



Department of Energy  
Washington, DC 20585

October 23, 2023

***Via Email***

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**RE: Notification in Accordance with Procedures for Changes in Control**  
Cove Point LNG, LP  
Docket Nos. 11-115-LNG, 11-128-LNG, 22-22-LNG, and 22-155-LNG

Dear Dr. Hollaway:

This correspondence constitutes the response of the Department of Energy (DOE), Office of Fossil Energy and Carbon Management (FECM),<sup>1</sup> to the Notification in Accordance with Procedures for Change in Control filed on behalf of your client, Cove Point LNG, LP (CPLNG), on July 11, 2023,<sup>2</sup> and updated with a Notification of Change in Control filed on September 11, 2023.<sup>3</sup> CPLNG provides notice of a change in its upstream ownership, in light of DOE's Change in Control Procedures.<sup>4</sup>

**I. BACKGROUND**

CPLNG is authorized to export domestically produced liquefied natural gas (LNG) by vessel from the Cove Point LNG Terminal in Lusby, Calvert County, Maryland, under the following long-term orders issued by DOE under section 3 of the Natural Gas Act (NGA):<sup>5</sup>

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<sup>1</sup> The Office of Fossil Energy (FE) changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

<sup>2</sup> Cove Point LNG, LP, Notification in Accordance with Procedures for Changes in Control, Docket Nos. 11-115-LNG, *et al.* (July 11, 2023), <https://www.energy.gov/sites/default/files/2023-07/Final%20BHE%20Cove%20Point%20DOE%20CIC%20Filing%20%287.11.2023%29.pdf> [hereinafter Notification].

<sup>3</sup> Cove Point LNG, LP, Notification of Change in Control, Docket Nos. 11-115-LNG, *et al.* (Sept. 11, 2023) [hereinafter Notification of Transaction], <https://www.energy.gov/sites/default/files/2023-09/Final%20Cove%20Point%20LNG%20Notice%20of%20Closing%20to%20DOE%20-09.11.2023.pdf>.

<sup>4</sup> See U.S. Dep't of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,541 (Nov. 5, 2014) [hereinafter DOE Change in Control Procedures].

<sup>5</sup> 15 U.S.C. § 717b.

- (i) DOE/FE Order No. 3019, as amended,<sup>6</sup> authorizing exports in a volume equivalent to 365 billion cubic feet per year (Bcf/yr) of natural gas for a term extending through December 31, 2050, to any country with which the United States has entered into, or in the future will have entered into, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries), pursuant to NGA section 3(c);<sup>7</sup> and
- (ii) DOE/FE Order No. 3331-A, as amended,<sup>8</sup> authorizing exports in a volume equivalent to 281 Bcf/yr of natural gas for a term extending through December 31, 2050, to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries), pursuant to NGA section 3(a).<sup>9</sup>

Under these authorizations, the FTA and non-FTA volumes are not additive.

CPLNG also holds the following short-term authorizations:

- (i) DOE/FECM Order No. 4940,<sup>10</sup> authorizing imports from various international sources by vessel, up to a total volume equivalent to 36 Bcf of natural gas for a two-year term extending through February 28, 2025; and
- (ii) DOE/FECM Order No. 4849,<sup>11</sup> authorizing exports of previously imported LNG to both FTA and non-FTA countries, in a volume equivalent to 70 Bcf of natural gas for a two-year term extending through July 7, 2024.

## II. DESCRIPTION OF CHANGE IN CORPORATE OWNERSHIP

In the Notification, CPLNG described a planned change in its upstream ownership through a transaction involving the following entities: Berkshire Hathaway Energy Company (BHE);

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<sup>6</sup> *Cove Point LNG, LP*, DOE/FE Order No. 3019, Docket No. 11-115-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal to Free Trade Agreement Nations (Oct. 7, 2011), *amended by* Order No. 3019-A (Aug. 4, 2017) (reflecting corporate name change), *amended by* Order No. 3019-B (Oct. 21, 2021) (extending export term), *further amended by* Order No. 3019-C (Dec. 2, 2020) (reflecting corporate name change).

<sup>7</sup> 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>8</sup> *Cove Point LNG, LP*, Order No. 3331-A, Docket No. 11-128-LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Cove Point LNG Terminal in Calvert County, Maryland, to Non-Free Trade Agreement Nations (May 7, 2015), *reh'g denied* Order No. 3331-B (Apr. 18, 2016), *amended by* Order No. 3331-C (Aug. 4, 2017) (reflecting corporate name change), *amended by* Order No. 3331-D (Oct. 21, 2020) (extending export term), *further amended by* Order No. 3331-E (Dec. 2, 2020) (reflecting corporate name change).

<sup>9</sup> 15 U.S.C. § 717b(a).

