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SMALL SCALE LNG ACCESS ACT OF 2019

AUGUST 16, 2019.—Ordered to be printed

Filed, under authority of the order of the Senate of August 1, 2019

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 816]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 816), to amend the Natural Gas Act to expedite approval of exports of small volumes of natural gas, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 816 is to amend the Natural Gas Act (NGA, Public Law 75-688) to expedite approval of exports of small volumes of natural gas.

BACKGROUND AND NEED

The Department of Energy (DOE) exercises regulatory authority to review and approve applications for the export of natural gas under the section 3 of the NGA. Section 3(a) of the NGA provides, among other things, that no person shall export natural gas from the United States to a foreign country without first having secured an order authorizing it to do so. It also requires that the Secretary of Energy (Secretary) issue the order authorizing the export unless the Secretary finds the export will not be consistent with the public interest.

Section 3(c) of the NGA currently provides a statutory determination that exports of natural gas to any nation with which

there is in effect a free trade agreement requiring national treatment for trade in natural gas are in the public interest, eliminating any need for the Secretary to make that determination on a case-by-case basis. In addition, section 3(c) requires the Secretary to issue an order for the export of natural gas to nations with which there is a free trade agreement in effect “without modification or delay.”

S. 816 extends the section 3(c) statutory public interest determination and the requirement that an export order be granted without modification or delay to exports of small volumes of natural gas—51.75 billion cubic feet per year, or less—to any nation not subject to trade sanctions. S. 816 is intended to enable U.S. exports to compete more effectively in emerging markets for liquefied natural gas (LNG).

A 2018 DOE final rule (10 C.F.R. 590.102 and 590.208) established that exports of 51.75 billion cubic feet per year or less of natural gas to any nation are in the public interest, and that completed applications for exports meeting this criteria and eligible for a National Environmental Policy Act (Public Law 91–190) categorical exclusion will be granted. S. 816 is similar to that rule as it would require the Secretary to issue an order for small volume exports (51.75 billion cubic feet per year, or less) to any nation not subject to trade sanctions “without modification or delay,” without regard to whether the export is eligible for a categorical exclusion.

The growth in domestic natural gas production, including from shale, has reduced natural gas prices for domestic consumers and provided an opportunity for LNG exports. The United States currently has three major LNG export terminals operating, eight under construction, and six more that are fully permitted. The International Energy Agency projects that the United States will have the capacity to become the world’s largest exporter of LNG by 2024, ahead of both Australia and Qatar. Although some are concerned that exporting too much domestic natural gas may increase costs for domestic consumers, to date additional demand for natural gas exports appears to have been met by a commensurate increase in supply and potential reserves.

LNG exports from the United States can provide a diversity of supply, for example, in Central and Eastern Europe (where Russia is often the sole supplier), the Caribbean countries, Central and South America, and in Asia. Cargoes of LNG from the first operating export terminal, Sabine Pass, for example, have been delivered to two dozen nations in Latin America, Europe, Asia and the Middle East.

LEGISLATIVE HISTORY

S. 816 was introduced by Senators Cassidy, Kennedy, and Rubio on March 14, 2019. Senators Inhofe, Jones, and Scott were added as cosponsors.

A companion measure, H.R. 1836, was introduced in the House of Representatives by Representative Yoho, on March 18, 2019, and referred to the Committee on Energy and Commerce.

In the 115th Congress, Senators Cassidy and Rubio introduced similar legislation, S. 1981, on October 18, 2017. The Subcommittee on Energy held a hearing on S. 1981, on December 5, 2017 (S. Hrg.

115–493). The Committee on Energy and Natural Resources reported the bill favorably on May 10, 2018 (S. Rept. 115–248).

The Committee on Energy and Natural Resources met in open business session on July 16, 2019, and ordered S. 816 favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 16, 2019, on a roll call vote of 11 to 9, recommends that the Senate pass S. 816.

The roll call vote on reporting the measure was 11 yeas, 9 nays as follows:

| YEAS | NAYS |
|------------------------|------------------|
| Ms. Murkowski | Mr. Manchin |
| Mr. Barrasso | Mr. Wyden * |
| Mr. Risch | Ms. Cantwell |
| Mr. Lee | Mr. Sanders * |
| Mr. Daines | Ms. Stabenow |
| Mr. Cassidy | Mr. Heinrich |
| Mr. Gardner | Ms. Hirono * |
| Ms. Hyde-Smith * | Mr. King |
| Ms. McSally | Ms. Cortez Masto |
| Mr. Alexander | |
| Mr. Hoeven | |

* Indicates vote by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 contains the short title.

Sec. 2. Expedited approval of export of certain volumes of natural gas

Section 2 amends section 3(c) of the NGA (15 U.S.C. 717b(c)) which currently deems licenses to import or export natural gas to a nation with which there is a free trade agreement in effect to be consistent with the public interest and requires the Secretary to grant them without modification or delay.

