

**United States of America**  
**Before the**  
**Department of Energy, Office of Fossil Energy**

**Kinder Morgan, Inc.’s Comments on DOE’s Proposed Changes to  
LNG Export Authorization Procedures**

On May 29, 2014, the Department of Energy’s (“**DOE**”) Office of Fossil Energy announced the availability for public review and comment a notice of “Proposed Procedures for Liquefied Natural Gas Export Decisions” (“**Proposed Procedures**”).<sup>1</sup> As explained in the Proposed Procedures, DOE proposes to suspend its current practice of issuing conditional export authorizations prior to final authorization decisions and only act on applications to export liquefied natural gas (“**LNG**”) from the lower-48 United States to non-Free Trade Agreement (“**FTA**”) countries under section 3 of the Natural Gas Act (“**NGA**”)<sup>2</sup> when such applications are “ready for final action” after the review required by the National Environmental Policy Act (“**NEPA**”)<sup>3</sup> has been completed. Kinder Morgan, Inc. (“**Kinder Morgan**”) respectfully submits these comments on the Proposed Procedures.

Kinder Morgan generally supports DOE’s attempt to expedite its consideration of LNG export applications in recognition of the tremendous supplies of natural gas being produced in excess of informed estimates of domestic demand. Kinder Morgan does, however, recommend that DOE clarify, in several significant areas, the steps it intends to take when processing LNG export applications under the Proposed Procedures. Specifically, Kinder Morgan requests that DOE make the following clarifications to the Proposed Procedures:

---

<sup>1</sup> Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32,261 (June 4, 2014).

<sup>2</sup> 15 U.S.C. § 717b (2012).

<sup>3</sup> 42 U.S.C. §§ 4321, *et seq.*

1. DOE should clarify that, when the Federal Energy Regulatory Commission (“**FERC**”) (or another agency) is the lead agency for the purposes of NEPA review, DOE will continue to be a cooperating agency, that it will rely upon FERC’s (or the other agency’s) NEPA review, and that it will not conduct additional or supplemental review under NEPA after publication of the final Environmental Impact Statement (“**EIS**”) by FERC (or the other agency).
2. DOE should clarify that, when FERC (or another agency) prepares an EIS for a project, DOE will deem the NEPA review process to have been completed 30 days after the publication of the final EIS, regardless of whether a party to the FERC proceeding seeks rehearing at FERC or whether there is an appellate challenge to the EIS or FERC order.
3. With respect to projects for which FERC (or another agency) issues an Environmental Assessment (“**EA**”) with a Finding of No Significant Impact (“**FONSI**”), DOE should clarify whether DOE will issue a separate FONSI. To the extent DOE intends to do so, DOE should clarify that it: (i) will rely upon FERC’s (or the other agency’s) EA, and the extensive record developed by such agency, when considering whether to issue its own FONSI; (ii) will not conduct subsequent NEPA review proceedings of the project to make such determination; (iii) will issue its own FONSI for the project no later than 30 days after the publication of the EA by FERC (or other agency) regardless of whether a party to the FERC proceeding seeks rehearing at FERC or whether there is an appellate challenge to the EA; and (iv) will deem the NEPA review process complete upon issuance of its FONSI.

4. DOE should clarify that, to the extent FERC (or another agency) determines that the project is eligible for a categorical exclusion (e.g., an exclusion for minor operational changes to a facility), DOE will adopt FERC's (or the other agency's) determination and do so within 30 days of issuance of FERC's (or the other agency's) determination.
5. DOE should clarify that the Proposed Procedures do not substantively change the factors that DOE traditionally has considered in assessing whether a proposed export project is in the public interest.
6. DOE should commit to make its public interest determination and to issue an order on the proposed export authorization pursuant to NGA section 3 no later than 30 days after the NEPA review process has been deemed complete unless DOE demonstrates extraordinary circumstances that would warrant the exercise of authority under section 16 of the NGA<sup>4</sup> or of DOE's retained site disapproval authority, preventing DOE from meeting this deadline.<sup>5</sup>

The clarifications proposed by Kinder Morgan will ensure that:

1. the NEPA review process is deemed complete within 30 days following publication of the final EIS or EA by FERC (or another agency) or within 30 days of the determination that the project is eligible for a categorical exclusion by FERC (or another agency);

---

<sup>4</sup> 15 U.S.C. § 717o.

<sup>5</sup> Redefinition Order No. 00-002.04F to the Assistant Secretary for Fossil Energy, § 1.3.A.2. (July 11, 2013), <https://www.directives.doe.gov/delegations-documents/002.004F> [hereinafter *Redefinition Order No. 00-002.04F*].

2. if DOE determines to issue its own EA it will do so within 30 days after publication of the EA by FERC (or another agency) and the NEPA review process will be deemed complete at that time; and
3. DOE will issue its public interest determination and an order on the proposed export authorization no later than 30 days after the NEPA review process has been deemed complete as described above, unless DOE demonstrates extraordinary circumstances that would warrant the exercise of authority under section 16 of the NGA or of DOE's retained site disapproval authority.

These clarifications are essential to provide investors a reasonable level of regulatory certainty regarding: (1) the timeframe in which DOE will act on an application; and, (2) the nature and extent of additional substantive review that DOE will apply to an application after the NEPA process has been completed by FERC. Regulatory certainty is necessary because the construction of facilities related to the liquefaction and export project already will have been the subject of several years of regulatory review and analysis which may cost the developer of a liquefaction and export project millions of dollars.<sup>6</sup> By providing the clarifications requested below, DOE will foster the regulatory environment necessary to support the substantial capital investments required to develop LNG export terminals as well as the related transportation infrastructure necessary to deliver the natural gas to the liquefaction facilities. In the absence of such clarification, developers of LNG export terminals and related transportation infrastructure will lack the definitive procedural guidance necessary to sustain the continued investment of

---

<sup>6</sup> Indeed, a project sponsor may invest significant capital even prior to construction just to get through the permitting process, sometimes spending \$50,000,000 or more.

millions of dollars of capital required to deliver significant natural gas to the liquefaction and export facilities.

