

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

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_____ )	DOCKET NO. 10-160-LNG
_____ )	DOCKET NO. 10-161-LNG
_____ )	DOCKET NO. 11-161-LNG
FREEPORT LNG DEVELOPMENT, L.P. )	DOCKET NO. 12-06-LNG
_____ )	DOCKET NO. 16-108-LNG
_____ )	DOCKET NO. 18-26-LNG
_____ )	DOCKET NO. 21-98-LNG
_____ )	

ORDER APPROVING CHANGE IN CONTROL

DOE/FECM ORDER NO. 4850

JULY 21, 2022

## I. INTRODUCTION AND BACKGROUND

On January 13, 2022, Freeport LNG Development, L.P. (FLNG) submitted a Statement of Change in Control (Statement)<sup>1</sup> to the Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy)<sup>2</sup> of the Department of Energy (DOE). FLNG subsequently supplemented the Statement with a Transaction Update on January 27, 2022,<sup>3</sup> and a Statement Supplement on March 3, 2022.<sup>4</sup> In the Statement, as supplemented, FLNG provides notice of a change in their upstream ownership, in light of DOE's Change in Control Procedures.<sup>5</sup>

FLNG is authorized to export domestically produced liquefied natural gas (LNG) by vessel from the Freeport LNG Terminal, located on Quintana Island near Freeport, Texas, under section 3 of the Natural Gas Act (NGA),<sup>6</sup> as follows:

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<sup>1</sup> See Freeport LNG Development, L.P., Statement of Change in Control, Docket Nos. 10-160-LNG, *et al.* (Jan. 13, 2022), [https://www.energy.gov/sites/default/files/2022-04/DOE%20CIC%20Statement%20-%20Freeport\\_Jera.pdf](https://www.energy.gov/sites/default/files/2022-04/DOE%20CIC%20Statement%20-%20Freeport_Jera.pdf) [hereinafter Statement].

<sup>2</sup> The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

<sup>3</sup> Email from John Tobola, Counsel for Freeport LNG Development, L.P., to Amy Sweeney, DOE, Email Correspondence in Reference to Statement of Change in Control, Docket Nos. 10-160-LNG, *et al.* (Jan. 27, 2022), <https://www.energy.gov/sites/default/files/2022-04/Email%20Correspondence%20with%20FLEX.pdf> (notifying closing of Transaction) [hereinafter Transaction Update].

<sup>4</sup> Freeport LNG Development, L.P., Supplement to Statement of Change in Control, Docket Nos. 10-160-LNG, *et al.* (Mar. 3, 2022), [https://www.energy.gov/sites/default/files/2022-03/DOE%20CIC%20Supplement%20to%20Jan%2013%202022%20Statement%20-%20Freeport\\_Jera.pdf](https://www.energy.gov/sites/default/files/2022-03/DOE%20CIC%20Supplement%20to%20Jan%2013%202022%20Statement%20-%20Freeport_Jera.pdf) [hereinafter Statement Supp.].

<sup>5</sup> See U.S. Dep't of Energy, Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas, 79 Fed. Reg. 65,541 (Nov. 5, 2014) [hereinafter DOE Change in Control Procedures].

<sup>6</sup> 15 U.S.C. § 717b. The authority to regulate the imports and exports of natural gas, including LNG, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2021, issued on March 25, 2021.

- (i) DOE/FE Order Nos. 2913<sup>7</sup> and 3066,<sup>8</sup> authorizing exports to countries with which the United States currently has, or in the future will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries);<sup>9</sup> and
- (ii) DOE/FE Order Nos. 3282-C,<sup>10</sup> 3357-B,<sup>11</sup> 3957,<sup>12</sup> and 4374<sup>13</sup> authorizing exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries).<sup>14</sup>

These orders authorize exports of LNG in a total combined volume equivalent to 1,022.0 billion cubic feet per year (Bcf/yr) of natural gas to FTA countries and 1044.8 Bcf/yr of

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<sup>7</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 2913, Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011), *amended by* DOE/FE Order No. 2913-A (Feb. 7, 2014) (amending authorization to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as applicants and authorization holders), *further amended by* DOE/FE Order No. 2913-B (June 7, 2017) (extending commencement date for export term), DOE/FE Order No. 2913-C (Oct. 21, 2020) (extending export term).

<sup>8</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3066, Docket No. 12-06-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal to Free Trade Agreement Nations (Feb. 10, 2012), *amended by* DOE/FE Order No. 3066-A (Feb. 7, 2014) (amending authorization to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as applicants and authorization holders), *further amended by* DOE/FE Order No. 3066-B (Oct. 21, 2020) (extending export term).