Section 2 reorganizes and supplements section 3(c) of the NGA by adding a new paragraph (1) with three subparagraphs, (A), (B), and (C) and a new paragraph (2). Subparagraphs (A) and (C) maintain the existing statutory public interest determination and direction that the Secretary shall grant certain applications for importation and exportation without modification or delay. Subparagraph (B) adds that any application for exportation of natural gas in a volume that is equal to or less than 51.75 billion cubic feet per year shall be deemed to be consistent with the public interest and shall be granted without modification or delay, without regard to the status of trade agreements between the importing country and the United States.

New paragraph (2) provides that the processes for small-scale exports under new subparagraph (1)(B) and exports to countries with free-trade agreements under subparagraph (1)(C) do not apply to any nation subject to sanctions imposed by the United States.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure have been provided by the Congressional Budget Office.

| S. 816, Small Scale LNG Access Act of 2019 | | | |
|--|------|-------------------------------------|-----------|
| As ordered reported by the Senate Committee on Energy and Natural Resources on July 16, 2019 | | | |
| By Fiscal Year, Millions of Dollars | 2019 | 2019-2024 | 2019-2029 |
| Direct Spending (Outlays) | 0 | * | * |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | * | * |
| Spending Subject to Appropriation (Outlays) | 0 | 0 | 0 |
| Statutory pay-as-you-go procedures apply? | Yes | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |
| * = between -\$500,000 and zero. | | | |

Under current regulations, the Department of Energy (DOE) issues expedited approvals for applications to export no more than 51.75 billion cubic feet of natural gas in a year to any nonsanctioned country with which the United States does not have a free trade agreement (FTA), provided that the exports do not come from facilities that require review under the National Environmental Policy Act (NEPA). S. 816 would codify existing regulations and would waive DOE's NEPA criterion for all applications to export small volumes of natural gas to non-FTA countries.

CBO expects that implementing S. 816 would further expedite the approval of applications relative to current law. According to DOE, small-volume exports represent less than one percent of the total amount of approved natural gas exports to non-FTA countries to date. On that basis, and considering the number of such applications submitted in recent years, CBO estimates that any increase in the number of applications and the volume of gas exported would be small.

Payments from mineral leasing on federal lands are recorded in the budget as offsetting receipts, or reductions in direct spending. Changes in the price of gas or in the production of gas on federal lands, or a combination of the two, could affect those payments. CBO expects that any additional demand for gas exports under the bill would be met by a commensurate increase in supply, resulting in no significant change in the price of gas.

In addition, CBO expects that any increase in the production of gas would probably occur in states that accounted for 80 percent of gas exports over the 2013–2017 period. Because those states, including Michigan, Texas, and New York, contain only small amounts of federal land (between 0.5 percent and 10 percent of the total land area in each state), we estimate that any increase in the production of gas on federal lands would be small, and that the net

increase in receipts would be insignificant over the 2019–2029 period.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 816.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 816, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 816, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of Energy at the December 5, 2017, hearing on S. 1981, a similar bill to S. 861, follows:

TESTIMONY OF UNDER SECRETARY MARK MENEZES, U.S. DEPARTMENT OF ENERGY

S. 1981—Small Scale LNG Access Act of 2017

Currently, all exports of natural gas, regardless of quantity, are subject to review and approval by the Department through its regulatory authority under the Natural Gas Act (NGA). Applications are made under NGA Section 3(a) for exports of natural gas to free trade agreement countries. This bill amends Section 3(c) to expedite approval of exports of small volumes of natural gas. The effect of this bill would be to have qualifying applications granted automatically, saving several months of review time at a minimum.

This bill appears to be similar to the volume criteria DOE laid out in a recent DOE Notice of Proposed Rulemaking (NOPR) concerning small-scale natural gas exports published on September 1, 2017. The NOPR sought to revise DOE's regulations in 10 CFR 590 concerning its role in administering the NGA. DOE's NOPR proposed that natural gas export applications to non-free trade agreement countries that proposed to export up to and including .14 billion cubic feet per day (or 51.75 billion cubic feet per year) would be deemed to be consistent with the public interest. The Department looks forward to working with the Committee to determine the technical aspects of the bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the original bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE NATURAL GAS ACT

Act of June 21, 1938, as amended

* * * * *

**EXPORTATION OR IMPORTATION OF NATURAL GAS; LNG
TERMINALS****SEC. 3.**

* * * * *

[(c) For purposes of subsection (a), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.]

(c) *EXPEDITED APPLICATION AND APPROVAL PROCESS.*—

(1) *IN GENERAL.*—*For purposes of subsection (a), the following shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay:*

(A) *The importation of the natural gas referred to in subsection (b).*

(B) *The exportation of natural gas in a volume up to and including 51,750,000,000 cubic feet per year.*

(C) *The exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas.*

(2) *EXCLUSION.*—*Subparagraphs (B) and (C) of paragraph (1) shall not apply to any nation subject to sanctions imposed by the United States.*

* * * * *