<sup>10</sup> *Cove Point LNG, LP*, DOE/FECM Order No. 4940, Docket No. 22-155-LNG, Order Granting Blanket Authorization to Import Liquefied Natural Gas from Various International Sources by Vessel (Dec. 15, 2022).

<sup>11</sup> *Cove Point LNG, LP*, DOE/FECM Order No. 4849, Docket No. 22-22-LNG, Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations (July 8, 2022).

Eastern MLP Holding Company II, LLC (Eastern MLP II); DECP Holdings, Inc. (DECP Holdings); and Dominion Energy, Inc. (DEI). According to CPLNG:

- Eastern MPL II is a wholly owned subsidiary of BHE, an Iowa corporation; and a subsidiary of Berkshire Hathaway Inc., a Delaware corporation which indirectly owned 25% of the limited partnership in CPLNG and 100% of the general partnership interest in CPLNG.
- DECP Holdings is an indirect wholly owned subsidiary of DEI, a Virginia corporation.<sup>12</sup>

CPLNG stated that, on July 9, 2023, BHE, Eastern MLP II, DECP Holdings, and DEI entered into a Purchase and Sale Agreement (PSA) under which DECP Holdings will transfer its 50% limited partnership interest in CPLNG to Eastern MLP II.<sup>13</sup> Upon the transaction closing, Eastern MLP II will own 75% of the limited partnership in CPLNG.<sup>14</sup> Thus, BHE (through its wholly owned subsidiary Eastern MLP II) will be the indirect owner of 75% of the limited partnership interest in CPLNG, and DEI will no longer own any interest in CPLNG.<sup>15</sup>

According to CPLNG, this transaction will be an internal change in ownership of limited partnership interests among the existing owners of CPLNG and will not affect CPLNG's operation.<sup>16</sup> BHE, as the indirect owner of the general partnership interest of CPLNG, will continue to have day-to-day management and control of CPLNG.<sup>17</sup>

On September 11, 2023, CPLNG notified DOE that the transaction had closed on September 1, 2023.<sup>18</sup>

### III. DISCUSSION AND CONCLUSIONS

DOE construes a change in control to mean a change, directly or indirectly, of the power to direct the management or policies of an entity 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>19</sup> A rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, 10% or more of the voting securities of such entity.<sup>20</sup>

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<sup>12</sup> Notification at 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* In the Notification, CPLNG provided charts illustrating its ownership structure before and after the transaction closes as Attachments A-1 and A-2, respectively. As depicted by the charts, Brookfield Asset Management Inc., through its affiliate Bowie Acquisitions LLC, will continue to indirectly own the remaining 25% of the limited partnership interest in CPLNG. See Notification, Attachments A-1 and A-2.

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> Notification of Transaction at 1.

<sup>19</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>20</sup> *Id.*

In light of the transaction described above, BHE has increased its indirect ownership in the limited partnership interest of CPLNG from 25% to 75%, which we find constitutes a change in control.<sup>21</sup>

#### **A. FTA Export Authorizations**

DOE's Change in Control Procedures provide that, upon receipt of a statement of change in control relating to existing FTA export authorizations, DOE will give immediate effect to the change in control and will take no further action.<sup>22</sup> Accordingly, the change in control described above has taken effect insofar as it relates to DOE/FE Order No. 3019, as amended, DOE/FECM Order No. 4940, and the FTA portion of DOE/FECM Order No. 4849.

#### **B. Non-FTA Export Authorizations**

DOE's Change in Control Procedures state that, with respect to existing non-FTA authorizations, DOE will give effect to the change in control and will publish a notice of the change in the *Federal Register*.<sup>23</sup> If no interested person protests the change in control and DOE takes no action on its own motion, the amendment to the existing non-FTA authorization will be deemed granted 30 days after publication in the *Federal Register*.<sup>24</sup>

Consistent with these procedures, DOE published a notice of CPLNG's change in control in the *Federal Register* on August 1, 2023 (Notice).<sup>25</sup> DOE invited protests, motions to intervene, and written comments to be filed no later than August 16, 2023.<sup>26</sup> DOE received no filings in response to the Notice. Because more than 30 days have passed since the Notice was published in the *Federal Register*, the change in control with respect to DOE/FE Order No. 3331-A, as amended, and the non-FTA portion of DOE/FECM Order No. 4849 is deemed granted. No further action is required.

Sincerely,

Amy R. Sweeney  
Director, Office of Regulation, Analysis, and Engagement  
Office of Resource Sustainability

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<sup>21</sup> *Id.*; see also Notification of Transaction at 2.

<sup>22</sup> DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>23</sup> See *id.*

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Dep't of Energy, Change in Control: Cove Point LNG, LP, 88 Fed. Reg. 50,134 (Aug. 1, 2023).

<sup>26</sup> *Id.*