

UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF FOSSIL ENERGY / DEPARTMENT OF ENERGY
REF: NOTICE ON PROPOSED PROCEDURES FOR LIQUEFIED NATURAL GAS EXPORT
DECISIONS: FEDERAL REGISTER / VOL. 79, NO. 107

**COMMENTS OF GOLDEN PASS PRODUCTS REGARDING PROPOSED CHANGES TO
THE DEPARTMENT OF ENERGY'S PROCEDURES FOR LIQUEFIED NATURAL GAS
EXPORT DECISIONS**

Golden Pass Products offers the following comments in response to the Notice of Change of Procedures for LNG Export Decisions issued by the Office of Fossil Energy, Department of Energy on May 29, 2014.

Summary

GPP commends the Department of Energy's ("DOE") desire to improve LNG export review procedures. However, the DOE's proposed changes would need certain modifications to ensure that viable US LNG projects do not continue to be disadvantaged through delays and regulatory uncertainty. Specifically, a clear timeline promoting earlier regulatory decisions must be defined.

I. Background

Golden Pass Products is advancing a proposed \$10 billion project to add LNG export capabilities to its existing world-class terminal in Southeast Texas.

Golden Pass Products LLC¹ (Golden Pass Products or GPP) is actively engaged in designing and permitting a natural gas liquefaction facility in Sabine Pass, Texas. The proposed project would have an annual average export capacity of approximately 2 BCFD of LNG (15.6 million tons per year). The new facility will be co-located at the site of an existing LNG import terminal owned and operated by Golden Pass LNG Terminal LLC, an affiliate of GPP. GPP will utilize the existing state-of-the-art tanks, berths and pipeline infrastructure as a part of the export facilities.

Golden Pass Products' joint venture owners, Qatar Petroleum International and Exxon Mobil Corporation, and their affiliates are world leaders in the LNG business with operational LNG expertise, financial capabilities, access to shipping fleets, large-scale regasification facilities and a diverse global customer portfolio.

Following a final investment decision, Golden Pass Products would invest approximately \$10 billion over five years to build the proposed facility, and would create about 45,000 direct and indirect jobs across

¹ Golden Pass Products LLC is affiliated with Golden Pass LNG Terminal LLC and Golden Pass Pipeline LLC, which since 2005 have constructed and operated the LNG import facility and distribution pipeline in Sabine Pass, Texas. Houston-headquartered Golden Pass Products LLC was formed by affiliates of Qatar Petroleum International and Exxon Mobil Corporation.

the nation during the construction phase. During its 25-year operations phase, the project would generate about 3,800 new jobs in the US, including more than 200 permanent jobs at the site.

Nearly two years ago (October 2012), Golden Pass Products submitted an application to the DOE to export LNG to countries with which the US does not have a free trade agreement requiring national treatment for gas (NFTA).² Although the public comment period closed in February 2013, the application still awaits DOE review.

Golden Pass Products continues to advance other aspects of its permitting, including the May 2013 initiation of the FERC's "pre-filing process" which was for the purpose of allowing GPP, the public and other interested stakeholders and the FERC staff to identify relevant issues associated with the GPP export project. The pre-filing process extended over more than a year, with intense work by GPP and other participants. In early July of this year, the FERC staff agreed that GPP had satisfactorily completed the pre-filing process, as required by 18 C.F.R. § 157.21(a) of the FERC's regulations. Hence, on July 7, 2014, GPP filed its application pursuant to Section 3 of the Natural Gas Act for authorization to construct, own and operate the proposed export facilities.³

In addition to the application filed at the FERC, GPP has filed for authorizations with other Federal and state regulatory agencies, including air and water permits. Those actions further demonstrate the commitment of GPP to obtain all authorizations needed to export LNG to both FTA and non-FTA countries.

Under the Natural Gas Act, the DOE is required to issue an NFTA authorization, unless a project is demonstrated to be inconsistent with the public interest.

The Natural Gas Act states that the DOE **must issue an NFTA authorization unless a project is inconsistent with the public interest.** Section 3(a) of the NGA, 15 U.S.C. § 717b(a), sets forth the standard for approval for applications:

(a) Mandatory authorization order

*... no 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 ("Secretary")] authorizing it to do so. **The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.***

Any opponents of an export application must make an affirmative showing of inconsistency with the public interest in order to overcome the rebuttable presumption favoring exports.

