

December 16, 2013

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**VIA FEDERAL EXPRESS**

Mr. John Anderson  
Department of Energy  
Office of Fossil Energy [FE-34]  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

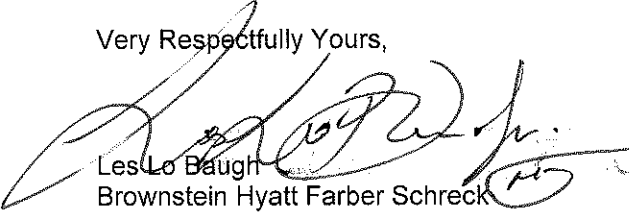
**RE: DOE/FE Docket No. 11-161-LNG  
Request for Clarification or Amendment of Order No. 3357**

Dear Mr. Anderson:

In reference to the matter of the Application by Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC, please find enclosed a Request for Clarification or Amendment of Order No. 3357. A Certificate of Service and Verification are also enclosed.

Should you have any questions or comments, please do not hesitate to contact me.

Very Respectfully Yours,



Les Lo Baugh  
Brownstein Hyatt Farber Schreck  
Attorneys for Applicants:  
Freeport LNG Expansion, L.P.  
FLNG Liquefaction, LLC,  
FLNG Liquefaction 2, LLC, and  
FLNG Liquefaction 3, LLC

LEL:mld  
Enclosures

cc: Edward Myers (w/ enclosures)  
John Tobola (w/ enclosures)

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*By Docket Room at 3:54 pm, Dec 16, 2013*

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

**REQUEST FOR CLARIFICATION OR AMENDMENT**

**OF**

**DOE/FE ORDER NO. 3357**

**IN**

**DOE/FE DOCKET NO. 11-161-LNG**

**BY**

**FREEPORT LNG EXPANSION, L.P., FLNG LIQUEFACTION, LLC,  
FLNG LIQUEFACTION 2, LLC AND FLNG LIQUEFACTION 3, LLC**

**Dated: December 16, 2013**

December 16, 2013

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

**REQUEST FOR CLARIFICATION OR AMENDMENT  
OF  
DOE/FE ORDER NO. 3357  
IN  
DOE/FE DOCKET NO. 11-161-LNG**

**I.  
INTRODUCTION**

Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC (collectively, "FLEX") have filed four applications for long-term export of domestically sourced LNG from the Freeport LNG Terminal at Quintana Island, Texas. (DOE/FE Docket Nos. 10-160-LNG, 10-161-LNG, 12-06-LNG and 11-161-LNG.) Originally Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC were the FLEX applicants. However, on September 19, 2013, FLEX filed to amend all four of its long-term export applications to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as additional applicants. DOE/FE granted the amendments in Order No. 3357.

The two applications for LNG exports to countries with Free Trade Agreements ("FTA") with the United States were approved by the Department of Energy, Fossil Energy ("DOE/FE") in DOE/FE Order Nos. 2913 and 3066.<sup>1</sup> The other two long-term export applications were for exports to non-FTA countries.<sup>2</sup> FLEX's first application for long-term export to non-FTA countries was filed on December 17, 2010 and conditionally granted on May 17, 2013 in

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<sup>1</sup> *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; *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.

<sup>2</sup> *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 Order No. 3282 (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 Order No. 3357 (FE Docket No. 11-161-LNG), December 19, 2011.

DOE/FE Order No. 3282. FLEX's second non-FTA application in Docket No. 11-161-LNG was filed on December 19, 2011 and conditionally granted on November 15, 2013 in DOE/FE Order No. 3357.

In this request for clarification or amendment, FLEX respectfully requests clarification of certain specific and limited aspects of conditional Order No. 3357. The clarifications sought are critical to both completing satisfactory financing of the FLEX LNG Export Project facilities and the satisfaction of certain contractual prerequisites of the long-term export contracts previously filed under seal with the DOE/FE.

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## **II.**

### **STATUTORY BASIS FOR REQUEST FOR CLARIFICATION OR AMENDMENT**

The rules and regulations of DOE/FE anticipate and authorize the filing of, among other documents, a "...request, petition, motion..." (10 CFR Part 590.103(a)) FLEX respectfully submits this filing pursuant to the applicable provisions of the DOE/FE regulations.

