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**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

**FE DOCKET NO. 10-160-LNG
FE DOCKET NO. 10-161-LNG**

**REQUEST FOR CLARIFICATION
OF
DOE/FE ORDER NOS. 3282 AND 2913**

by

FREEPORT LNG EXPANSION, L.P. AND FLNG LIQUEFACTION, LLC

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July 12, 2013

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I.
INTRODUCTION

Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, "FLEX") have filed four applications with the Department of Energy, Office of Fossil Energy ("DOE/FE") for long-term, multi-contract authorization to export domestically produced liquefied natural gas ("LNG") from FLEX's proposed natural gas liquefaction and export facility at Quintana Island, Texas (the "Freeport Liquefaction Project"). Two of those applications are for LNG exports to any country with which the United States has entered into a free trade agreement providing for national treatment for trade in natural gas ("FTA"), and are approved by DOE/FE in DOE/FE Order Nos. 2913 and 3066.¹ The other two applications are for exports to countries with which the United States has not entered into such an FTA ("Non-FTA Countries").² On May 17, 2013, DOE/FE Order 3282 was issued conditionally granting FLEX's initial application to export to Non-FTA Countries under DOE/FE Docket No. 10-161-LNG. FLEX's second application to export to Non-FTA Countries remains pending under DOE/FE Docket No. 11-161-LNG. Pursuant to this Request for Clarification, FLEX respectfully requests clarification from DOE/FE with respect to certain aspects of Order No. 3282, and the relationship between that order and DOE/FE Order No. 2913.

II.
FREEPORT LIQUEFACTION PROJECT

Construction of the Freeport Liquefaction Project is expected to commence in the first quarter of 2014. The project will initially be comprised of three natural gas liquefaction production units, or trains, each expected to be capable of gas equivalent LNG production in

¹ *Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations*, DOE/FE Order No. 2913 (FE Docket No. 10-160-LNG), February 10, 2011, at p. 6; *Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal to Free Trade Agreement Nations*, DOE/FE Order No. 3066 (FE Docket No. 12-06-LNG), February 10, 2012, at p. 5.

² *Application of Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries*, DOE/FE (FE Docket No. 10-161-LNG), December 17, 2010. *Application of Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Countries*, DOE/FE (FE Docket No. 11-161 LNG); December 19, 2011.

excess of 0.7 billion cubic feet per day (“Bcf/d”).³ Based on the construction schedule for the Freeport Liquefaction Project, the initial liquefaction train (“Train 1”) is expected to achieve full commercial operation in 48 months, and the subsequent liquefaction trains are expected to sequentially achieve full commercial operation at approximately six-month intervals thereafter. Thus, commercial operation of the second liquefaction train (“Train 2”) is expected to commence on about the 54th month following initial start of construction. Commencement of full commercial operation of each of the liquefaction trains will be preceded by a commissioning period during which the trains will be performance tested to verify that they meet required LNG production volumes. The commissioning period for each train is anticipated to be up to six months. LNG produced in connection with the commissioning and start-up of the liquefaction trains is not covered under the long-term liquefaction tolling agreements (“LTAs”) and is anticipated to be exported under separate, short-term arrangements.

The Freeport Liquefaction Project will be supported by LTAs under which customers will deliver natural gas to the Freeport Liquefaction Project and receive re-delivery of that gas for export in the form of LNG. To-date, LTAs have been executed with Chubu Electric Power Co., Inc. (“Chubu”), Osaka Gas Co., Ltd. (“Osaka Gas”) and BP Energy Company (“BP Energy”) covering the anticipated production volume of Train 1 and Train 2. Each of the LTAs has an initial term of 20 years. The initial terms of the Chubu and Osaka Gas LTAs commence upon full commercial operation of Train 1. The initial term of the BP Energy LTA commences upon full commercial operation of Train 2. LNG exports from the Freeport Liquefaction Project will ramp up as commercial operation of each liquefaction train is achieved and exports under the respective LTAs commence. Assuming limited export authority at the end of the initial 20-year base term of the LTAs, LNG exports will also ramp down as the LTAs expire. To the extent LNG production is curtailed during the course of the 20-year initial term of one or more of the LTAs, the initial term of those LTAs may be extended to provide for “make-up” of the delivery of volumes (“Make-up Volumes”) not delivered during the 20-year period.

III.

