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October 23, 2019

By Electronic Mail

Ms. Amy Sweeney
U.S. Department of Energy
Office of Fossil Energy
Office of Regulation, Analysis, and Engagement
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Attention: Dominion Energy Cove Point LNG, LP
FE Docket Nos. 11-115-LNG, 11-128-LNG, and 16-205-LNG
Notification Regarding Planned Change in Indirect Ownership
In Accordance with Procedures for Changes in Control

Dear Ms. Sweeney:

Pursuant to the authorizations to export natural gas issued by the Department of Energy, Office of Fossil Energy (“DOE/FE”) in the above-captioned proceedings and the “Procedures for Changes in Control Affecting Applications and Authorizations To Import or Export Natural Gas,”¹ Dominion Energy Cove Point LNG, LP (“DECP”) provides notification of a planned transaction in which Bowie Acquisitions LLC (the “Investor”), an affiliate of Brookfield Asset Management Inc., will acquire a minority ownership of the limited partnership interests in DECP. As explained below, DECP does not believe that the Investor’s equity investment will constitute a “change in control” within the meaning of DOE/FE policies; but, in any event, that investment does not affect DOE/FE’s public interest determinations regarding natural gas exports by DECP.

Background

DECP, a Delaware limited partnership, is the owner and operator of the Dominion Cove Point LNG Terminal located in Lusby, Maryland. DECP is a wholly-owned, indirect subsidiary of Dominion Energy, Inc. (“DEI”), a Virginia corporation.

¹ 79 Fed. Reg. 65,541 (Nov. 5, 2014)(the “CIC Procedures”).

DECP was granted long-term, multi-contract authority to export liquefied natural gas (“LNG”) from the Terminal (1) to nations with whom the United States has entered into a Free Trade Agreement (“FTA”) requiring the national treatment of natural gas in Order No. 3019 issued in FE Docket No. 11-115-LNG² and (2) to non-FTA nations in Order No. 3331-A issued in FE Docket No. 11-128-LNG.³ In addition, DECP was issued blanket authorization to export LNG to both FTA and non-FTA nations for a two-year term commencing with the first exports in Order No. 4046 issued in FE Docket No. 16-205-LNG.⁴

Ordering Paragraph P of Order No. 3331-A specifically requires DECP to require DOE/FE approval of any “change in control,” citing the CIC Procedures. More generally, DOE/FE policies also require this notification. The CIC Procedures require notification within thirty days after any change in control of the holder of an export authorization is effectuated, while also stating that notices of changes may be filed prior to the change being effectuated. DECP has chosen to provide DOE/FE with this notice in advance of the closing of the transaction.

As explained in the CIC Procedures, DOE/FE’s regulations at 10 C.F.R. Section 590.405 state that authorizations to import or export natural gas shall not be transferable or assignable unless specifically authorized by the Assistant Secretary for Fossil Energy. In applying Section 590.405, DOE/FE has stated that a change in control of an authorization holder may occur through asset sale or stock transfer or by other means. DOE/FE has further explained that it 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. Finally, DOE/FE has explained that a rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, ten percent or more of the voting securities of an entity.

The CIC Procedures provide that, with respect to FTA long-term export authorizations already issued by DOE/FE, DOE will give immediate effect to a change in control upon receipt of the notification and take no further action. With respect to previously issued non-FTA long-term export authorizations, DOE similarly will give immediate effect to a change in control and then will publish notice of the change in the Federal Register, allowing fifteen days for interventions, comments or answers. If no protests are filed and DOE/FE takes no action of its own on the

2 *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3019 (Oct. 7, 2011), *amended* Order No. 3019-A (Aug. 4, 2017)(reflecting corporate name change to DECP).

3 *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331-A (May 7, 2015)(final order), *reh’g denied*, Order No. 3331-B (April 18, 2016), *amended* Order No. 3331-C (Aug. 4, 2017)(reflecting corporate name change to DECP).

4 *Dominion Cove Point LNG, LP*, DOE/FE Order No. 4046 (June 2, 2017), *amended* Order No. 4046-A (Aug. 4, 2017)(reflecting corporate name change to DECP).

notification, authorization for a change in control is deemed granted thirty days after publication of the notice in the Federal Register. If protests are submitted, DOE/FE then will issue a determination whether a change in control has been demonstrated by the protestor(s) to render the underlying authorization inconsistent with the public interest.

The Planned Transaction

DECP is a wholly-owned, indirect subsidiary of DEI. Cove Point GP Holding Company, LLC (“Cove Point GP”), a Delaware limited liability company (and a wholly-owned, indirect subsidiary of DEI), is the general partner of DECP. In advance of the transaction described below, DEI will implement an internal corporate reorganization with respect to the limited partnership interests in DECP among certain of its wholly-owned, direct or indirect subsidiaries. Specifically, prior to the closing of the transaction described below, (i) Dominion MLP Holding Company II, Inc., a Delaware corporation that will be converted into a Virginia limited liability company (“Dominion MLP Holding”), will own 75% of the limited partnership interests in DECP, and (ii) Dominion Gas Projects Company, LLC, (“Dominion Gas Projects”), a Delaware limited liability company, will own 25% of the limited partnership interests in DECP. Cove Point GP will remain the general partner of DECP, and the pre-existing preferred equity interests in DECP will be converted into limited partnership interests and no longer entitled to any rights or claims in preference to other limited partnership interests. This internal corporate reorganization itself unquestionably does not constitute a change in control of DECP and does not implicate DOE/FE’s change of control policies, which are concerned only with external transfers or assignments.⁵

On October 18, 2019, DEI and Dominion Gas Projects entered into a Purchase and Sale Agreement with the Investor. As noted earlier, the Investor is an affiliate of Brookfield Asset Management Inc. (“Brookfield”), a global alternative asset manager with over \$385 billion in assets under management. Brookfield has over 120 years of experience owning and operating assets with a focus on property, infrastructure, renewable power and other real property assets. The Investor is a special purpose vehicle of a Brookfield managed open-ended infrastructure fund (Brookfield Super-Core Infrastructure Partners) for which Brookfield makes investment decisions. The parties have not yet closed on this transaction, which remains subject to certain conditions. The parties intend to close the transaction in early to mid-December of this year.

