

Biden Administration's LNG Export Approval Pause

Political/Legal History & Outlook

Environmental Law Institute

March 20, 2024

Holland & Knight

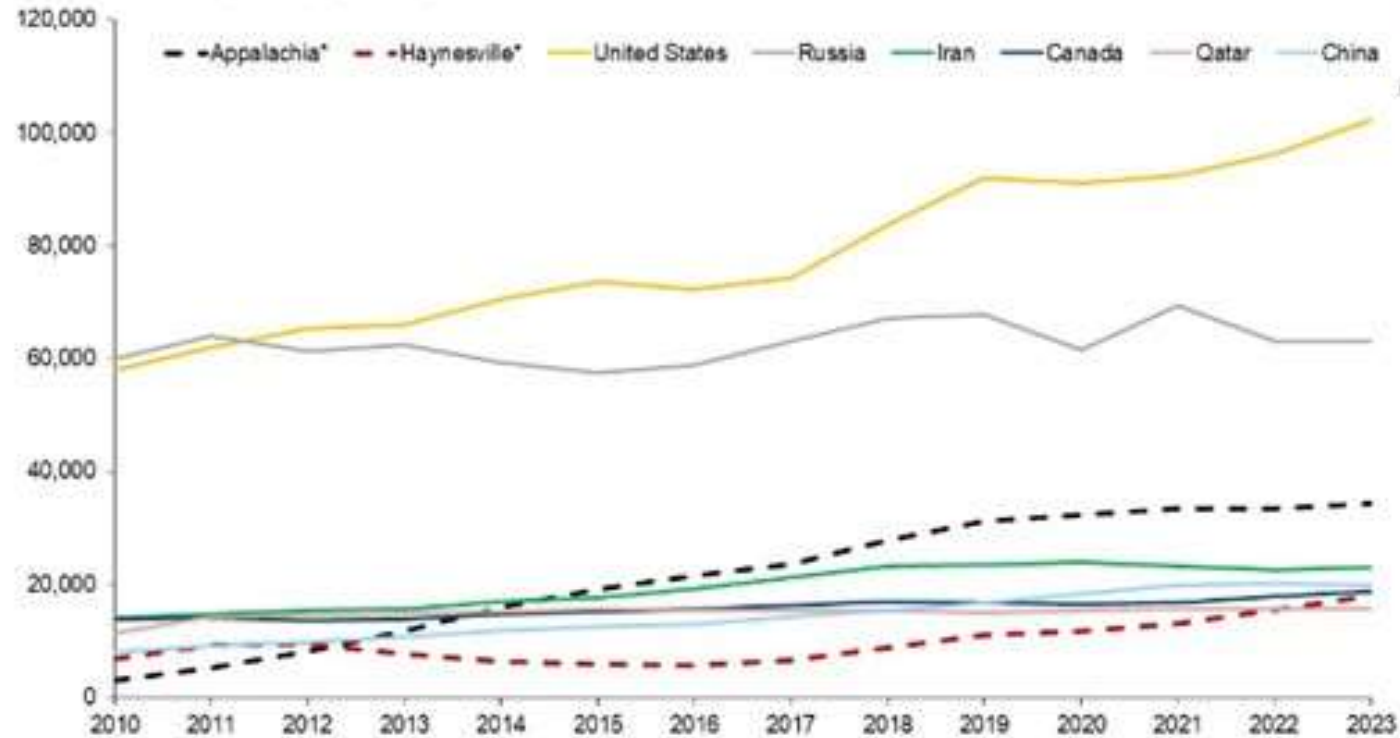
Memory Lane: A Look Back at Congressional Action

- In 2011, Congress began to seriously think about LNG exports.
 - Search of Congressional Record
 - Barely any mention of “LNG exports” until 2014
 - First Senate ENR hearing on LNG Exports in 2011
 - Mentions that Natural Gas Act is focused on imports/not exports
- Until then, the U.S. was on the path to build LNG *import* facilities.
 - Advanced drilling techniques upended U.S. natural gas supplies
 - In 2011 speech, Christopher Smith, Deputy Assistant Secretary – DOE, EIA projections
 - U.S. gas production will increase to 7.2 tcf by 2015 and 12.2 tcf by 2035
 - EIA now: 36.35 tcf in 2022, 37.86 tcf in 2023, 38.37 tcf in 2024
 - The U.S. has trippled natural gas production expectations

U.S. Natural Gas Production

Total gas production for key countries and major US shale basins

Million cubic feet per day (MMcfd)



Source: Rystad Energy iCube, Rystad Energy research and analysis



RYSTAD ENERGY

DOE/FERC Authority

Natural Gas Act: Under the Natural Gas Act of 1938 (NGA), as amended, requires federal approval of natural gas exports. DOE is responsible for reviewing LNG export applications.