² In September 2012, GPP received authorization from DOE to export LNG to countries with which the US has a free trade agreement requiring national treatment for gas (FTA).

³ The Section 3 application of GPP is docketed by the FERC in Docket No. CP14-517. Also on July 7th, an application was filed by Golden Pass Pipeline LLC in Docket No. CP14-518 for authorization to modify an existing pipeline, previously authorized by the FERC, to provide transportation services necessary to deliver gas to the proposed export terminal for liquefaction.

To date, the DOE has imposed unnecessary delays in authorizing requests to export LNG by avoiding a relatively simple and clear mandate – issue the order unless it is proven to be inconsistent with the public interest. The NFTA application process generates more than adequate information upon which to base decisions for authorization.

The public benefits of LNG exports are clear.

The DOE already has the data needed to make well-informed decisions as required by the Natural Gas Act. Indeed, the public benefits of US LNG exports have been effectively illustrated by ample studies, including the NERA report commissioned by DOE itself and those submitted in NFTA applications to date. As has been concluded in those studies, including that submitted with GPP's own NFTA application, US LNG exports represent a positive opportunity for our country.

In the case of Golden Pass Products, an independent study performed by The Perryman Group (TPG), concluded that the project would create significant, widespread and long-lasting benefits to the US economy. This world-scale investment (approximately \$10 billion) could create approximately \$31 billion in US economic gains at local, state and national levels over the life of the project.

According to the TPG study, the Golden Pass Products LNG export project would generate tens of thousands of jobs for American workers across the country, including:

- During the five-year construction phase, the equivalent of 45,000 jobs nationally across a spectrum of supporting industries, including manufacturing, transportation and utilities, including about 9,000 construction jobs (3,000 at peak)
- Around 3,800 permanent jobs nationwide during the operations phase, including more than 200 jobs at the facility

The project would also stimulate billions of dollars in economic output in the gas exploration and production and petrochemical industries. Additionally, the project is estimated to provide cumulative tax revenues for federal, state and local governments totaling about \$4.6 billion across the life of the project.

II. Analysis

The existing approach to NFTA permitting needs improvement.

Over the past two years, there has been significant focus on the DOE's NFTA review process for good reason. The success of an LNG export project is predicated on obtaining timely permission to export and successful completion of the more extensive FERC permitting activities.

In December of 2012, the DOE surprised applicants by announcing it would review NFTA applications one-by-one, forming a queue based on the date of submission and an early measure of progress in FERC permitting. Since then, the DOE has proceeded slowly with reviews, creating a substantial backlog of applications awaiting review, and impeding the growth of the US LNG export industry. As a result, many

parties have called on the DOE to accelerate NFTA approvals and unlock tremendous potential benefits for the nation.

In its Notice, the DOE proposes to modify the review process, taking action on applications to export LNG only after the National Environmental Policy Act (NEPA) review is completed. The DOE also proposes to suspend its practice of issuing conditional decisions prior to final authorization decisions.

The DOE is to be commended for signaling a willingness to improve the process for reviewing NFTA export applications. Its proposal, if modified, could advance that goal by helping prioritize reviews for projects that are demonstrating the highest likelihood of progressing. Without further modification, the DOE's proposal is not likely to improve the situation facing US LNG export project applicants.

DOE's proposal would continue to place US LNG projects at a competitive disadvantage.

Upon inspection, the proposed DOE changes neither speed up the approval process, nor materially improve the quality of decisions. Unless a firm decision timeline commitment is added, the DOE's proposal would potentially place US LNG projects at an even greater competitive disadvantage, introducing further delays that could erode regulatory certainty, handicap marketing efforts, and burden projects with additional cost exposures.

Specifically, the proposal would delay action on applications to a point much later in the project development cycle. Rather than acting on the completed NFTA applications on hand, including that of Golden Pass Products which was submitted over 20 months ago, the DOE proposes to wait until each applicant satisfies later and much more costly milestones. Even after final EIS, the DOE does not commit to a deadline for final action, exposing applicants to a new queue and indefinite wait for a decision. Without amendment, the proposed change would needlessly impair the competitiveness of US LNG projects.

