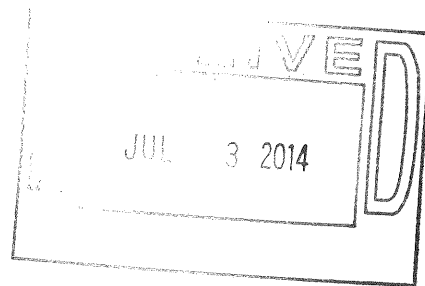


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**Morgan Lewis**  
C O U N S E L O R S   A T   L A W



**Brett A. Snyder**

202.739.5956  
bsnyder@morganlewis.com

July 3, 2014

**BY HAND**

Mr. John Anderson  
Office of Fossil Energy  
U.S. Department of Energy  
Docket Room 3F-056, FE-50  
Forrestal Building  
1000 Independence Avenue, SW  
Washington, DC 20585

Re: *Annova LNG, LLC, et al.*, FE Docket No. 14-004-CIC  
*Annova LNG, LLC*, FE Docket No. 13-140-LNG

Application of Annova LNG, LLC, Exelon Corporation, and Annova LNG Common Infrastructure, LLC to Transfer Control of Long-Term Authorization to Export LNG to Free Trade Agreement Nations and Request for Expedited Treatment

Dear Mr. Anderson:

Enclosed herewith is the Application of Annova LNG, LLC, Exelon Corporation, and Annova LNG Common Infrastructure, LLC to Transfer Control of Long-Term Authorization to Export LNG to Free Trade Agreement Nations and Request for Expedited Treatment.

Pursuant to 10 C.F.R. § 590.201(b) and for the reasons set forth in the application, the Applicants respectfully request that the Office of Fossil Energy act on this application on or before **September 2, 2014**.

Also enclosed is a check in the amount of \$50.00 in payment of the applicable filing fee.

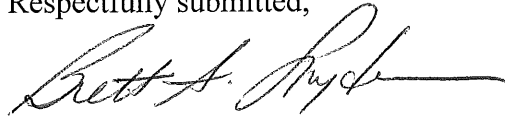
Almaty Beijing Boston Brussels Chicago Dallas Dubai\* Frankfurt Harrisburg Houston Irvine London Los Angeles Miami  
Moscow New York Palo Alto Paris Philadelphia Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

\*In association with Mohammed Buhashem Advocates & Legal Consultants

Mr. John Anderson  
July 3, 2014  
Page 2

Please contact me if you have any questions regarding this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brett A. Snyder", with a long horizontal flourish extending to the right.

Brett A. Snyder

*Counsel to Exelon Corporation and  
Annova LNG Common Infrastructure, LLC*

Enclosures

DB1/ 79876051.1

**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

**Annova LNG, LLC** )  
**Exelon Corporation** ) **FE Docket No. 14-\_\_\_\_-CIC**  
**Annova LNG Common Infrastructure, LLC** )  
  
**Annova LNG, LLC** ) **FE Docket No. 13-140-LNG**

**APPLICATION OF ANNOVA LNG, LLC, EXELON CORPORATION, AND ANNOVA  
LNG COMMON INFRASTRUCTURE, LLC TO TRANSFER CONTROL OF LONG-  
TERM AUTHORIZATION TO EXPORT LNG TO FREE TRADE AGREEMENT  
NATIONS AND  
REQUEST FOR EXPEDITED TREATMENT**

Pursuant to section 3 of the Natural Gas Act (“NGA”),<sup>1</sup> section 590.405 of the Department of Energy’s (“DOE”) regulations,<sup>2</sup> and Ordering Paragraph (K) of DOE/FE Order No. 3394, Annova LNG, LLC (“Annova”), Exelon Corporation (“Exelon”), and Annova LNG Common Infrastructure, LLC (“ACI”) (collectively, “Applicants”) submit this application for approval to transfer to ACI the authorization to export liquefied natural gas (“LNG”) to free trade agreement (“FTA”) nations granted to Annova by the Department of Energy Office of Fossil Energy (“DOE/FE”) in DOE/FE Order No. 3394 (“FTA Authorization”).<sup>3</sup> Under the proposed transaction, ACI will become a direct subsidiary of Series Z of Annova, as described herein, and Exelon will hold an indirect 96% interest in ACI, the new holder of the FTA Authorization.

