

Introduction

Despite global security challenges and economic instability, America's energy producers are harnessing technological innovation to provide clean, affordable, and reliable energy. As the world now knows, American liquefied natural gas (LNG) is the answer for nations desperate to alleviate energy shortages and to meet the increasing demands of growing populations in an environmentally sustainable way.

As it has for years now, US LNG will continue to assist people around the world seeking greater economic opportunity and prosperity. Their needs will only grow more acute over the next decade. And yet America's natural gas industry faces headwinds in the form of unnecessary legal, regulatory, and political barriers that, if left unaddressed, could inhibit its expansion. This would hurt American families, businesses, and workers, while at the same time deprive nations of an economic lifeline. This also threatens our national security, as the void created would likely be filled by nations hostile to the US, such as China, Russia, and Iran.

The American Exploration and Production Council (AXPC), in concert with its partners, recognizes the challenges and opportunities facing US LNG. In our joint survey of the political landscape, we identified policies, domestically and internationally, that needlessly restrict the industry's great potential. They should be removed.

By the same token, we are recommending a series of practical policies aimed squarely at unleashing more US LNG. Doing so will bring lower emissions and more jobs at home, while at the same time helping our allies and promoting a cleaner, more sustainable global environment—including by displacing higher-emitting fuels around the world, which is critical to address global climate change. If enacted, these policies would help the US keep a consistent place as the world's top LNG exporter for many years to come—which will usher in a brighter, more secure, and more sustainable future for America and the world.

The following recommendations are divided into four subject areas: International Finance, Permitting Reform, and Sections 3 and 7 of the Natural Gas Act. In each area, AXPC consulted the different segments of the natural gas industry, as well as former and current policymakers, and staff. We realize it will take time for these recommendations to get enacted. But we stand ready to work with you to make that happen as soon as possible.

Financing

BACKGROUND

The Biden Administration has taken several steps, via executive order and guidance, to articulate the US government's opposition, with certain exceptions, to financing and supporting US fossil fuel export projects, including US Liquefied Natural Gas (LNG).

These steps run counter to promoting energy security and lower emissions globally. The posture of the US government, specifically as expressed in official policies, to a specific project or a class of projects, is a major factor in securing investor buy-in.

Without the United States putting "skin in the game" as a policy and financial matter, other actors are less likely to do so. In addition, conflicting statements can also have a chilling effect on investor behavior. The optimal scenario for LNG project advocates is positive, vocal US support.

Therefore, the Biden Administration should rescind all artificial restrictions and conflicting statements of policy on overseas natural gas projects.

RECOMMENDATIONS

There are three major reforms on international financing that the Biden Administration should undertake now to ensure that United States LNG exports can be financed and to end the era of mixed messages and policy confusion:

Rescind Biden's Executive Order and his agencies guidance documents preventing the use of international fossil fuel financing.

The US Department of State, the Export-Import Bank, and the US Department of the Treasury should rescind policies enacted to comply with President Biden's Executive Order 14,008 and adopt policies that promote the use of natural gas in other countries around the world.

Ensure US LNG plays a central role globally in achieving a low-carbon future of abundant and reliable energy.

LNG export terminals require 20- to 30-year natural gas contracts. This means that investors in LNG terminals must believe that there will continue to be demand for natural gas well into the future – even if other countries implement a carbon tax or require the use of less carbon-intensive products.

Therefore, the US government should designate natural gas as a "low-carbon fuel" that is environmentally friendly for realizing a low-carbon future, especially if natural gas projects replace coal or other more carbon-intensive forms of energy. This positive designation will help strengthen confidence among potential investors in US LNG exports and in natural gas infrastructure in importing countries. American-made LNG is clean and abundant, and our policies should reflect that.

Declare that US LNG exports provide compelling national security benefits.

US LNG export projects strengthen the US security posture—and by extension, countries that import US LNG are more able to resist the influence of hostile third-party actors. In addition to the Russia/Ukraine war, another key example is China's ongoing efforts to use infrastructure investment as a means of exerting influence in developing nations.

Official US guidance should state that US LNG exports, by definition, provide compelling national security benefits, in terms of greater energy access, and more affordable, reliable, and cleaner energy for importing countries.

LNG Export Agenda

Environmental Permitting Reform

BACKGROUND

The US natural gas industry has a key role in establishing energy security for the United States and its allies. Liquefied Natural Gas (LNG) export projects are an indispensable part of making sure we continue to function as the economic “arsenal of democracy” during the Ukraine crisis and beyond. But we cannot get our product onto the world market without a functioning permitting system that ensures that midstream infrastructure can be planned, built, and operated with a reasonable degree of speed and certainty. The Biden Administration has stymied reforms and added new burden and doubt in the most crucial permitting areas. This will continue to throttle supply and prolong our energy crisis unless and until the government commits to reform. Reforms of these permitting processes will benefit a wide range of industries, including but not limited to, all types of energy development.

