

174 FERC ¶ 61,055  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
Neil Chatterjee, James P. Danly,  
Allison Clements, and Mark C. Christie.

Freeport LNG Development, L.P.

Docket No. IN17-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 28, 2021)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Freeport LNG Development L.P. (Freeport). This order is in the public interest because the Agreement resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2020), into whether Freeport violated Section 3(e) of the Natural Gas Act (NGA) (15 U.S.C. § 717b(e) (2012)) and the Commission's Order in *Freeport LNG Dev., L.P.*, 148 FERC ¶ 61,076 (2014) (Freeport Order).

2. Freeport agrees to pay a civil penalty of \$550,000. Freeport stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations.

**I. Facts**

3. Freeport is the owner and operator of a LNG receiving and regasification terminal in Freeport, Texas. Freeport was initially granted permission by the Commission to construct its facility in June 2004 in *Freeport LNG Dev., L.P.*, 107 FERC ¶ 61,278 (2004). Freeport began construction soon thereafter.

4. On July 30, 2014, the Commission issued the Freeport Order, authorizing the construction of a new LNG export terminal at the existing Freeport site. Freeport requested, and the Commission approved, the clearing and stabilization of 50 acres on an unstable plot of land previously used to place dredged material when preparing waterways and ports for commercial use, referred to as the Seaway Dredged Material Placement Area (DMPA).

5. Beginning in November 2015, Freeport began clearing and stabilizing activity at the Seaway DMPA. This activity included mowing, clearing and removal of vegetation and debris, mixing limestone into the soil, and leveling the soil/limestone mixture to create a level and stable workspace.

6. Upon commencement of site work, Freeport's contractor incorrectly staked 75 acres of the Seaway DMPA (which was the full area of the land leased by the contractor on the Seaway DMPA) rather than the 50 acres authorized by the Freeport Order. Because of the surveying error, Freeport's contractor engaged in clearing and stabilization activities on the Seaway DMPA beyond the originally permitted 50 acres.

7. Following a citizen complaint, Freeport provided a recounting of the cause and extent of the aforementioned construction violation in its April 15, 2016 Bi-Weekly Construction Report to the Commission. This report contained statements that were inconsistent with materials Freeport had gathered as part of an internal investigation prior to April 15, 2016.

## **II. Violations**

8. Enforcement determined that Freeport violated Section 3(e) of the Natural Gas Act (NGA) (15 U.S.C. § 717b(e) (2012)) and the Commission's Order in *Freeport LNG Dev., L.P.*, 148 FERC ¶ 61,076 (2014) when it performed construction-related activities on a portion of the Seaway DMPA site without first receiving Commission approval.

9. Enforcement additionally determined that Freeport violated the Commission's Order in *Freeport LNG Dev., L.P.*, 148 FERC ¶ 61,076 (2014) when it failed to fully and accurately describe the known violation on the site.

## **III. Stipulation and Consent Agreement**

10. Enforcement and Freeport have resolved Enforcement's investigation by means of the attached Agreement.

11. Freeport stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations set forth in Section III of the Agreement.

12. Freeport agrees to pay a civil penalty of \$550,000 to the United States Treasury.

**IV. Determination of the Appropriate Sanctions and Remedies**

13. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.<sup>1</sup>

14. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

15. The Commission directs Freeport to make the civil penalty as required by the Agreement within ten days of the Effective Date of the Agreement.

**The Commission orders:**

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>1</sup> *Enforcement of Statutes, Orders, Rules, and Regulations*, Revised Policy Statement on Penalty Guidelines, 132 FERC ¶ 61,216 (2010).

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FEDERAL ENERGY REGULATORY COMMISSION

Freeport LNG Development, L.P.

Docket No. IN17-7-000

**STIPULATION AND CONSENT AGREEMENT**

**I. INTRODUCTION**

1. The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”) and Freeport LNG Development, L.P. (“Freeport”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve a nonpublic, formal investigation (the “Investigation”) conducted by Enforcement pursuant to Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2020), involving Freeport’s alleged violations of Section 3(e) of the Natural Gas Act (“NGA”) (15 U.S.C. § 717b(e) (2012)) and the Commission’s 2014 order authorizing construction of a new liquified natural gas (“LNG”) terminal.<sup>1</sup>

2. Freeport stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. Freeport agrees to pay a civil penalty of \$550,000 to the United States Treasury.

**II. STIPULATIONS**

Enforcement and Freeport hereby stipulate and agree to the following facts.

3. Freeport is the owner and operator of a LNG receiving and regasification terminal in Freeport, Texas. Freeport was initially granted permission by the Commission to construct its facility in June 2004 in *Freeport LNG Dev., L.P.*, 107 FERC ¶ 61,278 (2004). Freeport began construction soon thereafter.

4. On July 30, 2014, the Commission issued the Freeport Order, authorizing the construction of a new LNG export terminal at the existing Freeport site. Freeport requested, and the Commission approved, the clearing and stabilization of 50 acres on an unstable plot of land previously used to place dredged material when preparing waterways and ports for commercial use, referred to as the Seaway Dredged Material Placement Area (“DMPA”).

5. Beginning in November 2015, Freeport began clearing and stabilizing activity at the Seaway DMPA. This activity included mowing, clearing and removal of vegetation and

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<sup>1</sup> *Freeport LNG Dev., L.P.*, 148 FERC ¶ 61,076 (2014) (“Freeport Order”).

debris, mixing limestone into the soil, and leveling the soil/limestone mixture to create a level and stable workspace.

6. Upon commencement of site work, Freeport's contractor incorrectly staked 75 acres of the Seaway DMPA (which was the full area of the land leased by the contractor on the Seaway DMPA) rather than the 50 acres authorized by the Freeport Order.

