

(ORAL ARGUMENT NOT YET SCHEDULED)

Docket No. 23-1065

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

In Re Sierra Club, Center for Biological Diversity, Delaware Riverkeeper
Network, Friends of the Earth, and Environment America,

Petitioners.

Petition for Writ of Mandamus

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GLOSSARY

The following acronyms and abbreviations are used in this brief:

CO	Carbon monoxide
DOE	United States Department of Energy
EPA	United States Environmental Protection Agency
FERC	United States Federal Energy Regulatory Commission
LNG	Liquified natural gas
NO _x	Nitrogen oxide
PM	Particulate matter
SSM	Start up, shut down, and malfunction
VOC	Volatile organic compound

INTRODUCTION AND FACTS

In 2013, Sierra Club, Center for Biological Diversity, Environment America, Friends of the Earth, Delaware Riverkeeper Network, and several other environmental organizations (collectively, “Petitioners”) submitted a Petition¹ to the United States Department of Energy (“DOE”) requesting the agency issue rules outlining how it will decide whether proposed exports of liquified natural gas (“LNG”) are “consistent with the public interest,” pursuant to section 3(a) of the Natural Gas Act. 15 U.S.C. § 717b(a). It has been nearly ten years since Petitioners submitted their Petition with DOE, and the agency has yet to respond, despite the massive increase in LNG export application approvals. Given the significant environmental, climate, and economic harm the continued increase in LNG exports will cause, much of which would be disproportionately borne by already overburdened Gulf Coast and Delaware River communities, Petitioners now implore this Court to issue a writ of mandamus compelling DOE to respond to their 2013 Petition.

New and expanded gas export facilities will harm Gulf Coast and Delaware River communities that already suffer from a massive amount of industrial pollution from the fossil fuel industry as well as the effects of extreme weather driven by climate change. Even during normal operations, export terminals emit

¹ A copy of this Petition is attached as an exhibit.

high volumes of air pollution that can result in concentrations exceeding health-based air quality standards. During so-called startup, shutdown, and malfunction (“SSM”) events, though, pollution levels from LNG facilities can be staggering. Last year, for example, the Freeport LNG facility in Texas had a catastrophic explosion, resulting in 5,912 hours of emissions well in excess of the facility’s permitted limits, including hundreds of thousands of pounds of harmful nitrogen oxide (“NO_x”), carbon monoxide (“CO”), volatile organic compound (“VOC”), and particulate matter (“PM”) pollution,² as well as the unauthorized emission of hazardous and toxic pollutants, like hydrogen chloride and hydrogen cyanide.³ A separate emissions “incident” occurred when Freeport LNG attempted to restart operations in February 2023, resulting in another 348 hours of excess NO_x, CO, and VOC emissions.⁴ The majority of the proposed or approved LNG export terminals are planned, under construction, or already built in low-income

² Tex. Comm’n on Env’t Quality, Air Emission Event Report Database, Incident 381191 (Feb. 2023), <https://www2.tceq.texas.gov/oce/eer/index.cfm?fuseaction=main.getDetails&target=381191>.

³ Tex. Comm’n on Env’t Quality, Air Emission Event Report Database, Incident 381194 (June 2022), <https://www2.tceq.texas.gov/oce/eer/index.cfm?fuseaction=main.getDetails&target=381194>.

⁴ Tex. Comm’n on Env’t Quality, Air Emission Event Report Database, Incident 394549 (Feb. 2023), <https://www2.tceq.texas.gov/oce/eer/index.cfm?fuseaction=main.getDetails&target=394549>.

communities and communities of color that are among the 25% worst areas in the country for air toxics cancer risk, according to the U.S. Environmental Protection Agency's ("EPA") EJScreen data tool. New or expanded LNG projects will exacerbate the already significant cumulative pollution burden these neighborhoods face.

The climate impacts of LNG export facilities are also staggering. If all 25 currently-proposed (or approved) LNG export facilities go into operation, their collective lifecycle emissions—from extraction to the end use of the gas—could emit approximately 1,660 million metric tons of carbon dioxide equivalent each year, roughly the annual greenhouse gas equivalent of all of the country's operational coal plants twice over.⁵

Under the Natural Gas Act, DOE oversees the export of gas as a commodity into the global market.⁶ DOE *must* grant applications to export LNG to the 20 countries with which the United States has a free trade agreement, but DOE cannot

⁵ Compare Leslie Abrams et al., *Life Cycle Greenhouse Gas Emissions from U.S. Liquefied Natural Gas Exports: Implications for End Uses*, 49 *Env't Sci. Tech.* 5, 3237-45 (analyzing the total lifecycle greenhouse gas emissions associated with LNG export terminals) with EPA, *Greenhouse Gas Equivalencies Calculator*, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator> (last visited March 2, 2023).

⁶ Regulation of LNG exports is divided between the Federal Energy Regulatory Commission ("FERC"), which oversees the construction and operation of LNG export terminals, and DOE, which, as noted, oversees the export of gas as a commodity into the global market. 15 U.S.C. § 717.

authorize exports to *non*-free trade agreement countries where such exports would be “[in]consistent with the public interest.” 15 U.S.C. § 717b(a). The statute does not explicitly define what is or is not “consistent with the public interest” in the export context, and DOE has never issued guidelines or regulations explaining how it will make “public interest” determinations. *Id.* Instead, the agency has repeatedly issued ad-hoc and inadequate “public interest” analyses that have failed to meaningfully consider highly pertinent factors like the environmental impacts of the actual export terminals themselves, the climate change-related impacts associated with the extraction, refinement, transportation, and ultimate combustion of the gas being exported, and the effect of increased gas exports on the price of domestic gas for low-income ratepayers.