Because the authorization requested herein is required to move forward with commercial conditions necessary for project development and investment decisions, the Applicants

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<sup>1</sup> 15 U.S.C. § 717b (2010).

<sup>2</sup> 10 C.F.R. § 590.405 (2013).

<sup>3</sup> Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Annova LNG Terminal in Brownsville, Texas, to Free Trade Agreement Nations, Order No. 3394, *Annova LNG, LLC*, FE Docket No. 13-140-LNG (Feb. 20, 2014).

respectfully request that DOE/FE expedite this request and act on this application by September 2, 2014.

In support of this application, the Applicants state as follows:

**I. COMMUNICATIONS AND CORRESPONDENCE**

Please address communications and correspondence in this proceeding to:

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Annova LNG  
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Mark R. Haskell  
Brett A. Snyder  
Morgan, Lewis & Bockius LLP  
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mhaskell@morganlewis.com  
bsnyder@morganlewis.com

**II. DESCRIPTION OF THE APPLICANTS**

Annova LNG, LLC. Annova is a limited liability company formed under the laws of Delaware, with its principal place of business at 3200 Southwest Freeway, Suite 3300, Houston, Texas 77027. Mr. David Chung currently holds all of the equity interests in Annova.<sup>4</sup>

Exelon Corporation. Exelon is a publicly traded utility services holding company that, through its subsidiaries, generates and distributes energy. Exelon is a Pennsylvania corporation headquartered in Chicago, Illinois, and is active throughout the entire energy value chain in both electricity and natural gas, including production and marketing of natural gas and electricity; transmission, storage, distribution, management and development of major gas infrastructure projects; and energy and environmental services.

Annova LNG Common Infrastructure, LLC. ACI is a Delaware limited liability company with its principal place of business at 10 South Dearborn Street, 49th Floor, Chicago,

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<sup>4</sup> See Supplement to Application at 1, *Annova LNG, LLC*, FE Docket No. 13-140-LNG (Oct. 29, 2013).

Illinois 60603. After the proposed transaction, ACI will be a wholly owned, direct subsidiary of Series Z of Annova and an indirect subsidiary of Exelon. The purpose of ACI will be to perform as operator of the proposed terminal and to hold certain of the common facilities and permits associated with the project. The parties have selected this corporate structure to facilitate financing for the various long-term phases of the project.

### **III. DESCRIPTION OF THE ANNOVA PROJECT**

Annova has proposed a greenfield LNG liquefaction project to be sited at the Port of Brownsville, Texas. On September 4, 2013, the Brownsville Navigation District of Cameron County, Texas, sold to Annova an option to lease 295 acres of land at the Port of Brownsville for the development of Annova's LNG terminal. On March 25, 2013, the Brownsville Navigation District of Cameron County, Texas, sold to Annova an additional option to lease 267.31 acres of land at the Port of Brownsville. In total, Annova has an option to lease 562.31 acres at the Port of Brownsville.

Annova has planned three stages for the terminal's development, each of which will add up to 2.33 metric tons per annum of LNG to the project's production capacity, for a total of 7.0 metric tons per annum. Annova will connect liquefaction trains to LNG storage facilities. One marine slip, sized for all three stages, will be constructed to facilitate the delivery of LNG to off-taking carriers. An approximately 60-mile header pipeline, to be built by a third party or Annova affiliate, will link the terminal to the domestic market.

### **IV. ANNOVA'S DOE AUTHORIZATION**

On October 9, 2013, Annova filed an application with DOE/FE for long-term, multi-contract authorization to export up to 342 Bcf of natural gas per year (equivalent to approximately 7.0 million tons of LNG) from domestic resources for a period of 30 years beginning on the earlier of the date of first cargo export or eight years from the date the

requested authorization is granted. Annova sought to export domestically produced LNG to any nation with which the United States has, or in the future may have, a free trade agreement requiring national treatment for trade in natural gas. DOE/FE issued the FTA Authorization on February 20, 2014.<sup>5</sup>

## V. REQUEST TO TRANSFER CONTROL

The Applicants seek approval: (i) to transfer the FTA Authorization to ACI; and (ii) to transfer indirect control of the FTA Authorization to Exelon, which will hold an indirect 96% interest in ACI, the new holder of the FTA Authorization, through a corporate reorganization.

