

BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

In Re: LCA GHG Report Comments

COMMENTS BY THE CENTER FOR LIQUEFIED NATURAL GAS

The Center for Liquefied Natural Gas (CLNG) respectfully files these comments in conjunction with the Report *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (LCA GHG Report), prepared by the National Energy Technology Laboratory (NETL), a U.S. Department of Energy (DOE) laboratory. CLNG requests that these comments be considered in all pending proceedings before DOE and placed in the administrative record for each of the pending export application dockets wherein the various applicants seek authorization from DOE to export liquefied natural gas (LNG) to countries with which the United States has not entered into a free trade agreement providing for the national treatment for the trade in natural gas (non-FTA countries).

Introduction

CLNG is a non-profit trade association whose mission is to promote fact-based discussions on LNG, support public policies that permit LNG exports and imports to be a part of the U.S. energy mix, and to ensure the safe, secure, and environmentally responsible development and operation of LNG facilities in the United States.

Federal Agency Environmental Reviews

With the passage of the National Environmental Policy Act of 1969 (NEPA), Congress established a national environmental policy, setting forth goals that recognize

“the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man.”¹

In order to achieve those goals, Congress authorized and directed “to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall – (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man’s environment.”²

NEPA also established the Council on Environmental Quality (CEQ), in part, “to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act [NEPA] for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy.”³ In furtherance of its statutory obligations, CEQ promulgated regulations, which leave little doubt as to the statute’s and CEQ’s expectations about compliance with NEPA:

“The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains ‘action-forcing’ provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act.”⁴

¹ 42 U.S.C. Section 4331(a)

² 42 U.S.C. Section 4332

³ 42 U.S.C. Section 4344

⁴ 40 CFR 1500.1

CEQ's promulgated regulations make it clear that federal agencies are to comply with those regulations as the overarching framework for the implementation of the Act: "The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose."⁵ Further: "Federal agencies shall to the fullest extent possible: (a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations."⁶ CEQ elaborates on federal agency authority:

"Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or make compliance impossible."⁷

Use of the term "shall" evidences a mandatory requirement for compliance, and the use of the phrase "to the fullest extent possible" evidences that CEQ does not contemplate variances from CEQ's regulations, especially with its express admonition that "to the fullest extent possible" means adherence to NEPA and CEQ regulations unless existing law to which the agency is bound to follow prohibits compliance or makes compliance impossible.

⁵ 40 CFR 1500.1

⁶ 40 CFR 1500.2

⁷ 40 CFR 1500.6

DOE has recognized the need to comply with NEPA and CEQ regulations when it promulgated its own “National Environmental Policy Act Implementing Procedures.”⁸ DOE states: “The purpose of this part is to establish procedures that the Department of Energy (DOE) shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508).”⁹ DOE further stated: “It is DOE’s policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations...”¹⁰

When more than one federal agency either “(1) Proposes or is involved in the same action; or (2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity”¹¹, then CEQ regulations require that a lead agency shall supervise the preparation of the environmental documents. While the regulations deal with how to determine the lead agency, the Congress has determined that the Federal Energy Regulatory Commission (FERC) is the lead agency for the purposes of complying with the National Environmental Policy Act for authorizations sought pursuant to the Natural Gas Act.¹² With FERC being the statutorily designated lead agency, DOE’s involvement in the NEPA process must be as a cooperating agency, which requires DOE to “Participate in the NEPA process at the earliest possible time.”¹³

⁸ 10 CFR Part 1021

⁹ 10 CFR 1021.100

¹⁰ 10 CFR 1021.101

¹¹ 40 CFR 1501.5

¹² 15 U.S.C. 717n(b)

¹³ 40 CFR 1501.6

DOE regulates the export of the commodity. FERC regulates the design, construction, and operation of the facility and the facility's impact on the environment in close proximity to the facility. Since the export of the commodity cannot be achieved without facilities to accomplish the task, both DOE and FERC are both either "involved in the same action", or "involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity."¹⁴ In such situations, CEQ regulations require a lead agency and a cooperating agency. Since the statute designated FERC as lead agency, DOE must be a cooperating agency. Both are committed to comply with the CEQ regulations.¹⁵

