

127 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Sabine Pass LNG, L.P.

Docket Nos. CP04-47-001
CP05-396-001

ORDER AMENDING SECTION 3 AUTHORIZATIONS

(Issued May 29, 2009)

1. On October 21, 2008, Sabine Pass LNG, L.P. (Sabine Pass) filed an application under section 3(a) of the Natural Gas Act (NGA)¹ and Parts 153 and 380 of the Commission's regulations² to amend the authorizations issued in *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004) (2004 Order) and 115 FERC ¶ 61,330 (2006) (2006 Order). The 2004 Order authorized Sabine Pass to site, construct, and operate a liquefied natural gas (LNG) receiving terminal facility in Cameron Parish, Louisiana, and the 2006 Order authorized Sabine Pass to expand the terminal's send-out capacity. Sabine Pass' amendment application proposes to operate the LNG terminal for the additional purpose of exporting LNG which has previously been imported into the United States. For the reasons discussed below, we will amend the authorizations as requested, subject to conditions.

Background

2. Sabine Pass is a Delaware limited partnership based in Houston, Texas. It is a subsidiary of Cheniere LNG, Inc., which in turn is a wholly-owned subsidiary of Cheniere Energy, Inc.

3. In the 2004 Order, we granted Sabine Pass authority to site, construct, and operate an LNG terminal, which would include, *inter alia*, a ship turning basin and two protected

¹ 15 U.S.C. § 717b (2006).

² 18 C.F.R. Parts 153 and 380 (2008).

ship berths, three LNG storage tanks, and associated vaporization facilities. These facilities are located on the Sabine Pass Channel, approximately three miles upstream from the Gulf of Mexico, in Cameron Parish, Louisiana. By the same order, the Commission issued certificates under section 7(c) of the NGA³ to Cheniere Sabine Pass Pipeline Company to, among other things, construct and operate a 16-mile long, 42-inch diameter pipeline from the LNG terminal to Johnsons Bayou, Louisiana. This pipeline would transport the revaporized imported natural gas to points of interconnection with existing interstate and intrastate pipelines, thereby accessing various markets throughout the United States.

4. In the 2006 Order, we authorized Sabine Pass to expand the LNG terminal by constructing and operating three additional LNG storage tanks and new vaporization systems that would increase the LNG import terminal's planned average send-out capacity from 2.6 to 4.0 billion cubic feet (Bcf) per day. Sabine Pass' terminal is in service, but the expansion facilities are currently under construction.⁴

Proposal

5. In the instant proceeding, Sabine Pass seeks authorization to make certain technical modifications to its existing LNG terminal for the additional purpose of exporting LNG received from outside the United States. Specifically, it plans to modify four 24-inch check valves located on Unloading Arms A and D on the West and East Jetty Platforms within the marine portion of the Sabine Pass facility. Sabine Pass states that no other modifications are necessary or proposed. It states that the existing in-tank pumps would be used to "pump/push" LNG from the LNG storage tanks through the transfer lines to the unloading/loading arms and then into a waiting LNG carrier for export. Sabine Pass states that there will be no additional impacts to the Sabine-Neches Waterway, and that the number of ship transits will remain within the limit currently authorized by the Coast Guard. Sabine Pass also asserts that there will be no expansion of the operational area of the terminal, as previously authorized,⁵ and no construction will take place outside the existing "footprint" of the facility. Sabine Pass states that no land-disturbing activities will occur and no environmental or other sensitive resources will be adversely affected by the proposed export operations. Sabine Pass also contends that

³ 15 U.S.C. § 717f (2006).

⁴ By letter order dated September 30, 2008, the Commission authorized Sabine Pass to commence service.

⁵ Application of Sabine Pass LNG, L.P. for Limited Amendment to Authorization Granted Under Section 3 of the Natural Gas Act, p.4 (October 21, 2008).

there will be no safety or security ramifications associated with the proposed change in operations.

6. Sabine Pass contends that its proposals will provide its customers the opportunity to purchase cargoes of LNG at current LNG world market prices with the intention of exporting the LNG for redelivery to a foreign market at a later date, in the event that U.S. market prices are lower than world market prices. Sabine Pass asserts that stored LNG would be readily available for U.S. consumption if U.S. prices “were to rise to a level where domestic sale of the LNG held in storage were to become economically feasible....”⁶ Sabine Pass contends that the public interest would be served by its proposal because a continuous supply of LNG would help ensure that the Sabine Pass facility remains in operation even when U.S. market prices are low, and would help ensure that an LNG supply is present in the United States when needed and when domestic sales are economically feasible.

7. Sabine Pass states that its marketing affiliate, Cheniere Marketing, Inc., has filed an application with the U.S. Department of Energy for blanket authorization to engage in short-term exports of as much as 64 Bcf of foreign-sourced LNG, cumulatively, for a two-year period commencing on the date of authorization.⁷

Notice and Intervention

8. Notice of the application was published in the *Federal Register* on November 4, 2008,⁸ with a deadline of November 21, 2008 for interventions, comments, and protests. Shell NA LNG LLC filed a timely, unopposed motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission’s Rules of Practice and Procedure.⁹ No protests or opposing comments to the application have been filed.

