

Supporting Statement for Import and Export of Natural Gas (Form FE-746-R)

OMB No. 1901-0294

The Department of Energy (DOE) requests OMB clearance for a 3-year extension of approval to its natural gas import and export application information collection associated with applications filed by persons seeking authorization to import and export natural gas (both long-term and blanket/short-term authorizations). DOE further requests a 3-year extension and revision of its existing information reporting requirements for import/export transactions under an approved application by revising the monthly reporting requirement and eliminating the quarterly reporting requirement. The information collected on the monthly and quarterly reports enables DOE to monitor such trade under the North American Free Trade Agreement (NAFTA), as well as other trade falling outside the parameters of NAFTA. Applications to import and export natural gas are required by statute and provide the decision maker and general public with basic information used in issuing import/export authorizations and in monitoring compliance and trade.

A. Justification

1. Legal Justification

The authority to regulate imports and exports of natural gas is derived from section 3 of the Natural Gas Act (NGA) of June 21, 1938 (Ch. 556.52 Stat. 821, 15 U.S.C. 717). Section 3 states in part that:

“...no 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 Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.

Until the 1977 passage of the Department of Energy Organization Act, Pub. L. 95-91 (the DOE Act), the NGA section 3 authority was exercised by the former Federal Power Commission (FPC). Sections 301(b) and 402(f) of the DOE Act transferred this authority to the Secretary of Energy who delegated it to the Assistant Secretary for Fossil Energy (FE) on February 7, 1989. From October 1977 through December 1988, these responsibilities were performed by the Economic Regulatory Administration within DOE.

On October 24, 1992, the Energy Policy Act of 1992 (EPACT) was signed into law. Section 201 of EPACT amended section 3 by eliminating DOE's need for making a public interest finding for natural gas imports and exports from or to, “a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas...” and for imports of liquefied natural gas (LNG) generally. The practical impact of this provision is that trade that falls into this new category of trade requires significantly less information from the applicant and the time needed by FE to process these applications has been reduced dramatically.

FE's administrative rules establish the procedures for filing applications to obtain natural gas import and export authorizations and are found in 10 CFR, Part 590. However, because of case precedent and the passage of EPACT in 1992, the applicability of these administrative rules varies, depending on the type of authorization sought. For applicants seeking long-term authorizations (greater than 2 years) to import or export natural gas from or to a country with which the United States does not have a free trade agreement, all of the information and procedures contained in the administrative rules continue to be applicable. For applicants seeking short-term authorizations (2 years or less) to import or export natural gas, much of the information provided by the applicant is no longer required, i.e., purchase contract, identification of suppliers and purchasers, and detailed project description. Finally, applicants seeking authorizations (long and short-term) to import from and export to countries with whom the United States has in effect a free trade agreement requiring national treatment for trade in natural gas, much of the information filed by the applicant is no longer required; e.g., evidence that a project is not inconsistent with public interest, and many of DOE's procedures have been eliminated; i.e., public comment period, and hearings.

2. How, by whom, and for what purpose is the information used

As stated above, FE still must make a public interest finding on the natural gas import/export applicants not covered by EPACT. Because such decisions are subject to review in the Federal courts, FE's decision must be fully supported by the record of the case. The information and data provided in an application are essential to that record. In addition, further information and data are needed from the applicant if FE is required to perform an environmental analysis of the proposed project. The information and data also are necessary to enable affected parties to properly evaluate the impact of a proposal on them. Information contained in these applications or supplements thereto, are not compiled, or published by FE or DOE. All applications become part of the public record and are available for inspection and copying, but are not otherwise disseminated.

For those applications that do not require public interest determinations from FE as discussed in section 1, the information and data contained in the applications have been scaled back considerably. Applications which fall into this category must be granted by FE. As a consequence, FE's action of issuing an authorization is ministerial in nature. Inasmuch as FE's action is ministerial in nature for these cases, FE also is no longer required to perform an environmental analysis of the proposed import/export project.

