



Department of Energy
Washington, DC 20585

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Via Email and Certified Mail

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**RE: Notice of Dismissal of Pending Non-Free Trade Agreement Portion of Application
Docket No. 12-123-LNG**

Dear Mr. Bryant:

On September 21, 2012, CE FLNG, LLC (CE FLNG) submitted an application (Application)¹ to the Department of Energy's (DOE) Office of Fossil Energy (now the Office of Fossil Energy and Carbon Management)² requesting long-term authorization to export liquefied natural gas (LNG) to free trade agreement (FTA) and non-free trade agreement (non-FTA) countries under section 3 of the Natural Gas Act (NGA).³ As explained below, DOE is dismissing the pending non-FTA portion of the Application without prejudice to CE FLNG filing a new non-FTA application in the future.

I. Background

In the Application, CE FLNG requests authority to export domestically produced LNG by vessel from the proposed CE FLNG Terminal to be located in Plaquemines Parish, Louisiana (the Project). CE FLNG seeks to export the LNG in a volume equivalent to approximately 389.6

¹ CE FLNG, LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement and Non-Free Trade Agreement Countries, Docket No. 12-123-LNG (Sept. 21, 2012) [hereinafter App.].

² On July 4, 2021, DOE's Office of Fossil Energy (FE) changed its name to the Office of Fossil Energy and Carbon Management (FECM).

³ 15 U.S.C. § 717b.

billion cubic feet (Bcf) per year (Bcf/yr) of natural gas, or 1.07 Bcf per day (Bcf/d), to both FTA and non-FTA countries on a non-additive basis, pursuant to NGA section 3(c)⁴ and NGA section 3(a),⁵ respectively.

On November 21, 2012, DOE granted the FTA portion of the Application in DOE/FE Order No. 3193 (FTA authorization) for a term of 30 years.⁶

On December 6, 2012, DOE published a notice of the non-FTA portion of the Application in the *Federal Register*.⁷ In response to the notice, DOE received a Motion to Intervene, Protest, and Comments filed by Sierra Club; a Motion to Intervene and Protest filed by the American Public Gas Association; and a comment opposing the Application filed by Jean Public.⁸

Under NGA section 3(a), DOE conducts an informal adjudication and will grant a non-FTA application unless DOE “finds that the proposed exportation ... will not be consistent with the public interest.”⁹ Before reaching a final decision on a non-FTA application, DOE also must comply with the National Environmental Policy Act (NEPA).¹⁰ Here, the Federal Energy Regulatory Commission (FERC or the Commission) is responsible for permitting CE FLNG’s proposed Project and would serve as the lead agency in the NEPA review process, while DOE would serve as a cooperating agency.¹¹

II. Current Status

The non-FTA portion of CE FLNG’s Application has now been pending for more than 12 years. During this time, CE FLNG has not submitted any updates to DOE demonstrating concrete action to develop the proposed Project or otherwise to advance the Application.¹² Further, DOE takes administrative notice that, on October 11, 2016, FERC issued a letter to CE FLNG terminating its pre-filing environmental review process for the proposed Project and closing the

⁴ *Id.* § 717b(c).

⁵ *Id.* § 717b(a).

⁶ *CE FLNG, LLC*, DOE/FE Order No. 3193, Docket No. 12-123-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Proposed CE FLNG LNG Terminal in Plaquemines Parish, Louisiana, to Free Trade Agreement Nations (Nov. 21, 2012) (authorizing exports of LNG to FTA countries in a volume equivalent to 391 Bcf/yr of natural gas).

⁷ *CE FLNG, LLC*, Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 30-Year Period; Notice of Application, 77 Fed. Reg. 72,840 (Dec. 6, 2012).

⁸ See Docket No. 12-123-LNG, https://fossil.energy.gov/ng_regulation/ce-flng-llc-ce-flng-12-123-lng.

⁹ 15 U.S.C. § 717b(a).

¹⁰ 42 U.S.C. § 4321 *et seq.*

¹¹ DOE’s authorization is solely with respect to the requested export of LNG and does not extend to authorization over the siting, construction, and operation of the proposed Project. See, e.g., *Sierra Club v. Fed. Energy Regul. Comm’n*, 827 F.3d 36, 40 (D.C. Cir. 2016).