The proposal will further delay NFTA permitting.

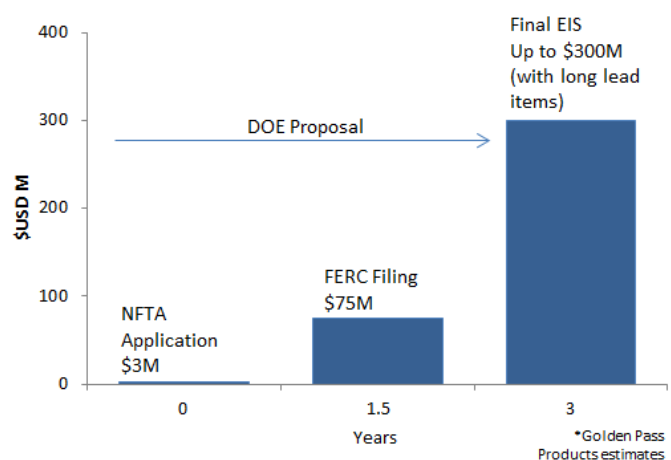
The DOE proposes to suspend action on each pending NFTA application until the respective NEPA review is complete. For many pending applicants, this would mean a 3-year wait following submission of the NFTA application before the agency would even begin review. (See Figure I)

The DOE's rationale warrants review.

First, the DOE errantly concludes that conditional permitting is no longer needed. As evidence, the agency asserts that applicants have continued to progress FERC permitting, despite unanticipated delays in the

FIGURE I

Late and Costly
DOE proposal would compel projects to work over 3 years and invest hundreds of millions before qualifying for NFTA review*



DOE NFTA process. However, this fails to account for the important value that conditional permitting brings to participants. Indeed, timely conditional permitting offers progressive regulatory certainty in complement to rapidly growing project investments. Early permitting is also critical, as it provides essential confidence to prospective LNG buyers, greatly enhancing global marketing prospects for US projects. Conversely, the suspension of conditional permitting eliminates important signals that the market now relies on in gauging project viability.

In its notice of proposed procedures, the DOE cites the reasons identified in 1981 for issuing conditional approvals:⁴ That finding continues to be applicable today. The global LNG market will be challenged to allocate resources or make financial commitments to projects that are unable to demonstrate progress in securing prompt DOE authorization to export LNG.

In this regard, the completion by an applicant of the FERC's pre-filing process, and the FERC's agreement that an NGA Section 3 application to construct and operate LNG export facilities can be made, provides affirmative market signals that a project is progressing. It is not enough, however, for the market to perceive that the FERC permitting process is progressing, inasmuch as that represents only one of the two NGA Section 3 authorizations that an applicant must secure. DOE should take contemporaneous steps to signal to the market that progress is also being made by an applicant in its pursuit of DOE authorizations.

Also, the proposal to cease conditional authorizations is discriminatory. In its Notice of Proposed Procedures, DOE states: "[T]he Department will continue to act on requests for conditional authorizations during the period when the proposed procedures in this notice are under consideration."⁵ The DOE provides no time when the proposed procedures will be implemented. Those NFTA applications that are addressed by DOE prior to that unknown time will receive the benefits described herein of a conditional order. However, for those applications considered by the DOE thereafter, no interim market signals will be forthcoming. That circumstance provides a competitive advantage to those in the former category, an advantage that is not the result of a superior product but merely the result of temporal happenstance. Thus, having committed to issuing some conditional authorizations, DOE must make conditional authorizations available to all applicants.

Second, while the DOE has rightly identified the need to prioritize for those applicants most likely to proceed, the DOE's NEPA-based prioritization mechanism introduces excessive delays. Specifically, the NEPA completion milestone is too late in the development process, when high costs and commitments merit a much higher degree of regulatory certainty. An earlier milestone can accomplish the DOE's prioritization goals without burdening projects with excessive delays.

