

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

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**COMMENTS OF EXCELERATE LIQUEFACTION SOLUTIONS I, LLC ON  
PROPOSED PROCEDURES FOR LIQUEFIED NATURAL GAS EXPORT DECISIONS**

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Pursuant to the U.S. Department of Energy, Office of Fossil Energy (“DOE/FE”) Notice of Proposed Procedures issued on June 4, 2014,<sup>1</sup> Excelerate Liquefaction Solutions I, LLC (“Excelerate”) provides the following comments seeking clarification on the procedures proposed by the DOE/FE for processing non-Free Trade Agreement (“non-FTA”) export authorization applications. When issuing its final procedures, the DOE/FE should ensure that the proposed procedures and any additional economic impact studies commissioned by the DOE/FE will not result in further delays in the processing of pending applications. In addition, for applicants engaged in the lengthy and expensive process of obtaining authorizations to construct and operate an LNG export facility, it is critical that any new procedures provide more certainty about the timing of the review process.

**I. BACKGROUND**

**A. DOE/FE Notice**

On June 4, 2014, the DOE/FE issued the DOE/FE Notice to announce changes to the procedures that it will use to process non-FTA export authorization applications. Specifically, the DOE/FE proposed to suspend its practice of issuing conditional approvals of applications to export LNG to non-FTA countries prior to completion of an export project’s

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<sup>1</sup> Department of Energy, Office of Fossil Energy, Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32,261 (Jun. 4, 2014) (“DOE/FE Notice”).

National Environmental Policy Act (“NEPA”) review.<sup>2</sup> As proposed, the DOE/FE would implement a new policy not to act on non-FTA export authorization applications until completion of the NEPA review, which the DOE/FE described as being 30 days after publication of a Final Environmental Impact Statement (“FEIS”) or upon publication by the DOE/FE of a Finding of No Significant Impact for projects for which an Environmental Assessment (“EA”) has been issued.<sup>3</sup> The DOE/FE requested comments on the proposed change in procedures.

**B. Excelerate’s Interest in the Proposed Procedures**

As an applicant for a non-FTA export authorization and with affiliates engaged in the commercial development of an LNG export facility, Excelerate has a significant interest in the DOE/FE’s proposed procedures for processing applications. On August 9, 2012, the DOE/FE issued to Excelerate an authorization to export natural gas from the Lavaca Bay LNG Project—a proposed LNG export facility in south Texas—to countries with which the United States has entered into a Free Trade Agreement requiring national treatment for natural gas. On October 5, 2012, Excelerate submitted an application to the DOE/FE for a non-FTA export authorization. That application is pending in DOE/FE Docket No. 12-146-LNG. Affiliates of Excelerate initiated pre-filing at the Federal Energy Regulatory Commission (“FERC”) for the Lavaca Bay LNG Project in November 2012 and filed an application pursuant to Sections 3 and 7 of the Natural Gas Act<sup>4</sup> on February 6, 2014. The project application is undergoing environmental and engineering review in FERC Docket Nos. CP14-71-000, CP14-72-000, and CP14-73-000.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 32,263.

<sup>4</sup> 15 U.S.C. §§ 717b and 717f.

## II. COMMENTS

Upon implementation of the proposed procedures, the DOE/FE will have taken, in the last two years, three different approaches to the order of precedence for pending non-FTA export applications.<sup>5</sup> Most recently, on December 5, 2012, after a hiatus from issuing non-FTA export authorizations, the DOE/FE said that it would first review those applications for which the applicant had approval from the FERC to use the FERC's pre-filing process, in the general order in which the DOE/FE had received the applications.<sup>6</sup> Excelerate's application was the ninth, and last application to receive this approval from the FERC before the order of precedence was established. The application has been pending for 21 months and was third in the queue for action before the DOE/FE issued the DOE/FE Notice.

Applicants, investors and customers have made business plans and allocated scarce resources based on the reasonable expectations they established after the DOE/FE's first change in procedure in December 2012. By changing course now, the DOE/FE's policy shift upsets settled expectations and has a cooling effect on stakeholders as they reassess their plans. It is therefore important that if the DOE/FE is to change its order for processing applications again, it should provide clear guidance on the manner in which it will proceed so as to not further undermine regulatory certainty.

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<sup>5</sup> Prior to establishing the order of precedence on December 5, 2012, DOE/FE processed non-FTA export applications in the order in which they were received.

<sup>6</sup> DOE/FE, Energy Department Releases Study on Natural Gas Exports, Invites Public Comment, Jan. 29, 2013, <http://www.fossil.energy.gov/programs/gasregulation/LNGStudy.html>.

