From:	Katharine Ehly
To:	Tran, Tu
Subject:	[EXTERNAL] CLNG Comments on FE-746R "Natural Gas Imports and Exports"
Date:	Tuesday, March 14, 2023 6:37:10 PM
Attachments:	image003.png CLNG Comments on DOE FE746R.pdf

Please find attached the Center for LNG's comments regarding DOE's Natural Gas Imports and Exports form FE-746R.
Thank you for your consideration.

Katie

Katharine Ehly
Senior Policy Advisor
Natural Gas Supply Association and Center for LNG
900 17th Street, NW, Suite 500
402-440-8187 cell
NGSA CLNG

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March 14, 2023

<u>Via Electronic Mail (tu.tran@hq.doe.gov)</u>
U.S. Energy Department (FE-34)
Attn: Tu Tran
Office of Fossil Energy and Carbon Management
1000 Independence Avenue SW
Washington, DC 20585

Re: <u>Comments of the Center for LNG on Agency Information Collection & Changes to Form FE-746R</u>

To the Department of Energy ("DOE") Office of Fossil Energy and Carbon Management ("FECM"):

Pursuant to the notice announcing a proposed three-year extension with changes of Form FE-746R, "Natural Gas Imports and Exports," published by the U.S. Energy Information Administration ("EIA") and DOE in the *Federal Register* on January 13, 2023, 88 Fed. Reg. 2350, Center for Liquefied Natural Gas submits the following comments.

I. <u>Interest of CLNG</u>

The Center for Liquefied Natural Gas (CLNG) advocates for public policies that advance the use of liquefied natural gas (LNG) in the United States, and its export internationally. A committee of the Natural Gas Supply Association (NGSA), CLNG represents the full LNG value chain, including large-scale LNG export facilities in the United States, shippers, and multinational developers, providing it with unique insight into the ways in which the vast potential of this abundant, clean, and versatile fuel can be fully realized.

II. <u>Background</u>

On January 13, 2023, DOE issued a notice and request for comments regarding a proposed three-year extension of the collection of information through Form FE-746R, "Natural Gas Imports and Exports" (the "Notice"). Form FE-746R requires holders of natural gas import and export authorizations issued by DOE FECM to report certain information regarding import and/or export transactions on a monthly basis. In the Notice, DOE proposed certain changes to the treatment of information collected on Form FE-746R, as well as corresponding amendments to the instructions to the form. Specifically, DOE proposes that FECM will apply Freedom of Information Act ("FOIA") exemptions to protect price information for liquefied natural gas ("LNG") exports, but will no longer provide FOIA protection to other natural gas price data. The Notice proposes that "[i]mport and export prices for all forms of natural gas at the transaction level will be considered public information and may be publicly released in company identifiable form, excluding prices for domestically produced LNG exports."[1]

The Notice further proposes that the data protection statement for information reported on Form FE-746R will state:

> 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 U.S.C. 552, as amended, and the Department of Energy (DOE) regulations, 10 CFR 1004.11, implementing the FOIA:
>
> • LNG export prices;
>
> • 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***; and
>
> • Heat content for all forms of natural gas imported and exported.[2]

Thus, according to the Notice, DOE proposes to make public and to *not* apply FOIA protections to cross-border pipeline natural gas import/export transactions, including the name of the specific purchaser/end user associated with a natural gas export via pipeline. DOE proposes to continue exemptions to protect price information for LNG exports.

III. Comments

CLNG supports DOE's continued recognition of FOIA protections as they relate to LNG export transactions. CLNG respectfully submits, however, that one element of DOE's proposal – to amend the information collection and data collection associated with Form FE-746R to allow public disclosure of cross-border import/export transaction information – raises significant concerns.

As a preliminary matter, DOE provides no rationale for why it is proposing a change in the treatment of information relating to cross-border gas imports/exports via pipeline. Nowhere in the Notice does DOE explain why commercially sensitive pricing information for cross-border imports/exports via pipeline will no longer receive such protection.

[1] 88 Fed. Reg. at 2351.
[2] *Id.* (emphasis added).

CLNG respectfully submits that price data and company-specific purchaser/end user data for *all* forms of exports including pipeline imports/exports are commercially and financially sensitive and are entitled to protection under FOIA Exemption 4 and DOE's regulations. Exemption 4 to the FOIA excludes from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential . . ." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.11. In *Food Marketing Institute v. Argus Leader Media*, the Supreme Court held that "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." 139 S. Ct. 2356, 2019 U.S. LEXIS 4200 *21 (June 24, 2019).