The scale of U.S. gas exports abruptly changed in 2010, when, as a result of a glut of domestic supply resulting from the hydraulic fracturing or fracking boom,⁷ the gas industry began seeking access to global markets to maximize its

⁷ Hydraulic fracturing (or fracking) is a technique used to enable the extraction of natural gas or oil from shale and other forms of “tight” rock (impermeable rock formations that lock in oil and gas and make extraction difficult). Large quantities of water, chemicals, and sand are blasted into these formations at pressures high enough to crack the rock, allowing the once-trapped gas and oil to flow to the surface. EPA, *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States* (Dec. 2016), https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=530285. Starting in the early 2000’s, the use of fracking drastically increased across the country, significantly increasing the domestic gas supply. *Id.* at 1.

profits. DOE has approved more than 40 non-free trade agreement LNG export applications since Petitioners sent DOE their 2013 Petition, facilitating a massive proliferation of dangerous gas export infrastructure along the Gulf Coast and elsewhere throughout the country.⁸ Indeed, approximately 25 new LNG facilities—primarily located along the Gulf Coast in Texas and Louisiana—are either under construction, approved, or proposed, and LNG exports are projected to increase by an astounding 149% from 2020 to 2030, an increase equivalent to the gas use of the entire U.S. commercial sector projected for 2030.⁹

Nevertheless, the agency has failed to issue any rules defining how it will make “public interest” determinations in the gas export context, or to respond to the 2013 Petition. With fifteen more export applications now pending under DOE review, the need for consistent rules defining how the agency will make “public interest” determinations is as pressing as ever.

⁸ Although FERC authorizes the export terminals, as a practical matter, many of the facilities FERC has approved have waited to begin construction until *after* they obtained export authorizations from DOE. *See, e.g.,* Callum O’Reilly, *Cameron LNG sponsors finalise FID*, LNG INDUSTRY, (Aug. 7, 2014), <https://www.lngindustry.com/liquefaction/07082014/cameron-lng-sponsors-finalise-fid-1161/> (noting that the developers of the Cameron LNG facility waited until after they obtained authorization from DOE for exports to none-free-trade countries before making a final investment decision).

⁹ *See* U.S. Energy Info. Admin., *Annual Energy Outlook 2022: Liquefied Natural Gas Exports*, <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=76-AEO2022®ion=00&cases=ref2022&start=2020&end=2050&f=A&linechart=~ref2022-d011222a.10-76-AEO2022&map=&ctype=linechart&sourcekey=0> (last visited March 2, 2023).

In undertaking “public interest” determinations in the gas export context, DOE has purported to consider “a range of factors,” including “the domestic need for the natural gas proposed to be exported; whether the proposed exports pose a threat to the security of domestic natural gas supplies; . . . whether the arrangement is consistent with [the Department’s] policy of promoting competition in the marketplace,” and any other factors bearing on the public interest. *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 27-29, Docket No. 10-111-LNG (May 20, 2011). The agency, however, has never provided any discussion regarding how it balances these factors. In practice, the agency consistently considers impacts like the balance of trade, purported job creation, global strategic concerns (including diversifying other nations’ energy supplies), and other issues not enumerated in its purported list of factors. *See, e.g., Magnolia LNG LLC*, DOE/FE Order No. 3909-C, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 24-26, Docket No. 13-132-LNG (Apr. 27, 2022) (emphasizing job creation, global strategic concerns, and balance of trade as key considerations in the public interest determination). And in some cases, the agency has changed its

mind about whether to even consider some factors, despite claiming that they are critical to its analysis in other contexts.¹⁰

In addition to these factors, DOE typically invokes its 1984 guidelines for making public interest determinations in the context of gas *imports*¹¹ when making “public interest” determinations in the gas export context. *See, e.g., Magnolia LNG LLC*, DOE/FE Order No. 3909-C at 24. Those guidelines are inapplicable to *export* proposals and to present day circumstances. The world has changed a great deal since the 1984 guidelines were issued. The import price control issues the 1984 guidelines were designed to solve no longer exist, as a result of the glut in domestic supply associated with the fracking boom. Today, DOE must wrestle with the proper role of LNG exports in the context of a modern, technology-based U.S. economy, at a time of increasingly severe climate change, and where gas is increasingly produced using hazardous fracking technologies. These shifts, as well

¹⁰ *Compare* Statement of Deputy Assistant Secretary Christopher Smith Before the Committee on Energy and Natural Resources, U.S. Senate, *The Department of Energy’s Role in Liquefied Natural Gas Export Applications* at 4 (Nov. 8, 2011) (including “consistency with DOE’s long-standing policy of promoting competition in the marketplace,” “U.S. balance of trade,” and impacts on industry as key factors to consider) *with* Statement of Deputy Assistant Secretary Christopher Smith Before the Oversight and Government Reform Committee, U.S. House of Representatives, *The Department of Energy’s Program Regulating Liquefied Natural Gas Export Applications* at 3 (Mar. 19, 2013) (omitting those factors as key issues to consider).

¹¹ Those 50-year-old guidelines are focused on reducing consumer rates, and were issued in order to limit the government’s role in the gas import context. 48 Fed. Reg. 34,501 (July 29, 1983); 49 Fed. Reg. 6,684, 6,685 (Feb. 22, 1984).

as the inherent differences between gas imports and gas exports, underline why clear DOE regulations are so urgently needed.

