

Freeport LNG Development,) FE Docket No. 19-61-LNG
L.P.; Application for Blanket)
Authorization To Export Previously)
Imported Liquefied Natural Gas on)
a Short-Term Basis to Non-Free)
Trade Agreement Countries)

NOTICE OF INTERVENTION, PROTEST AND COMMENT

The application seeks to increase the volume of LNG for which Freeport LNG Development, L.P. (Freeport) requests export authorization for the equivalent of 24 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on July 19, 2019. The U.S. Department of Energy (DOE) has not yet issued a final order on the pending application.

I. Industrial Energy Consumers of America (IECA)

IECA is a nonpartisan association of leading manufacturing companies with \$1.0 trillion in annual sales and with more than 1.7 million employees. 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: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, brewing, independent oil refining, and cement.

II. COMMUNICATION AND CORRESPONSE

All communications and correspondence concerning this application, including all service of pleadings and notices, should be directed to the below individual.

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III. THE FREEPORT REQUEST FOR AUTHORIZATION IS NOT IN THE PUBLIC INTEREST UNDER THE NATURAL GAS ACT AND SHOULD BE DENIED

The DOE has approved a cumulative volume equal to 35 percent of 2018 demand to NFTA countries and 57.4 Bcf/d or 70 percent to FTA countries. The NGA public interest standard applies to cumulative NFTA LNG export application volumes.

The DOE, nor Freeport, has provided any analysis or public report, for any individual LNG export application, nor cumulative LNG export volumes, including the requested increase by Freeport, that there is sufficient interstate natural gas pipeline capacity to supply the growing domestic demand for any period of time, for which the applicant seeks, AND interstate pipeline capacity sufficient to export to Mexico AND cumulative LNG export volumes.

No study has been undertaken to examine whether there is adequate interstate pipeline capacity to export LNG at peak summer or winter demand.

No study has been undertaken to examine price impacts of the seasonal demand of LNG exports and its price impacts on natural gas pipeline costs and the marginal price of natural gas and electricity, both of which are priced on the margin.

Exporting the Freeport requested volume, plus the cumulative LNG exports to NAFTA countries that the DOE has approved, means that the low U.S. domestic price of natural gas will become connected to the relatively high global price of LNG long-term, just as crude oil is today. No study has been undertaken to determine the price impacts of connecting the U.S. domestic price to the global price.

The global LNG market is not a free market¹ and buyers of LNG who will compete with U.S. consumers for natural gas on the basis of price are SOEs and foreign government-controlled utilities with automatic cost pass-through. Their sole mission is to ensure their country has sufficient supplies and they have the ability to pay any price, no matter how high to secure natural gas supplies. When global LNG demand exceeds global supply, these entities have *market power* to buy natural gas at any price necessary to keep their countries operating. No study has been undertaken to determine the price risk and economic impact of this *market power*.

NAFTA countries are the largest buyers of LNG and it is NAFTA countries that discriminate against the importation of U.S. manufacturing goods and farm products. On this subject, a DOE LNG export study did confirm that energy-intensive manufacturers would be economically harmed. The DOE studies admit that U.S. LNG exports lower the price of natural gas to other countries and it would result in improvement of their competitiveness, therefore negatively impacting U.S. manufacturing competitiveness.

It is inconsistent with the public interest to consider any LNG export application in advance of examining interstate pipeline capacity availability and the above listed issues. As Congress considered the NGA and the treatment of LNG exports and the public interest, they assumed that there would be adequate natural gas pipeline capacity to serve the domestic market. The U.S. public interest comes first, LNG exports come second. It is unthinkable that Congress would risk reliability of the electric grid, making sure homes

¹ “WoodMac: Uncontracted demand by world’s seven largest LNG buyers to quadruple,” LNG World News, December 13, 2018, https://www.lngworldnews.com/woodmac-uncontracted-demand-by-worlds-seven-largest-lng-buyers-to-quadruple/?utm_source=emark&utm_medium=email&utm_campaign=daily-update-lng-world-news-2018-12-14&uid=55872

have heat in the winter, air conditioning in the summer, and that manufacturers have pipeline capacity sufficient to invest and grow jobs in exchange for allowing Freeport to export LNG, for any period of time.