RECOMMENDATIONS

Allow for common-sense permitting amendments. Today project developers wanting to amend permit applications to include lower-emission technologies are required to restart the burdensome permitting process. Congress and agencies should work to reform NEPA, the Natural Gas Act, and other relevant permitting statutes and implementing regulations to prevent this unnecessary delay, and instead allow companies to incorporate new environmental enhancements into project design without having to go to the back of the permitting line.

Specific permitting programs most in need of reform. There are three environmental statutes whose permitting processes are badly broken:

The National Environmental Policy Act (NEPA). This law requires federal agencies to study the environmental consequences of their major actions, including permitting. Over the decades since NEPA was passed in 1969, the process has grown unnecessarily lengthy and complicated. Before the 2020 reforms to the implementing regulations, NEPA documents routinely ballooned to thousands of pages, and a timeline that was originally expected to take between six months and one year was averaging over four years. The prior Administration reformed the regulations to bring them in line with the original Congressional intent of NEPA. But the Biden Administration has begun to roll back these reforms, threatening not just a return to the old, slow, unnecessarily complicated way of doing things,

but in fact a dubious new system under which agencies would have to consider ever more far-flung and speculative issues. **The 2020 reforms should be restored:**

- » **The categories of “indirect” and “cumulative” effect analysis should be replaced with a single, common-sense, familiar legal test of “proximate cause,” under which agencies only consider the reasonably foreseeable consequences of their actions where they actually have statutory discretion to do something to mitigate those consequences; and**
- » **Real deadlines and page limits need to be imposed to prevent mission creep.**

The Clean Water Act (CWA). The Environmental Protection Agency (EPA) and the US Army Corps of Engineers (the Corps) jointly administer this law to protect the water quality of the “Waters of the United States.” The Corps issues “nationwide permits” under CWA 404 to pre-approve certain activities that will only have minimal environmental impact. And CWA Section 401 requires states to certify that new projects won’t impair their water quality. The statute gives states a maximum of one year to certify, but many states played procedural and substantive games to stretch this process out and introduce concerns beyond core water quality. The prior Administration reformed the regulations to crack down on these abuses, but the new Administration has proposed a rule that would empower states that are unfriendly to energy projects to return to their old abuses and introduce new ones. **The 2020 reforms should be restored:**

- » **States should be kept to a realistic timeline and not allowed to introduce concerns beyond those directly related to actual water quality affected by the specific water discharge in question, instead of roving over the whole scope of a project and introducing general policy concerns beyond the scope and intent of the statute; and**
- » **Nationwide Permit 12 for pipelines should be protected and the Corps’ premature new review of that permit, within a year of its renewal and four years before the statutory deadline, should be shut down.**

Environmental Permitting Reform (cont.)

The Endangered Species Act (ESA). Under the ESA, project proponents are required to ensure their actions do not harass or harm a listed species protected under the Act. For projects that require federal approval, the decision-making agency is required to consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (the Services) to ensure that the authorized federal action is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat, unless granted an exemption for such action. This “consultation” process can take years and is often exploited by activist litigants to tie up projects within the court system.

Again, the prior Administration reformed the implementing regulations to refocus agency processes on ESA’s statutory authority and intent, to clarify ESA protocols and limit undue agency discretion, and thus narrow the opportunity for misuse. But the new Administration has begun to roll the reforms back. **The 2019 reforms should be restored:**

- » **Species that are only “threatened” should not be afforded the same heightened protections as “endangered” species (Congress intended these to be different levels of protection).**
- » **The Services must abide by a Supreme Court case forbidding them from identifying land as “habitat” for species where the land is not in fact ready to host the species.**
- » **Alternative consultation mechanisms that may provide greater efficiency for how ESA consultations are conducted should be codified. A deadline should be established for informal consultations to provide greater certainty for federal agencies and applicants of timely decisions, without compromising conservation of ESA-listed species.**

LNG Export Agenda

Natural Gas Act Section 3

BACKGROUND

Liquefied natural gas (LNG) export authorization and export terminal permitting is an indispensable stage of a holistic approach to promoting LNG exports. It's not enough to fix our midstream permitting infrastructure. We also need to make sure that we have optimized permitting programs for exports themselves. And to make sure that US industry can supply our allies with clean, abundant natural gas, we need to make sure that we've optimized permitting programs for LNG exports and export terminals. Under Section 3 of the Natural Gas Act (NGA), both the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) have important roles to play. DOE approves exports (and imports) of LNG. FERC approves requests to construct and operate LNG export terminals.

