Legal Structures and Commercial Issues for LNG Export Projects -- North America & Beyond

Jason K. Bennett
Baker Botts L.L.P.
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LNG 17
Presenter Introduction

- **Recent LNG Deals:**
  - Developing greenfield LNG liquefaction projects:
    - Sabine Pass LNG, Wheatstone LNG, Yamal LNG
    - Peru LNG, Darwin LNG, Qatargas 3
    - Tangguh LNG, Equatorial Guinea, Angola LNG
    - Brass LNG, Sakhalin II, Pacific Rubiales
  - Developing the first U.S. LNG export project in 40 years
  - Securing the first LNG supply into new terminals in Brazil, Chile, China, Dominican Republic, E.U., India, Indonesia, Mexico, Puerto Pico, & U.S.
  - Negotiating some $500 Billion in LNG sales agreements
  - Chartering 73 LNG vessels (~20% of world fleet)
  - Co-Chair of industry-wide effort for the recently completed uniform LNG Master Sales Contract
Presenter Introduction
Focus and Overview of Key Topics

1. North American Gas & LNG Market

2. LNG Regulatory Regime
   - FERC authorization
   - DOE Export authorization
   - Policy Issues
   - Promoting your project's success

3. Commercial Issues Associated with N.American LNG Projects

4. Final Remarks
North American Gas and LNG Market

Attractive Oil Linked Market Prices

Spread between oil linked and U.S. natural gas prices ~ $9–$13/MMBtu

Regional Natural Gas & LNG Prices

~ 12% – 15% of Oil Prices

$16.64

$12.21

$8.71

$3.55

Source: PIRA, Platts

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North American Gas and LNG Market

North American shale plays
(as of May 2011)

Source: U.S. Energy Information Administration based on data from various published studies. Canada and Mexico plays from API.
Updated: May 9, 2011
North American Gas and LNG Market

North American LNG Import/Export Terminals

Proposed/Potential

Import Terminal
PROPOSED TO FERC
1. Robbinston, ME: 0.5 Bcfd (Kestrel Energy - Downeast LNG)
2. Astoria, OR: 1.5 Bcfd (Oregon LNG)
3. Corpus Christi, TX: 0.4 Bcfd (Cheniere – Corpus Christi LNG)

POTENTIAL U.S. SITES IDENTIFIED BY PROJECT SPONSORS
4. Offshore New York: 0.4 Bcfd (Liberty Natural Gas)

Export Terminal
PROPOSED TO FERC
5. Freeport, TX: 1.8 Bcfd (Freeport LNG Dev/Freeport LNG Expansion/FLNG Liquefaction)
6. Corpus Christi, TX: 2.1 Bcfd (Cheniere – Corpus Christi LNG)
7. Coos Bay, OR: 0.9 Bcfd (Jordan Cove Energy Project)
8. Lake Charles, LA: 2.4 Bcfd (Southern Union – Trunkline LNG)
9. Hackberry, LA: 1.7 Bcfd (Sempra – Cameron LNG)
10. Cove Point, MD: 0.75 Bcfd (Dominion – Cove Point LNG)
11. Astoria, OR: 1.30 Bcfd (Oregon LNG)
12. Lavaca Bay, TX: 1.38 Bcfd (Excelerate Liquefaction)
13. Elba Island, GA: 0.5 Bcfd (Southern LNG Company)
14. Sabine Pass, LA: 1.3 Bcfd (Sabine Pass Liquefaction)
15. Lake Charles, LA: 1.07 Bcfd (Magnolia LNG)

PROPOSED CANADIAN SITES IDENTIFIED BY PROJECT SPONSORS
16. Kitimat, BC: 0.7 Bcfd (Apache Canada Ltd.)
17. Douglas Island, BC: 0.25 Bcfd (BC LNG Export Cooperative)

POTENTIAL U.S. SITES IDENTIFIED BY PROJECT SPONSORS
18. Brownsville, TX: 2.8 Bcfd (Gulf Coast LNG Export)
19. Pascagoula, MS: 1.5 Bcfd (Gulf LNG Liquefaction)
20. Sabine Pass, TX: 2.6 Bcfd (ExxonMobil – Golden Pass)
21. Plaquemines Parish, LA: 1.07 Bcfd (CE FLNG)
22. Cameron Parish, LA: 0.16 Bcfd (Waller LNG Services)
23. Ingleside, TX: 1.09 Bcfd (Pangea LNG (North America))
24. Cameron Parish, LA: 0.20 Bcfd (Gasfin Development)

U.S. – MARAD/COAST GUARD
25. Gulf of Mexico: 3.22 Bcfd (Main Pass - Freeport-McMoRan)

