized in this Order is equivalent to approximately 441.4 Bcf/yr of natural gas for a 25-year term, beginning on the earlier of the date of first commercial export or seven years from the date the requested authorization is issued. Commonwealth 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).

Commonwealth may continue exporting for a total of three years following the end of the 25-year export term, solely to export any Make-Up Volume that it was unable to export during the original export period. The three-year Make-Up Period allowing the export of Make-Up Volumes does not affect or modify the maximum volume of LNG authorized for export in this Order. Insofar as Commonwealth may seek to export additional volumes not previously authorized for export, it will be required to obtain appropriate authorization from DOE/FE.

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. Commonwealth 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 the Federal Energy Regulatory Commission. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (i) Commonwealth shall file, or cause others to file, with the Office of Regulation, Analysis, and Engagement a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG from the Project as agent for other entities. The non-redacted

copies must be filed within 30 days of their execution and may be filed under seal, as described above.

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

E. Commonwealth is permitted to use its authorization to export LNG as agent for other LNG title-holders (Registrants), after registering those entities with DOE/FE. Registration materials shall include an agreement by the Registrant to supply Commonwealth with all information necessary to permit Commonwealth 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; and (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.

Any change in the registration materials—including 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).

F. Commonwealth, or others for whom Commonwealth acts as agent, shall 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. 4521, issued April 17, 2020, in FE Docket No. 19-134-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 Commonwealth LNG, LLC that identifies the country (or countries) into which the LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Commonwealth LNG, LLC is made aware of all such actual destination countries.

G. Within two weeks after the first export of domestically produced LNG occurs from the Commonwealth LNG Project, Commonwealth shall provide written notification of the date of first export to DOE/FE.

H. Commonwealth shall file with the Office of Regulation, Analysis, and Engagement, on a semi-annual basis, written reports describing the status of the proposed Commonwealth LNG Project. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the status of the Project, the date the Project is expected to commence first exports of LNG, and the status of any associated long-term supply and export contracts.

I. With respect to any change in control of the authorization holder, Commonwealth must comply with DOE/FE Procedures for Change in Control Affecting Applications and Authorizations to Import or Export Natural Gas.²⁵ 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 Commonwealth, 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 ownership or voting of securities, or common directors, officers, or

²⁵ 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).

stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.²⁶

J. Monthly Reports: With respect to the exports authorized by this Order, Commonwealth shall file with the Office of Regulation, Analysis, and Engagement, within 30 days following the last day of each calendar month, a report on Form FE-746R 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 was actually delivered; (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 on Form FE-746R shall be made to the U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Regulation, Analysis, and Engagement, according to the methods of submission listed on the Form FE-746R reporting instructions

²⁶ See *id.* at 65,542.

available at <https://www.energy.gov/fe/services/natural-gas-regulation>.

Issued in Washington, D.C., on April 17, 2020.

Steven E. Winberg
Assistant Secretary
Office of Fossil Energy