



June 1, 2020

Brian Costner
Department of Energy
Office of NEPA Policy and Compliance
1000 Independence Ave. SW
Washington, DC 20585
Attn: NEPA/NG Procedures (RIN 1990-AA49)
VIA Regulations.gov

RE: NEPA/NG Procedures (RIN 1990-AA49)

Dear Mr. Costner,

In response to the United States Department of Energy's (DOE) notice of proposed rulemaking (Proposal) to update its National Environmental Policy Act (NEPA) implementing procedures regarding authorizations issued under Section 3 of the Natural Gas Act (NGA), the Center for Liquefied Natural Gas (CLNG) respectfully submits the following comments.

CLNG supports DOE's proposed changes to its NEPA implementing procedures because it will improve the efficiency of the DOE decision-making process and eliminate unnecessary documentation aligning DOE's procedures with the legal principle that DOE is not required to include effects that it has no authority to prevent in its NEPA consideration.

I. Statements of Interest

The CLNG advocates for public policies that advance the use of liquefied natural gas (LNG) in the United States, and its export internationally. A committee of the Natural Gas Supply Association (NGSA), CLNG represents the full LNG value chain, including all six large-scale LNG export facilities in the United States, shippers, and multinational developers, providing it with unique insight into the ways in which the vast potential of this abundant and versatile fuel can be fully realized.

II. Comments

CLNG offers the following comments on DOE's notice of proposed rulemaking to update its NEPA implementing procedures regarding authorizations issued under Section 3 of the NGA.

- a. CLNG supports DOE's Proposal because it aligns DOE procedures and regulations with legal principle.*

Exporting natural gas requires authorizations from the DOE and from the Federal Energy Regulatory Commission (FERC). The FERC is responsible for authorizing the siting, construction and operation of onshore LNG facilities under Section 3 of the NGA.¹ The FERC is also responsible for preparing an environmental assessment or an environmental impact statement for proposed LNG facilities, as required by NEPA.² The FERC is the Lead Federal Agency in preparing the overall NEPA documentation for LNG facilities.³ And as the Lead Federal Agency the FERC has invested much time and effort into ensuring a robust NEPA review. This includes, creating a new Division of LNG Facility Review and Inspection within its Office of Energy Projects, it has increased the number of staff working on LNG application review, and it has shored up its coordination with the Pipeline and Hazardous Materials Safety Administration to ensure efficiency and leverage the agency's expertise.⁴

Upon request of the Lead Federal Agency, any other federal agency which has jurisdiction by law shall be a cooperating agency.⁵ DOE is a cooperating agency to the FERC with regards to the NEPA review for LNG. The DOE, under Section 3 of the NGA⁶, authorizes the export of natural gas unless it finds that the export is not consistent with the public interest.

DOE's jurisdiction rests solely with the export of the LNG. DOE lacks authority to approve the construction or operation of the LNG facility itself: indeed, that authority rests with the FERC. Because of this, the DOE need not review potential environmental impacts from the construction and operation of the LNG facility (as enunciated in *Public Citizen* and *Sierra Club*⁷) which will continue to be reviewed by the FERC. Rather DOE's review should be limited to the potential environmental impacts that are within DOE's authority, namely the impacts that occur at or after the point of export.

In order to determine whether or not to approve an LNG export application, DOE makes a public interest determination. Section 3(a) of the NGA establishes "a rebuttable presumption that a proposed export of natural gas is in the public interest, and DOE must grant such an application unless those who oppose the application overcome that presumption."⁸ While the NGA does not define "public interest," DOE has identified a range of factors that it evaluates when reviewing

¹ Ibid.

² 42 U.S.C. 4321 et seq.

³ 18 CFR Part 380.

⁴ "FERC Reorganizes to Create New LNG Division, Open Houston Regional Office." Federal Energy Regulatory Commission, 23 July 2019. Press release.

"FERC, PHMSA Sign MOU to Coordinate LNG Reviews." Federal Energy Regulatory Commission, 31 August 2018. Press release.

⁵ 40 CFR § 1501.6.

⁶ 15 U.S.C. § 717 et seq.

⁷ See *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004); *Sierra Club v. Federal Energy Regulatory Commission*, 827 F.3d 36 (D.C. Cir. 2016). When making a determination based on the NEPA analysis, only the information that is useful to the environmental decisionmaker need be presented. NEPA analysis has limits and, as enunciated in *Public Citizen* and *Sierra Club*, the "rule of reason" limits agency obligation under NEPA. The agency need only consider the environmental information that is of use and relevant to the decisionmaker. An agency does not need to evaluate an environmental effect where it "has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions."

