Industrial Energy Consumers of America
The Voice of the Industrial Energy Consumers

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July 21, 2014

U.S. Department of Energy (FE-34)
Attn: Proposed Procedures
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy
PO Box 44375
Washington, DC 20026-4375

Re: Proposed Procedures for Liquefied Natural Gas Export Decisions

I. Executive Summary

On behalf of the Industrial Energy Consumers of America (IECA), we do not support the "Proposed Procedures for Liquefied Natural Gas Export Decisions (DOE Proposal)." Determining whether an LNG export application will not be consistent with the public interest should, as the Natural Gas Act makes clear, come first, not last. The U.S. Department of Energy's (DOE) Proposal would violate the Natural Gas Act. The DOE Proposal threatens the integrity of the process by creating, at minimum, the appearance of a perverse incentive (a kind of regulatory capture). In the interim, while the DOE is completing its announced economic study, we urge the DOE to refrain from acting upon additional applications to export to non-free trade countries while you complete the new study. It is vitally important that decisions are made that use up-to-date information and correctly address, among other things, the cumulative economic impact of the approved and conditionally approved export applications on price, supply, pipeline transportation, and storage, as well as impacts to energy-intensive trade-exposed (EITE) industries. Because the current forecast for U.S. natural gas demand is vastly different than the Energy Information Administration's (EIA) AEO 2011 forecast, used to conditionally approve LNG export applications, we urge you to reopen all dockets for which there has not been a final decision. Lastly, we encourage the DOE to make its process transparent for how it determines whether an application for shipment to non-free trade countries is not in the public interest.

II. Industrial Energy Consumers of America

IECA is a nonpartisan association of leading manufacturing companies with $1.0 trillion in annual sales, over 2,900 facilities nationwide, and with more than 1.4 million employees worldwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, brewing, independent oil refining, and cement.

Most IECA companies are EITE companies, and are significant consumers of natural gas and natural gas-fired electricity. This means that relatively small changes to the price of energy can have relatively significant impacts to competitiveness and jobs. EITE companies consume over 80 percent of all energy consumed by the U.S. manufacturing sector.

III. The public interest test is the predicate for the entire LNG export applicant process
The core issue is, and always has been, to consider LNG exports on an application-by-application basis, and on a cumulative basis – answering the question as to whether the applicant's proposed LNG export volume for shipment to non-free trade countries will not be consistent with the public interest. Congress understood that LNG exports could have significant consequential impacts to the U.S. economy and the public's welfare. And, the Natural Gas Act makes this legal priority very clear, along with the sequence of the legal process for an applicant.

The importance of understanding the economic consequences are even more evident today. The DOE's approval of LNG export applications are for periods of 20 to 30 years. A lot can happen to either domestic production or consumption over that time frame which cannot be anticipated today. For this reason, great caution is warranted because LNG exports shift significant risk onto all consumers and to the domestic economy. And, as we have seen in Australia, exporting too much LNG has dire negative impacts to the domestic economy. Australian LNG exports have tripled domestic natural gas prices, manufacturing facilities are closing, and power generators and industry are switching from natural gas to coal.[1]

(a) The "Proposed Procedures for Liquefied Natural Gas Export Decisions" would violate the Natural Gas Act
Section 3 of the Natural Gas Act (below) makes it explicitly clear that the first hurdle for approval of LNG exports is that ***the Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest***.

> *Section 3 of the NGA (15 USC §717b)*
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> *Exportation or importation of natural gas; LNG terminals*
> *(a) Mandatory authorization order*
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> *After six months from June 21, 1938, no 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 Commission authorizing it to do so.* ***The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest***. *The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.*

Congress understood that economic impacts to the U.S. must be understood first. This also makes clear that Congress wanted to avoid applicants from having to spend upwards of $100

[1] "Gas Market Transformations – Economic Consequences for the Manufacturing Sector," Deloitte Access Economics, July 2014, http://pdf.aigroup.asn.au/Deloitte%20Gas%20Market%20Transformations%20-%20Manufacturing%20Impacts%20Report%20-%20web%20final%20-%20July%2014%202014.pdf

million, and up to two years securing FERC approval, unless the applicant is confident that the application has cleared the public interest test. Applicants seek regulatory certainty.

