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UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY/OFFICE OF FOSSIL ENERGY

Natural Gas Contract Guidance:
Filing of Contracts and Purchase Agreements Associated With the Export of Natural Gas

COMMENTS OF THE CENTER FOR LIQUEFIED NATURAL GAS

In accordance with the public comment procedures established in this proceeding, the Center for Liquefied Natural Gas (CLNG) respectfully submits the following comments regarding the Proposed Interpretive Rule issued by the Office of Fossil Energy (FE) of the Department of Energy (DOE) on December 13, 2018, and published in the *Federal Register* on Wednesday, December 19, 2018.[1]

I. Interest of CLNG

The Center for Liquefied Natural Gas 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, CLNG represents the full LNG export value chain, including LNG producers, shippers, terminal operators and

[1] *Filing of Contracts and Purchase Agreements Associated with the Export of Natural Gas*, 83 *Fed.Reg*. 65111 (December 19, 2018)(Proposed Interpretive Rule).

developers, providing it with unique insight into the ways in which the vast potential of this abundant and versatile fuel can be fully realized. The U.S. LNG industry is primed for remarkable growth in 2019, with multiple export projects commencing service. Due to a massive domestic resource base resulting from technological advances over the past decade, the U.S. is in a unique position to provide natural gas to eager markets across the globe, with only modest domestic price impacts.[2] CLNG appreciates the opportunity to provide comments on the Proposed Interpretive Rule.

II. Comments and Recommendations

The Proposed Interpretive Rule is intended to clarify (1) Part 590 of the DOE regulations, in particular 10 C.F.R. § 590.202(c), which requires natural gas exporters, including exporters of liquefied natural gas (LNG), to file with DOE "a copy of all relevant contracts and purchase agreements," and (2) the requirement under individual long-term (longer than two years) authorizations to file "any relevant long-term commercial agreements" pursuant to which the authorization holder or LNG title-holder (*i.e.*, Registrant) exports LNG "once those agreements have been executed." In addition, DOE/FE Orders approving long-term LNG exports typically include conditions requiring authorization holders to file: (a) any relevant long-term commercial agreements, including liquefaction tolling agreements, [3] pursuant to which the authorization holder

[2] "Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports," NERA Economic Consulting (June 7, 2018) at pp. 54-55.

[3] *See, e.g., Cameron LNG, LLC,* FE Docket No. 15-90-LNG, Order No. 3846, "Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from Trains 4 and 5 of the Cameron LNG Terminal In Cameron And Calcasieu Parishes, Louisiana, to Non-Free Trade Agreement Nations" (July 15, 2016) at 129-131, 134-135, and *Golden Pass Products LLC,* FE Docket No. 12-156-LNG, DOE/FE Order No. 3978, "Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas

(footnote continued on next page)

exports LNG as agent for a Registrant, (b) all long-term contracts associated with the long-term supply of natural gas to the LNG export terminal.[4]

A. Proposed Interpretation of the Contract Filing Requirement under 10 C.F.R. § 590.202(c).

1. The Scope of the Filing Requirement as Set Forth in the Proposed Interpretive Rule is Unduly Broad.

The Proposed Interpretive Rule would define the scope of the filing requirement broadly. It would clarify 10 C.F.R. § 590.202(c) to require the filing of the following contracts and purchase agreements:

> "i. *Natural gas supply agreements*;
>
> "ii. *Terminal service agreements*;
>
> "iii. Purchase and sale agreements [which would include long-term commercial agreements covering 'free on board' sales subsequent to a terminal service agreement];
>
> "iv. Liquefaction tolling agreements, liquefaction and regasification tolling *capacity agreements*, and similar types of agreements; and
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> "v. *Any other natural gas export contractual agreements* that are associated with the first sale or transfer of natural gas at the point of export and specify the volume of natural gas under contract."[5]

Pursuant to the authority delegated to DOE under Section 3 of the Natural Gas Act, 15 U.S.C. § 717b (2016), the DOE has significant responsibility for determining that exports

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by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations" (April 25, 2017) at 170-171, 174-175.

[4] Order No. 3978, at 174-175. DOE/FE regulations allow confidential treatment of information if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE/FE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11. DOE/FE generally permits submitting parties to redact commercially sensitive information for the public copy, and to submit the un-redacted information under seal. *See, e.g.*, Order No. 3978, at 171.

