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MONTGOMERY BARNETT

Louisiana at the Forefront of LNG Exportation

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Last month, Southern California Telephone & Energy announced the acquisition of 200 acres on the Calcasieu Ship Channel for the development of a $2.4 billion liquefied natural gas (LNG) export facility. The site is located on Monkey Island in Cameron Parish, less than three miles from the Gulf of Mexico, and is situated at the intersection of several major interstate and intrastate natural gas pipelines.

The Monkey Island facility is the latest in a growing number of multi-billion dollar LNG export terminal projects planned for construction in Louisiana. Export terminals are designed to receive natural gas from existing pipeline infrastructure, liquefy the gas for transportation, and load the gas onto carriers for shipment overseas. Despite the recent proliferation of terminals projects, however, efforts to export natural gas have been continuously hampered by a lengthy regulatory approval process.

Energy companies seeking to export domestically-produced natural gas must obtain approval to do so from two federal agencies: the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC). First, prospective exporters must submit an export application to the DOE (specifically the Office of Oil and Gas Global Security and Supply, Division of Natural Gas Regulatory Activities). Applications to export gas to the twenty countries that have Free Trade Agreements (FTAs) with the U.S. are granted almost automatically. In contrast, exports to non-FTA countries require a determination by the DOE that the proposed exportation would be "consistent with the public interest." In making this determination, the DOE considers a number of factors ranging from environmental impacts to domestic supply and demand. If the DOE determines that an export project is consistent with the public interest, it typically issues conditional approval of the project pending review by the FERC.

Over thirty proposed facilities (about a dozen from Louisiana) have applied for DOE export authority. Seven have been granted conditional approval. Of those seven, only one facility—

Cheniere Energy's Sabine Pass Liquefaction Terminal in Cameron Parish—has passed the second regulatory hurdle and received final approval from the FERC to begin construction.

The FERC is the federal agency responsible for regulating the siting and construction of onshore and near-shore LNG facilities. Under the Energy Policy Act and the National Environmental Policy Act (NEPA), the FERC is designated as the lead environmental regulator of LNG import and export terminals. In that role, the FERC performs comprehensive environmental assessments of proposed terminal projects and generates detailed environmental impact statements regarding the potential effects of the facilities' construction and operation.

The FERC review process has proven to be long and arduous. Regulatory approval from the FERC has been extremely slow due to the complexity of the regulations and the amount of moving parts involved. The FERC is required to coordinate its review with several state and federal regulatory authorities, including the Pipeline and Hazardous Materials Safety Administration and the Environmental Protection Agency, and it must incorporate the work of those authorities into its final assessment. There is no statutory time limit within which this process must be completed—consequently, several applications have languished at the FERC for years.

The foregoing has led some to describe the LNG export approval process as a "regulatory black hole." Lately, however, regulators have begun to move at a quicker pace, granting conditional approval to four separate projects since August 2013. Additionally, on May 29, 2014, the DOE announced that it is considering a proposal to eliminate the conditional approval stage altogether in an attempt to expedite the review process. If the proposal is adopted, the DOE will stop issuing conditional approvals prior to completion of NEPA reviews by the FERC. The DOE argues that this will increase efficiency since the agency will only begin to make a public interest determination once the FERC has completed its environmental assessment, thereby prioritizing DOE review to those projects that are most likely to be constructed.

Efforts to streamline the review process come amid political pressure to hasten export approvals in order to capitalize on fuel shortages around the globe. Geopolitical interests have also been a driving force, with particular attention being paid to a recent deal whereby Russia has agreed to export $400 billion in natural gas to China over a 30-year period. If political and economic considerations cause the accelerated pace of regulatory approval to continue, some proposed export terminals could be fully operational as early as 2016.

Given the ongoing glut in domestic natural gas production, coupled with recent political developments in Russia and Asia, nuclear phase-outs throughout Europe and Japan, and a growing worldwide demand for clean-burning fuel sources, the U.S. is poised to become the dominant force in the global LNG market. As many of the projects under regulatory review are based in Louisiana, LNG exportation holds huge promise for the communities where these facilities will be constructed, as well as for the state as a whole. Although the limits of natural gas exportation remain uncertain, there is no doubt that Louisiana stands at the forefront of the LNG export rush.