DOE's ad-hoc determinations have ignored key factors that plainly impact the public interest, namely the environmental impacts of the actual export terminals themselves, the climate change-related impacts associated with LNG exports, and the effect of increased gas exports on the price of domestic gas for low-income ratepayers. In addition to the public health and climate impacts associated with LNG export infrastructure, for example, increased gas exports also harm low-income energy customers by raising the price of domestic gas.¹² These economic harms disproportionately fall on communities of color and low-income households, which face dramatically higher energy burdens—spending a greater portion of their income on energy bills—than the average household, and on energy-intensive industries and public gas utilities that purchase a disproportionate share of the nation's gas supply.¹³ DOE has refused to consider these

¹² See, e.g., Clark Williams-Derry, *IEEFA U.S.: Booming U.S. natural gas exports fuel high prices*, INSTITUTE FOR ENERGY ECONOMICS AND FINANCIAL ANALYSIS, Nov. 4, 2021, <https://ieefa.org/resources/ieefa-us-booming-us-natural-gas-exports-fuel-high-prices>.

¹³ See Nat'l Conf. of State Legislatures, *Energy Justice and the Energy Transition*, <https://www.ncsl.org/energy/energy-justice-and-the-energy-transition> (last updated May 3, 2022).

disproportionate economic impacts in its “public interest” determinations.¹⁴

Instead, the agency has obstinately and arbitrarily asserted that export opponents have failed to demonstrate that the economic equity impacts of LNG exports are substantial enough to warrant the agency’s attention. *See, e.g., Magnolia LNG LLC*, DOE/FE Order No. 3909-C at 49 (citing *Sierra Club v. U.S. Dep’t of Energy*, 703 F. App’x 1, 3 (D.C. Cir. 2017)).

In the nearly ten years since Petitioners first submitted their Petition to DOE, the agency has failed to issue regulations explaining how it will determine whether gas export applications are or are not “consistent with the public interest.”¹⁵ U.S.C. § 717b(a). Given the amount of time that has passed, the continued proliferation of dangerous gas export infrastructure, and the ever-increasing urgency of the climate crisis, on October 27, 2022, Petitioners sent DOE a letter reiterating the need for a rulemaking addressing the LNG export “public interest” determination.¹⁵ In addition, approximately 50 environmental, consumer advocacy,

¹⁴ DOE has argued that it is FERC’s responsibility to fully balance the environmental harms associated with LNG exports. *See, e.g., Magnolia LNG LLC*, DOE/FE Order No. 3909-C at 24-26. Notably, FERC has done the same thing, and avoided a full balancing of these environmental harms by pointing to DOE. *See, e.g., Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (Nov. 17, 2022).

¹⁵ *See* Letter from Sierra Club et al. to Secretary Jennifer Granholm, DOE (Oct. 27, 2022), https://www.sierraclub.org/sites/www.sierraclub.org/files/2022-10/DOE%20Letter%20re_2013%20Petition.pdf (This letter did not present an additional petition for rulemaking; rather, the letter made clear that the signers were seeking action on the initial 2013 petition.).

and community groups not affiliated with the original petition also submitted similar letters to DOE.¹⁶

The agency's nearly ten-year delay here is patently unreasonable. 5 U.S.C. § 706(1) (reviewing courts shall “compel agency action . . . unreasonably delayed”); *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (“six-year-plus delay is nothing less than egregious”). As discussed in detail below, this Court should compel DOE to issue an order responding to Petitioners' 2013 Petition on the merits by a date certain in the near future.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review Petitioners' claim that DOE has unreasonably delayed responding to their 2013 Petition under the Natural Gas Act, since it would have exclusive jurisdiction to review DOE's response to the 2013 Petition pursuant to that Act, 15 U.S.C. § 717r(b).¹⁷ Under the All Writs Act, courts are empowered to “issue all writs necessary or appropriate in aid of their . . . jurisdictions.” 28 U.S.C. § 1651(a). Though the All Writs Act itself does not grant jurisdiction, it authorizes courts to issue a writ of mandamus in order to aid the jurisdiction the court will have as a result of issuing the writ. *In re Tennant*, 359

¹⁶ See *EJLF Letter to DOE Regarding Guidelines on LNG Exports* (Oct. 27, 2022), <https://www.weact.org/ejlf-letter-to-doe-regarding-guidelines-on-lng-exports/>.

¹⁷ Notably, though the Natural Gas Act's judicial review provision provides for exclusive jurisdiction of DOE actions in the circuit courts of appeals, it does not similarly grant jurisdiction to review DOE's failures to act. 15 U.S.C. § 717r(b).

F.3d 523, 527-28 (D.C. Cir. 2004). Where, as here, an agency has unreasonably delayed an action that this Court would have jurisdiction to review, this Court can issue a writ under the All Writs Act compelling that agency to complete the action so that it can exercise its jurisdiction to review it. *See, e.g., Telecomms. Rsch. & Action Ctr. v. Fed. Commc'ns Comm'n*, 750 F.2d 70, 75-79 (D.C. Cir. 1984) (“*TRAC*”) (holding that the D.C. Circuit had jurisdiction to review agency’s unreasonable delay in responding to the petitioner’s complaint “in order to protect its future jurisdiction” to review the agency’s ultimate decision in response to the petitioner’s complaint).

Here, this Court would have jurisdiction over DOE’s response to the 2013 Petition under the Natural Gas Act’s judicial review provision. 15 U.S.C. § 717r(b). Therefore, this Court has jurisdiction to issue a writ compelling DOE to respond to the 2013 Petition so that it can exercise its jurisdiction to review it. *In re Nat’l Nurses United*, 47 F.4th 746, 753 (D.C. Cir. 2022) (“When a statute grants courts of appeals jurisdiction to review agency action, the All Writs Act empowers those courts to issue a writ of mandamus compelling the agency to complete the action.”).

RELIEF REQUESTED

Petitioners respectfully request that the Court issue a writ of mandamus compelling DOE to issue an order that grants or denies their 2013 Petition

requesting the issuance of rules defining how DOE will make “public interest” determinations when evaluating whether to approve gas export applications.

STATEMENT OF THE ISSUES

Whether DOE violated its obligation to respond to Petitioners’ 2013 Petition within a “reasonable time,” as required by the Administrative Procedure Act, by failing to act on that petition for nearly ten years. 5 U.S.C. § 555(b).

ARGUMENT

I. Petitioners Have Article III Standing to Pursue This Writ.

To satisfy the “case or controversy” requirements of Article III of the U.S. Constitution, organizations (like Petitioners) must establish “representational standing” to sue on behalf of their members. *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 557 (1996). To do so, they must demonstrate that (1) their members would otherwise have standing to sue in their own right; (2) the interests they seek to protect are germane to their organizational purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. *Id.* at 553. To demonstrate that their members would otherwise have standing to sue in their own right, petitioners must show (1) that their members will suffer an “injury in fact” without judicial relief; (2) that the injury is “fairly traceable” to the complained-of conduct; and (3) that a favorable judicial ruling will “likely” redress that injury. *Friends of the*

Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000).

Importantly, the injury need not be large; an “identifiable trifle” is sufficient to confer standing. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973). That said, such injury must be “concrete and particularized,” as opposed to an injury that is shared equally by the public at large, and “actual or imminent,” rather than “conjectural or hypothetical.” *Laidlaw*, 528 U.S. at 180-81.

Here, Petitioners have standing to bring this action since their members would independently have standing to sue, and since Petitioners’ organizational missions include slowing or stopping the expansion of fossil fuel production and infrastructure and averting the worst impacts of the climate crisis. *See, e.g.*, Collentine Decl. ¶¶ 2-6; Hartl Decl. ¶¶ 7-12; Van Rossum Decl. ¶ 8; Templeton Decl. ¶ 3. For one, Petitioners’ members suffer injury because they live in and near the communities where LNG export terminals have been proposed or are under construction, and near LNG extraction and refinement facilities where the gas to be exported is obtained and prepared. *See* Allaire Decl. ¶¶ 2-10; Oldham Decl. ¶¶ 2-9; Van Rossum Decl. ¶¶ 1-16; Templeton Decl. ¶ 9. Construction and operation of these facilities has and will significantly impact members’ property and quality of life, the surrounding ecosystems, and cause and exacerbate light and air pollution problems. *See* Allaire Decl. ¶¶ 11-20; Oldham Decl. ¶ 9; Van Rossum Decl. ¶¶ 1-

16. The LNG export facilities being considered by FERC and DOE would emit massive quantities of harmful pollutants, including, for example, particulate matter, volatile organic compounds, nitrogen oxides, and carbon monoxide.¹⁸ This pollution causes myriad adverse impacts on human health, including, but not limited to, premature mortality, respiratory disease, damage to the nervous system, and ill effects on pregnancy and birth outcomes.¹⁹ Petitioners' members are therefore acutely impacted by LNG export infrastructure far and away beyond the general public.

Further, Petitioners' members live on or near, or recreate in and along, rivers, lakes, beaches, and wetlands throughout the Gulf Coast, the Delaware River watershed, and elsewhere across the country, that are impacted by current LNG export facilities or would be impacted by proposed LNG export facilities. *See, e.g.*, Allaire Decl. ¶¶ 11-20; Van Rossum Decl. ¶¶ 8, 12-13; Templeton Decl. ¶ 9. Such members frequently use these areas for outdoor recreation and scientific study, including nature study, birdwatching, observing wildlife (including protected species), photography, fishing, canoeing, kayaking, solitude, and a variety of other activities. *See, e.g.*, Allaire Decl. ¶¶ 13-20; Van Rossum Decl. ¶¶ 8, 12-16. The

¹⁸ *See* FERC, *Final Environmental Impact Statement for the Commonwealth LNG Project* (Sept. 2022), https://www.energy.gov/sites/default/files/2022-09/final-eis-0533-vol2-commonwealth-lng-2022-09_0.pdf.

¹⁹ *Id.*

many proposed and approved LNG export facilities intended to supply the gas exports being reviewed by DOE interfere or would interfere with Petitioners' members' use and enjoyment of these waters. Allaire Decl. ¶¶ 13-20; Van Rossum Decl. ¶¶ 8, 12-16.

For example, Sierra Club member John Allaire owns and lives on a 311-acre property directly adjacent to the proposed Commonwealth LNG export facility and within approximately one mile from the approved and operational Venture Global Calcasieu Pass LNG export facility in Louisiana. *See generally* Allaire Decl. ¶¶ 2-18. John and his family enjoy hunting, fishing, birdwatching, beach-walking, and stargazing, and have many special traditions on and around his property that are significantly harmed by the operational facility and would be further deteriorated by any new facility. Filling the nearby wetlands to construct the Commonwealth facility will substantially decrease available habitat for the birds and fish John and his family hunt and fish hundreds of days each year. *Id.* ¶¶ 13, 15. Filling the wetlands is also likely to lead to significant flooding on John's property, potentially damaging his property, and diminishing important habitat that John actively works to protect for the federally threatened Eastern Black Rail, along with the U.S. Fish and Wildlife Service and the National Audubon Society. *Id.* ¶¶ 14-16.

John takes his dogs and grandkids on walks on his beachfront property along the Gulf of Mexico 4 to 5 times each week. *Id.* ¶ 18. Dredging a channel for the Calcasieu Pass LNG export terminal dislodged massive quantities of black sludge from the bottom of the Calcasieu River that subsequently collected on his beachfront as a result of prevailing tides. *Id.* As a result, he has been unable for long periods of time to allow his dogs or grandchildren to swim in the Gulf, for fear that they'll encounter black viscous sludge and get stuck. *Id.* Constructing the Commonwealth facility would likely exacerbate this problem on his property. *Id.*

Petitioners and their members also have procedural interests in ensuring that DOE fully considers the information in the 2013 Petition, and in participating in any rulemaking activity undertaken in response to the Petition. *See, e.g.,* Allaire Decl. ¶¶ 21-22; Oldham Decl. ¶¶ 3, 15-16; Van Rossum Decl. ¶ 9; Collentine Decl. ¶¶ 9-11; Templeton Decl. ¶ 8. DOE's lengthy delay violates the procedural rights of Petitioners and their members to participate in a rulemaking process through comments, information sharing, and advocacy. If DOE begins a regulatory process, Petitioners and their members will participate. *See, e.g.,* Collentine Decl. ¶ 11; Oldham Decl. ¶ 16; Allaire Decl. ¶ 22; Templeton Decl. ¶ 12.

