

# CE FLNG, LLC

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June 11, 2013

Mr. John Anderson  
Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Docket Room 3E-042  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

RE: CE FLNG, LLC  
FE Docket No. 12-123-LNG  
Motion for Leave to File Letter of Support Out of Time

Dear Mr. Anderson:

We hereby submit, on behalf of CE FLNG, LLC ("CE FLNG"), one original and fifteen copies of a motion for leave to file a letter of support out of time.

Pursuant to 10 CFR 590.107(a), copies were served on all other parties to the proceeding.

Respectfully Submitted,

/s/ Justin S. Mann

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

**CE FLNG, LLC**

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**FE Docket No. 12-123-LNG**

**CE FLNG, LLC'S MOTION FOR LEAVE TO FILE OUT OF TIME FOR  
GOOD CAUSE**

Pursuant to 10 C.F.R. § 590.304, CE FLNG, LLC ("CE FLNG") moves that the U.S. Department of Energy/Office of Fossil Energy ("DOE/FE") grant CE FLNG leave to file a letter of support for CE FLNG's application.

On September 21, 2012, CE FLNG filed its application to export to Free Trade Agreement ("FTA") nations and non-FTA nations. Notice for the non-FTA portion was published on December 6, 2012. Comments were due on February 4, 2013. CE FLNG requests leave to file a letter of support for its application. DOE/FE has granted similar requests in prior proceedings.

**I. CE FLNG Meets the Standard for Filing a Motion Out of Time**

Although movant is the applicant, not the intervenor, the history of motion practice for motions to intervene should govern here. When a motion to intervene is filed out of time, it will be granted "for good cause shown and after considering the impact of granting the late motion of the proceeding." 10 C.F.R. § 590.303(d). Although DOE/FE has provided little interpretation of these terms, CE FLNG satisfies the analogous aspects of Federal Energy Regulatory Commission ("FERC") rule 214(d)<sup>1</sup> and Federal Rules of Civil

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<sup>1</sup> 18 C.F.R. § 385.214(d).

Procedure (“FRCP”) 24<sup>2</sup>.

Of these factors, the impact to the proceedings is generally regarded as the more important. Indeed, FERC has adopted a general policy of allowing late intervention in natural gas proceedings so long as intervention is sought before a final order is issued. *See, e.g., Cameron LNG, LLC*, 118 FERC ¶ 61019 (Jan. 18, 2007). Here, movant’s delay in submitting its motion does not prejudice or impact the proceedings in any meaningful way. Indeed, these proceedings are in their infancy: DOE/FE has determined that it will take a “measured approach” in reviewing the other pending applications<sup>3</sup> and monitor the natural gas market to make sure that the granting of successive applications does not harm the public interest. Following the publication of the LNG Export Study, DOE/FE declared that it will begin to act on the applications on a case-by-case basis.<sup>4</sup> DOE will process long-term applications to export LNG to non-FTA countries in the following order:

- All pending DOE applications where the applicant has received approval (either on or before December 5, 2012) from the Federal Energy Regulatory Commission (FERC) to use the FERC pre-filing process, in the order the DOE application was received.
- Pending DOE applications in which the applicant did not receive approval (either on or before December 5, 2012) from FERC to use the FERC pre-filing process, in the order the DOE application was received.
- Future DOE applications, in the order the DOE applications are received.

DOE/FE received CE FLNG’s application after several other applications; 13 applications are listed ahead of CE FLNG in the order of processing.<sup>5</sup> So far, DOE/FE has

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<sup>2</sup> Note that FRCP 24 does not establish an explicit deadline for intervention, so under that rule the inquiry is not whether to allow an “untimely” motion to intervene, but instead whether a delayed or late motion to intervene is nonetheless “timely.”

<sup>3</sup> *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations (May 17, 2013).

<sup>4</sup> LNG Export Study, <http://energy.gov/fe/services/natural-gas-regulation/lng-export-study>.

<sup>5</sup> Pending Long-Term Applications to Export LNG to Non-FTA Countries – Listed in Order DOE Will Commence Processing, Office of Oil & Gas Global Security & Supply, Office of Fossil Energy, U.S. Department of Energy,



only issued an order for the first application. Since DOE/FE will assess the cumulative impact of the successive granting of applications, DOE/FE could not assess the impact of the granting of CE FLNG's application before considering all of the other applications submitted before CE FLNG's application. A "measured approach" to reviewing CE FLNG's application is impossible until all applications prior to CE FLNG's application has been evaluated. Therefore, allowing CE FLNG to file its letter of support could not prejudice the other parties to the proceeding because DOE/FE has not yet begun to act upon CE FLNG's application.