POTENTIAL CANADIAN SITES IDENTIFIED BY PROJECT SPONSORS
26. Prince Rupert Island, BC: 1.0 Bcfd (Shell Canada)
27. Goldboro, NS: 0.67 Bcfd (Pieridae Energy Canada)
28. Kitimat, BC: 2.0 Bcfd (LNG Canada)

US Jurisdiction

FERC
MARAD/USCG

As of March 20, 2013

Office of Energy Projects
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LNG Regulatory Regime
Regulatory Regime

- Regulatory Regime Overview
  - Satisfying regulatory requirements may require significant investment of time and resources.
  - In the United States, Section 3 of the Natural Gas Act ("NGA") governs construction of export facilities and export of LNG.
    - Primary regulatory authority under NGA:
      - FERC: LNG facility siting authority.
      - Department of Energy ("DOE"): Approval for exports of the commodity.
  - Pipelines governed by Section 7 of the NGA.
    - FERC: Regulation of pipelines.
Regulatory Regime

- **DOE Export Authorization**
  - DOE required to authorize the export unless it finds the proposed exportation "will not be consistent with the public interest."
  - Exports to a country that has entered into a Free Trade Agreement ("FTA") with the United States deemed to be within the public interest.
  - Presently, only one license granted by DOE for LNG export to non-FTA countries.
    - Granted to Cheniere Energy.
    - 19+ applications pending
Regulatory Regime

- **DOE Non-FTA Export Authorization**
  - Dec. 5, 2012, DOE releases NERA study on LNG exports:
    - “Across all ... scenarios, the U.S. was projected to gain net economic benefits from allowing LNG exports. Moreover, for every one of the market scenarios examined, net economic benefits increased as the level of LNG exports increased. In particular, scenarios with unlimited exports always had higher net economic benefits than corresponding cases with limited exports.”
  - >100,000 comments filed
  - DOE to consider first those applications for which FERC has given approval < Dec. 5, 2012 to commence FERC pre-filing, in the "general order" in which such applicants filed with DOE
Regulatory Regime

- **DOE Non-FTA Export Authorization (cont’d)**
  - DOE to examine "cumulative" impacts of each application
  - Factors to be considered:
    - Domestic need for natural gas proposed for export
    - Adequacy of domestic natural gas supply
    - U.S. energy security
    - Impact on U.S. economy and natural gas prices
    - International considerations
    - Environmental considerations
  - EPA & Sierra Club urge DOE review of upstream impacts
    - Both FERC and the 2d Circuit Court of Appeals have rejected similar arguments
    - FERC is the lead agency for NEPA environmental review
Promoting Your Project's Success

What can Applicants do?

- Build a record at DOE that supports favorable decision and can withstand appeal by opponents
- Diligently progress FERC license filing -- DOE has shown an interest in prioritizing those applications that are moving forward with FERC
- Secure long-term creditworthy customers
  - Long-term agreements with creditworthy offtakers shows market support, commitment of sponsors, and likely financeability
  - Conversely, projects with no customers, contracts or capital miss an opportunity to demonstrate they are real
Commercial Issues Associated with N. American LNG Projects
Potential Commercial Issues for N.American LNG Projects

Many of the North American LNG Export Projects are Structured as Tolling Agreements. These create some commercial issues that differ from those typically found in the LNG industry, such as:

- **Development Funding --**
  - At risk
  - Consideration?
    - Equity
    - Tolling discount

- **Construction cost risk -- TSA signed before FID**
  - Greater issue for greenfields than for expansions
Potential Commercial Issues for N. American LNG Projects (cont’d)

- **Gas Supply**
  - Tollers must obtain gas (SPA buyers need not)
  - Buy off grid, or dedicated source? (EPA issues?)

- **Terminal Force Majeure risk**
  - Customer continues to pay toll/fixed charge?
  - How long? Termination right?

- **Change in law or tax risk**
  - TSA customers may bear this risk; SPA buyers rarely do

- **Multi-users**
  - Inter-customer default/credit risk?
  - Are partial assignments permitted?

- **Pipeline**
  - Who owns the pipeline, is there capacity available, and will an open season by required?
Potential Commercial Issues for N.American LNG Projects (cont’d)

- What impact will these commercial and legal risks have on the LNG industry generally?
  - Greater risks, including requirement to pre-fund development costs, may limit involvement to larger companies
  - Tolling structure means that customers must obtain their own natural gas supply, which may limit the pool of potential customers to those with US/Canada gas assets or trading capability
  - Fewer potential customers may mean fewer projects with creditworthy offtake and financeability
Final Remarks

- Sponsors should carefully consider their risk/reward posture, and that of their investors and lenders
- Select the appropriate structure; changes later can increase costs, impede marketing, and cause delays in financing
- Focus on obtaining creditworthy customers -- both capital and regulatory approvals are likely to follow strong financials
- Align contract terms to reflect structure, comply with licenses, and promote project commercial and financial success