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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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June 29, 2012

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COMMISSION

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FEDERAL ENERGY
REGULATORY COMMISSION

PF12-3-000

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Subject: Scoping Request on the Notice of Intent (NOI) to Prepare an Environmental Assessment (EA) for the Planned Corpus Christi Liquefied Natural Gas (LNG) Terminal and Pipeline Project, Nueces and San Patricio Counties, Texas.

Dear Ms. Bose:

The Region 6 office of the U.S. Environmental Protection Agency has reviewed the June 1, 2012 Request for Comments and NOI to prepare an EA for the planned Corpus Christi LNG Terminal and Pipeline Project in Nueces and San Patricio Counties, Texas. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

To assist in the scoping process for this project, we have identified several issues for your attention in the preparation of the EA and enclosed detailed scoping comments for your consideration. EPA is most concerned about the following issues: EA versus Environmental Impact Statement, public participation, mitigation, alternative development, impacts to water and biological resources, invasive species management, habitat protection, air quality, cumulative impacts, climate change, and environmental justice.

We appreciate the opportunity to review this NOI and are available to discuss our comments. Please send one hard copy of the Draft EA and four CD ROM copies to this office when completed and submitted for public comment. If you have any questions, please contact Michael Jansky of my staff at (214) 665-7451 or by e-mail at jansky.michael@epa.gov.

Sincerely,

Debra A. Griffin
Associate Director
Compliance Assurance and
Enforcement Division

Enclosure:

**DETAILED SCOPING COMMENTS
ON THE NOTICE OF INTENT (NOI)
FOR THE FEDERAL ENERGY REGULATORY COMMISSION (FERC)
TO PREPARE AN
ENVIRONMENTAL ASSESSMENT (EA) ON THE PROPOSED
CORPUS CHRISTI LIQUEFIED NATURAL GAS (LNG) TERMINAL AND PIPELINE PROJECT
NUECES AND SAN PATRICIO COUNTIES, TEXAS**

Proposed Project

In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Energy and Regulatory Commission (FERC) intends to prepare an Environmental Assessment (EA) analyzing the impacts of the proposed Corpus Christi LNG Terminal and Pipeline Project. Corpus Christi Liquefaction LLC plans to construct and operate a LNG export and import terminal on the north shore of Corpus Christi Bay in Nueces and San Patricio Counties, Texas. The terminal would be capable of liquefying approximately 2.1 billion cubic feet per day of natural gas. The facilities would also be capable of vaporizing approximately 400 million cubic feet per day of LNG. Corpus Christi Liquefaction plans to construct and operate three LNG storage tanks at the terminal. To facilitate the estimated 200 ships per year necessary to export and import LNG, Corpus Christi Liquefaction is also planning to construct and operate a marine berth connecting the terminal to the adjacent La Quinta Channel which provides access to open water shipping routes.

Cheniere Corpus Christi Pipeline, L.P. (Corpus Christi Pipeline) plans to construct and operate an approximately 23-mile-long, 48-inch-diameter, bi-directional, natural gas transmission pipeline capable of moving up to 2.25 billion cubic feet per day of natural gas between the terminal and existing natural gas transmission infrastructure near the City of Sinton, Texas. Corpus Christi Pipeline is also planning to construct and operate two compressor stations; the 12,260 horsepower (hp) Taft Compressor Station and the 41,000 hp Sinton Compressor Station to facilitate the movement of gas within the pipeline.

FERC will serve as the lead Federal agency under the NEPA process and is responsible for the preparation of the EA.

Preparation of an EA versus an Environmental Impact Statement (EIS)

An environmental assessment is a concise public document which has three defined functions. (1) it briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. (CEQ Regulations Section 1508.9(a))

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. (CEQ Regulations Section 1508.9(b))

While the regulations do not contain page limits for EA's, the CEQ has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines. To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

Lengthy EA

Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however; a lengthy EA indicates that an EIS is needed.

Public Availability of EA

An EA must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals. The objective is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public could be interpreted as a violation of the regulations.

Mitigation Measures Imposed in EAs

In cases where an EA is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist [46 FR 18038] agency planning and decision-making" and to "aid an agency's compliance with NEPA when no environmental impact statement is necessary."(Section 1501.3(b), 1508.9(a)(2)). The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

Propriety of Issuing EA When Mitigation Reduces Impacts.

Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. (CEQ Regulations Section 1508.8, 1508.27)

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and the NEPA process will result in enforceable mitigation measures as documented in the Record of Decision.

Statement of Purpose and Need

The EA should clearly identify the underlying purpose and need to which the FERC is responding in proposing the alternatives (40 CFR 1502.13). The purpose of the proposed action is typically the specific objectives of the activity, while the need for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity.

Alternatives Analysis

The National Environmental Policy Act requires evaluation of reasonable alternatives, including those that may not be within the jurisdiction of the lead agency (40 CFR Section 1502.14(c)). A robust range of alternatives will include options for avoiding significant environmental impacts. The EA should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

Water Resources

Water Supply and Water Quality

Public drinking water supplies and/or their source areas often exist in many watersheds. Source water is water from streams, rivers, lakes, springs, and aquifers that is used as a supply of drinking water. Source water areas are delineated and mapped by the state for each federally-regulated public water system. The 1996 amendments to the Safe Drinking Water Act require federal agencies to protect sources of drinking water for communities. The EA should address the potential effects of project discharges, if any, on surface water quality. Specific discharges should be identified and potential effects of discharges on designated beneficial uses of affected waters should be analyzed.

Stormwater Considerations

The EA should describe the original (natural) drainage patterns in the project locale, as well as the drainage patterns of the area during project operations. Also, the EA should identify whether any components of the proposed project are within a 50 or 100-year floodplain. The EA should note that, under the Federal Clean Water Act, any construction project disturbing a land area of one or more acres requires a construction stormwater discharge permit.

Geographic Extent of Waters of the United States (WUS)

The project applicant should coordinate with the U.S. Army Corps of Engineers to determine if the proposed project requires a Section 404 permit under the Clean Water Act. Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands and other *special aquatic sites*. The EPA recommends that FERC include a jurisdictional delineation for all WUS, including ephemeral drainages, in accordance with the 1987 *Corps of Engineers Wetlands Delineation Manual* and the December 2006 *Atlantic and Gulf Coast Region Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual*: A jurisdictional delineation will confirm the presence or absence of WUS in the project area and help determine whether or not the proposed project would require a Section 404 permit. If a permit is required, the EPA will review the project for compliance with *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the CWA.

Clean Water Act (CWA) Section 303(d)

The CWA requires States to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans, called Total Maximum Daily Loads (TMDL), to improve water quality. The EA should provide information on CWA Section 303(d) impaired waters in the project area, if any, and efforts to develop and revise TMDLs. The EA should describe existing restoration and enhancement efforts for those waters, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

Biological Resources, Habitat and Wildlife

The EA should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area. The EA should identify and quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and mitigate impacts to these species. EPA recommends that the FERC consult with the U.S. Fish and Wildlife Service (USFWS) and prepare a Biological Opinion under Section 7 of the Endangered Species Act for all impacted threatened or endangered species. We also recommend that the FERC coordinate across field offices and with USFWS and the Texas Parks and Wildlife Department to ensure that current and consistent surveying, monitoring, and reporting protocols are applied in protection and mitigation efforts.

Invasive Species

Human actions are the primary means of invasive species introductions. Pipeline construction causes disturbance of right-of-way (ROW) soils and vegetation through the movement of people and vehicles along the ROW, access roads, and lay down areas. These activities can contribute to the spread of invasive species. Parts of plants, seeds, and root stocks can contaminate construction equipment and essentially "seed" invasive species wherever the vehicle travels. Invasive species infestations can also occur during periodic ROW maintenance activities especially if these activities include mowing and clearing of vegetation. Once

introduced, invasive species will likely spread and impact adjacent properties with the appropriate habitat.

Executive Order 13112, *Invasive Species* (February 3, 1999), mandates that federal agencies take actions to prevent the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause. Executive Order 13112 also calls for the restoration of native plants and tree species. If the proposed project will entail new landscaping, the EA should describe how the project will meet the requirements of Executive Order 13112.

