



Department of Energy
Washington, DC 20585

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Via Email and Certified Mail

John S. Decker
Vinson & Elkins LLP
2200 Pennsylvania Avenue N.W.
Suite 500 West
Washington DC 20037-1701
jdecker@velaw.com

David C. Landry
Freeport-McMoRan Energy LLC
1615 Poydras Street
New Orleans, LA 70112
Dave_Landry@fmi.com

**RE: Notice of Dismissal of Pending Non-Free Trade Agreement Portion of Application
Docket No. 13-26-LNG**

Dear Mr. Decker and Mr. Landry:

On February 22, 2013, MPEH LLC (MPEH) (formerly Freeport-McMoRan Energy LLC) 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 MPEH filing a new application in the future.

¹ MPEH LLC (formerly Freeport McMoRan Energy, LLC), Application for Long-Term Authorization to Export Liquefied Natural Gas, Docket No. 13-26-LNG (Feb. 22, 2013) [hereinafter App.]. In September 2016, Freeport-McMoRan filed a Notice of Change in Control that included, in relevant part, a request to change the name of the applicant in this proceeding to MPEH LLC.

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.

I. Background

In the Application, MPEH requests authority to export domestically produced LNG by vessel from the proposed Main Pass Energy Hub™ Deepwater Port (MPEH™ Port), to be located in federal waters in Main Pass Block 299, 16 miles offshore of Louisiana. MPEH seeks to export the LNG in a volume equivalent to approximately 1,176 billion cubic feet (Bcf) per year (Bcf/yr) of natural gas, or 3.2 Bcf per day (Bcf/d), to both FTA and non-FTA countries on a non-additive basis, pursuant to NGA sections 3(c)⁴ and 3(a),⁵ respectively.

On May 24, 2013, DOE granted the FTA portion of the Application in DOE/FE Order No. 3290 for a term of 30 years.⁶

On June 6, 2013, 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; two Motions to Intervene filed by America's Energy Advantage, Inc. and Industrial Energy Consumers of America, respectively; and several letters from congressional members in support of the Application submitted by MPEH.⁸ Additionally, DOE received a Motion to Intervene Out-of-Time filed by the American Petroleum Institute.

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 U.S. Maritime Administration (MARAD), in coordination with the U.S. Coast Guard, is responsible for permitting the proposed MPEH™ Port and would serve as the lead agency in the NEPA review process, while DOE would serve as a cooperating agency.¹¹

⁴ *Id.* § 717b(c).

⁵ *Id.* § 717b(a).

⁶ MPEH LLC (formerly Freeport-McMoRan Energy LLC), DOE/FE Order No. 3290, Docket No. 13-26-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Proposed Main Pass Energy Hub™ Deepwater Port 16 miles Offshore of Louisiana to Free Trade Agreement Nations (May 24, 2013) (authorizing exports of LNG to FTA countries in a volume equivalent to 1,175 Bcf/yr of natural gas, not the 1,176 Bcf/yr requested in the Application).

⁷ MPEH LLC (formerly Freeport-McMoRan Energy 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, 78 Fed. Reg. 34,084 (June 6, 2013).

⁸ See Docket No. 13-26-LNG, https://fossil.energy.gov/ng_regulation/applications-2013-main-pass-energy-hub-previously-freeport-memoranenergyllc-13-26-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 MPEH™ Port. See, e.g., *Sierra Club v. Fed. Energy Regul. Comm'n*, 827 F.3d 36, 40 (D.C. Cir. 2016).

II. Current Status

The non-FTA portion of MPEH's Application has now been pending for almost 12 years. During this time, MPEH has not submitted any updates to DOE demonstrating concrete action to develop the proposed MPEH™ Port or otherwise to advance the Application.¹² For example, in the Application, MPEH stated that it had submitted to MARAD a "Letter of Intent to Submit Application" on October 3, 2012.¹³ Since that time, however, MPEH has not provided DOE with any evidence that it did, in fact, submit an application to MARAD.¹⁴

Since 2013, MPEH 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, MPEH asserts (exactly as it has stated in all of its past reports since 2014), that "[d]evelopment activities are continuing, and discussions are continuing with [MARAD] regarding an application for authorization to construct the Main Pass Energy Hub™ Deepwater Port."¹⁵ As noted above, however, there is no indication that MPEH has filed an application with MARAD for the proposed MPEH™ Port upon which the pending Application is based.

III. Dismissal of Application Without Prejudice

In the nearly 12 years since MPEH filed its Application, while 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,¹⁶ MPEH's pending non-FTA Application has remained stagnant. Based on the information in this proceeding, we find that MPEH has not made any identifiable progress with respect to its proposed MPEH™ Port and export proposal, including taking the threshold step of submitting an application to MARAD.

For all of these reasons, we conclude that the non-FTA portion of MPEH'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 MPEH filing a new application requesting non-FTA export authorization from DOE in the future.¹⁷

¹² The only filings by MPEH in its docket since August 2013 were in 2016 and 2017 pertaining to changes in control.

¹³ See App. at 27.

¹⁴ See generally 33 C.F.R. Part 148, Subpart B.

¹⁵ MPEH LLC, Semi-Annual Report (Period Ending Oct. 1, 2024), Docket No. 13-26-LNG, at 1 (Oct. 2, 2024), <https://www.energy.gov/fecm/articles/semi-annual-reports-mpeh-llc-fe-dkt-no-13-26-lng-order-3290>.

¹⁶ For example, as of February 2013, when MPEH 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., *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).

¹⁷ 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,

This dismissal does not affect MPEH's existing FTA authorization in DOE/FE Order No. 3290, which remains active.¹⁸

Sincerely,

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

cc: Service List, Docket No. 13-26-LNG

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).

¹⁸ See *supra* note 6.