

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Freeport LNG Development, L.P.

Docket No. CP03-75-002

ORDER AMENDING SECTION 3 AUTHORIZATION

(Issued August 17, 2005)

1. On April 1, 2005, Freeport LNG Development, L.P. (Freeport LNG) filed an application to amend the authorization issued June 18, 2004, pursuant to section 3 of the Natural Gas Act, in Docket No. CP03-75-000. That order authorized Freeport LNG to site, construct and operate the Freeport LNG Project.¹ In this application, Freeport LNG proposes to modify the project's send-out pipeline by increasing its diameter from 36- to 42-inches. In this order, the Commission amends Freeport LNG's section 3 authorization as requested.

Background and Proposal

2. In the June 18, 2004 Order, the Commission, pursuant to section 3 of the NGA,² authorized Freeport LNG to site, construct and operate the Freeport LNG Project,

¹ *Freeport LNG Development, L.P.*, 107 FERC ¶ 61,278, *order granting rehearing and clarification*, 108 FERC ¶ 61,253 (2004).

² The regulatory functions of section 3 of the NGA were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act (Pub. L. No. 95-91, 42 U.S.C. § 7101 *et seq.*). In reference to regulating the imports or exports of natural gas, the Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. DOE Delegation Order No. 00-004.00, 67 *Fed. Reg.* 8,946 (2002).

consisting of a new LNG import terminal on Quintana Island, southeast of the City of Freeport, in Brazoria County, Texas, and an associated 9.6-mile, 36-inch diameter, send-out pipeline extending from the LNG terminal to the Stratton Ridge meter station in Brazoria County, Texas. Freeport LNG proposed to receive, store and vaporize imported LNG at the terminal and transport up to 1.5 Bcf per day (Bcfd) of regassified LNG through the send-out pipeline.

3. The Freeport LNG Project is currently fully subscribed. However, Freeport LNG states in its application that it has received additional requests for deliveries of gas when the currently authorized facilities go into service. Freeport LNG also indicates that it anticipates additional requests to meet future market demand.³ Therefore, to enable Freeport LNG to meet currently identified and future market demand, Freeport LNG requests authorization to construct a 42-inch diameter send-out pipeline, in lieu of the currently authorized 36-inch diameter pipeline.

4. Freeport LNG explains in a May 13, 2005 supplement to its application that increasing the diameter of the send-out pipeline from 36- to 42-inches will also increase the operational reliability and flexibility of the pipeline, providing benefits which will accrue to its current customers. Specifically, Freeport LNG explains that this increase in pipeline diameter will increase system pressure and thus improve the deliverability at Freeport LNG's Stratton Ridge delivery point, where there would otherwise be a pressure drop between the delivery point and interconnected pipeline systems. Freeport LNG asserts that reducing the pressure drop will increase the delivery pressures to the downstream pipelines, resulting in a significant increase in line pack that would translate into increased working volumes.

5. Further, according to Freeport LNG, the higher delivery pressure would increase the send-out pipeline's capacity and operational flexibility, thereby enabling Freeport LNG to satisfy peak natural gas demand without adding costly compression facilities. During periods of high demand (generally on cold winter days and hot summer days), Texas intrastate natural gas pipeline systems are delivering at maximum capacity to supply fuel for electrical power generation and gas distribution systems. At peak conditions, pipeline systems are often strained to deliver gas at pressures adequate to fire gas-powered turbine generators. Use of the proposed 42-inch diameter pipeline, coupled with the Freeport LNG import terminal peaking capabilities, would allow downstream pipelines to operate at higher capacities and higher pressures.

³ In Docket No. CP05-361-000, Freeport LNG seeks authority to expand its LNG import terminal facilities to meet anticipated future demand.

6. Freeport LNG maintains that since construction of the send-out pipeline has not yet commenced, increasing the diameter of the pipeline at this time would eliminate the need to construct costly compression or looping facilities in the near future. Further, Freeport LNG maintains that construction of the larger diameter pipeline at this time would not change the construction procedures, schedule, personnel requirements, rights-of-way or workspace of the original proposal. The only change would be a somewhat larger and wider trench, which can be accommodated within the workspace designated in Freeport LNG's original application. Freeport LNG notes that its amended proposal is a stand-alone project that is not dependent on an expansion of the LNG facilities because the increased diameter of the send-out pipeline is necessary to meet presently identified demand and to provide operational benefits.