The injuries suffered by Petitioners and their members are directly traceable to DOE's failure to timely respond to their Petition. The subject of the 2013 Petition is the environmental impacts that inevitably will harm Petitioners'

members through DOE's approval of LNG exports without careful consideration of relevant "public interest" factors. By authorizing export proposals, DOE creates the demand driving the proliferation of gas export infrastructure; even if it does not authorize the export facilities themselves, DOE's export decisions are key considerations for the developers of proposed LNG export facilities, since they determine the scope of the market available for the gas to be exported. In many instances, the developers of proposed gas export facilities wait until after they have obtained authorization to export to none-free-trade countries before beginning construction in earnest, even where FERC had already authorized construction of the facility.²⁰

An order from this court directing DOE to respond to the Petition would redress Petitioners' injuries and those of their members. If DOE were to act in response to the Petition, the agency may begin to consider these public health and climate-related impacts when making decisions on proposed gas exports, and, as a result, may either decline to authorize proposed exports or otherwise issue directives better protecting Petitioners' members and other community residents in

²⁰ See, e.g., Callum O'Reilly, *Cameron LNG sponsors finalise FID*, LNG INDUSTRY, (Aug. 7, 2014), <https://www.lngindustry.com/liquefaction/07082014/cameron-lng-sponsors-finalise-fid-1161/> (noting that the developers of the Cameron LNG facility waited until after they obtained authorization from DOE for exports to none-free-trade countries before making a final investment decision).

and near proposed and approved gas export infrastructure. Petitioners need not prove that this will be the outcome of DOE's response, however, because the normal standards for causation and redressability are relaxed when a party has asserted a violation of a procedural right. *Summers v. Earth Island Inst.*, 555 U.S. 488, 496-97 (2009) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 572 (1992)). These relaxed standards relieve parties from having to prove that an agency will ultimately reach a decision most favorable to their interests, and instead require only that there be "some possibility" that the requested relief will prompt the agency to take action favorable to the party. *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007).

Petitioners also satisfy the second requirement for representational standing because this litigation regarding gas exports is germane to the purposes of Petitioners' organizations—the protection of the environment and averting climate catastrophe. *United Food & Com. Workers Union Local 751*, 517 U.S. at 553; *see also* Collentine Decl. ¶¶ 3, 5-6; Hartl Decl. ¶¶ 7, 9-11, 12; Van Rossum Decl. ¶¶ 3, 7; Templeton Decl. ¶ 3. The third element of representational standing is satisfied because Petitioners' members are not seeking individualized relief and thus the members' direct participation in the litigation is not required.

II. This Court Should Grant Mandamus Because DOE Has Unreasonably and Unlawfully Delayed Its Clear, Nondiscretionary Duty to Respond to Petitioners' 2013 Petition.

The All Writs Act provides that federal courts “may issue all writs [of mandamus] necessary or appropriate in aid of their respective jurisdictions.” 28 U.S.C. § 1651(a). “[T]he remedy of mandamus is a drastic one, to be invoked only in extraordinary circumstances.” *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980); *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988) (holding that only “exceptional circumstances amounting to a judicial ‘usurpation of power’” justify the issuance of the writ).

Accordingly, a petitioner seeking mandamus must first establish that the agency has violated “a crystal-clear legal duty.” *In re Nat’l Nurses United*, 47 F.4th at 752. One such circumstance exists where an agency unreasonably delays nondiscretionary action. *In re Am. Rivers & Idaho Rivers United*, 372 F.3d at 418. Indeed, the APA obligates agencies to “conclude [] matter[s] presented to [them]” within a “reasonable time,” 5 U.S.C. § 555(b), and directs courts to “compel agency action” where that action has been “unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1); *see also In re Int’l Chem. Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992) (*per curiam*). Here, the DOE has violated a clear, nondiscretionary duty to respond to the 2013 Petition within a “reasonable time,” pursuant to the APA. 5 U.S.C. § 555(b).

Violating a clear duty, however, is only part of the mandamus analysis. A mandamus petitioner must further show that judicial intervention would be appropriate. *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004). In cases of alleged agency delay, the central question is whether the agency's delay is "so egregious as to warrant mandamus." *In re Core Commc'ns, Inc.*, 531 F.3d 849, 885 (D.C. Cir. 2008). This Court's holding in *Telecommunications Research & Action Center v. Federal Communications Commission* guides this inquiry, as discussed in detail below. 750 F.2d at 80.

III. Petitioners Have a Clear Right to Relief Because DOE's Nearly 10-Year Delay Is Unreasonable Pursuant to the APA and the TRAC factors.

Under the APA, agencies must conclude matters presented to them within a "reasonable time." 5 U.S.C. § 555(b). Courts must "compel agency action" that has been "unlawfully withheld or unreasonably delayed." *Id.* § 706(1); *see In re Int'l Chem. Workers Union*, 958 F.2d at 1149. In determining whether an agency's delay is so "unreasonable" as to warrant mandamus relief, this Court balances the factors outlined in *TRAC*:

- (1) the time agencies take to make decisions must be governed by a rule of reason;
- (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
- (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
- (4) the court should consider the effect of expediting delayed

action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

TRAC, 750 F.2d at 80 (internal quotation marks and citations omitted).

