

Client Alert

Latham & Watkins
Corporate, Environment, Land & Resources
and Finance Departments

Update: US LNG — Precedence Order Announced by DOE for Commencing Processing of Pending Long-Term Applications to Export LNG to Countries without Free Trade Agreements with the US

"The relevant date for a project to have 'commenced the pre-filing process' at FERC is the date that FERC approves the start of the pre-filing process, not the date that a request to begin the pre-filing process was made."

As discussed in Latham's *Client Alert* dated December 10, 2012, the US Department of Energy (DOE) announced the issuance of the second and final economic study to be used in its evaluation of applications to export LNG to countries that do not have free trade agreements (so-called "non-FTA countries") that cover natural gas trade with the US. DOE also stated that 15 applications are currently awaiting its review and that it would give priority consideration to applications that were linked to facilities for which the environmental review process had begun at the Federal Energy Regulatory Commission (FERC). DOE recently released a list (excerpted below) providing the order of precedence by which it will begin processing pending long-term applications to export LNG to non-FTA countries.

As discussed in the prior *Client Alert*, FERC must review and approve plans for the construction and operation of LNG export facilities and the modification of LNG import facilities to become export terminals. Because of the potentially long lead times involved in FERC's environmental review process, FERC begins this process even before formal applications for construction and operation of proposed facilities are filed with FERC, in what is known as FERC's "pre-filing process." In a December 5, 2012 posting on its website, DOE stated:

[DOE] will begin to act on the 15 applications on a case-by-case basis. [DOE] expects to act first upon applications for which the applicants have commenced the pre-filing process at [FERC] as of December 5, 2012, in the general order in which [DOE] received them. Following disposition of those applications that have pre-filed with FERC, [DOE] expects to act upon the rest of the pending applications — and any others submitted — in the order received by [DOE].

The following is the order of precedence issued by DOE as of December 7, 2012.

Order to Be Processed	Company	Date DOE Application Filed	Date Applicant Received FERC Approval to Begin Pre- Filing Process
1	Freeport LNG Expansion, L.P. and FLNG	12/17/2010	1/5/2011
2	Lake Charles Exports, LLC	5/6/2011	4/6/2012
3	Dominion Cove Point LNG, LP	10/3/2011	6/26/2012
4	Freeport LNG Expansion, L.P. and FLNG	12/20/2011	1/5/2011
5	Cameron LNG, LLC	12/21/2011	5/9/2012
6	Jordan Cove Energy Project, L.P.	3/23/2012	3/6/2012
7	LNG Development Company, LLC (d/b/a)	7/6/2012	7/16/2012
8	Cheniere Marketing, LLC	8/31/2012	12/22/2012
9	Excelerate Liquefaction Solutions I, LLC	10/5/2012	11/20/2012
10	Carib Energy (USA) LLC	10/20/2011	
11	Gulf Coast LNG Export, LLC	1/10/2012	
12	Southern LNG Company, L.L.C.	8/31/2012	Not yet approved
13	Gulf LNG Liquefaction Company, LLC	8/31/2012	Not yet approved
14	CE FLNG, LLC	9/21/2012	
15	Golden Pass Products LLC	10/26/2012	

This list clarifies that the relevant date for a project to have “commenced the pre-filing process” at FERC is the date that FERC approves the start of the pre-filing process, not the date that a request to begin the pre-filing process was made. Along with this list of projects, the Order of Precedence clarified the criteria for determining precedence, as follows:

DOE will begin processing all long-term applications to export LNG to non-FTA countries in the following order:

1. All pending DOE applications where the applicant has received approval (either on or before December 5, 2012) from the Federal Energy Regulatory Commission (FERC) to use the FERC pre-filing process, in the order the DOE application was received.
2. Pending DOE applications in which the applicant did not receive approval (either on or before December 5, 2012) from FERC to use the FERC pre-filing process, in the order the DOE application was received.
3. Future DOE applications, in the order the DOE applications are received.

DOE has only stated that it will begin its review of the applications in the order listed above — not that it will issue decisions on the applications in that order. Additionally, consideration of an application is not an assurance that the application will be approved. DOE is required under the Natural Gas Act to approve only those exports that it finds not to be inconsistent with the public interest. There are many factors that DOE is likely to consider in its public interest assessment of individual applications, including economic impacts, environmental effects, security interests and the feasibility of a project, among other considerations.

If you have any questions about this *Client Alert*, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

Kenneth M. Simon

+1.202.637.2397
ken.simon@lw.com
Washington, D.C.

Michael J. Gergen

+1.202.637.2188
michael.gergen@lw.com
Washington, D.C.

Michael J. Yoshii

+81.3.6212.7803
michael.yoshii@lw.com
Tokyo

Joseph A. Bevash

+81.3.6212.7800
joseph.bevash@lw.com
Tokyo

Hiroki Kobayashi

+81.3.6212.7800
hiroki.kobayashi@lw.com
Tokyo

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult. A complete list of our *Client Alerts* can be found on our website at www.lw.com.

If you wish to update your contact details or customise the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to our global client mailings program.

Abu Dhabi

Barcelona

Beijing

Boston

Brussels

Chicago

Doha

Dubai

Frankfurt

Hamburg

Hong Kong

Houston

London

Los Angeles

Madrid

Milan

Moscow

Munich

New Jersey

New York

Orange County

Paris

Riyadh*

Rome

San Diego

San Francisco

Shanghai

Silicon Valley

Singapore

Tokyo

Washington, D.C.

* In association with the Law Office of Salman M. Al-Sudairi