



January 17, 2018

TO: Members, Subcommittee on Energy

FROM: Committee Majority Staff

RE: Hearing entitled “Legislation Addressing LNG Exports and PURPA Modernization”

I. INTRODUCTION

The Subcommittee on Energy will hold a hearing on Friday, January 19, 2018, at 9:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled, “Legislation Addressing LNG Exports and PURPA Modernization.”

II. WITNESSES

PANEL I

- **Steven Winberg**, Assistant Secretary for Fossil Energy, Department of Energy; and
- **James Danly**, General Counsel, Federal Energy Regulatory Commission.

PANEL II

- **Charlie Riedl**, Executive Director, Center for Liquefied Natural Gas;
- **Timothy Sparks**, Vice President of Electric Grid Integration, CMS Energy;
- **Karl Rábago**, Executive Director, Pace Energy and Climate Center;
- **Travis Kavulla**, Vice Chairman, Montana Public Service Commission; and,
- **Paul Cicio**, President, Industrial Energy Consumers of America.

III. BACKGROUND

A. Liquefied Natural Gas Exports

American innovation and advancements in drilling technologies have allowed the United States to become the world’s leading producer of oil and gas, putting the nation on track to

become a net energy exporter by 2026.¹ Natural gas production is at an all-time high, and reserves are so large that they are predicted to meet domestic demand for almost a century.² For 60 years, the U.S. has been a natural gas importer; however, with rising domestic production and relatively low prices, U.S. natural gas exports, including liquefied natural gas (LNG) exports, now exceed imports.³ While the U.S. has been exporting natural gas through pipelines for decades, the first large scale exports of LNG on ships began in 2016 from the Sabine Pass export facility.⁴ Five additional LNG export facilities are currently under construction, with an expected total capacity of 9.6 billion cubic feet per day (Bcf/d) by the end of 2019. According to data compiled by the Department of Energy (DOE), the majority of LNG exports to date were delivered to customers in Latin America and Asia.⁵

The Department of Energy exercises jurisdiction over the import and export of natural gas, with authorities derived from section 3 of the Natural Gas Act (NGA), and section 301(b) of the DOE Organization Act. Section 3(a) of the NGA sets forth the standard of 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.*⁶

Thus, section 3(a) thus creates a rebuttable presumption that a proposed export of natural gas is in the public interest. Section 3(c) creates a different standard of review for applications to export natural gas, including LNG, to countries with which the U.S. has in effect a free trade agreement (FTA) 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.

¹ See EIA, [Annual Energy Outlook 2017](#).

² U.S. dry natural gas production is forecast to average 73.5 Bcf/d in 2017, a 0.7 Bcf/d increase from the 2016 level. EIA forecasts that natural gas production in 2018 will be 6.1 Bcf/d higher than the 2017 level. See [EIA, Short-Term Energy Outlook, December 12, 2017](#). EIA estimates that as of January 1, 2015, there were about 2,355 trillion cubic feet (Tcf) of technically recoverable resources of dry natural gas in the United States. At the rate of U.S. dry natural gas consumption in 2015 of about 27.3 Tcf per year, the United States has enough natural gas to last about 86 years. See [EIA, Frequently Asked Questions](#).

³ In August 2017, total U.S. natural gas liquefaction capacity in the Lower 48 states increased to 2.8 billion cubic feet per day (Bcf/d) following the completion of the fourth liquefaction unit at the Sabine Pass LNG terminal in Louisiana. With increasing liquefaction capacity and utilization, U.S. LNG exports averaged 1.9 Bcf/d, and capacity utilization averaged 80% this year, based on data through November. See: EIA, Today in Energy, [August 9, 2017](#) and [December 7, 2017](#).

⁴ See EIA, [U.S. Natural Gas Pipeline Exports](#) and [Liquefied U.S. Natural Gas Exports](#).

⁵ See DOE, LNG Reports. Available at: <https://energy.gov/fe/listings/lng-reports>.

⁶ See Section 3 of the Natural Gas Act (15 U.S.C. §717b).

DOE's review of applications to export LNG to non-FTA countries is conducted through a public process. While section 3(a) establishes a broad public interest standard and presumption favoring export authorizations, the statute does not define "public interest" or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing applications for export authorizations, including economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. In 2012 and again in 2015, DOE released studies to assess the macroeconomic impacts of LNG exports to inform the decisions on export applications.⁷ These studies generally conclude that LNG exports would provide positive net economic benefits to the U.S.

On September 1, 2017, DOE issued a notice of proposed rulemaking to revise its regulations to provide for faster approval of small-scale exports of natural gas, including LNG. The U.S. small-scale LNG export market involves exports of small volumes of natural gas, primarily to countries in the Caribbean, Central America, and South America. The proposed rule provides that DOE, upon receipt of any complete application to export natural gas (including LNG) to non-free trade agreement countries, will grant the application provided that the application meets two criteria: the application proposes to export no more than 0.14 Bcf/day and the proposed export qualifies for a categorical exclusion under DOE's National Environmental Policy Act regulations. For applications meeting these criteria, the exports are considered "small-scale natural gas exports" and are deemed to be in the public interest under the Natural Gas Act. Exports of natural gas to free trade agreement countries are already deemed to be in the public interest under the Act.

