

[6450-01-P]

**DEPARTMENT OF ENERGY**

**[FE Docket No. 14-005-CIC]**

**Freeport LNG Expansion, L.P; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC; Request For Change In Control**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on July 3, 2014, by Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (collectively, FLEX), requesting approval to transfer indirect control of four export authorizations jointly held by these entities, including two authorizations to export liquefied natural gas (LNG) to any country with which the United States has a free trade agreement (FTA) that requires national treatment for trade in natural gas (FTA countries), and two conditional authorizations to export LNG to countries with which the United States does not have a FTA that requires national treatment for trade in natural gas (non-FTA countries). FLEX seeks approval to transfer its authorizations pursuant to 10 C.F.R. § 590.405, which states that “[a]uthorizations by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary.”

This Notice addresses the proposed indirect changes in control of FLEX’s two non-FTA conditional authorizations, which DOE/FE issued pursuant to section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b(a). The portion of the Application addressing FLEX’s two FTA

authorizations will be reviewed separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c), and are not subject to this Notice.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the **Public Comment Procedures** section no later than 4:30 p.m., Eastern time, **[INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:**

**Electronic Filing by email:**

[fergas@hq.doe.gov](mailto:fergas@hq.doe.gov)

**Regular Mail**

U.S. Department of Energy (FE-34)  
Office of Oil and Gas Global Security and Supply  
Office of Fossil Energy  
P.O. Box 44375  
Washington, DC 20026-4375

**Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)**

U.S. Department of Energy (FE-34)  
Office of Oil and Gas Global Security and Supply  
Office of Fossil Energy  
Forrestal Building, Room 3E-042  
1000 Independence Avenue, SW  
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**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

**Applicants.** Freeport LNG Expansion, L.P. is a Delaware limited partnership and a wholly owned subsidiary of Freeport LNG Development, L.P. Its principal place of business is in Houston, Texas.

FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC are Delaware limited liability companies and wholly owned subsidiaries of Freeport LNG Expansion, L.P. They also have their principal place of business in Houston, Texas.

The ultimate FLEX parent company, Freeport LNG Development, L.P., is a Delaware limited partnership. It owns and operates the Freeport LNG Terminal located on Quintana Island, southeast of the City of Freeport in Brazoria County, Texas.

**Procedural History.** FLEX's Application concerns the indirect control of four export authorizations issued by DOE/FE, beginning in 2011. The detailed procedural history of these authorizations and related amendments is summarized in DOE/FE Order Nos. 3282-B and 3357-



A.<sup>1</sup> Below, we provide a brief overview of each of the four authorizations:

**LNG Export Authorizations Held by the FLEX Entities**

DOE/FE Docket No.	DOE/FE Order No.	Type of Authorization	Date Issued	Export Volume Authorized	Subject to This Notice?
10-160-LNG	2913-A <sup>2</sup>	FTA	February 10, 2011	1.4 billion cubic feet per day (Bcf/d) (511 Bcf per year (Bcf/yr))	No
10-161-LNG	3282-B <sup>3</sup>	Non-FTA Conditional	May 17, 2013	1.4 Bcf/d (511 Bcf/yr)	Yes
11-161-LNG	3357-A <sup>4</sup>	Non-FTA Conditional	November 15, 2013	0.4 Bcf/d (146 Bcf/yr)	Yes
12-06-LNG	3066-A <sup>5</sup>	FTA	February 10, 2012	1.4 Bcf/d (511 Bcf/yr)	No

In sum, FLEX is currently authorized to export LNG from the Freeport LNG Terminal as follows: (1) to FTA countries, in a total volume equivalent to 2.8 Bcf/d of natural gas (1022 Bcf/yr), and (2) to non-FTA countries, in a total volume equivalent to 1.8 Bcf/d (657 Bcf/yr).

We note that the export volumes authorized in the two FTA orders are not additive to the export volumes conditionally authorized in the two non-FTA orders.<sup>6</sup>

<sup>1</sup> See *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order Nos. 3282-B, 3357-A, Docket Nos. 10-161-LNG, 11-161-LNG, Order Amending DOE/FE Order Nos. 3282 and 3357, at 2-5 (June 6, 2014).

<sup>2</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 2913, Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from the Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011), *as amended*, DOE/FE Order No. 2913-A (Feb. 7, 2014).

<sup>3</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282, Docket No. 10-161-LNG, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations (May 17, 2013), *as amended*, DOE/FE Order No. 3282-A (Feb. 7, 2014) & DOE/FE Order No. 3282-B (June 6, 2014) [hereinafter *Freeport I*].

<sup>4</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357, Docket No. 11-161-LNG, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations (Nov. 15, 2013), *as amended*, DOE/FE Order No. 3357-A (June 6, 2014) [hereinafter *Freeport II*].

