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LATHAM & WATKINS LLP

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By Electronic Mail

Ms. Amy Sweeney
U.S. Department of Energy
Office of Fossil Energy
Office of Regulation, Analysis, and Engagement
1000 Independence Ave., S.W.
Washington, D.C. 20026-4375
fergas@hq.doe.gov

Attention: Dominion Energy Cove Point LNG, LP
FE Docket Nos. 11-115-LNG, 11-128-LNG, 18-180-LNG, and 19-156-LNG
Notification In Accordance with Procedures for Changes in Control

Dear Ms. Sweeney:

Pursuant to the authorizations to export and import 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 Berkshire Hathaway Energy Company (“BHE”), an Iowa corporation and a subsidiary of Berkshire Hathaway Inc., a Delaware corporation, will acquire indirect ownership and control of one hundred percent (100%) of the general partnership interests of DECP, and twenty-five percent (25%) of DECP’s limited partnership interests. As explained below, this change in control does not affect DOE/FE’s determinations regarding natural gas exports and imports by DECP, which remain consistent with the public interest.

BHE is acquiring these interests in DECP as part of a larger transaction, with an enterprise value of approximately \$9.7 billion, involving the acquisition by BHE of a number of subsidiaries of Dominion Energy, Inc. (“DEI”), including Dominion Energy Gas Holdings, LLC (“DEGH”), pursuant to a Purchase and Sale Agreement dated as of July 3, 2020 (the “PSA”). BHE and DEI plan to close that transaction during the fourth quarter of 2020, and to effectuate the change in control of DECP at that time. To avoid any potential uncertainty about the continued effectiveness of DECP’s export authorizations following the change in control, DECP respectfully requests that

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

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

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DOE/FE issue an order consistent with this request, if one is required under the CIC Procedures, by no later than September 30, 2020.

Background regarding DECP Authorizations and the CIC Procedures

DECP, a Delaware limited partnership, is the owner and operator of the Dominion Cove Point Terminal located in Lusby, Maryland (“the Terminal”), as well as an 88-mile natural gas pipeline connecting the Terminal to the interstate pipeline grid. The Terminal has long been used to import liquefied natural gas (“LNG”). Beginning in 2018, DECP began to export LNG from the Terminal, rendering it a bi-directional facility capable of both imports and exports.

DECP currently holds long-term, multi-contract authority to export LNG from the Terminal (1) to any nation with whom the United States has entered into a Free Trade Agreement (“FTA”) requiring the national treatment of natural gas, pursuant to Order No. 3019² and (2) to any non-FTA nation, pursuant to Order No. 3331-A.³ In addition, DECP currently holds blanket authorizations applicable for two-year periods (1) to import LNG from various international sources pursuant to Order No. 4320⁴ and (2) to export both domestically produced and previously imported LNG to both FTA and non-FTA nations pursuant to Order No. 4508.⁵

Ordering Paragraph P of Order No. 3331-A specifically requires DECP to obtain DOE/FE approval of any “change in control,” citing the CIC Procedures. More generally, DOE/FE policies also require this notification of the planned change in control of DECP. The CIC Procedures require notification within thirty days after any change in control of the holder of an export authorization is effectuated, while adding that notices of changes may also be filed prior to the change being effectuated. DECP has chosen to provide DOE/FE with this notice in advance of the closing of its transaction with BHE, to promote certainty as soon as possible about the continued effectiveness of DECP’s authorizations.

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

² *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3019, FE Docket No. 11-15-LNG (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, FE Docket No. 11-128-LNG (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. 4320, FE Docket No. 18-180-LNG (Dec. 11, 2018).

⁵ *Dominion Cove Point LNG, LP*, DOE/FE Order No. 4508, FE Docket No. 19-156-LNG (Feb. 28, 2020).

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 existing FTA long-term export authorizations, as well as import authorizations, 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 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

Seventy-five percent (75%) of DECP's limited partnership interest is currently owned by Dominion MLP Holding Company II, LLC, a Virginia limited liability company ("Dominion MLP Holding"), that is a wholly-owned, direct subsidiary of DEGH (which in turn is a wholly-owned subsidiary of DEI). The general partnership interest in DECP is currently held by Cove Point GP Holding Company, LLC ("Cove Point GP"), a Delaware limited liability company and a wholly-owned, direct subsidiary of Dominion MLP Holding. The remaining twenty-five percent (25%) of DECP's limited partnership interest is owned by Bowie Acquisitions LLC, an affiliate of Brookfield Asset Management Inc. ("Brookfield"). Brookfield's acquisition of its DECP limited partnership interest was the subject of a notification pursuant to the CIC Procedures submitted by DECP on October 23, 2019, and reflected in a responsive letter from DOE/FE dated March 13, 2020.⁶

Pursuant to the PSA, (i) Dominion MLP Holding will, prior to closing, transfer or distribute fifty percent (50%) of the limited partnership interests in DECP to a wholly-owned subsidiary of DEI that is *not* being acquired by BHE, and (ii) at closing, BHE will acquire all of the ownership interests of DEGH, thereby becoming the indirect, one hundred percent (100%) owner of both

⁶ A simplified organization chart, which reflects DECP's current ownership structure, was provided as an attachment to that filing. As explained in the DOE/FE responsive letter, no filings were received in response to the public notice of DECP filing and DOE/FE took no action on its own motion within thirty days of the filing and, accordingly, no further action by DOE/FE was required to effectuate the transaction.