### **Introduction**

Kinder Morgan is the largest natural gas midstream services provider and fourth-largest energy company in North America. Kinder Morgan owns and operates two LNG import terminals: the Elba Island LNG Terminal, near Savannah, Georgia, and the Gulf LNG Terminal, near Pascagoula, Mississippi. Kinder Morgan and its affiliates are currently seeking authority from the FERC to construct liquefaction and export facilities at these terminals and authority from DOE to export LNG from these terminals to non-FTA countries. Kinder Morgan also owns and operates 68,000 miles of natural gas transportation facilities operating in both interstate and intrastate commerce that connect directly and indirectly to virtually all of the nation's existing or proposed LNG terminals.<sup>7</sup> Kinder Morgan therefore has significant interest in the DOE's Proposed Procedures and its review of requests for LNG export authorization to non-FTA nations.

Developers of LNG export facilities face considerable regulatory hurdles and must expend substantial resources prior to obtaining the authority to export LNG. For LNG terminals located onshore or in state waters, the applicant must obtain approval from FERC, which under section 3(e) of the NGA has “exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.”<sup>8</sup> For these approvals, FERC is the “lead agency for the purposes of coordinating all applicable Federal authorizations and for the

---

<sup>7</sup> See Attachment A (depicting the connections of Kinder Morgan's gas pipeline grid to planned LNG export terminals).

<sup>8</sup> 15 U.S.C. § 717b(e)(1).

purposes of complying with [NEPA]”<sup>9</sup> and DOE acts as a cooperating agency for FERC’s review of the proposed LNG export facilities.

Proposed exporters, commonly project developers, also must receive approval from DOE for authority to export domestically produced LNG to both FTA and non-FTA nations. However, the authorizations for exports to non-FTA countries require specific findings not already encompassed in an effective FTA or other statutory authority. Section 3(a) of the NGA sets forth DOE’s standard of review for applications for authorization to export LNG to non-FTA nations:

[N]o 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] authorizing it to do so. The [Secretary] shall issue such order upon application, unless, after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary’s] order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate . . . .<sup>10</sup>

DOE appropriately recognizes that the NGA creates a rebuttable presumption that a proposed export of natural gas is in the public interest and that DOE must grant such an application unless there is an affirmative showing of inconsistency with the public interest.<sup>11</sup> Although NGA section 3(a) does not define “public interest,” DOE has identified certain factors to evaluate in reviewing an application for export authorization, including “economic impacts, international

---

<sup>9</sup> *Id.* § 717n(b)(1).

<sup>10</sup> *Id.* § 717b(a).

<sup>11</sup> *See, e.g., Jordan Cove Energy Project, L.P., DOE/FE Order No. 3413, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Jordan Cove LNG Terminal in Coos Bay, Oregon to Non-Free Trade Agreement Nations, at 6 (Mar. 24, 2014) [hereinafter *Jordan Cove Energy Project*].*

impacts, security of natural gas supply, and environmental impacts, among others.”<sup>12</sup> DOE’s public interest review, therefore, focuses on:

- (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with [DOE’s] policy of promoting market competition, and (iv) any other factors bearing on the public interest.<sup>13</sup>

To date, DOE has approved, either finally or conditionally, seven applications for non-FTA LNG export authorization comprising a total of 9.27 billion cubic feet per day (“**Bcf/d**”), based on this standard.<sup>14</sup> These approvals were issued under procedures in which DOE has processed non-FTA LNG export applications in order based on the following factors: (1) for applications in which the applicant obtained FERC approval to use the pre-filing process either on or before December 5, 2012, the order in which DOE received the application; (2) for applications in which the applicant had not obtained FERC approval to use the pre-filing process either on or before December 5, 2012, in the order in which the DOE received the application,

---

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (May 20, 2011), *final opinion and order*, DOE/FE Order No. 2961-A (Aug. 7, 2012) [hereinafter *Sabine Pass*]; *Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 3282, Order Conditionally Granting Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations (May 17, 2013), *order amending applications*, DOE/FE Order Nos. 2913-A, 3066-A, 3282-A (Feb. 7, 2014), *order amending orders*, DOE/FE Order Nos. 3282-B, 3357-A (June 6, 2014); *Lake Charles Exports, LLC*, DOE/FE Order No. 3324, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles LNG Terminal to Non-Free Trade Agreement Nations (Aug. 7, 2013); *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal to Non-Free Trade Agreement Nations (Sept. 11, 2013); *Cameron LNG, LLC*, DOE/FE Order No. 3391, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cameron LNG Terminal in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations (Feb. 11, 2014); *Jordan Cove Energy Project*, Order No. 3413.

and (3) for applications received by DOE after December 5, 2012, in the order the DOE received the application.<sup>15</sup> Under these criteria, DOE has considered non-FTA export applications based on their published order of precedence. Under its Proposed Procedures, DOE explains that it will no longer use the currently published order of precedence, but will act on applications in the order in which the applications become “ready for final action.”<sup>16</sup> DOE explains that an application is “ready for final action when DOE has completed the pertinent NEPA review process and when DOE has sufficient information on which to base a public interest determination.”<sup>17</sup> To determine this order, “an application will be deemed to have completed the NEPA review process” in one of three ways:

- (1) [f]or those projects requiring an EIS, 30 days after publication of a Final EIS,
- (2) for projects for which an EA has been prepared, upon publication by DOE of a [FONSI], or
- (3) upon a determination by DOE that an application is eligible for a categorical exclusion pursuant to DOE’s regulations implementing NEPA.<sup>18</sup>

DOE explains that it is proposing these changes for four reasons: (1) conditional decisions no longer appear necessary for FERC or the majority of applicants to devote resources to NEPA review; (2) doing so will prioritize acting upon applications that are otherwise ready to proceed; (3) doing so will facilitate decision-making informed by better and more complete information; and (4) doing so will better allocate agency resources.<sup>19</sup> With the following clarifications, Kinder Morgan supports DOE’s proposed new procedures as a way to provide

---

<sup>15</sup> DOE, Order of Precedence – non-FTA LNG Export Applications (last revised Mar. 24, 2014), at <http://energy.gov/fe/downloads/order-precedence-non-fta-lng-export-applications>.

