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October 28, 2014

VIA E-MAIL AND HAND DELIVERY

John A. Anderson
U.S. Department of Energy
Division of Natural Gas Regulatory Activities
Director of the Office for Oil and Gas
Global Security and Supply
1000 Independence Ave., S.W., FE-34, Rm 3E-042
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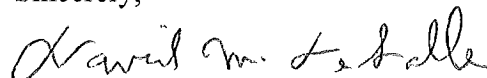
**Re: Motion to Intervene Out of Time and Comments of UTA FLNG, LLC, TIF FLNG, LLC and Zachry Hastings Infrastructure Partners, L.P.
DOE/FE Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG, 12-06-LNG, and 14-005-CIC**

Dear Mr. Anderson:

Enclosed please find the Motion to Intervene Out of Time and Comments of UTA FLNG, LLC, TIF FLNG, LLC and Zachry Hastings Infrastructure Partners, L.P. in the above-referenced DOE/FE dockets. Please lodge this Motion and Comments in all of the above-referenced dockets. The required Certificate of Service and a Verification are attached to the Motion and Comments.

Although this is being filed electronically, an original hard copy is being hand delivered to the DOE today.

Sincerely,



David M. DeSalle

DMD:lrw

Enclosure

cc: Edward B. Myers

073470/285672

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

<u>FREEPORT LNG EXPANSION, L.P.,</u>)	
)	FE Docket No. 10-160-LNG
FLNG LIQUEFACTION, LLC,)	FE Docket No. 10-161-LNG
FLNG LIQUEFACTION 2, LLC, and)	FE Docket No. 11-161-LNG
FLNG LIQUEFACTION 3, LLC,)	FE Docket No. 12-06-LNG
)	FE Docket No. 14-005-CIC
)	

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS OF UTA FLNG LLC,
TIF FLNG, LLC, AND ZACHRY HASTINGS INFRASTRUCTURE PARTNERS, L.P.**

Pursuant to 10 C.F.R. §§ 590.105(b) and 590.303(d) (2014), UTA FLNG, LLC, a Delaware limited liability company, TIF FLNG, LLC, a Delaware limited liability company, and Zachry Hastings Infrastructure Partners, L.P., a Delaware limited partnership (collectively the “Sellers”), hereby (A) move to intervene out of time in the above-captioned proceedings before the Department of Energy’s Office of Fossil Energy (“DOE/FE”) and (B) comment upon the Notice Amendment, and Statement of Change filed by Freeport LNG Expansion, L.P. (“FLEX”), FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (collectively “Freeport”) in the above-captioned dockets on October 14, 2014 (the “CIC Notice”).

I. COMMUNICATIONS

Any communications regarding this pleading or this proceeding should be addressed to:

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Attorney for Sellers

II. STATEMENT OF INTEREST

DOE/FE's regulations require that "[a]ny other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based."¹ The Sellers have interests in these proceedings as current indirect owners of FLEX. Sellers are proposing to dispose of their indirect interests in FLEX and GIP II FLNG Holding Partnership, L.P., a Delaware limited partnership ("GIP II FLNG") proposes to acquire a portion of Seller's indirect interests in FLEX, all as more fully described below.

Sellers are joint owners of ZHA FLNG, LLC, a Delaware limited liability company.² ZHA FLNG, LLC owns and controls 100% of the Class A membership and voting interests in ZHA FLNG Purchaser, LLC, a Delaware limited liability company.³ ZHA FLNG Purchaser, LLC currently owns and controls 55% of the limited partner interests in Freeport LNG

¹ 10 C.F.R. § 590.303(b) (2014).

² The Sellers' ownership of the membership interests in ZHA FLNG, LLC is as follows: UTA FLNG, LLC: 37.5%; TIF FLNG, LLC: 25%; Zachry Hastings Infrastructure Partners, L.P.: 37.5%. UTA FLNG, LLC is an indirectly wholly owned subsidiary of the Utilities Trust of Australia, an Australian pension fund. TIF FLNG, LLC is an indirectly wholly owned subsidiary of The Infrastructure Fund, an Australian pension fund. Zachry Hastings Infrastructure Partners, L.P. is an investment fund whose majority investor is the Teacher Retirement System of Texas.