## **III.**

### **BACKGROUND**

In each of its applications for LNG exports to FTA countries in Docket Nos. 10-160-LNG and 12-06-LNG, FLEX requested authorization to export up to 1.4 billion cubic feet per day ("Bcf/d") of LNG, for a total of 2.8 Bcf/d, over a term of twenty-five (25) years. In DOE/FE Order Nos. 2913 and 3066, each of these requests was approved, thus granting FLEX a total authorization of 2.8 Bcf/d exports of domestically sourced LNG to FTA countries over a 25-year term.

In each of its applications for LNG exports to non-FTA countries in DOE/FE Docket Nos. 10-161-LNG and 11-161-LNG, FLEX requested authorization to export 1.4 Bcf/d of LNG, for a total of 2.8 Bcf/d, over a term of twenty-five (25) years. In DOE/FE Order No. 3282 dated May 17, 2013, DOE/FE granted the application in Docket No. 10-161-LNG, but only for a 20-year term.

On November 15, 2013, in Docket No. 11-161-LNG, DOE/FE issued Order No. 3357. In that order, DOE/FE reached the following determination as its formal "FINDING":

"On the basis of the findings and conclusions set forth above, we find that it has not been shown that a grant of the requested authorization will be inconsistent with the public interest...."<sup>3</sup>

In Order No. 3357 the DOE/FE granted conditional approval for only 0.4 Bcf/d of additional non-FTA exports resulting in a total authorization to FLEX to export 1.8 Bcf/d to non-FTA countries. (See, *Errata* for DOE/FE Order No. 3357, issued December 13, 2013.) Furthermore, Order No. 3357 granted an export term of only twenty years.

#### IV. COMMENCEMENT DATE OF THE TERM OF AUTHORIZATION

Before an individual liquefaction train can become commercially operational, it must first go through a performance testing and commissioning process that typically includes several trial liquefaction exercises. This testing and commissioning process is required for a number of reasons, including safety, environmental compliance, and satisfaction of warranty requirements with respect to mechanical integrity and operational efficiency. Commissioning volumes are not subject to the long-term contracts that FLEX has with its customers. These volumes will be dealt with separately, most likely under future short-term off-take arrangements (i.e., under agreements having a term of less than two years).

In Section X.A of Order No. 3357, DOE/FE states that the 20-year term of the export authorization begins "from the date of first export."<sup>4</sup> Similarly, in ordering paragraph A, DOE/FE states that FLEX is authorized to export for a 20-year term, commencing on the earlier of "the date of first export" or seven years from the date of issuance of the order. However in Section X.B of Order No. 3357, in discussing the commencement of operations, DOE/FE adds a condition that FLEX must "commence **commercial** LNG export operations no later than seven years from the date of issuance of this Order" (Emphasis added.)<sup>5</sup> It is FLEX's understanding that DOE/FE's intent in Order No. 3357, as well as in Order No. 3282, in using terminology such as "commencement of operations", "first export", "commence commercial LNG export operations" and similar phrases, is to refer to first exports as part of commercial activities under FLEX's long-term off-take agreements and not to refer to volumes that may be produced during commissioning and testing unless those volumes are commercially produced and exported pursuant to long-term contracts.

For the avoidance of doubt, and to remove any uncertainty, FLEX respectfully requests that DOE/FE clarify or amend Order No. 3357 to confirm that the term of the export authorization under Order No. 3357 shall not commence until the date of the first *commercial* export of domestically sourced LNG under FLEX's long-term liquefaction tolling agreements with its customers, and that the export of commissioning volumes of LNG prior to commencement of commercial operations pursuant to short-term contracts will not trigger the

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<sup>3</sup> Order No. 3357, p. 164.

<sup>4</sup> Order No. 3357, p. 157.

<sup>5</sup> Order No. 3357, p. 158.

commencement of the term of the long-term authorizations. Since the authorizations in Order No. 3357 are combined with those in Order No. 3283, FLEX requests that DOE/FE additionally confirm that this clarification also applies to the authorizations in Order No. 3282.