⁶ *Id.* at p. 6.

⁷ Cheniere Marketing’s application was filed on August 15, 2008 and is currently pending before the U.S. Department of Energy in FE Docket No. 08-77-LNG.

⁸ 73 Fed. Reg. 65,594.

⁹ 18 C.F.R. § 385.214(a)(3) (2008).

Discussion

9. Since the proposed facility modifications would be used to export foreign-sourced LNG to foreign countries, the construction and operation of the facilities require approval by the Commission under section 3 of the NGA.¹⁰

10. Section 3 of the NGA provides that the Commission “shall issue such order on application” if it finds that the proposal “will not be inconsistent with the public interest.” Our authority over facilities constructed and operated under section 3 includes the application of terms and conditions as necessary and appropriate to ensure that the proposed siting and construction is in the public interest.¹¹

11. Our earlier orders determined that construction and operation of the Sabine Pass facility would provide needed supplies of natural gas to customers. Sabine Pass’ current proposal will provide its customers with the opportunity to export stored LNG for redelivery to a foreign market. The proposal will help ensure that the Sabine Pass facility remains in operation even when U.S. market prices are low and, to the extent that a domestic market for LNG does develop, the proposal will help ensure that a supply is present and available for delivery to domestic markets. The proposal will not have an impact on any landowners, since all of the construction will take place within Sabine Pass’ existing terminal site. Thus, we find that, subject to the conditions imposed in this order, Sabine Pass’ proposal is not inconsistent with the public interest.

¹⁰ 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). Section 311 of the Energy Policy Act of 2005 (Pub. L. No. 109-58, § 311, 119 Stat. 594 (2005)) amended section 3 of the NGA to clarify the Commission’s exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.

¹¹ See section 3(e)(3)(A) of the NGA. See also *Distrigas Corporation v. FPC*, 495 F.2d 1057, 1063-64 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001).

Environmental Review

12. On November 20, 2008, we issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) for the proposed modifications to the Sabine Pass Terminal. The notice was published in the *Federal Register* on November 28, 2008,¹² with comments due by December 22, 2008. A comment was filed by the Lafayette, Louisiana Field Office of the U.S. Fish and Wildlife Service (FWS) in which FWS stated that it did not anticipate that any impacts would occur to FWS' trust resources.

13. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),¹³ the Commission's staff prepared an environmental assessment (EA) for Sabine Pass' proposal that was distributed for public comment and placed into the public record of this proceeding on February 23, 2009. The EA addressed the project's purpose and potential impacts on geology, soils, water resources (including ballast water), essential fish habitat, wetlands, vegetation, wildlife, threatened and endangered species, land use, recreation, cultural resources, air quality, noise, reliability and safety, and alternatives.

14. We received comments on the EA from the Louisiana Department of Fish and Wildlife (LDFW), the United States Coast Guard (USCG), and the FWS. The LDFW states that the proposed modifications will have no additional impacts to wetland functions and that it has no objection to the proposal. The USCG states that the EA adequately describes the environmental impacts, as they relate to the safety and security of the port and waterway, associated with marine transport of LNG. Also, the USCG states that it is not requiring Sabine Pass to submit a modified water suitability assessment or a new Letter of Intent regarding use of the existing terminal as an export facility. In its comment letter, the FWS noted that no federally listed threatened or endangered species are known to occur in the area.

15. Sabine Pass submitted a letter from the U.S. Army Corps of Engineers, Galveston District, stating that the proposed export operations will not require modification to Sabine Pass' existing Department of the Army permit.

16. Based on the analysis set forth in the EA, we have determined that our approval of this project will not constitute a major federal action significantly affecting the quality of the human environment, if Sabine Pass constructs the facilities in accordance with its application and supplements and the environmental conditions in the Appendix to this order.

¹² 73 Fed. Reg. 72,471.

¹³ 42 U.S.C. § 4331 *et seq.* (2006).

17. Any state or local permits issued with respect to facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines 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.¹⁴

18. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Sabine Pass' proposed amendment, as more fully described in this order and the petition, is approved, subject to the environmental conditions set forth in the Appendix to this order.

(B) In all other respects, the 2004 and 2006 Orders shall remain in full force and effect.

(C) Sabine Pass shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Sabine Pass. Sabine Pass shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Appendix

Environmental Conditions

This authorization is subject to the following environmental conditions:

1. Sabine Pass shall follow the construction procedures and mitigation measures described in its application(s) and supplemental filings (including responses to staff data requests), and as identified in the Environmental Assessment unless modified by this Order. Sabine Pass must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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. For LNG facilities, the Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of life, health, property, and the environment during construction and operation of the Project. This authority shall include:
 - a. Stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of this Order.
3. **Within 60 days of the acceptance of this authorization and before construction begins**, Sabine Pass LNG shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Sabine Pass LNG must file revisions to the plan as schedule changes. The plan shall identify:
 - a. how Sabine Pass will implement the construction procedures and mitigation measures, if any, described in its application (including responses to staff data requests), and identified in the EA;
 - b. the training and instructions Sabine Pass will give to all personal involved with construction; and
 - c. provide a Gantt or PERT chart (or similar project scheduling diagram) and dates for start and completion of project.