Again, motion to intervene practice in the past is instructive here. Numerous FERC decisions hold that untimely intervention will not cause prejudice if the intervention is sought prior to the final decision. *See, e.g., Cent. Hudson Gas & Elec. Corp.*, 41 FERC ¶ 61313 (Dec. 15, 1987). For example, FERC has granted a motion to intervene that "was over two and one-half years late" where FERC was still processing the underlying application, such that intervention would not disrupt the proceeding or cause prejudice to the applicant. *Jack M. Fuls Tumalo Irrigation Dist.*, 36 FERC ¶ 61136 (July 30, 1986). Cases interpreting Federal Rule of Civil Procedure 24 likewise establish that "[t]he most important consideration in deciding" a late motion to intervene "is whether the delay in moving for intervention will prejudice the existing parties to the case." § 1916 Timeliness of Motion, 7C Fed. Prac. & Proc. Civ. § 1916 (3d ed.) (summarizing cases). Similarly, where FERC has determined that late intervention will not delay, disrupt or otherwise prejudice the proceeding FERC has granted intervention. FERC has repeatedly gone so far as to find that the lack of prejudice itself demonstrated "good cause shown" without

examining the reason for the delay in filing. *Superior Offshore Pipeline Co.*, 68 FERC ¶ 61089 (July 19, 1994), *E. Am. Energy Corp. Columbia Gas Transmission Corp.*, 68 FERC ¶ 61087 (July 19, 1994). There would be no prejudice whether the motion comes two hours late or four months late as long as the motion comes prior to the final decision. DOE/FE tacitly approved this reasoning when it allowed Sierra Club to file its late motion to intervene in a previous proceeding.<sup>6</sup>

Here, allowing CE FLNG to file its letter of support now would not delay the proceeding significantly because of the scheduled order of processing. Further, allowing CE FLNG to file its letter would not prejudice any party to the proceeding because the other parties to the proceeding generally do not respond to letters of support. Even if they choose to respond to CE FLNG's letter of support, the delay in filing the letter to the docket will not lessen the amount of time the other parties have to respond to the letter. CE FLNG sent copies of the letter to all parties prior to filing this motion, so the parties have had even more time to respond than DOE/FE procedures require. Finally, the letter of support discusses policy matters which DOE/FE is obliged to consider even in the absence of CE FLNG's motion so that granting the motion could not prejudice the proceedings.

Insofar as a further or independent showing of good cause is required, CE FLNG has good cause for its delay. In one of the few cases where, after finding a lack of prejudice, FERC goes on to assess whether good cause is shown, FERC has held that even where the "excuse for untimely filing is flimsy at best," the absence of prejudice nonetheless warranted allowing intervention. *Am. Ref-Fuel Co. of Hempstead*, 47 FERC ¶

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<sup>6</sup> *Sierra Club and Columbia Riverkeeper*, Motion to Intervene Out of Time, November 6, 2012. See 12-77-LNG Service List at [http://www.fossil.energy.gov/programs/gasregulation/authorizations/2012\\_applications/Service\\_List\\_12\\_77\\_Lng.pdf](http://www.fossil.energy.gov/programs/gasregulation/authorizations/2012_applications/Service_List_12_77_Lng.pdf) (indicating motion to intervene was granted and Sierra Club was added as a party to the proceedings).

61161 (Apr. 28, 1989). Sherman Bryant, CEO of CE FLNG, LLC, explains the reason for the delay:

