

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

ANNOVA LNG COMMON
INFRASTRUCTURE, LLC

ANNOVA LNG, LLC

FE DOCKET NO. 14-004-CIC
FE DOCKET NO. 13-140-LNG

ORDER APPROVING CHANGE IN CONTROL TO ANNOVA LNG COMMON
INFRASTRUCTURE, LLC OF AUTHORIZATION ALLOWING EXPORTS OF LIQUEFIED
NATURAL GAS TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3464

JULY 17, 2014

I. DESCRIPTION OF REQUEST

On July 3, 2014, Annova LNG, LLC (Annova) filed an Application¹ with the Office of Fossil Energy (FE) of the Department of Energy (DOE) to transfer indirect control of a DOE/FE export authorization that it currently holds. The authorization, set forth in DOE/FE Order No. 3394, allows Annova to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 0.94 billion cubic feet per day (Bcf/d) of natural gas (342 Bcf per year (Bcf/yr)), from the proposed Annova Terminal located in Brownsville, Texas, to any country with which the United States has a free trade agreement (FTA) that requires national treatment for trade in natural gas (FTA countries).²

Annova states that the change in control will occur due to a corporate reorganization. As explained in more detail below, Annova proposes to transfer the FTA authorization to Annova LNG Common Infrastructure, LLC (ACI), which will become a direct subsidiary of Series Z of Annova. Exelon Corporation (Exelon) will hold an indirect 96% interest in ACI, the new authorization holder. Annova states that this change in control will not affect the planned Annova Terminal or modify the proposed liquefaction project.

Annova requests approval of the proposed change in control pursuant to DOE/FE's regulations, which state that "[a]uthorizations by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary."³ As the requested change in control affects an FTA authorization subject to section

¹ Annova LNG, LLC, Exelon Corp., & Annova LNG Common Infrastructure, LLC, Application to Transfer Control of Long-Term Authorization to Export LNG to Free Trade Agreement Nations and Request for Expedited Treatment, FE Docket No. 14-004-CIC (July 3, 2014) [hereinafter Annova App.]. Although Annova filed this Application together with two other entities involved in the proposed transaction, we construe it as a filing by Annova alone, as the existing authorization holder.

² *Annova LNG, LLC*, DOE/FE Order No. 3394, FE Docket No. 13-140-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Annova LNG Terminal to Free Trade Agreement Nations (Feb. 20, 2014) [hereinafter Annova FTA Order].

³ 10 C.F.R. § 590.405.

3(c) of the Natural Gas Act (NGA), 15 U.S.C. § 717b(c), as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486), we are charged with granting it without modification or delay. We therefore grant Annova's Application, as set forth below.⁴

II. BACKGROUND

Applicant. Annova states that it is a Delaware limited liability company with its principal place of business in Houston, Texas. Mr. David Chung holds all of the equity interest in Annova. Annova currently has an option to lease 562.31 acres at the Port of Brownsville, Texas, on which it plans to build the proposed Annova Terminal.⁵

Exelon is a publicly traded utility services holding company formed under the laws of Pennsylvania and headquartered in Chicago, Illinois. According to Annova, Exelon generates and distributes energy through its subsidiaries, and is active throughout the entire energy value chain in both electricity and natural gas.

ACI is a Delaware limited liability company with its principal place of business in Chicago, Illinois. Annova states that ACI is currently a wholly owned subsidiary of Exelon Generation Company, LLC (ExGen), an indirect, wholly owned subsidiary of Exelon.⁶ Annova states that, after the proposed transaction, ACI will be a wholly owned, direct subsidiary of Series Z of Annova and an indirect subsidiary of Exelon, as well as the new authorization holder. According to Annova, the purpose of ACI will be to perform as operator of the proposed terminal and to hold certain of the common facilities and permits associated with the project.

⁴ The authority to regulate the imports and exports of natural gas, including LNG, under NGA section 3 has been delegated to the Assistant Secretary for Fossil Energy pursuant to Redelegation Order No. 00-002.04F (July 11, 2013).

⁵ Annova states that, on March 25, 2013, the Brownsville Navigation District of Cameron County, Texas, sold it an additional option to lease 267.31 acres of land at the Port of Brownsville. Annova App. at 3. This amount is in addition to Annova's initial option to lease 295 acres of land at the Port of Brownsville, referenced in the FTA authorization. *See Annova LNG*, DOE/FE Order No. 3394, at 3. In total, Annova has an option to lease 562.31 acres at the Port of Brownsville.

⁶ According to Annova, ExGen is headquartered in Kennett Square, Pennsylvania, and is involved in wholesale energy marketing operations and natural gas exploration and production, among other activities.

