BEFORE THE COUNCIL ON ENVIRONMENTAL QUALITY

Re: Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews

COMMENTS BY THE CENTER FOR LIQUEFIED NATURAL GAS

The Center for Liquefied Natural Gas (CLNG) respectfully files these comments in conjunction with the issuance of the “Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews”\(^1\) (hereinafter referred to as the “Revised Guidance”).

CLNG is a non-profit trade association whose mission is to promote fact-based discussions on LNG, support public policies that recognize the important role LNG exports and imports play in the U.S. energy mix, and to ensure the safe, secure, and environmentally responsible development and operation of LNG facilities in the United States (“U.S.”).

SUMMARY

The U.S. has a tremendous opportunity to capitalize on the rapid growth in domestic natural gas supply by exporting LNG. Natural gas exports will expand the economy and create new jobs. Development of infrastructure in the U.S. for the transport and processing of natural gas is a necessary component of these efforts. This infrastructure can be built while safeguarding the nation’s environmental resources, and at the same time supporting U.S. economic growth, employment and energy security.

CLNG asserts that this Revised Guidance is a far-reaching and costly policy action of untested legal basis which puts the timely development of such beneficial projects at risk by guiding agencies to broaden the scope of National Environmental Policy Act ("NEPA") reviews

\(^1\) 79 Fed. Reg. 77,802 (December 24, 2014)
to an extent that is unwarranted and inconsistent with the NEPA statute. Further, the Revised Guidance is likely to add administrative confusion and delay to the process of receiving necessary permits, licenses and approvals from Federal agencies. The result is that the Revised Guidance is unlikely to support, and in fact could run counter to broad policy objectives (i.e. EPA’s Clean Power Plan). For these reasons, CLNG recommends that the Revised Guidance should be withdrawn. The group of trades collectively called the Associations separately submitted comments identifying a number of critical problems regarding the legality of the Revised Draft Guidance, and we incorporate those comments here by reference.

DETAILED COMMENTS

1. Inconsistency with NEPA statute

The Revised Guidance seeks to inform decisions regarding GHG emissions and effects of climate change. It acknowledges that climate change is complex and global in nature yet recommends that agencies use projected GHG emissions as the proxy for assessing climate change impact. No scientific or regulatory support is offered for this approach. Rather, there are many well qualified scientific bodies conducting assessments of climate change, and many of these are noted in the Revised Guidance. The complexity of these scientific studies illustrates the challenges and uncertainties of accurately predicting climate change impacts. While CEQ is correct in identifying climate change as a global issue, it is not as simple as using GHG emissions as a proxy for climate change. The Revised Guidance essentially requires both consideration of alternatives to an action and adoption of mitigation measures based on their GHG emissions. However, it offers no objective methodology for this process and correlation between GHG emission and environmental impacts is not provided. In the absence of
quantification of actual impacts there is no basis for the ranking, with respect to environmental impact, of the alternatives which may be considered in the NEPA analysis of an action. Nor can this be integrated with consideration of other impacts which are properly supported by a NEPA analysis.

CEQ itself in the Revised Guidance recognizes a fundamental issue, that ‘GHG emissions from an individual agency action will have small, if any, potential climate change effect….climate impacts are not attributable to any single action’. Despite this, CEQ is guiding each individual project to address climate impacts through the inexact proxy of GHG emissions, without full regard to the cost benefit impacts. In this way, the Revised Guidance expands the scope of NEPA review into transnational affects beyond its remit of reasonably foreseeable and proximately caused by the proposed action.

The Revised Guidance further proposes a threshold or reference point for emission of 25,000 ton per year of GHG emissions as a threshold for NEPA significance. Agencies are advised to be guided by the “rule of reason” and to ensure that the level of effort expended is reasonably proportionate to climate change impacts. The proposed threshold does not help in either respect since no scientific, reasoned or objective support is provided for this threshold. This at the outset contravenes NEPA requirements for “accurate scientific analysis” and “scientific integrity.”

It also contravenes the NEPA requirement that, if information is unavailable, an agency should disclose that fact. The threshold, which may be exceeded by

\[2 \text{ 40 C.F.R. § 1500.1, “Purpose”; 40 C.F.R. § 1502.24, “Methodology and scientific accuracy” (“Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.”)}\]

\[3 \text{ 40 C.F.R. § 1502.22 “Incomplete or unavailable information” (“When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking…”)}\]
many projects, does not help to ensure a reasonably proportionate level of effort. Rather, the
effect could be that this threshold becomes a proxy for a finding of significance under NEPA,
thus substituting a CEQ presumption for proper NEPA determination by the lead agency. In the
above respects, CLNG asserts that the Revised Guidance is inconsistent with the empirical
agency review required by the NEPA statute.

