

Distributed by
Rep Chenault



Department of Energy
Washington, DC 20585

March 07, 2013

Mr. William M. Walker
Ms. Lindsay W. Hobson
Walker Richards, LLC
General Counsel
Alaska Gasline Port Authority
731 N. St.
Anchorage, AK 99501

RE: Dismissal of Application in FE Docket No. 12-75-LNG without Prejudice to Refile
at a Later Time

Dear: Mr. Walker and Ms. Hobson,

On July 12, 2012, Alaska Gasline Port Authority (AGPA) filed an application (Application) with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)¹ for long-term, multi-contract authorization, to export liquefied natural gas (LNG) in an amount up to the equivalent of approximately 2.5 billion cubic feet per (Bcf) per day (Bcf/d) of natural gas from a proposed LNG Terminal in Valdez, Alaska, for a 25-year term. AGPA seeks to export LNG by vessel to any nation with which the United States currently has, or in the future will have, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas, and that currently has, or in the future develops, the capacity to import LNG via ocean-going carriers.

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04E issued on April 29, 2011.



On October 4, 2012, DOE/FE issued a letter (DOE/FE Letter) to AGPA requesting additional information regarding the Application. In DOE/FE's review of the Application, it found that the application lacks information required by 10 C.F.R. § 590.202 ("Contents of applications"). Specifically, the Application failed to meet the requirements of subsections 590.202(b)(1) and 590.202(b)(2), which require applicants to identify the "source and security of the natural gas supply to be imported or exported" and "the facilities to be utilized or constructed." In order to address these deficiencies, DOE requested the Applicant to provide additional information about the following: (1) the availability of a pipeline to transport gas to a liquefaction plant; (2) the source of the natural gas supply; and (3) the siting of the liquefaction plant.

Discussion of AGPA Response Dated November 9, 2012

AGPA responded to the DOE/FE Letter, by letter dated November 9, 2012 (AGPA Letter). The AGPA Letter addressed each of the issues identified in the DOE/FE letter, as follows:

(1) Availability of a pipeline. AGPA restated the first issue identified in the DOE/FE Letter: "[n]o pipeline exists, nor has AGPA demonstrated a commitment by any capable party for the construction of a pipeline for the transportation of natural gas from the North Slope to Valdez, Alaska." In response, AGPA describes a number of developments supportive of the construction of a pipeline capable of transporting natural gas to a liquefaction plant on the Alaska coast. In particular, AGPA refers to (1) the Alaska Gasline Inducement Act (AGIA), enacted in 2007; (2) Administrative Order No. 242, issued by Governor Palin in 2008; and (3) efforts by TransCanada Pipeline, the AGIA licensee, and its co-sponsors to encourage public participation in a Solicitation of Interest for capacity on a proposed pipeline. AGPA states that

in response to the Solicitation, AGPA nominated 2.8 Bcf/d of natural gas into the inlet of the LNG facility at Valdez. AGPA further states that this volume was supported by written confirmation of interest from six companies.² AGPA also states that during the Solicitation, a consortium of Japanese companies nominated 2.7 Bcf/d into the same pipeline,³ which is in addition to the AGPA volumes nominated.⁴

AGPA states that “[m]ost recently, TransCanada and ExxonMobil joined with BP and ConocoPhillips in issuing a letter to Governor Parnell describing their joint efforts to ‘advance a collective understanding of what would be required for [LNG] exports from Southcentral Alaska’” (Parnell Letter).⁵ AGPA states that the Parnell Letter pointed out that the Solicitation described interest from potential shippers and major players from a broad range of industry sectors and geographic locations. AGPA provides a further quote from the Parnell Letter, stating, “[n]othing in [AGIA] precludes a person from pursuing a gas pipeline independently from [AGIA].” AGPA states that “AGPA’s efforts are not contingent upon a successful AGIA project.”

(2) Source of Supply. AGPA restated the second issue identified in the DOE/FE Letter: “that ‘AGPA has not demonstrated a source of supply of natural gas through a commitment, such as a contract, memorandum of understanding, letter of intent, or other agreement with producers of natural gas on the North Slope of Alaska,’” and then discussed it as follows:

AGPA states the source of gas supply will be the Prudhoe Bay and Point Thomson units, which contain approximately 24.5 and 8.0 trillion cubic feet of gas reserves, respectively. AGPA

² *AGPA Letter*, at 4.