<sup>9</sup> 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>10</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282-C, Docket No. 10-161-LNG, 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 (Nov. 14, 2014), *amended by* DOE/FE Order No. 3282-D (Oct. 21, 2020) (extending export term).

<sup>11</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3357-B, Docket No. 11-161-LNG, 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 (Nov. 14, 2014), *reh'g denied* DOE/FE Order No. 3357-C (Dec. 4, 2015), *amended by* DOE/FE Order No. 3357-D (Oct. 21, 2020) (extending export term).

<sup>12</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3957, Docket No. 16-108-LNG, 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 (Dec. 19, 2016) ), *amended by* DOE/FE Order No. 3957-A (Oct. 21, 2020) (extending export term).

<sup>13</sup> *Freeport LNG Expansion, L.P. and FLNG Liquefaction 4, LLC*, DOE/FE Order No. 4374, Docket No. 18-26-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (May 28, 2019), *amended by* DOE/FE Order No. 4374-A (Oct. 21, 2020) (extending export term).

<sup>14</sup> 15 U.S.C. § 717b(a).

natural gas to non-FTA countries on a non-additive basis. Additionally, FLNG currently has a non-FTA application pending with DOE in Docket No. 21-98-LNG.<sup>15</sup>

Consistent with DOE’s Change in Control Procedures, DOE published a notice of FLNG’s Statement in the *Federal Register* on May 12, 2022 (Notice).<sup>16</sup> DOE invited protests, motions to intervene, and written comments to be filed no later than May 27, 2022.<sup>17</sup> In response, DOE received one filing from Public Citizen, Inc. (Public Citizen),<sup>18</sup> dated May 27, 2022. The filing states that Public Citizen “moves to intervene and protest” in the change in control proceeding and express opposition to the FLNG Statement.<sup>19</sup> Therefore, DOE construes the filing as a motion to intervene and protest the proposed change in control.<sup>20</sup> On June 7, 2022, FLNG filed an “Answer in Support of Statement of Change in Control” (Answer).<sup>21</sup>

As discussed below, DOE grants Public Citizen’s motion to intervene and protest in this portion of the proceedings and finds that FLNG’s proposed change in control has not been demonstrated to render the underlying non-FTA authorizations inconsistent with the public interest under NGA section 3(a). DOE’s actions for FLNG’s FTA authorizations and pending non-FTA application are also set forth below.

## **II. DESCRIPTION OF CHANGE IN CORPORATE OWNERSHIP**

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<sup>15</sup> See Statement Supp. at 2.

<sup>16</sup> U.S. Dep’t of Energy, Change in Control; Freeport LNG Development, L.P., 87 Fed. Reg. 29,140 (May 12, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-05-12/pdf/2022-10171.pdf> [hereinafter DOE Notice].

<sup>17</sup> See *id.*

<sup>18</sup> Public Citizen, Inc., Docket Nos. 10-160-LNG, *et al.* (May 27, 2022), <https://www.energy.gov/sites/default/files/2022-06/FreeportLNGControl%20Citizens.pdf> [hereinafter Public Citizen Filing].

<sup>19</sup> See Public Citizen Filing at 1.

<sup>20</sup> See 10 C.F.R. §§ 590.303, 590.304.

<sup>21</sup> Freeport LNG Development, L.P., Answer in Support of Statement of Change in Control, Docket Nos. 10-160-LNG, *et al.* (Jun. 6, 2022), <https://www.energy.gov/sites/default/files/2022-06/Freeport%20Reply%20to%20Public%20Citizen%20Motion%20to%20Intervene%20%28CIC%29%20%28003%29.pdf> [hereinafter FLNG’s Answer].

In the Statement, FLNG states that, on November 14, 2021, JERA entered into a Securities Purchase Agreement whereby JERA Americas Inc. (JERA) agreed to acquire a 25.7% equity interest in FLNG through a wholly-owned subsidiary created for the purposes of this transaction (Transaction).<sup>22</sup> FLNG states that JERA is wholly-owned by JERA Co., Inc., which in turn is an equal joint venture of TEPCO Fuel & Power, Incorporated (TEPCO) and Chubu Electric Power Company (Chubu). FLNG states that the Government of Japan indirectly owns a 27.37% interest in TEPCO.<sup>23</sup> According to the Statement, the Transaction received approval from the Committee on Foreign Investment in the United States (CFIUS) on January 12, 2022.<sup>24</sup> FLNG notified DOE that the Transaction closed on January 24, 2022.<sup>25</sup>