[5] *Filing of Contracts and Purchase Agreements Associated With the Export of Natural Gas*, 83 *Fed.Reg*. 65111, 65112 (December 19, 2018) (emphasis added).

and imports of natural gas are consistent with the exporting and importing companies' authorizations. Accordingly, DOE has a clear interest in requiring the filing of the agreements identified in subpart (iii) in the Proposed Interpretive Rule and Section 590.202(c) of the regulations.

However, the CLNG is concerned that the inclusion of natural gas supply agreements under which LNG exporters acquire domestic supplies for export, terminal service agreements and tolling agreements, including capacity agreements, under subparts (i), (ii) and (iv) above conflict with (1) DOE/FE's statutory authorities and regulatory responsibilities, and (2) the delegation of authority to the Federal Energy Regulatory Commission ("FERC") under NGA Section 3. In addition, the broad scope of the reporting obligations imposes unnecessary burdens on LNG exporters and owners/operators of LNG export facilities.

The CLNG accordingly proposes that DOE limit the filing requirement to subpart (iii), contracts that provide for the transfer of title or physical custody of LNG at the point of export in foreign commerce. CLNG requests that DOE modify and clarify the Proposed Interpretive Rule as discussed below, to ensure that the filing requirements are based on a thoughtful assessment of need, and to avoid unduly burdening the development and growth of LNG exports.

a) The Scope of the Proposed Filing Requirements Conflicts with (1) DOE/FE's Statutory Authorities and Regulatory Responsibilities, and (2) FERC's Delegation of Authority under NGA Section 3.

CLNG commends DOE for seeking to clarify the scope of the contract filing requirements, and respectfully submits that this proceeding offers DOE an opportunity to re-evaluate its need for certain of the contracts that must be filed, in accordance with

federal policies intended to remove unnecessary regulatory burdens.[6] Pursuant to NGA Sections 3(a) and 3(c),[7] and the delegations of authority to DOE under those provisions of the NGA, DOE is authorized and responsible for authorizing the export of natural gas, including LNG. Under section 3(c) of the NGA, exports to countries with which the U.S. has free trade agreements are "deemed to be consistent with the public interest," and DOE has granted a rebuttable presumption that such exports are authorized. Therefore, DOE's primary concern is to assess the public interest of each LNG export terminal's proposal to export to countries with which the U.S. does not have free trade agreements and to provide ongoing monitoring of such exports to ensure they are being conducted consistent with a license holders' granted authority. By statute, DOE does not have regulatory responsibility for or authority over the siting, construction and operation of LNG export terminals -- that authority lies with FERC.[8]

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[6] *See, e.g.*, Executive Order No. 13777 (February 24, 2017) citing the chief domestic policy priority to "alleviate unnecessary regulatory burdens placed on the American people." *See also*, Executive Order No. 13771 (February 24, 2017) (concerning, among other things, managing the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations) defining "regulation" or "rule" as "an agency statement of general or particular applicability and future effect designed to implement, *interpret*, or prescribe law or policy. . . ." E.O. No. 13771, Sec. 4 (emphasis added). The proposed Interpretive Rule is subject to these Executive Orders.

[7] 15 U.S.C. §§ 717b(a) and 717(b)(c).

[8] DOE Delegation Order No. 00-004.00A, ¶ 1.21.A delegates to the FERC authority to (emphasis added):

> Approve or disapprove the construction ***and operation*** of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, ***except when the Assistant Secretary for Fossil Energy exercises the disapproval authority pursuant to the Delegation of Authority to the Assistant Secretary for Fossil Energy***.

The corresponding limitation on the Assistant Secretary for Fossil Energy is found in Redelegation Order No. 00-002.04-02A:

(footnote continued on next page)

Requiring the filing of supply agreements under which LNG exporters acquire domestic supplies for export, terminal service agreements, LNG terminal capacity and liquefaction/tolling agreements creates significant overlap and potential for conflict between DOE and FERC regulation of LNG exports under NGA Section 3. Under its delegated authority, FERC regulates the siting, construction and operation of LNG terminals, including performing annual facility inspections. Agreements governing capacity rights, volumes and the prices of liquefaction services generally correspond to the rates, terms and conditions that govern interstate pipeline services under the NGA, which are comprehensively regulated by FERC under NGA Sections 4, 5 and 7, among others.[9] DOE/FE's proposed requirement to file agreements relating to upstream natural gas supply and terminal activities directly usurps the jurisdiction given to FERC by Congress.

