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September 11, 2013

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DOE Issues Fourth Order Authorizing Export of LNG to Non-FTA Nations from the Lower-48

By David L. Wochner and Sandra E. Safro

On Wednesday, September 11, 2013, the U.S. Department of Energy ("DOE") issued an order (available here) authorizing Dominion Cove Point LNG, LP ("Cove Point") to export liquefied natural gas ("LNG") from the Cove Point LNG Terminal, in Calvert County, Maryland to nations with which the United States does not have a Free Trade Agreement ("non-FTA nations"), making it the fourth terminal in the lower-48 to secure such authorization. DOE Order No. 3331 ("Cove Point Order") conditionally grants Cove Point's application for long-term multi-contract authorization to export LNG by vessel to non-FTA nations.

Overall, DOE's Cove Point Order, like the Lake Charles Order and Freeport 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 methodical manner. Importantly, in the Cove Point Order, DOE reiterates its statement from the Lake Charles Order and 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.

The Cove Point Order

While DOE's analysis in the Cove Point Order is largely the same as its analysis in the Lake Charles Order and Freeport Order, a few key points are highlighted below. 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. For a more detailed summary of the Lake Charles Order, please see

our Liquefied Natural Gas Alert: DOE Issues Third Authorization to Export LNG to Non-FTA Countries from Lower-48.

Under DOE's regulations, requests for rehearing are due Friday, October 11, 2013.

Pace of Authorization

Shortly after its issuance of the Freeport Order earlier this year, DOE made public statements that it took only two months to write the Freeport order. The Cove Point Order, which has been highly anticipated, comes 35 days after the Lake Charles Order.

Take Aways

The Cove Point Order issued much faster than the Lake Charles Order, which issued just over 80 days after the Freeport Order. DOE performed much of its analysis of the LNG Export Study in the Freeport Order. The fact that the Cove Point Order is largely similar to the Lake Charles Order and Freeport Order underscores this point. Notably, between the issuance of Freeport Order and the Lake Charles Order, DOE Secretary Moniz took office and indicated that he wanted to review the record before issuing additional authorizations.

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 Cove Point 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 current available information, including the results of the EIA's Annual Energy Outlook, which is expected to issue at the end of 2013. Therefore, we believe it is reasonable to expect there may be a lag or pause in DOE's issuance of orders immediately following the release of the Annual Energy Outlook as DOE updates its public interest analysis to account for the new information.

DOE Did Not Authorize the Full Volume Requested

Although Cove Point requested authorization to export 1 billion cubic feet per day ("Bcf/d") of LNG, DOE did not grant the full export quantity requested. In the Cove Point Order, DOE explains that Cove Point informed DOE on May 2, 2013, that its Liquefaction Project will only have a liquefaction capacity of 5.75 mtpa, which DOE approximates to be the equivalent of 0.77 Bcf/d or 281 Bcf/year. Consequently, DOE explains that there is no basis for authorizing exports in excess of the maximum liquefaction capacity of a planned facility and, therefore, only authorizes Cove Point to export up to the equivalent of 281 Bcf/year of LNG.

Importantly, DOE also points out that Cove Point already is authorized to export approximately 1 Bcf/d of LNG to FTA countries. DOE explains that its authorization in the Cove Point Order will be limited to 281 Bcf/year of LNG to non-FTA countries and that Cove Point may not treat the volumes authorized in the FTA and non-FTA proceedings as additive to one another.

Take Aways

In this respect, the Cove Point Order demonstrates 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. As DOE continues to process applications, it likely will carefully tailor its authorizations to the project before it to avoid drawing any undue criticism of its orders.

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Total Exports above 6 Bcf/d Level

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, including the volumes authorized in that order, it had authorized cumulative non-FTA exports totaling 5.6 Bcf/d, which it noted was under the 6 Bcf/d threshold NERA analyzed in its three "low" cases. In the Cove Point Order, DOE notes that, including the 0.77 Bcf/d authorized in the Cove Point Order, it has cumulatively authorized non-FTA LNG exports totaling 6.37 Bcf/d. DOE points out that this volume "only moderately exceeds the 6 Bcf/d volume evaluated by NERA in its 'low' export case."

In addition, DOE notes 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.

Take Aways

As noted in our analysis of the 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 Order, the Lake Charles Order, and the Cove Point 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 intending to impose any kind of a cap on the volume of exports it authorizes. 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. 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 in the Cove Point Order of the conclusions of the NERA Study that the United States will experience net economic benefits at all levels of exports studied.

Authors:

David L. Wochner
david.wochner@klgates.com
+1.202.778.9014

Sandra E. Safro
sandra.safro@klgates.com
+1.202.778.9178

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