7. Because of the surveying error, sometime between November 2015 and March 17, 2016, Freeport's contractor engaged in clearing and stabilization activities on the Seaway DMPA beyond the originally permitted 50 acres.

8. On March 29, 2016, Freeport requested a variance from the Commission to clear and place crushed gravel on 34 additional acres of the Seaway DMPA that were not included in the existing authorization granted in the Freeport Order.<sup>2</sup>

9. The March 2016 Variance Request: (1) did not state that construction activity had already begun in the area described in the request; and (2) implied that Freeport had the right to enter all 34 acres, when nine of the 34 acres were not leased by Freeport's contractor.

10. On April 6, 2016, after learning of the March 2016 Variance Request, a local resident complained to both the Commission and Freeport about what she believed to be unauthorized construction activities occurring on the Seaway DMPA.

11. Freeport directed its contractor to cease work on the Seaway DMPA and conducted an internal investigation during the period of April 6, 2016 – April 15, 2016. As part of this investigation, Freeport took pictures of the Seaway DMPA with aerial drones and created a report listing the estimated acreage affected by the violation. This internal report listed: "5 acres are unaffected, impacted areas include: mowed areas (4 acres), filled and lime stoned areas (~9 acres), graded areas (16 acres). The sum of these is 34 which is represented in the variance request." Additionally, Freeport began gathering materials analyzing the timing and cause of the violation.

12. Staff from the Commission's Office of Energy Projects (OEP) contacted Freeport regarding the resident's allegation. Freeport addressed the activity on the Seaway DMPA in its April 15, 2016, bi-weekly construction report filed with the Commission ("April 15 Report").<sup>3</sup>

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<sup>2</sup> *Freeport LNG Development, L.P.*, Docket Nos. CP12-29-000 & CP12-509-000 (filed Mar. 29, 2016) ("March 2016 Variance Request").

<sup>3</sup> Bi-Weekly Construction Status Report No. 43 (Dkt. Nos. CP12-29-000 and CP12-509-000).

13. The April 15 Report contained the following statement: “In attempting to determine how the noncompliance occurred (and in an effort to ensure that appropriate safeguards are enacted to prevent a repeat occurrence), Freeport LNG believes it is likely that the status of the Variance Request may have been miscommunicated at the field level. As a result of that miscommunication, geotextile material was placed in a two to three acre area beginning April 1, 2016 and limestone was placed in that same two to three acre area commencing on April 3 -- after the Variance Request was filed with FERC but obviously, before it was granted.” Part of this statement was inconsistent with materials Freeport had in its possession prior to April 15, 2016.

14. In additional communications with OEP staff in April 2016, Freeport failed to correct these inaccuracies or to provide the information in its possession displaying the extent of the violation.

15. In May 2016, Freeport informed OEP staff that several statements in the April 15 Report were factually inaccurate, and that, in particular, clearing and stabilization had occurred on the unpermitted portion of the Seaway DMPA prior to the filing of the variance request.

16. On July 12, 2016, the Commission granted Freeport’s March 2016 Variance Request and referred this matter to Enforcement.

17. The next day, July 13, 2016, Freeport submitted a filing to the Commission correcting the information above.

18. Freeport revamped its compliance procedures following the opening of staff’s investigation, including implementing enhanced controls over the process for preparing daily and bi-weekly reports.

### **III. VIOLATIONS**

19. Enforcement determined that Freeport violated Section 3(e) of the NGA and the Freeport Order.

20. The terms and conditions of the Freeport Order, effectuated pursuant to Section 3(e) of the NGA, forbid construction at jurisdictional natural gas facilities without prior Commission approval. Freeport did not receive approval prior to conducting the construction activities outside the 50-acre area on the Seaway DMPA discussed above.

21. Appendix A of the Freeport Order also obligated Freeport to inform the Commission of “all problems encountered and each instance of noncompliance observed by each EI [Environmental Inspector].” Freeport failed to provide a complete and accurate accounting

of the construction violation. Staff concluded that this conduct constituted a misrepresentation.

#### **IV. REMEDIES AND SANCTIONS**

22. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Freeport's conduct evaluated in Enforcement's Investigation, Freeport agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. Freeport further agrees to undertake the obligations set forth in the following paragraphs.

##### **A. Civil Penalty**

23. Freeport agrees to pay a civil penalty of \$550,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

#### **V. TERMS**

24. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to Freeport and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

25. Commission approval of this Agreement without material modification shall release Freeport and forever bar the Commission from holding Freeport, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

26. Failure by Freeport to make the civil penalty payment or to comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the NGA, 15 U.S.C. §717, *et seq.*, and may subject Freeport to additional action under the enforcement provisions of the NGA.

27. If Freeport does not make the required civil penalty payment described above within the times agreed by the parties, interest will begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.

28. This Agreement binds Freeport and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Freeport, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

29. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Freeport has been made to induce the signatories or any other party to enter into the Agreement.

30. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Freeport shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Freeport.

31. In connection with the civil penalty provided for herein, Freeport agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22 of the NGA, 15 U.S.C. § 717t-1 (2018). Freeport waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

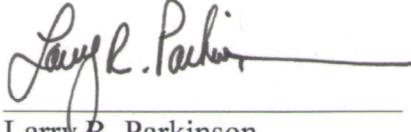
32. This Agreement can be modified only if in writing and signed by Enforcement and Freeport, and any modifications will not be effective unless approved by the Commission.

33. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

34. The undersigned representative of Freeport affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

35. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:



1/19/2021

Larry R. Parkinson  
Director, Office of Enforcement  
Federal Energy Regulatory Commission



John B. Tobola  
Senior Vice President & General Counsel  
Freeport LNG Development, L.P.

Document Content(s)

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