20-YEAR TERM OF AUTHORIZATION

In its LNG export applications to DOE/FE, FLEX requested a 25-year term of authorization commencing on the date of first export. However, citing (1) the 20-year initial term of the Freeport Liquefaction Project LTAs,⁴ (2) the 20-year projection period under the macro-economic study performed by NERA Economic Consulting commissioned by DOE/FE to inform its decisional process (the “NERA Study”)⁵ and (3) the 20-year term of authorization to export to Non-FTA Countries requested by Sabine Pass,⁶ and granted by DOE/FE, DOE/FE limited the FLEX authorization under Order No. 3282 to a 20-year term beginning from the date

³ Because the liquefaction trains are being built under construction contracts with strict LNG production volume requirements, FLEX expects significant design margin and over-build of the facility by the construction contractor will result in actual gas equivalent LNG production well in excess of the nameplate per train. In addition, conservative assumptions regarding ambient air temperatures and the quality of feed gas supplying the Freeport Liquefaction Project support an expectation that, once in operation, actual production will significantly exceed nameplate. This expectation is consistent with production capability experienced globally at liquefaction projects using similar liquefaction technology.

⁴ Order No. 3282 at 115.

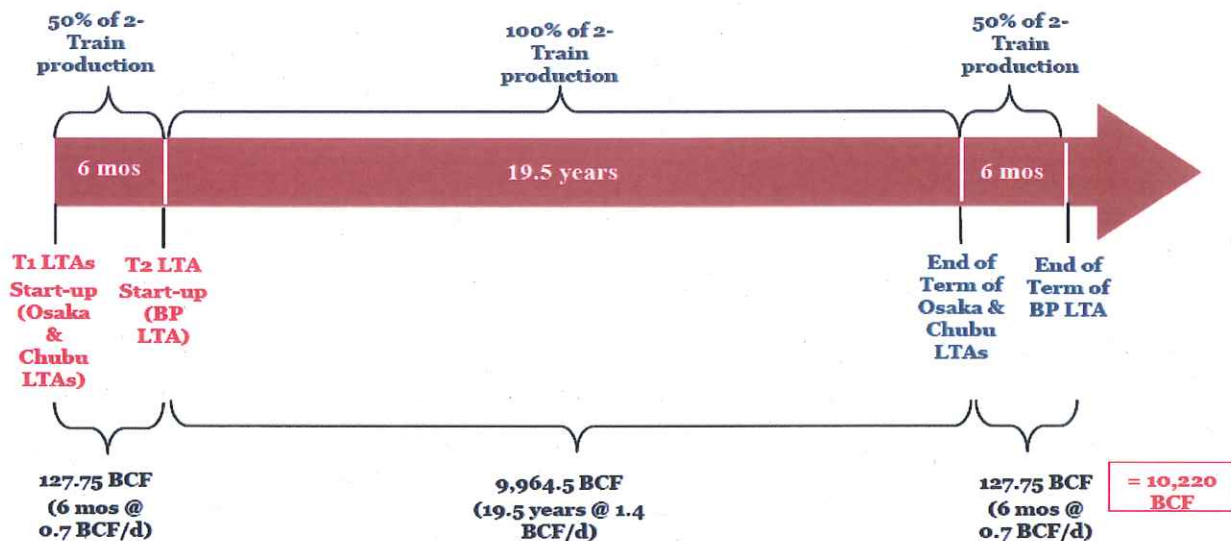
⁵ 77 Fed. Ref. at 73,629; *Macroeconomic Impacts of LNG Exports from the United States*, NERA Economic Consulting, released 2013.

⁶ *Sabine Pass*, DOE/FE Order No. 2961-A, at 29.

of first export.⁷ In summarizing its conclusions, DOE/FE also stated in Order No. 3282:

“In imposing this condition, we are mindful that LNG export facilities are capital intensive and that, to obtain financing for such projects, there must be a reasonable expectation that the authorization will continue for a term sufficient to support repayment. We find that a 20-year term is likely sufficient to achieve that result. We base that conclusion on the fact that FLEX has submitted to DOE/FE LTAs with 20-year terms, which is also the length of all LNG export contracts DOE/FE has received to date.”⁸