The Natural Gas Act, Section (b) "Free Trade agreements" and Section (c) "Expedited application and approval process," are also **predicates** to any FERC requirements. For an LNG export applicant to ship to countries with which the U.S. does not have a free-trade agreement, the Natural Gas Act requires a public interest determination. Here again, Congress had it right and the Congressional priority and intent is clear.

It is only after Section (a), Section (b), and Section (c) of the Natural Gas Act that it states that the LNG export applicant shall be required to secure approval from the FERC, or other regulatory agencies, and secure a National Environmental Policy Act (NEPA) approval.

The Natural Gas Act statutes do not start by saying that the applicant must first secure approval from FERC and then the Secretary shall complete a public interest test. The DOE Proposal would violate the Natural Gas Act and the proposed procedures are unwittingly creating a momentum which would make it almost impossible to deny LNG export applications should rational analyses determine that approving an application would, in fact, not be consistent with the public interest.

(b) The Natural Gas Act places the priority on "consequences" of LNG exports
The Congress, in its wisdom, had its priorities right in crafting the Natural Gas Act. Congress placed the welfare of the U.S. economy above the priority of an applicant's desire to export LNG. The Natural Gas Act requires that the DOE must find that the application to export LNG to non-free trade countries will not be consistent with the public interest. The public interest test determines how the export volume could impact economic growth, jobs, energy prices, capital investment, wages, inflation, imports and exports, among other things. The U.S. has 316 million people, 132 million homes, 7 million farms, and 27 million businesses that are dependent upon natural gas and natural gas-fired electricity for their health and welfare. The importance of natural gas is increasing daily with growing use and dependency. The public interest takes precedence over the commercial interests of an LNG export applicant.

For manufacturing, availability and affordability of natural gas is crucial to competitiveness and jobs. Manufacturers are price sensitive and the only sector of the economy that competes globally. As energy prices rise, competitiveness falls. If they cannot compete, manufacturing facilities close and jobs are lost. This is what happened from 2000 to 2008, when natural gas prices rose to over $9 per MMBtu, and according to the U.S. Bureau of Labor Statistics, tens of thousands of manufacturing facilities closed, and over 3 million jobs were lost.

If energy prices are low, manufacturers invest in new facilities and create jobs. Today, EITE industries are investing over $100 billion in new facilities creating significant new demand for natural gas. On July 9, 2014, the Center for Energy Economics (CEE) at The University of Texas at Austin said that the 103 new industrial projects identified could consume 23.5 Bcf/day of natural gas.[2] This amount is greater than the total industrial consumption in 2013.

[2] "Industrial Gas Demand in the U.S. – How Much Will It Be?" Center for Energy Economics at The University of Texas at Austin, July 2014,

IV. DOE should refrain for considering new non-free trade applications until the new study is completed

IECA urges the DOE to not consider additional applications to export to non-free trade countries until it completes the announced new study. The DOE has a fiduciary responsibility to the public to ensure that they are making the best decisions, and we do not believe that sound decisions can be made using the past outdated studies that will lead to incorrect decision making.

V. DOE should open all LNG export dockets for shipment to non-free countries for which there has not been a final decision

Because the forecast for U.S. natural gas demand is vastly different than in 2011, when the first LNG export applications were filed and considered by the DOE, we urge you to open all dockets for which there has not been a final decision. DOE has been granted a fiduciary responsibility to make critically important decisions on behalf of the public. When the fundamental information on which the decision has been made significantly changes, it is DOE's responsibility to revisit the decision.

For example, the EIA AEO 2011 estimated 2025 U.S. natural gas demand at 25.07 Tcf and net imports (pipeline/LNG) at 1.08 Tcf, for a net demand of 23.99 Tcf. The EIA AEO 2014 estimated 2025 natural gas demand at 28.35 Tcf and net exports (pipeline/LNG) at 3.41 Tcf, for a total net demand of 31.79 Tcf, or a 32.5 percent increase over the EIA AEO 2011 estimate. This is an incredibly large increase to demand above the estimate used to conditionally approve all of the LNG export applications, and all by itself gives justification to open the dockets. But there is even more potential demand that is not included in the EIA estimates.

