



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

June 14, 2013

TO: Members, Subcommittee on Energy and Power

FROM: Majority Committee Staff

RE: Hearing on “U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export”

On Tuesday, June 18, 2013, at 10:15 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export.” This day of the hearing will focus on the various barriers that exist to exporting coal and liquefied natural gas (LNG) from the United States.

I. WITNESSES

Panel I

Ms. Jennifer Moyer
Acting Chief, Regulatory Program
U.S. Army Corps of Engineers

Mr. Jeff C. Wright
Director, Office of Energy Projects
Federal Energy Regulatory Commission

Mr. Christopher A. Smith
Principal Deputy Assistant Secretary and
Acting Assistant Secretary for Fossil Energy
U.S. Department of Energy

Panel II

Honorable Mike McGinn
Mayor
City of Seattle

Mr. Harold P. Quinn
President and CEO
National Mining Association

Mr. Ross E. Eisenberg
Vice President, Energy and Resources Policy
National Association of Manufacturers

Mr. KC Golden
Policy Director
Climate Solutions

Mr. Lucian Pugliaresi
President
Energy Policy Research Foundation, Inc.

Mr. Bill Cooper
President
The Center for Liquefied Natural Gas

II. BACKGROUND

There has been a great deal of attention focused recently on the potential geopolitical and economic benefits of allowing LNG exports and the recent growth of U.S. coal exports. A critical factor impacting the future of LNG and coal exports are the potential barriers that can limit, slow down or outright stop the export of these commodities. These barriers come from a variety of sources, ranging from permitting requirements for facilities and for the actual commodity itself to market forces that will dictate the viability and scale of export of these commodities.

Some of the same barriers are present for both coal and LNG exports; some are unique to one only. Both LNG and coal export facilities are facing litigation over compliance with federal environmental laws. However, while there is a specific requirement under the Natural Gas Act (NGA) to obtain authorization to export LNG from the U.S., there is no such specific requirement to export coal in federal law.

Barriers to Exporting LNG

In 2010 the U.S. became the top natural gas producing nation in the world. Estimates for natural gas resources in the U.S. continue to be revised upward. The Potential Gas Committee's latest biennial assessment placed the total technically recoverable natural gas resource base in the U.S. at 2,384 trillion cubic feet (Tcf) as of end of 2012.¹ A recent estimate placed U.S. technically recoverable shale gas resources at 665 Tcf.²

The NGA, which became law in 1938, governs the import and export of natural gas in the U.S. and has been amended several times since enactment. The Department of Energy (DOE) is responsible for the authorization of natural gas imports and exports, specifically LNG, which is how natural gas is transported. The Federal Energy Regulatory Commission (FERC) is responsible for authorizing the siting and construction of actual natural gas facilities. The NGA all but assures that applications for natural gas trade with countries that the U.S. has a free trade agreement (FTA) with will automatically be approved in an expedited manner. For applications to export LNG to non-FTA countries, the NGA requires a much higher level of scrutiny. DOE must engage in a public interest assessment and has interpreted its obligations under the NGA and other Federal environmental laws to evaluate applications under several standards, including whether the proposed exports threaten the security of domestic natural gas supplies and the catch-all "any other issue determined to be appropriate." Two licenses to export LNG have been approved and there are currently 18 applications to export LNG filed and pending with DOE.

Potential LNG export facilities also face litigation from third party groups over compliance with state and federal environmental laws, such as the Coastal Zone Management Act and the National Environmental Policy Act. Potential facilities will also likely require a great deal of time to secure other mandatory federal permits.

¹ Potential Gas Committee, "[Potential Supply of Natural Gas in the United States](#)" (April 9, 2013).

² U.S. Energy Information Administration (EIA), "[Technically Recoverable Shale Oil and Shale Gas Resources](#)" at Table 3 (last updated June 13, 2013).

Market forces also real-world limitation on not only the amount of LNG that could potentially be exported but also the number of LNG export facilities that will be built – regardless of how many are approved.

Barriers to Exporting Coal

With an estimated 259 billion short tons of coal reserves, the United States has more recoverable coal than any other country.³ The overwhelming majority of U.S. coal – 90% – is used to produce electricity. However, coal-fired generation has declined since 2007 due to various factors, including slow economic growth, low natural gas prices, federal environmental regulations, and increased use of intermittent resources.

Although U.S. demand for coal has slowed, global demand for U.S. coal has increased significantly.⁴ In 2011, U.S. coal exports totaled 107 million short tons, accounting for nearly 10% of total U.S. coal production. This was the highest amount of U.S. coal exports in over 20 years, only to be surpassed in 2012 with coal exports reaching 125.7 million short tons.⁵ EIA predicts U.S. coal exports to reach 144 million short tons by 2030 and 159 million by 2040.⁶

A facility used in the export of coal may require certain federal approvals or authorizations.⁷ For instance, construction and operation of ports in any navigable waters in the United States are regulated by the U.S. Army Corps of Engineers (Corps). Applicants seeking to construct and operate coal export shipping terminals must obtain the appropriate permits from the Corps pursuant to certain federal laws, such as the Clean Water Act and the Rivers and Harbors Act.⁸ The Corps also may be required to complete an Environmental Impact Statement or Environmental Assessment pursuant to the National Environmental Policy Act. In addition, such facilities may face legal challenges brought by third party litigants regarding compliance with state and federal laws.

III. ISSUES

The following issues are expected to be examined at the hearing:

- What specific barriers are there to exporting coal and LNG in the U.S.?
- What impact can these barriers have on the export of coal and LNG?
- What role, if any, should Congress play in removing or amending these barriers?

³ EIA, “[What is the Role of Coal in the United States?](#)” (last updated July 18, 2012) (stating that “the United States is home to the largest estimated recoverable reserves of coal in the world. In fact, we have enough coal to last more than 200 years.”).

⁴ See EIA, “[Quarterly Coal Report: October – December 2012](#)” at Table 7 (March 2013) (showing that in 2012, U.S. coal exports to Europe increased by 23% and U.S. coal exports to Asian markets rose 18%); see also Wall Street Journal, “[Shale Boom is a Bust for Europe’s Gas Plants](#)” (May 8, 2013).

⁵ EIA, “[Quarterly Coal Report: October – December 2012](#)” at Table 7 (March 2013).

⁶ EIA, “[Annual Energy Outlook 2013](#)” at Table A15 (April 2013).

⁷ The Energy Policy and Conservation Act of 1975 authorizes the President to restrict coal exports; however, there currently are no significant export restrictions specific to coal. 42 U.S.C. § 6212.

⁸ USACE is currently reviewing several permit applications for coal export shipping terminals in the Northwest United States, including the Gateway Pacific and Millennium Bulk terminals in Washington and the Morrow Pacific terminal in Oregon.

IV. STAFF CONTACT

If you have any questions regarding the hearing, please contact Committee staff Tom Hassenboehler, Patrick Currier, or Jason Knox at (202) 225-2927.