## V.

### 20-YEAR TERM OF AUTHORIZATION

FLEX requested a 25-year term of export. However, citing 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”)<sup>6</sup>, DOE/FE limited the authorization under Order No. 3357 to a 20-year term beginning from the date of first export.<sup>7</sup> In summarizing its conclusions, DOE/FE stated:

“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. It is also consistent with the 20-year term authorized by DOE/FE in the final and conditional non-FTA export authorizations issued to date.”<sup>8</sup>

Precisely because of the capital intensive nature of FLEX’s proposed LNG export facility, FLEX respectfully requests that DOE/FE clarify or amend the authorization under Order No. 3357. The imposition of a single, rigid 20-year term commencing with the first export would have a significant negative commercial and financing implications for FLEX. FLEX notes that all other applicants that have received final and conditional non-FTA export authorizations from DOE/FE to date requested only 20-year terms of authorization, and received what they requested. However, FLEX specifically requested a 25-year term because of the sequential nature of its planned facilities.

The Freeport LNG Terminal will include several liquefaction trains. Initially, FLEX is constructing three liquefaction trains. One or more additional trains may be added in the future. Construction, commissioning, testing and commencement of commercial operations of these trains will be sequential. Under the DOE/FE authorizations, FLEX will export LNG as agent for multiple customers under separate long-term liquefaction tolling agreements (“LTAs”). To date, LTAs have been executed with Osaka Gas Co., Ltd. (“Osaka Gas”), Chubu Electric Power Co., Inc. (“Chubu”), BP Energy Company (“BP”), Toshiba Corporation (“Toshiba”) and SK E&S LNG, LLC (“SK”). As described in Section IV.A.3 of Order No. 3357, each of the LTAs has a 20-year initial term that commences upon the start of commercial operation of specific liquefaction trains. The term of the Osaka Gas and Chubu LTAs commence upon commercial operation of the first liquefaction train, the term of the BP LTA commences upon commercial operation of the second liquefaction train and the Toshiba and SK LTAs commence upon commercial operation of the third liquefaction train. The liquefaction trains will achieve start-up and commence operations sequentially over a time period of approximately 18 to 27 months (i.e.,

<sup>6</sup> 77 Fed. Ref. at 73,629; Macroeconomic Impacts of LNG Exports from the United States, NERA Economic Consulting, released 2013.

<sup>7</sup> Order No. 3357, p. 157.

<sup>8</sup> Order No. 3357, p. 157-158.

6 to 9 months apart). As such, the 20-year terms of the LTAs do not commence on the same date, but rather, sequentially as construction, commissioning and start-up of the applicable individual train is completed. In addition, 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 not delivered during the 20-year period ("Make-up Volumes"). Thus, LNG exports from the Freeport LNG Terminal under the LTAs will gradually ramp up over the initial 18 to 27 months of commercial operations, and will gradually ramp down as the 20-year initial terms of the LTAs (as may be extended for delivery of any Make-up Volumes) sequentially expire. The effect of this is that the overall term of the FLEX exports under the LTAs will be longer than a simple 20-year term measured from the date of first commercial export. However, the total volume of domestic LNG exported over the initial term of the LTAs will not exceed the total volume authorized by DOE/FE.

Since the receipt of LNG exports from FLEX is the primary purpose for FLEX's customers' entry into the LTAs with FLEX, the effectiveness of each of FLEX's LTAs is conditioned on receipt by FLEX from DOE/FE of LNG export authorization sufficient to deliver the full quantity required to be delivered under the LTAs for the full initial 20-year term of such LTA. Because Order No. 3357 specifies a fixed 20-year term commencing with first export, the order as drafted does not appear to cover the entire initial term of the LTAs and the condition precedent to effectiveness of the LTAs has not been met. As the revenues under the LTAs will be used to support the financing of the FLEX export facilities, FLEX's ability to raise the needed capital for the project is being frustrated by the lack of effectiveness of the LTAs and the inability of prospective providers of financing to rely on the full term of the LTAs to support repayment.

FLEX respectfully requests that DOE/FE clarify or amend Order No. 3357 to confirm that the 20-year fixed term of the authorization commences upon the date of the first commercial export of LNG under FLEX's long-term liquefaction tolling agreements with its customers (as described above) and continuing until expiration of the initial 20-year terms of FLEX's LTAs, including any period of time by which the initial terms of those agreements are extended to allow for delivery of Make-up Volumes not delivered by FLEX during their initial terms. Since the authorizations in Order No. 3357 are combined with those in Order No. 3282, FLEX requests that DOE/FE additionally confirm that this clarification also applies to the authorization in Order No. 3282.

