

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

Alaska LNG Project LLC

)
)
)

FE Docket No. 14-96-LNG

MOTION FOR LEAVE TO INTERVENE AND COMMENTS
OF THE AMERICAN PUBLIC GAS ASSOCIATION

Pursuant to Section 590.303 of the Administrative Procedures with Respect to the Import and Export of Natural Gas,¹ the American Public Gas Association (“APGA”) files this motion to intervene and comments in the above-captioned proceeding. In support, APGA states the following:

I. COMMUNICATIONS

Any communications regarding this pleading or this proceeding should be addressed to:

David Schryver
Executive Vice President
American Public Gas Association
Suite C-4
201 Massachusetts Avenue, N.E.
Washington, D.C. 20002
dschryver@apga.org

William T. Miller
McCarter & English, LLP
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 753-3400
wmiller@mccarter.com

¹ 10 C.F. R. § 590.303 (2012).

II. INTERVENTION

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 700 members in 36 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. APGA members purchase interstate natural gas transportation services, usually as captive customers of a single interstate pipeline, at rates and under terms and conditions that are regulated by the Federal Energy Regulatory Commission (“FERC”). APGA’s members are active participants in the domestic market for natural gas where they secure the supplies of natural gas to serve their end users.

On July 18, 2014, Alaska LNG Project, LLC (“Alaska LNG”) filed an application in this docket seeking authorization long-term authorization to export 20 million metric tons per annum of liquefied natural gas (“LNG”) from Alaska sources for a 30-year period.² The Application states that LNG will be exported “from a liquefaction facility to be constructed in the Nikiski area of the Kenai Peninsula in south central Alaska.”³ The Application seeks authorization to export LNG to (1) to any country with which the United States currently has, or in the future enters into, a free trade agreement (“FTA”) requiring national treatment for trade in natural gas and (2) any country with which the United States does not have a free trade agreement requiring

² Application of Alaska LNG Project LLC for Long-Term Authorization to Export Liquefied Natural Gas, Docket No. 14-96-LNG (July 18, 2014) (“Application”).

³ Application at 1-2.

national treatment for trade in natural gas with which trade is not prohibited by United States law or policy (“non-FTA Nations”).⁴

LNG exports generally have the recognized potential to impact the price of natural gas in the United States; APGA’s interest in such proceedings has been recognized as sufficient to warrant intervenor status.⁵ APGA has a continuing concern with the export of natural gas to non-FTA Nations and thus has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party. APGA respectfully submits that good cause exists to grant its motion to intervene.

III. COMMENTS

a. APGA does not oppose the Application on the merits in light of the circumstances.

APGA has intervened and protested virtually every request to export LNG from the United States to non-FTA Nations, pointing out that such authorization would be inconsistent with the public interest because, among other things, it would substantially raise gas prices to American consumers, the burden of which will largely fall on low and middle income consumers of natural gas and electricity; defeat the efforts of the United States to achieve energy independence; undermine the emerging American renaissance in manufacturing; and frustrate the Administration’s efforts to lessen greenhouse gas emissions in the United States. However, given the nature of the subject Application, including most essentially the fact that it involves the export of LNG from a State outside of the continental United States that does not have pipeline access to the lower 48 States and thus should not affect in any material manner the prices paid by natural gas customers within the continental United States, APGA is not protesting the subject

⁴ Application at 2.

⁵ *E.g.*, DOE/FE Order No. 3357 issued Nov. 15, 2013, Docket No. 11-161-NG, at p. 147.

filing; however, it will monitor this filing such that if it appears that the conclusion stated above concerning the lack of adverse impacts to consumers in the lower 48 States is mistaken, APGA will comment further.

b. DOE/FE should apply its new procedural policy to applications to export LNG from Alaska.

APGA opposes Alaska LNG's procedural request that DOE issue a conditional decision on the Alaska LNG export Application. On August 15, 2014, DOE announced a new procedural policy for applications to export LNG from the lower-48 states. Specifically, DOE stated that it would "suspend its practice of issuing conditional decisions on applications to export LNG to non-FTA countries" and would "no longer act in the published order of precedence but will act on applications in the order they became ready for final action."⁶ Under the new policy, LNG export applications are ready for final action "when DOE has completed the pertinent NEPA review process and when DOE has sufficient information on which to base a public interest determination."⁷ With respect to applications to export LNG from Alaska, the DOE stated that it "could not determine whether there may be unique features of Alaskan projects that would warrant exercise of the DOE's discretionary authority to issue conditional decisions."⁸

APGA submits that the rationale supporting DOE's decision to suspend its practice of issuing conditional decisions in the lower 48 states applies with equal force to applications for exports from Alaska. In its Proposed Procedures Notice, DOE offer four rationales for its proposed procedural change.⁹ First, DOE explained that it had found that conditional authorizations no longer appeared necessary for FERC or the majority of LNG export applicants

⁶ 79 Fed. Reg. 48,132, 48,135 (Aug. 15, 2014).

⁷ *Id.*

⁸ *Id.* at n. 6.