As discussed above, Mr. David Chung currently holds all of the membership interest in Annova, the current holder of the FTA Authorization.

ACI is currently a wholly owned subsidiary of Exelon Generation Company, LLC (“ExGen”), an indirect, wholly owned subsidiary of Exelon. ExGen’s business consists of, among other things, wholesale energy marketing operations, competitive retail customer supply of electric and natural gas products and services including renewable energy products, risk management services, and natural gas exploration and production activities. ExGen is headquartered in Kennett Square, Pennsylvania.

Under the proposed transaction, Annova will be converted to a series limited liability company under Delaware law. Membership interest in Annova will be issued in two series of units, Series A and Series Z.<sup>6</sup> ExGen will acquire a 96% interest in each of the Series A Units and Series Z Units of Annova. Mr. Chung and one or more individuals will indirectly hold, through a new intermediary company, 1836 Energy Partners, LLC, a Delaware limited liability

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<sup>5</sup> *Annova LNG, LLC*, DOE/FE Order No. 3394 (2014).

<sup>6</sup> Under Delaware law, each series in a series limited liability company may have different assets, rights, remedies, and obligations. Each series will be treated as separate for accounting, legal, and tax purposes.

company, the remaining 4% interest in each of the Series A Units and Series Z Units of Annova. Mr. Chung will continue to be involved in the project as an employee.

All membership interests in ACI will be transferred from ExGen to Series Z of Annova such that ACI will become a direct, wholly owned subsidiary of Series Z of Annova. The FTA Authorization will be transferred from Annova to ACI.

In summary, as a result of the proposed transaction (i) ACI, a subsidiary of Series Z of Annova, will become the FTA Authorization holder, (ii) Exelon will hold an indirect 96% interest in ACI, and (iii) the remaining 4% indirect interest in ACI will be held in the aggregate by Mr. Chung and one or more individuals.<sup>7</sup>

This transfer of control will not modify the proposed liquefaction project or any of the export characteristics that DOE/FE previously considered in granting the FTA Authorization. The total volume of LNG to be exported will remain unchanged. There are no facts that would alter DOE/FE's previous public interest determination in granting the FTA Authorization. The Applicants submit that the proposed transfer of control is not inconsistent with the public interest and is consistent with DOE/FE's regulations and precedent.

#### **A. Statutory and Regulatory Requirements**

DOE/FE reviews requests to transfer or assign an import or export authorization pursuant to its authority under section 3 of the NGA. The DOE/FE has codified a requirement that parties seeking to transfer or assign an import or export authorization must first seek and obtain DOE/FE approval. Section 590.405 of DOE/FE's regulations provides:

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<sup>7</sup> In the context of transfers of control of non-FTA authorizations, DOE/FE has indicated that a presumption of control only arises with an interest of 10% or more. *See, e.g., Jordan Cove Energy Project, L.P.*, DOE/FE Order No. 3413 at 148, FE Docket No. 12-32-LNG (Mar. 24, 2014).

Authorizations by the Administrator to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Administrator.<sup>8</sup>

In addition, Ordering Paragraph (K) of the FTA Authorization provides:

Prior to any change in control of the authorization holder, Annova must obtain the approval of the Assistant Secretary for Fossil Energy. For purposes of this Ordering Paragraph, a “change of control” shall include any change, directly or indirectly, of the power to direct the management and policies of Annova, whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.<sup>9</sup>

#### **B. Public Interest Standard**

DOE/FE reviews applications to transfer control of a DOE/FE export authorization using the public interest standard under section 3 of the NGA, and DOE/FE will approve an application unless it determines that the requested transfer or assignment is not consistent with the public interest.<sup>10</sup>

Section 3(c) of the NGA requires that applications for authorization to export natural gas, including LNG, to nations with which there is in effect an FTA requiring national treatment for trade in natural gas be deemed consistent with the public interest and granted without modification or delay. The DOE/FE has found that, in light of its statutory obligation to grant such applications without modification or delay, there is no need for the DOE/FE to engage in any analysis of factors affecting the public interest.<sup>11</sup>

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<sup>8</sup> 10 C.F.R. § 590.405 (2013).