<sup>5</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3066, Docket No. 12-06-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2012), *as amended*, DOE/FE Order No. 3066-A (Feb. 7, 2014).

<sup>6</sup> See, e.g., *Freeport II*, DOE/FE Order No. 3357, at 5-6, 163, 165 (Ordering Para. C).

FLEX filed its Application in this proceeding on July 3, 2014. Thereafter, FLEX submitted to DOE/FE a total of four supplements to the Application via electronic mail, all of which are posted on the docket and incorporated herein.

### **Current Application**

Pursuant to 10 C.F.R. § 590.405, FLEX seeks approval for the proposed indirect changes in control of FLNG Liquefaction, LLC (FLIQ1) and FLNG Liquefaction 2, LLC (FLIQ2). Both are Delaware limited liability companies with their principal place of business in Houston, Texas.

According to FLEX, the proposed indirect changes in control are necessary components of the financing of the FLEX liquefaction project. FLEX further asserts that DOE/FE approval is “critically time sensitive” in light of certain financing requirements anticipated to occur early in the fourth quarter of 2014.<sup>7</sup>

**Proposed Ownership of Liquefaction Trains.** As stated in the Application and discussed in prior orders,<sup>8</sup> the FLEX export facilities initially will include three liquefaction trains, each having long-term liquefaction tolling agreements (LTAs) as follows:

- FLIQ1 will own the initial liquefaction train (Train 1). It has entered into a LTA with each of Osaka Gas Co., Ltd. (Osaka Gas) and Chubu Electric Power Co., Inc. (Chubu Electric).<sup>9</sup> The LTAs will commence upon achieving commercial operation of Train 1.
- FLIQ2 will own the second liquefaction train (Train 2). It has entered into a LTA with BP Energy Company (BP) that will commence upon achieving commercial operation of Train 2.
- FLNG Liquefaction 3, LLC (FLIQ3) will own the third liquefaction train (Train 3). It has entered into a LTA with each of Toshiba Corporation and SK E&S LNG, LLC. The LTAs will commence upon achieving commercial operation of Train 3.

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<sup>7</sup> App. at 2.

<sup>8</sup> See *Freeport II*, DOE/FE Order No. 3357, at 13-15 (discussing these LTAs and the ownership of each liquefaction train).

<sup>9</sup> FLEX states that Osaka Gas and Chubu Electric are two of the largest utilities and LNG end users in Japan.

According to FLEX, the capital costs for the construction of Train 1, Train 2, and Train 3 will be separately financed by FLIQ1, FLIQ2, and FLIQ3, respectively, with equity and debt financing provided by third parties.

**FLNG Liquefaction 1, LLC (FLIQ1).** FLEX states that the FLIQ1 debt requirements will be provided by the Japan Bank for International Cooperation and a consortium of commercial banks. The approximately \$1.2 billion FLIQ1 equity requirements for Train 1 will be provided 50% each by Osaka Gas and Chubu Electric through their wholly owned U.S. subsidiaries, which have not yet been formed. For purposes of the Application, these planned U.S. subsidiaries are referred to as “Osaka Gas Member” and “Chubu Member,” respectively.<sup>10</sup>

In exchange for this capital, Osaka Gas Member and Chubu Member each will receive an ownership interest in FLIQ1’s 100% parent company, FLIQ1 Holdings, LLC. The remaining ownership interest in FLIQ1 Holdings will be retained by its current parent, Freeport LNG Expansion, L.P.

FLEX further states that, following the new equity investments by Osaka Gas Member and Chubu Member in FLIQ1 Holdings, all votes with respect to FLIQ1 Holdings and indirectly, FLIQ1, will require the unanimous consent of Freeport Expansion, Osaka Gas Member, and Chubu Member (or, at a minimum, one appointee of each of them to the Board of Managers of FLIQ1 Holdings). According to FLEX, this voting control will grant each of Freeport Expansion, Osaka Gas Member, and Chubu Member equal power to direct management and policies of FLIQ1.

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<sup>10</sup> FLEX anticipates that, once these new subsidiaries are formed, both Osaka Gas Member and Chubu Member will be Delaware corporations with their principal place of business in Houston, Texas. We note that FLEX will be required to file relevant information with the Office of Oil and Gas Global Security and Supply within 30 days of the establishment of these entities.



**FLNG Liquefaction 2, LLC (FLIQ2).** FLEX states that the FLIQ2 debt requirements will be sourced from the U.S. project finance bank markets. The approximately \$1.3 billion in FLIQ2 equity requirements for Train 2 will be provided by the IFM Global Infrastructure Fund (IFM), a global infrastructure investment fund advised by IFM Investors.<sup>11</sup> FLEX states that IFM is a trust company established under the laws of the Cayman Islands, where it has its principal place of business.

