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Energy

DOE Issues Third Authorization to Export LNG to Non-FTA Countries from Lower-48

By David L. Wochner and Sandra E. Safro

On August 7, 2013, the U.S. Department of Energy ("DOE") issued an order authorizing Lake Charles Exports, LLC ("Lake Charles") to export liquefied natural gas ("LNG") from the Trunkline LNG terminal, its affiliate's terminal in Lake Charles, Louisiana, to nations with which the United States does not have a Free Trade Agreement ("non-FTA nations"), making it the third terminal in the lower-48 to secure such authorization. DOE Order No. 3324 ("Lake Charles Order") conditionally grants Lake Charles's application for long-term multi-contract authorization to export up to 2 billion cubic feet ("Bcf") per day ("Bcf/d") of LNG by vessel to non-FTA nations. The Lake Charles Order, which has been highly anticipated, comes just over 80 days after the Freeport Order, which was DOE's second order authorizing LNG exports from the lower-48 to non-FTA countries. For a more detailed summary of the Freeport Order, please see our Liquefied Natural Gas Alert: [DOE Issues Second LNG Export License for Non-FTA Countries](#).

Like the Freeport Order, the Lake Charles Order demonstrates DOE's understanding of the global gas market. Overall, when coupled with recent statements from DOE officials, the Lake Charles Order appears to indicate that DOE will continue to process the pending applications in a timely manner, even in the face of questions and requests for information from Congress. Importantly, in the Lake Charles Order DOE reiterates its statement from the Freeport Order 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 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.

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The Lake Charles Order

As it had done in the Freeport Order, in addition to providing an analysis of Lake Charles's application, DOE analyzes the results of the LNG Export Study, as well as initial and reply comments on the LNG Export Study. While DOE's analysis in the Lake Charles Order is largely the same as its analysis in the Freeport Order, a few key points are highlighted below. In general, DOE's tone in the Lake Charles Order seems to be much more measured than it was in the Freeport Order. For example, there are several places in the Lake Charles Order where DOE provides additional language that mainly serves to underscore its previous points. In addition, DOE has omitted some broader language that had been included in the Freeport Order. We note, however, that DOE's overall conclusions are consistent with its conclusions in the Freeport Order - that LNG exports remain in the public interest and a market based approach remains appropriate. In addition, DOE's analysis of the arguments posed by parties who have opposed LNG export applications remains the same.

NERA Found LNG Exports Increase Wellhead Prices - But LNG Exports Result in Net Economic Benefits

In its Summary of Findings and Conclusions in the Lake Charles Order, DOE did not include the following statement, which was included in the Freeport Order: "We further find that granting the requested authorization is unlikely to affect adversely the availability of natural gas supplies to domestic consumers or result in natural gas price increases or increased price volatility such as would negate the net economic benefits to the United States." Read in the overall context of the Lake Charles Order, the omission of this language seems to suggest that DOE intends to remain true to its recent statement that it will continue to update its analysis of LNG export applications based on then-projected domestic supply data. In addition, this is a fairly broad statement and, later in the Lake Charles Order, DOE points out that the NERA Study indicated that LNG exports would result in wellhead natural gas price increases. However, DOE ultimately rests on NERA's finding that the United States will experience net economic benefits from increased LNG exports in all cases studied.

Updated Projection Data - But No Net Change

DOE used updated projection data from the recently released EIA's Annual Energy Outlook 2013 ("AEO 2013"). However, as DOE notes in the Lake Charles Order, its analysis of whether natural gas exports are in the public interest remains the same because the projection results in AEO 2013 are the same as in the earlier data that NERA relied upon. The Lake Charles Order demonstrates that DOE is serious about including the most updated projection data in its orders on non-FTA LNG export applications and indicates that its decisions on those applications may depend largely on the then-current projection data.

Cumulative Impacts - Still Under NERA "Low" Cases

In the Freeport Order, DOE explained that in each order it would assess the cumulative impacts of each succeeding request for export authorization. In the Lake Charles Order, DOE noted that in granting Lake Charles's application, it will have cumulative authorized non-FTA exports totaling 5.6 Bcf/d, which it noted is under the 6 Bcf/d threshold NERA analyzed in its three "low" cases. If projected supplies remain high, 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. At this point in time, there does not appear to be any reason to believe that DOE intends to impose a higher bar on projects that take authorized cumulative export volumes above 6 Bcf/d.

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Revocation

Late last week, Senators Wyden and Murkowski sent a letter to DOE Secretary Moniz requesting his response to a number of questions on DOE's purported authority to revoke a previously granted LNG export license under the Natural Gas Act. The issuance of the Lake Charles Order in advance of DOE's response to the Senators seems to demonstrate the agency's ongoing independent view of its authority in these matters and some evidence that these Congressional requests will not necessarily delay the processing of the pending applications. In addition, in the Lake Charles Order DOE did not provide any additional insight into its purported revocation authority and instead included the same footnote on this topic that it had included in the Freeport Order.

The Path Forward

Under DOE's regulations, requests for rehearing on the Lake Charles Order are due Friday, September 6, 2013. Once DOE issues a final order on rehearing, parties will have sixty days to file an appeal in federal court.

In terms of how DOE moves forward with the rest of the pending non-FTA applications, 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. Moreover, in its [press release](#) covering the Lake Charles Order, DOE reiterated its intent to process the pending and any future applications using its previously established queue.

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