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August 2, 2013

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Dear Secretary Moniz:

We are writing you seeking greater clarity on the Department's process and authority for the consideration of applications for the exportation of liquefied natural gas (LNG). Recent developments regarding the approval of new export facilities have generally met with praise from both supporters and skeptics of LNG exports.

DOE claims the authority to modify or rescind prior approvals under two provisions of the Natural Gas Act (NGA): section 3(a) and section 16. Section 3(a) authorizes DOE to issue "supplemental orders" that it finds "necessary or appropriate" after providing an opportunity for hearing. Such orders must be "for good cause shown." In addition, under section 16, DOE is empowered to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions" of the NGA.


Additionally, another statute, the Energy Policy and Conservation Act of 1975 (EPCA) may also provide DOE authority to revoke or substantially modify previously authorized export licenses. EPCA gives the President the power to restrict the export of natural gas, by rule, under such terms and conditions as he determines to be appropriate and necessary, in order to carry out the purposes of EPCA such as the fulfillment of U.S. obligations under the international energy program, the creation of a Strategic Petroleum Reserve, and the conservation of energy supplies. Some believe natural gas exports could be restricted in the interest of conserving domestic supplies under this authority.

In situations where a holder of an authorization is not in violation of the DOE order or any conditions, however, we request that DOE provide greater clarity on what the agency considers "appropriate circumstances" when the agency might be compelled to revoke or modify an export authorization and explain the applicable process in such a situation. Please answer the following questions:

1. Has DOE used authority under section 3(a) of the NGA to issue a supplemental order modifying or rescinding authority granted? If so, how many times, and generally, under what circumstances?
2. Has DOE used authority under section 16 of the NGA to issue a supplemental order modifying or rescinding authority granted? If so, how many times, and generally, under what circumstances?
3. Under any of the above authorities, how would a suspension or revocation proceeding be initiated? Could a third party petition for suspension or revocation?
4. Would DOE be required to hold a hearing on the proposed suspension or revocation?
5. What is DOE statutorily required to consider when evaluating a suspension or revocation?
6. If DOE has initiated revocation procedures in the past, what factors were considered? Was the section 3(a) license revoked?
7. Would the same public interest test applied for approval be applied for revocation?
8. Is the "cumulative impact" of natural gas exports a factor DOE considers in the context of its revocation authority?
9. Explain how the Administrative Procedures Act would affect a procedure where DOE sought to modify or revoke an authorization to export LNG.
10. Describe any emergency authorities that could be used by DOE to revoke an authorization to export LNG.
11. If DOE's authorization order includes a reference to the agency's authority under sections 3 and 16 of the NGA to modify or revoke an approval, and the authorization holder does not appeal that reference in the order, has the authorization holder accepted DOE's authority and relinquished future arguments against DOE on that issue?

We believe greater transparency and certainty in connection with LNG decisions would be beneficial to all parties and look forward to your response.

Sincerely,


Ron Wyden
Chairman


Lisa Murkowski
Ranking Member