**A. New Procedures Should Be Clarified to Expedite Review of Pending Applications**

Excelerate is concerned that the adoption of the proposed procedures will not improve the manner in which the DOE/FE processes non-FTA export authorization applications. Although the DOE/FE Notice describes how a new order of precedence will be developed among pending applications, it does not explain how the proposed procedures will expedite review for applicants or address the backlog of pending applications. As a result, Excelerate respectfully requests that the DOE/FE clarify its procedures to achieve the stated goal of “avoid[ing] the possibility of delayed action on applications that are otherwise ready to proceed.”<sup>7</sup>

**1. The DOE/FE Should Clarify that the DOE/FE’s Public Interest Review of an Application Will Run Concurrently with NEPA Review**

In the DOE/FE Notice, the DOE/FE stated that it will “act on applications in the order in which they become ready for final action;” that is, “when DOE has completed the pertinent NEPA review process and when DOE has sufficient information on which to base a public interest determination.”<sup>8</sup> It is not clear, however, whether “act” means issuance of a final order or merely the commencement of the DOE/FE’s public interest review. To “avoid the possibility of delayed action on applications that are otherwise ready to proceed,” we recommend that the DOE/FE conduct its public interest review concurrently with the NEPA review. This way, the DOE/FE will be in a position to make a final determination on the application when the NEPA review is complete rather than waiting until that time to take up an export application in earnest.

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<sup>7</sup> DOE/FE Notice at 32,263.

<sup>8</sup> *Id.* DOE/FE considers the completion of the NEPA review process to be 30 days after publication of an FEIS or upon publication by the DOE/FE of a Finding of No Significant Impact for projects for which an EA has been issued. *Id.*

This approach is consistent with how other federal agencies and state agencies acting pursuant to federal law must conduct their reviews for authorizations required with respect to an application for an LNG project pending before the FERC. The Natural Gas Act authorizes FERC to set a schedule for the issuance of federal authorizations by other agencies, which ensures the expeditious completion of such proceedings.<sup>9</sup> The FERC's regulations prescribe that agencies reviewing requests for federal authorizations make their final decisions on the applicant's requests no later than 90 days after the FERC issues its FEIS, unless a schedule for the decision is otherwise established by federal law.<sup>10</sup> In order to meet this deadline, an agency issuing a federal authorization conducts its own review of an applicant's request for the relevant authorization concurrently with the NEPA review being undertaken by the FERC.

Because of the amount of time that it has taken the DOE/FE to process non-FTA export applications—six conditional non-FTA export authorizations over the 19 months since the DOE/FE issued the order of precedence on December 5, 2012—if the DOE/FE waits to undertake its review of pending applications until after the NEPA review is complete, Excelsior is concerned that the DOE/FE will not be able to clear the queue of pending applications at the same rate that applicants' projects complete NEPA review, resulting in a backlog similar to the current backlog. Therefore, DOE/FE should clarify that it plans to conduct its public interest review of pending applications concurrently with the NEPA review process. This will help prevent a backlog of applications awaiting a DOE/FE decision upon completion of NEPA review, and avoid delayed action on applications – and projects – that are otherwise ready to proceed.

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<sup>9</sup> 15 U.S.C. § 717n(c).

<sup>10</sup> 18 C.F.R. § 157.22.

**2. The DOE/FE Should Clarify the Timeline for Making a Final Decision on a Non-FTA Export Application**

By discontinuing its practice of issuing conditional orders, the DOE/FE has perhaps reduced its future workload, but the proposed procedures do little to address the current delays in administrative review and do not appear to “expedite the regulatory process for applicants.”<sup>11</sup> The DOE/FE Notice is silent on the amount of time DOE/FE will take from issuance of an EA or FEIS to issue a final determination on a non-FTA authorization application. However, the example of Cameron LNG suggests that the processing of a final authorization following NEPA review will not be swift. Cameron LNG’s export authorization from the DOE/FE was conditioned on Cameron LNG’s satisfactory completion of the environmental review process at the FERC and on a Finding of No Significant Impact by the DOE/FE.<sup>12</sup> Other than the environmental review, the DOE/FE’s public interest review for Cameron LNG is complete. Yet more than 80 days after issuance by the FERC of Cameron LNG’s FEIS, the DOE/FE has not issued its own environmental determination or a final action on Cameron LNG’s conditional authorization.

Rather than merely reshuffling the order in which applications are processed, to provide applicants with more certainty about the review process and to expedite review, the DOE/FE’s revised procedures should establish a timeline which the DOE/FE will follow in processing applications, including the number of days after issuance of an FEIS or EA by which a final DOE/FE Order will be issued. Specifically, the DOE/FE should commit to taking final action on a pending application within 10 business days after the issuance of an FEIS or EA.

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<sup>11</sup> Christopher Smith, DOE Office of Fossil Energy, Statement Before the U.S. Senate Committee on Energy and Natural Resources at 6 (Jun. 19, 2014).

<sup>12</sup> *Cameron LNG, LLC*, FE Docket No. 11-162-LNG, Order No. 3391 at Ordering Par. F (Feb. 11, 2014).