³ Michael Smith owns a non-voting Class B membership interest in ZHA FLNG Purchaser, LLC.

Development, L.P. (“Freeport Development”), a Delaware limited partnership that owns and operates the Freeport LNG Terminal located on Quintana Island, southeast of the City of Freeport in Brazoria County, Texas. Freeport Development indirectly owns and controls 100% of the interests in FLEX, which, in turns, controls each of the other Freeport entities.

GIP II FLNG, a Delaware limited partnership, is ultimately owned by Global Infrastructure Partners II, the second fund of Global Infrastructure Partners (“GIP”), a leading independent global infrastructure investor, focusing on the energy, power and utilities, transportation and water/waste sectors. Headquartered in New York, GIP manages \$15 billion for its investors. GIP was formed in 2006. To date, GIP has invested approximately \$6 billion in core infrastructure assets in the midstream energy and power sectors, with a focus on large strategic partnerships.

Pursuant to the DOE/FE Notice of Procedures issued on September 26, 2014, Freeport filed the CIC Notice in the above-captioned dockets describing anticipated changes in control of the indirect upstream ownership of FLEX.⁴ As described in the CIC Notice, (a) Michael Smith and his family trusts will purchase from ZHA FLNG Purchaser, LLC five percent (5%) of the limited partner interests in Freeport Development; (b) Mr. Smith will exchange his non-voting Class B membership interest in ZHA FLNG Purchaser, LLC for 25% of the limited partner interests in Freeport Development currently owned by ZHA FLNG Purchaser, LLC (together with the transaction described in clause (a), the “Smith Transactions”); and (c) GIP II FLNG will acquire the Sellers’ membership interests in ZHA FLNG, LLC, and, indirectly, 100% of the membership interests in ZHA FLNG Purchaser, LLC (the “ZHA-GIP Transaction”). As a result

⁴ Notice, Amendment, and Statement of Change Filed Pursuant to DOE/FE September 26, 2014, Notice of Procedures Change, In re: DOE/FE Order Nos. 2913, 2913-A, 3066, 3066-A, 3282, 3282-A, 3282-B, 3357, and 3357-A and DOE/FE Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG, and 12-06-LNG (October 14, 2014).

of the Smith Transactions and the ZHA-GIP Transaction, GIP II FLNG will indirectly own a 25% limited partner interest in Freeport Development.⁵

To facilitate timely closing of the transactions (a) between the Sellers and GIP II FLNG and (b) between the Sellers and Michael Smith, as both are described in the CIC Notice, Freeport assumed that the requested approval of a change-in-control is required. The Sellers as parties to the transactions set forth in the CIC Notice support the requested approval of change-in-control, to the extent such approval is required. However, in the CIC Notice, Freeport does not fully describe the Sellers' indirect upstream ownership interests. As stated in greater detail below, the ZHA-GIP transaction involves the transfer of contractual governance rights (including representation on the board or other governing body of the general partner in Freeport Development) that might not be typically associated with the transfer of limited partner interests. Accordingly, in the interests of providing DOE with a complete record upon which to base any decision,⁶ the Sellers request that DOE grant and accept the instant Motion to Intervene Out of Time and Comment.

III. MOTION TO INTERVENE OUT OF TIME

DOE's regulations provide that the deadline for submitting comments can be extended "for good cause shown."⁷ DOE has previously found "good cause" to accept comments out of time in LNG export proceedings where the commenter made a good faith effort to file its

⁵ The Smith Transactions depend on the achievement of certain economic milestones that are expected to be reached at the financial closing of Train 1 and Train 2. In the unlikely event that the Smith Transactions do not occur at the financial closing of Train 1 and Train 2, they could occur at a later time. Until that time, ZHA FLNG Purchaser LLC will continue to own 55% of the limited partner interests in Freeport Development.