Firstly, CE FLNG staff was not available because they were responding to a request made on January 31, 2013 by Louisiana Economic Development to reach out and examine how CE FLNG could pursue opportunities with the Avondale shipyard in the commercial energy market, as a result of CE FLNG's unique business model. The effort has taken four and a half months and has resulted in a Letter of Intent (LOI) between the parties executed on May 10, 2013. Avondale is a subsidiary of Huntington Ingalls Industries, the largest ship builder in the United States, which had lost a significant number to jobs since 2010. According to an article by Richard Thompson, NOLA.com | The Times-Picayune on November 29, 2011 at 6:28 PM, updated November 30, 2011 a study, called "Avondale: The Uncertain Future of a Great American Shipyard," makes the case that the closure of the yard will significantly impact the regional economy, and that the economic pain will be felt particularly by the thousands of laid-off workers, whom will have trouble affording car and house payments, sending children to college or supporting local businesses. The article indicated that while the group acknowledges that Avondale's days as a Navy shipbuilder are likely numbered, they contend that the facility could produce commercial vessels under the right circumstances, a stance that has been supported by the union that represents shipyard workers. It also stated that in October 2011, Louisiana officials offered a \$214 million package to Huntington Ingalls Industries that aims to save 3,850 jobs at the Avondale shipyard. The incentives, which Huntington would receive if it's able to find a company that it can partner with to keep the site operational, would pay for work-force retraining and updates to the facility, officials said. As part of the effort, local businesses including Greater New Orleans (GNO) have been a key part of the coalition that has fought to save the jobs. CE FLNG's efforts in this area are reflected in the letter of support we intend to submit should this motion be granted.

Secondly, CE FLNG staff was not available because they were evaluating methods and approaches to facilitate the participation of minority- and/or female-owned firms throughout the country that were seeking business



opportunities with CE FLNG regarding the development, construction and operation of CE FLNG pipelines and facilities in United States. CE FLNG staff had focused its efforts to ensure these groups' participation was as a result of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 ("Pipeline Safety Act" or the "Act"). CE FLNG staff was reviewing the Act which became PUBLIC LAW 112-90—JAN. 3, 2012 and more specifically SEC. 26. REPORT ON MINORITY-OWNED, WOMAN-OWNED, AND DIS-ADVANTAGED BUSINESSES. According to that law, not later than 1 year after the date of enactment of the Act, the Comptroller General of the United States, based upon available information, was required to submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives a comprehensive report assessing the levels and types of participation and methods of facilitating the participation of minority-owned business enterprises, woman-owned business enterprises, and disadvantaged business enterprises in the construction and operation of pipeline facilities in the United States. The GAO report was done at the request of the Senate Committee on Commerce, Science and Transportation led by Sen. Jay Rockefeller (D-W.Va.), the House Committee on Energy and Commerce, and the House Committee on Transportation and Infrastructure chaired by Reps. Fred Upton (R-Mich.) and John L. Mica (R-Fla.), respectively. Because the U.S. pipeline industry is large and dynamic, CE FLNG staff was engaged in analyzing information from the GAO report that used data from 2007, the most recent year for which industry-wide data is available, which shows approximately 2,500 firms operated and constructed natural gas and hazardous liquid pipelines in the United States. The report also indicated that these firms generated almost \$200 billion in receipts and employed approximately 275,000 workers as its basis. In terms of market share, the report showed minority- or female-owned firms are estimated to have accounted for a total of 13 percent of industry receipts, with minority-owned firms having accounted for 3 percent and female-owned firms having accounted for 11 percent of receipts, all of which drove CE FLNG to spend additional time to ensure participation. As a result, CE FLNG and our affiliates have entered into agreements with minority- or female-owned firms, in support of 42 USC 7141, Office of Minority Economic Impact.

As such, movant has demonstrated good cause that more than outweighs any impact from its delay in filing.

## II. CONCLUSION

For the reasons explained in this motion for leave to file out of time, good cause warrants that DOE/FE grant CE FLNG's motion. Although CE FLNG's motion was submitted late, movant has shown a lack of prejudice to the proceedings and good cause for the delay sufficient to warrant late motion out of time. Accordingly, its motion for leave to file out of time must be granted.

As explained previously, DOE/FE's decisions will have significant ramifications on DOE/FE policy with regard to minority economic impact. DOE/FE must ensure that this impact is fully considered before taking action on the application.

Wherefore, for the foregoing reasons, CE FLNG requests leave to file out of time for good cause.

Respectfully Submitted,

/s/ Justin S. Mann  
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**Certificate of Service**

I certify that I have this day served copies of the foregoing document filed with the DOE/FE on the designated representatives of all of the parties to this proceeding, in accordance with 10 C.F.R. § 590.107(a).

Dated June 11, 2013.

/s/ Justin Mann  
Justin Mann  
Counsel for CE FLNG, LLC