



UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

4:19 pm, Aug. 3, 2016

In The Matter Of:)	
)	
Freeport LNG Expansion, L.P.)	FE Docket No. 16- 108 - LNG
FLNG Liquefaction, LLC)	FE Docket No. 11-161-LNG
FLNG Liquefaction 2, LLC &)	
FLNG Liquefaction 3, LLC)	

**APPLICATION FOR AMENDMENT TO LONG-TERM AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS
TO NON-FREE TRADE AGREEMENT NATIONS**

Pursuant to Section 3 of the Natural Gas Act (“NGA”)¹ and Part 590 of the Department of Energy’s (“DOE”) regulations,² Freeport LNG Expansion, L.P. (“Freeport Expansion”), FLNG Liquefaction, LLC (“FLIQ1”), FLNG Liquefaction 2, LLC (“FLIQ2”) and FLNG Liquefaction 3, LLC (“FLIQ3” and collectively with Freeport Expansion, FLIQ1, and FLIQ2, “FLEX”) hereby request that DOE, Office of Fossil Energy (“DOE/FE”) grant an amendment (“Amendment”) to the authorization received in DOE/FE Order Nos. 3357, 3357-A, 3357-B and 3357-C³ (collectively, “Order No. 3357”) to allow FLEX to engage in additional long-term,

¹ 15 U.S.C. § 717b (2012).

² 10 C.F.R. Part 590 (2016).

³ *Freeport LNG Expansion, L.P. et al., 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*, DOE/FE Order No. 3357, FE Docket No. 11-161-LNG (Nov. 15, 2013); *Freeport LNG Expansion, L.P. et al., Order Amending Applications in Docket Nos. 10-160-LNG, 10-161-LNG, and 12-06-LNG and Granting Request in Docket No. 11-161-LNG to Add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as Applicants and Authorization Holders*, DOE/FE Order Nos. 2913-A, 3066-A, & 3282-A, FE Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG & 12-06-LNG (Feb. 7, 2014) [hereinafter *Additional Entities Order*]; *Freeport LNG Expansion, L.P. et al., Order Amending DOE/FE Order Nos. 3282 and 3357*, DOE/FE Order Nos. 3282-B & 3357-A, FE Docket Nos. 10-161-LNG & 11-161-LNG (June 6, 2014) [hereinafter *DOE/FE Order No. 3357-A*]; *Freeport LNG Expansion, L.P. et al., Final Opinion and Order 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*, DOE/FE Order No. 3357-B, FE Docket No. 11-161-LNG (Nov. 14, 2014) [hereinafter *DOE/FE Order No. 3357-B*]; *Freeport LNG Expansion, L.P. et al., Opinion and Order Denying Request for Rehearing of Orders 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*, DOE/FE Order No. 3357-C, FE Docket No. 11-161-LNG (Dec. 4, 2015).

multi-contract exports of domestically produced liquefied natural gas (“LNG”) to any nation that has, or in the future develops, the capacity to import LNG with which the United States (“U.S.”) does not have a free trade agreement (“FTA”) requiring the national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (“Non-FTA Nations”). Through this Amendment, FLEX seeks to align the authorized export volumes of LNG from the Freeport LNG Liquefaction Project (the “Liquefaction Project”)⁴ with the optimized production capacity design of the facilities.⁵ Therefore, FLEX requests that Order No. 3357 be amended to increase the quantity of authorized exports of domestically produced LNG thereunder by an additional amount equivalent to 125 Bcf per year (“Bcf/y”) of natural gas to Non-FTA Nations for a 20-year period commencing on the date of first commercial export from the Liquefaction Project.⁶ FLEX requests that all other aspects of Order No. 3357 apply equally to such additional amount as they do to the 146 Bcf/y of natural gas equivalent exports currently authorized under Order No. 3357, including without limitation, the authorization to continue exporting “Make-Up Volumes” of LNG for a total of three years following the end the 20-year export period as may be necessary to bring total exports up to the full volume of exports authorized, if FLEX is unable

⁴ The Liquefaction Project is currently under construction at the Freeport LNG Terminal on Quintana Island, Texas. The Federal Energy Regulatory Commission (“Commission” or “FERC”) authorized the siting, construction and operation of the Liquefaction Project in 2014. *See Freeport LNG Development, L.P. et al.*, 148 FERC ¶ 61,076 (2014), *reh’g denied*, 149 FERC ¶ 61,119 (2014) [hereinafter *Liquefaction Order*].