Moreover, the DOE/FE requirement to file such agreements conflicts with FERC's pronouncements relating to LNG terminal siting and operations. Under its delegated authority, FERC historically certificated LNG terminals under NGA Section 7, under which FERC requires open access to capacity and directly regulates rates and terms

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> The authority delegated by this Order does ***not*** include the authority to approve ***the construction and operation of particular facilities***, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except the Principal Deputy Assistant Secretary is authorized to disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports.

Department of Energy Redelegation Order No. 00-002.04-02a to the Principal Deputy Assistant Secretary for Fossil Energy (emphasis added).

[9] 15 U.S.C. §§ 717c, 717d and 717f (2012).

of services. However, the current predominant regulatory model for LNG terminal operators operating under NGA Section 3 is the established *Hackberry* Policy,[10] under which FERC essentially permits terminal operators to provide terminal, liquefaction and regasification service on a proprietary basis, without the filing of tariffs or contracts, or the establishment of regulated rates or terms of service. FERC established the *Hackberry* Policy to remove economic and regulatory barriers to the development of onshore LNG terminals in order to encourage more site development. The majority of LNG terminal operators have proposed to operate on a proprietary basis under the *Hackberry* Policy and, as FERC has implemented the Policy, it has not required LNG export facility operators to file their capacity and/or tolling agreements.

Significantly, in *Hackberry* FERC determined that it did not need to impose the same level of regulation on LNG terminals. FERC does not require terminals to offer open-access service or to maintain a tariff or rate schedules for terminalling services. However, FERC has reserved its Section 3 authority under section 3 "to take any necessary and appropriate action if it receives complaints of undue discrimination or anticompetitive behavior."[11] Thus, FERC has reserved the right to occupy this regulatory sphere for specific authorization holders in certain circumstances.

A requirement that LNG terminals owners and operators file upstream supply agreements, terminal service agreements, tolling agreements and capacity agreements with DOE/FE encroaches on FERC's authority to regulate these activities, in a manner

[10] *Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 (2002), *order issuing certificates and granting reh'g*, 104 FERC ¶ 61,269 (2003). The *Hackberry* policy was codified as part of the Energy Policy Act of 2005, at 15 U.S.C. § 717b(e)(3)(B)(ii), through January 1, 2015.

[11] *See, e.g., Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 at P 23 (2004); *Corpus Christi LNG, L.P.*, 111 FERC ¶ 61,081 at P 16 (2005).

inconsistent with FERC's stated approach. CLNG respectfully submits that the filing requirements under the proposed interpretive rule should be modified to exclude (1) upstream natural gas supply agreements, (2) terminal service agreements, (3) liquefaction tolling agreements, (4) liquefaction and regasification tolling capacity agreements, and (5) similar types of agreements.

b) A Requirement to File Upstream Supply, Tolling and Terminal Service Agreements Imposes Unnecessary Burdens on LNG Exporters and Owners/Operators of LNG Export Terminals.

DOE states that its intent is to reduce administrative uncertainty and minimize regulatory burdens associated with the application of 10 CFR §§ 590.202(c) and 10 CFR 509.407.[12] The Paperwork Reduction Act[13] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. In particular, agencies must consider: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Proposed Interpretive Rule does not include a burden estimate. It appears

[12] *Proposed Interpretive Rule*, 83 *Fed.Reg*. 65111, 65113.

[13] 44 U.S.C. 3507(d)("PWA").

that DOE considers this proposal as simply clarifying in nature, and thus imposing no additional burdens on regulated companies. For the reasons discussed above, however, the Proposed Interpretive Rule increases and codifies reporting burdens, in particular the filing of terminal service agreements, liquefaction and regasification tolling capacity agreements, and similar types of agreements. CLNG respectfully requests that DOE/FE assess the burden associated with filing executed agreements from all areas of the value chain of an LNG terminal and find that the only relevant contracts and purchase agreements for purposes of 10 C.F.R. § 590.202(c) are contracts that provide for the transfer of title or physical custody of natural gas, *i.e.*, the purchase and sale of the LNG commodity, at the point of export in foreign commerce.

2. To the Extent DOE/FE Decides Not to Limit the Proposed Filing Requirements to Contracts that Provide for the Transfer of Title or Physical Custody of LNG at the Point of Export in Foreign Commerce, It Should Eliminate or Clarify the Following Individual Filing Obligations.

a) The Requirement to File Natural Gas Supply Agreements Should be Eliminated.