- **DOE's Statutory Authority**

- DOE's authority to regulate the export of natural gas arises under section 3 of the Natural Gas Act. That authority is vested in the Secretary of Energy and has been delegated to the Assistant Secretary for Fossil Energy and Carbon Management.
- Section 3(a) of the Natural Gas Act sets forth the standard for review of most LNG export applications:
- [N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest.

- **FERC's Authority**

- In 1984 DOE delegated to FERC the authority to approve or deny LNG facilities. [DOE Delegation Order No. 0204-112, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984).] FERC also authorizes the construction and operation of associated pipelines under section 7 of the NGA.
- FERC is responsible for authorizing the construction and operation of facilities located onshore or within state waters that liquefy natural gas and load the LNG onto ships for export.
- FERC conducts an environmental review (NEPA analysis) of the facility to help with this decision.
- FERC's review of applications to construct LNG export facilities can take 2 to 3 years or more.

Changes to Permitting Process Over the Years

- NGA was amended in the Energy Policy Act of 1992
 - Congress enacted section 3(c) to the NGA. Section 3(c) created a different standard of review for applications to export natural gas to those countries with which the United States has in effect a free trade agreement (FTA) requiring national treatment for trade in natural gas. Section 3(c) requires such applications to be deemed consistent with the public interest and granted without modification or delay.
- Until May 2014, DOE granted conditional approvals
 - Granted on the condition that FERC completed a satisfactory environmental review of the associated export facility. DOE granted final approvals only after it had the opportunity to consider and adopt the FERC-led review. In May 2014, DOE proposed suspending its practice of issuing conditional approvals and instead proposed reviewing applications only after FERC has completed the environmental review, and DOE has sufficient information to determine the public interest of an application.
 - In August 2014, DOE finalized this proposal after a public comment and review period.

What is Deemed “Public Interest”

- Section 3 of NGA does not define “public interest”
- Wide range of criteria are considered as part of DOE’s public interest review process, including:
 - Domestic need for the natural gas proposed for export
 - Adequacy of domestic natural gas supply
 - U.S. energy security
 - Impact on the U.S. economy (GDP), consumers, and industry
 - Jobs creation
 - U.S. balance of trade
 - International considerations
 - Environmental considerations
 - Consistency with DOE’s long-standing policy of promoting competition in the marketplace through free negotiation of trade arrangements
 - Other issues raised by commenters and/or interveners deemed relevant to the proceeding

Legal Challenges

- Many legal challenges:
- **D.C. Circuit Upheld FERC's Environmental Review for Texas LNG Facility, Left Door Open for Challenges of Energy Department Authorizations of Natural Gas Export**
 - June 28, 2016
- **US appeals court scraps Sempra's Port Arthur LNG emissions permit**
 - November 15, 2023



February 6, 2024

Submitted via email

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

The Honorable Jennifer M. Granholm
Secretary, U.S. Department of Energy
100 Independence Avenue, SW
Washington, D.C. 20585

Re: Objections to the Liquefied Natural Gas Export Pause

Dear President Biden and Secretary Granholm:

We, the Attorneys General for Kansas, Indiana, Louisiana, West Virginia, Alabama, Alaska, Arkansas, Georgia, Idaho, Kentucky, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming urge you to end the "pause" on exports of liquefied natural gas (LNG). Instead of addressing

FERC/DOE Action

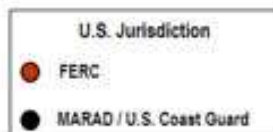


United States LNG Export Terminals *Existing*



1. Kenai, AK: 0.2 Bcf/d (Trans-Foreland)
2. Sabine, LA: 4.55 Bcf/d (Cheniere/Sabine Pass LNG – Trains 1-6)
3. Cove Point, MD: 0.79 Bcf/d (Dominion–Cove Point LNG)
4. Corpus Christi, TX: 2.40 Bcf/d (Cheniere – Corpus Christi LNG Trains 1-3)
5. Hackberry, LA: 2.08 Bcf/d (Semptra–Cameron LNG, Trains 1-3)
6. Elba Island, GA: 0.35 Bcf/d (Southern LNG Company Units 1-10)
7. Freeport, TX: 2.38 Bcf/d (Freeport LNG Dev/Freeport LNG Expansion/FLNG Liquefaction Trains 1-3)
8. Cameron Parish, LA: 1.70 Bcf/d (Venture Global Calcasieu Pass Units 1-9)

