



1001 McKinney, Suite 400
Houston, Texas 77002

One Lakeshore Drive, Suite 1810
Lake Charles, Louisiana 70629

July 21, 2014

Mr. John Anderson
U.S. Department of Energy (FE-34)
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
Forrestal Building
Room 3E-042
1000 Independence Avenue, S.W.
Washington, DC 20585

**RE: *Magnolia LNG, LLC*, DOE/FE 13-132-LNG
Proposed Procedures for Liquefied Natural Gas Export Decisions**

Mr. Anderson:

Magnolia LNG, LLC (“Magnolia LNG”) submits the following comments addressing the above-referenced Proposed Procedures for Liquefied Natural Gas (“LNG”) Export Decisions (“Proposed Procedures”).¹ Magnolia LNG appreciates the opportunity to offer its views on the Department of Energy’s (“DOE”) proposal to adjust its procedures for acting on applications to export LNG to nations with which the United States does not have a free trade agreement (“FTA”) requiring the national treatment of natural gas. Magnolia LNG’s comments in this letter are rooted in the “good-faith investment-backed expectations of private parties subject to [DOE’s] regulatory jurisdiction,” like Magnolia LNG, that then-Deputy Assistant Secretary Christopher Smith recognized more than two years ago.²

After providing brief background information, Magnolia LNG respectfully submits the following comments on issues raised by the proposed procedures:

1. Greater clarity is needed regarding which environmental review document readies a non-FTA application for final action; and

¹ 79 Fed. Reg. 32261 (June 4, 2014). DOE requests comments by July 21, 2014. *Id.*

² Letter from Christopher Smith, Deputy Assistant Secretary of Fossil Energy, U.S. Department of Energy, to Rep. Edward Markey, Ranking Member, U.S. House Committee on Natural Resources (Feb. 24, 2012), 2 n.1, in NATURAL RESOURCE COMM. DEMOCRATS, DRILL HERE, SELL THERE, PAY MORE: THE PAINFUL PRICE OF EXPORTING NATURAL GAS, app., available at http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/content/files/2012-03-01_RPT_NGReport.pdf



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2. Applicants and the general public would benefit from further detail on DOE's anticipated timelines for final action on non-FTA LNG export applications.

Background

Magnolia LNG submitted its application to export U.S. domestic natural gas as LNG to non-FTA nations on October 11, 2013.³ DOE published notice of Magnolia LNG's application and a solicitation of public comments in the Federal Register on March 24, 2014.⁴ Based on DOE's procedures for processing non-FTA applications at that time, which include an order of precedence for commencing consideration of pending non-FTA LNG export applications that was first established in December 2012,⁵ Magnolia LNG's application was 19th in DOE's queue for processing.

In addition, Magnolia LNG has diligently pursued its FERC authorization to site, construct, and operate its proposed natural gas liquefaction and export facility. Magnolia LNG worked closely with FERC staff throughout the 13-month pre-filing process, culminating in the filing of its formal Section 3 application on April 30, 2014.⁶ Magnolia LNG continues to work cooperatively with FERC staff and all interested stakeholders throughout the National Environmental Policy Act ("NEPA") environmental review process.

Comments

Magnolia LNG appreciates DOE's efforts to provide regulatory clarity and to concentrate on LNG export projects that are successfully moving through the required regulatory processes. DOE's proposed procedural changes offer the possibility of assisting the agency in focusing its administrative resources on projects that are achieving critical milestones toward commercial operations, such as advancing through the robust NEPA regulatory process at FERC.

³ Magnolia LNG received authorization from DOE to export LNG to FTA nations on February 27, 2013, and March 5, 2014. *Magnolia LNG, LLC*, DOE/FE Order No. 3245 (2013); and *Magnolia LNG, LLC*, DOE/FE Order No. 3406 (2014).

⁴ Dep't of Energy, *Magnolia LNG, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas, 79 Fed. Reg. 15980 (Mar. 24, 2014).