As noted above, while it is correct that the Freeport Liquefaction Project LTAs do have 20-year initial terms, the terms of the various LTAs do not run simultaneously. In addition, the 20-year initial term of one or more of the LTAs could be extended to provide for the delivery of Make-up Volumes. However, the staggered commencement and staggered expiration of the LTA terms will not result in the total volume of exports under the LTAs exceeding the aggregate 10,220 Bcf of export volume authorized in Order No. 3282. The volume of LNG exports will ramp up as the liquefaction trains and associated LTAs come on line. Likewise LNG exports will ramp down as the contractual delivery obligations under the LTAs are fulfilled. Following is a graphical depiction of the staggered start-up of the initial two trains and the associated LTAs, assuming a 6 month period between commercial operation of each train and gas equivalent LNG production volume of each train of 0.7 Bcf/d:



In the above example, exports continue under the Chubu, Osaka Gas and BP Energy LTAs for a total period of 20.5 years, but because export volumes are only 50% of the 1.4 Bcf/d authorized during the first and last six months of the 20.5 years, the total quantity of LNG exported during the 20.5 years is equal to the amount authorized at full daily production over 20 years. Likewise, because Make-up Volumes are by definition volumes that were not delivered during the initial term, any LTA term extension for delivery of Make-up Volumes will not result in the total volume of exports under the LTAs exceeding the aggregate authorized under Order No. 3282.

⁷ Order No. 3282 at 114.

⁸ Order No. 3282 at 114-115.

Regarding the NERA Study, DOE/FE correctly observed in Order No. 3282 that the 20-year projection period under the NERA Study was for reference and not tied to any specific calendar date.⁹ In fact, the NERA study, which used 5-year intervals in its model beginning in 2015, states that: “These calendar years should not be interpreted literally but represent intervals after exports begin. Thus, if the United States does not begin LNG exports until 2016 or later, one year should be added to the dates for each year that exports commence after 2015.”¹⁰ This is appropriate since each LNG export project, and each individual liquefaction train within each LNG export project, will commence commercial operations on different dates. In fact, the initial train of the Sabine Pass project (*i.e.*, the only LNG export project currently under construction in the United States) is not projected to be in service until the fourth quarter of 2015.¹¹

Furthermore ordering paragraph C of Order No. 3282 states: “The combined total LNG export quantity authorized in this Order **and** DOE/FE Order No. 2913 is equivalent of 511 Bcf/yr of natural gas.”¹² (Emphasis added.) However, ordering paragraph A of Order 2913 authorizes exports of 511Bcf/yr “for a 25-year term, beginning on the earlier of the date of first export ... pursuant to one or more long term contracts...with terms not to exceed the term of the authorization.”¹³ (Emphasis added.)

Based on the foregoing, FLEX respectfully requests that DOE/FE clarify Orders Nos. 3282 and 2913 to provide for a term of authorization that commences on the date of first commercial export of LNG under one of the Freeport Liquefaction Project LTAs and ends upon the earlier of: (1) completion of delivery of all Make-up Volumes not delivered during the initial terms of the different LTAs, or (2) 25 years from the date of the first commercial exports by Freeport under its LTAs, provided that the total volume of exports under Order No. 3282 shall not exceed the aggregate 10,220 Bcf authorized thereunder. FLEX does not seek authorization beyond the originally requested 25 years.

IV. 7-YEAR DEADLINE TO COMMENCE EXPORTS

In ordering paragraph B of Order No. 3282, DOE/FE states that “FLEX must commence export operations using the planned liquefactions facilities no later than seven years from the date of issuance of this order.”¹⁴ However, Order No. 3282 issued on May 17, 2013 is a “conditional order”, subject to satisfactory completion of the environmental review of the Freeport Liquefaction Project under the National Energy Policy Act (“NEPA”) in FERC Docket No. CP12-509 and DOE/FE’s issuance of a record decision pursuant to NEPA thereafter.¹⁵ Only after satisfaction of those conditions will DOE/FE consider the issuance of its final order in this FE Docket No. 10-161-LNG.¹⁶ Importantly, FLEX cannot commence construction of the Freeport Liquefaction Project until FERC has granted FLEX the requested authorization to do

⁹ Order No. 3282 at 49 footnote # 66 and at 114 footnote # 128.

¹⁰ NERA Study at 5.

¹¹ See: http://www.chenienergypartners.com/liquefaction_project/project_schedule.shtml

¹² Order No. 3282 at 122.

¹³ Order No. 2913 at 8.

¹⁴ Order No. 3282 at 122. Order No. 2913 at 6-7, requires commencement 8 year from the “authorization.”

¹⁵ Order No. 3282 at 123.