FLNG states that, prior to the Transaction, the 25.7% equity interest in FLNG that is the subject of this change in control submission, was owned by Global Infrastructure Partners (GIP) subsidiaries GIP II FLNG Holdings Partnership, L.P., which changed its name to Evergreen II FLNG Holdings Partnership, L.P., and Global Infrastructure GP II, L.P., who transferred its general partnership interests in three entities, two of which Evergreen FLNG GP Holdings, LLC and Evergreen II FLNG Holdings Partnership, L.P. were intermediate owners of the FLNG interests, to Evergreen GP, LLC.<sup>26</sup>

FLNG states, following consummation of the Transaction, (i) JERA will own 25.7% of FLNG's equity interest, (ii) Freeport LNG Investment, LLLP will retain its 63.5% indirect ownership interest in FLNG, and (iii) Osaka Gas will retain its 10.8% indirect ownership interest

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<sup>22</sup> See Statement at 2.

<sup>23</sup> See *id.*

<sup>24</sup> *Id.* Although DOE expresses no opinion on CFIUS review. Additional information may be obtained at: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

<sup>25</sup> See Transaction Update at *supra* note 3.

<sup>26</sup> See Statement Supp. at 1-2.

in FLNG. Freeport LNG-GP, LLC will continue to be the sole general partner of FLNG, with no change in ownership.<sup>27</sup>

FLNG provides charts showing the proposed pre- and post-Transaction change in ownership structure in the Statement.<sup>28</sup> FLNG further provides exhibits with certificates showing the assignment of partnership interests and amendments from GIP's subsidiaries to the Evergreen entities as Appendices to the Statement Supplement.<sup>29</sup>

### **III. PROCEDURAL MATTERS**

In its filing submitted to DOE, Public Citizen expresses general concern about FLNG's proposed change in control, with Public Citizen asserting that the proposed ownership change is not in the public interest.<sup>30</sup>

Public Citizen states that “[t]he Department of Energy cannot approve the [FLNG] change in control until a full analysis is undertaken to determine whether U.S. households will suffer net economic harm as a result of the change in control.”<sup>31</sup> Public Citizen argues that “record LNG exports—including those authorized for Freeport LNG—are directly responsible for spiking domestic natural gas prices,” which (according to Public Citizen) is resulting in “increases in the rate of energy poverty for millions of American families.”<sup>32</sup> Public Citizen states that “[t]he change in control involving a transfer of ownership to a foreign national government” attenuates the economic benefits available to American households and “undermines the public interest.”<sup>33</sup>

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<sup>27</sup> Statement at 2-3.

<sup>28</sup> *See id.* at 3-4.

<sup>29</sup> *See* Statement Supp. at Exhibit B-D.

<sup>30</sup> *See* Public Citizen Filing at 1.

<sup>31</sup> *See id.*

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 1.

In their Answer (in relevant part), FLNG opposes the motion to intervene filed by Public Citizen. FLNG contends that Public Citizen has articulated unsubstantiated generalized arguments that do not relate to the Statement and, therefore, requests that Public Citizen's comments be rejected.<sup>34</sup>

On review, we find that the proposed change in control could affect the interests of Public Citizen and its members, insofar as DOE must determine whether the Transaction renders FLNG's existing non-FTA orders inconsistent with the public interest. Accordingly, we grant Public Citizen's motion to intervene in this change in control portion of the proceedings.<sup>35</sup>

#### **IV. DISCUSSION AND CONCLUSIONS REGARDING CHANGE IN CONTROL**

DOE 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.<sup>36</sup> 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.<sup>37</sup>

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<sup>34</sup> See FLNG's Answer at 2-3.

<sup>35</sup> See DOE Notice, 87 Fed. Reg. at 19,083 n.4 ("Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings.").

<sup>36</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>37</sup> See *id.*

In this proceeding, FLNG states that JERA acquired a 25.7% equity interest in FLNG.<sup>38</sup> We find that this Transaction constitutes a change in control.<sup>39</sup>

#### **A. FTA Export Authorizations**

DOE's Change in Control Procedures provide that, upon receipt of a statement of change in control relating to existing FTA export authorizations, DOE will give immediate effect to the change in control and will take no further action.<sup>40</sup> Accordingly, FLNG's change in control described above has taken effect insofar as it relates to the FTA export authorizations DOE/FE Order Nos. 2913 and 3066 (and any amendments to these orders, as applicable).

