



Department of Energy  
Washington, DC 20585

July 25, 2019

BY EMAIL

Brian Wright  
Senior Vice President  
Annova LNG Common Infrastructure, LLC  
1221 Lamar Street, Suite 750  
Houston, Texas 77010

**RE: Notice of Ownership Change**  
Annova LNG Common Infrastructure, LLC  
FE Docket Nos. 13-140-LNG, 19-34-LNG

Dear Mr. Wright:

This correspondence constitutes the response of the Department of Energy (DOE), Office of Fossil Energy (FE), to the Notice of Ownership Change filed on April 26, 2019.<sup>1</sup> In that Notice, Annova LNG Common Infrastructure, LLC (ACI) provides information regarding a recent change to its upstream ownership in light of DOE/FE's Change in Control Procedures.<sup>2</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 (FTA countries), pursuant to section 3(c) of the Natural Gas Act (NGA).<sup>3</sup> DOE/FE originally issued this export authorization to Annova LNG, LLC, on February 20, 2014, in DOE/FE Order No. 3394 (FTA Authorization).<sup>4</sup>

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<sup>1</sup> Annova LNG Common Infrastructure, LLC, FE Docket Nos. 13-140-LNG & 19-34-LNG, Notice of Ownership Change (Apr. 26, 2019) [hereinafter CIC Notice].

<sup>2</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 or CIC Procedures].

<sup>3</sup> 15 U.S.C. § 717b(c).

<sup>4</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

On July 17, 2014, in DOE/FE Order No. 3464, DOE/FE approved a change in control through which Annova LNG, LLC transferred the FTA Authorization to ACI.<sup>5</sup> In that transaction, Annova LNG, LLC was converted to a Delaware series limited liability company with membership interests issued in four series companies. ACI became a direct, wholly owned subsidiary of Series Z of Annova LNG, LLC (Series Z), one of those four series companies.<sup>6</sup>

**Non-FTA Application (FE Docket No. 19-34-LNG).** On February 26, 2019, ACI submitted an application requesting long-term 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), pursuant to NGA section 3(a)<sup>7</sup> (Non-FTA Application).<sup>8</sup> ACI's Non-FTA Application is pending.

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

As summarized in a letter issued by DOE/FE to ACI on April 4, 2019, the ownership of ACI's parent company, Series Z, previously was as follows:

- (i) Exelon Corporation (Exelon) held a 90% membership interest;
- (ii) Black & Veatch Corporation (B&V) held a 5% membership interest; and
- (iii) Kiewit Corporation (Kiewit) held a 5% membership interest.<sup>9</sup>

In the CIC Notice at issue here, ACI informs DOE/FE about a change in Series Z's ownership. ACI states that, on March 29, 2019, Enbridge Holdings (USGC) LLC, an indirect wholly owned subsidiary of Enbridge Inc. (Enbridge), entered into a transaction with Exelon; B&V; Kiewit; Annova LNG, LLC; and each of its four series companies (the Transaction). As relevant here, the Transaction resulted in the current ownership of Series Z as follows:

- (i) Exelon holds a 80.55% membership interest;
- (ii) B&V holds a 4.475% membership interest;
- (iii) Kiewit holds a 4.475% membership interest; and

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Agreement Nations (Feb. 20, 2014).

<sup>5</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>6</sup> CIC Notice at 1; *see also* ACI, DOE/FE Order No. 3464, at 4-5.

<sup>7</sup> 15 U.S.C. § 717b(a).

<sup>8</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).

<sup>9</sup> *See* U.S. Dep't of Energy, FE Docket Nos. 13-140-LNG & 19-34-LNG, Response to Statement of Change in Control for Annova LNG Common Infrastructure, LLC, at 2-3 (Apr. 4, 2019); *see also* CIC Notice at 2.

(iv) Enbridge holds a 10.5% membership interest.<sup>10</sup>

ACI states that, because it is a direct, wholly owned subsidiary of Series Z, the Transaction resulted in an upstream change in ACI's ownership.<sup>11</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>12</sup> A rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, of 10% or more of the voting securities of such entity.<sup>13</sup>

#### **A. FTA Authorization (FE Docket No. 13-140-LNG)**

DOE/FE's CIC Procedures provide that, upon receipt of a statement of a change in control relating to existing FTA long-term natural gas export authorizations, DOE will give immediate effect to the change in control and will take no further action.<sup>14</sup> Accordingly, the change in control described above has taken effect insofar as it relates to ACI's FTA Authorization—DOE/FE Order No. 3394, as amended by DOE/FE Order No. 3464. No further action is required.

#### **B. Pending Non-FTA Application (FE Docket No. 19-34-LNG)**

As stated above, ACI's Non-FTA Application is currently pending before DOE/FE. The CIC 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>15</sup>

Under the CIC Procedures, DOE will give immediate effect to the amendment, but it will accept and consider answers to the notice of amendment received within 15 days of service of the applicant's pleading.<sup>16</sup> DOE will address the issues raised in any answers to the amendment in its final order on the pending application.<sup>17</sup>

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<sup>10</sup> CIC Notice at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *See* DOE/FE CIC Procedures, 79 Fed. Reg. at 65,542.

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

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

<sup>15</sup> *Id.*

<sup>16</sup> *See id.*

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

ACI filed its CIC Notice prior to the establishment of a service list in the non-FTA proceeding, and DOE/FE posted the CIC Notice to the docket.<sup>18</sup> The change in control applicable to ACI's pending Non-FTA Application has thus taken effect. More than 15 days have passed since DOE/FE posted the CIC Notice, and DOE/FE has not received any answers in opposition to the change in control. Accordingly, the change in control as to ACI's Non-FTA Application continues in effect. No further action is required.

Sincerely,

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Amy R. Sweeney  
Director, Office of Regulation, Analysis, and Engagement  
Office of Oil and Natural Gas

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<sup>18</sup> See 10 C.F.R. § 590.107(b) (“When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements . . . may be met by serving a copy of all documents . . . on FE for inclusion in the FE docket in the proceeding.”). ACI filed its Non-FTA Application on February 26, 2019. When ACI filed the CIC Notice on April 26, 2019, the initial comment period for the Application was still open. See *Annova LNG Common Infrastructure, LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Notice of Application*, 84 Fed. Reg. 11,291 (Mar. 26, 2019) (comment period open through May 28, 2019). Therefore, ACI complied with the service requirements when it submitted its Application to FE for inclusion in the docket (FE Docket No. 19-34-LNG). 10 C.F.R. § 590.107(b).