



## COMMENT ON PROPOSED PROCEDURES FOR LIQUEFIED NATURAL GAS EXPORT DECISIONS DOCKET ID

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### INTRODUCTION

The procedure for issuing permits to export Liquefied Natural Gas (LNG) to non-Free Trade Agreement (FTA) needs to be streamlined. Unfortunately, the DOE's proposed procedure change will only slow down the process of projects obtaining authorizations to export LNG. The proposed change to suspend the practice of issuing conditional authorizations for LNG export will cause a bottleneck by funneling applications through the National Environmental Policy Act (NEPA) review process conducted by the Federal Energy Regulatory Commission (FERC) and then through the public interest review process conducted by the Department of Energy (DOE) before finally issuing a decision. This will not expedite the permitting process, as projects will not be able to seek both reviews concurrently any longer.

It is imperative that the LNG export process be better streamlined to allow exports of LNG to help create more natural gas production jobs in the United States and to help our allies around the world.

Energy policies in Europe in particular have driven up their energy prices, but have also harmed their economies and reduced their national security capabilities. Because Europe is dependent on natural gas from Russia, it has asked the United States to speed up its review of LNG applications. Europe is clearly worried about further Russian aggression and availability of its natural gas supplies.

The ability to export LNG is important for the U.S. economy, it helps our own national security, and it improves the national security of our allies. The LNG export process should be streamlined, but the DOE's proposed changes actually slow down the process instead of streamlining it.

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The key change DOE wants to make is to suspend issuing “conditional decisions on the applications to export LNG.” DOE gives four reasons for this change:

*Rationale*

The Department [of Energy] is proposing the procedure described above for four reasons: first, because conditional decisions no longer appear necessary for FERC or the majority of applicants to devote resources to the 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.<sup>1</sup>

All four of these contentions are flawed. Instead of this approach DOE should expedite conditional decisions and truly streamline the LNG export permit process.

**I. DOE argues that the reasoning for the creation of the conditional permitting process is out of date.**

DOE’s first argument in favor of ending conditional decisions is because the “condition decisions no longer appear necessary.” As stated in DOE’s Rationale for the proposed procedure, “The Department’s original stated justification for issuing conditional authorizations – to provide greater certainty for FERC – no longer appears to apply. FERC has proceeded with the NEPA review process for many LNG terminals that have yet to receive conditional non-FTA authorizations from DOE.”<sup>2</sup>

However, the original stated justification actually argues that FERC would “benefit from a preliminary indication from [DOE] regarding the consistency of the importation with the public interest.” The original rationale for issuing conditional authorizations was that:

[s]ince such applications are usually major Federal actions significantly affecting the quality of the human environment within the meaning of [NEPA], an environmental impact statement (EIS) would usually be prepared to assess the impacts of and alternatives to the proposed project. The EIS would then be used by both FERC and [DOE] in making their respective decisions on the application. Since the terminal facilities potentially would involve the larger environmental impact, the FERC would generally be the lead agency for preparing and EIS. Before expending the time and resources needed to develop an EIS, the FERC would benefit from a preliminary indication from [DOE] regarding the consistency of the importation with the public interest.<sup>3</sup>

After comparing the actual stated justification as opposed to the paraphrased version, it becomes clear that the reasoning for the creation of the conditional permitting process is, indeed, not out of date.

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<sup>1</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32263 (June 4, 2014).

<sup>2</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262 (June 4, 2014).

<sup>3</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32261, 32262 (June 4, 2014).

Simply because FERC claims to have proceeded with the NEPA review process for eight LNG export projects that have yet to receive conditional authorizations from DOE to export to non-FTA countries, does not mean that FERC would then necessarily not benefit from an indication from DOE regarding the consistency of exportations with the public interest. The validity of this contention can be seen on a multitude of levels.<sup>4</sup>

A. FERC Can Save Time if DOE provides a Timely Conditional Authorization

In the event that FERC has proceeded with the NEPA review process for an LNG export project that has yet to receive conditional authorization from DOE to export to non-FTA countries, but not yet completed said process (as this can take years), FERC would indeed benefit from knowing if said LNG terminal's exports in question would be consistent with the public interest. In other words, were a project seeking conditional approval and an EIS concurrently be denied conditional approval, the EIS process could then automatically be cancelled by FERC, as no matter what the environmental impact of the project be, the project would not comport with the public interest; i.e. the point would be moot. Hence, in the event that a conditional decision was given before the completion of the NEPA review process, FERC would benefit in that it can save resources that it otherwise would have expended or continue to expend on the NEPA review process.<sup>5</sup>

B. Firms Starting the NEPA Review Process Without DOE Conditional Authorization is Only Evidence of the Capital Intensive Nature of LNG Export Projects

According to the proposed rule, currently seven LNG export projects have been granted conditional authorization from DOE and eight are "well into the NEPA review process" that do not have conditional authorization.<sup>6</sup>

These numbers appear to be incorrect. DOE lists various parts of the Sabine Pass project twice under both the list of projects that have been given conditional authorization and the projects without conditional authorization. This makes the list of projects under FERC consideration with conditional authorization from DOE a total of six distinct projects and the list of projects

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<sup>4</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262, 32263 (June 4, 2014).