⁸ Department of Energy, Order No. 2961, Sabine Pass Liquefaction, LLC, FE Docket No. 10-111-LNG, pg. 28, http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders_Issued_2011/ord2961.pdf.

an application to export LNG. These factors include economic impacts, international impacts, security of national gas supply, and environmental impacts.⁹

In considering the public interest, DOE has conducted two studies outlining the environmental impacts of U.S. LNG exports.¹⁰ The *2019 Life Cycle Analysis (LCA) Greenhouse Gas Update* commissioned by DOE as an update to its 2014 LCA, both found that U.S. LNG exports for power production in European and Asian markets will not increase GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.¹¹ DOE has relied upon these studies to support its public interest determination even though they are outside of DOE's NEPA-review obligations because the regasification and ultimate burning of LNG in foreign countries are beyond the scope of DOE requirements under NEPA, as decided in *Sierra Club vs. U.S. Dep't of Energy*¹² and upheld in subsequent cases.¹³

CLNG supports DOE's Proposal, and believes it is prudent to update DOE's existing regulations governing compliance with NEPA to be consistent with the controlling legal principle under *Public Citizen* and *Sierra Club*¹⁴. It is important for U.S. LNG exporters that DOE's regulations be clear and reflect DOE jurisdictional parameters. The LNG export application and licensing process is timely and expensive, and any regulatory uncertainty only serves to diminish incentive to invest in LNG infrastructure.

b. CLNG supports DOE's decision to include marine vessel transportation in its scope as a source of potential environmental impacts.

In the proposal, DOE seeks to revise the scope of categorical exclusion B5.7 by deleting the reference to operation of natural gas facilities and including a new statement that the scope includes any "associated transportation of natural gas by marine vessel".¹⁵ CLNG supports this change and agrees with DOE's assessment that any associated transportation of natural gas by

⁹ See, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050, 85 FR 7675 (Feb. 11 2020).

¹⁰ National Energy Technology Laboratory, "Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States" May 2014, and National Energy Technology Laboratory, "Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update" September 2019.

¹¹ National Energy Technology Laboratory, "Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States" May 2014, and National Energy Technology Laboratory, "Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update" September 2019.

¹² *Sierra Club vs. U.S. Dep't of Energy*, 867 F.3d 189 (Aug. 15, 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., et al.).

¹³ *Sierra Club v. U.S. Dep't of Energy*, Nos. 16-1186, 16-1252, 16-1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, et al., respectively).

¹⁴ Department of Transportation v. Public Citizen, 541 U.S. 752 (2004); *Sierra Club v. Federal Energy Regulatory Commission*, 827 F.3d 36 (D.C. Cir. 2016).

¹⁵ National Environmental Policy Act Implementing Procedures, 10 CFR 1021 (May 1 2020).

marine vessel “is the only source of potential environmental impacts associated with DOE's decision regarding authorizations under section 3 of the NGA”.¹⁶

c. DOE’s Proposal will reduce redundancy, delay, and regulatory uncertainty.

The changes in DOE’s Proposal will improve the efficiency of the DOE decision-making process. While updating DOE’s regulations to align with legal precedent, the Proposal also brings DOE’s NEPA process in line with the statute’s intended objective from its adoption in 1978: to “reduce paperwork, to reduce delays, and at the same time to produce better decisions [that] further the national policy to protect and enhance the quality of the human environment.”¹⁷ The proposal will provide LNG exporters with more clarity regarding DOE’s public interest determination and its obligations under NEPA, thus enhancing regulatory certainty. Further, this clarity with regards to DOE’s NEPA review process will eliminate unnecessary documentation, saving time and money for DOE and LNG exporters.

III. Conclusion

CLNG supports DOE’s notice of proposed rulemaking to update its NEPA implementing procedures regarding authorizations issued under Section 3 of the NGA. The Proposal updates DOE’s existing regulations governing compliance with NEPA to be consistent with the controlling legal principle, which provides LNG exporters with greater regulatory certainty. Reliable trade in natural gas is critical to maintaining the U.S. natural gas and LNG industry as an engine for growth in the United States. Having reliable regulations here in the United States is an important step in enabling U.S. LNG exports to flourish.

Respectfully Submitted,



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¹⁶ Ibid.

¹⁷ 43 FR 55978 (Nov. 29, 1978); *see also* 44 FR 873 (Jan. 3, 1979) (technical corrections), and 43 FR 25230 (June 9, 1978) (proposed rule), and 40 FR Parts 1500-1508 (Jan. 10, 2020) (proposed rule).