

UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY
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PUBLIC COMMENT

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I. INTRODUCTION

1. I am thankful for the opportunity to submit these comments in response to the Department of Energy's ("DOE") request for public comment on the proposed rule to expedite small-scale natural gas exports. I am currently a second-year law student at the Villanova University Charles Widger School of Law. Over the past four years, I have spent time working on Capitol Hill and in government relations. In each of these positions I was responsible for tracking legislative proposals and congressional hearings related to the issue of liquefied natural gas ("LNG") exports. I am interested in this issue because my home state of Pennsylvania is a natural gas-producing state that seeks to benefit from increased natural gas exportation. For example, one study found that Pennsylvania could see an increase of approximately 60,000 jobs from increase natural gas exports by 2035.¹ I would also like to note that the views expressed in this public comment are my own and do not reflect those of any of my previous employers nor my Villanova University Charles Widger School of Law.

2. In this public comment, I offer my support for this deregulatory measure, but suggest some changes regarding the language of the proposed rule. I believe that the current approval process for exporters to non-free trade agreement countries has had a negative impact on U.S. natural gas companies wishing to export LNG overseas. Since the United States only has free trade agreements with twenty different countries, the current process has severely limited the ability of natural gas exporters to obtain export approvals and capture the global market share. The current proposed rule goes a long way in correcting this issue and I applaud DOE for its efforts. The main points of my comments can be briefly summarized as follows:
 - LNG exports to non-free trade agreement ("FTA") countries are consistent with the public interest because they benefit U.S. national security and help promote international diplomacy.
 - Increased exports of natural gas to non-FTA countries will benefit the U.S. economy.
 - U.S. LNG exporters should be subjected to the same standards for export authorization to non-FTA countries as FTA countries.
 - The Department should provide language that allows the Secretary to determine that LNG exports to non-FTA countries are not consistent with the public interest if the U.S. loses its competitive price advantage in natural gas production.
 - Alternatively, the Department should cap the expedited authorizations of LNG exports at 28 billion cubic feet per day ("bcf/d").²

¹ American Petroleum Institute, *U.S. LNG Exports: State-Level Impacts on Energy Markets and the Economy* available at <http://www.api.org/~media/Files/Policy/LNG-Exports/API-State-Level-LNG-Export-Report-by-ICF.pdf>

² 28 bcf/d is the maximum export volume considered by the 2015 study.

II. BACKGROUND

3. The United States (“U.S.”) is currently the largest producer of natural gas in the world³ and has more fossil fuel reserves than any other country on earth.⁴ The low cost of natural gas in the U.S. coupled with its abundant supply of resources give U.S. companies a competitive advantage. As a result, the United States has an opportunity to dominate the global energy market. The rise in the supply of natural gas in the United States has had a positive impact on consumers, but has cut into the profits of natural gas companies and their supply chains. Expediting the approval process for natural gas exports will allow these companies to recapture profits, invest domestically, and will provide Americans with tens of thousands of good paying jobs. With all this potential, companies in the private sector have been hampered by bureaucratic red tape, duplicate review processes, and unnecessary delays, especially for licenses to non-free trade agreement countries. This proposed rule alleviates many of those concerns.

A. Statutory Framework

4. Section 3(a) of the Natural Gas Act (“NGA”) vests the authority to regulate the exportation of natural gas to foreign countries in the Department of the Energy.⁵ The NGA requires DOE to issue an order authorizing the exportation of natural gas unless “after opportunity for hearing, [DOE] finds that exportation . . . will not be consistent with the public interest.”⁶ This puts the burden of finding that an export application is not consistent with the public interest on the Department. Applications to export natural gas to countries with which the U.S. has a free trade agreement are “deemed consistent with the public interest.”⁷ For each application to export natural gas to non-FTA countries, the Department has been issuing notices for public comment to determine whether the applications are consistent with the public interest. Additionally, the statute does not define public interest, giving DOE broad discretion in determining whether a proposed export of natural gas to a non-FTA country is consistent with the public interest.

³United States Energy Information Administration, *United States Remains the World’s Top Producer of Petroleum and Natural Gas Hydrocarbons* (June 7, 2017), available at: <https://www.eia.gov/todayinenergy/detail.php?id=31532#>

⁴ Chairman Fred Upton, *Statement on U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export* (June 13, 2013), available at <https://archivesenergycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/Hearings/EP/20130618/HHRG-113-IF03-MState-U000031-20130618.pdf>

⁵ 15 U.S.C.S. § 717(b)(a) (2012).