⁵ In this regard, on July 7, 2016 in FERC Docket No. CP15-518-000, the Commission granted Freeport LNG Development, L.P. (“Freeport LNG”), FLIQ1, FLIQ2 and FLIQ3’s request for a limited amendment to the Liquefaction Order to increase the Liquefaction Project’s authorized LNG production capacity based on less conservative operating assumptions. *Freeport LNG Development, L.P. et al.*, 156 FERC ¶ 61,019 (2016) [hereinafter *Limited Amendment Order*]. *See also, Freeport LNG Development, L.P. et al.*, Application for Limited Amendment to Authorization Granted Under Section 3 of the Natural Gas Act, FERC Docket No. CP15-518-000 (June 15, 2015) [hereinafter *Limited Amendment Application*]. In the 2011 application filed with DOE/FE in FE Docket 11-161-LNG, Freeport Expansion and FLIQ1 requested authorization for exports of LNG in an amount up to the equivalent of approximately 1.4 billion cubic feet (“Bcf”) per day (“Bcf/d”) of natural gas to Non-FTA Nations. However, because the production capacity of the Liquefaction Project was thought to be 1.8 Bcf/d at the time Order No. 3357 was issued, DOE/FE only authorized exports for up to .4 Bcf/d (to bring the total authorized non-FTA exports up to 1.8 Bcf/d when added to the 1.4 Bcf/d authorized in FE Docket No. 10-161-LNG). *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 11-161-LNG (Dec. 19, 2011); *Order No. 3357, supra* note 3; *see infra*, note 10.

⁶ FLEX intends to export commissioning volumes prior to the commencement of the term of the authorization requested herein, pursuant to a separate short-term blanket export authorization that it will seek closer to the commencement of commissioning activities.

to export all volumes during the original export period, and the authorization of FLEX to export such volumes both on its own behalf and as agent for other parties who hold title to the LNG at the time of export, in each case subject to the registration and reporting requirements and other terms and conditions of Order No. 3357.⁷ In support of the instant application (“Application”), FLEX provides as follows:

I. DESCRIPTION OF APPLICANTS

The exact legal name of Freeport Expansion is Freeport LNG Expansion, L.P. Freeport Expansion is a Delaware limited partnership. The exact legal name of FLIQ1 is FLNG Liquefaction, LLC, the exact legal name of FLIQ2 is FLNG Liquefaction 2, LLC, and the exact legal name of FLIQ3 is FLNG Liquefaction 3, LLC. FLIQ1 is indirectly owned by Freeport Expansion, Osaka Gas Company Ltd., and JERA Co., Inc. FLIQ2 is indirectly owned by Freeport Expansion and IFM Global Infrastructure Fund. FLIQ3 is an indirect wholly owned subsidiary of Freeport Expansion. Freeport Expansion, FLIQ1, FLIQ2, and FLIQ3 are all authorized to do business in Texas and have a principal place of business at 333 Clay Street, Suite 5050, Houston, Texas 77022.

The exact legal name of Freeport LNG is Freeport LNG Development, L.P. Freeport LNG has its principal place of business at 333 Clay Street, Suite 5050, Houston, Texas 77022 and is authorized to do business in Texas. Freeport LNG is a Delaware limited partnership with one general partner, Freeport LNG-GP, LLC, a Delaware limited liability company owned by an individual, Michael S. Smith, and by IFM Investors Midstream, LLC. Freeport LNG's limited partners are: (1) Freeport LNG Investments, LLLP and FLNGI Option Holdco, LLC, a Delaware limited liability limited partnership and limited liability company, respectively, owned by Mr. Smith; (2) GIP II FLNG, L.P. and GIP II FLNG Holdings Partnership 2, LLC, a Delaware limited partnership and Delaware limited liability company, respectively, owned by Global

⁷ See DOE/FE Order No. 3357-B, *supra* note 3.