<sup>9</sup> FTA Authorization at 12.

<sup>10</sup> See, e.g., *Nw. Pipeline Corp.*, DOE Opinion & Order No. 664, 1 FE ¶ 70,683, at 3–4 (1992), *reh'g denied*, DOE/FE Opinion & Order No. 664-A, 1 FE ¶ 70,656, *order terminating long-term authorization*, DOE/FE Order No. 664-B, 1 FE ¶ 71,047 (1994), *order amending authorization*, DOE/FE Order No. 664-C (1999); *Brooklyn Union Gas Co.*, DOE Opinion & Order No. 561, 1 FE ¶ 70,515, at 4, 8 (1991), *reh'g denied*, DOE/FE Opinion & Order No. 561-A (1992).

<sup>11</sup> See, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2833 (2010).



In an abundance of caution, the Applicants nevertheless note that entities opposing a request to transfer control must rebut DOE/FE's prior finding that the import authorization is not inconsistent with the public interest or establish that the proposed arrangement is not in the public interest.<sup>12</sup> This showing is difficult when the requests to transfer or assign an authorization will not result in changed circumstances or results only in non-substantive changes to the terms and conditions of an arrangement that DOE/FE has already approved.<sup>13</sup> Absent a showing that the proposed transfer modifies the facts on which the DOE/FE previously found that the export authorizations is in public interest, DOE/FE will approve the requested transfer of control.<sup>14</sup>

1. The requested transfer of the FTA Authorization to ACI is in the public interest.

The requested transfer of the FTA Authorization from Annova to ACI is in the public interest and is consistent with precedent. In DOE Opinion & Order No. 424, Great Lakes Gas Transmission Company ("Great Lakes") and Great Lakes Transmission Limited Partnership ("Great Lakes LP") filed an application for authorization permitting Great Lakes LP to succeed to all of Great Lakes' existing authorizations to import and export natural gas. Great Lakes formed Great Lakes LP to acquire Great Lakes' facilities and import and export authorizations and to "facilitate the financing of current expansions and encourage further expansion of the pipeline system to better serve the public interest."<sup>15</sup> DOE determined that the request would not be inconsistent with the public interest and stated:

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<sup>12</sup> *Nw. Pipeline Corp.*, DOE Opinion & Order No. 664, 1 FE ¶ 70,683, at 6-7 (1992).

<sup>13</sup> *See Brooklyn Union Gas Co.*, DOE Opinion & Order No. 561, 1 FE ¶ 70,515, at 6-7 (1991); *Nw. Pipeline Corp.*, DOE/FE Opinion & Order No. 664, at 6-7 (Dec. 9, 1992); *Great Lakes Gas Transmission LP*, DOE Opinion & Order No. 424 (1990).

<sup>14</sup> *Nw. Pipeline Corp.*, DOE Opinion & Order No. 664, 1 FE ¶ 70,683 at 6-7 (1992) ("[T]he burden of proof, however, belongs to Producers and they have failed to rebut DOE's previous finding of need in Order 383, a finding which was based on circumstances that will not change as a result of the proposed transfer.").

<sup>15</sup> *Great Lakes Gas Transmission LP*, DOE Opinion & Order No. 424 (1990).

Orders 416 and 276-A concluded Great Lakes' imports for resale and import/export, respectively, were consistent with the public interest based on the records in those proceedings. The only change represented by this uncontested joint petition is the proposed transfer of authority from Great Lakes to Great Lakes LP. The contractual terms and conditions of the import and export arrangements upon which the section 3 determinations were based would remain the same, and there is no other information in the record of this proceeding to support or compel reexamination under section 3.<sup>16</sup>

Here, ACI, a special purpose company, will be formed to facilitate financing of the project, to construct and operate the export facilities, and to hold the project's permits. The requested transfer is in the public interest.