<sup>16</sup> Proposed Procedures, 79 Fed. Reg. at 32,263.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



greater definition of how applications will be processed rather than relying on the arbitrary nature of the queuing process.

Kinder Morgan recommends that DOE clarify its proposal by explaining what it means by “completed the pertinent NEPA review process” and “sufficient information on which to base a public interest determination.” As explained in more detail below, this clarification is imperative to provide the regulatory certainty necessary to encourage the significant capital investment required for the development of LNG export capacity and natural gas transportation infrastructure. In this context, the large capital outlay necessary to comply with FERC’s environmental and engineering pre-filing and post-filing review process cannot be ignored. DOE should clarify that FERC is the lead agency for the purposes of NEPA review and that DOE will continue to be a cooperating agency. Further, DOE should clarify it will rely upon FERC’s NEPA review and will not conduct additional review under NEPA or require material amounts of additional information once the FERC NEPA process is complete through the issuance of a final EIS, EA, or categorical exclusion determination, absent extraordinary circumstances, compelling the exercise of authority under NGA section 16 or the exercise of DOE’s retained site disapproval authority.<sup>20</sup>

DOE’s non-FTA LNG export authorizations are critically important to Kinder Morgan and the entire U.S. natural gas industry. Export authorizations affect not only the viability of a particular LNG export terminal, but also the natural gas transportation facilities, including interstate and intrastate natural gas pipelines, necessary to support the LNG export project and domestic producers of natural gas. Due to the rapid and unprecedented shift in the domestic

---

<sup>20</sup> See *Redelegation Order No. 00-002.04F* § 1.3.A.2.

natural gas supply, pipeline companies are proposing and constructing substantial new pipeline infrastructure, including new pipeline transportation facilities, projects to reverse the flow of existing facilities, and new pipeline headers. As a result of its unmatched existing pipeline infrastructure, the United States is strategically positioned to develop an LNG export industry that is a leader in the world LNG market; however, a material amount of investment from project sponsors such as Kinder Morgan must be made to support this goal. The gains from such investment in the U.S. economy will be significant in creating jobs<sup>21</sup> and reducing the U.S. trade deficit.

The United States has the technological resources, abundant gas supplies, production capability, existing infrastructure, skilled workforce, and access to capital necessary to develop the requisite infrastructure and facilitate the growth of an LNG export industry. With these advantages, the United States can become a leader in the emerging global LNG market so long as DOE provides the necessary level of regulatory certainty and predictability that provides the proper signals to investors as well as international customers. Both investors and international customers require clear regulatory standards and procedures to gauge probabilities of securing regulatory authorizations in a predictable time frame and at predictable costs. Kinder Morgan applauds DOE for announcing, coincident with the announcement of the Proposed Procedures,

---

<sup>21</sup> While total annual average employment in all U.S. industries decreased by 3.7 million (2.7 percent) from 2007 to 2012, employment in the U.S. oil and natural gas industry increased by 135,084 (31.6 percent) over the same period. Dep't of Labor, Bureau of Labor Statistics, *Employment changes in the oil and natural gas industry, by state* (Apr. 4, 2014), at [http://www.bls.gov/opub/ted/2014/ted\\_20140404.htm](http://www.bls.gov/opub/ted/2014/ted_20140404.htm). The shale gas industry supported over 600,000 jobs in 2010, and predicted that figure to grow to 1.6 million by 2035. IHS Global Insight (USA) Inc., *The Economic and Employment Contributions of Shale Gas in the United States* (Prepared for America's Natural Gas Alliance) (Dec. 2011), available at <http://anga.us/media/content/F7D1750E-9C1E-E786-674372E5D5E98A40/files/shale-gas-economic-impact-dec-2011.pdf>.

that it plans to undertake an economic study regarding the impacts of potential U.S. LNG exports between 12 and 20 Bcf/d.<sup>22</sup> Kinder Morgan encourages DOE to complete and publish the results of such study as expeditiously as possible since the results of such study will provide additional regulatory certainty and predictability to the marketplace.

**A. Overview of Kinder Morgan**

Kinder Morgan is the largest natural gas midstream services provider and fourth-largest energy company in North America, with a combined enterprise value of approximately \$110 billion. Through its consolidated subsidiaries, Kinder Morgan owns an interest in or operates over 80,000 miles of pipelines that transport natural gas, refined petroleum products, crude oil, condensate, carbon dioxide, and other products, approximately 68,000 miles of which are interstate and intrastate natural gas pipelines. Kinder Morgan also owns or has interests in, storage, treating, and processing facilities through which natural gas is stored, treated, processed, and sold. Kinder Morgan's natural gas pipeline grid is connected to every major natural gas resource play in the United States, including the Eagle Ford, Marcellus, Utica, Uinta, Haynesville, Fayetteville, Barnett, and Rocky Mountain formations. Kinder Morgan's major pipelines include El Paso Natural Gas Company, L.L.C.; Fayetteville Express Pipeline LLC; Florida Gas Transmission Company; Kinder Morgan Louisiana Pipeline LLC; Kinder Morgan Texas Pipeline Company LLC; Midcontinent Express Pipeline LLC; Natural Gas Pipeline Company of America LLC; Ruby Pipeline, L.L.C.; Southern Natural Gas Company, L.L.C.;

---

<sup>22</sup> DOE, *A Proposed Change to the Energy Department's LNG Export Decision-Making Procedures*, at Economic Impact Study (May 29, 2014) ("**DOE Proposed Change**"), at <http://energy.gov/articles/proposed-change-energy-departments-lng-export-decision-making-procedures>.