⁶ See also 10 C.F.R. § 590.407 (2014) (describing the continuing obligation to give DOE written notification, as soon as practicable, of any prospective or actual changes to the information submitted during the application process upon which the original authorization was based); this obligation to update relevant information is also reflected in the authorizations issued in the above-captioned dockets.

⁷ 10 C.F.R. § 590.105(b); see also 10 C.F.R. § 590.310 (stating that DOE may grant parties additional time to request permission to file written comments "for good cause shown").

comments in a timely manner and no party will be prejudiced.⁸ In this case, good cause exists because Sellers will supplement the records of these proceedings with important facts relating to the effect of the ZHA-GIP transaction. The Sellers are acting at this time because the governance rights relating to the Sellers' indirect upstream ownership interests in FLEX were not at issue before DOE/FE at any earlier stage of this proceeding. Further, no other party adequately represents Sellers' interests in the ZHA-GIP Transaction or in providing a complete description of it to DOE/FE. In addition, Sellers agree to accept the records of these proceedings as they stand, and, as a result, their intervention will not prejudice any party in regard to the timing or outcome of these proceedings.⁹ In light of their valid interest¹⁰ and absence of prejudice to any party with respect to these proceedings, the Sellers request that they be granted party status in these proceedings.

IV. COMMENTS

In this section, the Sellers summarize the governance rights referenced above. The rights described herein are representative of the rights being transferred, but are not necessarily exhaustively catalogued or fully detailed in all respects.

⁸ See Procedural Order on Late-Filed Pleadings, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, at 3-4 (March 25, 2011) (accepting late-filed comment where “a good faith effort was made to file . . . in a timely manner” and “[n]o party is likely to have been prejudiced”); see also DOE/FE Order No. 3282, *Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC*, FE Docket No. 10-161-LNG (May 17, 2013) at 2 n.3 (accepting late-filed comment because doing so “will not prejudice other parties”); DOE/FE Order No. 3324, *Lake Charles Exports, LLC*, FERC Docket No. 11-59-LNG (Aug. 7, 2013) at 3 n.8 (same).

⁹ See DOE Response to Sierra Club's Motion to Intervene Out of Time, *Pangea LNG (North America) Holdings, LLC*, FE Docket No. 12-184-LNG (May 10, 2013). The Federal Energy Regulatory Commission (“FERC”), which administers other aspects of the Natural Gas Act, likewise focuses on potential prejudice when reviewing motions to intervene out of time in proceedings. See *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 12 (2012) (granting motions to intervene out of time where they did not “delay, disrupt, or unfairly prejudice any party to the proceeding”); *Tumalo Irrigation District*, 36 FERC ¶ 61,136, at ¶ 61,342 (1986) (“[S]ince we are still processing the application for Project No. 3470, granting Fuls intervention in that proceeding at this time would not disrupt that proceeding or cause prejudice to Tumalo”).

¹⁰ See *Sierra Club, Inc. v. EPA*, 358 F.3d 516 (7th Cir. 2004) (noting that “[p]ersons whose legal interest are at stake are appropriate intervenors[]”).

Among other rights that GIP II FLNG will acquire from the Sellers in connection with its acquisition of the Sellers' membership interests in ZHA FLNG, LLC, GIP II FLNG will have the right to require Mr. Smith to appoint a person designated by GIP II FLNG to be a member of the board of the general partner of Freeport Development (the "GIP director") or the equivalent managing body of any successor entity and all current and future subsidiaries of Freeport Development. The affirmative vote of the GIP director will be required to cause the general partner of Freeport Development to, among other things, withdraw as general partner of Freeport Development, encumber certain non-liquefaction assets, or engage in certain material transactions (*e.g.*, selling a material portion of Freeport Development's assets, merging or consolidating with another person, acquiring other companies, issuance of certain securities, formations of new subsidiaries, dissolving, filing for bankruptcy), except in certain circumstances. In the event of Michael S. Smith's death or incapacity, the GIP director's consent is required for appointment of a replacement CEO. The GIP director will have the right to approve certain ordinary course, day-to-day operational decisions made by FLNG, but only if the decision (i) is not in the best interests of Freeport Development, involves an expansion of Freeport Development's business that exceeds \$10 million and Freeport Development does not have sufficient tolling arrangements that can support financing of at least 75% of the cost of such expansion, or (ii) is not consistent with standards and practices generally followed by reasonable and prudent operators of LNG receiving and regasification facilities in the U.S.

