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*Practice Groups:*

*Liquefied Natural Gas*

*Oil & Gas*

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*Energy, Infrastructure  
and Resources*

## DOE Issues Order on Freeport Expansion Application to Export LNG to Non-FTA Countries

*By David L. Wochner and Sandra E. Safro*

On November 15, 2013, the U.S. Department of Energy ("DOE") issued an order (available [here](#)) authorizing Freeport LNG Expansion, LP; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC; (collectively, "FLEX") to export liquefied natural gas ("LNG") from the Freeport LNG terminal on Quitana Island, Texas, to nations with which the United States does not have a Free Trade Agreement ("non-FTA nations"). FLEX received authorization to export 1.4 billion cubic feet per day ("Bcf/d") of LNG to non-FTA nations earlier this year ("[Freeport I Order](#)"). In the application related to the November 15th conditional order, FLEX sought authorization to export an additional 1.4 Bcf/d to non-FTA nations. This order, DOE/FE Order No. 3357 ("Freeport II Order"), conditionally grants FLEX's application for long-term multi-contract authorization to export LNG by vessel to non-FTA nations. Importantly, however, as discussed in greater detail below, DOE did not grant authorization for the full 1.4 Bcf/d requested, but rather for 0.4 Bcf/d because FLEX has stated in other filings with the U.S. Federal Energy Regulatory Commission ("FERC") that its terminal capacity is 1.8 Bcf/d, not the 2.8 Bcf/d that would result from authorization of the original 1.4 Bcf/d in the Freeport I Order and the 1.4 Bcf/d requested by Freeport in its second application.

Overall, DOE's Freeport II Order, like the [Cove Point Order](#), [Lake Charles Order](#), and Freeport I Order, demonstrates an understanding of the global gas market and, coupled with recent statements from DOE officials, appears to indicate that DOE will continue to process the pending applications in a timely manner. Importantly, in the Freeport II Order DOE reiterates its statement from the Cove Point, Lake Charles, and Freeport I orders that significant LNG exports and the rapid reversal of the natural gas market are new phenomena that are likely to change over time. Consequently, DOE affirms that it intends to monitor market developments that could tend to undermine the public interest in grants of successive applications for exports of domestically produced LNG to non-FTA nations.

### Background

DOE derives its authority to grant or deny applications for authorization to export LNG from the Natural Gas Act ("NGA"). Pursuant to Section 3 of the NGA, DOE must grant applications for authorization to export natural gas to countries with which the United States has a Free Trade Agreement without modification or delay. By contrast, the NGA sets up a rebuttable presumption that natural gas exports to non-FTA nations are in the public interest.

Following its order authorizing LNG exports to non-FTA nations from the Sabine Pass terminal, DOE commissioned two studies on the impacts of LNG exports on the U.S. economy: a microeconomic study performed by the Energy Information Administration ("EIA") and a macroeconomic study performed by NERA Economic Consulting (collectively, the "LNG Export Study"). The stated intention was to determine, broadly speaking, the likely impacts of larger scale exports of LNG on the U.S. economy. In December 2012, DOE

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invited public comment on the LNG Export Study, with an initial comment period ending January 24, 2013, and a reply comment period ending February 25, 2013.

### The Freeport II Order

While DOE's analysis in the Freeport II Order is largely the same as its analysis in the Cove Point Order, Lake Charles Order, and Freeport I Order, a few key differences are highlighted below. Under DOE's regulations, requests for rehearing are due Monday, December 16, 2013.

### DOE Did Not Authorize the Full Volume Requested

Although FLEX requested authorization to export an additional 1.4 Bcf/d of LNG, DOE did not grant the full export quantity requested. In the Freeport II Order, DOE explains that FLEX informed FERC that the liquefaction capacity at its terminal will only be 1.8 Bcf/d. Therefore, DOE finds that there is no basis for authorizing exports in excess of the maximum liquefaction capacity of the planned facility and only authorizes an additional 0.4 Bcf/d of LNG exports to non-FTA countries in the Freeport II Order, bringing the entire authorized export volumes to 1.8 Bcf/d.

### *Take Aways*

This aspect of the Freeport II Order can be taken as the next step in what appears to be DOE's ongoing attempts to tailor its authorizations to each specific project it is considering.

DOE took a similar position in the Cove Point Order, when it authorized only 0.77 Bcf/d of the 1 Bcf/d requested. In this respect, the Freeport II Order and Cove Point Order demonstrate that DOE will carefully review the details of a proposed project to ensure that its orders granting export authorization do not exceed realistic design limitations. However, the Freeport II Order arguably goes a step further than the Cove Point Order. In the Cove Point Order, DOE explained that Cove Point informed DOE that its Liquefaction Project will only have a liquefaction capacity of 5.75 mtpa, which DOE approximated to be the equivalent of 0.77 Bcf/d. Here, the information DOE used to support its conclusion came from FLEX's FERC application, not from statements FLEX made to DOE.