Procedural History. On February 20, 2014, DOE/FE issued Order No. 3394, in which it authorized Annova to export domestically produced LNG in a volume equivalent to 342 Bcf/yr of natural gas by vessel from the proposed Annova Terminal to FTA countries for a term of 30 years, beginning on the earlier of the date of first cargo export or eight years from the date of authorization.⁷

Annova filed the Application in this proceeding on July 3, 2014. Citing DOE/FE regulations and Ordering Paragraph (K) of DOE/FE Order No. 3394,⁸ the Application requests that DOE/FE approve Annova's request for transfer of control of its FTA authorization under Section 3(c) of the Natural Gas Act, as amended.⁹

III. APPLICATION TO TRANSFER CONTROL

Pursuant to 10 C.F.R. § 590.405, Annova seeks approval to: (i) transfer the FTA authorization to ACI; and (ii) transfer indirect control of the FTA authorization to Exelon, which will hold an indirect 96% interest in ACI through a corporate reorganization. Annova states that the parties have selected this corporate structure to facilitate financing for the various long-term phases of the project.

Under the proposed transaction, Annova will be converted to a series limited liability company under Delaware law.¹⁰ Membership interest in Annova will be issued in two series of units, Series A and Series Z. ExGen will acquire a 96% interest in each of the Series A and Series Z Units of Annova. Mr. David Chung (who currently holds all of the membership interest in Annova) and one or more individuals will indirectly hold the remaining 4% interest in each of

⁷ See *supra* at n.2.

⁸ See Annova FTA Order at 12 (ordering Annova, prior to any change in control of the authorization holder, to obtain the approval of the Assistant Secretary for Fossil Energy).

⁹ 15 U.S.C. § 717b(c).

¹⁰ Annova states that, under Delaware law, each series in a series limited liability company may have different assets, rights, remedies, and obligations. Each series will be treated as separate for accounting, legal, and tax purposes.

the Series A Units and Series Z Units of Annova through a new intermediary company, to be named 1836 Energy Partners, LLC. 1836 Energy Partners, LLC will be a Delaware limited liability company. Annova states that Mr. Chung will continue to be involved in the project as an employee.

According to Annova, all membership interests in ACI will be transferred from ExGen to Series Z of Annova, such that ACI will become a direct, wholly owned subsidiary of Series Z of Annova. The FTA authorization issued in DOE/FE Order No. 3394 will be transferred from Annova to ACI.

In summary, the following changes will occur as a result of the proposed transaction: (i) ACI, a subsidiary of Series Z of Annova, will hold the FTA authorization; (ii) Exelon will hold a 96% interest in ACI; and (iii) the remaining 4% interest in ACI will be held in the aggregate by Mr. Chung and one or more individuals through 1836 Energy Partners, LLC.

According to Annova, there are no facts that would alter DOE/FE's grant of the FTA authorization in DOE/FE Order No. 3394. Specifically, the change in control will not affect or modify the proposed liquefaction project, the total volume of LNG to be exported, or any of the export characteristics that DOE/FE previously considered in granting the FTA authorization. Annova further asserts that, because the proposed transaction will not require any changes to the proposed liquefaction project facilities, granting the Application would not be a federal action significantly affecting the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, *et seq.* For these reasons, Annova submits that the proposed change in control is consistent with the public interest under NGA section 3(c).¹¹

¹¹ Although, as stated above, the Application is deemed consistent with the public interest under section 3(c) of the Natural Gas Act, Annova nonetheless addresses in its Application why the proposed change in control is in public interest. *See* Annova App. at 6-9. Annova also requests that DOE/FE act on the Application by or before September 2, 2014—a request that is mooted with issuance of this order.

IV. DECISION

Pursuant to the transfer of authorities under sections 301(b) and 402 of the DOE Organization Act, 42 U.S.C. § 7151(b) and 42 U.S.C. § 7172, DOE/FE is responsible for evaluating the Application under section 3 of the NGA. Where, as here, an application requesting approval to transfer control of an authorization pertains only to a FTA authorization granted under NGA section 3(c), that Application is deemed consistent with the public interest and will be granted without delay or modification. 15 U.S.C. § 717b(c). We therefore grant the Application, and further find that all parties involved are companies registered in the United States, availing themselves of United States law.¹²

ORDER

Pursuant to section 3 of the NGA and 10 C.F.R. § 590.405, it is ordered that:

A. DOE/FE approves the proposed change in control of Annova's FTA authorization, issued in DOE/FE Order No. 3394 (FE Docket No. 13-140-LNG), as follows:

(i) Annova's FTA authorization will be transferred to Annova LNG Common Infrastructure, LLC, which will become a wholly owned, direct subsidiary of Series Z of Annova and an indirect subsidiary of Exelon;

(ii) Exelon will hold an indirect 96% interest in Annova LNG Common Infrastructure, LLC; and

(iii) The remaining 4% indirect interest in Annova LNG Common Infrastructure, LLC will be held by Mr. David Chung and one or more individuals through 1836 Energy Partners, LLC.

¹² Annova is advised, however, that any change in control may require the approval of the Committee on Foreign Investment in the United States (CFIUS). DOE expresses no opinion regarding the need for review by CFIUS. Further information may be obtained at: <http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>.

B. Annova LNG Common Infrastructure, LLC will be the holder of the FTA authorization specified above.

C. This authorization shall be effective immediately.

Issued in Washington, D.C., on July 17, 2014.

A handwritten signature in black ink, appearing to read "John A. Anderson", is written over a horizontal line.

John A. Anderson
Director, Division of Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy