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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

April 1, 2022

Alaska LNG Project; Supplemental Environmental Impact Statement (SEIS)

I. Summary

The Alaska LNG Project (Project) is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.*, sponsored by Alaska Gasline Development Corporation (project sponsor). On February 25, 2022, the Department of Energy (DOE), the lead agency for the preparation of a supplemental environmental impact statement (SEIS) under the National Environmental Policy Act (NEPA), submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the permitting timetable by approximately 60 days for the three remaining DOE actions associated with the SEIS. DOE requests the extension to allow for additional technical analyses of options for managing the carbon dioxide produced with, and removed from, the natural gas supplying the Project. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable has been revised accordingly.

II. Legal Standard

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV), a lead agency may extend a final completion date under a FAST-41 permitting timetable to a date more than 30 days after the final completion date originally established in the permitting timetable only if it consults with the project sponsor and requests and obtains Executive Director approval. After receiving an extension request from the lead agency, the Executive Director must consult with the project sponsor and make a determination on the record that approves or denies the request based on consideration of “relevant factors,” including, but not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(IV). Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) are not subject to judicial review. 42 U.S.C. § 370m-2(c)(2)(D)(iv)(I).

III. Background

On September 11, 2020, the Project was marked “complete” on the Permitting Dashboard. On April 15, 2021, DOE granted a rehearing request that, in essence, re-opened the Project’s LNG export authorization proceeding pursuant to section 3 of the Natural Gas Act (NGA).¹ DOE subsequently placed the project back “in progress” on the Dashboard and became the lead agency in preparing an SEIS for the Project. The original completion dates established for the DOE SEIS milestones were as follows:

Notice of Availability of Draft SEIS (DSEIS)	May 2, 2022
Notice of Availability of Final SEIS (FSEIS)	September 15, 2022
Final Order and NEPA Record of Decision	December 14, 2022

In a February 25, 2022, Notice of Amended Schedule that DOE served to all parties in the NGA export authorization proceeding, DOE explained that the agency was extending these completion dates by approximately 60 days. DOE’s amended completion dates are as follows:

Notice of Availability of DSEIS	July 1, 2022
Notice of Availability of FSEIS	November 14, 2022
Final Order and NEPA Record of Decision	February 13, 2023

DOE has indicated that the SEIS will contain two studies: (i) an upstream analysis of reasonably foreseeable environmental impacts associated with natural gas production on the North Slope of Alaska; and (ii) a life cycle analysis that will calculate the greenhouse gas emissions for liquefied natural gas exported from the proposed Project, taking into account unique issues relating to production, pipeline transportation, and liquefaction in Alaska, among other considerations. DOE’s National Energy Technology Laboratory (NETL) is conducting both studies.

NETL’s work on the SEIS has progressed over the last several months. Recently, DOE determined it was necessary for NETL to conduct additional modeling on options associated with managing carbon dioxide produced with, and removed from, the natural gas supplying the proposed Alaska LNG Project on the North Slope of Alaska. The extent of the project sponsor’s analysis of carbon management was not known when DOE originally undertook the SEIS. Upon reviewing the details of project planning as part of the SEIS process, NETL determined that analysis of carbon disposition was not accounted for in the documentation

¹ *Alaska LNG Project LLC*, DOE/FE Order No. 3643-B, FE Docket 14-96-LNG, Order on Rehearing (April 15, 2021).



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related to project planning. This was confirmed through consultation with the project sponsor, and the project sponsor does not object to the different options DOE plans to analyze further. NETL's additional analysis will determine the range of potential environmental and production impacts associated with different carbon management options and will be used to assess the technical viability of producing natural gas to support the Project, as well as any secondary effects to North Slope oil production.

DOE consulted with the project sponsor to obtain information associated with the Project, including information on carbon dioxide management options. But DOE did not consult with the project sponsor with respect to modifying the SEIS milestone completion dates prior to filing the Notice of Amended Schedule. Instead, the project sponsor was notified of the date changes when the Notice of Amended Schedule was posted to DOE's docket and served on all parties to DOE's proceeding. The Project sponsor also received service of the related status report filed by DOE in litigation before the United States Court of Appeals for the District of Columbia Circuit.²

The Office of the Executive Director has consulted with the project sponsor, and the project sponsor objects to DOE's extension request for two reasons:

