

6450-01-P

U.S. DEPARTMENT OF ENERGY

Alaska Natural Gas Pipeline Loan Guarantee

AGENCY: Department of Energy

ACTION: Notice of Inquiry

SUMMARY: The Department of Energy (DOE) is seeking comments and information from the public to assist DOE in developing a possible advance notice of proposed rulemaking or notice of proposed rulemaking concerning the loan guarantee provisions of the “Alaska Natural Gas Pipeline Act.” The Act authorizes the Secretary of Energy (Secretary) to issue Federal loan guarantees to facilitate the construction of a pipeline or liquefied natural gas project to bring natural gas from the Alaska North Slope to the continental United States.

DATES: Interested persons must submit written comments by July 26, 2005. Comments may be mailed to the address given in the **ADDRESS** section below. Comments also may be submitted electronically by e-mailing them to: bettie.corey@hq.doe.gov. We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail.

ADDRESS: Office of the General Counsel, GC-72, Attention: Lawrence R. Oliver, U.S. Department of Energy, Forrestal Building, Room 6B-256, 1000 Independence Avenue, SW, Washington, DC 20585. DOE requires, in hard copy, a signed original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Oliver, Esq., Assistant General Counsel, U.S. Department of Energy, Office of the General Counsel, GC-72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507, lawrence.oliver@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2004, the “Alaska Natural Gas Pipeline Act,” Division C of Public Law 108-324 (the “Act”), was enacted as part of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005. The Act, as amended, generally is intended to expedite regulatory consideration, approval and construction of a pipeline or liquefied natural gas (LNG) project that would be used to transport Alaska North Slope natural gas to the continental United States, and provide financial incentives in the form of Federal loan guarantees for construction of such a pipeline or project.

Section 116 of the Act authorizes the Secretary to enter into Federal loan guarantee agreements (LGAs) for a “Qualified Infrastructure Project” (1) with one or more holders of a final certificate issued by the Federal Energy Regulatory Commission (FERC) under either section 103(b) of the Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g), and (2) with one or more owners of the Canadian portion of a “Qualified Infrastructure Project,” for up to \$18 billion total, but no more than 80 percent of the capital costs of a project. Section 114 of Title I of Division J of the Consolidated Appropriations Act, 2005 (Public Law 108-447) amended section 116 of the Act to add authority for the Secretary to enter into LGAs with an entity the Secretary determines is qualified to construct and operate an LNG project to transport LNG from “Southcentral Alaska to West Coast States.” The Act also authorizes the Secretary to issue loan guarantee regulations. The definition of “qualified lender” in the Act does not include the Federal Financing Bank.

Questions for Public Comment

DOE may issue regulations implementing the Act's loan guarantee authority and is currently analyzing this authority in the context of the Act's other provisions. Since the Act is silent on many of the customary loan guarantee requirements, DOE is considering the development and issuance of regulations that would establish certain minimum requirements or terms for such LGAs. In an effort to identify issues potentially affecting implementation of the loan guarantee authority, DOE invites interested members of the public, including lending and other financial institutions, potential project sponsors, and individuals to comment, in writing, on the following questions and to provide DOE with other information or analyses potentially relevant to the development of loan guarantee regulations and the implementation of the loan guarantee provisions in the Act.

1. Conditional Commitment. Section 116(a)(3) of the Act provides that “[t]he authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project.” Section 116(b)(1) of the Act provides that “[t]he Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity . . . has been issued for the project, or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States.”

Under these provisions the Secretary may not enter into an LGA (a negotiated document which sets forth in writing the terms and conditions that must be met before the Secretary will issue the loan guarantees) until a certificate of public convenience and necessity has been issued by FERC or the Secretary has issued an appropriate certification in the case of an LNG project. DOE is considering whether it can or should negotiate a conditional commitment with one or more potential project sponsors prior to the time that a final certificate is issued by FERC or the Secretary issues the required certifications with respect to an LNG project. A conditional commitment would, after the terms and conditions specified therein have been satisfied, lead to the execution of an LGA after the required subsequent conditions occur. DOE is requesting comments on potential advantages and disadvantages of this approach including whether it would expedite the loan guarantee application process and at what point in the certificate application and/or project consideration process the loan guarantee application and/or negotiation process with DOE should begin.

