From: Tyler Brown
To: Tran, Tu
Cc: James Bowe; Krysta De Lima
Subject: [EXTERNAL] Mexico Pacific Limited LLC Comments on U.S. Department of Energy, Energy Information Administration - Agency Information Collection Proposed Extension
Date: Monday, March 13, 2023 11:11:54 AM
Attachments: MPL Comments on DOE FOIA Proposal - March 13, 2023.pdf

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Please find attached Mexico Pacific Limited LLC's comments on DOE's Agency Information Collection Proposed Extension published in the Federal Register on January 13, 2023.

Best,

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March 13, 2023

Submitted electronically to: tu.tran@hq.doe.gov

RE: U.S. Department of Energy, Energy Information Administration – Agency Information Collection Proposed Extension

Mexico Pacific Limited LLC ("MPL"), by counsel, hereby submits comments on the U.S. Department of Energy, Energy Information Administration ("DOE") request for comments on its proposal to extend for three years its collection of information relating to natural gas imports and exports, and to modify the manner in which the confidentiality of that information is respected. If adopted, the proposal would extend Form FE-746R, "Natural Gas Imports and Exports," for an additional three years, but the proposal would for the first time require company-specific disclosure of the prices at which all natural gas is imported and exported other than natural gas exported from domestic facilities in the form of LNG.[1] This new selective natural gas export price disclosure policy would discriminate against the export of U.S. natural gas from non-U.S. facilities, competitively disadvantaging those facilities' owners as well as suppliers of natural gas to those facilities and the jurisdictions that host them, without justification.

As detailed below, MPL strongly opposes the proposed changes to Form FE-746R that would result in certain natural gas import and export price data being considered public information while other such data involving competitor activity remains exempt from public disclosure. MPL urges DOE to reconsider and rescind the proposal insofar as it would require for the first time the disclosure in company-identifiable form of export and import prices other than prices of LNG produced in domestic facilities.

[1] Department of Energy, Energy Information Administration, Agency Information Collection Proposed Extension (notice and request for comments), 88 Fed. Reg. 2350 (Jan. 13, 2023) ("Proposed Extension Notice").

Background on MPL

MPL is a limited liability company organized under the laws of Delaware with its principal place of business at 700 Louisiana Ave., Suite 2410, Houston, TX 77002. MPL is developing a liquefied natural gas ("LNG") production and offtake facility located in the State of Sonora, Mexico near Puerto Libertad (the "Saguaro Energía project"). Once completed, the Saguaro Energía project will be capable of receiving, processing, and liquefying natural gas, storing the resulting LNG, and loading LNG onto oceangoing LNG carriers for re-export. To supply the Saguaro Energía project, MPL will arrange for the transportation of natural gas from the United States via pipeline across the Mexican border and on to the Saguaro Energía project for processing and liquefaction.

MPL previously sought, and was granted, DOE authorization to export up to the equivalent of 621 Bcf/year of U.S.-sourced natural gas to Mexico for end use in Mexico and/or, after liquefaction in Mexico, by vessel in the form of LNG from the proposed Saguaro Energía project facility to free trade agreement and non-free trade agreement nations.[2] Once it becomes an exporter of natural gas via pipeline from the United States, MPL will be required to complete Form FE-746R on a monthly basis (assuming the form is extended). Other entities that export natural gas from the U.S. to Mexico or Canada by pipeline for liquefaction and re-export in the form of LNG will also be required to complete Form FE-746R, if extended. The Proposed Extension Notice makes it clear that if the form is renewed as proposed, except for prices for domestically produced LNG exports, import and export prices for all imported and exported natural gas will be considered public information and may be publicly released in company identifiable form.

Comments in Opposition

MPL does not oppose the extension of the time period relating to the obligation to file Form FE-746R and the continued collection of information relating to imports and exports of natural gas. MPL does not contest DOE's assertion that data on natural gas imports and exports are useful in the agency's assessments of "the adequacy of energy resources to meet near and longer-term energy demands, and … in the management of [the Office of Fossil Energy and Carbon Management's] natural gas regulatory program."[3]

However, MPL strongly opposes DOE's proposal to designate *for the first time* information submitted on Form FE-746R as "public information [that] may be publicly released in company identifiable form," except for domestically produced LNG export prices."[4] The Proposed Extension Notice proposes that Form FE-746R be renewed "with changes" that contemplate that DOE's Office of Fossil Energy and Carbon Management will henceforth invoke exemptions under

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2 *Mexico Pacific Limited LLC*, DOE/FE Order No. 4248, Docket No. 18-70-LNG (Sept. 19, 2018) ("Order No. 4248"); *Mexico Pacific Limited LLC*, DOE/FE Order No. 4312, Docket No. 18-70-LNG (Dec. 14, 2018) ("Order No. 4312").