With this requested clarification or amendment, the total volume of LNG that FLEX may export under Order Nos. 2913, 3068, 3282 and 3357 would not exceed the total authorized annual volume, multiplied by 20 years. To provide DOE/FE assurance of that, FLEX suggests that DOE/FE clarify or amend Order No. 3357 to confirm that total exports under the respective orders during the term of the authorizations may not exceed the aggregate annual volume authorized over a 20-year period (e.g., 20,440 Bcf of total authorized exports to FTA countries). If, despite the aggregate volume limitation, DOE/FE requires that the overall term of exports be time limited, FLEX requests that DOE/FE provide for a total term of authorizations not to exceed 25 years measured from the date of the first commercial export of domestically sourced LNG from the Freeport LNG Terminal.

FLEX notes that DOE/FE correctly observed that the 20-year period used by the NERA model was for convenience and not tied to any specific calendar date.<sup>9</sup> In fact, the NERA study, which used five (5) year intervals in its model, states that: “These calendar years are not actual, but represent modeling intervals after exports begin. For example, if the United States does not begin LNG exports until 2016, one year should be added to the dates of each year that exports commence after 2015.”<sup>10</sup> This is appropriate since not only will a project’s liquefaction trains begin operation on different dates, but different LNG projects will also commence commercial operations over a period of several years. Hence, their respective commercial operations would commence and end over a similarly extended time frame.

## VI.

### REQUIRED 7-YEAR OPERATIONS COMMENCEMENT DATE

In ordering paragraph B of Order No. 3357, DOE/FE states that FLEX “must commence commercial LNG export operations no later than seven years from the date of the issuance of this Order.”<sup>11</sup> Order No. 3357 is a “conditional order” subject to the satisfactory completion of the National Energy Policy Act (“NEPA”) review process by the Federal Energy Regulatory Commission (“FERC”) in FERC Docket No. CP12-509, and subsequent review thereof by DOE/FE. Only at that point will DOE/FE consider issuance of its final order in this docket.<sup>12</sup> Furthermore, FLEX cannot lawfully even commence construction on the new liquefaction facilities until FERC has granted FLEX the requested authorization to do so.<sup>13</sup> That authorization is not anticipated before the second quarter of 2014, at least six months into the 7-year period. While FLEX anticipates a 4-year period from commencement of construction to initial commercial operations, the day on which construction of the facilities commences is not under the exclusive control of FLEX. Starting the 7-year clock on November 15, 2013 inappropriately reduces the time allowed to execute on the project from the outset, unnecessarily constraining FLEX’s ability to raise the significant amounts of capital needed for the LNG export facilities, 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 or amend Order No. 3357 to confirm that the commencement of the 7-year period by the end of which exports are required to commence under Order 3357 will be the date that the authorizations in both FERC Docket No. CP12-509 and DOE/FE Docket No. 11-161-LNG have become final and non-appealable. Since the authorization in this Order No. 3357 is combined with the non-FTA authorization in Order No. 3282, FLEX requests that DOE/FE additionally confirm that this confirmation also applies to Order No. 3282.

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<sup>9</sup> Order No. 3357, p. 51, fn. 75.

<sup>10</sup> NERA Study, p. 5.

<sup>11</sup> Order No. 3357, p. 158.

<sup>12</sup> See 10 CFR Part 590.402 (DOE/FE authority to issue conditional orders prior to its issuance of a final opinion and order).

<sup>13</sup> 15 U.S.C. § 717f.



**VII.**  
**AMENDMENT TO ADD FLNG 2, LLC AND FLNG 3, LLC AS APPLICANTS**

As noted above, originally the applicants in Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG and 12-06-LNG were Freeport Expansion, L.P. and FLNG Liquefaction, LLC. On September 19, 2013, FLEX filed an Amendment and Supplement to those four applications to add two new entities in the Freeport corporate family, namely FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC, as applicants in each of the four dockets. In Order No. 3357, DOE/FE states that “(t)his Order grants FLEX’s Amendment...”<sup>14</sup>

In ordering Paragraph Q of Order No. 3357, the DOE/FE accepted and approved the Amendment and Supplement to include FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as additional applicants.<sup>15</sup> FLEX respectfully requests that DOE/FE confirm that the Amendment and Supplement is granted and approved for each of the four FLEX long-term export dockets, namely Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG and 12-06-LNG.