Infrastructure Partners; and (3) Turbo LNG, LLC, a Delaware limited liability company owned by Osaka Gas Company, Ltd.

II. COMMUNICATIONS AND CORRESPONDENCE

All correspondence and communications concerning this Application, including all service of pleadings and notices, should be directed to the following persons:⁸

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III. BACKGROUND

Currently, in FE Docket Nos. 10-160-LNG and 12-06-LNG, FLEX is authorized by DOE/FE to export LNG to FTA nations in an amount up to 2.8 Bcf/d of natural gas.⁹ In FE Docket Nos. 10-161-LNG¹⁰ and 11-161-LNG,¹¹ FLEX is authorized by DOE/FE to export LNG to Non-FTA Nations in an amount up to 1.8 Bcf/d of natural gas.

⁸ FLEX requests waiver of Section 590.202(a) of DOE's regulations, to the extent necessary to include outside counsel on the official service list in this proceeding. 10 C.F.R. § 590.202(a) (2016).

⁹ *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations*, DOE/FE Order No. 2913, FE Docket No. 10-160-LNG (Feb. 10, 2011); *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas from the Freeport LNG Terminal to Free Trade Agreement Nations*, DOE/FE Order No. 3066, FE Docket No. 12-06-LNG (Feb. 10, 2012); *Additional Entities Order*.

¹⁰ *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, 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*, DOE/FE Order No. 3282, FE Docket No. 10-161-LNG (May 17, 2013); *Additional Entities Order*, *supra* note 3; *DOE/FE Order No. 3357-A*, *supra* note 3; *Freeport LNG Expansion, L.P. et al., Final Opinion and Order 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*, DOE/FE Order No. 3282-C, FE Docket No. 10-161-LNG (Nov. 14, 2014) [hereinafter *DOE/FE Order No. 3282-C*].

¹¹ *See DOE/FE Order No. 3357-B*, *supra* note 3.

As previously noted, the Commission has approved the increase of the Liquefaction Project's authorized maximum LNG production capacity from the 1.8 Bcf/d (or 657 Bcf/y) reflected in the Liquefaction Order to 2.14 Bcf/d (or 782 Bcf/y), which is the maximum peak day combined LNG production capacity of the three liquefaction trains authorized as part of the Liquefaction Project.¹² No construction or modification of facilities is required to accomplish this capacity increase. The authorization requested in the instant Application aligns with the increase in production capacity as approved in the Limited Amendment Order. The FERC staff issued an Environmental Assessment (the "FERC EA") on March 31, 2016, in conjunction with its review of the Limited Amendment Application.¹³ In the FERC EA, the FERC staff "determined that if [Freeport LNG, FLIQ1, FLIQ2 and FLIQ3] operate[] the proposed facilities in accordance with [their] application and supplements, approval of the [a]mendment would not constitute a major federal action significantly affecting the quality of the human environment."¹⁴ The Commission adopted this conclusion in issuing the Limited Amendment Order.¹⁵

IV. AUTHORIZATION REQUESTED

FLEX hereby respectfully requests that DOE/FE amend the authorization received in Order No. 3357 to allow FLEX to engage in additional long-term, multi-contract exports of an additional 125 Bcf/y of natural gas in the form of LNG from the Liquefaction Project to Non-FTA Nations. Consistent with the existing authorization under Order No. 3357, FLEX requests that DOE/FE issue such additional authorization for a 20-year term commencing on the date of first commercial export from the Liquefaction Project.

FLEX requests that all other aspects of Order No. 3357 apply equally to such additional volumes as they do to the 146 Bcf/y of natural gas equivalent exports currently authorized under

¹² *Limited Amendment Order*, *supra* note 5.

¹³ *Freeport LNG Development, L.P. et al.*, Environmental Assessment Report, FERC Docket No. CP15-518-000 (Mar. 31, 2016).

¹⁴ *Id.*

¹⁵ *Limited Amendment Order*, *supra* note 5, at P36.