Kinder Morgan Tejas Pipeline LLC; Tennessee Gas Pipeline Company, L.L.C. (“**Tennessee Gas Pipeline**”); and numerous other transmission and midstream related assets.

With its unparalleled scope of natural gas transportation infrastructure, Kinder Morgan is poised to play an integral role in the development of the LNG export capability of the United States. Kinder Morgan’s interstate pipelines are uniquely positioned to provide the transportation of natural gas supplies produced across the United States to LNG terminals on the East Coast, Gulf Coast, and West Coast, for liquefaction and export. In addition to connecting directly to its own LNG terminals, Kinder Morgan’s pipeline system directly and indirectly connects to virtually all of the nation’s existing or proposed LNG terminals.<sup>23</sup> Kinder Morgan’s Tennessee Gas Pipeline alone has the potential to serve 9 Bcf/d of transportation demand from five announced LNG liquefaction projects.<sup>24</sup>

Additionally, Kinder Morgan has the financial capability to expand upon its existing infrastructure to connect to authorized and proposed LNG export terminals. Since its inception in 1997, Kinder Morgan has invested over \$42 billion in expansions, new-build projects, joint ventures, and acquisitions to grow the company. Kinder Morgan has accessed capital markets for these investments and has continually maintained the confidence of the capital markets.

---

<sup>23</sup> See Attachment A (depicting the connections of Kinder Morgan’s gas pipeline grid to planned LNG export terminals).

<sup>24</sup> Tom Martin, Kinder Morgan 2014 Analysts Conference, *Natural Gas Pipelines*, at 9 (Jan. 29, 2014), available at [http://www.kindermorgan.com/investor/presentations/2014\\_Analysts\\_Conf\\_02\\_NaturalGas.pdf](http://www.kindermorgan.com/investor/presentations/2014_Analysts_Conf_02_NaturalGas.pdf).

Expansion of natural gas infrastructure is fundamental to Kinder Morgan's growth plans, with \$4.1 billion of planned investment in new natural gas infrastructure over the next five years.<sup>25</sup>

Developing the pipeline facilities necessary to provide access to LNG export terminals is a critical element of Kinder Morgan's planned investment in new gas infrastructure. As such, DOE's procedures for review of applications for LNG exports affect Kinder Morgan both as the owner of LNG terminals as well as the operator of extensive and dynamic pipeline systems. Kinder Morgan therefore has a direct and unique interest in ensuring that DOE's Proposed Procedures lead to a transparent, predictable, and expeditious process for the permitting of LNG exports.

**B. Kinder Morgan's Proposed LNG Export Projects**

Kinder Morgan has proposed to install liquefaction and export capabilities at its two existing LNG import terminals: the Elba Island LNG Terminal and the Gulf LNG Terminal. The construction and operation of these "brownfield" projects at existing terminals, described below, will result in acceptable additional environmental impacts and will provide substantial public benefits.

*1. Elba Island LNG Terminal*

Southern LNG Company, L.L.C., ("**SLNG**"), a subsidiary of El Paso Pipeline Partners, L.P. ("**EPB**"), of which Kinder Morgan is the general partner, owns the Elba Island LNG Terminal, located in Chatham County, Georgia. SLNG was authorized by the Federal Power Commission (predecessor to FERC) in 1972 to construct and operate the Elba Island LNG

---

<sup>25</sup> David Michels, Kinder Morgan, JPMorgan 3rd Annual Energy Infrastructure/MLP 1x1 Corporate Access Day Presentation, *Companies Run by Shareholders, for Shareholders*, at 10-11, (June 12, 2014), available at [http://www.kindermorgan.com/investor/presentations/0612\\_JPM\\_%28DM%29.pdf](http://www.kindermorgan.com/investor/presentations/0612_JPM_%28DM%29.pdf).

Terminal to import LNG from Algeria, and to regasify and transport the revaporized LNG on interstate pipelines to domestic markets.<sup>26</sup> SLNG currently imports LNG for storage and revaporization using two LNG carrier berths, five LNG storage tanks, vaporization capacity, sendout facilities, and other associated infrastructure. The Elba Island LNG Terminal currently has 11.5 Bcf of storage capacity, with 1.76 Bcf/d of peak vaporization and sendout capacity.

SLNG has received authorization from the DOE to export up to 0.5 Bcf/d of LNG by vessel from the Elba Island LNG Terminal to FTA Nations,<sup>27</sup> and has filed an application with DOE for authorization to export up to 0.5 Bcf/d of LNG to non-FTA Nations.<sup>28</sup> In conjunction with Elba Liquefaction Company, L.L.C. (“**ELC**”), which is owned by Kinder Morgan subsidiary Southern Liquefaction Company, and Shell US Gas & Power LLC, SLNG has sought authorization from FERC to modify the existing Elba Island LNG Terminal to allow for exports, and bi-directional service capable of both imports and exports of LNG.<sup>29</sup> ELC plans to construct and operate a natural gas liquefaction facility comprised of up to ten Movable Modular Liquefaction Systems units to prepare the LNG for export. A critical component of that plan is the expansion of Kinder Morgan subsidiary Elba Express Company, L.L.C.’s (“**EEC**”) Elba Express Pipeline to feed the planned liquefaction and export facilities. An application by EEC is

---

<sup>26</sup> *Columbia LNG Corp.*, Opinion No. 622, 47 FPC 1624, *opinion & order on reh’g*, Opinion No. 622-A, 48 FPC 723 (1972), *vacated and remanded by*, *S. Natural Gas Co. v. FPC*, 491 F.2d 651 (5th Cir. 1974), *order on remand*, *S. Energy Co.*, Opinion No. 786, 57 FPC 354 (1977).

