



Department of Energy  
Washington, DC 20585

April 4, 2019

BY EMAIL

Brett A. Snyder  
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**RE: Statement of Change of Control**  
Annova LNG Common Infrastructure, LLC  
FE Docket Nos. 13-140-LNG, 19-34-LNG

Dear Mr. Snyder:

This correspondence constitutes the response of the Department of Energy (DOE), Office of Fossil Energy (FE), to your letters filed on behalf of Annova LNG Common Infrastructure, LLC (ACI). Specifically, ACI filed a Statement of Change in Control on November 16, 2018,<sup>1</sup> and Supplemental Information on March 29, 2019.<sup>2</sup> In the letters, ACI provides information regarding changes to its indirect ownership in light of DOE/FE's Change in Control Procedures.<sup>3</sup>

## **I. BACKGROUND**

**FTA Authorization (FE Docket No. 13-140-LNG).** ACI currently holds a long-term authorization to export domestically produced liquefied natural gas (LNG) to any country with which the United States has a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (FTA countries), pursuant to section 3(c) of the Natural Gas Act (NGA).<sup>4</sup>

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<sup>1</sup> Annova LNG Common Infrastructure, LLC, FE Docket No. 13-140-LNG, Statement of Change of Control (Nov. 16, 2018) [hereinafter ACI Statement of Change in Control].

<sup>2</sup> Annova LNG Common Infrastructure, LLC, FE Docket No. 13-140-LNG, Supplemental Information for Statement of Change of Control (Mar. 29, 2019) [hereinafter ACI Supp.].

<sup>3</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/FE Change in Control Procedures].

<sup>4</sup> 15 U.S.C. § 717b(c).

DOE/FE originally issued this export authorization to ACI's predecessor, Annova LNG, LLC, on February 20, 2014, in DOE/FE Order No. 3394 (FTA Authorization).<sup>5</sup>

On July 17, 2014, DOE/FE approved a change in control through which Annova LNG, LLC transferred the FTA Authorization to ACI.<sup>6</sup> In that transaction, Annova LNG, LLC was converted to a series limited liability company with membership interests issued in different series of units.<sup>7</sup> ACI became a direct, wholly owned subsidiary of Series Z of Annova LNG, LLC. Additionally, Exelon Corporation (Exelon) acquired, among other things, a 96% indirect interest in Series Z of Annova LNG, LLC.<sup>8</sup> Subsequently, Exelon acquired a 100% interest in Series Z of Annova LNG, LLC.<sup>9</sup>

**Non-FTA Application (FE Docket No. 19-34-LNG).** On February 26, 2019, ACI submitted an application requesting authority to export domestically produced LNG to any country with which the United States has not entered into a FTA requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries),<sup>10</sup> pursuant to NGA section 3(a).<sup>11</sup> That application is pending.

Although ACI filed its Statement of Change in Control prior to filing its non-FTA application, we construe the Statement of Change in Control (and related Supplemental Information) to apply to both ACI's FTA authorization and pending non-FTA application.

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

According to the Statement of Change in Control, ACI has undergone recent changes in the indirect ownership of the company. On October 19, 2018, Black & Veatch Corporation (B&V) and Kiewit Corporation (Kiewit) each acquired a 5% interest in Series Z of Annova LNG, LLC, "resulting in an upstream change in ownership of ACI, the FTA Authorization holder."<sup>12</sup> Following the transaction, Exelon owns a 90% indirect interest in ACI, B&V owns a 5% indirect interest in ACI, and Kiewit owns a 5% indirect

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<sup>5</sup> *Annova LNG Common Infrastructure, LLC* (formerly *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 in Brownsville, Texas, to Free Trade Agreement Nations (Feb. 20, 2014).

<sup>6</sup> *Annova LNG Common Infrastructure, LLC*, DOE/FE Order No. 3464, FE Docket Nos. 14-004-CIC & 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 (July 17, 2014).

<sup>7</sup> ACI Statement of Change in Control at 2; *see also* ACI, DOE/FE Order No. 3464, at 4-5.

<sup>8</sup> *See id.*

<sup>9</sup> ACI Statement of Change in Control at 2.

<sup>10</sup> *Annova LNG Common Infrastructure, LLC*, FE Docket No. 19-34-LNG, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 26, 2019); *see also* *Annova LNG Common Infrastructure, LLC*, FE Docket No. 19-34-LNG, Supplemental Info. (Mar. 13, 2019) (supplement to non-FTA application).

<sup>11</sup> 15 U.S.C. § 717b(a).

<sup>12</sup> ACI Statement of Change in Control at 2.

interest in ACI.<sup>13</sup> ACI states that no single entity acquired a 10% or greater ownership interest in ACI.<sup>14</sup> Further, ACI states that, “B&V and Kiewit are not affiliated entities.”<sup>15</sup>

### **III. DISCUSSION AND CONCLUSIONS**

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.<sup>16</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>17</sup>

Upon review of the information set forth in ACI’s Statement of Change in Control and Supplemental Information, DOE/FE finds that the described transaction does not constitute a change in control. In the transaction, B&V and Kiewit each acquired a 5% interest in Series Z of Annova LNG, LLC (ACI’s parent company), and Exelon retained a 90% interest. Although, collectively, B&V and Kiewit acquired a 10% interest, ACI states that B&V and Kiewit are not affiliated entities. Therefore, we find that each 5% interest acquired by B&V and Kiewit, respectively, does not trigger DOE/FE’s rebuttable presumption for a change in control.<sup>18</sup>

No further action is required.

Sincerely,

Amy R. Sweeney  
Director, Division of Natural Gas Regulation

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<sup>13</sup> *See id.*

<sup>14</sup> *See id.*

<sup>15</sup> *See* ACI Supp. at 1.

<sup>16</sup> *See* DOE/FE Change in Control Procedures, 79 Fed. Reg. at 65,542.

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

<sup>18</sup> *See id.*; *see also, e.g.*, U.S. Dep’t of Energy, Response to Magnolia LNG, LLC, FE Docket Nos. 12-183-LNG, *et al.* (Aug. 23, 2018) (no change of control where new ownership investment was 9.9%).