

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

*Notice of Change of Procedures*  
(79 Fed. Reg. 32,261 (June 4, 2014))

**COMMENTS OF THE  
AMERICAN PUBLIC GAS ASSOCIATION**

Pursuant to the Notice of Proposed Procedure (“NOPP”) appearing in the Federal Register on June 4, 2014, 79 Fed. Reg. 32,261, the American Public Gas Association (“APGA”) submits these comments in support of the NOPP, and as the basis for its support, states as follows:

**I. COMMUNICATIONS**

Any communications regarding this pleading or this proceeding should be addressed to:

David Schryver  
Executive Vice President  
American Public Gas Association  
Suite C-4  
201 Massachusetts Avenue, N.E.  
Washington, D.C. 20002  
Telephone: (202) 464-0835  
dschryver@apga.org

William T. Miller  
McCarter & English, LLP  
Twelfth Floor  
1015 Fifteenth Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 753-3420  
wmiller@mccarter.com

## II. INTRODUCTION

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 700 members in 36 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. APGA members purchase interstate natural gas transportation services, usually as captive customers of a single interstate pipeline, at rates and under terms and conditions that are regulated by the Federal Energy Regulatory Commission (“FERC”). APGA’s members are active participants in the domestic market for natural gas where they secure the supplies of natural gas to serve their end users. APGA has been an active participant in the LNG export application proceedings referenced in notes 3 and 6 of the NOPP (79 Fed. Reg. 32,262).

## III. COMMENTS

In the normal scheme of things, DOE/FE would review LNG export applications under Natural Gas Act (“NGA”) Section 3(a), 15 U.S.C. § 717b(a), after completion of review by the FERC under NGA Section 3(e), 15 U.S.C. § 717b(e), which review by FERC would include the required review under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*<sup>1</sup> Thus, in such situations, when an application reached the DOE/FE for review, there would be a full record upon which to issue a final order determining whether the proposed export is consistent with the public interest.

---

<sup>1</sup> FERC serves as the lead agency in NEPA review, with DOE serving as cooperating agency, under 10 CFR §§ 1501.4, .5, & .6. *See* 79 Fed. Reg. 32,262.

Rather than adhere to the normal review process described above, DOE/FE has been issuing pre-NEPA conditional approvals for LNG export applications pursuant to 10 C.F.R. § 590.401. Conditional orders are authorized “where a need exists for an indication of [DOE’s] preliminary findings and conclusions, but additional information is needed before a final decision and order can be rendered.” 46 Fed. Reg. 44,696 (Sept. 4, 1981). On December 5, 2012, DOE/FE published its order of precedence indicating the order in which it would consider applications to export LNG to non-FTA countries. Pursuant thereto, DOE/FE has issued seven conditional authorizations based on records that do not contain the NEPA review required for issuance of a final order; none of those orders is final today, and some of them have been taken out of sequence if you assume that DOE/FE review should occur upon conclusion of NEPA review.

In the NOPP, DOE/FE is proposing “to suspend its practice of issuing conditional decisions on applications to export LNG from the lower-48 states to non-FTA countries prior to completion of NEPA review.” 79 Fed. Reg. 32,263. Under the proposal, an application will be deemed ready for DOE/FE review only after it has completed the NEPA review process. The four reasons given by DOE/FE for abandoning the conditional approval approach are as follows (*id.*):

first, because conditional decisions no longer appear necessary for FERC or the majority of applicants to devote resources to NEPA review; second, because doing so will prioritize acting upon applications that are otherwise ready to proceed; third, because doing so will facilitate decisionmaking informed by better and more complete information; and fourth, because doing so will better allocate agency resources.

APGA believes the four reasons given above, and the expanded explanation set forth in the NOPP (*id.* at 32,263-264), provide ample basis for the proposed suspension. APGA also notes that in addition to better allocating agency resources, such an approach will also allow

interested parties to focus their resources on the applications that warrant attention, i.e., those in which the applicants have proved their willingness to expend the time and energy to pursue the NEPA review to conclusion. That is the appropriate time for entities like APGA to weigh in as to whether the application should be approved as only then is there a full record upon which to comment.

In addition, the approach being proposed in the NOPP is consistent with building the best record not only as to environmental issues but also as to consumer-impact issues affecting the public interest determination. DOE/FE has been issuing conditional authorizations based on data that was stale at the time of the conditional authorizations and that will be beyond stale at the time of a final order after NEPA review. In particular, DOE/FE has been relying on an EIA Report completed in January 2012,<sup>2</sup> which relies on projected natural gas demand data from the 2011 Annual Energy Outlook (“*AEO2011*”) - data that is backward looking in its development and that does not reflect the rapid changes in the U.S. natural gas markets that have occurred since *AEO2011* was published. And since the EIA Report is the basis for the NERA Study<sup>3</sup> upon which DOE/FE relies heavily for its determination of “net benefits” in its conditional orders, those findings are likewise neither sound nor sustainable.

