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Department of Energy Issues Second Authorization to Export LNG to Non-Free Trade Agreement Countries

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On May 17, 2013, the United States Department of Energy ("DOE") issued its second authorization to export liquefied natural gas ("LNG") to non-Free Trade Agreement ("non-FTA") countries. The DOE granted authorization to Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, "Freeport") to export domestically produced LNG from its existing facility in Quintana Island, Texas. The DOE previously authorized Freeport to export LNG to FTA countries in February 2011.

To date, the only other facility to receive DOE authorization to export LNG to non-FTA countries is the Sabine Pass LNG Terminal in Cameron Parish, Louisiana, which received authorization to export up to 2.2 Bcf/d of LNG in May 2011. There are currently 19 pending applications for the export of LNG to non-FTA countries. In its press release announcing the Freeport authorization, the DOE stated that it "will continue to process the applications currently pending on a case-by-case basis, in the order of precedence previously detailed." The DOE previously announced that it would act on the existing applications on a case-by-case basis and that it expected to act first upon applications for which the applicants have commenced the pre-filing process at the Federal Energy Regulatory Commission as of December 5, 2012, in the general order in which the DOE received them.

Terms and Conditions of the Freeport Authorization

The major terms and conditions of Freeport's authorization to export LNG to non-FTA countries include:

- Volume: Freeport may export the requested volume of up to the equivalent of 1.4 Bcf/d, or 511 Bcf per year, of natural gas.
- Term: Though Freeport requested a 25-year term, the DOE authorized Freeport to export LNG for a term of 20 years beginning on the date of first export.
- Commencement of operations: Freeport must commence LNG export operations within seven years from the authorization date.
- Agency Rights: Freeport may export LNG on its own behalf, or as agent for others. Where Freeport proposes to export LNG as agent for others, Freeport must register the other entity (the "Registrant") with DOE.
- Contracts: Freeport is required to file with DOE within 30 days of execution (1) any relevant long-term commercial agreements, including LTAs, between Freeport and a third party, including a Registrant, (2) any subsequent relevant long-term commercial agreements entered into by a

Registrant, (3) any long-term contracts Freeport enters into providing for the long-term export of LNG on its own behalf from the terminal, and (4) any long-term contracts associated with the long-term supply of natural gas to the terminal that either Freeport or the Registrant enters into.

General Findings Applicable to Pending Applications to Export to Non-FTA Countries

In granting the Freeport authorization, the DOE made certain general findings and determinations about the export of LNG to non-FTA countries that may be applicable to the other pending applications. The DOE found:

- The LNG Export Study, which was issued in December 2012, "provides substantial additional support for conditionally granting [Freeport's] Application in this proceeding" and is "fundamentally sound and supports the proposition that the proposed authorization would not be inconsistent with the public interest."
- There are also non-economic benefits that support the authorization: "[T]o the extent U.S. exports can counteract concentration within global LNG markets, thereby diversifying international supply options and improving energy security for many of this country's allies and trading partners, authorizing U.S. exports may advance the public interest for reasons that are distinct from and additional to the economic benefits identified in the LNG Export Study."
- Although the DOE viewed the economic impacts of higher natural gas prices and potential increases in gas price volatility as two of the most serious factors in its determination, the DOE found that the potential negative impacts of Freeport's proposed exports are "outweighed by the likely net economic benefits and by other non-economic or indirect benefits."
- The DOE noted that it will attach "appropriate and necessary terms and conditions to authorizations to ensure … that authorizations are not issued except where the applicant can show that there are or will be facilities capable of handling the proposed export volumes and existing and forecast supplies that support that action."

In addressing the issue of how Freeport's authorization will impact the DOE's analysis of the other pending non-FTA export applications, the DOE emphasized that it will "take a measured approach," is "proceeding cautiously," and, in issuing this order, "makes no decisions regarding any future cases." The DOE "intends to monitor developments that could tend to undermine the public interest in grants of successive applications for exports of domestically produced LNG[.]" Finally, with regard to comments submitted to the DOE relating to the total volume of LNG exports or the timing or sequencing of any future authorizations, the DOE said such comments "may be relevant to later proceedings but need not be decided in this proceeding."

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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