Order No. 3357, including without limitation, the authorization to continue exporting “Make-Up Volumes” of LNG for a total of three years following the end the 20-year export period, and the authorization of FLEX to export such volumes both on its own behalf and as agent for other parties who hold title to the LNG at the time of export, in each case subject to the registration and reporting requirements and other terms and conditions of Order No. 3357.

To comply with the National Environmental Policy Act (“NEPA”),¹⁶ FLEX respectfully submits that it would be appropriate for DOE/FE to fulfill its requirements through a categorical exclusion¹⁷ or through adoption of the FERC EA and issuance by DOE of a Finding of No Significant Impact (“FONSI”). As the Amendment requested in the Application requires no new construction or modifications to authorized facilities (as confirmed in the FERC EA), a categorical exclusion or adoption of the FERC EA is appropriate in this instance.¹⁸

Finally, FLEX respectfully requests that DOE/FE issue the Amendment as requested herein no later than October 20, 2016.

V. COMMERCIAL TERMS AND EXPORT SOURCES

With limited exception, FLEX does not purchase natural gas under long-term purchase agreements, but rather its business model is based on long-term liquefaction tolling agreements. Customers generally secure their own natural gas for export. However, because of the interconnectivity of the U.S. natural gas pipeline system, FLEX and the Liquefaction Project’s customers will have access to almost any point on the grid through direct delivery or by displacement.

¹⁶ 42 U.S.C. §§ 4321 *et seq.* (2012).

¹⁷ Categorical exclusions apply to certain actions an agency determines are not expected to have individually or cumulatively significant environmental impacts. 40 C.F.R. § 1508.4 (2015). Under DOE’s regulations a categorical exclusion can apply to “[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the [NGA] that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.” 10 C.F.R. Part 1021, Subpart D, Appendix B, B5.7 (*Import or export of natural gas, with operational changes*) (2016).

¹⁸ *Id.*

To date, FLEX has entered into long-term contracts with Osaka Gas Trading and Export, LLC, Chubu US Gas Trading LLC and Kansai Electric Power Co., Inc. for a portion of the volumes for which export authorization is requested herein. These contracts have been provided to DOE/FE.

Consistent with Order No. 3357, for additional contracts that it enters into, FLEX will file, or cause to be filed, either unredacted contracts, or long-term contracts under seal, with either: (i) a copy of each long-term contract with commercially sensitive information redacted, or (ii) a summary of all major provisions of the contracts including, but not limited to, the parties to each contract, contract term, quantity, any take-or-pay or equivalent provisions/conditions, destinations, re-sale provisions, and other relevant provisions.

VI. APPLICABLE LEGAL STANDARD

FLEX's application to amend Order No. 3357 to allow for additional exports to Non-FTA Nations must be reviewed under Section 3(a) of the NGA, which provides that, unless there is a finding that such exports "will not be consistent with the public interest,"¹⁹ DOE/FE must authorize exports to a foreign nation. Specifically, Section 3(a) of the NGA states in relevant part:

...no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission *shall issue* such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.²⁰

A presumption in favor of approval of an application for non-FTA authorization, which opponents bear the burden of overcoming, is created by Section 3(a) of the NGA. Regardless, it is clear from the abundance of evidence in the public record that exports of LNG from the U.S. are in the public interest. In granting both of FLEX's previous applications for export

¹⁹ 15 U.S.C. § 717b(a).

²⁰ *Id* (emphasis added).

authorization to Non-FTA Nations,²¹ DOE/FE pointed to market studies and other supporting evidence submitted by FLEX which demonstrated the substantial economic and public benefits that are likely to follow from U.S. exports of natural gas as LNG. That same rationale is equally applicable here, and FLEX herein incorporates by reference the record it developed demonstrating the public interest benefits of exports in FE Docket Nos. 10-161-LNG and 11-161-LNG.²² Additionally, FLEX incorporates the DOE-commissioned studies on LNG exports.²³ For the foregoing reasons, FLEX respectfully submits that its requested Amendment should be granted pursuant to Section 3(a) of the NGA.