#### **B. Non-FTA Export Authorizations**

DOE's Change in Control Procedures state that, with respect to existing non-FTA export authorizations issued under NGA section 3(a), DOE will give effect to the change in control and will publish a notice of the change in the *Federal Register*.<sup>41</sup> If no interested person protests the change in control and DOE takes no action on its own motion, the amendment to the existing non-FTA authorization(s) will be deemed granted 30 days after publication in the *Federal Register*.<sup>42</sup>

DOE complied with this notice procedure for non-FTA authorizations, as described above. As noted above, Public Citizen has opposed FLNG's Statement, expressing its concern about foreign governments having equity in U.S. natural gas companies that export U.S. natural gas (including LNG) to other countries. Public Citizen appears to suggest that foreign ownership in U.S. natural gas companies is directly linked to current natural gas prices.<sup>43</sup> Additionally,

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<sup>38</sup> See Transaction Update at *supra* note 3.

<sup>39</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>40</sup> See *id.*

<sup>41</sup> See DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>42</sup> *Id.*

<sup>43</sup> See Public Citizen Filing at 2.



Public Citizen questions LNG exports’ net economic benefits for U.S. households and whether authorizing LNG exports are in the public interest.<sup>44</sup>

As a preliminary matter, the issue before us is not whether any exports are in the public interest under NGA section 3(a). This portion of the proceedings is limited to the FLNG’s proposed change in upstream ownership. Public Citizen’s challenge to U.S. exports generally, and request to conduct an analysis to ensure direct economic benefits from LNG exports to U.S. households—as well as any related arguments concerning natural gas prices—are therefore beyond the scope of this proceeding.

Further, we see no basis to conclude that the described equity ownership by an indirect upstream owner of JERA would render FLNG’s existing non-FTA orders inconsistent with the public interest under NGA section 3(a). As described above, JERA is wholly-owned by JERA Co., Inc., which is an equal joint venture of TEPCO and Chubu. TEPCO, in turn, is indirectly owned by 27.37% interest by the Government of Japan—a U.S. trading partner and ally with strong diplomatic ties to the United States. Although Public Citizen makes broad claims about the impacts of foreign ownership of U.S. natural gas companies on U.S. citizens, it provides no evidence to support these allegations.<sup>45</sup> DOE previously held that “[a] 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.”<sup>46</sup> On the basis of Public Citizen’s unsubstantiated claims, we reach the same conclusion here.

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<sup>44</sup> *Id.*

<sup>45</sup> Public Citizen Filing at 2.

<sup>46</sup> *Freeport LNG Expansion, L.P., et al.*, Letter Order, Docket Nos. 10-161-LNG, *et al.*, at 4 (June 17, 2016); *see also Jordan Cove Energy Project L.P.*, DOE/FE Order No. 3413-A, Docket No. 12-32-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 94 (July 6, 2020) (stating that “DOE/FE has never required an applicant to have domestic ownership under NGA section 3(a) . . .”) (order vacated at Jordan Cove’s request).

Accordingly, the change in control described above with respect to the non-FTA export authorizations as it relates to DOE/FE Order Nos. 3282-C, 3357-B, 3957, and 4374 (and any amendments to these orders, as applicable) are deemed granted, effective immediately.

### **C. Pending Non-FTA Export Application**

DOE has not yet issued a final order on the non-FTA application pending in Docket No. 21-98-LNG.<sup>47</sup> The Change in Control Procedures state that, with respect to “pending non-FTA export applications, *i.e.*, proceedings in which DOE has not yet issued a final order,” applicants may amend their applications to reflect a change in control by submitting notice of the amendment to DOE and serving that notice on other parties in the proceeding.<sup>48</sup>

Under the Change in Control Procedures, DOE will give immediate effect to the amendment to each of these applications, but it will accept and consider answers to the notice of amendment received within 15 days of service of the applicant’s pleading.<sup>49</sup> DOE will address the issues raised in any answers to the amendment in its final order on the pending applications.<sup>50</sup>

FLNG complied with the service requirements of the Change in Control Procedures when they served the Statement and Statement Supplement.<sup>51</sup> The change in control applicable to the non-FTA application in Docket No. 21-98-LNG thus has taken effect. Because DOE is rejecting Public Citizen’s arguments (*see supra* at 6, 9), no further action is required in any future DOE action on this pending application.

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<sup>47</sup> *See* Statement Supp. at 2.

<sup>48</sup> DOE Change in Control Procedures, 79 Fed. Reg. at 65,542.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *See* Statement at 1 and Statement Supp. at 1.

**ORDER**

Pursuant to NGA section 3, DOE's regulations at 10 C.F.R. Part 590, and DOE's Change in Control Procedures, it is ordered that:

- A. The motion to intervene and protest submitted by Public Citizen is granted.
- B. The proposed change in control is approved, as set forth in the body of this Order.

Issued in Washington, D.C., on July 21, 2022.

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