The availability of interstate natural gas pipeline capacity is central to reliability and affordability of natural gas and electricity to the U.S. and the competitiveness of the entire manufacturing sector which employs 12.8 million people. If there is not enough pipeline capacity, it does not matter how much natural gas resources are in the ground.

Manufacturers are already suffering from inadequate pipeline capacity regionally. And the FERC has numerous interstate pipelines that have been approved and are not getting finished for a variety of reasons.² Everyone recognizes that it is getting harder, not easier to build pipelines yet DOE/Freeport has not considered it.

The FERC's State of the Markets Report from April 2019 contradicts the DOE/FE Order No. 4197 and the DOE's use of EIA's AEO Outlook assessments of adequate supply. In 2018, demand exceeded supply, storage levels fell to dangerous levels, and electric prices rose.³

“In 2018, natural gas demand reached a record high, driven primarily by increased demand for natural gas-fired generation and liquefied natural gas (LNG) export growth. Record high demand was accompanied by record high production, with the largest growth from the Marcellus Shale and the Permian Basin. However, demand growth outpaced production growth, resulting in consistently lower-than-average storage levels that at times were the lowest in more than a decade. Low storage contributed to rising natural gas prices across the nation, although pipeline additions helped to broadly distribute growing production and ease tightness in some markets. In the electric markets, day-ahead on-peak prices increased across the country, reflecting the general increase in natural gas prices.”

The INGAA Foundation report supports the IECA position that LNG exports have substantial negative impacts to interstate pipeline capacity availability, commodity and pipeline transportation costs to consumers, and significant seasonable peak demand and price impacts.⁴ All of these concerns have not been studied by the DOE.

INGAA: Up to 13 Bcf/d of take-away capacity from the Marcellus/Utica and 8 Bcf/d from the Permian Basin will be needed to transport this production to markets in the Gulf Coast, Florida, the Southeast, and New England.

- IECA: FERC confirms that several pipelines already approved are years behind in getting completed and some are being cancelled.

² Natural Gas Pipelines, FERC, <https://www.ferc.gov/industries/gas/indus-act/pipelines.asp>.

³ State of the Markets Report 2018, FERC, <https://www.ferc.gov/CalendarFiles/20190418105357-A-3-report.pdf>

⁴ “The Role of Natural Gas in the Transition to a Lower-Carbon Economy,” The INGAA Foundation, May 2019.

INGAA: LNG export terminal operators/tollers. These entities seek firm access to large low-cost gas production basins to supply gas to an LNG terminal.

- IECA: Firm access pipeline arrangements lock in pipeline capacity for exporters and reduces available pipeline capacity for domestic consumers.

INGAA: Under the Balanced Future Scenario, eight LNG export terminals will be in operation in the Gulf Coast by 2040, with close to 9.2 Bcf/d of demand for incremental feed gas by 2020 and another 4.1 Bcf/d by 2040. The Atlantic Coast LNG terminals at Cove Point and Elba Island, will add 1.0 Bcf/d of feed gas demand by 2021 and remain flat through 2040. *This incremental gas demand will significantly affect the daily and seasonal utilization of pipelines along the eastern seaboard and the service offerings needed to meet the requirements of these LNG terminals.*

- IECA: There is inadequate pipeline capacity along the eastern seaboard right now and becomes more severe during peak seasonal winter demand. The large LNG buying countries have winter when we do. This means that exporters will be consuming pipeline capacity and pulling on our limited natural gas storage inventories when U.S. consumers need it most. The DOE LNG export studies did not consider impacts to price due to LNG seasonal demand or pipeline capacity constraints that drive up basis costs for consumers. Because natural gas and electricity are priced on the margin, price impacts will be larger.

