

**Statement of  
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**Before the**

**Subcommittee on Energy and Power  
Committee on Energy and Commerce  
United States House of Representatives**

**The Department of Energy's Program Regulating Liquefied Natural Gas Export  
Applications**

**June 18, 2013**

Thank you Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee; I appreciate the opportunity to be here today to discuss the Department of Energy's (DOE) program regulating the export of natural gas, including liquefied natural gas (LNG).

**Recent Developments in LNG Exports**

The boom in domestic shale gas provides unprecedented opportunities for the United States. Over the last several years, domestic natural gas production has increased significantly, outpacing consumption growth, resulting in declining natural gas and LNG imports. Production growth is primarily due to the development of improved drilling technologies, including the ability to produce natural gas trapped in shale gas geologic formations.

Historically, the DOE has played a critical role in the development of technologies that have enabled the United States to expand development of our energy resources. Between 1978 and 1992, public research investments managed by the Department contributed to the development of hydraulic fracturing and extended horizontal lateral drilling technologies that spurred private sector investments and industry innovation, unlocking billions of dollars in economic activity associated with shale gas.

Today, domestic natural gas prices are lower than international prices of delivered LNG to overseas markets. As in the United States, demand for natural gas is growing rapidly in foreign markets. Due primarily to these developments, DOE has received a growing number of applications to export domestically produced natural gas to overseas markets in the form of LNG.

**DOE's Statutory Authority**

DOE's authority to regulate the export of natural gas arises under section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b, and section 301(b) of the DOE Organization Act, 42 U.S.C. §

7151. This authority is vested in the Secretary of Energy and has been delegated to the Assistant Secretary for Fossil Energy.

Section 3(a) of the NGA sets forth the standard for review of most LNG export applications:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.

Section 3(a) thus creates a rebuttable presumption that a proposed export of natural gas is in the public interest. Section 3(a) also authorizes DOE to attach terms or conditions to the order that the Secretary finds are necessary or appropriate to protect the public interest. Under this provision, DOE performs a thorough public interest analysis before acting.

In the Energy Policy Act of 1992, Congress introduced a new section 3(c) to the NGA. Section 3(c) created a different standard of review for applications to export natural gas, including LNG, to those countries with which the United States has in effect a free trade agreement requiring the national treatment for trade in natural gas. Section 3(c) requires such applications to be deemed consistent with the public interest, and requires such applications to be granted without modification or delay.

### **Free Trade Agreement (FTA) Countries**

There are currently 18 countries with which the United States has in place free trade agreements that require national treatment for trade in natural gas for purposes of the Natural Gas Act. These 18 countries include: Australia, Bahrain, Canada, Chile, Colombia, the Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

There also are two countries — Israel and Costa Rica — that have free trade agreements with the United States that do not require national treatment for trade in natural gas for purposes of the Natural Gas Act.

Because complete applications under section 3(c) must be granted without modification or delay and are deemed to be in the public interest, DOE does not conduct a public interest analysis of those applications.

### **DOE Process to Review Applications to Export LNG to non-FTA Countries**

DOE's review of applications to export LNG to non-FTA countries is conducted through a public and transparent process. Upon receipt of an application, DOE issues a notice of the

application in the *Federal Register*, posts the application and all subsequent pleadings and orders in the proceeding on its website, and invites interested persons to participate in the proceeding by intervening and/or filing comments or protests. Section 3(a) applicants are typically given an opportunity to respond to any such comments or protests and, after consideration of the evidence that has been introduced into the record, DOE issues an order either granting the application as requested, granting with additional terms or conditions, or denying the application.

Under the Natural Gas Act, DOE's orders are subject to a rehearing process that can be initiated by any party to a proceeding seeking to challenge DOE's determinations. Court review is available as well after the rehearing process is exhausted.

### **Public Interest Criteria for NGA Section 3(a) Applications**

For applications requesting authority to export LNG to countries that do not have free trade agreements requiring national treatment for trade in natural gas, DOE conducts a full public interest review. A wide range of criteria are considered as part of DOE's public interest review process, including but not limited to:

- Domestic need for the natural gas proposed for export
- Adequacy of domestic natural gas supply
- U.S. energy security
- Impact on the U.S. economy (GDP), including impact on domestic natural gas prices
- International considerations
- Environmental considerations

These criteria are not statutory but rather have been developed over several decades and supplemented and refined by subsequent agency adjudication. It is important to emphasize, however, that these criteria are not exclusive. Other issues raised by commenters and/or interveners or DOE that are relevant to a proceeding may be considered as well.

### **Jurisdiction over the LNG Commodity Export Versus the LNG Export Facility**

The DOE exercises export jurisdiction over the commodity (natural gas), whereas other Federal, state, and local organizations have jurisdiction over the facilities used in the import or export of the commodity, depending on the facility location.

The Federal Energy Regulatory Commission (FERC) is responsible for authorizing the siting, construction, expansion, and operation of LNG import and export terminals pursuant to section 3(e) of the Natural Gas Act. FERC may approve those applications in whole or in part with such modifications and upon such terms and conditions as it finds necessary or appropriate.