⁵ DEP'T OF ENERGY, *Pending Long-Term Applications to Export LNG to Non-FTA Countries Listed in Order DOE Will Commence Processing* (last revised Mar. 24, 2014), <http://energy.gov/sites/prod/files/2014/03/f13/Pending%20LT%20LNG%20Export%20Apps%20%283-24-14%29.pdf> (last visited July 10, 2014).

⁶ *Magnolia LNG, LLC*, Application of Magnolia LNG, LLC for Authorization under Section 3 of the Natural Gas Act, FERC Docket No. CP14-347 (Apr. 30, 2014). FERC, Ltr. Order Approving Magnolia LNG for Pre-Filing, FERC Docket No. PF13-9-000 (Mar. 20, 2013).



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Magnolia LNG notes that large scale LNG infrastructure projects like the one it is proposing in Calcasieu Parish, Louisiana, involve the investment of billions of dollars, require substantial planning and coordination among numerous stakeholders, and rely on long-term commercial agreements, including land lease agreements, engineering and construction agreements, and most importantly sale and purchase agreements for the LNG commodity, that generally extend twenty years or more. DOE previously has noted that LNG export projects provide substantial benefits to the U.S. economy.⁷ Given the complexity and substantial investment of resources that LNG export projects represent, regulatory certainty is critical to ensure the development of these projects and to enable the local, regional, and national economies to realize the significant associated benefits.

Therefore, Magnolia LNG offers the following comments on DOE's Proposed Procedures:

1. Greater clarity is needed regarding which environmental review document readies a non-FTA application for final action.

DOE states in its Federal Register notice of the Proposed Procedures that it will "act on applications in the order in which they become ready for final action."⁸ DOE further explains that an application will be deemed 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."⁹ The Proposed Procedures then state that the NEPA review process will be deemed complete "30 days after publication of a Final [environmental impact statement (EIS)]," upon publication of a Finding of No Significant Impact (FONSI), or following a determination by DOE that an application is eligible for a categorical exclusion under NEPA.¹⁰ DOE notes further that it will apply the test for whether the NEPA review process is complete "without regard for whether FERC, [the Maritime Administration (MARAD)], or DOE has served as lead agency in preparation of the environmental review document."¹¹

Magnolia LNG appreciates DOE's efforts in outlining its proposed procedures for the benefits of applicants and the general public, but believes that greater clarity is required with regard to which agency's environmental review document DOE is intending to reference when it

⁷ See, e.g., *Jordan Cove Energy Project, L.P.*, DOE/FE Order No. 3413 at 137-38 (2014); *Cameron LNG, LLC*, DOE/FE Order No. 3391 at 127-28 (2014); *Freeport LNG Expansion, L.P.*, DOE/FE Order No. 3357 at 148-49 (2013); *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331 at 138 (2013); *Lake Charles Exports LLC*, DOE/FE Order No. 3324, at 89-90 (2013); *Freeport LNG Expansion, L.P.*, DOE/FE Order No. 3282, at 77-78 (2013); and *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 38 (2011).

⁸ 79 Fed. Reg. at 32263.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*



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evaluates whether the NEPA review process for an LNG export application is complete. Given its understanding of DOE's intent, Magnolia LNG believes that DOE intends to refer to the FERC or MARAD environmental review document, but would appreciate DOE's confirmation on this point. Ambiguity in this aspect of the Proposed Procedures exists for the two reasons noted below.

First, NEPA requires an analysis for all "major federal actions significantly affecting the quality of the human environment."¹² Issuance of a license to export domestically produced natural gas has been recognized as such a major federal action and, as such, DOE would be required to prepare a NEPA environmental review document when issuing a non-FTA LNG export license. Likewise, FERC or MARAD also would need to conduct a NEPA analysis for the siting, construction, and operation of an LNG export facility. It is not clear from the Proposed Procedures which of these NEPA environmental review documents would trigger an application's readiness for final DOE action.