**Total Existing Capacity:
14.43 bcf/d**



As of March 12, 2024
No updates since previous issuance



FERC/DOE Action

United States LNG Export Terminals Approved, Not Yet Built



U.S. Jurisdiction & Status

- FERC - Approved, Under Construction
- FERC - Approved, Not Under Construction
- MARAD / U.S. Coast Guard



FERC – APPROVED, UNDER CONSTRUCTION

1. Sabine Pass, TX: 2.57 Bcfd (ExxonMobil – Golden Pass) (CP14-517, CP20-459)
2. Plaquemines Parish, LA: 3.32 Bcfd (Venture Global Plaquemines) (CP17-66)
3. Calcasieu Parish, LA: 3.81 Bcfd (Driftwood LNG) (CP17-117)
4. Corpus Christi, TX: 1.58 Bcfd (Cheniere Corpus Christi Stage III) (CP18-512)
5. Port Arthur, TX: 1.86 Bcfd (Sempra - Port Arthur LNG Trains 1 & 2) (CP17-20)
6. Brownsville, TX: 3.73 Bcfd (Rio Grande LNG – NextDecade) (CP16-454)
7. Cameron Parish, LA: 0.06 Bcfd (Venture Global Calcasieu Pass) (CP15-550)

**Total Capacity:
17.53 bcf/d**

FERC – APPROVED, NOT UNDER CONSTRUCTION

- A. Lake Charles, LA: 2.27 Bcfd (Lake Charles LNG) (CP14-120)
- B. Lake Charles, LA: 1.22 Bcfd (Magnolia LNG) (CP14-347)
- C. Hackberry, LA: 0.93 Bcfd (Sempra - Cameron LNG Train 4) (CP15-560, CP22-41)
- D. Freeport, TX: 0.74 Bcfd (Freeport LNG Dev Train 4) (CP17-470)
- E. Pascagoula, MS: 1.50 Bcfd (Gulf LNG Liquefaction) (CP15-521)
- F. Jacksonville, FL: 0.13 Bcfd (Eagle LNG Partners) (CP17-41)
- G. Brownsville, TX: 0.62 Bcfd (Texas LNG Brownsville) (CP16-116)
- H. Nikiski, AK: 2.76 Bcfd (Alaska Gasline) (CP17-178)
- I. Cameron Parish, LA: 1.21 Bcfd (Commonwealth LNG) (CP19-502)
- J. Port Arthur, TX: 1.86 Bcfd (Sempra - Port Arthur LNG Trains 3 & 4) (CP20-55)

**Total Capacity:
13.24 bcf/d**

MARAD/USCG – APPROVED, NOT UNDER CONSTRUCTION

- MC1. Gulf of Mexico: 1.8 Bcfd (Delfin LNG)

**Total FERC Approved Capacity:
45.2 bcf/d**

House Action since Pause



- This bill repeals certain restrictions on the import and export of natural gas under the Natural Gas Act, including requirements for Department of Energy (DOE) approval and related provisions that address free trade agreements.
- In addition, the bill grants the Federal Energy Regulatory Commission (FERC) the exclusive authority to approve or deny applications to authorize the siting, construction, expansion, or operation of facilities (e.g., liquefied natural gas terminals) to export natural gas to foreign countries or import natural gas from foreign countries. (Currently, DOE authorizes the export or import of natural gas, and FERC authorizes related facilities.)
- In determining whether to approve or deny an application, FERC must deem the exportation or importation of natural gas to be consistent with the public interest.

Senate Action since Biden's Pause



- **S.3704 - Unlocking Domestic LNG Potential Act of 2024**
 - Allows the Federal Energy Regulatory Commission to approve or deny applications for the siting, construction, expansion or operation of facilities to export or import liquified natural gas (LNG).
- **Senator Kennedy (R-LA):**
 - On Jan. 30, Kennedy vowed to block President Biden's nominees to the State Department and the Department of Energy until the Administration stops its hostility towards LNG production.
 - Louisiana's Calcasieu Pass 2 project is among the 17 proposed LNG terminals Biden's decision froze.