Dominion MLP Holding and Cove Point GP. Thus, BHE will become the indirect owner of the entire general partnership interest in DECP, and of twenty-five percent (25%) of DECP's limited partnership interest. Accordingly, BHE generally will have day-to-day management and control of DECP. Fifty percent (50%) of the DECP limited partnership interest will continue to be owned directly or indirectly by DEI, and Brookfield will continue to own the remaining twenty-five percent (25%) of DECP's limited partnership interest through its existing special purpose entity. The limited partners have essentially economic interests in DECP, along with voting rights with respect to certain major decisions.

The revised DECP corporate structure, to be in effect following the closing of the transaction between DEI and BHE, is reflected on the simplified organization chart appended as Attachment A. While the transaction remains subject to certain conditions, the parties expect it to close during the fourth quarter of 2020.

Application of the CIC Procedures to the Transaction

DECP itself will remain the holder of the export authorizations, though BHE expects to change the name of the entity and will submit a future filing to DOE/FE to effectuate the name change for its export and import authorizations. BHE, as the indirect owner of the general partnership interest of DECP, will operate the Terminal after the closing, but there will be no change in any aspect of DECP's export and import operations as a result of the acquisition by BHE of DECP interests. All of DECP's commercial agreements with its customers will remain in effect and unaltered. And all the key employees currently involved in DECP's operations will either remain employees of DECP, or otherwise transfer to BHE following the transaction.

BHE is a large U.S. energy company with a diverse portfolio of over \$100 billion of high-quality, locally managed businesses that share a vision for a secure and sustainable energy future, including regulated electric and natural gas utility operations in eleven Western and Midwestern states, and electric transmission and distribution operations in Great Britain and Canada. These businesses deliver affordable, safe and reliable service each day to more than 12 million end-use customers, and consistently rank high among energy companies in customer satisfaction. The BHE assets include, *inter alia*, approximately 16,300 miles of natural gas pipelines stretching from Texas to Michigan and from Wyoming to California, held by its subsidiaries Northern Natural Gas and Kern River Gas Transmission Company. BHE and all its businesses adhere to a policy of strict regulatory compliance and pursue frequent, open communication with regulators. BHE is headquartered in Des Moines, Iowa.

Backed by the financial resources of Berkshire Hathaway Inc., BHE invests in hard assets and focuses on long-term operations and opportunities that will contribute to the future strength of the company. BHE's acquisition of a controlling interest in DECP – along with significant other natural gas pipeline assets from DEI, including Dominion Energy Transmission, Inc., a large

interstate pipeline and storage system connected to DECP's own pipeline – is consistent with these goals. This acquisition will add to BHE's portfolio of regulated natural gas assets and significantly expand its geographic footprint, market reach, and diversity.

DOE/FE has consistently approved 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 BHE's acquisition of a controlling interest in DECP provides absolutely no basis to question the DOE/FE decisions to authorize LNG exports by DECP. The public interest considerations addressed in Order No. 3331-A, and the other authorizations for DECP, did not focus in any way on DEI ownership or control of DECP. In any event, BHE is fully capable – financially and otherwise – of continuing to operate DECP, perform its contractual obligations to export and import LNG, and fully comply with all regulatory requirements.

In accordance with the CIC Procedures, DOE/FE should give immediate effect to this notification upon receipt and the expected closing of the DEI-BHE transaction.⁸ That effect is considered final upon receipt of this notice and no further action is needed with respect to the FTA export authorization issued in Order No. 3019, the import blanket authorization issued in Order No. 4320, and the FTA portion of the blanket export authorization of Order No. 5408. 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 reaffirming its prior conclusion that the authorized LNG exports by DECP remain not inconsistent with the public interest.

As noted above, DEI and BHE plan to close their agreed-upon transaction in the fourth quarter of 2020. If thirty days pass after public notice of this filing without any protest or action by DOE/FE, the change of control becomes effective pursuant to the CIC Procedures and no further action is needed by DOE/FE for the parties to close the transaction. If this filing is protested, however, DECP respectfully requests that DOE/FE act on that protest by issuing an order consistent with this request by September 30, 2020 to remove any potential uncertainty about the continued effectiveness of DECP's authorizations.

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 Jordan Cove Energy Project, LP issued in FE Docket Nos. 11-127-LNG and 12-32-LNG, dated July 20, 2018; 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.

⁸ Counsel for DECP will notify DOE/FE once the DEI-BHE transaction closes, expected to occur in the fourth quarter of 2020.

LATHAM & WATKINS^{LLP}

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
Partner
Patrick.Nevins@LW.com
D (202) 637-3363