VII. PUBLIC INTEREST

DOE/FE already concluded that exports from the Liquefaction Project are not inconsistent with the public interest.²⁴ In DOE/FE Order Nos. 3282-C and 3357-B, DOE/FE found LNG exports from the Liquefaction Project will result in many local and national economic and public benefits.²⁵

The improved outlook for domestic natural gas production stemming from technological advances has enabled greater access to Gulf Coast and other U.S. gas supplies. In this regard, FLEX submits that the lack of domestic need for the LNG necessary to support the export of the

²¹ See DOE/FE Order Nos. 3357-B and 3282-C, *supra* notes 3 & 10.

²² *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 10-161-LNG (Dec. 17, 2010); *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 11-161-LNG (Dec. 19, 2011).

²³ U.S. Energy Information Administration (“EIA”), *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 29, 2014), available at <http://www.eia.gov/analysis/requests/fe/>; NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 3, 2012), available at http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf [hereinafter *NERA Report*]; EIA, *Effect of Increased Natural Gas Exports on Domestic Energy Markets, as Requested by the Office of Fossil Energy* (Jan. 2012), available at http://energy.gov/sites/prod/files/2013/04/f0/fe_eia_lng.pdf [together with the NERA Report, hereinafter *2012 LNG Export Study*].

²⁴ See DOE/FE Order Nos. 3357-B and 3282-C, *supra* notes 3 & 10.

²⁵ *Id.*

volumes requested herein from the Liquefaction Project is clear from the existing and projected trends concerning U.S. gas demand and supply.

While there is no explicit criteria for the public interest analysis laid out in the regulations, the 1984 DOE *Policy Guidelines* state that “[t]he market, not government, should determine the price and other contract terms of imported [and exported] gas,” and that “the federal government’s primary responsibility ... should be to evaluate the need for the gas”²⁶ To this end, DOE/FE has stated in previous export authorizations that domestic need for the natural gas proposed to be exported is “the only explicit criterion that must be considered in determining the public interest.”²⁷

Current projections indicate that supply available to domestic consumers will far exceed market need for the foreseeable future. Governmental sources, such as the Annual Energy Outlook (“AEO”) 2015 produced by the EIA, make clear that domestic natural gas resources are abundantly available to meet projected future domestic needs, including the volumes this Application proposes to export.²⁸ Similarly, the AEO 2016 Early Release states that “[n]atural gas production in the Reference case grows more than 50% between 2015 and 2040”²⁹ and it is

²⁶ DOE, *New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684, 6685 (Feb. 22, 1984). While the *Policy Guidelines* addressed natural gas imports, DOE/FE has recognized that their “principles are applicable to exports as well.” *Phillips Alaska Nat. Gas Corp. & Marathon Oil Co.*, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, DOE/FE Order No. 1473, at 14, FE Docket No. 96-99-LNG (Apr. 2, 1999) [hereinafter *Phillips Alaska*].

²⁷ *Phillips Alaska* at 14. “In prior decisions, however, DOE/FE has identified a range of factors that it evaluates when reviewing an application for export authorization. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.” *DOE/FE Order No. 3282-C*, *supra* note 10, at 9.

²⁸ EIA, *Annual Energy Outlook 2015 with Projections to 2040* (Apr. 2015), available at [http://www.eia.gov/forecasts/aeo/pdf/0383\(2015\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf).

²⁹ EIA, *Annual Energy Outlook 2016 Early Release: Annotated Summary of Two Cases*, at 7 (May 17, 2016), available at [http://www.eia.gov/forecasts/aeo/er/pdf/0383er\(2016\).pdf](http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2016).pdf).

projected that during that same period, “U.S. natural gas production exceeds consumption, making the United States a net exporter of natural gas in the very near future.”³⁰

Moreover, analyses performed and commissioned by DOE show that LNG exports from the U.S. benefit the U.S. economy as a whole and would not result in any significant adverse price impacts to U.S. consumers.³¹ As DOE/FE noted, “[t]he 2012 LNG Export Study concluded that LNG exports at ... 6 Bcf/d of natural gas and higher[] would result in higher U.S. natural gas prices, but that these price changes would remain in a relatively narrow range across the scenarios studied.”³²

Furthermore a subsequent 2014 NERA Report confirmed prior findings. The 2014 NERA Report held that across all studied scenarios “U.S. economic welfare consistently increases as the volume of natural gas exports increases. This includes scenarios in which there are unlimited exports. Unlimited exports always create greater benefits than limited exports in comparable scenarios.”³³

Finally, natural gas exports also are consistent with U.S. policy initiatives and global energy priorities. As DOE/FE recently remarked, “[a]n efficient, transparent international market for natural gas with diverse sources of supply provides both economic and strategic benefits to the United States and our allies.”³⁴

³⁰ *Id.* at 52.