INGAA: Higher ambient temperatures will require more feed gas to produce the same amount of LNG. The variation of daily feed gas could approach 12 percent during the peak summer months, which will translate into over 2 Bcf/d of extra feed gas demand on certain days.

- IECA: First, this means that LNG demand will be higher than what DOE/EIA is saying, due to higher temperatures in the Gulf Coast. This also means that LNG exports will cause greater price and demand volatility during the summer months.

INGAA: Additional gas storage or pipeline no-notice services will be needed to help mitigate the types of intra-day swings that already have been observed at existing LNG liquefaction terminals.

- IECA: Intra-day swings are already being observed even at the existing lower LNG export volumes. These swings impact consumer costs.

INGAA: The destination markets for the LNG terminals currently under construction are in Asia and Europe. Because of significant seasonal demand variability in both markets, the volume of U.S. LNG exports could vary significantly. High U.S. demand for natural gas during the peak winter months to serve residential and commercial load *could place additional stress on the existing natural gas infrastructure, requiring new infrastructure to serve LNG exports for the global market. LNG export terminals have supported numerous dedicated pipeline projects to ensure that capacity will be available year-round.*

- IECA: This is additional confirmation that there is inadequate pipeline capacity and of predicted significant seasonal demand variability, which also means price volatility for both natural gas and electricity. Many export terminals have dedicated lateral pipelines to serve the export facility. Export terminals still rely on the same interstate pipelines that all other consumers rely upon.

INGAA: For a Gulf Coast LNG liquefaction train, the feed gas rate can fluctuate throughout the day and seasonally. LNG liquefaction operators or tollers will need daily balancing services on pipelines and/or use instantaneous, no-notice storage services to mitigate diurnal feed gas rate swings in both directions.

Pipeline imbalance tolerances will allow a shipper to flow typically within +/-2.5 percent of daily variation; however, the daily swings for LNG liquefaction feed gas rates are expected to far exceed those thresholds during summer months. *Even if pipelines allowed a 5 percent nomination tolerance, the average daily variation would exceed that limit seven months of the year.*

- IECA: Illustrates the disruption and volatility for seven months out of the year.

The CFTC report of May 2018 also issued warnings regarding LNG exports and their impacts to increased prices and volume and price volatility. The Executive Summary says:

“Aside from limited pipeline gas traded with Canada and Mexico, U.S. natural gas has been relatively insulated from international market dynamics. Increasing exports of LNG from the U.S. may mean that the domestic market will be influenced more by global forces.” And, under its three conclusions it says, “U.S. LNG export growth may put upward pressure on domestic (US) natural gas prices and expose a heretofore relatively isolated North American market to global market dynamics.”⁵

The NGA requires that shipments to NAFTA countries must not be inconsistent with the public interest. Every U.S. DOE LNG export study shows that the public does not benefit from LNG exports and in fact, are damaged by them. Instead of considering the negative impact to the public, the DOE has focused on “economic net benefit” and markets as their interpretation of whether LNG exports are not in the public interest.

Figure 1 was taken from the DOE report entitled, “Macroeconomic Impacts of LNG Exports from the United States,” and illustrates that LNG exports create winners and losers. Natural gas producers and exporters are the winners and everyone else in the U.S. economy are losers, clearly illustrating that LNG exports are not in the public interest. Figure 1 makes clear that LNG exports are in the interest of the natural gas producer and LNG exporter, a small and narrow portion of the U.S. economy, and not in the interest of the public. Natural gas costs increase, wages decrease, capital investment decreases, especially in manufacturing, and there is a reduction in indirect economic income.