In addition, Michael S. Smith must consult with the GIP director prior to voting in favor of making public announcements about Freeport Development or terminating certain specified employees of Freeport Development. GIP II FLNG's consent will also be required for limited "Major Decisions" of Freeport Development, including among other decisions: (i) bankruptcy of

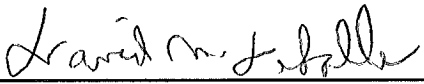
Freeport Development, (ii) the sale of all or substantially all of Freeport Development's assets or a merger or consolidation of Freeport Development, and (iii) transactions with affiliates, unless they are fair and reasonable and not less favorable than could be obtained in arm's-length negotiations. GIP II FLNG's consent will also be required for any amendments to Freeport Development's limited partnership agreement and to remove its general partner as the general partner of Freeport Development in the event of bankruptcy, fraud, dissolution, misappropriation of funds, or breach of the Freeport Development limited partnership agreement. GIP II FLNG will have the right to consent to any amendment to the FLNG GP Stockholders Agreement if such amendment would vitiate or materially and adversely affect the GIP governance rights, and GIP II FLNG will also have the right to information relating to Freeport Development and its business, subject to appropriate confidentiality obligations.

The rights described above are among those pursuant to a letter agreement with Mr. Smith, and the rights under the letter agreement will continue to exist and be exercisable by GIP II FLNG (and its successors and assigns) notwithstanding any change in Freeport Development or its general partner, including without limitation any change in the identity of such general partner or any change in Freeport Development's or its general partner's organizational documents, equity-holder arrangements, organizational form or governing body (including without limitation any change in the number of members or composition of any such governing body).

V. CONCLUSION

The Sellers respectfully request that DOE/OFE grant their motion to intervene out of time and incorporate their comments in the records of the above-captioned proceedings.

Respectfully submitted,

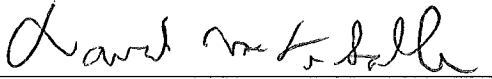


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Attorney for Sellers

VERIFICATION

I, David M. DeSalle, being duly sworn on his oath, do hereby affirm that I am familiar with the contents of this Motion to Intervene Out of Time and Comment and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.

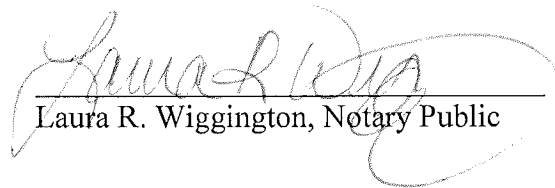
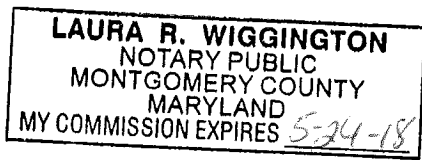


David M. DeSalle

STATE OF MARYLAND

COUNTY OF MONTGOMERY

Subscribed and sworn to before me, a Notary Public in and for the State of Maryland, County of Montgomery, this 28th day of October, 2014



Laura R. Wiggington, Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of October, 2014, served the foregoing document upon the parties as listed below in Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG, 12-06 LNG, and 14-005-CIC and DOE/FE for inclusion in the FE dockets in the above-referenced proceedings in accordance with 10 C.F.R. §§ 590.103(b) and 590.107 (2014).

Applicant:

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Dated: October 28, 2014



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