Third, the DOE also contends that delaying action to a later point will better inform decisions. During the timeframe in question, the fundamentals will remain the same, underpinned by abundant domestic gas resources. There is little to suggest that information quality would improve enough to justify subjecting applicants to additional delays. As already discussed, numerous studies, including DOE's own

⁴ Notice of Proposed Procedures at 5, *citing*, *Dep't of Energy, Import and Export of Natural Gas: New Administrative Procedures; Proposed Rule*, 46 FR 44696 (Sept. 4, 1981). "...a 'conditional decision would be appropriate in cases where a need exists for an indication of [DOE's] preliminary finding and conclusions, but additional information is needed before a final decision and order can be rendered.'"

⁵ *Id.* at 8. As discussed herein, it is unclear when the proposed procedures will be placed into effect.

commissioned study by NERA Consulting in 2012 have demonstrated net benefits, including at potential cumulative export volumes that well exceed approvals to date. For example, the 2014 NERA study submitted by Cheniere Energy has already tested high export volume scenarios much greater than 20 BCFD and still found net benefits for the US. In this regard, DOE contemporaneously announced that it has commissioned an additional economic study to supplement a previous study conducted by the Energy Information Administration,⁶ as well as a supplement to the 2012 study conducted by NERA Consulting.⁷ As discussed above, there already is ample data that can be relied on by DOE in rendering its decision in individual proceedings. Waiting for additional economic analyses to be conducted has the real potential to further delay issuance of DOE decisions, especially since the timing of the availability of such new studies is wholly uncertain.

Permitting delays disadvantage American projects.

Delayed NFTA permitting reduces regulatory certainty in the face of rising and significant project development costs. The DOE proposes to condition action on an applicant's FEIS, overlooking earlier milestones that signal viability such as FERC filing. For developers, this late action by DOE means that the stakes will grow unbalanced, lacking sufficient confidence in the ultimate regulatory outcome of NFTA permitting.

LNG projects are long-lead, capital-intensive propositions. To succeed, project developers must bring a host of elements into sync, including project design, engineering, regulatory, marketing, and financing, with the goal of progressing along an efficient path of growing definition in line with increasing commitments.

Of the applicable regulatory requirements, NEPA authorization is the longest-lead, most resource- and cost-intensive undertaking. Key NEPA milestones, including FERC pre-filing, FERC filing, Environmental Impact Statement (EIS) draft and EIS final, demarcate progress. Figure II shows a representation of the rapidly growing costs of developing a project through NEPA review. By the time of FERC filing (Year 3), very significant costs and time have been invested by the developer, strongly demonstrating an applicant's willingness and capability to complete the proposed project. From there, permitting costs continue to ramp up.

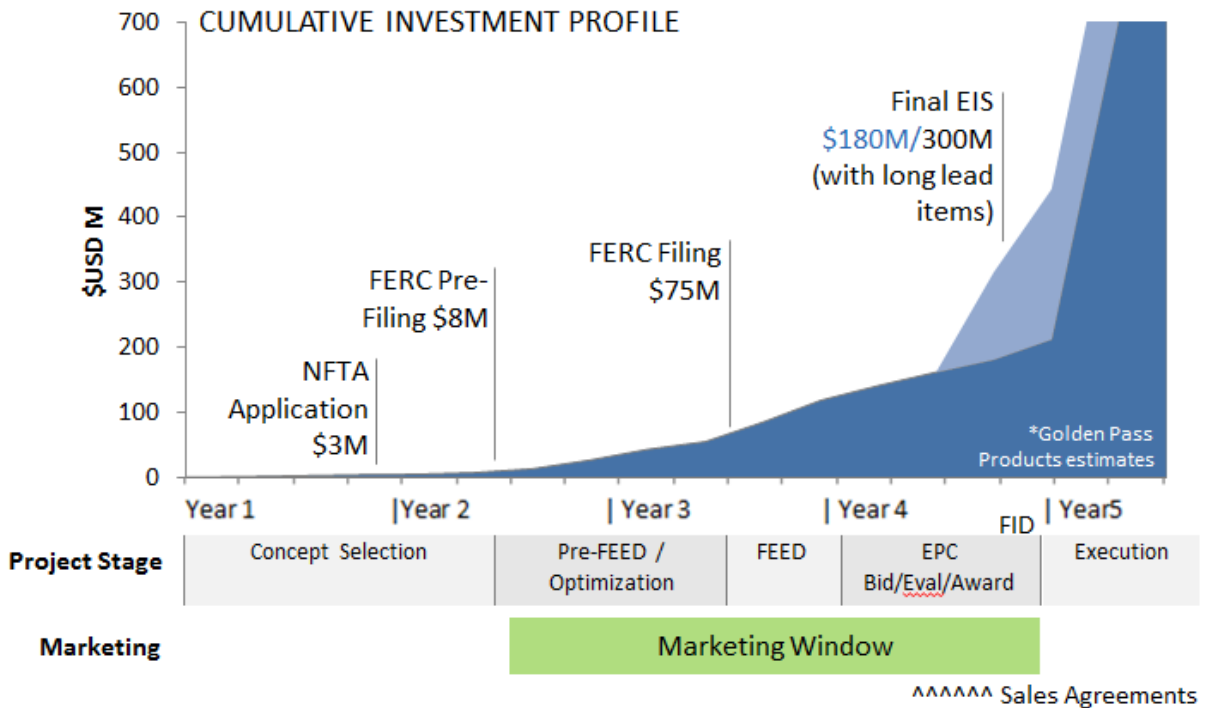
⁶ *Effect of Increased Natural Gas Exports on Domestic Energy Markets* as requested by the Office of Fossil Energy, US Energy Information Administration (EIA), January 2012.