The U.S. Department of Transportation's Maritime Administration (MARAD) is responsible under the Deepwater Port Act of 1974, as amended, (33 U.S.C. § 1501 *et seq.*) for the licensing

system for ownership, construction, operation and decommissioning of deepwater port structures located beyond the U.S. territorial sea, including deepwater LNG export facilities.

### **Sabine Pass Authorization – First Long-Term LNG Export Authorization**

DOE granted the first long-term application to export domestically-produced lower-48 LNG to non-FTA countries to *Sabine Pass Liquefaction, LLC*, (*Sabine Pass*) in DOE/FE Order Nos. 2961 (May 20, 2011), 2961-A (August 7, 2012), and 2961-B (January 25, 2013). The LNG export volume authorized is equivalent to 2.2 billion cubic feet per day (Bcf/d) of natural gas for a period of 20 years. In the first of the *Sabine Pass* orders, DOE stated that it would evaluate the cumulative impact of the Sabine Pass authorization and any future authorizations for export authority when considering subsequent applications.

### **LNG Export Study**

Following issuance of the *Sabine Pass* order, DOE undertook a two-part study of the cumulative economic impact of LNG exports. The first part of the study was conducted by the Energy Information Administration (EIA) and looked at the potential impact of additional natural gas exports on domestic energy consumption, production, and prices under several prescribed export scenarios. The second part of the study, performed by NERA Economic Consulting under contract to DOE, evaluated the macroeconomic impact of LNG exports on the U.S. economy with an emphasis on the energy sector and natural gas in particular. The NERA study was made available on December 5, 2012.

On December 11, 2012, DOE published in the *Federal Register* a Notice of Availability of the EIA and NERA studies, and inserted both parts of the study into 15 then-pending LNG export application dockets for public comment. An initial round of comments on the study ended on January 24, 2013, and reply comments were due February 25, 2013.

### **Comments to the LNG Study**

In response to the Notice of Availability, DOE received over 188,000 initial comments and approximately 2,700 reply comments. Proponents of LNG exports generally endorsed the results of the two-part study, particularly the conclusion of the NERA study that increasing levels of exports will generate net economic benefits for the United States. On the other hand, comments filed by opponents of LNG exports raised a number of issues, including challenges to the assumptions and economic modeling underlying the two-part study and assertions that the two-part macroeconomic study should have further examined regional, sectoral, or environmental issues.

### **Second Long-Term LNG Export Authorization**

On May 17, 2013, DOE granted the second long-term application to export LNG, which was granted to *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC* in DOE/FE Order No. 3290 (a conditional order pending a satisfactory environmental review). The order was granted

after an extensive review of the application to export LNG from the Freeport LNG Terminal, the LNG Export Study, public comments for and against the application, and public comments on the cumulative impact of LNG exports submitted in response to the LNG Export Study. DOE determined that exports from the terminal at a rate of up to 1.4 billion cubic feet per day for a period of 20 years was not inconsistent with the public interest.

### **LNG Export Applications Status**

Consistent with the NGA, as of June 7, 2013, DOE has approved 24 long-term applications to export lower-48 LNG to free trade agreement countries equivalent to 29.41 billion cubic feet per day of natural gas from 21 new liquefaction facilities. In addition, DOE has three long-term applications pending to export lower-48 LNG to free trade agreement countries.

Most of the applicants seeking authorization to export LNG from proposed facilities to free trade agreement countries have also filed to export LNG to non-free trade agreement countries in the same volume from the same facility to provide optionality on the final destination country. The volumes of the applications to export to free trade agreement countries and non-free trade agreement countries are therefore not additive.

As of June 7, 2013, DOE has approved two long-term applications to export lower-48 LNG to non-free trade agreement countries equivalent to 3.6 billion cubic feet per day of natural gas from two proposed liquefaction facilities. DOE also currently has 20 applications pending to export LNG equivalent to an additional 25.61 billion cubic feet per day of natural gas to non-free trade agreement countries.

### **DOE Path Forward**

The Department will continue processing the pending non-FTA LNG export applications on a case-by-case basis, following the order of precedence previously established and set forth on DOE's website. As further information becomes available at the end of 2013, including the EIA's Annual Energy Outlook Report, the Department will assess the impact of any market developments on subsequent public interest determinations.

### **Conclusion**

Due to the adjudicatory nature of this process, I am unable to comment today on issues that are presently being addressed in our pending proceedings. Those issues include but are not limited to the merits of pending applications, the validity of the two-part LNG export study, the study's adequacy as a basis for decision, and the appropriate scope of environmental review. However, I can speak to DOE's statutory authority, our process to review applications to export LNG to non-FTA countries, our two-part LNG export study, the comments we received on those studies, and other recent developments. I am committed to being as responsive as possible to any questions you or the Committee may have.

In conclusion Mr. Chairman, I would like to emphasize that DOE is committed to moving this process forward as expeditiously as possible. DOE understands the significance of this issue — as well as the importance of getting these decisions right.