In addition, we encourage alternative management practices that limit herbicide use (as a last resort), focusing instead on other methods to limit invasive species vegetation and decrease fire risk. Possible alternatives include mowing and weed control fabric, which may need a layer of soil to prevent degradation due to ultraviolet light.

Air Quality

The EA should provide a detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards, criteria pollutant nonattainment areas, and potential air quality impacts of the proposed project (including cumulative and indirect impacts). Such an evaluation is necessary to assure compliance with State and Federal air quality regulations, and to disclose the potential impacts from temporary or cumulative degradation of air quality. The EA should describe and estimate air emissions from potential construction and maintenance activities, as well as proposed mitigation measures to minimize those emissions.

Climate Change

Scientific evidence supports the concern that continued increases in greenhouse gas emissions resulting from human activities will contribute to climate change. Global warming is caused by emissions of carbon dioxide and other heat-trapping gases. On December 7, 2009, the EPA determined that emissions of Green House Gases (GHG) s contribute to air pollution that “endangers public health and welfare” within the meaning of the Clean Air Act. Higher temperatures and increased winter rainfall will be accompanied by a reduction in snow pack, earlier snowmelts, and increased runoff.¹ Some of the impacts, such as reduced groundwater discharge, and more frequent and severe drought conditions, may impact the proposed projects. The EA should consider how climate change could potentially influence the proposed project, specifically within sensitive areas, and assess how the projected impacts could be exacerbated by climate change.

Hazardous Materials/Hazardous Waste/Solid Waste

The EA should address potential direct, indirect and cumulative impacts of hazardous waste from construction and operation of the proposed transmission line and other facilities. The document should identify projected hazardous waste types and volumes, and expected storage,

disposal, and management plans. It should address the applicability of state and federal hazardous waste requirements. Appropriate mitigation should be evaluated, including measures to minimize the generation of hazardous waste (i.e., hazardous waste minimization). Alternate industrial processes using less toxic materials should be evaluated as mitigation since such processes could reduce the volume or toxicity of hazardous materials requiring management and disposal as hazardous waste.

Cumulative and Indirect Impacts

The cumulative impacts analysis should identify how resources, ecosystems, and communities in the vicinity of the project have already been, or will be, affected by past, present, or future activities in the project area. These resources should be characterized in terms of their response to change and capacity to withstand stresses. Trends data should be used to establish a baseline for the affected resources, to evaluate the significance of historical degradation, and to predict the environmental effects of the project components.

For the cumulative impacts assessment, we recommend focusing on resources of concern or resources that are “at risk” and/or are significantly impacted by the proposed project, before mitigation. For this project, the FERC should conduct a thorough assessment of the cumulative impacts to aquatic and biological resources, especially in the context of the other developments occurring and proposed in the area.

Coordination with Tribal Governments

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. If applicable, the EA should describe the process and outcome of government-to-government consultation between the FERC and with any and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

National Historic Preservation Act (NRHA) and Executive Order 13007

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO). Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed and mitigated. Section 106 of the NHPA requires that Federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800.

Environmental Justice and Impacted Communities

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994) and the Interagency Memorandum of Understanding on Environmental Justice (August 4, 2011) direct federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. Guidance² by CEQ clarifies the terms low-income and minority population (which includes Native Americans) and describes the factors to consider when evaluating disproportionately high and adverse human health effects. The EA should include an evaluation of environmental justice populations within the geographic scope of the projects. Assessment of the projects impact on minority and low-income populations should reflect coordination with those affected populations. The EA should also describe outreach conducted to all other communities that could be affected by the project, since rural communities may be among the most vulnerable to health risks associated with the project.

Coordination with Land Use Planning Activities

The EA should discuss how the proposed action would support or conflict with the objectives of federal, state, tribal or local land use plans, policies and controls in the project areas. The term "land use plans" includes all types of formally adopted documents for land use planning, conservation, zoning and related regulatory requirements. Proposed plans not yet developed should also be addressed if they have been formally proposed by the appropriate government body in a written form (CEQ's Forty Most Asked Questions, #23b) <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>.

² Environmental Justice Guidance under the National Environmental Policy Act, Appendix A (Guidance for Federal Agencies on Key Terms in Executive Order 12898), CEQ, December 10, 1997.

Document Content(s)

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