³ *Id.* at 4. The consortium, known as Resources Energy Inc. (REI) is comprised of six major Japanese companies.

⁴ On January 14, 2013, DOE/FE received a letter dated January 10, 2013, from John L. Wittenborn writing on behalf of his firm’s clients, Energy Resources, Inc., a Japanese corporation, and its wholly owned subsidiary, Resources Energy, Inc., (ERI/REI). The letter wanted to clarify that the consortium of six Japanese companies had “no affiliation whatsoever with AGPA or the AGPA Export Application” and that ERI/REI was planning to submit its own application to DOE for authority to export LNG from Alaska to Japan. This letter is attached.

⁵ *AGPA Letter*, Exhibit 7, Letter to Governor Sean Parnell (October 1, 2012) at 1.

states that North Slope leases executed by the State of Alaska on the Prudhoe Bay and Point Thomson fields require that natural gas be sold to companies willing to take the resource to market. AGPA further states that “[t]he operator of Prudhoe Bay has recognized that obligation, and stated it would ‘delightfully’ sell gas to creditworthy entities willing to undertake a pipeline project.”⁶

AGPA states that “[t]he Asian buyers that AGPA has been in negotiations with over the past year have expressed their interest and intent to make offers to purchase gas from the North Slope lease holders and the State of Alaska at the wellhead. However, prior to their engaging in that process they have explained that there would need to be an export license in place. AGPA thus seeks an export license as the next necessary step before it can commence negotiations with the North Slope leaseholders, on behalf of Asian buyers, to secure gas supply contracts.”

AGPA states that “DOE/FE has granted export licenses in the past without executed supply contracts, including the previously issued non-FTA export license from Port Valdez issued to the Yukon Pacific Corporation.”⁷

(3) Siting of Liquefaction Plant. AGPA restated the third issue identified in the DOE/FE Letter: “AGPA has not settled on a location for the LNG liquefaction facility or demonstrated that it has entered into a memorandum of understanding, letter of intent, or other agreement to secure title in a or a long term lease of the property where such a facility would be located.”

AGPA states “AGPA’s inclusion of alternative sites were meant only to illustrate that there are additional site options at Port Valdez. AGPA indicates that the project plan has always centered on the Anderson Bay site which previously received significant Federal and State

⁶ AGPA Letter, Exhibit 10, Letter from David Van Tyul (July 21, 2008) at 2.

⁷ DOE/FE Opinion and Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FE ¶ 70,259 (November 16, 1989).

regulatory permits while under lease to the Yukon Pacific Corporation” (YPC). AGPA references seven such permits the previous site had received.⁸ In addition, AGPA states that it has applied to lease the identical footprint of land at Anderson Bay previously leased to YPC.

FINDINGS

DOE/FE has considered the AGPA Letter and, for the reasons set forth below, finds that the Application is deficient as it does not meet the requirements of 10 C.F.R. § 590.202(b)(1) and 10 C.F.R. § 590.202(b)(2) and the Application, therefore, will be dismissed pursuant to 10 C.F.R. § 590.203, without prejudice to re-filing at a future time if the deficiencies are corrected.

DOE/FE further finds as follows:

(A) The availability of a pipeline to transport natural gas from the North Slope to Valdez has not been demonstrated. Information in the AGPA Letter demonstrates that the AGIA licensee and the North Slope lease holders (producers) are evaluating options to monetize North Slope natural gas. However, the AGPA Letter has not demonstrated that a pipeline will be built from the North Slope to Valdez. Further, DOE/FE notes that the Parnell Letter indicates that the focus of the work of the AGIA licensee and producers includes: “Developing a design basis for the required LNG tanker fleet” and “Evaluating multiple LNG process design alternatives.”⁹ Further, the Parnell Letter includes an attachment that indicates the AGIA licensee and producers intend to “File DOE Export License” themselves.¹⁰ Indeed, the Parnell Letter implies that the AGIA licensee and the producers would develop an LNG project themselves and seek their own DOE LNG export authorization, assuming a pipeline is constructed between the North Slope and Valdez. Based on the foregoing discussion, DOE/FE finds that in the absence of a firm plan to

⁸ AGPA Letter, at 7-8.

⁹ AGPA Letter, Exhibit 7, Parnell Letter, at 1.

¹⁰ *Id.*, Exhibit 7, Parnell Letter at Attachment 3.

build a pipeline from the North Slope to Valdez by either the AGIA licensee, AGPA itself, or others, the application is premature.