<sup>5</sup> David L. Goldwyn, *New Procedure for Approving LNG Export Permits: A More Sensible Approach*, Brookings Institution, June 10, 2014, <http://www.brookings.edu/research/articles/2014/06/10-doe-approving-lng-export-goldwyn-hendrix>

Ayesha Rascoe, *UPDATE 2-Oregon plant LNG exports approved as U.S. pressured to flex energy muscle*, Reuters, March 24, 2014, <http://www.reuters.com/article/2014/03/24/usa-lng-jordancove-idUSL1N0ML0YX20140324>

Office of NEPA Policy and Compliance, DOE, U.S. Department of Energy Environmental Impact Statements and Environmental Assessments Status Chart, 5-6, (July 17, 2014).

<sup>6</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262, 32263 (June 4, 2014).

under FERC consideration without conditional authorization from DOE a total of six distinct projects.<sup>7</sup>

This suggests that while there exist six projects that have associated resources sufficient to start the NEPA review process without conditional authorization, the conditional decision process is still useful. While the DOE claims that FERC does not gain a greater amount of certainty from the conditional decision process, it merely draws this conclusion from the existence of these six projects. These are not sufficient grounds for the conclusion drawn by DOE in the Federal Register for the proposed procedure change. Because there are firms willing to expend the significant resources to start the NEPA review process does not mean that FERC doesn't gain valuable insight from the conditional decisions made by the DOE.

From the existence of these six projects seeking FERC review that do not have DOE conditional authorization, the Rationale for the proposed procedure draws the conclusion that the, "original stated justification for issuing conditional authorizations...seems to no longer apply." Clearly the logic of this argument is lacking without further input from FERC or further data to show that conditional decisions from the DOE provide no value to FERC.<sup>8</sup>

The fact that there are six projects "well into the NEPA review process" is only evidence of the fact that LNG export projects are capital intensive endeavors, and as such it is only logical that those firms with the wherewithal to undertake them would also have the funds to start the NEPA review process given the risk of possibly not gaining authorization from the DOE subsequently.

Moreover, the claim of these six projects being "well into the NEPA review process" is dubious. Two of the six projects have barely started the NEPA review process. The Golden Pass project began seeking an EA September 9, 2013 and in June 2014 FERC decided that instead of an Environmental Assessment (EA), an Environmental Impact Statement (EIS) would be required; i.e. the EIS process was started about one month before the writing of this comment.<sup>9</sup> The CE FLNG project only received a Notice of Intent for its EIS on December 12, 2013. No further documentation from FERC on CE FLNG has been released since then.<sup>10</sup>

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<sup>7</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262, 32263 (June 4, 2014).

By all appearances DOE seems to be incorrect in its claim of eight projects being before NEPA review without conditional authorization and seven projects with conditional authorization. See also the DOE's EIS and EA status chart of July 17, 2014.

<sup>8</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32263 (June 4, 2014).

<sup>9</sup> Office of NEPA Policy and Compliance, DOE, U.S. Department of Energy Environmental Impact Statements and Environmental Assessments Status Chart, 5-6, (July 17, 2014).

Office of Energy Projects, FERC, PROJECT UPDATE FOR THE Golden Pass LNG Project, 1-2, (June 2014).

<sup>10</sup> CE FLNG, LLC, CE Pipeling, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned CE FLNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting, 78 Fed. Reg. 75557, 75558, 75559 (December 12, 2013).

## **II. DOE argues that the proposed procedure change will streamline the permitting process.**

The DOE claims that the proposed procedure change should be enacted because the permitting process will be made more efficient in that it “will prioritize acting upon applications that are otherwise ready to proceed.”

There are two flaws with this argument.

### *A. Projects sitting in limbo at DOE that have passed the NEPA review process are exceedingly unlikely to exist*

Because the NEPA review process will take longer than the DOE public interest review process, all things being equal, projects will get clearance from the DOE for LNG exportation before they will from FERC.