United States Senate

March 18, 2024

Mr. John Podesta
Senior Advisor to the President for International Climate Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Podesta:

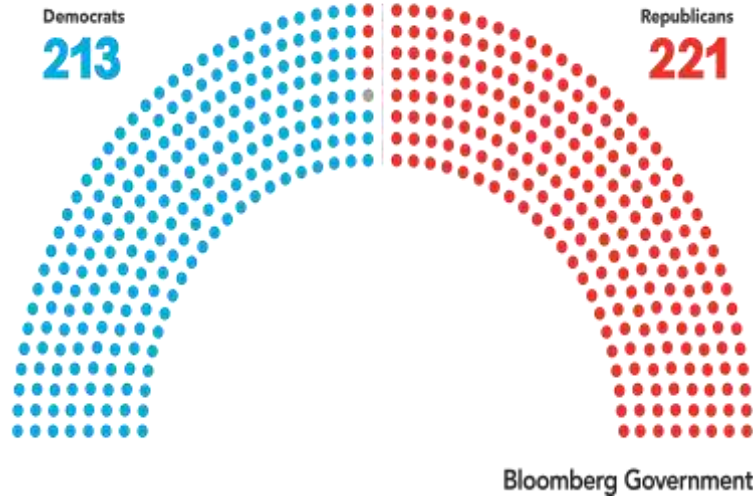
We write to you regarding our serious concerns regarding the Biden administration's recent decision to halt the approval process for liquefied natural gas (LNG) exports to non-Free Trade Agreement (FTA) countries.¹ At a time when war is ongoing in Ukraine and tensions are rising in the Middle East and Asia, it is particularly important that allied nations can rely on the United States for a reliable, long-term fuel supply. The administration's decision, however, creates serious doubts about the reliability of that fuel supply and will have dire national security and foreign policy implications. It should be reversed immediately.

As you know, the Natural Gas Act (NGA) requires the U.S. Department of Energy (DOE) to evaluate whether the authorizations for the export of LNG to non-FTA countries is consistent with the "public interest."² It also presumes that those exports are in the public interest *unless* a finding is made otherwise after the opportunity for a public hearing.³ To date, DOE and the Federal Energy Regulatory Commission (FERC) have consistently made such affirmative findings, as LNG exports are in the public interest of the United States and its allies abroad.

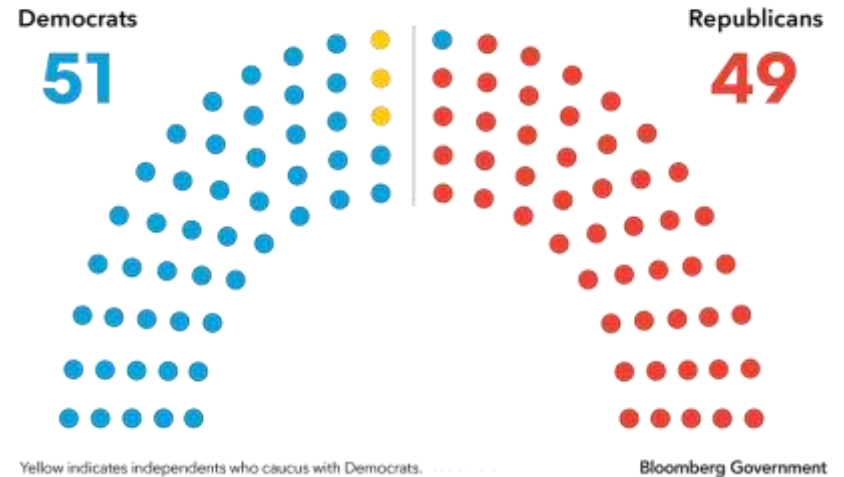
This is particularly important given global LNG demand is expected to increase to nearly 700 metric tonnes (MT) by 2040.⁴ The supply increase is also necessary to meet the growing

Crystal Ball – Election Implications

House Balance of Power



Senate Balance of Power



Administration:

HOUSTON — The Department of Energy’s pause on liquefied natural gas exports will wrap up well within a year, Energy Secretary Jennifer Granholm told E&E News in an interview Monday.

“By the time we meet here at this place next year, it’s going to be long in the rear-view mirror,” Granholm said at the CERAWEEK by S&P Global energy conference in downtown Houston.

Thank you

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