⁶ *Id.*

⁷ *Id.* § 717(b)(c)

B. Summary of Proposed Rule

5. Under this proposal, DOE will grant any complete application to export natural gas, including LNG, to non-FTA countries with which trade is not prohibited by law or policy, provided that the application:
 - (1) proposes to export natural gas in a volume up to and including 0.14 billion cubic feet per day (“bcf/d”) AND
 - (2) approval does not require an EIS or EA under NEPA because it meets a categorical exclusion. Any application that meets these criteria will be considered consistent with the public interest pursuant to NGA section 3(a) and will be granted.
6. Small-scale natural gas exports that involve only existing facilities and/or minor operational changes qualify as a categorical exclusion under NEPA so long as no new construction is involved.⁸ Among the factors that DOE considered in determining the volume for small-scale exports was industry practice.⁹ Therefore, applicants with existing infrastructure to export natural gas that meet the volume requirements, would qualify for an expedited approval under the new proposed rule. Furthermore, since the exclusion is limited to applicants with existing infrastructure and deals only with export licenses, the proposed rule will not interfere with the Federal Energy Regulatory Commission’s jurisdiction over LNG terminal authorization.
7. Additionally, the Department rightfully concluded that small-scale natural gas exports are consistent with the public interest. In determining that small-scale natural gas exports are consistent with the public interest, DOE commissioned several studies that led the Department to conclude that the positive benefits from job creation and economic activity would outweigh the slight increases in domestic gas prices. Moreover, the studies showed that domestic supplies will be adequate to meet domestic needs for LNG exports up to 28 billion cubic feet per day.¹⁰

III. DISCUSSION

8. I agree with DOE’s conclusion that small-scale natural gas exports are consistent with the public interest because natural gas exports to non-FTA countries will benefit the economy, diversify the international supply of natural gas, and provide uniformity and clarity to U.S. companies that apply for natural gas exportation licenses. However, DOE should

⁸ 10 C.F.R. §1021 appendix B5.7

⁹ *Id.* § 1021.410(2)

¹⁰ Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), available at: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf

change the language in the proposed rule to allow the Secretary to halt the issuance of export licenses if the U.S. loses its price advantage in oil and natural gas production.

A. The Proposed Rule Benefits the Public Interest by Strengthening U.S. Foreign Policy

9. LNG exports are consistent with the public interest because they benefit U.S. national security and help promote diplomacy. In a recent speech, Secretary of Energy Rick Perry said, “We will acknowledge that energy policy is not just a vital element of U.S. economic policy, but also a vital element of U.S. foreign policy.”¹¹ The ability to export to non-FTA countries in the Caribbean, Central America, and South America will provide these countries with a stable supply of natural gas and allow the United States to exert greater influence in the region. Additionally, diversifying the international market with U.S. LNG will reduce the ability of energy rich nations to affect the global supply of natural gas. For example, an influx of U.S. natural gas will allow countries in the regions listed above to reduce their reliance on energy from Venezuela as the country continues to deal with domestic political unrest and sanctions from the United States.

B. The Proposed Rule Benefits the Public Interest Increased LNG Exports to non-FTA Benefits the U.S. Economy

10. Increased exports of natural gas to non-FTA countries will benefit U.S. economy by creating tens of thousands of good paying jobs and reducing carbon dioxide emissions (“CO₂”). According to the International Gas Union, natural gas emits half as much CO₂ as coal and 20-30 percent less than oil.¹² Not only is natural gas cleaner than other fossil fuels, but the United States has the largest natural gas reserves in the world. Senators Bill Cassidy, Lisa Murkowski, and John Barasso recently sent a letter in support of this proposed rule, emphasizing the potential to create well-paying jobs for Americans.¹³ According to the Bureau of Labor Statistics the average annual wage for an oil and gas extraction worker is \$90,310.¹⁴ Therefore an increase in natural gas exports to non-FTA countries is consistent with the public interest because it will provide benefits economically and environmentally
11. Although the studies have shown that some sectors will be hurt by increases in natural gas exports, the 2015 study found that the benefits from LNG exports outweigh the negative effects created by a rise in the price of natural gas. In support of that argument, the American Petroleum Institute noted that the increases in prices of natural gas, although minimal, are exaggerated because the EIA study did not account for “potential supply

¹¹ U.S. Department of Energy, *Statement by Secretary of Energy Rick Perry on LNG Shipments to the Netherlands & Poland* (June 9, 2017), available at <https://energy.gov/articles/statement-rick-perry-us-secretary-energy-lng-shipments-netherlands-poland>

¹² International Gas Union, *Natural Gas is the Cleanest Fossil Fuel*, available at <https://www.igu.org/natural-gas-cleanest-fossil-fuel>

¹³ Senator Bill Cassidy, *Cassidy, Murkowski, Barrasso Send Letter in Support of LNG Exports* (Oct. 5, 2017), available at https://www.cassidy.senate.gov/imo/media/doc/0618_001.pdf

¹⁴ Bureau of Labor Statistics, *National Industry-Specific Occupational Employment and Wage Estimates* (2016), available at https://www.bls.gov/oes/current/naics3_211000.htm#00-0000

responses from competitive international LNG suppliers.”¹⁵ Other analysis by the U.S. Energy Information Administration predicts that added LNG exports would increase real gross domestic product (“GDP”) by as much as 0.17 percent.¹⁶ Furthermore, I am a strong believer in free markets, and ultimately those who are displaced by an increase in natural gas exports will navigate to other industries that receive benefits from this proposal. Therefore, I agree with DOE’s conclusion that LNG exports are consistent with the public interest because they provide a net economic benefit to the U.S. economy.