2. Determinations and Findings by the Secretary. DOE is considering the desirability of requiring by rule the following findings and determinations as conditions for approval of an application for loan guarantees for a “Qualified Infrastructure Project”: (A) That the applicant has received a final certificate from FERC or, with respect to an LNG project, that the Secretary has made a determination that the entity applying for loan guarantees is qualified to construct and operate a liquefied natural gas project “to transport liquefied natural gas from Southcentral Alaska to West Coast States”; (B) That the project submitted for approval is a “Qualified Infrastructure Project” as defined in section 116(g)(4) of the Act; (C) That there is a reasonable

assurance of repayment of the guaranteed debt; (D) That the guaranteed loan funds and the equity contribution of the project sponsors will be sufficient to complete the construction and start-up of the “Qualified Infrastructure Project” and fund any cost overruns; and (E) That the terms and conditions of the LGA provide adequate terms and security to appropriately protect the financial interests of the United States Government. DOE is requesting comments on what determinations and/or findings the Secretary should make prior to approving an LGA for one or more parts of a “Qualified Infrastructure Project.”

3. Special Terms and Conditions. DOE is also requesting comments on what other terms and conditions, other than the usual project financing requirements, that are unique to construction of a natural gas pipeline or LNG facility, should be included in the regulations and whether the regulations should include requirements for such unique terms and conditions in the LGAs.

4. Lender Risk. Section 116(g)(3) of the Act provides that “the term ‘Federal guarantee instrument’ means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.” DOE requests comments on whether this provision precludes any “lender risk” on the project debt that receives a Federal guarantee and also the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements.

5. Guarantee Fee. DOE is considering the imposition of a loan guarantee fee on the portion of the loan that is guaranteed by DOE. DOE requests comments on how the amount of any loan guarantee fee should be determined and whether the fee should be an origination or an annual fee.

6. Equity Funding Commitment. Section 116(c)(1) provides that “[t]he amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.” Section 116(b)(3) provides that “[t]he Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees).” These provisions may be interpreted as in effect requiring the project sponsor to make at least a twenty (20) percent equity contribution to the project. At the time of the execution of the LGA and related documents DOE must be satisfied that necessary equity contributions can and will be made during the construction and startup phase of the project consistent with an established equity contribution schedule. DOE requests comments as to what type and form of assurance DOE should require from the project sponsors to assure that the scheduled equity contributions to the project will be available and will be made when needed.

7. Thirty year loan guarantee term. Section 116(d)(1) of the Act provides, in part, that “[t]he term of any loan guarantee under this section shall not exceed 30 years.” DOE requests comments on whether the calculation of the maximum loan guarantee “term”, for purposes of

this provision, should commence with the first construction loan borrowing and include the sum of both the construction period and long-term debt period.

8. Collateral/Recourse/Default. The Act is silent with regard to requirements and procedures relating to collateral for the Federally guaranteed debt. What recourse or options should the Secretary have in the event of a default. For instance, should security other than the project assets be pledged to secure the guarantee, credit and related agreements and should DOE have a first lien on all project assets? DOE requests comments on what should be included in any regulations, should DOE decide to promulgate regulations, regarding collateral requirements, recourse and default procedures.

9. Cost Overruns. The Act is silent on how LGAs might address cost overruns on a Qualified Infrastructure Project, or how a debt instrument guaranteed pursuant to an LGA might be used to fund cost overruns. The Act, therefore, provides no guidance on whether cost overruns can or should be funded through the authorized guaranteed debt, other debt, equity or some combination. DOE is requesting comments on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGAs and any appropriate regulations.

10. Monitoring and Reporting Requirements. DOE is requesting comments on appropriate required reporting to DOE to assist DOE in its monitoring responsibilities including the content and timing of such reporting generally, whether reports should address the status of loan

disbursement requests, whether loan repayment status reports should be required, and the timing and content of construction status reports and other appropriate information submissions from the project sponsors.

Dated: May 27, 2005

Mark R. Maddox
Principal Deputy Assistant Secretary
for Fossil Energy