In addition to information collected pursuant to import and export applications, FE requires, as a condition to granting an authorization, quarterly and monthly reports from prospective importers and exporters of natural gas. These reports are used by FE to monitor North American natural gas trade, ensure that importers and exporters are in compliance with the terms and conditions of their authorizations, and ensure that certain individual import and export arrangements continue to be in the public interest. FE is the only official source of this trade information and, therefore, publishes its compilations in various formats in the Natural Gas Imports and Exports Quarterly Report, as well as making it available to the public via the Internet (<http://www.fe.doe.gov>). The trade data are used extensively by other offices within DOE (i.e., Energy Information Administration (EIA), Policy, and Emergency Planning), the Federal Energy Regulatory

Commission (FERC), other Federal agencies (i.e. Treasury, State, Commerce, Central Intelligence Agency, and Federal Trade Commission), State public service commissions, Congress, industry, trade publications, and investment/financial groups.

3. Use of Improved Information Technology

Blanket or short-term import and export applications can be filed electronically on the FE's Internet site (<http://www.fe.doe.gov>). Long-term application filings cannot be filed electronically at this time. At present, companies can file the monthly and quarterly reports by e-mail or facsimile machines. FE is near completion of a new data system that will enable the electronic filing of these reports. In addition, all of FE's regulatory decisions, statistical reports, and analyses, are located on the office's internet site.

4. Efforts to Identify Duplication/Similar Information

A check of EIA's Data Resources Directory revealed no duplication with other DOE information collections nor is there any known source of this exact information from outside DOE. Each application requesting authority to import or export natural gas is unique. There are no other sources, either public or private, that collect such comprehensive information on the North American natural gas trade.

5. Impact on Small Business or Other Small Entities

This collection of information does not involve small businesses or other small entities.

6. Consequences of Less Frequent Collection

These applications and on occasion, supplements thereto, and reports submitted by the respondents on their own initiative are of indeterminate frequency, as are application supplements submitted at the direction of FE. Without this data, respondents would be unable to import or export natural gas and FE would be unable to carry out its duties under the law. With regard to the monthly or quarterly reports of activities, less frequent reports on international natural gas trade would greatly impair the ability of DOE to monitor and analyze the rapid changes in the North American natural gas marketplace. Moreover, the usefulness of the data to other users, both public and private, would be significantly diminished.

7. Special Circumstances of the Information Collection

Data are collected consistent with the guidelines in 5 CFR 1320.5 except for the number of copies required for applications not electronically submitted. Multiple copies of non-electronic applications are required to provide for full dissemination within DOE/FE, DOE/Office of General Counsel, parties to a regulatory proceeding, and the general public.

8. FR. Notice Soliciting Comments on Data Collection

On August 10, 2006, the *Federal Register* published the Energy Information Administration's Notice (71 FR 45800) soliciting comments on the proposed extension of FE-746R, "The Natural Gas Import and Export Authorization Application and Monthly Reports," prior to submission to OMB. Three comments were filed. They are discussed below.

On September 22, 2006, Teresa Hui, a marketing accountant at Talisman Energy Inc., filed a comment via e-mail. Ms. Hui states that she agrees with the elimination of the quarterly report and that it will help to streamline the reporting process. Ms. Hui also supports electronic filing of reports. She suggests that FE provide an instruction manual on the FE website. Finally, she suggests that the electronic filing system should be able to send confirmation that the report has been received and a copy of what was entered into the system by the company personnel filing the report.

FE has reviewed and considered Ms. Hui's comments. FE will be revising and updating the current instructions for the quarterly reports to reflect the proposed changes in reporting requirements. These instructions are currently available on the FE website and in hardcopy as requested. The instructions will be revised to reflect the change to monthly reports and to reflect the change in the information required to be filed with the proposed monthly report. In addition, the electronic filing system has been developed to ensure ease of use. Most sections are self-explanatory but will include additional help links for guidance and instruction. FE staff will be available to assist customers during office hours.

The electronic filing system has been developed to send confirmation of a report filed to the users of the system. The current system allows the user to print transaction information directly from the data collection module to retain for the user's records.

On October 10, 2006, Encana Marketing (USA) Inc. (Encana) filed comments. FE has granted Encana a blanket authorization to import and export natural gas from and to Canada, and to import LNG from various international sources. Encana is required to file monthly and quarterly reports. Encana generally supports the proposed reporting revisions but offered the following comments.

Encana supports the proposal to eliminate the quarterly reports and replacing them with the more detailed monthly report. Encana also supports the establishment of an electronic filing system that allows authorization holders to file monthly reports by e-mail or to upload files directly onto FE's Internet website. Encana believes that an authorization holder should have the flexibility to create the monthly report in a variety of electronic formats, including spreadsheets. Furthermore, Encana believes that the format of the monthly report should be compatible with those reports filed to other agencies and entities. Encana suggests that the North American Energy Standards Board should be used to develop the different electronic formats for uploading the monthly report files to DOE. Encana does not support the establishment of an Internet-based reporting system which would require authorization holders to manually enter data into a web-based application or electronic database system.

The electronic filing system that has already been developed and completed by FE is a web-based system. It does require the manual input of data by the authorization holder. Therefore, no

additional software is required. FE has run several tests entering a variety of authorization holders' reports (reports already filed with FE) and has determined that the electronic filing of reports will not require a significant amount of time. In fact, FE tested the system by manually entering the data filed in past reports and found that most reports showing substantial activity took less than 10 minutes to enter. FE believes that filing electronically will not take any longer than currently available methods for filing a report (completing the sample form by hand or completing a spreadsheet developed by the authorization holder). Furthermore, FE emphasizes that submitting reports via the electronic filing system will not be a requirement. Authorization holders will still be able to file reports using their current methods which include filing by U.S. mail, messenger service, facsimile machine, or e-mail. FE will encourage use of the new electronic filing system but will not require it. Finally, if there is enough demand for the ability to upload reports, as described by Encana, FE may consider revising the system in the future. However, FE cannot make any guarantees of this type of revision.

In response to the questions posed by DOE in the Federal Register Notice, Encana makes the following points. Encana encourages DOE to eliminate the requirement to report information on "end use" of the imported or exported natural gas, stating that it is difficult or impossible to trace the ultimate end-user because most sales go through several transactions before reaching the end-user. FE agrees with this and had already decided to eliminate this requirement. FE will ask for information on the end-user's State and if that is not known, the Census Region or more general geographical area of the end-user.

Encana suggests that DOE update the instructions and compile them in a separate manual. See the reply to Ms. Hui, above.

Encana questions the accuracy of the time estimate for filing the proposed monthly reports, stating that the estimate of an average of 5 hours may not be accurate if the authorization holder has to manually input the data. See the above reply to the same point made by Encana.

Encana states that there will be a cost to the respondent in the form of start-up costs for automating the submission of the proposed monthly report. FE disagrees with this statement. The electronic filing system is a web-based system that will require the manual input of the data and therefore, not require an authorization holder to automate the reporting of the data.

Encana suggests that the reporting requirements should provide flexibility for reporting procedures. As stated above, FE will not require an authorization holder to file electronically. Reports may still be filed by e-mail, U.S. mail, messenger, or facsimile.

Lastly, Encana states that the information required on the proposed monthly report is also collected by the Department of Homeland Security's U.S. Customs and Border Protection. While it is true that the U.S. Customs and Border Protection collects some of this information, the data are collected in a different format and are not as complete as that collected by DOE. Additionally, the data collected by the U.S. Customs and Border Protection are not relevant to the information needed by DOE to ensure that authorization holders are in compliance with their authorizations. The U.S. Customs and Border Protection data also are not relevant to the users of

DOE's published natural gas import/export reports. These users include the natural gas industry, trade press, consulting firms, and other Government agencies.

Finally, on October 10, 2006, Nexen Marketing U.S.A. Inc. (Nexen) filed comments. FE has granted Nexen a blanket authorization to import from and export natural gas to Canada and Mexico, and to import LNG from various international sources. Nexen is required to file monthly and quarterly reports. Nexen generally supports the proposed reporting revisions but offered the following comments.

Nexen supports DOE's proposal to eliminate the quarterly report in favor of enhanced monthly reporting. Nexen also supports DOE's proposal to implement internet-based reporting for the proposed monthly reports, stating that it would help ease the reporting burden placed on authorization holders.

Nexen does make the following suggestions/requests. Nexen recommends that DOE require the quantity to be reported in million British Thermal Units (MMBtu) rather than in thousand cubic feet (Mcf), since DOE requires that the price be in dollars per MMBtu. Nexen claims that the difference in units is awkward and less meaningful than consistency in units. DOE disagrees with this approach. Volumetric reporting (Mcf) of transactions is a standard measure within the U.S. Government and the natural gas industry. They are easily applied for use when conducting analysis of global natural gas trade and provide a measure of consistency for reporting purposes between natural gas and liquefied natural gas.

Nexen suggests that DOE eliminate the end-use requirement. As stated above, FE agrees with this and plans to eliminate the end-use requirement.

Lastly, Nexen suggests that DOE eliminate the "special price clauses" requirement. FE agrees and has already planned to eliminate this requirement.

9. Payment of Gifts to Respondents

No gifts or other remuneration are made to respondents.

10. Provisions for Confidentiality

Unless confidential treatment is requested, the information reported on the Form FE-764R will not be treated as confidential and may be publicly released in identifiable form. In addition to the use of the information by DOE for statistical purposes, the information may be used for any nonstatistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes.

If confidential treatment is requested, the information reported on the Form FE-764R will not be 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, the DOE regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

11. Questions of a Sensitive Nature

No information of a sensitive nature is requested.

12. Information Collection Burden

Public reporting burden for preparing applications to be submitted to FE is estimated to range between 2 hours (for short-term authorizations of up to 2 years) and 16 hours for long-term authorizations (over 2 years). The public reporting burden of the monthly reports after the proposed change is authorized by OMB is estimated to range from 0.25 hours to 5 hours per response, with an average burden of 3 hours. In addition, the proposed elimination of the quarterly report is estimated to reduce the public reporting burden by an average of 5 hours per response per quarter.

Based on prior years, DOE expects to receive 110 short-term applications per year, 20 long-term applications per year and 3,180 monthly reports each year (265 currently active authorizations times 12 months per year). Based on this information, DOE expects the total burden for this information will be 10,080 hours (110 short-term applications times 2 hours, plus 20 long-term applications times 16 hours, plus 3,180 monthly reports times 3 hours/report). The burden estimate includes time for follow-up on survey responses to clarify any questions about information reported. Given this, DOE estimates the total annual cost to the respondents to be \$594,720 (10,080 hours times \$59/hour).

An average cost of \$59 is used because that is the average loaded (salary plus benefits) cost for a DOE employee. DOE assumes that the survey respondent workforce completing surveys for DOE is comparable with the DOE workforce.

13. Costs to Respondents

The information requested as part of the applications and monthly reports is expected to be available as part of a company's business records. Therefore, DOE envisions no additional start-up or on-going costs to be incurred as a result of this information collection other than the costs associated with the hours to complete the reporting requirements.

14. Costs to the Federal Government

The estimated annual cost to the Federal Government associated with the FE-746 information collection is as follows:

Activity	Costs
1. Reviewing and analyzing applications and then issuing orders	\$ 150,000
2. Maintaining public docket room and internet site information on applications and quarterly reports	\$126,000
3. Compliance activities including collecting, compiling, and preparing reports as a result of receiving quarterly reports on natural gas import and export activities	\$205,000
4. Publication of Natural Gas Imports and Exports Quarterly Report	\$ 5,000
TOTAL	\$486,000

15. Reason for Changes in Burden

The previous burden of 10,320 hours is decreased by 330 hours to 10,080 hours. This estimated change is due to several reasons. There is a decrease in the estimated number of applications (from 150 to 130 applications). Note that there is no change in the information requested as part of the applications. There is an increase of information required to complete the revised monthly reports (from 2 hours to 3 hours per report) but this is offset by the elimination of the quarterly report (a reduction of 2,400 burden hours). The electronic filing option, when available for use, will also reduce the time required for filing monthly reports.

16. Plans for Tabulation and Publication

The application information is not tabulated or published. It is made available through publicly-available docket files. The monthly reports of import/export activities are due 30 calendar days after the end of each calendar month. The data are tabulated and published approximately 60 days after the date of submission.

17. Display of Expiration Date and OMB Approval Number

The OMB number is published in the orders issued to the authorization holders and on the sample forms. The expiration date is not published on these because the forms do not change over time.

18. Exceptions to Certification

DOE takes no exception to the certification statements on the OMB 83-I.

B. Statistical Methods

The FE-746R information collection is not a statistical information collection. It is applicable to all firms that wish to import or export natural gas. Firms receiving approval are currently required to file quarterly and monthly reports of activities. (If this proposed change in reporting requirements is approved by OMB, only monthly reports will be required.)

The information collection has been in place in its current form for over 2 years. Changes are proposed to the information collection, as detailed above.

Questions on this information collection should be directed to the collection manager, Ms. Yvonne Caudillo, at 202-586-4587. General questions about the agency's clearance process for energy information and statistical collections should be directed to Kara Norman at 202-287-1902.