(B) A commitment or other agreement with producers to supply AGPA with natural gas from the North Slope of Alaska has not been demonstrated. As the AGPA Letter details, the source of supply would be Prudhoe Bay and Point Thomson, a location with known natural gas reserves. AGPA points out that the Prudhoe Bay producers “would ‘delightfully’ sell gas to creditworthy entities willing to undertake a pipeline project.” However, DOE/FE notes that AGPA did not propose to build a pipeline project as part of its project description in the Application to DOE/FE requesting authorization to export LNG to FTA countries. AGPA indicated that DOE/FE previously authorized YPC to export LNG from Port Valdez without an executed supply contract. DOE/FE notes that the proposed project in the YPC LNG export application included construction of a trans-Alaska natural gas pipeline, the design and location of which was well established. The following statement from the DOE/FE Letter, therefore, remains valid.

While DOE/FE has accepted applications to export LNG by vessel from applicants that lacked executed supply contracts, in all of those cases applicants have demonstrated that gas supplies for the proposed export would be drawn from known producing fields; that pipeline transportation capacity already existed or would be added in the project scope, subject where necessary to the negotiation of binding transportation contracts; and that the applicants had settled on specific locations for the proposed liquefaction facilities and had secured at least a letter of intent or memorandum of understanding affording them access to and use of the property where the liquefaction facilities were to be constructed. By contrast, in the present case, the applicant has presented none of these essential pieces of information.

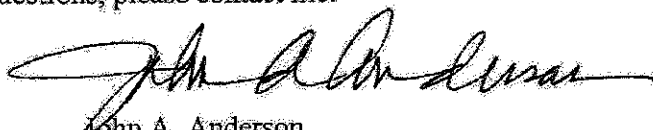
(C) AGPA has not settled on a location for the LNG liquefaction facility. The AGPA Letter indicated that AGPA has applied to lease the identical footprint of land at Anderson Bay previously leased to YPC. However, the application did not have a specific location identified.

(D) In any future long-term LNG export application, DOE will require the location of the liquefaction facility, demonstration that the applicant has secured a property or contractual right in the facility and use of the facility, and that the facility has access to a source of natural gas supply that is within the power of the applicant or the facility to secure. If the applicant is constructing the facility proposed in the application, the applicant must demonstrate that it either owns, or has access to, the site on which the proposed facility will be built. This could include demonstration that the applicant has entered into a memorandum of understanding, letter of intent, or other agreement to secure title in or a long term lease of the property where such a facility would be located.

ORDER

For the foregoing reasons, the AGPA application is dismissed without prejudice to re-filing at a future time if the deficiencies identified herein are corrected.

Should you have any questions, please contact me.



John A. Anderson
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy

Attachment

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE

MUMBAI, INDIA

FACSIMILE

(202) 342-8447

www.kelleydrye.com

January 10, 2013

Mr. John A. Anderson
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
Department of Energy
Washington, DC 20585

Re: Alaska Gas Port Authority (AGPA) LNG Export Application in FE
Docket No. 12-75-LNG

Dear Mr. Anderson:

We are writing on behalf of our clients, Energy Resources, Inc., a Japanese corporation, and its wholly owned subsidiary, Resources Energy, Inc., a Delaware corporation, (together ERI/REI) to clarify a potential area of confusion regarding the AGPA Application and more specifically the letter to you from AGPA, dated November 9, 2012.

In Section I. A Process is in Place to Facilitate Pipeline Construction on page 3 of AGPA's letter, there is reference to a "consortium, known as Resources Energy Inc. (REI) ... comprised of six major Japanese companies with a focus of bringing natural gas to Japan" as having responded to a Solicitation of Interest issued by TransCanada and ExxonMobil for the AGPA Pipeline and having nominated 2.7 bcf/d of natural gas into the pipeline. In the context in which that statement is made, it could be inferred that REI is affiliated in some fashion with the AGPA Export Application. We wish to clarify that ERI/REI has no affiliation whatsoever with AGPA or the AGPA Export Application. In fact, in due course, ERI/REI will be submitting to the Department of Energy its own application for a permit to export LNG from Alaska to Japan.

If you require any further clarification, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Wittenborn", written over a horizontal line.

John L. Wittenborn

Partner

202-342-8514

jwittenborn@kelleydrye.com