DOE has recognized its role in the authorizations it has issued, most recently in the Jordan Cove conditional authorization: "FERC is responsible for ensuring that the siting, construction, and operation of LNG facilities are consistent with the public interest under section 3 of the NGA. FERC is also the lead agency for purposes of review of the [project] under the National Environmental Policy Act of 1969 (NEPA). DOE/FE is participating in that environmental review as a cooperating agency."¹⁶

In summary, CEQ regulations' purpose is to tell federal agencies how to comply with NEPA and "to make sure that federal agencies act according to the letter and spirit of the Act."¹⁷ Adherence to CEQ regulations are the means by which a federal agency complies with the requirements of NEPA. NEPA is the procedural vehicle that provides for the evaluation of environmental concerns in the regulatory process. DOE is committed to the "letter and spirit" of NEPA and the regulations promulgated by CEQ.

¹⁴ 40 CFR 1501.5

¹⁵ 10 CFR 1021.100; 18 CFR 380.1

¹⁶ Jordan Cove Energy Project, L.P., FE Docket No. 12-32-LNG, DOE/FE Order No. 3413, page 14

¹⁷ 40 CFR 1500.1

Therefore, for DOE to evaluate environmental considerations in the permitting process, it must do so in compliance with NEPA and CEQ regulations as a cooperating agency.

LCA GHG Report

The LCA GHG Report was prepared by DOE's National Energy Technology Laboratory (NETL) with an issue date of May 29, 2014. As stated in the notice published in the Federal Register, "The LCA GHG Report estimates the life cycle GHG emissions of U.S. LNG exports to Europe and Asia, compared with alternative supplies, to produce electric power."¹⁸ The report does not state the purposes for which the report was drafted, but the notice does: "The purpose of this LCA GHG Report is to provide additional information to the public and to DOE to inform its decisions regarding the life cycle greenhouse gas (GHG) emissions of U.S. LNG exports for use in electric power generation."¹⁹ The LCA GHG Report and the comments submitted "will be placed in the administrative record for each of the 25 currently pending export application dockets."²⁰

In essence, an environmental report prepared by NETL will be used by DOE, in part, to determine authorizations for the export of U.S. LNG to non-FTA countries. The use of the report by DOE "to inform its decisions regarding the life cycle greenhouse (GHG) emissions of U.S. LNG exports" in the administrative records for the 25 pending export application dockets is inappropriate for the following reasons.

DOE is a cooperating agency for the NEPA review. FERC is the lead agency. As lead agency, it is FERC's responsibility to supervise the preparation of the environmental analysis, not DOE's. As a cooperating agency, DOE is directed to

¹⁸ 79 Federal Register 32261

¹⁹ Ibid

²⁰ Ibid

participate in the NEPA process early, participate in the scoping process, and “assume **on request of the lead agency** responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.”²¹ (Emphasis added). No publicly available document suggests that the lead agency, FERC, has requested that DOE prepare any portion of the NEPA documents. Consequently, DOE is not authorized to perform an environmental analysis in the context of considering export applications, either by statute or regulation, but only participate as a cooperating agency. Therefore, the LCA GHG Report should not be considered in the various dockets.

Furthermore, the LCA GHG Report does not comport with the requirements of the regulations. In implementing procedures pursuant to NEPA and CEQ regulations, DOE promulgated rules published in 10 Code of Federal Regulations Part 1021. Subpart C of those regulations sets forth the requirement that “DOE shall determine, under the procedures in the CEQ Regulations and this part, whether any DOE proposal: (1) Requires the preparation of an EIS; (2) Requires the preparation of an EA; or (3) Is categorically excluded from preparation of either an EIS or an EA. DOE shall prepare any pertinent documents as required by NEPA, the CEQ Regulations, or this part.”²²

The CEQ regulations define an EA, or environmental assessment, as follows:

- “Environment assessment:
- (a) Means a concise public document for which a Federal agency is responsible that serves to:
 - (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

²¹ 40 CFR 1501.6

²² 10 CFR 1021.300

- (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.
- (3) Facilitate preparation of a statement when one is necessary.
- (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.²³

The LCA GHG Report does not meet the definition of an “environmental assessment.”

The CEQ regulations define “environment impact statement” as “a detailed written statement as required by section 102(2) of the Act.”²⁴ Section 102(2) of NEPA imposes on federal agencies several requirements that would make an environmental analysis an “environmental impact statement.” The LCA GHG Report does not meet those requirements, and therefore cannot be an environmental impact statement.