The Proposed Interpretive Rule notes that the "Order" section of LNG export authorizations requires the authorization holder to file, or cause others to file "'all executed long-term contracts' associated with both the long-term export of LNG *and the long-term supply of natural gas to the export facility*."[14] The export authorization orders typically do not include a discussion of the regulatory purpose of this requirement. The orders cite Section 590.202(c) of the DOE/FE regulations, but that provision does not

[14] Proposed Interpretive Rule, 83 *Fed.Reg*. 65111, 65112 (emphasis added).

refer explicitly to agreements to supply the export facility.[15] DOE proposes, as noted above, to include in 10 C.F.R. § 590.202(c)(i) the filing of "natural gas supply agreements."[16] It does not explicitly indicate whether this refers to agreements to provide gas to a terminal (or to an export shipper that has contracted with the terminal).

As part of the initial licensing, DOE/FE reviews the domestic need for the natural gas proposed to be exported and DOE/FE has limited the volume of exports approved to ensure domestic needs continue to be met. The filing of individual long-term natural gas supply agreements will not provide DOE/FE with a means to ensure domestic needs continue to be met and, given the undue burden associated with this requirement, should be eliminated.

The U.S. natural gas market is a complex mix of short-term, long-term and spot sales, typically taking place at market centers rather than at individual production sources. Exporting entities will hold a portfolio of supply arrangements and do not specifically tag certain supplies as LNG exports until the need arises. This is essential since exporting entities will need to have ready markets to take domestic supplies when an LNG terminal shuts down. As such, it is nearly impossible to meet a general reporting requirement to provide long-term (>2 year) supply arrangements since supply agreements typically will not solely be dedicated to LNG exports. Moreover, such reports will not give DOE/FE a clear picture of domestic need given that the bulk of supplies for export will be obtained in the spot market or through shorter-term supply arrangements and

[15] 10 C.F.R. § 590.202(c)("[t]he application shall also have attached a statement, including a signed opinion of legal counsel, showing that a proposed import or export of natural gas is within the corporate powers of the applicant and a copy of *all relevant contracts and purchase agreements*.)

[16] Proposed Interpretive Rule, 83 *Fed.Reg*. 65111, 65113.

DOE/FE will only be getting a small part of the domestic LNG supply picture. Finally, as referenced below, given the complexity of tolling and transfer arrangements, it will be difficult for the license holder acting as agent for many exporting entities to keep track of and ensure compliance with this reporting obligation. For the foregoing reasons, DOE/FE should eliminate the requirements to report natural gas supply agreements.

b) The Requirement to File Tolling Agreements Should be Eliminated.

The requirement to file relevant long-term commercial arrangements between the LNG title holders and the entity that holds DOE export authorization seems to be an outgrowth of DOE's interest in simplifying and expediting the approval process by providing a single export authorization for each terminal with the right of the export authority holder to export as agent for all entities that hold terminal capacity or title to the LNG upon export.[17] In the FLEX application (FE Docket No. 10-160-LNG), the applicant agreed to file under seal with DOE/FE any relevant long-term commercial agreements as an alternative to the non-binding policy adopted by DOE/FE in *The Dow Chemical Company*,[18] which required that the title for all LNG authorized for export must be held by the authorization holder at the point of export.

The proposed DOE/FE requirement to file liquefaction tolling agreements, liquefaction and regasification tolling capacity agreements, and similar types of agreements pursuant to 10 C.F.R. § 590.202(c)(iv) is unwieldy and should be revisited. LNG exporters and export facility owner/operators use different transactional structures.

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[17] DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC,* Order No. 2913, issued February 10, 2011.

[18] *The Dow Chemical Company*, Order No. 2859, issued October 5, 2010.

These structures can be quite complex, and typically involve numerous agreements. Some LNG exporters may use an integrated structure in which the exporter acts as a full-service LNG provider offering customers the option to load the LNG onto their vessels at an LNG export terminal on a free-on-board ("FOB") basis or delivering the LNG to regasification facilities around the world.