Interventions

7. Notice of Freeport LNG's application to amend its NGA section 3 authorization was published in the *Federal Register* on April 19, 2005, 70 Fed. Reg. 20,363 (2005). No motions to intervene, notices of intervention or protests were filed.

Discussion

8. Since the proposed pipeline will be used to import natural gas from a foreign country, the construction and operation of the pipeline upgrade is subject to the Commission's jurisdiction under section 3 of the NGA.

9. Section 3 of the NGA provides that the Commission "shall issue such order on application . . .," unless it finds that the proposal "will not be consistent with the public interest." Here, the record shows that the capacity of the project is fully subscribed and requests for future deliveries have been received. Thus, the Freeport LNG Project, as modified, will enhance Freeport LNG's ability to provide needed supplies of natural gas to customers in the Texas market, which the Commission found to be in the public interest in the June 18 Order, as clarified in the September 20 Order on rehearing.

10. Additionally, increasing the diameter of the send-out pipeline from 36- to 42-inches will provide Freeport LNG with more operational flexibility by maintaining higher delivery pressures at the Stratton Ridge delivery point at the terminus of the line. The increase in pipeline diameter will have the potential to increase delivery pressures at the Stratton Ridge delivery point by as much as 13 percent, enabling Freeport LNG to respond to larger hourly swings in demand on its system.

11. The proposed modification to the project, involving only a change in the diameter of the 9.6-mile send-out pipeline, will not change the proposed construction footprint or construction procedures. Changing the pipeline diameter at this time will obviate the

need to construct an additional pipeline or compression in the near future, which could result in additional environmental impacts. Thus, for these reasons, the Commission finds that authorizing construction of the larger diameter pipeline at this time will be consistent with the public interest.

Environmental Review

12. An environmental assessment (EA) for Freeport LNG's proposal to amend its previous authorization was prepared. The EA addressed geology; soil; water resources; vegetation; wildlife; fisheries; threatened and endangered species; land use; cultural resources; air quality; noise; safety, and alternatives. The EA did not identify any environmental impacts or increased safety risks which would result from the proposed increase in pipeline diameter. Although installing a larger diameter pipeline would involve a slightly deeper and wider trench, Freeport LNG would use the previously proposed and authorized project footprint, construction techniques, and equipment and thus would not require any additional ground disturbance.

13. Three individuals filed comments in response to the EA, generally raising issues previously addressed in the Environmental Impact Statement (EIS) prepared for the original project and by the Commission's June 18, 2004 Order. One commenter suggests that the increased pipeline diameter would increase the risk of a leak or explosion in proximity to her property and urges that the buffer zone between the LNG facility and her residence be increased. We note that the concerns about explosions and spills discussed in the EIS and the June 18, 2004 Order relate to the transportation and delivery of LNG to the storage and vaporization facilities, not to the operation of the send-out pipeline which will transport natural gas in vapor form. The increase in pipeline diameter will not increase the risks of a pipeline accident to any significant extent. As we stated in the June 18, 2004 Order, Freeport LNG will construct and operate the send-out pipeline in accordance with the Department of Transportation's safety standards which take into consideration the size and location of natural gas pipelines in setting requirements for pipeline thicknesses and the depths of the pipeline trenches.⁴

14. Another commenter expressed concern that the send-out pipeline would be located above ground in a floodplain. However, the pipeline will be buried and the approved design of the pipeline takes into account its placement in a floodplain. Concern was also evidenced that the pipeline could be accidentally or intentionally damaged without anyone knowing about it, thereby creating a risk for residents in proximity to it. The pipeline will be placed on property controlled by Freeport LNG and/or the Port of

⁴ See 49 C.F.R. Part 192 (2005).

Freeport. The route runs along the main road on the island in a built-up area. Accordingly, it would be highly unlikely that anyone could conduct any type of excavations near the pipeline that could harm it without someone noticing. Moreover, pipelines monitor a pipeline's operation electronically and by visual inspection; thus leaks or other damage of any sort would be discovered promptly.