<sup>27</sup> *S. LNG Co.*, DOE/FE Order No. 3106, Order Granting Long-Term Multi-Contract Authorization To Export Liquefied Natural Gas by Vessel from the Elba Island Terminal to Free Trade Agreement Nations (June 15, 2012).

<sup>28</sup> Southern LNG Company, L.L.C., Application for Long-Term Authorization to Export Liquefied Natural Gas Produced from Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-Year Period, DOE/FE Docket No. 12-100-LNG (Aug. 31, 2012).

<sup>29</sup> Application of Elba Liquefaction Co., L.L.C. and Southern LNG Co., L.L.C. for Authorization Under Section 3 of the NGA and Application of Southern LNG Co., L.L.C. for Abandonment under Section 7 of NGA, FERC Docket No. CP14-103-000 (Mar. 10, 2014).

currently pending before FERC, as well.<sup>30</sup> Indeed, ELC, SLNG, and EEC have completed the FERC’s pre-filing process in which they have positively engaged stakeholders in support of the three components—the construction and operation of liquefaction and export facilities at the Elba Island LNG Terminal, reconfiguration of existing pipeline facilities to allow for dedicated send-in capacity to the terminal, and the expansion and modification of the Elba Express Pipeline—related to the Elba Liquefaction Project.

## 2. *Gulf LNG Terminal*

The Gulf LNG Terminal, located in Jackson County, Mississippi, is owned by Gulf LNG Holdings Group (“**Gulf LNG Holdings**”), which is held 50% by Southern Gulf LNG Company, LLC, a subsidiary of EPB, in which Kinder Morgan is the general partner, 38% directly and indirectly by GE Energy Financial Services (a unit of General Electric Company), and 12% indirectly by other investors. The Gulf LNG Terminal was placed in service in 2011 as an LNG import terminal and consists of a single marine berth, two storage tanks with approximately 6.6 Bcf of storage capacity, 1.5 Bcf/d of peak vaporization and sendout capacity, and approximately five miles of 36-inch send-out pipeline extending to interconnections with several interstate pipelines.<sup>31</sup>

---

<sup>30</sup> Application of Elba Express Company, L.L.C. for a Certificate of Public Convenience and Necessity under Section 7 of NGA, FERC Docket No. CP14-115-000 (Mar. 21, 2014).

<sup>31</sup> Application of Gulf LNG Liquefaction Co., LLC for Long-Term Authorization to Export Liquefied Natural Gas to Free Trade Agreement Countries, DOE/FE Docket No. 12-47-LNG, at 6 (May 2, 2012). Gulf LNG connects to the Gulfstream, Destin, Florida Gas Transmission and Transcontinental pipelines.

Gulf LNG Holdings has received authorization from the DOE to export up to 1.5 Bcf/d of LNG by vessel from the Gulf LNG Terminal to FTA Nations,<sup>32</sup> and has filed an application with the DOE for authorization to export up to 1.5 Bcf/d of LNG to non-FTA Nations.<sup>33</sup> Gulf LNG Holdings currently is participating in the FERC pre-filing process to engage stakeholders and commence the NEPA approval process in order to gain authorization to construct and operate natural gas processing, liquefaction, and export facilities at the Gulf LNG Terminal.<sup>34</sup>

**C. Kinder Morgan Recommends Clarification of DOE's Proposed Procedures**

1. *Regulatory certainty is essential to encourage the significant capital investment necessary for the continued development of LNG export and natural gas transportation infrastructure.*

Without pre-judging a particular application, DOE should ensure that its revised procedures maximize regulatory certainty and efficiency. Uncertainty in the permitting process will hamper investment in LNG export projects, which inherently have long lead times and require substantial capital investment.<sup>35</sup>

Regulatory certainty will increase the United States' ability to compete with potential LNG exporters in other nations for access to the global LNG market. The U.S. Energy

---

<sup>32</sup> *Gulf LNG Liquefaction Co.*, DOE/FE Order No. 3104, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Gulf LNG Energy, LLC Terminal to Free Trade Agreement Nations (June 15, 2012).

<sup>33</sup> Application of Gulf LNG Liquefaction Co., LLC for Long-Term Authorization, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Countries, DOE/FE Docket No. 12-101-LNG (Aug. 31, 2012).

<sup>34</sup> Letter to Gulf LNG Liquefaction Co., L.L.C., Approval to Initiate the Commission's Pre-Filing Process for the GLLC Liquefaction Project, FERC Docket No. PF13-4-000 (May 21, 2014).

<sup>35</sup> On average, a LNG liquefaction project takes at least 40 months to construct after all of the FERC and other permit approvals have been obtained.



Information Administration recently noted the rise in liquefaction capacity worldwide,<sup>36</sup> and a recent survey by ICF International indicates that approximately 49.6 Bcf/d of new liquefaction capacity could come online outside of the United States by 2025.<sup>37</sup> Non-FTA LNG export authorizations for over 35 Bcf/d of exports have been requested from DOE.<sup>38</sup> With projections of world demand for LNG ranging from 50 to 65 Bcf/d by 2025, global LNG supply may exceed demand.<sup>39</sup> An efficient and transparent permitting process is necessary to strengthen U.S. companies' ability to compete successfully for global LNG market share in a timely manner.