Alternatively, a third-party LNG tolling structure may be utilized, in which the project tolling company provides a liquefaction processing service to suppliers of natural gas for a fee. The tolling company may not be affiliated with the LNG exporters who are tolling shippers; significantly, the tolling company does not take title to the natural gas or LNG and does not sell LNG in foreign commerce. In the tolling structure, LNG is exported by authorization holders that contract with an export terminal for tolling services. In individual orders authorizing long-term LNG exports, the DOE/FE has required applicants acting as agents to register with DOE/FE each LNG title holder for which it seeks to export LNG as agent and comply with other information requirements.[19]

Regardless of the structure employed, the export of LNG can require numerous agreements, including tolling agreements for the service of liquefaction of the gas and delivery to the vessel, capacity agreements defining the rights of exporters to capacity in the terminal, or agreements for purchase of domestic production to be exported or possibly resold within the United States. Capacity may be allocated differently on

[19] *See, e.g., Freeport LNG Expansion, L.P., et al.*, DOE/FE Order No. 2913, FE Docket No. 10-160-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011). *Cameron LNG, LLC*, DOE/FE Order No. 3391-A, FE Docket No. 11-162-LNG, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cameron LNG Terminal in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations (Sept. 10, 2014).

different LNG terminals. Terminals may provide a tolling customer the right to process a fixed volume of gas, or alternatively a percentage right to the processing capacity of the LNG liquefaction facilities. These differences would not directly impact the quantities or prices provided for in the export purchase and sales contract, however.

There is no clearly identified need for the filing of these agreements in order to regulate the principal terms of the LNG export, such as "the place of entry or exit, the transporters, the volumes accepted or offered, or the import or export price."[20] DOE/FE receives monthly reporting detailing the specifics of exports from each terminal, including details about pricing and the exporting entity, which should be sufficient for purposes of ongoing monitoring and enforcement of export licenses.

c) The Requirement to File Terminal Service Agreements Should be Eliminated or Clarified.

DOE proposes, as noted above, to include under 10 C.F.R. § 590.202(c)(ii) the filing of "terminal service agreements."[21] The owner/operator of an LNG export terminal may enter into many contracts related to the physical operation of the terminal that have no impact on any particular export transaction. These contracts could include terminal maintenance and contracts with tug boat operators, for example. It could even include service agreements typical of any facility, such as cleaning and janitorial services. These agreements are presumably outside the scope of the filing requirement, but the Proposed Interpretive Rule's reference to "service" agreements may call that into question.

To the extent DOE/FE decides to retain this filing requirement, it should be

[20] 10 C.F.R. § § 590.407 (2018) (notification of changes).

[21] Proposed Interpretive Rule, 83 *Fed.Reg*. 65111, 65113.

clarified to exclude contracts related to the physical operation of the terminal that have no impact on any particular export transaction, such as terminal maintenance contracts, contracts with tug boat operators, or service agreements typical for cleaning and janitorial services. There is no clearly identified need for the filing of these agreements in order to regulate the principal terms of the LNG export, such as "the place of entry or exit, the transporters, the volumes accepted or offered, or the import or export price."[22] Indeed, the CLNG proposes that DOE limit the filing requirement to contracts that provide for the transfer of title or custody of natural gas for export in foreign commerce to eliminate such ambiguities.

d) The DOE/FE Should Clarify the Filing Requirement Does Not Include In-Tank Transfers

When clarifying DOE/FE's proposed interpretation of which agreements may be relevant for reporting that are associated with the sale, transfer, and/or export of natural gas, including LNG, prior to export, DOE/FE provides an example of an in-tank transfer arrangement. DOE/FE states,

> For example, for export facilities that operate on a tolling model, if an off-taker that holds initial title to the LNG within the storage tank of an export facility (Party A) enters into an agreement to sell the LNG to another party (Party B) prior to the LNG being loaded onto a ship, both Party A's and Party B's contracts would be considered ''relevant'' for purposes of 10 CFR 590.202(c).[23]

This example raises questions and uncertainty. Is it merely referencing whether a certain party's agreements will need to be filed based on them being within the value chain of LNG exports, or does DOE/FE want individual in-tank transfer arrangements to

[22] 10 C.F.R. § § 590.407 (2018) (notification of changes).

[23] Proposed Interpretive Rule, 83 *Fed.Reg.* 65111, 65113.

be filed? A contract for a one-time in-tank transfer of a particular quantity of LNG is not likely to be a "long-term" (*i.e.* longer than two years) agreement that would be subject to the filing requirement in the first instance. In-tank transfer arrangements generally take the form of single transaction confirms and, therefore, should not be relevant for purposes of DOE/FE reporting. Moreover, the transaction would not itself be an export, so there would be no indication of a destination country or export purchaser. Party B would presumably separately file the export contract, including that information.

In keeping with the objectives of clarity and reduction of regulatory burdens, CLNG recommends that DOE clarify that in-tank transfer arrangements do not need to be filed with DOE/FE.