⁵ “Liquefied Natural Gas Developments and Market Impacts,” CFTC, May 2018, https://www.cftc.gov/sites/default/files/2018-05/CFTC_LNG0518_3.pdf

As stated above, the global LNG market is not a free market⁶ and buyers of LNG who will compete for natural gas on the basis of price with U.S. consumers are state-owned enterprises (SOEs) and foreign government-controlled utilities with automatic cost pass-through. Their sole mission is to ensure their country has sufficient natural gas supplies and they have the ability to pay any price, no matter how high to secure it. When global LNG demand exceeds global supply, these entities have *market power* to buy natural gas at any price necessary to keep their countries operating. Eighty-eight percent of all LNG consuming countries have winter when we do, which means their winter demand will drive up U.S. natural gas and electricity prices. Price spikes and volatility will increase. Because the global LNG market is not a free market, it is prudent and in the public interest to limit exports of LNG.

Today's U.S. natural gas market price is delinked from global markets and pricing impacts and it is for this reason the U.S. consumer is benefiting from lower prices. Lower prices have resulted in significant investment and good paying jobs in the manufacturing sector across the country. As U.S. LNG exports grow, the low U.S. natural gas price (Henry Hub \$3 MMBtu) will become connected to the high global LNG prices (Historical Asia \$12 MMBtu), which increases the marginal price, increasing both natural gas and electricity prices for the entire U.S. market.

This is what has happened in Australia. The Australian example shows that using *market determined* levels of LNG exports is not in the public interest. Australia started exporting LNG in 1989 and now has 70.65 MTPA of capacity operating and 16.95 MTPA under construction. Like the U.S., Australia has vast natural gas resources with growing production. Historically the consumer prices have been around \$3.00 MMBtu. Now, because of LNG exports, the Australian consumer pays the *Asian LNG net back price*. This means that the Australian consumer pays the high Asian LNG price, less transportation and liquefaction costs, which has resulted in Australian domestic consumer prices at \$8, \$9, and \$10 MMBtu. The net result is that Asia LNG market sets the price for every Australian citizen, rather than the supply and demand of the Australian natural gas market. The Australian domestic market is no longer a free market and they no longer benefit from their vast natural gas resources.

The Australian Competition and Consumer Commission started publishing LNG netback prices in order to boost price transparency.⁷ The Australian consumer net back prices have increased from 7.27 Gj in 2017 to 10.69 Gj YTD 2018, a 47 percent increase. In approving LNG export terminals, the Australian government let markets determine the volume of exports, which has now directly caused disastrous impacts to consumers and the manufacturing sector as jobs continue to decrease.

⁶ "WoodMac: Uncontracted demand by world's seven largest LNG buyers to quadruple," LNG World News, December 13, 2018, https://www.lngworldnews.com/woodmac-uncontracted-demand-by-worlds-seven-largest-lng-buyers-to-quadruple/?utm_source=emark&utm_medium=email&utm_campaign=daily-update-lng-world-news-2018-12-14&uid=55872

⁷ "Australian watchdog starts LNG netback price publication," October 2018, LNG World News https://www.lngworldnews.com/australian-watchdog-starts-lng-netback-price-publication/?utm_source=emark&utm_medium=email&utm_campaign=daily-update-lng-world-news-2018-10-05&uid=55872

As mentioned above, LNG exports will link U.S. prices to the global market long-term, like crude oil. U.S. crude oil prices are connected to the global market price. If global crude oil prices rise, so does U.S. gasoline prices. A direct cause and effect. This means that the U.S. consumer is not benefiting from U.S. crude oil resources and production. The same will happen to natural gas.

IV. THE NATURAL GAS ACT (NGA) REQUIRES THAT SHIPMENTS TO NFTA COUNTRIES MUST NOT BE INCONSISTENT WITH THE PUBLIC INTEREST. A U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO) REPORT⁸ MAKES CLEAR THAT NEITHER CONGRESS NOR THE DOE HAS EVER DEFINED THE “PUBLIC INTEREST.” DOE IS USING GUIDELINES DEVELOPED IN 1984 FOR LNG IMPORTS TO INFORM LNG EXPORT PUBLIC INTEREST DECISIONS.

The GAO report entitled, “Federal Approval Process for Liquefied Natural Gas Exports,” dated September 2014 includes the following statement on page 11.