C. The Proposed Rule Provides Uniformity for Natural Gas Export Applicants by Simplifying the Application Process

12. According to economist, Nicolas Loris, “The decision to export natural gas should be a business decision, not a political one.”¹⁷ Allowing U.S. companies to apply for natural gas exports to non-FTA and FTA countries under the same guidelines is consistent with the public interest because it promotes certainty in the approval process and cuts down on unnecessary costs. It also diminishes the argument that the United States government is picking winners and losers. The U.S. currently allows for an expedited approval process for natural gas exports to countries with which it has a free trade agreement. If a complete application is to a country with which the United States has a FTA the DOE must authorize the application “without modification or delay.”¹⁸ Exports to FTA countries are deemed to be in the public interest¹⁹ and so should exports to non-FTA countries. Additionally, courts have already ruled that there is a “general presumption favoring [export] authorization.”²⁰ This proposal brings the process of obtaining approval for small-scale natural gas exports to non-FTA countries in line with the process to export to FTA countries.

13. One of the biggest problems with the current rule, as opposed to the proposed rule, is that the U.S. only has free trade agreements with twenty countries. Of those twenty countries, South Korea is the only country that is a major importer of LNG.²¹ Additionally, the process for obtaining approval to export LNG to non-FTA countries has been plagued

¹⁵ American Petroleum Institute, *Public Comment on 2012 LNG Export Study* (Jan. 13, 2013), available at http://www.api.org/~media/Files/News/2013/13-January/API_Comments-DOE_2012_LNG_Export_Study.pdf

¹⁶ U.S. Energy Information Administration, *Effect of Increased Levels of Liquefied Natural Gas Exportation on U.S. Energy Markets* (Oct. 29, 2014), available at <https://www.eia.gov/analysis/requests/fe/>

¹⁷ Nicolas Loris, Heritage Foundation, *Energy Exports Promote Prosperity and Bolster National Security* (Jul. 23, 2014), available at: <http://www.heritage.org/environment/report/energy-exports-promote-prosperity-and-bolster-national-security>

¹⁸ 15 U.S.C.S. § 717b (2012).

¹⁹ See 10 CFR 590.205; 10 CFR 590 (C)

²⁰ *Sierra Club v. United States DOE*, 867 F.3d 189, 203 (D.C. Cir. 2017) (quoting *W. Va. Pub. Servs. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856, 220 U.S. App. D.C. 331 (D.C. Cir. 1982)); accord *Panhandle Producers & Royalty Owners Ass’n v. Econ. Regulator Admin.*, 822 F.2d 1105, 1111 U.S. App. D.C. 43 (D.C. Cir. 1987)

²¹ Charles K. Ebinger & Govinda Avasarala, *The Case for U.S. Liquefied Natural Gas Exports* (Feb. 28, 2013), available at <https://www.brookings.edu/articles/the-case-for-u-s-liquefied-natural-gas-exports/>

by delays. For example, Senator Cruz in a press release for the introduction of the Natural Gas Export Expansion Act, noted that it took one Texas company five years to obtain approval.²² According to the American Petroleum Institute there are currently 20 applicants to export LNG to non-FTA countries that are still pending approval.²³ Furthermore, many of the companies that have applied for LNG export authorization through DOE's approval process have applied for both FTA and non-FTA approvals. The duplicative nature of this process is redundant, costly, and has hampered the U.S.'s ability to capture the small-scale natural gas market.

D. The Proposal Should Include Language that Allows the Secretary to Cease Approval of Small-Scale LNG Exports if the U.S. Loses its Competitive Price Advantage.

14. I support DOE's conclusion that LNG exports to non-FTA are consistent with the public interest because the micro and macroeconomic benefits outweigh the negative impacts on non-energy industries. Additionally, the potential benefits that increased LNG exports can have on national security further support this conclusion. However, if the U.S. were to lose its price advantage in natural gas LNG, exports would no longer be consistent with the public interest because the positive economic benefits would likely be overshadowed by the negative impacts from domestic price increases.