In response to the concerns of government officials and industry representatives, legislation recently passed by the U.S. House of Representatives,<sup>40</sup> and under consideration in the Senate,<sup>41</sup> aims to address perceived uncertainty surrounding DOE's current process for evaluating and approving LNG export proposals. These bills would expedite the deadlines for DOE's decisions concerning proposed LNG export applications. In support of the recently passed bill in the House of Representatives, the Report of the House Committee on Energy and Commerce stated that "LNG facilities will have difficulty securing financing in an uncertain

---

<sup>36</sup> See U.S. Energy Information Administration, International Energy Outlook 2013, at Table 8 (July 25, 2013), available at <http://www.eia.gov/forecasts/ieo/table8.cfm>

<sup>37</sup> ICF International, Webinar, *The Economics of U.S. LNG Exports: Policy, Process and Politics* (Feb. 14, 2012) (estimate as of Dec. 2012) (cited in Comments of the American Petroleum Institute on DOE/FE 2012 LNG Export Study (Jan. 23, 2013), available at [http://www.api.org/policy-and-issues/~media/Files/News/2013/13-January/API\\_Comments-DOE\\_2012\\_LNG\\_Export\\_Study.pdf](http://www.api.org/policy-and-issues/~media/Files/News/2013/13-January/API_Comments-DOE_2012_LNG_Export_Study.pdf)) ("**API Comments**").

<sup>38</sup> DOE, Long Term Applications Received by DOE/FE to Export Domestically Produced LNG from the Lower-48 States (June 2014), <http://energy.gov/sites/prod/files/2014/06/f16/Summary%20of%20LNG%20Export%20Applications.pdf>.

<sup>39</sup> API Comments at 16.

<sup>40</sup> Domestic Prosperity and Global Freedom Act, H.R. 6, 113th Cong. (2014).

<sup>41</sup> Natural Gas Export Promotion Act of 2014, S. 2494, 113th Cong. (2014).

regulatory environment,” and that an expedited approval process would bring about greater certainty, thereby strengthening U.S. LNG facilities against international competition.<sup>42</sup>

In announcing the issuance of the Proposed Procedures, Principal Deputy Assistant Secretary for Fossil Energy, Christopher Smith, recognized the importance of regulatory certainty to project proponents explaining “[DOE’s] practice of issuing conditional authorizations to export LNG to non-FTA countries was designed to provide *regulatory certainty* before project sponsors and [FERC] spend significant resources for the review of export facilities required by environmental laws and regulations that are included in the NEPA review.”<sup>43</sup> Kinder Morgan generally agrees that market participants are “willing[ ] to dedicate the resources needed for their NEPA review prior to receiving . . . authorizations from [DOE].”<sup>44</sup> However, that general agreement presupposes greater certainty and clarity from DOE to support the significant investment of capital in LNG export facilities and upstream natural gas transportation infrastructure to move natural gas to the proposed terminals.

Kinder Morgan supports DOE’s proposal to prioritize LNG export applications that are “ready for final action” and when DOE has sufficient information on which to base a “public interest determination.” But that proposal should be given concrete form so that its meaning is not left uncertain. Uncertainty in the permitting process could deter customers from committing to the liquefaction and export service. International customers, in particular, that are less familiar with the permitting regulations of the United States could become reluctant to sign firm

---

<sup>42</sup> H.R. Rep. 113-477, at 3 (June 19, 2014).

<sup>43</sup> DOE Proposed Change at Proposed Procedural Change, <http://energy.gov/articles/proposed-change-energy-departments-lng-export-decision-making-procedures> (emphasis added).

<sup>44</sup> *Id.*

contracts if the DOE's rules are not certain. Recognizing the considerable effort and capital that applicants are required to expend to undergo the FERC environmental and engineering review process, Kinder Morgan agrees that completion of the "pertinent NEPA review process" can serve as a reliable indicator of project viability, so long as DOE undertakes a rational and efficient approach to reviewing the public interest after the FERC NEPA process has been completed.<sup>45</sup> Kinder Morgan therefore recommends that DOE clarify its Proposed Procedures to provide greater definition and predictability to provide the appropriate signals for investment in LNG export-related projects and confidence on the part of international customers.

The proposed changes eliminate the regulatory options currently available for LNG export project developers. Under the current order of precedence procedures, an applicant may elect to pursue an export authorization from DOE prior to, or in tandem with, FERC's capital intensive pre-filing, advanced engineering, and NEPA process. This choice allows the LNG export applicant the flexibility to pursue the regulatory path that suits its project timeline, capital demands, and contract requirements. DOE's changes in its Proposed Procedures will now require applicants to expend the substantial capital required by the FERC process before knowing how DOE will rule with respect to the public interest test of section 3 of the NGA.

By removing an applicant's option to choose its own regulatory path and receive a conditional finding from DOE that its proposal is likely to be consistent with the public interest, DOE is injecting additional uncertainty as well as mandating development expenditures in the

---

<sup>45</sup> Other indicators of project viability, however, could be the completion of the FERC pre-filing process, the purpose of which is to engage stakeholders and other permitting agencies to determine the feasibility of the project from a permitting standpoint and assist FERC with prosecuting its NEPA review; or the issuance of a comprehensive Draft EIS or Notice of EA, which indicates that the project is in its final permitting stages.

regulatory process. Coupling the substantial additional investment with uncertainty will create significantly more investment risk unless DOE provides a clear signal that its subsequent public interest review will be a rational and efficient process and that applicants will not have to repeat or substantially encounter a second or duplicative review of their projects. While DOE's statement is true that project sponsors are contributing a significant investment in projects in order to obtain NEPA review without final DOE endorsement, it is not likely that an applicant would invest the billions of dollars necessary for actual construction of the facilities prior to receipt of DOE approval. Therefore, it is imperative that DOE's determination be made as soon as feasible after the NEPA review is complete. Typically, project developers desire to mobilize their contractors as quickly as possible after the FERC Order is issued, and an extended delay of DOE authorization would have a direct and negative effect on the project timing. To help moderate the increased uncertainty for project developers—who expend considerable economic resources during the FERC review process—Kinder Morgan believes that it is imperative for DOE to clarify the following points from its Proposed Procedures.