3 Proposed Extension Notice, 88 Fed. Reg. at 2351.

4 *Id.*

the Freedom of Information Act ("FOIA") to protect from public disclosure *only* prices of LNG exports, and not other natural gas price data.[5]

Currently, Form FE-746R provides that the "Price at Import or Export Point *for all forms of natural gas imported and exported*, including LNG" will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the FOIA.[6] The Proposed Extension Notice makes it clear that, if modified as proposed, Form FE-746R would fundamentally change this settled practice, and going forward would permit the Office of Fossil Energy and Carbon Management to release to the public "in company identifiable form" all pricing of natural gas imports and exports "excluding pricing for domestically produced LNG exports."[7] DOE's proposed changes to Form FE-746R will result in "[i]mport and export prices for all forms of natural gas at the transaction level [to] be considered public information and may be publicly released in company identifiable form," with the single – and unexplained – exception of the prices of LNG exported from domestic LNG production facilities.[8]

MPL urges DOE to reconsider and rescind its proposal because there is no basis or justification for a change in policy regarding the disclosure of pricing information that (i) will result in disproportionate impacts on one class of natural gas exporters relative to all others, including direct competitors of such exporters, and (ii) departs without explanation from DOE's historical practice.

First, DOE has identified no basis for treating one set of natural gas exporters (those that export LNG from domestic production facilities) differently from all others (including exporters of LNG from facilities such as the Saguaro Energía project that are supplied by U.S.-sourced natural gas but are not located in the U.S.). DOE's proposal will disproportionately burden one set of natural gas export market actors (those that do not export natural gas in the form of LNG from domestic LNG production facilities, whose pricing will be publicly disclosed on a company-specific basis) relative to other natural gas export market actors (those that export LNG from

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5 *Id.*

6 The instructions accompanying the current version of Form FE-746R, at "Disclosure of Information," provide that (emphasis added):

> Information reported on Form FE-746R is considered public information and may be publicly released in company identifiable form *except that the following information will be protected and not disclosed to the public* to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 USC §552, as amended, and the Department of Energy (DOE) regulations, 10 CFR §1004.11, implementing the FOIA.
>
> • Price at Import or Export Point for all forms of natural gas imported and exported, including LNG
>
> • Name of the Specific Purchaser/End User for all forms of natural gas imports and exports, including LNG for all modes of transportation except by pipeline.
>
> • Heat content for all forms of natural gas imported and exported.

7 Proposed Extension Notice at 2351.

8 *Id.*

domestic facilities, whose pricing information would continue to be exempt from public disclosure). The inevitable result will be harm to competition among gas sellers supplying export markets and to natural gas exporters, some of whose pricing will become public while competitors' pricing remains exempt from public disclosure.

For MPL and other LNG producers whose facilities are located outside the U.S., adoption of the changes outlined in the Proposed Extension Notice would be competitively disastrous. Renewed Form FE-746R would require that MPL and others exporting natural gas by pipeline to the Saguaro Energía project or other LNG production facilities located in Mexico or Canada to reveal to their competitors and the world the prices at which natural gas is exported by pipeline for subsequent production of LNG outside the U.S. This information – which is competitively sensitive and would benefit domestic LNG producers that would be under no comparable compulsion to reveal their most significant input cost – would be made publicly available on a company-specific basis, while similar information on input costs and export prices for exporters of LNG produced in the U.S. will not be. This asymmetrical information disclosure requirement will adversely affect MPL and all other projects and companies that export natural gas to support LNG production outside of the U.S., and will unjustifiably benefit producers of LNG from domestic facilities. Under the proposed change, the prices of the feed gas exported to LNG facilities located outside the U.S. will be made public on a company-specific basis, while the price of feed gas supplying LNG exporters located in the U.S. will not have to be made public on a company-specific basis. The inequity here is obvious.

Second, DOE has offered no justification for treating pricing data for natural gas exports other than those made in the form of LNG from domestic facilities differently from the way it has been treated historically. In fact, DOE provides no justification at all for the proposal to withdraw protection for sensitive natural gas export pricing data that would have real, and harmful, consequences on a single group of natural gas exporters. Lacking any explanation whatsoever for the fundamental change DOE is proposing, the renewal of Form FE-746R with a change requiring disclosure of competitively sensitive information pertaining to one set of competitors but not to another is legally deficient. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983) (agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choices made). Moreover, DOE's contemplated change in policy is nowhere explained, even though such an explanation is legally required. *See, e.g., FCC v. Fox Television Stations*, 129 S. Ct. 1800, 1811 (2009) (when an agency changes its policy it must acknowledge the change and "show that there are good reasons for the new policy"). The proposed action accordingly would be highly unlikely to survive judicial challenge.