These problems are even more marked with respect to mitigation. Leaving aside the issue
of the lack of authority of an agency to require mitigation through an EIS, it is unclear what basis
there might be to impose any mitigation in the absence of direct linkage to climate impacts when
no demonstrable minimization to any impact of a proposed action can be shown. The reliance on
reference points and proxies to determine impacts cannot provide a reasoned basis to
meaningfully address alternatives or mitigation, and if followed would yield only arbitrary
results. In summary, the proposed approach runs the risk of reducing the overall scientific
credibility and objectivity of NEPA review.

2. Confusion and delay

In the more than forty years since its enactment NEPA has established a procedural
framework for taking a "hard look" at the environmental impacts of any major action requiring
Federal review. Judicious NEPA reviews provide a measure of assurance to decision-makers and
the public, as well as a degree of certainty for project sponsors. NEPA reviews, when poorly
framed, can quickly add significant costs, uncertainties and delays to projects, and vulnerability
to litigation, as the scope of the review expands into more speculative and hard-to-quantify
potential impacts. For instance, a project could be required to analyze the environmental effects
of circumstances entirely outside the control of the company and not well known to the
company. Thus, aside from the significant level of effort required, the integrity of the data collected for upstream and downstream activities would be suspect and could result in incorrect and inappropriate influence on a NEPA decision.

These and similar issues leave the potential for challenge from all sides with the courts being left to determine the appropriate impact of the Draft Guidance, a process which could take many years and result in conflicting conclusions.

There is also the potential for project delay as agencies seek to implement and adjust procedures in an attempt to comply with the Revised Guidance. This could lead to requests for new studies or additional review which would be particularly inefficient and costly for those ongoing projects whose NEPA reviews are already underway.

3. Broad policy objectives

The Revised Guidance is unlikely to support, and could run counter to, broad environmental policy objectives of reducing carbon emissions and support economic growth. Natural gas emits less carbon than other fossil fuels when combusted and its increased use for electricity generation has supported U.S. carbon emissions reductions. It also has lower emissions in sulfur dioxide, mercury, nitrogen oxide and particulate matter emissions compared to other fuels.

These factors explain why increased use of natural gas for power generation is an integral part of EPA’s Clean Power Plan\(^4\). Further, increased use of natural gas can support broader policy objectives as the most cost effective means to reducing carbon emissions, supporting growth and developing global competitive markets.

The U.S. has a tremendous opportunity to capitalize on its abundant gas reserves by exporting LNG. The breadth of the U.S. natural gas resource base means that the U.S. can continue to meet growing domestic industrial, power and other demand while also exporting LNG. An influx of U.S. resources would make the global LNG marketplace more competitive, offer greater energy diversity and security of supply, and potentially make natural gas more affordable for importing nations. This is especially crucial for a number of U.S. allies and trading partners abroad who seek to diversify their natural gas supplies. For the U.S., this would not only mean re-emergence as a global energy supplier, but increasing the flow of wealth into the U.S. whilst decreasing the trade deficit\(^5\).

An individual LNG export project represents a multi-billion dollar investment in the U.S and will generate millions of dollars in new tax revenue for federal, state and local governments. The Department of Energy-commissioned 2014 NERA Consulting report on the macroeconomic impact of LNG exports concluded that across all export scenarios examined U.S. economic welfare increased as the volume of natural gas exports increased, including that in which there were unlimited exports\(^6\).

Expanded U.S. LNG exports will benefit the workforce. A report from ICF International estimates that between 73,100 and 452,300 jobs will be created between 2016 and 2035, with 7,800 to 76,800 of those in manufacturing and 1,700 to 11,400 of those specifically in refining, petrochemicals and chemicals sectors. As resources to meet increased international demand are expected to be met by additional production, further employment opportunities will be supported in the upstream sector\(^7\).

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\(^6\) NERA Economic Consulting: Updated Macroeconomic Impacts of LNG Exports from the United States, March 2014
\(^7\) The Hamilton Project: A Strategy for U.S. Natural Gas Exports, June 2012
The U.S. enjoys the advantage of plentiful natural gas resources. The resulting environmental benefits can be globally shared whilst also benefiting the U.S. economy. However, driving down impact assessments to particular projects is unjustified, costly and speculative. This makes it harder for the U.S. to share the environmental benefits of its abundance abroad, and in turn runs counter to broader policy objectives of supporting the U.S. economy, reducing GHG emission, and developing global competitive markets.

**SUMMARY**
In view of the above concerns, CLNG respectfully recommends that the Revised Guidance should be withdrawn. If CEQ continues to believe that guidance is needed, then CLNG would encourage additional detailed consultation with industry and other stakeholders in order to arrive at an approach that is both consistent with the existing statute and regulations and does not create overwhelming burdens, delays and litigation uncertainties for all parties. CLNG would also specifically recommend that any final guidance should not be applied to ongoing NEPA reviews that have proceeded past the scoping stage. Most importantly, CLNG seeks an approach that allows for the economic and environmental benefits of U.S. natural gas production to be shared across the world.