**VIII.**  
**CONCLUSION**

FLEX respectfully requests that DOE/FE expeditiously clarify or amend Order No. 3357 to confirm each of the following matters:

1. The term of the export authorization under Order Nos. 3357 (as well as under Order Nos. 2913, 3066 and 3282) shall not commence until the date of the first *commercial* export of domestically sourced LNG under FLEX’s long-term liquefaction tolling agreements with its customers, and that the export of commissioning volumes of LNG prior to commencement of commercial operations pursuant to short-term contracts will not trigger the commencement of the term of the long-term authorizations.
2. The term of the authorized exports will commence upon the date of the first commercial export of LNG under FLEX’s long-term liquefaction tolling agreements with its customers and continue until expiration of the initial 20-year terms of FLEX’s LTAs, including any period of time by which the initial terms of those agreements are extended to allow for delivery of Make-up Volumes not delivered by FLEX during their initial terms, provided that (a) total exports under the respective orders during the term of the authorizations may not exceed the aggregate volume authorized over a 20-year period and (b) the term of authorization shall not exceed 25 years measured from the date of the first commercial export of domestically sourced LNG from the Freeport LNG Terminal.

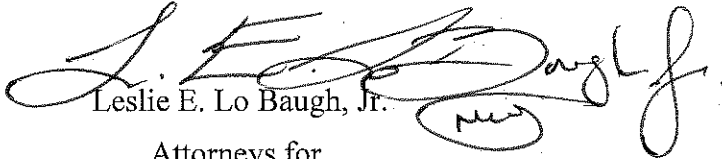
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<sup>14</sup> Order No. 3357, p. 6

<sup>15</sup> Order No. 3357, p. 169

3. The commencement of the 7-year period by the end of which exports are required to commence under Order No. 3357 (as well as under Order No. 3282) will be the date that the authorizations in both FERC Docket No. CP12-509 and DOE/FE Docket No. 11-161-LNG (and DOE/FE Docket No. 10-161-LNG) have become final and non-appealable.
4. The applications and associated orders in the FLEX four long-term export dockets (DOE/FE Docket Nos. 10-160-LNG, 10-161-LNG, 12-06-LNG & 11-161-LNG and respectively DOE/FE Order Nos. 2913, 3066, 3282 & 3357) are each amended to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as additional applicants.

Respectfully submitted,



Leslie E. Lo Baugh, Jr.

Attorneys for  
Freeport LNG Expansion, L.P.  
FLNG Liquefaction, LLC  
FLNG Liquefaction 2, LLC  
FLNG Liquefaction 3, LLC

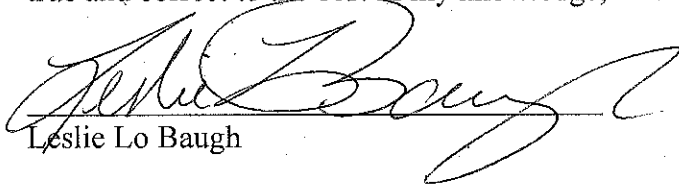
December 16, 2013

VERIFICATION

County of Los Angeles

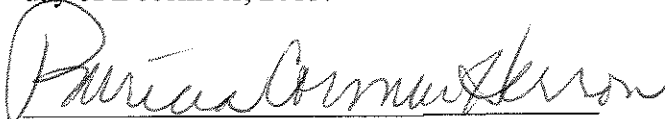
State of California

I, Leslie Lo Baugh, being duly sworn on his oath, do hereby affirm that I am familiar with the contents of this Amendment and Supplement and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.



Leslie Lo Baugh

Sworn to and subscribed before me, a Notary Public, in and for the State of California, this 16th day of December, 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. 11-161-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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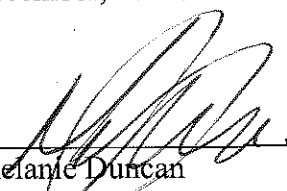
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Dated at Los Angeles, California, this 16<sup>th</sup> day of December, 2013.

By: \_\_\_\_\_

  
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