Second, to date, DOE has issued a final order on only one non-FTA LNG export application, *Sabine Pass Liquefaction, LLC*.¹³ In that proceeding, DOE re-issued the environmental assessment published by FERC simultaneously with the issuance of a FONSI and its final order granting authorization to export LNG to non-FTA nations.¹⁴ Assuming that DOE proposes to follow a comparable process and re-issue a FERC or MARAD-prepared EIS, a question exists based on DOE's Proposed Procedures whether the DOE-issued NEPA document is the one that triggers readiness of a pending non-FTA application for final DOE action. Alternatively, Magnolia LNG considers a more likely interpretation to be that the issuance of an EIS by FERC or MARAD begins the 30-day countdown toward readiness for DOE's final action on a non-FTA application.

This question is of paramount importance to Magnolia LNG and similarly situated entities because the flow of the regulatory process provides important milestones to the project developer, its investors and offtakers, and the public at large. Therefore Magnolia LNG

¹² 42 U.S.C. 4332(c).

¹³ Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, FE Docket No. 10-111-LNG, DOE/FE Order No. 2961-A (Aug. 7, 2012).

¹⁴ FERC, Environmental Assessment for the Sabine Pass Liquefaction Project, FERC Docket No. CP11-72 (Dec. 2011). DOE re-issued the EA for this project on August 7, 2012, the same date that it issued the FONSI and final order in its Sabine Pass LNG export proceeding. *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG.



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respectfully requests that DOE confirm that the 30-day timeframe for final action begins with the issuance of the first-in-time EIS by any agency, be it FERC, MARAD, or DOE itself.¹⁵

2. Applicants and the general public would benefit from further detail regarding DOE's anticipated timelines for final action on non-FTA LNG export applications

As noted above, the Proposed Procedures state that DOE "would act on applications in the order in which they become ready for final action" and note the time at which DOE will deem the NEPA review process complete.¹⁶ However, the Proposed Procedures do not include any information regarding when DOE might act on a non-FTA LNG export application once it is ready for final action. In light of the process referenced in Section 1 above that DOE used for the only final non-FTA license the agency has issued to date, *Sabine Pass Liquefaction, LLC*, Magnolia LNG seeks clarity regarding whether DOE will wait for a final order from the lead regulatory agency, FERC in the case of Magnolia LNG, adopting the final environmental review document issued by agency staff, prior to DOE taking final action. In the Sabine Pass Liquefaction proceeding, DOE did not issue the EA, FONSI and final order until after FERC had issued its order on rehearing adjudicating those requests for rehearing that had been timely filed with FERC. Given the potential delay introduced by requests for rehearing at FERC, it is important for project developers and commercial counterparties to understand the timeline for DOE final action with as much clarity as possible since key commercial milestones may be tied to DOE authorization.

Moreover, applicants and the general public alike would benefit from further clarity on the timeline for final action because, among other reasons, additional information would allow all interested parties to better plan for their participation in the DOE process and allocate their resources accordingly.

The scale of investment for LNG export projects contemplated by project developers is substantial. For example, Magnolia LNG expects its capital investment will be approximately \$3.5 billion, spent on permitting and construction of the planned liquefaction and export facilities.¹⁷ Other LNG export projects may require investments of \$10 billion or more.¹⁸ These

¹⁵ Magnolia LNG notes that DOE's EIS is unlikely to be the first-in-time for the Magnolia LNG Project given that FERC is the lead agency for the related NEPA review. In its Notice of Application, FERC stated that it would issue a schedule for its environmental review within 90 days of its Notice including the anticipated date of issuance of the final EIS. *Magnolia LNG, LLC*, Notice of Application, FERC Docket No. CP14-347-000 (May 13, 2014).

¹⁶ 79 Fed. Reg. at 32263.

¹⁷ Representatives of Magnolia LNG have offered this estimate of investment on the public record in the past. See, e.g., Erica Bivens, *Magnolia LNG's Lake Charles Export Facility to be "Most Efficient in the World,"* KPLCTV.COM, Jan. 30, 2014, <http://www.kplctv.com/story/24584742/magno>.