15. The 2015 DOE LNG study recognized that "the price advantage enjoyed by U.S. manufacturers is a key competitive advantage" that would allow the U.S. to capture the natural gas market. It states that domestic gas prices will ultimately rise slightly because of increased exports of natural gas.²⁴ Additionally, the 2015 study analyzed macroeconomic effects of LNG exports up to 28 bcf/d. As of last month, DOE has authorized 21.35 bcf/d.²⁵ Therefore, it is important to address concerns about the potential risks for increases in domestic natural gas prices referenced in the 2015 study. The 2015 study's authors cited the DOE's public interest determination process as a mechanism to protect against potential negative impacts on the economy.²⁶ As a result of this proposed rule, the public interest determination has already been made and this notice of proposed rulemaking stands as the only notice and comment period. This proposed rule will expedite approvals and will move the U.S. closer towards 28 bcf/d. For those reasons, I suggest revising the language of the proposed rule as follows:

²² Press Release, Senator Ted Cruz, *Sen. Ted Cruz Introduces Bill to Champion America's Energy Renaissance* (June 26, 2017), available at https://www.cruz.senate.gov/?p=press_release&id=3203

²³ LNG Export Facilities, American Petroleum Institute, available at <https://api.maps.arcgis.com/apps/StorytellingTextLegend/index.html?appid=aa7b306e4769400fbc69989d9c9cbea4>

²⁴ U.S. Department of Energy, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), available at https://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf at p. 19

²⁵ U.S. Department of Energy, *U.S. Department of Energy Authorizes Eagle Maxville Small-Scale Liquefied Natural Gas Exports* (Sept. 15, 2017), available at <https://energy.gov/articles/us-department-energy-authorizes-eagle-maxville-small-scale-liquefied-natural-gas-exports>

10 C.F.R. § 590.208

Small volume exports.

- (a) Small-scale natural gas exports. Small-scale natural gas exports are deemed to be consistent with the public interest under section 3(a) of the Natural Gas Act, 15 U.S.C. 717b(a), **so long as the Secretary determines that the U.S. maintains a competitive advantage in natural gas production.** DOE will issue an export authorization upon receipt of any complete application to conduct small-scale natural gas exports. DOE's regulations regarding notice of applications, 10 CFR 590.205, and procedures applicable to application proceedings, 10 CFR part 590, subpart C (10 CFR 590.303 to 10 CFR 590.317), are not applicable to small-scale natural gas exports.

16. The language in section 3(a) of the Natural Gas Act is overly broad. It allows DOE to approve applications subject to certain terms that it finds “necessary or appropriate.”²⁷ The language of the statute also allows DOE to make supplemental orders after a period of notice and an opportunity to be heard. By adding the phrase *so long as the Secretary determines that the U.S. maintains a competitive advantage in natural gas production*, I believe the DOE will be able protect the U.S. economy from any unforeseen negative impacts due to any shocks in the economy or shortages in natural gas supplies. This language is purposefully broad, like the statute, to provide the Secretary with discretion in issuing authorizations in the public interest. It also gives the Secretary the ability to halt the issuance of natural gas exports. Additionally, the 2015 study found that industries such as cement, concrete and gas would be negatively impacted by the decision to exports LNG. Similarly, opponents of similar proposals, like DOW Chemical have argued that exporting gas in the liquid form would negatively impact U.S. manufacturers. This language would at least allow the Secretary to the ability to halt the issuance of export licenses if these industries are impacted more than the studies have predicted. Furthermore, this language does not do away with the rebuttable presumption that small-scale natural gas exports to non-FTA countries are in the public interest.
17. Alternatively, DOE could provide language to cap this proposal at 28 bcf/d. As noted, the 2015 study dealt only up to volumes included 28 bcf/d. An influx of natural gas over that volume has not yet been studied and U.S. LNG exports are already approaching such a level. This concession would give economists more time to study the effects of increased export levels and still give the Secretary the opportunity to increase those levels if the U.S. is economy is progressing. For those reasons, I believe it is important to insert this language into the rule to provide a safety net for the DOE and to the U.S. economy once and to LNG exports exceed the 28 bcf/d levels.

IV CONCLUSION

18. I have followed issues related to natural gas exportation for the last four years. It is an issue that crosses party lines and the window of opportunity is closing to capture the market share. I believe that this deregulatory measure will help create jobs, grow the American economy, increase our national security, and allow the United States to reach its goal of dominating the global energy market. I support the conclusions of the Department that LNG exports to non-FTA countries are consistent with the public interest for these reasons. I do recommend, however, that the proposed rule include a provision that would allow the Secretary to make a determination that the natural gas exports are no longer in the public interest if the United States loses its price advantage in natural gas production. In conclusion, I would like to thank the Department of Energy for giving me the opportunity to comment on this important issue.

If you have any questions feel free to email me at gconla01@law.villanova.edu.

Sincerely,

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