“In passing the NGA, Congress did not define ‘public interest;’ however, in 1984, the DOE developed policy guidelines establishing criteria that the agency uses to evaluate applications for natural gas imports. The guidelines stipulate that, among other things, the market, not the government, should determine the price and other contract terms of imported natural gas. In 1999, DOE began applying these guidelines to natural gas exports.”

In 1984, LNG imports were needed and they reduced risks for domestic consumers and manufacturers. Imports of LNG were in the public interest. LNG exports increase risk and especially market-determined LNG export levels by increasing consumer prices and reliability risks. Therefore, criteria used for decision making in 1984 on LNG imports is inconsistent with what Congress had intended under the NGA, and should not be used to inform decision making on LNG exports.

There is an explicit intent of Congress, in their asserting the requirement that LNG exports to non-free trade agreement (NFTA) countries must not be inconsistent with the public interest. And importantly, they were referring to *cumulative* LNG export volumes, not incremental volumes. When Congress passed the NGA and included the above-mentioned public interest provision, there is no mention of markets as a predicate for determining levels of exports, nor net economic benefit.

The U.S. Supreme Court has stated that “in order to give content and meaning to the words ‘public interest’ as used in the Federal Power and Natural Gas Acts, it is necessary to look to the purposes for which the Acts were adopted. In the case of the Power and Gas Acts it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.”⁹ Furthermore, the Court also stated that the “primary aim” of the NGA is “to protect

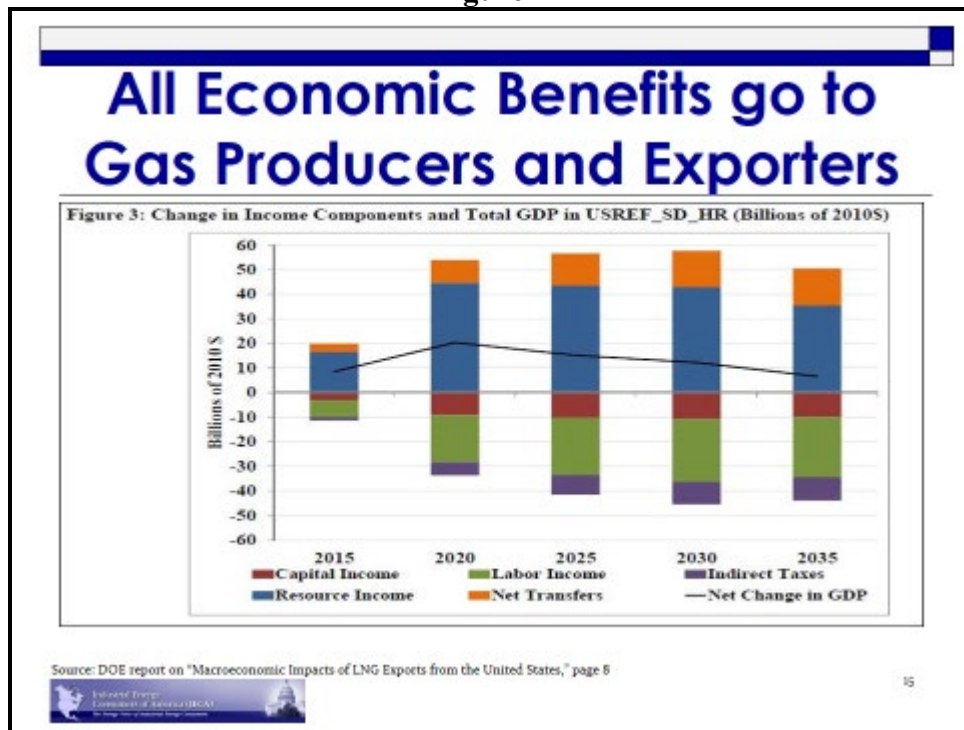
⁸ “Federal Approval Process for Liquefied Natural Gas Exports,” U.S. Government Accountability Office (GAO), September 2014.