The term “environmental document” is a defined term as well, and includes “the documents specified in 1508.9 (environmental assessment), 1508.11 (environmental impact statement), 1508.13 (finding of no significant impact), and 1508.22 (notice of intent).”²⁵ The LCA GHG Report does not fit within the definition.

It is patently obvious that the LCA GHG Report does not qualify as an environmental document for the purpose of a NEPA determination, and therefore should not be considered in the various dockets.

One may make the argument that DOE is within its purview to have prepared and submit for the administrative records the LCA GHG Report, citing DOE’s regulations allowing it to do.²⁶ But to do so would be in error. 10 CFR 1021.300 does state: “Notwithstanding any other provision of these regulations, DOE may prepare a NEPA

²³ 40 CFR 1508.9

²⁴ 40 CFR 1508.11

²⁵ 40 CFR 1508.10

²⁶ 10 CFR 1021.300

document for any DOE action at any time in order to further the purposes of NEPA.”²⁷ But that regulation is designed to override inconsistencies within DOE’s regulations. It cannot override the statutory designation of FERC as lead agency and all that flows from such a designation. Furthermore, for those times when DOE can prepare a NEPA document, it must be done in accordance with the previous paragraph, which requires an Environmental Impact Statement, an Environmental Assessment, or a categorical exclusion. The LCA GHG Report does not meet any of those criteria.

An additional argument might be made that the use of the LCA GHG Report is not for NEPA purposes, but instead for use in the public interest determination for the commodity, which is different than the required NEPA analysis for the facilities. CLNG’s concern is that if such an argument prevailed, DOE could accomplish environmental goals through its own analysis what it cannot do through the NEPA process. For instance, DOE could consider environmental factors in other countries, which is what the LCA GHG Report does, and is too broad in scope by NEPA standards. Additionally, such a use outside of the NEPA process could lead to inconsistent conclusions on the environmental review, undermine the express requirement of the CEQ regulations for a lead agency designation, and subject the public interest determination by DOE to unnecessary legal challenges by those opposing the applications for any perceived deficiencies in DOE’s considerations of environmental factors.

Report: *Environmental Impacts of Unconventional Natural Gas Development and Production*, May 29, 2014

The report under this heading has been released contemporaneously with the LCA GHG Report. It is unclear how this report relates to the various Federal Register

²⁷ Ibid

notices published by DOE on June 4, 2014.²⁸ In various public settings, DOE officials have indicated that this report feeds into the LCA GHG Report. For the reasons set forth herein regarding the LCA GHG Report, CLNG respectfully requests that it not be placed in the administrative records of the pending export application dockets, nor should it be considered for any purpose related to those applications.

Conclusion

NEPA and the CEQ regulations determine how federal agencies are to act according to the “letter and spirit” of NEPA. The CEQ regulations provide direction to achieve the purposes of the NEPA process. The CEQ regulations mandate that federal agencies “interpret and administer the policies, regulations and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.”²⁹ Pursuant to the “letter and spirit” of the law, FERC is the lead agency for the preparation of the environmental analysis, DOE is the cooperating agency, both of which are to work within the framework of NEPA and the CEQ regulations.

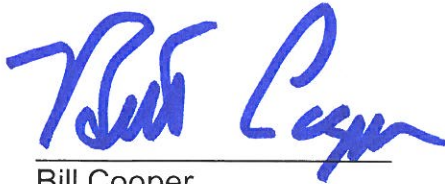
The preparation and consideration of the LCA GHG Report for its stated purpose of informing DOE regarding its decisions and to place the report and the comments collected in the various export application dockets is contrary to the “letter and spirit” of NEPA.

Therefore, based upon the foregoing, CLNG respectfully requests that the LCA GHG Report not be placed in the administrative records of the pending export

²⁸ 79 Federal Register 32258
79 Federal Register 32260
79 Federal Register 32261
²⁹ 40 CFR 1500.2

application dockets, nor should it be considered for any purpose related to those applications.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bill Cooper". The signature is written in a cursive style with a horizontal line underneath the name.

Bill Cooper
President
Center for Liquefied Natural Gas
1620 Eye Street, NW, Suite 700
Washington, D.C. 20006
(202) 962-4750