³¹ See DOE/FE Order Nos. 3357-B and 3282-C, *supra* notes 3 & 10.

³² *Flint Hills Resources, LP, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas In ISO Containers and In Bulk Loaded at the Stabilis LNG Eagle Ford Facility in George West Texas, and Exported by Vessel to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3829, FE Docket No. 15-168-LNG (May 20, 2016) [hereinafter *Flint Hills Order*].

³³ Robert Baron, et. al, *Updated Macroeconomic Impacts of LNG Exports from the United States*, NERA Economic Consulting, at 7, (March 24, 2014), available at, http://www.nera.com/content/dam/nera/publications/archive2/PUB_LNG_Update_0214_FINAL.pdf.

³⁴ *Flint Hills Order*, *supra* note 32 at 18.

VIII. ENVIRONMENTAL IMPACT

FLEX respectfully submits that a categorical exclusion applies to the Amendment requested herein. As noted above, a categorical exclusion is appropriate because the requested Amendment of Order No. 3357 to allow for exports of additional volumes of LNG from the Liquefaction Project does not involve any new construction or modifications to existing facilities.

If the agency conducting the NEPA analysis determines that a proposed action is not expected to have individually or cumulatively significant environmental impacts, a categorical exclusion may apply under the regulations and guidance from the Council on Environmental Quality.³⁵ FERC conducted a NEPA analysis as part of its review of the Limited Amendment Application because FERC regulations do not provide for a categorical exclusion under Section 3 of the NGA. As discussed below, FERC concluded that increasing the authorized LNG production capacity of the Liquefaction Project involved “no additional construction of new facilities or the modification of the previously authorized facilities.”³⁶ Rather, the proposed increase in production capacity represents the maximum or peak LNG production and export capability of the liquefaction trains under optimal operating conditions and merely reflects the most up-to-date engineering and design information.

The DOE regulations allow for a categorical exclusion for “amendments of existing authorizations to import or export natural gas under section 3 of the [NGA] that involve minor operational changes ... but not new construction”,³⁷ as is the case in the Amendment requested in the instant Application.

³⁵ See 40 C.F.R. § 1508.4; see also *Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*, 77 Fed. Reg. 14,473 (Mar. 12, 2012).

³⁶ *FERC EA*, supra note 13.

³⁷ See supra note 17. DOE/FE recently applied the categorical exclusion set out at B5.7 in the context of proposed LNG exports from the United States. See *Carib Energy (USA) LLC, Categorical Exclusion Determination*, FE Docket No. 11-141-LNG (May 30, 2014). See also *ConocoPhillips Alaska Natural Gas Corp., Categorical Exclusion Determination*, FE Docket No. 13-155-LNG (Apr. 3, 2014) (applying a categorical exclusion to ConocoPhillips’ application to engage in exports of LNG to Non-FTA Nations under circumstances which require no new facilities or modifications to existing facilities). Proposed actions that fall within a categorical exclusion category do not require further environmental documentation or formal analyses. 10 C.F.R. § 1021.400. A categorical exclusion can be used after determining that a proposed action falls within the

In the alternative, if DOE/FE does not find that a categorical exclusion is appropriate for the exports proposed in the Application, FLEX respectfully submits that DOE/FE should adopt the FERC EA and issue a FONSI.