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projects require a level of planning and coordination commensurate with their substantial capital investments to avoid delays that may negatively impact a project's commercial viability.¹⁹ Magnolia LNG believes additional clarification on the timing of a final DOE decision once an application is ripe for DOE action is necessary to enable the parties involved in LNG export projects the optimal opportunity to coordinate their efforts. These economically beneficial projects require this clarity and informed coordination both to minimize commercial risks caused by regulatory uncertainty and to ensure that projects have the best chance of reaching commercial operations. The ultimate success of these projects will, in turn, put the United States in a position to create new domestic jobs, create new streams of revenues for state and local economies, help level our trade balance deficit, and assist our international allies with energy security.

Magnolia LNG also notes that DOE has prepared two additional environmental documents that it may consider in processing non-FTA LNG export applications: a *Draft Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*²⁰ and a report entitled *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*.²¹ Magnolia LNG is not submitting comments regarding the substance or validity of the conclusions contained in these reports at this time, but believes that the introduction of these reports injects additional uncertainty into DOE's regulatory process. Additional information regarding the parameters used to generate these reports and the eventual purposes for which the reports will be used is necessary as project developers, who spend tens of millions of dollars on environmental reviews to comply with the NEPA requirements and other federal and state environmental laws, seek to comply with the laws in a changing regulatory environment.

Finally, Magnolia LNG notes that members of Congress recently have taken action to address this lack of certainty in DOE's timeframe for issuing final decisions on pending non-FTA LNG export applications. On June 25, 2014, the U.S. House of Representatives passed a bill that would require DOE to take final action on a non-FTA LNG export application not more than thirty days after the conclusion of the NEPA review.²² Similarly, the U.S. Senate is considering two different pieces of legislation that would impact DOE's timeframe to issue a final decision on an

¹⁸ CENTER FOR LIQUEFIED NATURAL GAS, <http://lnginitiative.org/facts/> (last visited July 16, 2014).

¹⁹ Magnolia LNG alone requires coordination between company personnel, design engineers and construction planners, environmental engineers and consultants, the proposed interconnecting interstate pipeline, local, state, and federal regulatory authorities (including DOE and FERC), commercial customers, and neighboring stakeholders in Cameron Parish.

²⁰ 79 Fed. Reg. 32258 (June 4, 2014).

²¹ 79 Fed. Reg. 32260 (June 4, 2014).

²² Domestic Prosperity and Global Freedom Act, H.R. 6, 113th Cong. § 2(a) (2014). This legislation is currently pending before the U.S. Senate.



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LNG export application. Senators Mary Landrieu (D-La.) and Mark Udall (D-Colo.) have proposed legislation that would require DOE to issue a decision on an LNG export application no more than 45 days following the completion of the NEPA review process.²³ Separately, Senators John Hoeven (R-N.D.), John McCain (R-Ariz.), Lisa Murkowski (R-Alaska), and John Barrasso (R-Wyo.) have introduced legislation that would require DOE to issue a decision on a non-FTA LNG application within 45 days of FERC's receipt of the Section 3 application.²⁴ Should any of these legislative efforts attract enough support to become law, the interplay between these legislative mandates and DOE's Proposed Procedures would introduce additional uncertainty into the regulatory permitting process.

In light of the benefits of greater certainty to applicants and stakeholders, Magnolia LNG respectfully requests that DOE provide further detail regarding the agency's anticipated timelines for final action on non-FTA LNG export applications.

Conclusion

For the foregoing reasons, Magnolia LNG considers further clarification regarding these two issues in the proposed procedures for addressing non-FTA LNG export applications is warranted and therefore respectfully requested.

Thank you very much for the opportunity to offer these comments.

Sincerely,

A handwritten signature in blue ink that reads "Ernest A. Megginson, Jr.".

Ernest A. Megginson, Jr.

VP - Development

²³ Natural Gas Export Promotion Act of 2014, S. 2494, 113th Cong. § 2(a) (2014).

²⁴ North Atlantic Energy Security Act, S. 2592, 113th Cong. § 108 (2014).