B. Public Utility Regulatory Policies Act

Since the Public Utility Regulatory Policy Act's (PURPA) enactment in 1978, the nation's power generation sector has experienced significant changes in the manner and mode by which electricity is generated and supplied to consumers. The rapid deployment of less costly renewable resources in recent years, along with the growth of energy efficiency and demand response products, has changed the long-standing model by which consumers use, and generators supply, electricity. Moreover, little to no growth in demand for electricity nationwide has created an environment where a diverse fleet of generator resources now aggressively compete to supply electricity to these customers. These factors, along with others, have resulted in near-record low electricity prices around the country.

PURPA separates facilities into two distinct categories; small power production facilities and cogeneration facilities. A small power production facility is deemed as having a capacity of 80 megawatts (MWs) or less and its primary energy source must come from a renewable, biomass, waste, or geothermal resource. Cogeneration facilities are defined as a generator that produces electricity and a second form of thermal energy (such as heat or steam) in a manner that is more efficient than producing both forms of energy separately. Both types of facilities are required to seek certification as a "qualifying facility or "QF" by the Federal Energy Regulatory Commission (FERC).

⁷ See DOE, LNG Export Studies. Available at: <https://energy.gov/fe/downloads/lng-export-studies>.

While FERC is charged with administering PURPA and developing a set of regulations under which QFs operate, section 210(f) of PURPA leaves the implementation of the regulations to the individual states. However, over the nearly 40 years that PURPA has existed, states have implemented the law in various ways depending on many local factors, including, whether utilities in the state participate in an organized wholesale electricity market. Differences in the types and scale of renewable resources among the states have also affected how state regulators address matters related to PURPA.

On September 6, 2017, the Energy Subcommittee held an oversight hearing to reevaluate PURPA's objectives and its effects on consumers. The Subcommittee received testimony from witnesses representing a state utility commission, electric utilities, and several qualifying facilities. Various arguments were made both in support and against potential reforms to PURPA. Among the concerns raised was that some renewable energy developers are constructing power production facilities larger than the maximum size (80 MWs), but dividing the project into multiple smaller projects to meet PURPA's regulatory requirements, and thus have each project qualify for QF status. Specifically, utilities have alleged that QF facilities are being developed just far enough from each other to comply with FERC's regulations and qualify as separate facilities despite evidence to indicate that the development is actually a single facility.⁸ Separately, electric utilities have cited instances when they have no need to purchase the QF output, but are required to do so under PURPA even if lower-cost alternatives exist. In such cases, the utilities wish to have the option to be relieved from PURPA's requirement that utilities must purchase the QF's electrical output.

IV. SUMMARY OF LEGISLATION

A. H.R. 4605, Unlocking our Domestic LNG Potential Act

H.R. 4605, Unlocking our Domestic LNG Potential Act, was introduced by Rep. Bill Johnson (OH) on December 15, 2017. The legislation repeals restrictions on the export and import of natural gas. Section 2 would strike subsections 3(a) through 3(c) of the NGA. Section 2 also provides exclusive authority to FERC to approve or deny an application for the siting, construction, expansion, or operation of a facility to export natural gas from the United States to a foreign country or import natural gas from a foreign country, including an LNG terminal.

B. H.R. 4606, Ensuring Small Scale LNG Certainty and Access Act

H.R. 4606, Ensuring Small Scale LNG Certainty and Access Act, was introduced by Rep. Bill Johnson (OH) on December 15, 2017. The legislation provides that applications under the NGA for the importation or exportation of small volumes of natural gas shall be granted without modification or delay. Section 2 amends section 3(c) of the NGA by inserting "or the importation or exportation of a volume of natural gas that does not exceed 0.14 billion cubic feet per day" after "natural treatment for trade in natural gas."

⁸ 18 CFR § 292.204(a)(2) (2017) (Defining FERC's "one-mile rule", *i.e.*, "facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility....")

C. H.R. 4476, PURPA Modernization Act

H.R. 4476, PURPA Modernization Act of 2017, was introduced by Rep. Tim Walberg (MI) on November 29, 2017. To address the concern that certain facility developers are successfully evading the intent of FERC's "one-mile rule," section 2 of the legislation creates a rebuttable presumption that small power production facilities located one mile or more away from each other are deemed not to be located at the same site, and that facilities located within one mile of each other are deemed to be located at the same site. If an attempt is made to rebut the presumption by an interested person or party, the legislation provides a list of factors that FERC must consider when determining whether a facility is located at the same site as another. The factors are designed to evaluate the nature and relationship between the facilities, as well as the relationship between the owners and operators of the facilities.

Section 3 of the legislation creates a new capacity threshold, finding that a qualifying small power production facility with an installed generation capacity of 2.5 megawatts or greater is presumed to have nondiscriminatory access to transmission and interconnection services and wholesale markets, as these services and markets are described in PURPA Section 210(m)(1). Finally, Section 4 of the legislation allows an electric utility to be relieved of its mandatory purchase obligation if the appropriate state regulatory agency determines that the electric utility: (1) has no need to purchase the output of a small power production facility; or (2) uses integrated resource planning and conducts a competitive resource procurement process that provides an opportunity for qualifying small power production facilities to supply its output to the utility. Under this provision, if relief is granted by the state regulatory agency, the agency must submit a copy of its written determination to FERC.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Brandon Mooney, Jason Stanek, or Mary Martin of the Majority Committee staff at (202) 225-2927.