¹⁶ See 10 C.F.R. § 590.402 (DOE/FE authority to issue conditional orders prior to its issuance of a final opinion and order).

so.¹⁷ That authorization is not anticipated until the first quarter of 2014, nearly a year into the 7-year period if commenced on May 17, 2013. While FLEX anticipates a 4-year period from commencement of construction to initial commercial operations, the day on which construction of the Freeport Liquefaction Project commences is not under the exclusive control of FLEX. (By way of illustration, approximately 2.5 years elapsed between the filing of the Freeport application in Docket 10-161-LNG on December 17, 2010 and the issuance of Conditional Order 3281 on May 17, 2013.) Starting the 7-year clock on May 17, 2013 inappropriately reduces the time allowed to execute on the project from the outset, jeopardizing the significant capital invested in the project and potentially defeating the DOE/FE's policy objective to encourage the realization of exports from facilities receiving DOE/FE authorization. Based on the foregoing, FLEX respectfully requests that DOE/FE clarify Order No. 3282 to provide that the commencement of the 7-year period by the end of which exports are required to commence is the date that the authorizations in both FERC Docket No. CP12-509 and DOE/FE Docket No. 10-161-LNG have become final and non-appealable.

V. REPORTING AND COMPLIANCE REQUIREMENTS

At various places in Order No. 3282, there are filing, reporting, and informational delivery requirements imposed upon FLEX, along with a requirement that FLEX ensure contracts are in compliance with the order and not contrary to U.S. law or policy. In particular, DOE/FE requires that FLEX file with DOE/FE any relevant long-term commercial agreements, including LTAs, between FLEX and other entities, including a registrant on behalf of which FLEX is permitted to export LNG as agent (a "Registrant").¹⁸ In addition, DOE/FE requires that FLEX file or "cause" to be filed with DOE/FE any subsequent relevant long-term commercial agreements associated with export of LNG from, or supply of natural gas to, the Freeport Liquefaction Project, entered into by such a Registrant ("Subsequent Contracts").¹⁹ For instance, ordering paragraph G states that "FLEX shall file, or cause others to file" various contracts or summaries of the "major provisions of the contract". The contract filing requirements extend to both "executed long-term contracts associated with the long-term export of LNG" and "executed long-term contracts associated with the long-term supply of natural gas to the Freeport LNG terminal".²⁰

In addition, ordering paragraph G of Order No. 2913 specifies that a Registrant must provide FLEX with "all information and copies of contracts" necessary to permit FLEX to register the person or entity with DOE/FE including, "...within 30 days of execution by a person or entity required by this Order to register, a copy, filed with DOE/FE under seal, of any agreement to purchase or receive LNG exported pursuant to this authorization."²¹ However, ordering paragraph I of Order No. 3282 specifies that a Registrant must provide FLEX with "all information"²² necessary to permit FLEX to register the person or entity with DOE/FE including various long-term contracts either non-redacted for public posting or alternatively a non-redacted

¹⁷ NGA, *supra*.

¹⁸ Order No. 3282 at 117, 123-124.

¹⁹ *Id.*

²⁰ Order No. 3282 at 123.

²¹ *Order No. 2913 at 10.*

²² Order No. 3282 at 124.

copy filed under seal **and** for public filing either (a) a major provisions summary; or (2) redacted copy of the contract.

FLEX acknowledges that DOE/FE has a legitimate interest in receiving country of destination information for LNG exported under the DOE/FE authorizations, and in requiring that long-term contracts associated with export of LNG from, or supply of natural gas to, the Freeport Liquefaction Project, contain appropriate provisions requiring compliance with the terms of the authorizations.²³ In circumstances where FLEX or one of its affiliates is a party to such long-term contracts, FLEX will be in a position to file or cause the filing of those contracts and redacted versions or summaries of major provisions of those contracts. However, FLEX may not be party to Subsequent Contracts entered into by Registrants. Subsequent Contracts are likely to contain commercially sensitive information that Registrants, or other parties to Subsequent Contracts, may not want to disclose to FLEX, and FLEX may not have or be able to obtain a copy of those Subsequent Contracts.

DOE/FE's interests can seemingly be met without FLEX possessing or filing Subsequent Contracts to which FLEX is not a party. The requirement that FLEX file all applicable long-term contracts to which FLEX is a party, demonstrating inclusion of contractual commitments by FLEX's counterparties to comply with Order No. 3282, coupled with the requirement under ordering paragraph O of Order No. 3282 and ordering paragraph K of Order No. 2913 for monthly reporting of the country of destination of exported LNG, would appear to satisfy the needs of DOE/FE.