These factors weigh strongly against DOE in this instance. For one, the agency's more than nine-year delay in responding to Petitioner's 2013 Petition "flouts the 'rule of reason.'" *In re Ctr. for Biological Diversity*, 53 F.4th 665, 671 (D.C. Cir. 2022). Since neither the Natural Gas Act nor the APA provide a timetable governing when the agency must respond to petitions for rulemaking, the agency's time to respond is "governed by a rule of reason." *Id.* at 670. Although "there is no *per se* rule as to how long is too long to wait for agency action . . . a reasonable time for agency action is typically counted in weeks or months, not years." *In re Am. Rivers & Idaho Rivers United*, 372 F.3d at 419 (internal quotation marks and citations omitted); *see also Midwest Gas Users Ass'n v. FERC*, 833 F.2d 341, 359 (D.C. Cir. 1987) ("[T]his court has stated generally that a reasonable time for an agency decision could encompass 'months, occasionally a year or two, but not several years or a decade.'" (quoting *MCI Telecomms. Corp. v. Fed. Commc'ns Comm'n*, 627 F.2d 322, 340 (D.C. Cir. 1980))). It has been more than nine years since the instant Petition was submitted. This near-decade delay is plainly unreasonable on this basis alone, without further context. *See In re Core*

Commc 'ns, Inc., 531 F.3d at 855 (asserting that while courts, in applying *TRAC*, balance each of the factors, the length of the agency's delay is the "first and most important factor"). In fact, Petitioners are not aware of a single case where a court has upheld a nine-year delay like that at issue here. *In re A Cmty. Voice*, 878 F.3d 779, 787 (9th Cir. 2017) (noting that the agency at issue there had failed to "identify a single case where a court has upheld an eight year delay as reasonable").

This Court has repeatedly found analogous delays unreasonable in previous cases. In *In re American Rivers & Idaho Rivers United*, for example, this Court held that FERC's six-year delay in failing to respond to a petition to consult under the Endangered Species Act regarding the impacts of hydropower facilities along the Snake River on endangered salmon and steelhead was "nothing less than egregious." 372 F.3d at 419. There, like here, the governing statute did not require the agency to respond within a particularized deadline. *Id.* Many other cases have held that shorter delays were unreasonable. *See, e.g., In re Core Commc 'ns, Inc.*, 531 F.3d at 857 (six-year delay); *In re Bluewater Network*, 234 F.3d 1305, 1316 (D.C. Cir. 2000) (nine-year delay); *Air Line Pilots Ass'n, Int'l v. Civil Aeronautics Bd.*, 750 F.2d 81, 86 (D.C. Cir. 1984) (five-year delay); *In re Int'l Chem. Workers Union*, 958 F.2d at 1150 (six-year delay); *In re Ctr. for Biological Diversity*, 53 F.4th at 671 ("Eight years of outright non-compliance flouts the 'rule of reason'");

Nader v. Fed. Comm'n's Comm'n, 520 F.2d 182, 206 (D.C. Cir. 1975) (“[N]ine years should be enough time for any agency to decide almost any issue.”); *In re A Cmty. Voice*, 878 F.3d at 787 (eight-year delay).

Further, the agency’s delay in responding to the 2013 Petition has serious implications for human health and welfare. *See TRAC*, 750 F.2d at 80 (“delays ... are less tolerable when human health and welfare are at stake”). The consideration of human health and welfare includes environmental concerns. *In re Bluewater Network*, 234 F.3d at 1316. Here, the agency’s failure to respond to the 2013 Petition has left it without an appropriate method of evaluating whether exports are or are not consistent with the “public interest” that considers environmental and human health and welfare concerns. Absent such review, the agency has repeatedly authorized LNG exports that have exacerbated the proliferation of dangerous gas export infrastructure in already over-polluted communities without considering the immediate effects of such decisions on the families living near major LNG export terminals or properly evaluating climate change impacts. *See e.g., Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 27-29 (authorizing massive increase in LNG exports from Sabine Pass export terminal without considering the impacts of the facility on the surrounding community; wrongly determining that increased LNG exports would benefit the climate by supplanting potential coal-based generation); *Magnolia LNG LLC*, DOE/FE Order No. 3909-C at 24-26

(authorizing significant increase in LNG exports from Magnolia export facility without considering the impacts of the facility on local communities).

Under the fourth factor, Petitioners cannot speculate as to what, if any, competing priorities have prevented DOE from substantively responding to their Petition because DOE has not yet provided any justification for its delay. *TRAC*, 750 F.2d at 80 (considering “the effect of expediting delayed action on agency activities of a higher or competing priority”). However, “nine years should be enough time for any agency to decide almost any issue.” *Nader*, 520 F.2d at 206.

Whatever justifications DOE may articulate to explain its nearly ten-year delay “must . . . be balanced against the potential for harm,” *Cutler v. Hayes*, 818 F.2d 879, 898 (D.C. Cir. 1987). Agencies’ “asserted justifications . . . become less persuasive the longer the delay continues.” *In re Int’l Chem. Workers Union*, 958 F.2d at 1150; *Cobell v. Norton*, 240 F.3d 1081, 1097 (D.C. Cir. 2001) (“[N]either a lack of sufficient funds nor administrative complexity, in and of themselves, justify extensive delay.”). “There is a point when the court must ‘let the agency know, in no uncertain terms, that enough is enough.’” *In re Int’l Chem. Workers Union*, 958 F.2d at 1150 (quoting *Pub. Citizen Health Rsch. Grp. v. Brock*, 823 F.2d 627 (D.C. Cir. 1987)). After more than nine years with no response to the Petition, and given the ongoing proliferation of dangerous gas export infrastructure, that time has come.