So far FERC has only completed Final EIS for two LNG export projects: Freeport LNG Liquefaction Project and Cameron Liquefaction Project.<sup>11</sup> Both of these projects took a lengthy time period for FERC to analyze. Freeport began seeking Environmental approval from FERC for its liquefaction project on August 26, 2011, when FERC released a Notice of Intent to conduct an EA on the project.<sup>12</sup> FERC later on July 25, 2012 decided to pursue the more in depth, costly stringent analysis of an EIS.<sup>13</sup> The Notice of Availability of the Final EIS for Freeport only came on June 27, 2014.<sup>14</sup> When looking at the timeline of Freeport’s experience with the NEPA compliance review we see that from the first Notice of Intent to conduct an EA to the Final EIS being released took a time period of 34 months – a little less than three years. The EIS period alone lasted just over 22 months – a little less than two years. A similar experience can be seen with the Cameron Liquefaction Project. The Notice of Intent to conduct an Environmental Assessment (EA) on the project was released by FERC on August 13, 2012.<sup>15</sup>

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<sup>11</sup> Office of NEPA Policy and Compliance, DOE, U.S. Department of Energy Environmental Impact Statements and Environmental Assessments Status Chart, 5-6, (July 17, 2014).

<sup>12</sup> Freeport LNG Development, LP; Freeport LNG Expansion LP; FLNG Liquefaction LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting, 76 Fed. Reg. 53440, 53441, 53442 (August 26, 2011).

<sup>13</sup> Freeport LNG Development, LP; Freeport LNG Expansion LP; FLNG Liquefaction LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting, 77 Fed. Reg. 43589, 43590, 43591 (July 25, 2012).

<sup>14</sup> Freeport LNG Development, LP; Freeport LNG Expansion LP; FLNG Liquefaction LLC; Notice of Availability of Final Environmental Impact Statement for the Proposed Phase II Modification and Liquefaction Projects, 79 Fed. Reg. 35345, 35346 (June 20, 2014).

<sup>15</sup> Cameron Interstate Pipeline, LLC, Cameron LNG; Notice of Intent to Prepare an Environmental Impact Statement for the Planned Cameron Pipeline Expansion Project and

The Notice of Availability of the Final EIS for Cameron was released April 30, 2014.<sup>16</sup> This is a time period of just under 21 months – again, a little less than 2 years.

In addition FERC has completed a final EA for Sabine Pass Liquefaction Project and for Cove Point; however, Sabine Pass is seeking another EA for an expansion of its existing infrastructure.

All other LNG export projects seeking to be certified to be in compliance with NEPA by FERC have yet to receive final judgment. The only other project whose review is close to completion is Corpus Christi LNG project, who started the review process in June of 2012 and received the Notice of Availability of the Draft (not final) EIS on June 13, 2013.<sup>17</sup>

The DOE on the other hand has an average approval time of about 8 weeks.<sup>18</sup>

Freeport LNG, Cameron LNG, Corpus Christi LNG, and Sabine Pass all have conditional authorization from the DOE to export LNG to non-FTA countries.<sup>19</sup>

Projects sitting in limbo at DOE that have passed the NEPA review process are exceedingly unlikely to exist; none exist as of yet because of the very nature of the NEPA review process.

### *B. The Proposed Procedure Change Does Not Streamline the Permitting Process*

The proposed changes, if implemented, will create a system in which projects will have to pass through one gate, the NEPA review, before they can begin to pass through the other, the DOE public interest gate. Under the current system, projects can pursue both gates concurrently as opposed to one after the other. The new system will actually create a slower pipeline for projects to get approval. In addition it presupposes the importance of the NEPA review above the importance of the public interest assessment because it makes it a prerequisite. It assumes that the public interest assessment is only logical after the necessarily primary NEPA compliance is determined. In fact, both are of equal importance. A project cannot export LNG to non-FTA countries if it fails either the NEPA review or the public interest assessment. The problem is that the choice of which gate comes first is arbitrary. Thus, the new system serves only to arbitrarily prioritize applications to FERC above applications to DOE.

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Cameron LNG Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting, 77 Fed. Reg. 48145, 48146, 48147 (August 13, 2012).

<sup>16</sup> FERC, Notice of Availability of the Final Environmental Impact Statement for the Proposed Cameron Liquefaction Project (April 30, 2014).

<sup>17</sup> FERC, Notice of Availability of the Draft Environmental Impact Statement for the Proposed Corpus Christi LNG Project (June 13, 2014).

<sup>18</sup> David L. Goldwyn, *New Procedure for Approving LNG Export Permits: A More Sensible Approach*, Brookings Institution, June 10, 2014, <http://www.brookings.edu/research/articles/2014/06/10-doe-approving-lng-export-goldwyn-hendrix>

Ayesha Rascoe, *UPDATE 2-Oregon plant LNG exports approved as U.S. pressured to flex energy muscle*, Reuters, March 24, 2014, <http://www.reuters.com/article/2014/03/24/usa-lng-jordancove-idUSL1N0ML0YX20140324>

<sup>19</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262, 32263 (June 4, 2014).