VI. CONCLUSION

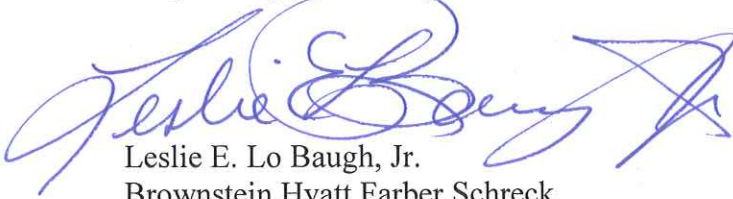
FLEX respectfully requests that DOE/FE expeditiously clarify Orders Nos. 3282 and 2913 by confirming each of the following matters:

1. The commencement date for the term of the export authorization is the date of first commercial export of LNG under one of the long-term Freeport Liquefaction Project LTAs.
2. The term of the authorization under Order No. 3282 will end upon completion of delivery of any Make-up Volumes not delivered during the initial 20-year terms of the Freeport Liquefaction Project LTAs, provided that the total volume of exports under Order No. 3282 shall not exceed the aggregate 10,220 Bcf authorized thereunder nor exceed a calendar period of 25 years measured from the date of the first commercial exports by Freeport under its LTAs.
3. The commencement of the 7-year period by the end of which exports are required to commence under Order No. 3282 will be the date that the authorizations in both FERC Docket No. CP12-509 and DOE/FE Docket No. 10-161-LNG have become final and non-appealable.
4. With respect to FLEX's contract reporting and compliance requirements:

²³ Order No. 3282 at 123-124.

- a. FLEX is required to file with DOE/FE only applicable long-term contracts to which FLEX or an affiliate of FLEX is a party, demonstrating inclusion of contractual commitments by the counterparties to such contracts to comply with Order Nos. 3282 and 2913; and
- b. For applicable Subsequent Contracts entered into by Registrants, but to which neither FLEX nor an affiliate of FLEX is a party, FLEX's obligation to ensure proper registration of such Registrants and compliance with Order Nos. 3282 and 2913 will be satisfied by FLEX registration of the Registrant and by compliance by FLEX with the monthly reporting obligations under ordering paragraph O of Order No. 3282 and ordering paragraph K of Order No. 2913.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Leslie E. Lo Baugh, Jr.", with a stylized flourish at the end.

Leslie E. Lo Baugh, Jr.
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Attorneys for:
Freeport LNG Expansion, L.P.
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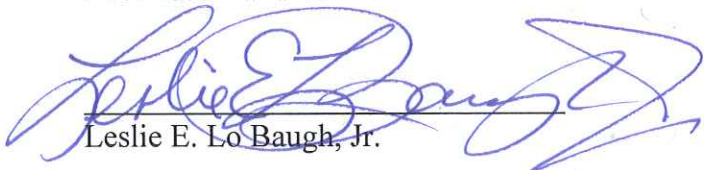
July 12, 2013

**VERIFICATION
and
CERTIFIED STATEMENT**

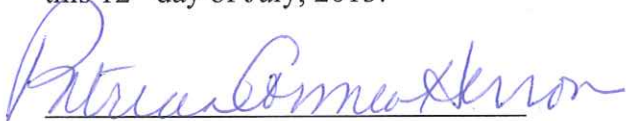
County of Los Angeles

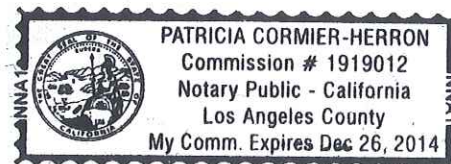
State of California

I, Leslie E. Lo Baugh, Jr., being duly sworn on his oath, do hereby affirm that I am a duly authorized representative of Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC; that I am familiar with the contents of this Request for Clarification of DOE/FE Order Nos. 3282 and 2913; and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.


Leslie E. Lo Baugh, Jr.

Sworn to and subscribed before me, a Notary Public, in and for the State of California,
this 12th day of July, 2013.


Patricia Cormier Herron, Notary Public



CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties on listed below in Docket No. 10-160-LNG and Docket NO. 10-161-LNG and DOE/FE for inclusion in the FE dockets in the above-referenced proceedings in accordance with 10 C.F.R. § 590.107(b)(2011).

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