

June 17, 2016

John Tobola
Freeport LNG Expansion, L.P.
333 Clay Street, Suite 5050
Houston, Texas 77002-4173

RE: Recent Equity Ownership Change in Control

Freeport LNG Expansion, L.P.,
FLNG Liquefaction, LLC, [FE Docket No. 10-161-LNG]
FLNG Liquefaction 2, LLC, and [FE Docket No. 11-161-LNG]
FLNG Liquefaction 3, LLC

Dear Mr. Tobola:

This correspondence constitutes the response of the Office of Fossil Energy (FE) of the Department of Energy (DOE) to your letter dated March 2, 2016, in reference to the proceedings listed above. A copy of this letter will be posted to each of the listed proceedings and served on the parties to those proceedings.

I. DESCRIPTION OF REQUEST

On March 2, 2016, Freeport LNG Expansion, L.P. (“Freeport Expansion”), FLNG Liquefaction, LLC (“FLIQ1”), FLNG Liquefaction 2, LLC (“FLIQ2”), and FLNG Liquefaction 3, LLC (“FLIQ3”) (“collectively, “FLEX”) jointly filed with DOE/FE a notice and statement of Change in Control (Statement) regarding a change in control of the upstream ownership of FLIQ1.¹ The Statement indicated that FLIQ1 is 100 percent owned by FLIQ1 Holdings, LLC (Holdings) and 25 percent of Holdings is owned by Osaka Gas Liquefaction USA Corporation,

¹ On September 23, 2014, DOE/FE granted an earlier FLEX request for a change in control of FLIQ1 and FLIQ2. *Freeport LNG Expansion, L.P., et al.*, Order Approving Change in Control of Export Authorizations, DOE/FE Docket Nos. 14-005-CIC, 10-160-LNG, 10-161-LNG, 11-161-LNG, 12-06-LNG (Sept. 23, 2014).

25 percent by Chubu Electric Power Company Freeport, Inc., and 50 percent by Freeport LNG Expansion, L.P. The Statement indicated that FLEX did not propose to change these ownership stakes. However, the Statement described a proposed change to the ownership of Chubu Electric Power Company Freeport, Inc. Whereas, prior to the change in control, 100 percent of Chubu Electric Power Company Freeport, Inc. was owned by Chubu Electric Power Company, after the change, Chubu Electric Power Company Freeport, Inc. will be 100 percent owned by a joint venture called JERA Co., Inc. In this regard, JERA Co., Inc. is 50 percent owned by Chubu Electric Power Company and 50 percent is owned by Tokyo Electric Power Fuel & Thermal Power Generation Business Split Preparation Company, Inc., a wholly owned subsidiary of Tokyo Electric Power Company, Incorporated (“TEPCO”). TEPCO, in turn, is 54.69 percent owned by the Nuclear Damage Compensation and Decommissioning Facilitation Corporation (NDF) which is owned jointly by the Government of Japan (50.1%), TEPCO (17.1 %), Kansai Electric Power Company, Inc. (8.8 %), Chubu Electric Power Company (4.5 %), and nine other nuclear operators (each holding less than 5 %).

The Statement appears to recognize that these changes in ownership interests triggered the 10% rebuttable presumption of a change in control² for FLIQ1. However, the Statement asserts that operation and maintenance of the Freeport LNG facilities (both regasification and liquefaction) will continue to be under the control of the existing owner/operator of the facility,

² DOE/FE 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. 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. *See, e.g.,* U.S. Dep’t of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,641, 65,542 (Nov. 5, 2014) (applying 10 C.F.R. § 590.405) [hereinafter CIC Revised Procedures].

Freeport LNG Development, L.P. (“Freeport Development”) through various contractual arrangements with and among FLIQ1, FLIQ2, and FLIQ3. Freeport Development is the ultimate 100% parent of Freeport Expansion. The Statement further maintains that no change in control is being contemplated at this time with respect to Freeport Development, Freeport Expansion, FLIQ2, or FLIQ3. The Statement also asserts that FLEX will remain the single point of contact with DOE/FE with respect to reporting and administration under the FTA and non-FTA authorizations for the FLEX LNG Project.

II. BACKGROUND

As indicated above, FLEX filed the Statement on March 2, 2016. DOE/FE published a notice of the filing in the Federal Register on May 26, 2016 (Notice),³ and invited protests, motions to intervene, and written comments no later than June 10, 2016. In accordance with DOE/FE’s CIC Revised Procedures for reviewing changes in control⁴, the Notice stated that the protests, motions to intervene, and written comments should only address the amendment of previously issued authorizations to export natural gas to nations with which the United States has not entered into a free-trade agreement requiring national treatment for trade in natural gas (non-FTA authorizations). The Statement identifies numerous DOE/FE proceedings in which FLEX has received non-FTA authorizations from DOE.

DOE/FE received one response to the Notice. This response, submitted by Jean Q. Public via email on May 26, 2016, opposes the change in control described in the Statement. Specifically, the response opposes any U.S. company being controlled by a foreign entity, especially U.S. companies that own or control natural resources in the United States.

³ *Cheniere Marketing, LLC & Corpus Christi Liquefaction, LLC, et al.*, Notice of Change in Control, 81 Fed. Reg. 21,851 (April 13, 2016).

⁴ *Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas*, Notice of Procedures, 79 Fed. Reg. 65541 (Nov. 5, 2014).

III. DISCUSSION AND CONCLUSIONS

The CIC Revised Procedures state that, with respect to existing non-FTA authorizations already issued by DOE, DOE will give effect to a change in control following notification of the change and will publish a notice of same in the Federal Register.⁵ If no interested person protests the change in control and DOE takes no action on its own motion, the change in control will be deemed granted 30 days after publication.⁶

Here, DOE/FE received a single comment in opposition to the change in control. DOE/FE, however, is not persuaded by the comment that the change in control is or will be inconsistent with the public interest. The commenter maintains that no foreign entity regardless of the country in which it is based should be permitted to take a controlling stake in a U.S. company, particularly a domestic natural resources company.

On review, we find that the commenter's indiscriminate opposition to foreign controlling interests does not support a determination that the change in control in this proceeding is inconsistent with the public interest. The foreign control is being exercised by a Japan-based business with ties to the Government of Japan, a U.S. trading partner and ally. Moreover, the commenter does not refer to and DOE/FE is not aware of any trade restriction between the U.S. and Japan affecting the investment of Japanese concerns in FLIQ1 that would warrant our rejecting the change in control described in the Statement.

⁵ See CIC Revised Procedures, 79 Fed. Reg. at 65,542.

⁶ *Id.*

Accordingly, DOE/FE approves the change in control as to previously issued non-FTA LNG export authorizations.⁷

Sincerely,



John A. Anderson
Director, Office of Regulation and International
Engagement
Office of Oil and Natural Gas

⁷ As set forth in the CIC Revised Procedures, upon receipt of a statement of change in control relating to previously issued FTA authorizations, DOE gave immediate effect to the change in control and will take no further action. *Id.*