In exchange for the capital, IFM will receive an ownership interest in FLIQ2's 100% parent company, FLIQ2 Holdings, LLC. The IFM entity that will hold the ownership interest in FLIQ2 Holdings will be IFM FLIQ Holding GP, which is a general partnership under Delaware law. The remaining ownership interest in FLIQ2 Holdings will be retained by its current parent, Freeport Expansion.

FLEX states that, following the new equity investment by IFM in FLIQ2 Holdings, all votes with respect to FLIQ2 Holdings and, indirectly, FLIQ2, will require the unanimous consent of Freeport Expansion and IFM. Consequently, this voting control will grant each of Freeport Expansion and IFM equal power to direct the management and policies of FLIQ2.<sup>12</sup>

**Freeport LNG Terminal Operations and Export Administration.** FLEX asserts that, under its proposal, operation and maintenance of the Freeport LNG facilities (both regasification and liquefaction) will remain under the control of Freeport LNG Development, L.P. through various contractual arrangements with FLIQ1, FLIQ2, and FLIQ3. As noted above, Freeport Development is the ultimate 100% parent of Freeport Expansion. No change in control is

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<sup>11</sup> According to FLEX, IFM Investors is a global fund manager (with nearly \$50 billion in funds under management) and one of the largest infrastructure investors in the world. It is owned by 30 major not-for-profit pension funds, with investments in the United States, Australia, and Europe. Therefore, FLEX states that the capital investment in FLIQ2 will be owned by some of the largest pension funds globally, including 5 of the top 10 U.S. public pension funds.

<sup>12</sup> FLEX asserts that the source of debt and equity funding for FLNG Liquefaction 3, LLC's (FLIQ3) capital costs for construction of Train 3 has not yet been finalized. FLEX states that it will submit a separate request to DOE/FE for approval of any proposed change in control related to FLIQ3, as appropriate.

proposed with respect to either Freeport Development or Freeport Expansion. FLEX states that Freeport Expansion will be the single point of contact with DOE/FE with respect to reporting and administration under all of FLEX's FTA and non-FTA export authorizations.

### **Public Interest Considerations**

Citing DOE/FE precedent, FLEX states that the proposed indirect transfer of control is in the public interest under the NGA. Specifically, FLEX asserts that the proposed change will have no effect on any of the terms and conditions of its existing non-FTA authorizations (as well as its FTA authorizations not subject to this Notice), which DOE/FE granted under the public interest standard set forth in section 3(a) of the NGA. FLEX maintains that there are no facts presented in the Application that should cause DOE/FE to alter those prior public interest determinations. In particular, FLEX asserts that DOE/FE has previously held that foreign investment in LNG export facilities is not inconsistent with the public interest.<sup>13</sup>

FLEX further states that, because the transactions described above are required to finance construction of the Train 1 and Train 2 export facilities, approval of the proposed indirect changes in control is a prerequisite to FLEX beginning construction, and ultimately, to exporting LNG from the Freeport LNG Terminal. For these reasons, FLEX contends that the proposed changes in control will facilitate the realization of the significant benefits associated with its liquefaction project.

### **Environmental Impact**

FLEX states that the proposed changes in control of FLIQ1 and FLIQ2 will not change the nature, extent, location, or operations of the proposed FLEX liquefaction project facilities. Therefore, FLEX maintains that a grant of its Application would not constitute a federal action significantly affecting the human environment within the meaning of the National Environmental

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<sup>13</sup> See App. at 3.



Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, nor would an environmental impact statement or environmental assessment be required.

### **DOE/FE Evaluation**

The portion of FLEX's Application subject to this Notice will be reviewed pursuant to section 3(a) of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00-002.00N (July 11, 2013) and DOE Redelelegation Order No. 00-002.04F (July 11, 2013). In reviewing this Application, DOE will consider the Application, any comments filed in response to this Application, and as well as any other issues determined to be appropriate including conformity with the regulations at 10 C.F.R. § 590.405 and with NGA section 3(a), 15 U.S.C. § 717b(a). Parties that may oppose this Application should comment in their responses on these issues.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities, to the extent any are deemed to exist.

### **Public Comment Procedures**

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 C.F.R. Part 590.

Filings may be submitted using one of the following methods: (1) e-mailing the filing to [fergas@hq.doe.gov](mailto:fergas@hq.doe.gov), with FE Docket No. 14-005-CIC in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 14-005-CIC. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are

factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 C.F.R. § 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E-042, 1000 Independence Avenue, S.W., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address:

<http://www.fe.doe.gov/programs/gasregulation/index.html>.

Issued in Washington, D.C., on August 7, 2014.



**Marc P. Talbert**

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