Furthermore, DOE's regulations at 10 C.F.R. § 1004.11 provide that DOE will consider the following criteria in determining whether information is exempt under FOIA Exemption 4: (1) whether the information has been held in confidence by the person to whom it pertains; (2) whether the information is of a type customarily held in confidence by the person to whom it pertains and whether there is a reasonable basis therefore; (3) whether the information was transmitted to and received by the Department in confidence; (4) whether the information is available in public sources; (5) whether the disclosure of the information is likely to impair the Government's ability to obtain similar information in the future; and (6) whether disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.

Pricing and purchaser/end user information associated with cross-border pipeline imports/exports satisfy the above criteria. Such information is "customarily and actually treated as private" by FE-746R reporting parties. Pricing and purchaser data is commercially sensitive and confidential information that export authorization holders do not provide to third parties in the ordinary course of business and that is not available from public sources. Authorization holders engaged in cross-border pipeline imports/exports face competition in the sale of natural gas in the marketplace and would be harmed by the disclosure of company-specific price and purchaser/end user information reported in Form FE-746R. Prices associated with natural gas import/export transactions are the result of substantial negotiation between the import/export authorization holders and their customers. In light of the competitive gas export marketplace, import/export authorization holders and their customers customarily and actually treat gas pricing as private and do not disclose such information to third parties. Currently, respondents to Form FE-746R have provided pricing information for all natural gas transaction to DOE FECM under an expectation of confidential treatment with respect to detailed pricing information.

Section 1004.11 provides in pertinent part that when a document is submitted to DOE that contains information that may be exempt from public disclosure, "DOE will consider the submitter's views . . . in making its determination."[3] Contrary to the dictates of that section, the changes proposed in the Notice would automatically disclose pricing data for cross-border exports

[3] 18 C.F.R. § 1004.1.

that is protected under FOIA Exemption 4, without providing the submitter of such information any opportunity to respond. Such an approach is contrary to the spirit and requirements of FOIA and DOE's regulations.

As previously noted, DOE has provided no explanation as to why it proposes to remove protections for pricing data associated with cross-border pipeline transactions. To the extent DOE is proposing to remove data protections for cross-border imports and exports because such exports may involve transactions occurring between entities in the United States and entities in Mexico and Canada, this disparate treatment may be contrary to the United States' free trade agreement obligations and the intent of Congress in enacting Section 3(c) the Natural Gas Act, which mandate national treatment of imports and exports from such countries. Removing protections for the pricing of natural gas sales in Mexico and Canada on such a granular level while not doing so for sales of domestic gas within U.S. borders is contrary to national treatment principles.

For the foregoing reasons, DOE should not release company-specific data at the level in which it is reported for cross-border pipeline import/export transactions. Currently, DOE/FECM publishes *both* (1) monthly and quarterly price data by location for short-term and long-term natural gas imports and exports by pipeline, and (2) quarterly aggregated price data by *company* and location for short-term natural gas imports and exports by pipeline. DOE/FECM should justify the public interest in publishing company-specific price data for cross-border pipeline transactions or discontinue this practice for the reasons set forth above.

IV. Conclusion

CLNG respectfully requests that DOE/FECM accept these comments supporting the current treatment of LNG export pricing information but withdraw its proposal to amend the information collection for Form FE-746R and associated instructions and data protections as set forth in the Notice as related to pipeline import/export transactions.

Respectfully submitted,

/x/ Katharine Ehly

Katharine Ehly
Senior Policy Advisor
Center for Liquefied Natural Gas
900 17th Street NW, Suite 500
Washington, D.C. 20006
Katherine.ehly@ngsa.org

From:	Tran, Tu
To:	Katharine Ehly
Subject:	DOE Response to CLNG"s Comments on Form FE-746R, Agency Information Collection Extension, 88 Fed. Reg. 2350
Date:	Tuesday, May 2, 2023 4:27:00 PM

Dear Katharine Ehly,

Thank you for submitting comments on behalf of the Center for Liquefied Natural Gas (CLNG) 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 the CLNG's comments by email on March 14, 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.

CLNG states that price data and company-specific purchaser/end user data for all forms of imports and exports including pipeline imports/exports are commercially and financially sensitive and are entitled to protection under FOIA Exemption 4, and DOE's regulations, as the information is "customarily and actually treated as private" by FE-746R reporting parties.

DOE appreciates CLNG 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. DOE would also like to note that the 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 will continue to be protected. DOE does not currently collect and is not proposing to collect purchaser/end user data for pipeline imports and exports. 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