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Vice President

Energy & Resources Policy

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U.S. Department of Energy (FE-34)
Attn: Proposed Procedures, Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
P.O. Box 44375
Washington, DC 20026-4375
Via Electronic Submission: <http://energy.gov/fe/Procedures>

Re: Proposed Procedures for Liquefied Natural Gas Export Decisions

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, submits these comments on the Department of Energy's (DOE) notice of proposed procedures for liquefied natural gas (LNG) export decisions.

The NAM was founded over 100 years ago to promote manufacturing growth in the United States by opening foreign markets and advancing free trade for domestic manufacturers. These principles are embedded in our policies today, including those governing energy exports. We have consistently urged the DOE to process applications for the export of LNG and subsequent construction of export terminals in a timely fashion, so that the market may operate with as little distortion as possible, and so that the U.S. remains in compliance with its international obligations under the World Trade Organization (WTO).¹

The existing LNG export licensing process, established by the DOE in December 2012, sets an "order of precedence" based largely on the date in which applications have been received. The NAM and others have been critical of the DOE's process because it has caused needless delays and lengthy intervals of two months or longer between each licensing decision. With more than 30 applications to work through, some applicants will be waiting multiple years before completing what is essentially the first step in a very long permitting process. This is not acceptable. Manufacturers in the United States are ahead of their global competitors in the race to build the infrastructure needed to export LNG; however, this window of opportunity may be limited, and an unnecessarily protracted regulatory process could cause a major competitive disadvantage for U.S. exporters.

For all of these reasons, manufacturers believe each LNG export applicant deserves the benefit of an up-or-down decision as quickly and efficiently as possible. The NAM therefore welcomes any improvements to the process that will accomplish this goal. The DOE has

¹ Bacchus, J. and Jeong, R., *LNG and Coal: Unreasonable Delays in Approving Exports Likely Violate International Treaty Obligations*, November 2013, available at <http://www.nam.org/~media/9CCC6B36723C4AEDB37F78C19EBE8971.ashx>.

proposed to remove the conditional approval step of the permitting process, and instead require applicants to first complete the National Environmental Policy Act (NEPA) review before the DOE takes action on a final license. If the proposed new procedure will result in a quicker decision making process than currently exists, manufacturers will benefit. If it fails to meaningfully address the problem—for instance, by merely shifting the DOE-caused delay to issue licenses from the beginning to the end of the process, without providing any regulatory certainty for an applicant at the beginning of the process—the NAM will continue to press for improvements.

If the DOE does finalize the proposed new procedure, the NAM urges the Department to impose additional safeguards against delay. The DOE's proposed procedure suggests that the Department will act on applications *no earlier than* 30 days after publication of a final NEPA review. The NAM prefers a hard deadline similar to the one found in H.R. 6, the Domestic Prosperity and Global Freedom Act, which was passed by the U.S. House of Representatives on June 25, 2014. H.R. 6 would require the DOE to issue a decision on an LNG license application within 30 days of issuance of a final NEPA review.

The DOE's proposed procedure also allows the Department to postpone a decision until it "has sufficient information on which to base a public interest determination." The NAM suggests removing this new criterion altogether. The Natural Gas Act of 1938 imposes a rebuttable presumption that exports are in the public interest; the DOE must allow exports unless, after opportunity for hearing, it finds that a proposed export project is not in the national interest. It is neither the DOE's nor the applicant's responsibility to affirmatively prove that the project is in the public interest; rather, the burden is on project opponents to prove that it is not. The new language in the proposed procedure seems to shift this burden. To do so would be in plain violation of Section 3 of the Natural Gas Act and would likely put the United States at odds with its international commitments. The NAM urges removal of this language from the proposed procedure altogether.

The NAM agrees with the DOE that the new procedure will ensure that certain applications otherwise ready to proceed (for instance, those which have completed NEPA review) will not be held back by their position in the order of precedence. However, the inverse is also true. When the DOE announced its order of precedence in late 2012, it essentially stated that the companies who completed their application first and invested in the Federal Energy Regulatory Commission (FERC) pre-filing process first would receive a conditional approval before those who did not. The first tier of applicants took this financial risk in reliance on the fact that they were more likely to receive a conditional approval. The conditional approval held a value for these companies that made investing in the FERC pre-filing process worthwhile. By taking away the conditional approval, these companies who acted in reliance on the DOE's December 2012 order are losing something of value. A simple solution would be for the DOE to proceed with the conditional approvals for all applicants who have begun or completed the FERC pre-filing process in an expedited manner while the Department reviews comments and finalizes the proposed new procedure.

Manufacturers support a natural gas policy process that is open, transparent and objective. As we have done in previous comments on this issue, the NAM urges the DOE to rely upon the best quality information regarding the impact of LNG exports on economic, environmental and energy security interests. The NAM fundamentally believes principles of free trade and open markets should govern the export of LNG, and believes a licensing process completed as quickly as possible will ensure that the market functions properly. While the DOE lists four reasons for its proposed change in procedure, none of these reasons happens to be

“speed.” Manufacturers encourage the DOE to take all necessary steps under current or future procedures to ensure that LNG export applicants receive an up-or-down decision as quickly as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ross Eisenberg", is placed on a light yellow rectangular background.

Ross Eisenberg
Vice President
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