In considering the fifth *TRAC* factor, this Court draws on some of the same considerations as the third factor. *In re Barr Laboratories, Inc.*, 930 F.2d 72, 75 (D.C. Cir.), *cert. denied*, 502 U.S. 906 (1991). DOE’s nearly ten-year delay continues to prejudice the interests of the communities impacted by LNG export infrastructure, including Petitioners’ members. *See TRAC*, 750 F.2d at 80 (considering “the nature and extent of the interests prejudiced by delay”). DOE has repeatedly authorized LNG export proposals, causing the proliferation of dangerous gas export infrastructure that will further exacerbate the climate crisis and expose already overburdened communities to dangerous concentrations of pollution. DOE’s authorization of LNG exports without meaningful “public interest” review not only harms these communities, but it also threatens to undermine the country’s ability to adequately respond to the climate crisis.

CONCLUSION

Petitioners submitted their Petition to DOE nearly ten years ago, and the agency has yet to respond. For the foregoing reasons, Petitioners request this court issue a writ of mandamus directing DOE to grant or deny the 2013 Petition on the merits, and provide any other relief that is just and equitable pursuant to the All Writs Act.

Dated: March 13, 2023

Respectfully submitted,

/s/ Harrison Beck

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CERTIFICATE OF PARTIES

In accordance with D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), Petitioners certify that the following persons are parties, movant-intervenors, or amici curiae in this Court:

1. Parties

Petitioners: Sierra Club, Center for Biological Diversity, Delaware Riverkeeper Network, Friends of the Earth, Environment America

Respondent: Department of Energy

2. Movant-Intervenors

At present, no parties have moved to intervene in this action.

3. *Amici Curiae*

At present, no parties have moved for leave to participate as amicus curiae.

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PETITIONERS' RULE 26.1 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Petitioners make the following disclosures:

Sierra Club: Sierra Club has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Sierra Club.

Sierra Club is a nonprofit organization dedicated to the protection and enjoyment of the environment.

Center for Biological Diversity: Center for Biological Diversity has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Center for Biological Diversity.

Center for Biological Diversity is a national nonprofit environmental advocacy organization working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all.

Delaware Riverkeeper Network: Delaware Riverkeeper Network has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Delaware Riverkeeper Network.

Delaware Riverkeeper Network is a nonprofit 501(c)(3) membership organization that advocates for the protection of the Delaware River, its tributaries, and the communities of its watershed.

Environment America: Environment America has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Environment America.

Environment America is a nonprofit organization whose mission is to transform the power of our imaginations and our ideas into change that makes our world a greener and healthier place for all.

Friends of the Earth: Friends of the Earth has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Friends of the Earth.

Friends of the Earth is a nonprofit organization whose mission is to fight for a more healthy and just world by building long-term political power and campaigning to prevent economic and political systems from creating injustice and destroying nature.

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of FRAP 32(c)(2) and the word limit of FRAP 21(d) because, excluding the parts of the document exempted by FRAP 32(f) this document contains 5,955 words.

This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this document has been prepared with a proportionally spaced typeface using Microsoft Word 2019 in 14-point font size and Times New Roman type style.

Dated: March 13, 2023

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on March 13, 2023, copies of the foregoing Petition for Writ of Mandamus, the Exhibit thereto, Certificate of Parties, and Rule 26.1 Statement, and the attached Petitioners' Addendum of Declarations were served via Federal Express on the following parties:

Secretary Jennifer M. Granholm
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Honorable Merrick B. Garland
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**Exhibit – Sierra Club et al. Petition to DOE for Rulemaking
Regarding Natural Gas Export Policy (Apr. 8, 2013)**



April 8, 2013

Secretary Steven Chu
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The.Secretary@doe.gov

cc:

Gregory Woods, General Counsel
Office of the General Counsel
U.S. Department of Energy
1000 Independence Ave SW
Washington, DC, 20585

Re: Petition for Rulemaking Regarding Natural Gas Export Policy

Dear Secretary Chu:

Pursuant to 5 U.S.C. § 553(e), the Sierra Club, Catskill Citizens for Safe Energy, Center for Biological Diversity, Delaware Riverkeeper Network, Earthworks, Environment America, Friends of the Earth, Lower Susquehanna Riverkeeper, and Rogue Riverkeeper hereby petition the Department of Energy (DOE) to promulgate new regulations or guidance defining the process by which it will consider applications to export liquefied natural gas (LNG). The current guidelines are nearly thirty years old, and were designed to implement the Reagan Administration's energy policy on natural gas *imports*. They are very ill-suited to manage the serious questions raised by large-scale LNG exports, and urgently need to be revised in a fair and open public process. Although DOE asserts that it has expanded its considerations beyond those articulated by the import guidelines, its process remains unclear and poorly equipped to manage the serious energy policy questions now before it. We therefore petition it to open a public notice and comment process by which DOE will seek comments upon its outdated policy guidelines and proposals to revise them. LNG exports pose pressing public questions; DOE

owes the public a policy discussion which recognizes the seriousness of these matters and responds to them with care.

I. Petitioning Parties

The following parties join this petition:

The Sierra Club is the nation's oldest and largest grassroots environmental organization, with more than 2 million members and supporters. Sierra Club's Beyond Natural Gas Campaign is focused on reducing natural gas demand, and on controlling the dangerous environmental impacts of gas production. As part of this work, the Sierra Club is a movant-intervenor in the majority of the LNG export dockets at DOE's Office of Fossil Energy ("DOE/FE").

Catskill Citizens for Safe Energy is an all-volunteer, grassroots organization that has been working to protect the public from dangerous hydraulic fracturing since 2008. Its website, catskillcitizens.org, is a reliable source of information about every aspect of shale gas extraction. Its Newsroom contains thousands of articles on the subject, and scores of scientific reports can be found in the Learn More section of its site. Catskill Citizens has been at the forefront of efforts to encourage the U.S. to develop a responsible energy export policy.