RECOMMENDATIONS

The federal government should implement the following reforms to encourage United States LNG exports:

Ensuring fair and equal access to LNG export authorizations

Currently, no federal authorization is needed to export crude oil. And for exports to countries with which the United States has a free trade agreement (FTA), DOE is told that these exports are categorically within the public interest and directed to approve them "without modification or delay" (although, as noted above, without any actual, binding deadline). Congress should consider affording LNG equal treatment with crude oil by removing any export permitting requirement. Alternatively, Congress should at least provide equal access among LNG projects by either deeming all LNG exports to be in the public interest or to be approved "without modification or delay."

Avoiding unnecessary delay.

NGA does not give any deadline for DOE to rule on an application to export LNG. For FTA countries, Congress should amend Section 3 to remove the need for DOE approval for FTA countries. For non-FTA countries, if Congress decides not to treat them the same as FTA-countries, Congress should require DOE to issue its decision within 30 days after FERC issues its environmental document (EA or EIS).

Providing transparent and reliable rules of the road.

NGA Section 3 tells DOE to grant a request for authorization to export LNG unless DOE determines that the export "will not be consistent with the public interest." Section 3 gives even less guidance to FERC for its review of LNG export terminal permit applications. Apart from a requirement that open-access LNG terminals not hurt the interests of existing customers, and an open-ended authorization for FERC to make "necessary and appropriate" modifications, terms, and conditions, the statute does not tell FERC how it should evaluate applications. Congress should clarify the standards that DOE and FERC use to perform their roles under NGA Section 3, including by providing that it is the policy of the United States that LNG exports are in the public interest unless a narrowly limited set of exceptions applies (for instance, that an export terminal will pose an unacceptable risk to the safety of a nearby community).

LNG Export Agenda

Natural Gas Act Section 7

BACKGROUND

Interstate natural gas pipelines are necessary for liquefied natural gas (LNG) export facilities – as they provide the safest, cheapest and cleanest way to transport natural gas. These interstate natural gas pipelines require permits from the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (NGA). Unfortunately, FERC has been slow to make “public convenience and necessity” determinations and provide certifications under Section 7 of the NGA.

Moreover, FERC has proposed changes to the certificate process for natural gas infrastructure – particularly infrastructure which feeds into LNG export facilities – that could make obtaining certificates much more difficult and unnecessarily time-consuming. In order to provide greater certainty to LNG export investors and developers, FERC discretion should be constrained in how and when it decides to issue certificates under Section 7. These reforms will also ease pressure on the nation’s electrical grid by fostering infrastructure for natural gas as a domestic fuel source for power plants.

RECOMMENDATIONS

Require that FERC follow its 1999 Certificate Policy Statement governing approvals for natural gas infrastructure and prevent the agency from implementing the changes it proposed to that statement in March 2022.

FERC has long determined the “necessity” of a proposed pipeline based on whether, among other factors, it had customers; if it was not needed, there would be no customers (i.e., market conditions). In 2022, FERC proposed to grossly expand the “necessity” and “public convenience” determinations. Under its proposal, FERC can second guess the “necessity” for a pipeline beyond just the market for natural gas. Moreover, FERC inserted environmental considerations – including climate change – beyond the pipeline-specific focus Congress intended.

FERC should be prohibited from implementing its “Interim Greenhouse Gas Policy Statement,” proposed in March 2022.

Specifically:

- » **With respect to considerations of greenhouse gas emissions from proposed projects, it should be specified that FERC can only analyze emissions directly resulting from construction and operation of proposed projects and be prohibited from considering speculative downstream emissions from consumption of natural gas.**
- » **FERC should be prohibited from using the “social cost of greenhouse gases” (SC-GHG) in Section 7/NEPA reviews. The SC-GHG protocol does not measure the actual incremental impacts at the project-level; further, these estimates are imprecise, uncertain, and not designed for this type of application.**
- » **It should be stipulated that greenhouse gas emissions from proposed projects, either individually or cumulatively, cannot by themselves automatically trigger an environmental impact statement (EIS) review under National Environmental Policy Act (NEPA).**

FERC’s recently proposed changes would broaden the scope of its environmental review beyond Congressional intent. Specifically, FERC proposed to not only consider the direct impact of the construction and operation of the natural gas pipeline itself, but also speculate the future destination and use of the transported natural gas and the assumed, respective greenhouse gas emissions. FERC is not an environmental regulator; its focus should be on its core statutory mission of providing an adequate supply of natural gas at a fair market price.

Provide certainty to existing natural gas pipelines by ensuring that FERC cannot reopen granted certifications.

When a company receives a certificate from FERC, it should be able to rely on it for building and operating its pipeline—without fear that FERC may at some point revoke it. However, under Chairman Glick, FERC has considered reopening already granted certificates, creating uncertainty in the approval process for natural gas infrastructure.