The potential environmental impacts associated with the Limited Amendment Application were evaluated under NEPA by FERC staff in Docket No. CP15-518-000. More specifically, as noted above, in the FERC EA issued on March 31, 2016, the FERC staff considered the request to increase the Liquefaction Project's authorized maximum capacity from 1.8 Bcf/d to approximately 2.14 Bcf/d. The FERC EA "confirmed [FERC's] prior assessment that the Project would not effect environmental resources" and that "the proposed action would not contribute cumulative impacts to other past, present, or reasonably foreseeable projects in the project region."³⁸ Additionally, in the Limited Amendment Order, FERC concluded that "the [FERC EA] supports a finding that production at [the proposed] level will not result in any significant adverse environmental impacts," that "the proposal is not inconsistent with the public interest" and that the Limited Amendment Application should be granted "to ensure better utilization of the existing liquefaction facilities and capacity."³⁹ FLEX respectfully submits that DOE/FE need look no further than the FERC's environmental review for the Liquefaction Project and the FERC EA, along with the DOE-commissioned studies, to make a determination that the proposed increase in authorized export volumes does not constitute a major federal action significantly affecting the human environment.

IX. APPENDICES

Appendix A: Verification

Appendix B: Opinion of Counsel

categories of actions described in the categorical exclusion and that there are no extraordinary circumstances indicating further environmental review is warranted. *Id.* at § 1021.410.

³⁸ *FERC EA*, *supra* note 13.

³⁹ *Limited Amendment Order*, *supra* note 5, at P13.

X. CONCLUSION

WHEREFORE, FLEX respectfully requests that DOE/FE grant its request for amendment of Order No. 3357 to allow FLEX to engage in additional long-term, multi-contract exports of 125 Bcf/y of domestically produced LNG from the Liquefaction Project to Non-FTA Nations for a 20-year period commencing on the date of first commercial export from the Liquefaction Project. FLEX respectfully requests that the DOE/FE issue the authorization as requested herein by October 20, 2016.

Respectfully submitted,

/s/Lisa M. Tonery

Lisa M. Tonery

Mariah T. Johnston

Attorneys for

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Dated: August 3, 2016

APPENDIX A

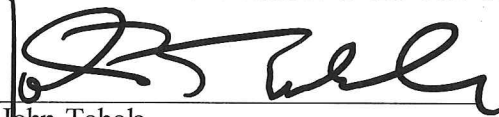
VERIFICATION

VERIFICATION

State of Texas)

County of Harris)

BEFORE ME, the undersigned authority on this day personally appeared John Tobola, who, having first by me been duly sworn, says he is the Senior Vice President and General Counsel for Freeport LNG Expansion, L.P. and is duly authorized to make this Verification; that he has read the forgoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information, and belief.




John Tobola

SWORN TO and SUBSCRIBED on this 3rd day of August 2016.



12512055-4



NAME: CAROL BINHMINH BROOKS

TITLE: Notary Pubic

Commission Expires:

11-17-2016

APPENDIX B

OPINION OF COUNSEL



August 3, 2016

Mr. John A. Anderson
Office of Fossil Energy
U.S. Department of Energy
FE-34
Forrestal Building
1000 Independence Avenue, S.W.
Washington, DC 20585

**RE: Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, & FLNG Liquefaction 3, LLC
DOE/FE Docket Nos. 16- _____ -LNG and 11-161-LNG
Application for Amendment to Long-Term Authorization to Export LNG**

Dear Mr. Anderson:

This opinion of counsel is submitted pursuant to Section 590.202(c) of the regulations of the U.S. Department of Energy, 10 C.F.R. § 590.202(c) (2016). I am the duly authorized representative for Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC, (collectively, "FLEX"). I have reviewed the organizational and internal governance documents of FLEX and other documents and authorities as necessary for purposes of this opinion. On the basis of the foregoing, it is my opinion that the proposed long-term, multi-contract exports of liquefied natural gas by FLEX, as described in the above-referenced application, is within the partnership and company powers of FLEX.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Tobola".

John Tobola
Senior Vice President & General Counsel
Freeport LNG Expansion, L.P.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at New York, N.Y. this 3rd day of August, 2016.

/s/ Mariah T. Johnston

Mariah T. Johnston

Attorney on behalf of

Freeport LNG Expansion, L.P.,

FLNG Liquefaction, LLC,

FLNG Liquefaction 2, LLC, &

FLNG Liquefaction 3, LLC