### **III. DOE argues that the proposed new process will raise the quality of the information on which it bases its decisions.**

The DOE claims that the proposed procedure change will enhance the quality of its rulings in that it, “will facilitate decisionmaking informed by better and more complete information.”

#### *A. Slowing Down the Permitting Process Unfairly Limits the Ability of the U.S. to Firms to Compete in the Global LNG Market*

By enacting such changes in permitting procedure, the DOE will be directly influencing the “cumulative market impacts” that it claims it “will be in a better place to judge.” This is because the slowing down of the permitting process as argued above will serve to prevent the U.S. from growing our share of the international LNG trade, thus hampering the potential domestic benefits of earlier participation in the global market. This will serve to create an unfairly negative dampening effect on the subsequent assessment of whether or not the project is in the public interest.<sup>20</sup>

#### *B. Applicants with the Wherewithal to Build LNG Export Facilities Also Have the Wherewithal to Complete the Permitting Process*

The subsequent claim made in the Rationale for the proposed procedure in support of this third contention, that “An applicant’s willingness and capability to make such expenditures is indicative of the applicant’s willingness to make such expenditures is indicative of the applicant’s willingness and capability to complete the proposed project,” is illogical. Projects to export LNG are exceedingly capital intensive. As pointed out earlier, firms that undertake such projects know the costs associated, and will incorporate NEPA review costs into their decisions to proceed with starting a project. Additionally the costs associated with actually engaging in exporting LNG are far larger than the costs associated with a NEPA review; firms that think they will be able to pay such costs will be able to pay for a NEPA review.<sup>21</sup>

#### *C. The Proposed Procedure Change Still Fails to Integrate the Permitting Process*

Another subsequent claim made by DOE for the proposed procedure is that, “it is generally preferable to integrate the consideration of all public interest factors in a single order,” is not achieved by the NEPA review. The public interest factors are still segregated in that the NEPA review becomes a prerequisite to the consideration of the other public interest factors. So while the two portions of the permitting process are not “bifurcated” in the strictest sense of the word, they are still made completely distinct and are separated, and hence, not integrated. Moreover, the DOE gives no explanation as to why this “integration...into a single order” of the review process is in anyway “generally preferable.” It merely asserts that it is without any pretense at

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<sup>20</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32263, 32264 (June 4, 2014).

<sup>21</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32264 (June 4, 2014).

justification. To the contrary, as explained in the arguments above, this envisioned “single order” is anything but preferable to the status quo.<sup>22</sup>

#### **IV. DOE argues the proposed procedure change will help it more effectively use its resources.**

The DOE defends the proposed procedure change by saying that it “will better allocate agency resources.”

In defense of this assertion, DOE argues that due to the inexpensive nature of the application for export authorization from the DOE, “some companies may view it as advantageous to file an application with DOE even if they foresee only a low probability that they will ultimately undergo NEPA review and complete the application process.” At best this is an extremely misguided judgment. The implied argument made here by DOE for the proposed procedure is that firms will seek to get conditional approval for LNG export projects that they expect will be shut down by a future failure in a NEPA review. The capital intensive nature of the project points to the fact that this would be an illogical move by a profit seeking organization. The large upfront costs for creating an LNG exporting facility, combined with the time and effort required to make it operational, more than suggest that doing so would only be undertaken with the belief that such a facility would operate in the long term as opposed to the short term.<sup>23</sup>

Additionally, in the vein of seeking to better allocate agency resources, due to the much more involved nature of the NEPA review, especially when compared with the DOE public interest assessment, it would make more sense to argue that the FERC stands to be less likely to “devot[e] resources to applications that have little prospect of proceeding.” If said project already had approval from the DOE instead of an after the fact assessment as promoted by the new procedure, FERC would have the full assurance that its resources would not be wasted on projects that ultimately fail the DOE public interest test.<sup>24</sup>

#### **Conclusion**

The motivations for the proposed procedure change for LNG export permitting are laudable. The current process is unnecessarily slow and bureaucratic. U.S. exports of LNG are extremely important as not only a domestic market driver of growth in the industry but also as a promoter of global security, commerce, and human growth. The Institute for Energy Research recognizes that the current process for authorizing exports of LNG to non-FTA countries is flawed; however the proposed change will not ameliorate the situation or truly streamline the process. The potential for LNG exports is great, and exports are important for economic and geopolitical reasons. The U.S. has a unique opportunity to lead on this issue, but only if DOE and FERC truly streamline and improve their approval processes.

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<sup>22</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262, 32263 (June 4, 2014).

<sup>23</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32264 (June 4, 2014).

<sup>24</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32262, 32263 (June 4, 2014).