⁷ *Macroeconomic Impacts of LNG Exports from the United States*, NERA Economic Consulting, December 3, 2012.

FIGURE II

High Stakes...Growing Higher

LNG projects face substantial commitments. Regulatory progress needs to be in sync.*



To preserve a cost-efficient timeline, long-lead commitments will typically be made prior to the final EIS. These long-lead items include significant pre-ordered materials and equipment to enable initial works to begin on schedule following final investment decision (FID). By Final EIS, a developer may have invested well over \$180M in the permitting process, with another significant amount committed for long lead items- in all hundreds of millions of dollars and close to four years of project development activity.

Finally, in the period just before project execution, a myriad of procurement, construction, commercial, and financial elements are readied and closely orchestrated. Regulatory delays then could stress and potentially imperil projects as costs mount, contractors attempt to disengage, and sales commitments become strained by slipping startup dates. As written, the DOE's proposal provides no commitment to a timely final NFTA decision. This must be addressed.

Delayed permitting can dim marketing prospects.

Before committing to LNG purchase contracts, LNG customers around the world must have early confidence in prospective projects' ability to deliver needed supplies. Unlike global competitors, US LNG projects must endure a lengthy DOE review process in order to secure government permission to export. The DOE's approach to the NFTA review process has created an unnecessary burden for US

projects; if not modified, the new proposal could increase that burden, further challenging the competitiveness of US projects.

In response to the continued uncertainty of the DOE's NFTA export review timeline, global LNG customers are now looking for timely evidence that a proposed US project has, or is likely to receive, an NFTA permit.

The slow pace of NFTA permitting to date has already proved a substantial issue for marketing efforts, making it harder to secure buyer commitments in the critical marketing window (see Figure II). The DOE's proposed shift to an even later review timeline and the elimination of conditional permitting could make matters worse. Customers would have lower confidence in US projects and thus would be less inclined to sign up. Perversely, competing projects from other nations would be favored.

A decision timeline is essential.

Under the current proposal, American projects are uniquely disadvantaged. It is unreasonable to require an industry to commit years of work and hundreds of millions of dollars to a process that starts too late and has no defined end. The DOE should define an earlier starting point and a firm timeline for final decisions.