2. The requested transfer of indirect control of ACI to Exelon is in the public interest.

The indirect transfer of control of ACI to Exelon is in the public interest. To the extent a transfer or assignment will not result in a substantive change in the terms and conditions of the initial authorization, the DOE/FE has generally relied on its previous determination that the import is consistent with the public interest when evaluating the transfer or assignment.<sup>17</sup> For example, in *Brooklyn Union Gas Co.*, under the proposed transfer the total amount of gas authorized to be imported remained the same, as would all other terms of the underlying import arrangement, including "the scope of the [import] project, the total volume of gas to be imported, the date of commencement or completion of the [import] project, the source and security of the gas supply, the price and other terms of the transaction, or the proven need for the supply."<sup>18</sup>

DOE approved the application and stated:

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<sup>16</sup>

*Id.*

<sup>17</sup> *E.g., Brooklyn Union Gas Co.*, DOE Opinion & Order No. 561 (1991); *Consumer Power Co.*, DOE Opinion & Order No. 390 (1990), *order amending authorization*, DOE/FE Order No. 390-A (1994), *order terminating authorization*, DOE/FE Order No. 390-B (1995); *Great Lakes Gas Transmission LP*, DOE Opinion & Order No. 424 (1990); *Midwestern Gas Transmission Co.*, DOE Opinion & Order No. 318 (1989).

<sup>18</sup> *Brooklyn Union Gas Co.*, DOE Opinion & Order No. 561, 1 FE ¶ 70,515 at 2-3 (1991).

[t]o the extent that the transfer does not effect [sic] the terms and conditions of the underlying import arrangement, the DOE can rely on its previous determinations regarding that arrangement when considering the transfer application.<sup>19</sup>

The proposed transfer of control to Exelon would not affect the amount of gas authorized, the scope of the project, or other characteristics of the project. Moreover, as one the nation's leading energy companies, Exelon will be able to bring its expertise and resources to bear in getting the Annova project built. The requested indirect transfer of control to Exelon is in the public interest.

**C. Good Cause Exists to Grant the Application in the Time Requested**

Section 590.201 of DOE/FE's rules states that "[a]pplications shall be filed at least ninety (90) days in advance of the . . . requested action, unless a later date is permitted for good cause shown." The Applicants are requesting that DOE/FE act on this application in [60] days. Good cause exists for the Applicant's request.

The Annova project is currently in its earliest stages. Good cause exists to grant the application in the time period requested because the transfer of the FTA Authorization is necessary to enable the commercial structure that the Applicants have determined is best positioned to move forward on the project development and related investment decisions in a timely manner. In addition, prompt approval will facilitate the project's ability to seek and obtain long-term contracts with baseload customers.

Further, the proposed transaction is beneficial and non-controversial. Exelon is a publicly traded U.S. energy company with the resources and expertise necessary to bring the Annova project to fruition, and under Exelon's sponsorship the project will rest on a more secure foundation. The proposed corporate structures will help attract financing for the serial phases of the project as contemplated by the Applicants.

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<sup>19</sup> *Id.* at 7.

Because the authorization requested herein is required to move forward with commercial conditions necessary for project development and investment decisions, the Applicants respectfully request that DOE/FE act on this application by September 2, 2014.

## **VI. ENVIRONMENTAL IMPACT**

No changes to Annova's proposed liquefaction project facilities would be required for the requested transfer of control. Granting this application would not be a federal action significantly affecting the human environment within the meaning of NEPA. Therefore, an environmental impact statement or environmental assessment is not required.

## **VII. APPENDICES**

The following appendices are attached hereto and incorporated by reference herein:

Appendix A: Verification of Annova LNG, LLC  
Verification of Exelon Corporation and Annova LNG Common Infrastructure, LLC

Appendix B: Opinion of Counsel for Annova LNG Common Infrastructure, LLC

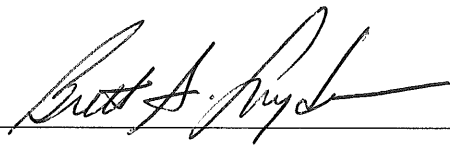
## VIII. CONCLUSION

For the reasons set forth above, the Applicants respectfully request that DOE/FE approve Annova's request for transfer of control of the FTA Authorization currently held by Annova, as discussed herein. The Applicants further respectfully requests that DOE/FE approve the transfer of control by September 2, 2014.