¹² The only filing by CE FLNG in its docket since June 2013 was a “Docket Service List Update” filed in January 2023.

administrative record due to lack of progress.¹³

CE FLNG failed to notify DOE of FERC's termination notice, in contravention of DOE's regulations requiring an applicant to "amend or supplement the application, whenever there are changes in material facts or conditions upon which the proposal is based,"¹⁴ and to update the application "as the status of any environmental assessments changes."¹⁵ Additionally, more than eight years have passed since FERC issued the termination notice, yet CE FLNG has not initiated a new pre-filing review process with FERC.¹⁶

During this time, CE FLNG has filed its semi-annual reports with DOE, as required by its FTA authorization. In its most recent semi-annual report, filed in October 2024, CE FLNG acknowledged that it has not "re-submitted" its pre-filing request to FERC.¹⁷ CE FLNG also identified key Project milestones as "delayed" or "TBD [to be determined]."¹⁸ As in past semi-annual reports, CE FLNG asserts that it is "working through issues," "[w]orking to evaluate the impact of market changes on the project," and "working to identify new LNG Supply Agreement(s)."¹⁹

III. Dismissal of Application Without Prejudice

In the 12 years since CE FLNG filed its Application, both the U.S. natural gas market and DOE's authorization of LNG exports to non-FTA countries under NGA section 3(a) have evolved considerably,²⁰ yet CE FLNG's pending non-FTA Application has remained stagnant. By its own admission, CE FLNG has not made any identifiable progress with respect to its proposed

¹³ Letter from Ann F. Miles, Director of FERC's Office of Energy Projects, to Sherman E. Bryant, CE FLNG LLC, FERC Docket No. PF13-11-000, at 1 (Oct. 11, 2016), https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20161011-3018 (stating that "[t]he Commission's staff has participated in the pre-filing review of this project for approximately three and a half years, yet CE FLNG, LLC has not filed any of the draft resource reports needed," except for two filed in 2013; "[t]he schedule ... has changed eight times and CE FLNG, LLC has failed to meet these schedules each time"; and "it has been over two years since CE FLNG, LLC engaged any regulatory authorities or potentially affected stakeholders, which is the intended purpose of the pre-filing process").

¹⁴ 10 C.F.R. § 590.204(a).

¹⁵ *Id.* § 590.202(b)(7).

¹⁶ *See, e.g.*, 18 C.F.R. § 157.21.

¹⁷ CE FLNG, LLC, Semi-Annual Report (Period Ending Oct. 1, 2024), Docket No. 12-123-LNG, at 1 (Oct. 31, 2024), <https://www.energy.gov/sites/default/files/2024-10/CE%20FLNG%20Semi-Annual%20Report%20%20Oct%201%202024.pdf>.

¹⁸ *Id.*

¹⁹ *Id.* We note that CE FLNG has repeated these statements for at least two years.

²⁰ For example, as of September 2012, when CE FLNG filed its Application, DOE had issued only one final long-term non-FTA export authorization (to Sabine Pass Liquefaction, LLC) in a volume equivalent to 2.2 Bcf/d of natural gas. Since that time, DOE has issued more than 40 final non-FTA authorizations, with the cumulative volume of approved export authorizations now totaling approximately 49.0 Bcf/d sourced from both the lower-48 states and Alaska. *See, e.g., NFE Altamira FLNG, S. de R.L. de C.V.*, DOE/FECM Order No. 5156, Docket No. 22-110-LNG, Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Nations, at 6 (Aug. 31, 2024); *Sierra Club, et al.*, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas, at 13, 12-15, 20-22 (July 18, 2023) (stating that, in 2013, DOE's LNG export regulatory program "was still relatively new" and discussing significant developments in the program over the last decade).

Project, most notably in engaging with FERC to commence a new pre-filing review process following FERC's 2016 termination notice (which itself was based on CE FLNG's lack of progress for several years and which CE FLNG did not disclose to DOE).

For all of these reasons, we conclude that the non-FTA portion of CE FLNG's Application fails to provide a sufficient basis for DOE's review under either NGA section 3(a) or NEPA. DOE thus finds it necessary and appropriate to dismiss the Application, effective immediately, without prejudice to CE FLNG filing a new application requesting non-FTA export authorization from DOE in the future.²¹

This dismissal does not affect CE FLNG's existing FTA authorization, DOE/FE Order No. 3193, which remains active.²²

Sincerely,

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

cc: Service List, Docket No. 12-123-LNG

²¹ See 15 U.S.C. § 717o; see also, e.g., *Fourchon LNG LLC*, DOE/FECM Order No. 4162-A, Docket No. 17-105-LNG, Order Vacating Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations, and Dismissing Pending Application (May 31, 2024) (dismissing non-FTA portion of pending application due to applicant's failure to inform DOE of FERC termination notice, as well as lack of progress).

²² See *supra* note 6.