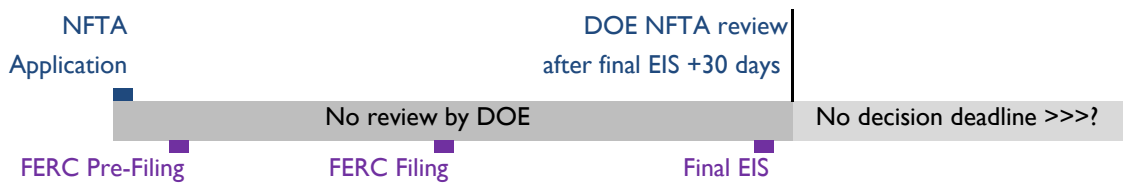
III. Recommendations

Suggestions for Improving the Process

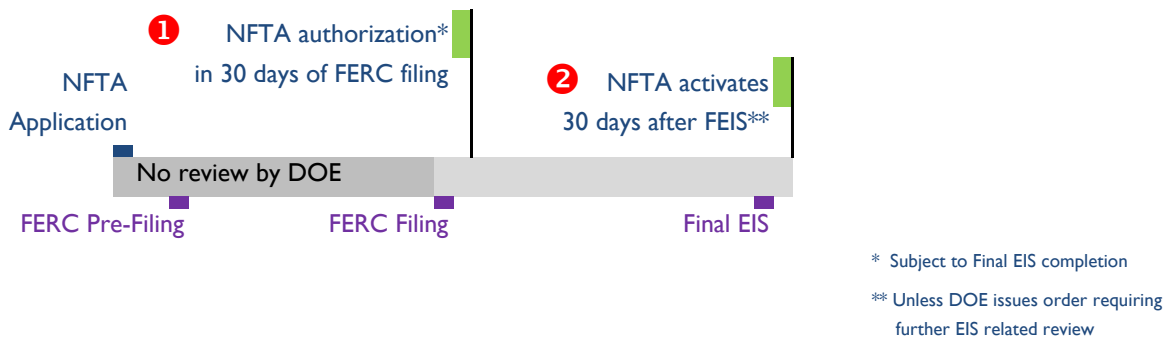
In light of the challenges described above, the DOE’s proposal would benefit significantly from a pair of simple enhancements, implemented together. Collectively, these enhancements would provide needed structure and greater regulatory certainty, improving the competitive position of US LNG projects. At the same time, the changes would better satisfy the DOE’s efficiency and decision-making objectives.

FIGURE III: DOE Proposal and Suggested Improvements

DOE Proposal: May 29, 2014 (6450-01-P)



Suggested Improvements



1 Front end: Conclude NFTA review within 30 days of FERC filing, issuing authorizations subject to Final EIS completion.

The DOE should process NFTA applications, complete decisions, and issue authorizations within 30 days of FERC filing based on the already complete administrative record.⁸ This timing would enhance US competitiveness, provide needed progressive regulatory confidence, and support effective marketing internationally.

⁸ For those applicants whose formal comment period has been completed.

The FERC filing milestone strikes a good balance in terms of project development and increasing commitment. As was illustrated in the earlier discussion, at FERC filing a project will have demonstrated significant progress and commitment of financial resources over a few years, a clear indication of an “applicant’s willingness and capability to complete the proposed project.”⁹ Compared to the DOE’s proposal, a FERC filing review threshold would offer an improved means for the DOE to achieve its prioritization goal while also conserving resources for “timely action on applications.”¹⁰ Indeed, FERC filing is both an objective measure of significant and sustained actions of the participants, as well as a fitting milestone for increasing regulatory certainty.

2 Back End: NFTA authorization activates 30 days after Final EIS (FEIS), becoming final unless DOE issues order requiring further EIS related review.

This would provide an essential definitive timeline for NFTA permitting, establishing a fundamental baseline of regulatory certainty, while maintaining the DOE’s role in the process.

A 30-day activation period would avoid undue delays, costs, and uncertainty just before project execution. A firm timeline for final authorization can help restore the competitive strengths of US LNG projects, and allow the US to capitalize on the jobs and economic benefits of LNG exports.

In conclusion, the DOE is right to consider changes to its current approach to NFTA export applications. If complemented by the additional enhancements described above, the proposed changes could yield an effective permitting process that allows US projects to compete effectively in the global market, translating into significant employment and lasting economic benefits for the nation.

Respectfully submitted,



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⁹ *Proposed Procedures for Liquefied Natural Gas Export Decisions*, Department of Energy Office of Fossil Energy, 29 May 2014.

¹⁰ *Ibid*, P 10