The EIA underestimates industrial demand. For example, the EIA AEO 2014 net demand forecast for the U.S. (domestic demand and net export/imports) projects a 17.3 percent increase from 2013 to 2020. The EIA AEO 2014's "industrial" demand is slated to increase by 8.4 percent, or to 22.16 Bcf/day. The July 2014 study from the CEE said that just the 103 industrial projects that are likely to be built in Texas and Louisiana could increase natural gas demand by 23.5 Bcf/day. If accurate, industrial demand could potentially double by 2020. The calculation by CEE is a bottoms-up calculation and is far more accurate than EIA's top-down modeling. And, there are other organizations such as Bentek, PIRA, and IHS that also forecast higher demand than EIA.

The EIA estimates also do not account for demand from proposed EPA GHG rules for new and existing electric generating units. The proposed rule for new units prevents coal from use and would drive more natural gas demand for electric generation. The proposed rule for existing electric generation units require natural gas-fired generation to operate at higher rates, up to 70 percent of capacity. Doing so would increase natural gas demand.

Lastly, on January 21, 2014, environmentalists filed a motion for summary judgment with the U.S. District Court for Northern California, and if granted it would require the EPA to finalize a new rule for lower limits for ozone by October 1, 2015. On February 26, 2014, the EPA filed a motion for schedule with the U.S. District Court of California, that if granted would require the EPA to finalize the rule by November 15, 2015. Any reduction of the ozone limits would substantially increase demand for natural gas.

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http://www.beg.utexas.edu/energyecon/thinkcorner/CEE%20Industrial%20Gas%20Demand%20June%202014.pdf

VI. DOE should make its public interest decision process transparent
Decisions on how much LNG to export are critically important to the entire economy and for future generations, yet the DOE has acted without transparency of how the decisions are made. It is very concerning that Congress has entrusted the DOE and a small handful of people, to make these decisions that are literally determining energy and economic policy for the country. IECA requests that the DOE make its public interest determination process transparent.

We believe that the DOE considers various economic and public welfare issues in weighing whether to approve an LNG export application for shipment to non-free trade countries. These issues may include: impacts to energy prices, jobs, economic growth, wages, investments, and trade balances. IECA assumes that these issues are included in the evaluation, because the two DOE funded studies addressed these issues. Due to press reports, we also understand that the issue of energy security of our allies has been added to the list. Great uncertainties remain as to whether specific impacts to energy-intensive trade-exposed industries will be properly evaluated, as the NERA report failed to include all of the EITE industries. Furthermore, the information used was inaccurate and resulted in understated negative impacts. The energy price sensitive industries consume over 80 percent of the manufacturing sector's energy consumption and as such, would be the first to experience demand destruction from higher energy prices with the resultant job leakage to other countries.

Given all of these issues, we question how the DOE is weighting the individual issues in its decision making process? Surely not all issues receive equal weight. One would think that job creation specifically in the manufacturing sector would be one of the most heavily weighted – but no one knows, because the entire decision making process is not transparent. President Obama has pledged to support the manufacturing sector, yet we do not know if the DOE is weighting manufacturing job creation appropriately.

Since knowledge and transparency are the foundation for sound public policy, we respectfully request that a transparent process be established to consider all of the many issues in reviewing these applications.

VII. Closing Comments
Natural gas is not renewable. The manufacturing sector is benefiting from affordable natural gas and natural gas-fired electricity, but is reminded that the cost of production slopes upward from here. Demand is accelerating and we need to be prudent on how to maximize domestic job creation. Natural gas use in manufacturing can be the "job creation" engine that the U.S. desires. But to do so, the U.S. must not make the mistakes made by Australia, who did not place any restraints on the volume of LNG exports. Global LNG crude oil-linked pricing is not a free market, and it is these artificially high prices that are driving LNG export demand. Public policy makers should not let domestic prices rise because of OPEC cartel crude oil LNG-linked prices. Thank you for considering these comments.

Submitted by:
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