To its credit, DOE/FE has recognized the need to proceed on the basis of more current data. On May 29, the same date that it noticed that the NOPP would issue, DOE/FE also issued a release in which its stated as follows:

DOE plans to undertake an economic study in order to gain a better understanding of how potential U.S. LNG exports between 12 and 20 billion cubic feet per day (Bcf/d) could affect the public interest. Using more recent data from sources like the Annual

---

<sup>2</sup> *Effect of Increased Natural Gas Exports on Domestic Energy Markets*, U.S. Energy Information Administration (Jan. 2012) (“EIA Report”).

<sup>3</sup> *Macroeconomic Impacts of LNG Exports from the United States*, NERA Economic Consulting (Dec. 2012) (“NERA Study”).

Energy Outlook 2014, the Energy Information Administration (EIA) will update its 2012 LNG Export Study, which only looked at export cases of 6 and 12 Bcf/d. Following the EIA update, DOE will again contract for an external analysis of the economic impact of this increased range of LNG exports and other effects that LNG exports might have on the U.S. natural gas market.<sup>[4]</sup>

APGA commends DOE/FE for its recognition of the need to act on the basis of more current data. However, given that recognition, APGA is dismayed by DOE/FE's stated intention to proceed on a business-as-usual basis pending the outcome of this NOPP and of those studies: "While these studies are underway, the Department will continue to act on applications as stated above."<sup>5</sup> The NOPP itself makes the point that by suspending the use of conditional orders, DOE/FE will be able to act on the basis of a more complete record, and the May 29 press release tacitly acknowledges that the data upon which DOE/FE is now relying is both stale and not relevant given the magnitude in the aggregate of the LNG export quantities for which approval is being sought. It is incumbent upon DOE/FE, in light of these facts, to cease issuing conditional orders pending the outcome of this NOPP proceeding. The alternative course being suggested by DOE/FE flies in the face of its own rationale as to how most effectively and efficiently to proceed.

---

<sup>4</sup> The DOE/FE release is available at: <http://energy.gov/fe/doe-lng-exports-announcements-may-29-2014>.

<sup>5</sup> *Id.*

## CONCLUSION

WHEREFORE, APGA, on the basis of the comments above, respectfully requests that the DOE/FE adopt the proposed procedures set forth in the NOPP and that it suspend the issuance of conditional orders during the pendency of this NOPP proceeding and until the updated economic studies requested by DOE/FE have been completed.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By 

William T. Miller  
Kevin J. Conoscenti  
McCarter & English, LLP  
Twelfth Floor  
1015 Fifteenth Street, N.W.  
Washington, DC 20005

Its Attorneys

July 21, 2014

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

Notice of Change of Procedures

VERIFICATION

WASHINGTON

§

DISTRICT OF COLUMBIA

§

§

Pursuant to 10 C.F.R. § 590.103(b) (2013), William T. Miller, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that all facts stated herein are true and correct to the best of his knowledge, information, and belief.

William T. Miller

William T. Miller  
McCarter & English, LLP  
Twelfth Floor  
1015 Fifteenth Street, N.W.  
Washington, DC 20005  
Telephone: (202) 753-3420  
Fax: (202) 354-4658  
Email: [wmiller@mccarter.com](mailto:wmiller@mccarter.com)

Subscribed and sworn to before me this 18<sup>th</sup> day of July 2014.

Leslie K. Nelson-Walski

Notary Public

My Commission Expires:

**LESLIE K. NELSON-WALSKI**  
**Notary Public, District of Columbia**  
**My Commission Expires May 31, 2015**

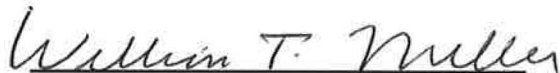
**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY**

Notice of Change of Procedures

**CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b) (2013), I, William T. Miller, hereby certify that I am a duly authorized representative of the American Public Gas Association, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of the American Public Gas Association, the foregoing document and in the above-captioned proceeding.

Dated at Washington, D.C., this 18<sup>th</sup> day of July 2014.



Kevin J. Conoscenti  
William T. Miller  
McCarter & English, LLP  
Twelfth Floor  
1015 Fifteenth Street, N.W.  
Washington, DC 20005  
Telephone: (202) 753-3420  
Fax: (202) 354-4658  
Email: [wmillers@mccarter.co](mailto:wmillers@mccarter.co)