While the queue that DOE established in December 2012 took into account whether applicants had commenced the pre-filing process at FERC, prior to the Freeport II Order, DOE had not indicated that an applicant for an export license needed to have filed its FERC pre-filing application for the related facilities in advance of receiving its export license. The NGA and both DOE and FERC's regulations are silent on the order in which an applicant must pursue its DOE export license and its FERC authorization to construct the export facilities. However, earlier this year, DOE dismissed Alaska Gasline Port Authority's ("AGPA") application for authorization to export LNG to FTA countries because AGPA had not demonstrated sufficient site control. The Freeport II Order can be taken as the next iteration of this evolving area of DOE's regulation.

### Pace of Authorization

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Shortly after its issuance of the Freeport I Order earlier this year, DOE made public statements that it took only two months to write the Freeport order. The Freeport II Order, which has been highly anticipated, comes approximately 65 days after the Cove Point Order. The Cove Point Order issued just 35 days after the Lake Charles Order. The relative difference in timing may be due in part to the fact that in the interim between the Cove Point Order and Friday's Freeport II Order, the U.S. government shut down for approximately 16 days. While DOE technically was able to continue operating during the shutdown by using funds left over from prior years, we understand that DOE was not operating with full staff during that period and that the agency was faced with a backlog once the shutdown was over.

### *Take Aways*

DOE did much of its analysis in the Freeport I Order. The fact that the Freeport II Order is in largely similar to the Cove Point Order, Lake Charles Order, and Freeport I Order underscores this point.

DOE has made several public statements recently that it will continue to process the pending applications and any future applications in the order of precedence established in December 2012. In its [press release](#) covering the Freeport II Order, DOE reiterated its intent to stick to the previously established queue.

DOE also has indicated that it will continue to refresh its analysis based on the most currently available information, including the results of the Energy Information Administration's Annual Energy Outlook Report, which is expected to issue at the end of 2013, though the issuance could be delayed as a result of the government shutdown. Therefore, there may be a slight lag in DOE's issuance of orders immediately following the release of the Annual Energy Outlook Report as DOE updates its public interest analysis to account for the new information. Although it is notable that during the November 14 Senate confirmation hearing for Christopher Smith to be the Assistant Secretary of Fossil Energy at DOE, when asked whether DOE would formally pause the review process, Mr. Smith said that DOE will continue to expeditiously process the applications and did not confirm that DOE would, in fact, pause after the release of new EIA data.

### Total Exports above 6 Bcf/d Level

In the Freeport I Order, DOE explained that in each order it would assess the cumulative impacts of each succeeding request for export authorization. In the Cove Point Order, DOE noted that, including the volumes authorized in that order, it had authorized cumulative non-FTA exports totaling 6.37 Bcf/d, which it noted was just over the 6 Bcf/d threshold NERA analyzed in its three "low" cases. In the Freeport II Order, DOE notes that, including the 0.4 Bcf/d authorized in that order, it has authorized cumulative non-FTA LNG exports totaling 6.77 Bcf/d. DOE points out, as it did in the Cove Point Order, that this volume "only moderately exceeds the 6 Bcf/d volume evaluated by NERA in its 'low' export case."

In addition, DOE again notes, as it did in prior orders, that the LNG Export Study concluded that exports at levels of 6 Bcf/d of natural gas and higher would result in higher U.S. natural gas prices. However, DOE points out that these price changes would remain in a relatively narrow range across all of the scenarios studied in the LNG Export Study and that even with estimated price increases, the United States will experience a net economic benefit.

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### Take Aways

As noted in our analysis of the Cove Point Order and Lake Charles Order, this statement can be taken as an attempt on DOE's part to tie its cumulative assessment back to the LNG Export Study, which it has used largely as the basis for its analysis in the Freeport I Order, the Lake Charles Order, the Cove Point Order, and Friday's Freeport II Order. It does not appear that DOE plans to move away from the market-based approach it traditionally has relied upon or that it is looking to impose any kind of a cap on the volume of LNG exports. If projected supplies remain high, or in fact increase in the coming EIA 2014 data, DOE likely will have little reason to depart from the conclusions of the NERA Study that LNG exports result in net economic benefits under all cases studied. There also does not appear to be any indication at this time that DOE intends to impose a higher bar on projects that take authorized cumulative export volumes above 6 Bcf/d -- rather it will review and analyze those applications pursuant to the same factors, albeit with updated data and on a cumulative basis, it has reviewed each application. This conclusion is further supported by DOE's continued support of the conclusions of the NERA Study that the United States will experience net economic benefits at all levels of exports studied.

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