2. *DOE should clarify what it means by “completed the pertinent NEPA review process.”*

It is not clear from the Proposed Procedures how DOE intends to proceed once an application is ready for final action “when DOE has completed the pertinent NEPA review process.”<sup>46</sup> As required by section 15 of the NGA, FERC is the lead agency for the purposes of NEPA review for all proposed projects located onshore and within state waters.<sup>47</sup> DOE's Proposed Procedures recognize that most of the non-FTA applications before DOE have also

---

<sup>46</sup> Procedures Notice, 79 Fed. Reg. at 32,263.

<sup>47</sup> 15 U.S.C. § 717n(b)(1).

initiated the NEPA review process at FERC, seeking parallel authorizations at both FERC and DOE, and that 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>48</sup> DOE should clarify that when FERC is the lead agency for the purposes of NEPA review, DOE will continue to be a cooperating agency. The Council on Environmental Quality’s NEPA regulations provide that, as a cooperating agency, DOE has the opportunity to participate fully in the preparation of FERC’s comprehensive NEPA review.<sup>49</sup> FERC’s NEPA review will thus provide DOE all of the information that DOE requires to “fulfill[ ] its duty to examine environmental factors as a public interest consideration under the NGA.”<sup>50</sup> Accordingly, DOE should clarify that it will rely upon FERC’s NEPA review, and that DOE will not need to conduct additional or supplemental review under NEPA once FERC’s process is complete. This clarification would be consistent with existing FERC policy on interagency coordination under NEPA.<sup>51</sup>

The Proposed Procedures identify three possible NEPA review processes that, if fulfilled, would render an application ready for final action: (1) 30 days after publication of a final EIS,

---

<sup>48</sup> Procedures Notice, 79 Fed. Reg. at 32,262.

<sup>49</sup> See 40 C.F.R. § 1501.6 (2013) (Lead agencies must: “(1) [r]equest the participation of each cooperating agency in the NEPA process at the earliest possible time, (2) [u]se the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency, [and] (3) [m]eet with a cooperating agency at the latter’s request.” Cooperating agencies must “(1) [p]articipate in the NEPA process at the earliest possible time, (2) [p]articipate in the scoping process . . . . (3) [a]ssume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise, (4) [m]ake available staff support at the lead agency’s request to enhance the latter’s interdisciplinary capability, and (5) [n]ormally use its own funds.”).

<sup>50</sup> *Sabine Pass*, Order No. 2961-A at 27.

<sup>51</sup> See, e.g., Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (May 2002), available at <http://www.ferc.gov/legal/mou/mou-20.pdf>.

(2) upon publication by DOE of a FONSI for projects for which an EA has been prepared, or (3) upon a determination by DOE that an application is eligible for a categorical exclusion.<sup>52</sup>

Further clarification is necessary for each of these options.

For the first track where FERC (or another agency) prepares an EIS, DOE should clarify that the NEPA review process will be deemed complete 30 days after publication of the final EIS, regardless of which agency publishes the final EIS. Read in conjunction with the statement in the Proposed Procedures that states “[a]n application is ready for final action when DOE has completed the pertinent NEPA review process,”<sup>53</sup> the Proposed Procedures are ambiguous as to whether DOE intends to publish its own EIS after FERC has already published one applicable to the relevant project. DOE should clarify that this statement does not mean that DOE will perform its own environmental review or issue its own environmental document or require extensive follow-up information from the applicant, much of which inherently would be duplicative of the information already on record in the FERC proceeding, but that DOE will rely upon the EIS prepared by FERC. The basis for using the FERC-prepared EIS is supported by the fact that DOE can be assured that the FERC examination is complete and robust<sup>54</sup> and that the parties that may have objections to the project on environmental grounds would have been given the opportunity to participate fully in the FERC proceeding.

Further, a second DOE-issued EIS inherently will take additional time because of the notice and comment period required. Changing the scope of the EIS could cause more comments to be reconciled and more delay. Even if DOE did not intend to raise new or

---

<sup>52</sup> Procedures Notice, 79 Fed. Reg. at 32,263.

<sup>53</sup> *Id.*

<sup>54</sup> *See* 18 C.F.R. pt. 380.

supplemental issues to, or to change the scope of, the FERC EIS by issuing its own EIS, the notice and comment period obligations will cause delay to the approval process. Finally, having two orders on the same subject matter increases the possibility of confusion or contradiction in the orders, and such inconsistencies, even if unintentional, could create additional grounds for judicial review to resolve the conflict. Except to have a chilling effect on the DOE application process, there is no reason to provide objecting parties a second bite at the apple or to create opportunities for forum shopping when the objectors' concerns would have already been vetted and addressed during the FERC proceeding.

Furthermore, DOE should clarify that the 30-day period applies regardless of whether a party to the FERC proceeding seeks rehearing at FERC or whether there is an appellate challenge to the EIS. Under NGA section 3, a request for rehearing does not normally stay the effectiveness of the order or halt the proceeding.<sup>55</sup> Likewise, a pending petition for review in a federal Court of Appeals of a FERC action does not automatically operate as a stay of FERC's orders.<sup>56</sup> As previously referenced, legislation passed in the House of Representatives with bipartisan support and similar legislation introduced in the Senate propose a similar timeline for DOE action on a non-FTA application.<sup>57</sup>

The second alternative basis for determining when DOE will consider an application "ready for final action" is after DOE publishes a FONSI for projects requiring an EA to be issued. DOE should clarify the steps it will take to issue a FONSI following issuance of an EA by FERC. For example, typical FERC practice is for FERC Staff to recommend a FONSI as part

---

<sup>55</sup> 15 U.S.C. § 717r(c).