B. Proposed Interpretation of the Filing Timetable under 10 C.F.R. § 590.407

DOE proposes to interpret the phrase ''as soon as practicable'' in 10 CFR 590.407 with respect to the continuing obligation of authorization holders and Registrants to provide written notification to DOE/FE of any prospective or actual changes to the information submitted during the application process. Specifically, DOE/ FE will consider a written notification of any Executed Agreement(s) filed within 30 days of its execution to have been submitted "as soon as practicable" under this regulation. DOE/FE believes a 30-day timeframe, absent good cause for delay, will provide a reasonably sufficient time for authorization holders to prepare and file the written notifications with DOE/FE. The 30-day time period appears consistent with prior DOE/FE Orders.

C. Request for Clarification of the Definition of Export

In a footnote, the Proposed Interpretive Rule states that "[a]n 'export' occurs when the LNG is delivered to the flange of the LNG export vessel," citing *Freeport LNG*

Expansion, L.P. et al.[24] This definition is significant to, among other things, "the specification of the volume of natural gas under contract."[25] CLNG supports this definition, but requests further clarification that for reporting purposes, the export *quantity* does not include vapor return. Thus, the export quantity would be the net quantity LNG remaining on board the vessel *after* adjustments for displaced gas (i.e., the vapor returned to the LNG terminal).[26] The requested clarification is consistent with the Department's explicit incorporation of the flange of the vessel in its definition of "export."

This clarification also is necessary to address the circumstance in which an LNG vessel engages in both import and export of LNG. An import terminal's unloading system will include a vapor return line to maintain adequate pressure in the vessel's storage tanks during unloading, as well as an LNG recirculation line to keep the LNG unloading lines cold when not unloading a vessel. Normally, the vapor flow returning to the ship is not measured at the terminal, and would be calculated from the vessel's operational data. As a consequence of these operations, which are operationally necessary, a quantity of residual vapor from the LNG import cargo would be physically returned to the vessel's storage tanks. The residual vapor would remain in the vessel's

[24] DOE/FE Order No. 3282, FE Docket No. 10–161–LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, at 10 n.28 (May 17, 2003), citing *The Dow Chemical Company*, DOE Opinion and Order No. 2859, FE Docket No. 10-57-LNG, Order Granting Blanket Authorization to Export Liquefied Natural Gas (October 5, 2010) at 1 (permitting applicant to export gas to which it held title at the point of export, but not permitting applicant to export gas on behalf of other who themselves hold title at the point of export).

[25] *Proposed Interpretive Rule*, 83 *Fed.Reg*. 65111, 65113.

[26] Accordingly, these vapor return volumes would not be counted against the maximum level of export volumes authorized.

storage tanks when it departed the terminal.

This residual vapor return should not be regarded as an "export" for purposes of the Proposed Interpretive Rule. There is no sale or exchange for value associated with the transport of this vapor quantity away from the LNG import terminal. Even if the tanker proceeds to another U.S. domestic LNG export terminal and receives an LNG cargo for export, the original vapor quantity does not become part of that cargo; it is operational gas, analogous to pipeline linepack or storage base gas. CLNG therefore respectfully requests that the DOE clarify the definition of "export" to exclude vapor return associated with physical loading or unloading of LNG at a terminal.

Summary and Conclusion

CLNG commends the DOE/FE for proposing this Interpretive Rule to clarify the contract filing requirements applicable to LNG exporters. For the reasons set forth in these Comments, CLNG respectfully submits that the Proposed Interpretive Rule should be modified as follows:

- The requirement for filing supply agreements should be limited to contracts that provide for the transfer of title or physical custody of natural gas at the point of export in foreign commerce.
- The filing requirement under the proposed interpretive rule should be modified to exclude (1) natural gas supply agreements, (2) terminal service agreements, (3) liquefaction tolling agreements, (4) liquefaction and regasification tolling capacity agreements, (5) in-tank transfer agreements, and (6) similar types of agreements.
- Absent excluding the requirement to file terminal service agreements, the filing requirements should be clarified to exclude contracts related to the physical operation of the terminal that have no impact on any particular export transaction, such as terminal maintenance contracts, contracts with tug boat operators, or service agreements typical for cleaning and janitorial services.
- The definition of "export" should be clarified such that the export quantity would be the net quantity LNG remaining on board the vessel *after* adjustments for displaced gas, and that vapor return to a vessel occurring in LNG import operations is not an "export" of natural gas.

Respectfully submitted,

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