⁹ 79 Fed. Reg. 32,263-264.

to commit resources to the NEPA review process. The DOE also stated that its proposed rules would, ensure prompt action on applications otherwise ready to proceed, and would improve the quality of information on which DOE bases its decisions. Finally, DOE stated that the proposed procedural rules would better allocate resources by reducing the likelihood that the Department would be forced to act on applications with little prospect of proceeding.

All of these rationales apply to applications to export LNG from Alaska. For example, by the time that Alaska LNG's NEPA review process is completed, the updated LNG export studies that DOE requested on May 29, 2014 may be published. Furthermore, there is no rationale for DOE to have inferior information when considering applications to export LNG from Alaska – the findings required under the Natural Gas Act do not distinguish between Alaska and the rest of the United States. Finally, DOE's findings concerning the efficiency of waiting until a project has completed NEPA review before expending the resources necessary to review an application certainly apply to applications concerning Alaska LNG exports.

Alaska LNG contends that the size of the proposed project and the Artic environment in which it will be built sufficiently distinguish the instant project from those in the lower 48 states and warrants a deviation from the DOE's policy.¹⁰ However, there are no size or difficult location exemptions in the DOE's policy for the lower 48 states (should such a project be proposed in the lower 48 states) and Alaska LNG has not shown why conditional authorization is needed at this time for its proposed project to move forward. The Application states that "substantial commercial and engineering activities and expenditures" are ongoing for the project.¹¹ These expenditures are occurring in the face of significant regulatory hurdles,

¹⁰ Application at 5-6.

¹¹ Application at 6.

including the need to complete the NEPA review process. Alaska LNG suggests in the Application that conditional authorization from DOE FE to export gas to non-FTA Nations pending the outcome of the NEPA review is necessary to reduce the regulatory uncertainty surrounding the project to a level that permits further project development.¹² But given the numerous permits still required for the project, it is hard to see how the requested conditional authorization would significantly reduce the regulatory uncertainty facing the project. And, as noted above, DOE has already found that such conditional approvals are not necessary for parties to move forward with the NEPA review process.¹³ For these reasons, APGA requests that DOE apply its new procedural policies to the Alaska LNG export Application as well as future applications to export LNG from Alaska.

Furthermore, APGA requests that the DOE be mindful of its new procedural policy when establishing comment dates for applications such as Alaska LNG's that are not ready for final action. Establishing comment dates that are closer to the date on which LNG export applications are ready (or nearly ready) for consideration by DOE will allow commenters such as APGA to submit pleadings that are based on data available at the time the application is ready for final review. Establishing comment dates closer to the time when projects are ready for final DOE FE review would also be more efficient as it would save resources by eliminating the need for the Department to review filings in response to applications that have little prospect of completing the NEPA review process. Similarly, APGA and other interested parties should not be forced to expend their resources filing premature comments on applications that DOE may never act on

¹² Application at 6.

¹³ 79 Fed. Reg. at 48,184.

and, at a minimum, will not act on until the applicant has completed the required NEPA review process.

IV. CONCLUSION

WHEREFORE, based on the foregoing, APGA respectfully requests that (1) the DOE/FE grant its motion to intervene in this proceeding with all rights appurtenant to that status and (2) find that its procedures for LNG export decisions in the lower 48 states should apply to the instant Application as well as future applications to export LNG from Alaska.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By William T. Miller

William T. Miller
McCarter & English, LLP
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, DC 20005

Its Attorneys

November 17, 2014

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

Alaska LNG Project LLC

)
)
)

FE Docket No. 14-96-LNG

VERIFICATION

WASHINGTON

§
§
§

DISTRICT OF COLUMBIA

Pursuant to 10 C.F.R. § 590.103(b) (2012), William T. Miller, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that all facts stated herein are true and correct to the best of his knowledge, information, and belief.

William T. Miller

William T. Miller
McCarter & English, LLP
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 753-3400
Fax: (202) 296-0166
Email: wmill@mccarter.com

Subscribed and sworn to before me this 17th day of November 2014.

Leslie K. Nelson-Walski
Notary Public
My Commission Expires: LESLEE K. NELSON-WALSKI
Notary Public, District of Columbia
My Commission Expires May 31, 2016

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

Alaska LNG Project LLC

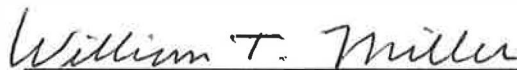
)
)
)

FE Docket No. 14-96-LNG

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b) (2012), I, William T. Miller, hereby certify that I am a duly authorized representative of the American Public Gas Association, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of the American Public Gas Association, the foregoing document and in the above-captioned proceeding.

Dated at Washington, D.C., this 17th day of November, 2014.



William T. Miller
McCarter & English, LLP
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 753-3400
Fax: (202)-296-0166
Email: wmiller@mccarter.com

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) (2012).

Dated at Washington, D.C., this 17th day of November, 2014.

By:



Kevin J. Conoscenti
McCarter & English, LLP
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 753-3400