⁹ NAACP v. Fed. Power Comm’n, 425 U.S. 662, 669-70 (1976).

consumers against exploitation at the hands of natural gas companies.”¹⁰ LNG exports exploit U.S. consumers when low domestic prices rise due to high global LNG demand.

The DOE’s interpretation and use of public interest is inconsistent with the Administration’s own use and understanding of the words *public interest*. On March 24, 2019, U.S. Attorney General Barr submitted his summary of ‘The Special Counsel’s Report’¹¹ to Congress. Attorney General Barr says, “Although my review is ongoing, I believe that it is in the *public interest* to describe the report and to summarize the principal conclusions reach by the Special Counsel and the results of his investigation.” His use of *public interest* in this important document is not misunderstood by anyone. The public interest is about people. It is not about *net economic benefit* nor *markets*. To be in the public interest means it is to the benefit of the public. As stated above, LNG exports do not benefit the public. This is a core legal vulnerability for the DOE and LNG export applicants.

Figure 1



U.S. consumers are benefiting by a U.S. natural gas market that is a free market - whereby domestic demand versus domestic supply is resulting in low relative natural gas prices. And, U.S. consumers are benefiting from our vast natural gas resources. Why market-derived demand cannot and should not be used to justify levels of specific LNG export applications volumes like this one, or cumulative volumes of LNG exports is illustrated today with U.S. crude oil and gasoline prices. U.S. crude oil prices are

¹⁰ FPC v. Hope Gas Co., 320 U. S. 591, 610 (1944).

¹¹ Attorney General Barr, The Special Counsel’s Report, March 24, 2019 <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/AG%20March%2024%202019%20Letter%20to%20House%20and%20Senate%20Judiciary%20Committees.pdf>

connected to the global market. If global market prices increase, so does U.S. gasoline, fuel oil, and jet fuel prices. Global demand from other countries are dictating demand and price versus the U.S. supply and demand. The net result is that the U.S. consumer is NOT benefiting from our vast crude oil resources. This can and will happen to natural gas if our low natural gas prices are connected to the high price of global LNG markets. It is for this reason that connecting the low U.S. price of natural gas to the high global market price is NOT in the public interest. This is what happened in Australia as noted above.

The DOE study entitled, “Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports”¹² illustrates that LNG exports would substantially increase U.S. natural prices. Page 54 of the reports states that “for all the reference supply scenarios in the more likely range, natural gas prices could be from \$5.00 to \$6.50 per MMBtu in 2040. These mid-range scenarios have a combined probability of 47%.” This is the highest probability the study gave any scenario. Since today’s Henry Hub price is roughly \$3.00 MMBtu, the study confirms that natural gas prices could more than double causing domestic natural gas prices to rise to a level which would harm energy-dependent manufacturers and every homeowner. Consumers do not have an alternative. This is clearly not in the public interest.

There is all pain and no benefit for the public. The DOE report confirms that market determined U.S. LNG exports will connect U.S. prices to higher global LNG prices. The DOE report says that LNG exports will reduce the price that Asian countries pay and increase U.S. prices and eventually our prices will reach parity with Asia. At that point, the U.S. will have lost its competitive advantage. The report is explicit in highlighting the economic damage to especially manufacturing companies who are large users of natural gas. Importantly, manufacturers will have lost their competitive advantage, with very serious long-term implications for a viable manufacturing sector, jobs, and investment.

IECA wishes to intervene and be made a party to this proceeding, with all of the rights attendant to such status pursuant to 10 C.F.R. 590.303(b).

Sincerely,

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¹² “Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Export,” U.S. Department of Energy (DOE), June 7, 2018, <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%20018.pdf>.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon on the applicant and on DOE/FE for inclusion in the FE docket in the proceeding in accordance with 10 C.F.R. § 590.107(b) (2013).

Dated at Washington, D.C., this 19th day of July 2019.

By: _____

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