Pursuant to the Purchase and Sale Agreement, the Investor will acquire a minority, twenty-five percent (25%) limited partnership interest in DECP from Dominion Gas Projects. The remaining seventy-five percent (75%) of DECP’s limited partnership interest will continue to be owned by Dominion MLP Holding, and Cove Point GP will continue to remain the general partner of DECP. Similarly, each of Dominion MLP Holding and Cove Point GP will remain wholly-owned, direct

⁵ See DOE/FE response regarding the notice of internal reorganization of Port Arthur LNG, LLC issued in FE Docket Nos. 15-53-LNG, 18-162-LNG, and 15-96-LNG, dated April 11, 2019 (explaining this conclusion based upon the CIC Procedures and DOE/FE regulations).

or indirect subsidiaries of DEI. This revised corporate structure, following the transaction with the Investor is reflected on the simplified organization chart appended as Attachment A.

Along with the Purchase and Sale Agreement, the parties will enter into an amended and restated Limited Partnership Agreement for DECP. This Agreement generally provides that the day-to-day management and control of DECP is fully vested in its General Partner, Cove Point GP, which shall have all of rights and powers that may be possessed by a general partner under the Delaware Revised Uniform Limited Partnership Act. As a minority, limited partner, the Investor has essentially an economic interest in DECP, along with voting rights with respect to certain major decisions. No representative of the Investor will serve as an officer or director of the General Partner of DECP, nor as an officer or director of DECP itself. DECP will continue to be consolidated on DEI's financial statements for accounting and financial reporting purposes.

Application of the CIC Procedures to the Transaction

DECP itself will remain the holder of the export authorizations and there will be no change in any aspect of the operation of the DECP Terminal as a result of the transaction. Furthermore, DECP's general partner will continue to direct the management and policies of DECP, and it remains a wholly-owned subsidiary of DEI. Therefore, while the Investor's acquisition of a minority, twenty-five percent (25%) limited partnership interest in DECP may give rise to a "rebuttal presumption" of a change of control, there is no actual change of control on these facts as the DOE/FE has interpreted control, and DOE/FE should recognize that the presumption is rebutted.⁶

If and to the extent that the Investor's acquisition of a minority of DECP's limited partnership interest is deemed by DOE/FE to constitute a "change in control," however, that ownership change provides absolutely no basis to question the DOE/FE decisions to authorize LNG exports by DECP. DOE/FE has consistently approved of changes of control in the absence of a demonstration that the change impacts the public interest considerations it evaluated when issuing the export authorization.⁷ The Investor's acquisition of a minority of DECP's limited partnership interests does not in any way alter the public interest considerations addressed in Order No. 3331-A or the other export authorizations for DECP.

⁶ In somewhat similar facts, DOE/FE held that its presumption of a change of control was rebutted in connection with investments of Blackstone in the ownership structure of Sabine Pass Liquefaction, LLC where the General Partner of that authorization holder was not changed and continued to manage the company's operations and activities. See DOE/FE response regarding notice of a reorganization of Sabine Pass Liquefaction, LLC issued in FE Docket Nos. 10-85-LNG, *et al.*, dated February 20, 2018

⁷ *E.g.*, *Freeport LNG Expansion, L.P., et al.*, Order Approving Change in Control in Export Authorization, DOE/FE Order No. 3495 (Sept. 23, 2014); *Cameron LNG, LLC*, Order Approving Change in Control in Export Authorization, DOE/FE Order No. 3452 (June 27, 2014); DOE/FE response regarding notice of change of control of Delfin LNG, LLC issued in FE Docket Nos. 13-147-LNG, dated March 11, 2019.

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In accordance with the CIC Procedures, DOE/FE should give immediate effect to this notification upon receipt. That effect is final and no further action is needed with respect to the FTA authorization issued in Order No. 3019. With respect to the non-FTA authorization issued in Order No. 3331-A, DOE/FE should publish notice of this DECP notification in the Federal Register, providing fifteen days for interventions, comments or answers, and stating explicitly that, if no protests are filed and DOE/FE takes no action of its own on the notification, authorization for the change in ownership will be deemed granted thirty days after publication of the notice in the Federal Register. If any protest is submitted, DOE/FE then should issue a determination recognizing that the presumption of a change of control has been rebutted and/or reaffirming its prior conclusion that the authorized LNG exports by DECP remain not inconsistent with the public interest.

As noted above, DEI, Dominion Gas Projects, and the Investor plan to close on the planned transaction in early to mid-December of this year. Accordingly, DECP respectfully requests that DOE/FE act expeditiously in processing this notification in accordance with the CIC Procedures. If you have any questions about this notification or related matters, please contact the undersigned counsel for DECP.

Sincerely,

/s/ J. Patrick Nevins

J. Patrick Nevins
Latham & Watkins LLP
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Attachment A
Simplified Organizational Chart Following Closing