Respectfully submitted,

David Chung  
Annova LNG, LLC  
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3200 Southwest Fwy, Suite 3300  
Houston, TX 77027  
(713) 201-1700  
david.chung@annovalng.com

*President & CEO, Annova LNG, LLC*



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bsnyder@morganlewis.com

*Counsel to Exelon Corporation and Annova  
LNG Common Infrastructure, LLC*

Dated: July 3, 2014

## APPENDIX A

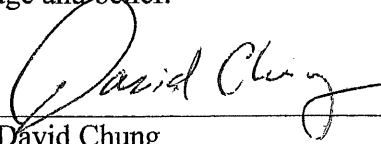
UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY/OFFICE OF FOSSIL ENERGY

VERIFICATION

County of Hamis

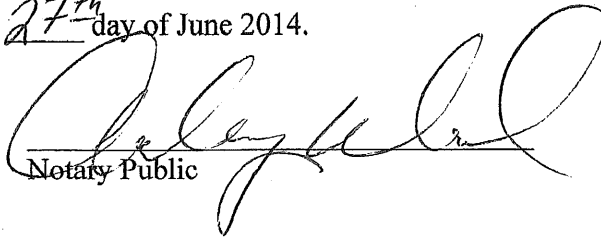
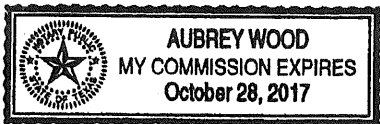
State of Texas

BEFORE ME, the undersigned authority, on this day personally appeared David Chung, who, having been first being sworn, states that he is President and Chief Executive Officer of Annova LNG, LLC; that he is authorized to execute this Verification; that he has read the foregoing filing and is familiar with the contents thereof; and that all of the statements of fact therein contained are true and correct to the best of his knowledge and belief.



David Chung  
On behalf of Annova LNG, LLC

Sworn to and subscribed before me on this 27<sup>th</sup> day of June 2014.



Notary Public

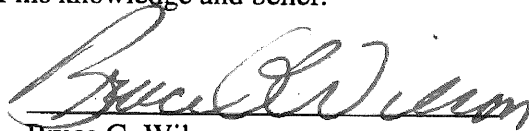
UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY/OFFICE OF FOSSIL ENERGY

VERIFICATION

County of Cook

State of Illinois

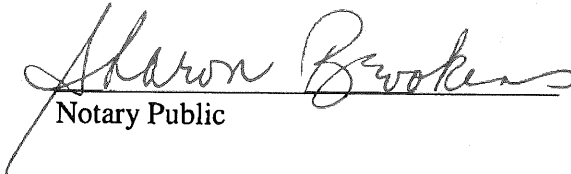
Bruce G. Wilson, who, having been first being sworn, states that he is Secretary of Exelon Corporation; that he is authorized to execute this Verification; that he has read the foregoing filing and is familiar with the contents thereof; and that all of the statements of fact therein contained are true and correct to the best of his knowledge and belief.



Bruce G. Wilson

On behalf of Exelon Corporation and Annova LNG  
Common Infrastructure, LLC

Sworn to and subscribed before me on this 30<sup>th</sup> day of June 2014.



Notary Public





## APPENDIX B

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel. 202.739.3000  
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**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

June 26, 2014

Mr. John A. Anderson  
Office of Fossil Energy  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: Annova LNG, LLC, et al., FE Docket No. 14- -CIC

Dear Mr. Anderson:

This opinion is submitted pursuant to 10 C.F.R. § 590.202(c) of the Department of Energy administrative procedures. The undersigned is counsel to Annova LNG Common Infrastructure, LLC. We have reviewed the corporate documents and it is our opinion that the proposed export of natural gas is within Annova LNG Common Infrastructure, LLC's corporate powers.

Sincerely,

*Morgan, Lewis & Bockius LLP*