<sup>56</sup> *Id.*

<sup>57</sup> H.R. 6, 113th Cong. (2014); S. 2494, 113th Cong. (2014).

of the EA. If FERC authorizes the proposed project, it either adopts or modifies the findings of the EA and issues the FONSI in its order authorizing the project.<sup>58</sup> Therefore, FERC typically would be the agency issuing the FONSI, not DOE. Kinder Morgan recognizes that under its current procedures, DOE has issued its own FONSI based on a FERC EA for a non-FTA LNG export authorization prior to issuing a final order.<sup>59</sup> In light of the designation of FERC, in section 15 of the NGA, as the lead agency for environmental reviews,<sup>60</sup> the necessity or even the desirability of DOE issuing its own FONSI seems questionable and burdensome to both DOE and the applicant.

DOE's statement that it will consider a non-FTA LNG export application ready for final action following the DOE publication of a FONSI requires clarification. DOE should clarify (1) whether DOE intends to issue a FONSI in every instance where FERC has prepared an EA and, if so, (2) when DOE will issue its FONSI in relation to the FERC EA and the FERC order authorizing the proposed project. Kinder Morgan submits that there is no benefit, much less a legal requirement, for DOE to issue a duplicate FONSI.<sup>61</sup> However, if DOE insists on doing so, it should issue its own FONSI no later than 30 days after FERC issues an EA, regardless of

---

<sup>58</sup> See *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 46, *reh'g denied*, 140 FERC ¶ 61,076 (2012).

<sup>59</sup> See Finding of No Significant Impact for Sabine Pass Liquefaction, LLC Regarding Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, DOE/FE Docket No. 10-111-LNG (Aug. 7, 2012).

<sup>60</sup> See 15 U.S.C. § 717n(b)(1).

<sup>61</sup> The FERC EA associated with a LNG liquefaction project is an exceedingly thorough and extensive document. See, e.g., Environmental Assessment for the Sabine Pass Liquefaction Project, FERC Docket No. CP11-72-000 (Dec. 28, 2011). Applicants at FERC have the obligation to submit to FERC the same detailed environmental resource reports in the case of FERC submission of an EA or an EIS. Therefore, there is no bona fide reason to distinguish the process of DOE accepting FERC's EIS or a FERC FONSI in conjunction with an EA.



whether a party seeks rehearing at FERC or whether there is a judicial challenge to the EA.<sup>62</sup> DOE also should clarify that it –

1. will rely upon FERC’s EA, and the extensive record developed at FERC, when considering whether to issue a FONSI;
2. will not conduct subsequent NEPA review proceedings of the project requiring supplemental or duplicative information from the applicant to make such independent FONSI determination; and
3. will not challenge FERC’s decision to issue an EA instead of a draft EIS, absent extraordinary circumstances compelling the exercise of authority under section 16 of the NGA<sup>63</sup> or the exercise of DOE’s retained site disapproval authority.<sup>64</sup>

Finally, with regards to the third situation in which a DOE application is ready for final action upon a determination by DOE that the project is eligible for a categorical exclusion under DOE’s regulations, Kinder Morgan recommends that DOE clarify that if FERC determines the project is eligible for a categorical exclusion, e.g., an exclusion for minor operational changes to a facility, DOE will adopt FERC’s determination.<sup>65</sup>

---

<sup>62</sup> As noted above, requests for rehearing or pending petitions for review do not stay the effectiveness of the order or halt the proceeding. *See* 15 U.S.C. § 717r(c).

<sup>63</sup> 15 U.S.C. § 717o.

<sup>64</sup> *See Redelegation Order No. 00-002.04F* § 1.3.A.2.

<sup>65</sup> *See* 10 C.F.R. pt. 1021, subpt. D, App. B5.7 (DOE regulations provide for a categorical exclusion from NEPA for “[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the [NGA] that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”).

3. *DOE should clarify what it means by “sufficient information on which to base a public interest determination.”*

DOE states that in addition to completing an environmental review, in order for an application to be “ready for final action,” DOE must have “sufficient information on which to base a public interest determination.”<sup>66</sup> Again, this language is troublesome because it does not make clear what information DOE would deem “sufficient” in order to make its public interest determination. Therefore, DOE should provide clear notice to applicants and other parties what information, beyond the information in the NEPA analysis, is “sufficient” to allow DOE to make its public interest determination with respect to that particular application. DOE currently considers the following factors in determining whether an application is in the public interest:

- (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with [DOE’s] policy of promoting market competition, and (iv) any other factors bearing on the public interest.<sup>67</sup>

DOE should clarify that there will be no substantive change to the factors that DOE considers in assessing the public interest of a proposed export application and that DOE will continue to focus on the factors listed above.

Finally, Kinder Morgan recommends that DOE commit to making its public interest determination and to issuing an order on the export authorization not later than 30 days after the pertinent NEPA review process has been deemed complete as described previously. The 30-day period should provide DOE ample time to complete its review of the remaining (non-environmental) factors in order to determine whether a proposed export application is in the public interest.

---

<sup>66</sup> Procedures Notice, 79 Fed. Reg. at 32,263.

<sup>67</sup> *Jordan Cove Energy Project*, Order No. 3413 at 8.

## **Conclusion**

Kinder Morgan submits these comments generally supporting DOE's Proposed Procedures, and respectfully recommends that DOE clarify certain points in its Proposed Procedures, as explained above, in order provide a greater degree regulatory certainty and predictability in the LNG export and natural gas market.

Respectfully Submitted,

/s/ Thomas A. Martin

Thomas A. Martin

President, Natural Gas Pipelines

Kinder Morgan, Inc.

1001 Louisiana

Houston, Texas 77002

(713) 369-8957

# ATTACHMENT A