- 1) According to the project sponsor, after seven years of working through the NEPA process and finally obtaining all major Federal permits and approvals, DOE's reopening of the NGA proceeding and subsequent NEPA process has negatively impacted the Project by discouraging potential investors and creating uncertainty. According to the project sponsor, postponing the issuance of the DSEIS creates several additional months of uncertainty for potential investors and key stakeholders when, in the opinion of the project sponsor, the project sponsor should be signing investment agreements and moving into the Project's Front End Engineering and Design stage.
- 2) According to the project sponsor, the original May 2 date for DSEIS issuance would have meant that public meetings would have occurred in the May or early June timeframe, which would have been prior to the primary Alaska fishing and gathering times. According to the project sponsor, modification of the date for DSEIS issuance to early July will mean that the public comment period will overlap a time (July, August and September) when Alaskans (including Tribes) are engaged in hunting and fishing – in some cases for subsistence purposes. The project sponsor is concerned that the timing of DSEIS issuance could fuel arguments to further extend the DSEIS comment

² *Sierra Club v. U.S. Dep't of Energy*, No. 20-1503 (D.C. Cir. Feb. 28, 2022).



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period, which would shift completion of the SEIS even later in time. The project sponsor contends that, had it been given the opportunity to consult with DOE, it would have worked with the agency to identify alternative completion dates that may have given DOE the time it needed but also accommodated timely public participation and comment on the DSEIS.

DOE believes it is unnecessary to consider dates different from those identified in the Notice of Amended Schedule at this time. DOE represents that it is prepared to consult further with Tribes and provide timely opportunities for public participation. DOE has indicated that neither Tribes nor members of the public have raised concerns about their ability to provide timely input on the DSEIS according to the revised timetable.

IV. Discussion

A. Agency Obligation to Consult with the Project Sponsor Prior to Modifying the Permitting Timetable

FAST-41 requires the lead agency to consult with the project sponsor before extending a final completion date by more than 30 days beyond the originally-established final completion date. 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV). Consultation with the project sponsor is a critical component of permitting timetable management because it ensures the lead agency considers the project sponsor's perspectives and relevant information related to permitting timetable workflows and decision making. Consultation facilitates a more efficient permitting process and substantively better permitting outcomes.

FAST-41 contains a savings clause, which provides that nothing in FAST-41 “supersedes, amends, or modifies any Federal statute or affects the responsibility of any Federal officer to comply with or enforce any statute” 42 U.S.C. § 4370m-6(d)(1). FAST-41 also contains a limitations provision stating that nothing in FAST-41 “preempts, limits, or interferes with any power, jurisdiction, responsibility, or authority that a Federal, State, or local governmental agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to any project, plan, or program.” 42 U.S.C. § 4370m-6(e).

DOE did not consult with the project sponsor pursuant to 42 U.S.C. 4370m-2(c)(2)(D)(ii) because DOE's regulations prevented it from doing so. The regulation at 10 C.F.R. § 590.108 prohibits DOE from having off-the-record communication with any interested person in a contested proceeding. According to DOE, the Alaska LNG NGA proceeding, including the rehearing proceeding, is a contested proceeding. The project sponsor is an intervenor in that proceeding and, therefore, is an “interested person” for the purpose of 10 C.F.R. § 590.108. Accordingly, the FAST-41 requirement to consult with the project sponsor prior to modifying a



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permitting timetable completion date is superseded by DOE’s regulations that prohibit off-the-record communication with the interested party project sponsor.

B. Reason for Date Change

The “size and complexity” of the Project merits the additional analysis that DOE represents the agency requires. 42 U.S.C. §§ 4370m-2(c)(2)(B)(1). The Project is the largest liquified natural gas project ever designed in the United States. The size, complexity, and unique operational considerations of the Project support DOE’s need to further analyze different options for carbon disposition. DOE considers this additional analysis necessary, and the project sponsor has not contended otherwise.

V. Determination

Because DOE’s regulations prohibit off-the-record communications with interested persons in contested proceedings, DOE was not required to comply with FAST-41’s requirement to consult with the project sponsor before modifying permitting timetable completion dates. DOE’s professed need for additional time to time to complete the additional modeling appears reasonable and is uncontested by the project sponsor. Accordingly, DOE’s extension request is **GRANTED**, and the permitting timetable is revised as requested.

Christine Harada
Executive Director
Federal Permitting Improvement Steering Council