DOE should bear one additional consideration in mind as it considers whether to move forward with the proposed change to the scope of protection it will afford competitively sensitive pricing information. The result of the proposed exemption only of export prices of LNG produced in the U.S. from public disclosure will be to place other natural gas exporters at a significant competitive disadvantage. The entities that would be adversely affected would include both producers of LNG reliant on facilities located in Mexico and Canada, and natural gas producers that supply those facilities. On its face, this disparate treatment of natural gas exporters would appear to burden LNG producers operating in Mexico and Canada relative to those whose production facilities are located in the U.S. This disparate treatment could be viewed as inconsistent with obligations the U.S. has undertaken under the United States-Mexico-Canada Agreement, and can be expected to be viewed with concern by our trading partners in both nations. It is conceivable that the disproportionate burden DOE is proposing to place on natural gas exporters reliant on LNG facilities located in Mexico or Canada could engender informal or even formal requests for consultation concerning the impacts on trade of the changes DOE has proposed.

Conclusion

MPL is making significant progress with the commercial development of the Saguaro Energía project, for which DOE has granted natural gas export authorizations upon finding that such exports would not be inconsistent with the public interest. It is therefore troubling in the extreme for MPL to confront the prospect that DOE may change course and for the first time, and without any rational basis, require public disclosure of company-specific natural gas export pricing information for some LNG producers but not for others. As discussed above, this action would put MPL and natural gas suppliers to the Saguaro Energía project at a distinct competitive disadvantage vis-à-vis exporters of LNG produced in the U.S. DOE has offered no justification whatsoever for the proposed change, nor has it addressed the impacts of the proposed change on competition among natural gas exporters and their suppliers. Consequently, the proposed change is inconsistent with the requirements of Section 10 of the Administrative Procedure Act[9] and therefore unlawful.

MPL respectfully urges DOE to consider these comments, and for the reasons stated herein, reconsider and rescind its proposal to change Form FE-746R.

Sincerely,

James F. Bowe, Jr.

James F. Bowe, Jr.
Counsel for Mexico Pacific Limited LLC

cc: Krysta De Lima

[9] 5 U.S.C. §§ 701–706.

From:	Tran, Tu
To:	Tyler Brown
Cc:	James Bowe; Krysta De Lima
Subject:	DOE Response to MPL"s Comments on Form FE-746R, Agency Information Collection Extension, 88 Fed. Reg. 2350
Date:	Tuesday, May 2, 2023 4:35:00 PM

Dear Tyler R Brown,

Thank you for submitting comments on behalf of Mexico Pacific Limited LLC (MPL) in response to the January 13, 2023 notice issued by the U.S. Department of Energy, Office of Fossil Energy and Carbon Management. The notice announced changes to Form FE-746R, OMB Control Number 1901-0294. DOE published this notice in the Federal Register on January 13, 2023 at 88 Fed. Reg. 2350 and received MPL's comments by email on March 13, 2023.

DOE uses Form FE-746R to collect critical information on U.S. natural gas trade from authorized importers and exporters of natural gas, including importers and exporters of liquefied natural gas (LNG). The notice proposes to change the confidentiality policy for select information reported on Form FE-746R using the exemption under the Freedom of Information Act (FOIA) to protect certain price information reported on Form FE-746R, LNG export prices, and for all other price information reported on Form FE-746R to be considered public information.

MPL strongly opposes the proposed changes to Form FE-746R that would result in certain natural gas import and export price data being considered public information while other such data involving competitor activity remains exempt from public disclosure.

DOE appreciates MPL's comments. Based on comments filed in support of the protection of individual submissions of price data submitted on Form FE-746R, DOE's final proposal does not make changes to the existing data collection. DOE will use the exemptions under the FOIA to maintain the protection of transaction-level price data for all forms of natural gas imported and exported, including LNG, to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 USC §552, as amended, and the Department of Energy (DOE) regulations, 10 CFR §1004.11, implementing the FOIA. Price data will not be published at a transaction level for all forms of natural gas imported and exported, including LNG. The final proposal balances the public interest to be served by publishing significant amounts of aggregate price data but retaining protection for transaction-level data that would cause competitive harm to natural gas importers and exporters.

A Federal Register Notice will be published in the near future when Form FE-746R is submitted to the Office of Management and Budget for their review.

If you have further questions or concern regarding Form FE-746R, please feel free to contact me.

Sincerely,

Tu Tran
Economist

U.S. Department of Energy
202-235-5873