15. The proposed increase in pipeline diameter would not result in any environmental impacts that were not described and addressed in the EIS for the whole project. Based on the discussion in the EA, we conclude that, if constructed and operated in accordance with the procedures outlined in Freeport LNG's amendment and the environmental conditions in the Appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

16. Any state or local permit issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions in this order. The Commission encourages cooperation between Freeport LNG and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁵

17. Freeport LNG shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Freeport LNG. Freeport LNG shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

18. On August 17, 2005, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) The authorization issued pursuant to section 3 of the NGA in Docket No. CP03-75-000, as clarified in Docket No. CP03-75-001, for Freeport LNG to site,

⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293; *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2nd Cir. 1990); *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 and 59 FERC ¶ 61,094 (1992).

construct and operate the Freeport LNG Project is amended to authorize construction of a 42-inch diameter send-out pipeline, as described and conditioned herein, and as more fully described in Freeport LNG's application.

(B) The authorization issued in Paragraph (A) is subject to the terms and conditions set forth in the Commission's June 18, 2004 Order, as clarified on September 20, 2004, and on the environmental conditions listed in the Appendix to this order.

(C) Freeport LNG shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Freeport LNG. Freeport LNG shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) In all other respects, the June 18, 2004 Order, as clarified in the September 20, 2004 Order, shall remain in full force and effect.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

APPENDIX

ENVIRONMENTAL CONDITIONS

1. Freeport LNG shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the EIS, unless modified by this Order. Freeport LNG must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. Receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. Prior to any construction, Freeport LNG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include the staff's recommended facility

locations. As soon as they are available, and before the start of construction, Freeport LNG shall file with the Secretary revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Freeport LNG shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that will be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP before construction in or near that area.

This requirement does not apply to extra workspace allowed by the Upland Erosion Control; Revegetation; and Maintenance Plan or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. At least 60 days before the start of construction of the pipeline Freeport LNG shall file an Implementation Plan for the pipeline with the Secretary for the review and written approval by the Director of OEP describing how Freeport LNG will

implement the mitigation measures required by this Order. Freeport LNG must file revisions to the plan as schedules change. The plan shall identify:

- a. how Freeport LNG will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of EIs assigned to the pipeline construction, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. what training and instructions Freeport LNG will give to all personnel involved with construction and restoration of the pipeline (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Freeport LNG's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Freeport LNG will follow if noncompliance occurs; and
7. Freeport LNG shall re-inform landowners along the pipeline route of the environmental complaint resolution procedure.
8. Freeport LNG shall employ a team of environmental inspectors. The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
9. Freeport LNG shall file updated status reports prepared by the environmental inspector with the Secretary on a weekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Freeport LNG from other Federal, state or local permitting agencies concerning instances of noncompliance, and Freeport LNG's response.
10. Freeport LNG must receive written authorization from the Director of OEP before commencing service of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
11. Within 30 days of placing the authorized facilities in service, Freeport LNG shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or

- b. identifying which of the certificate conditions Freeport LNG has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Freeport LNG shall file with the Secretary a plan for the crossing of each waterbody if the directional drill is unsuccessful. This shall be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. Freeport LNG shall file this plan concurrent with its application to the COE for a permit to construct using this plan. The Director of OEP must review and approve this plan in writing before construction of the crossing.
13. Freeport LNG shall prepare a detailed SPCC Plan for construction and operation of the pipeline. The plan shall address personnel training, detailed secondary containment plans for materials storage as well as equipment refueling, designated equipment refueling areas, an equipment list to be kept on site for spill countermeasures, equipment inspection measures and Best Management Practices that Freeport LNG plans to implement. The plan shall be filed with the Secretary, for review and written approval by the Director of OEP, prior to the start of construction.
14. Freeport LNG shall comply with the revegetation methods described in our Plan and Procedures. If Freeport LNG wishes to request a variance to the revegetation requirements, a plan shall be prepared addressing the amount and condition of seed available in the native hay, conditions for storage and handling of the hay, and application rates for applying the hay. Freeport LNG shall also include a plan for monitoring the long-term revegetation of areas reseeded using the native hay. This plan shall be filed with the Secretary for review and written approval by the Director of OEP prior to the start of construction.
15. If facilities are not constructed within 1 year from the date of issuance of the authorization, Freeport LNG shall consult with the appropriate offices of the FWS/NOAA Fisheries to update the species list and to determine if additional surveys are required.

16. If any hazardous waste is uncovered during construction, Freeport LNG shall:
 - a. stop work at the contaminated site, leaving contaminated equipment and materials within the contaminated area; and
 - b. notify all required agencies (including FERC).