The DOE/FE is acting as a cooperating agency in each of the pending FERC application dockets pertaining to LNG export facilities.<sup>13</sup> As a result, the DOE/FE has access to all of the environmental information for a project throughout the NEPA review process. With access to the environmental analysis comprising the NEPA review, and with a public interest review undertaken concurrently with the NEPA review, there should not be significant additional review required at the completion of the NEPA review process. Setting a deadline for a final decision on a non-FTA export application will provide the regulatory certainty that is so critical for the development of an LNG export facility and will ensure that there is not delayed action on applications that are ready to proceed.

**B. The DOE/FE Should Clarify the Timing for Additional Studies and how it Calculates the Cumulative Rate of Export**

The DOE/FE announced on May 29 plans to undertake an economic study to update the 2012 LNG Export Study with more recent data and to evaluate the implications of additional natural gas demand on domestic energy consumption, production, and prices for ranges of exports between 12 Bcf/d and 20 Bcf/d. The DOE/FE requested that the Energy Information Administration (“EIA”) develop a study report based upon the EIA’s Annual Energy Outlook 2014 for exports up to 20 Bcf/d.<sup>14</sup> While the letter to EIA requesting the updated study report indicates that the DOE/FE “would like to receive the complete analysis as soon as

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<sup>13</sup> DOE/FE Notice at 32,262 (“Nearly all of the non-FTA export proposals currently pending before DOE that have begun the NEPA review process are seeking parallel authorizations from FERC. In those cases, FERC is serving as the lead agency for purposes of preparing the environmental review documents and DOE is serving as a cooperating agency.”).

<sup>14</sup> Department of Energy - Office of Fossil Energy, DOE LNG Exports Announcements, <http://energy.gov/fe/doe-lng-exports-announcements-may-29-2014> (May 29, 2014).

possible,”<sup>15</sup> the DOE/FE’s webpage announcing the study states that “[i]f at any future time the cumulative export authorizations approach the high end of export cases examined, the Department will conduct additional studies as needed to understand the impact of higher export ranges.”<sup>16</sup>

Excelerate requests that the DOE/FE clarify that it will continue to process applications while the studies are pending and conduct any additional economic impact studies before the cumulative rate of exports reach “the high end of export cases examined.” This approach will avoid delay in the review of applications for those applicants on the cusp of the “high end of export cases examined” that might otherwise have to wait until the additional studies are completed before the DOE/FE would be in a position to make a decision on the application.

Further, Excelerate requests that the DOE/FE clarify the cumulative rate of export for determining the “high end of export cases” is based on final authorizations. The DOE/FE has issued seven non-FTA export orders authorizing the export of LNG at a cumulative rate of 9.27 billion cubic feet per day (“Bcf/d”), with more than 26 Bcf/d of LNG exports requested in pending non-FTA applications. However, only one of the seven orders is a final order. The other six orders are conditioned on satisfactory completion of NEPA review and the DOE/FE’s public interest determination based on environmental impacts. In contrast to the 9.27 Bcf/d

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<sup>15</sup> Letter from Christopher Smith, DOE/FE, to Adam Sieminski, EIA, Request for an Update of EIA’s January 2012 Study of Liquefied Natural Gas Export Scenarios, <http://energy.gov/sites/prod/files/2014/05/f16/Request%20for%20Updated%20EIA%20Study.pdf> (May 29, 2014).

<sup>16</sup> Department of Energy - Office of Fossil Energy, DOE LNG Exports Announcements, <http://energy.gov/fe/doe-lng-exports-announcements-may-29-2014> (May 29, 2014).



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conditionally approved, “[t]o date, the Department has issued final authorization for export to non-FTA countries at a rate of 2.2 Bcf/d.”<sup>17</sup>

### **III. Conclusion**

The DOE/FE’s proposed procedures should provide applicants and other LNG export project stakeholders with greater regulatory certainty and not result in further delays in the processing of pending applications. To ensure that there is not “delayed action on applications that are otherwise ready to proceed,” pending applications should be processed concurrently with the FERC’s NEPA review such that DOE/FE is in a position to issue an authorization within 10 business days after the completion of NEPA review. Further, any additional economic impact studies that the DOE/FE believes are necessary to make a public interest determination on an application should be commissioned and undertaken before approved export authorizations approach the designated threshold. By doing so, the DOE/FE can provide applicants with greater regulatory certainty and avoid continued delays in the processing of applications.

Respectfully,

*/s/ Mike Trammel*

Mike Trammel  
*Excelerate Liquefaction Solutions I, LLC*

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<sup>17</sup> Department of Energy - Office of Fossil Energy, DOE LNG Exports Announcements, <http://energy.gov/fe/doe-lng-exports-announcements-may-29-2014> (May 29, 2014). Principal Deputy Assistant Secretary Christopher Smith repeated this assertion in a June 19, 2014 statement before the U.S. Senate Committee on Energy and Natural Resources.