The Center for Biological Diversity is a non-profit corporation with offices throughout the United States and tens of thousands of members. The Center works to secure a future for all species, great and small, hovering on the brink of extinction. It does so through science, law and creative media, with a focus on protecting the lands, waters and climate that species need to survive.

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the impacts of irresponsible mineral and energy development while seeking sustainable solutions. Earthworks stands for clean water, healthy communities and corporate accountability. It works for solutions that protect both the Earth's resources as well as our communities.

Environment America is a federation of state-based, citizen-funded environmental advocacy organizations. It defends our environment with independent research, tough-minded advocacy and spirited grassroots action. Environment America, with hundreds of thousands of supporters from all walks of life, works to win tangible results for our environment.

Friends of the Earth, U.S. is a national, non-profit environmental advocacy organization founded in 1969 and incorporated in the District of Columbia, with its headquarters in Washington, D.C. and an office in Berkeley, California. Friends of the Earth's mission is to defend the environment and champion a healthy and just world. To this end, Friends of the Earth promotes policies and actions that address the climate change crisis and minimize the negative impacts of environmental pollution. Friends of the Earth has more than

150,000 members and activists in all 50 states. Friends of the Earth is a part of Friends of the Earth International, a federation of grassroots groups working in 76 countries on today's most urgent environmental and energy issues.

Lower Susquehanna Riverkeeper works on behalf of a friends, neighbors, outdoorsmen, recreationalists, and families who want safe drinking water, sustainable use of natural resources, and the ability to fish and swim in the Susquehanna River and her tributaries. Its program focuses on identifying sources of pollution and enforcing environmental laws. It actively educates the public on current issues, work with decision-makers to emphasize the economic and social benefits of protecting our watershed, and when necessary enforces laws protecting communities and natural resources of the basin.

Rogue Riverkeeper works to protect and restore water quality and fish populations in the Rogue River Basin of southern Oregon and adjacent coastal watersheds.

Please address correspondence in this matter to:

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II. Relief Requested

The LNG export applications now before DOE would significantly alter American energy policy if granted even in substantial part. The United States has never exported substantial quantities of natural gas beyond North America, and continental exports have always been relatively limited. The licenses before DOE would, on the other hand, give the U.S. the potential to be one of the largest gas exporters in the world. Such a shift would lead to structural changes in the national and international gas market and have important implications for climate change, manufacturing and economic policy, and issues of international trade and national security. Unfortunately, the 1984 import guidelines which now structure this consideration are not up to the task of shaping this critical analysis.

Yet those guidelines apparently continue to guide DOE's approach on LNG issues. As DOE has explained, its processes "have evolved from policy guidelines published in 1984 ..., as supplemented and refined by subsequent agency adjudications."¹ To be sure, some of these "refine[ments]" – such as analysis of "environmental considerations" and "U.S. energy security" – do, indeed, bear usefully on export in ways that the 1984 guidelines do not. But they

¹ Letter from Deputy Secretary of Energy Daniel Poneman to Senator Ron Wyden. (Dec. 11, 2012) at 1-2.

have been presented simply as a list of non-exclusive factors, of questionable significance, in letters and testimony to Congress, rather than as new guidelines or regulations. Meanwhile, DOE/FE, in its only license decision to date, *Sabine Pass*, has affirmed that the import guidelines “will be applied to natural gas export applications.”²

The result is that DOE’s decisionmaking on export still appears to be rooted in the 1980s, and a policy document designed to speed *imports*. DOE has not solicited public comments on the appropriateness of that policy, how it should be applied in export cases, or how best to amend it in light of the very different problems posed by export.

Instead, DOE is apparently planning to move forward with a series of individual export authorization proceedings. Because these are adjudicatory processes, they do not invite broad public participation and do not provide a clear venue to announce new agency-wide policy decisions. On the other hand, DOE has shown encouraging signs that it seeks some broader public participation by commissioning programmatic economic studies on some LNG issues, and inviting public comment on those studies. That process, though far from perfect, indicates that DOE is aware that the individual cases before it implicate larger public concerns, and warrant full analysis.

DOE must follow this recognition to its proper conclusion and initiate a full public notice and comment process to update its decisionmaking guidelines on these crucial matters. The policy should also articulate how DOE will monitor any approved export terminals to ensure that they continue to be in the public interest. That rulemaking process must be fully informed by the economic and environmental and public health studies which the Natural Gas Act and the National Environmental Policy Act (NEPA) require.

III. The Existing Guidelines Are Insufficient to Address the Questions Now Before DOE and Must Be Revised

DOE is now considering whether to permit all or a portion of a proposed 28.30 billion cubic feet per day (“bcf/d”) of natural gas export – the equivalent of 10,329.5 bcf per year.³ Permitting the full volume would mark an approximately ten-fold expansion of *all* U.S. gas exports (both pipeline and LNG) and expand LNG exports specifically by a factor of about 370.⁴ Indeed, the total volume proposed for export is approaching half of total marketed gas production in 2012.⁵ This substantial new source of gas demand would certainly increase gas prices with important

² DOE/FE, *Opinion and Order Conditionally Granting Long-Term Authorization to Export from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, Order No. 2961 (May 20, 2011) (emphasis added).

³ See DOE/FE, *Applications Received by DOE/FE to Export Domestically Produced LNG from the Lower 48 States* (Mar. 7, 2013), available at:

http://fossil.energy.gov/programs/gasregulation/reports/summary_lng_applications.pdf.

⁴ Exports in 2012 were 1,619 bcf/year, with only 28 bcf of that as LNG. See EIA, *U.S Natural Gas Exports by Country*, available at: http://www.eia.gov/dnav/ng/ng_move_expc_s1_a.htm.

⁵ Total marketed gas production in 2012 was 25,304 bcf.

implications for U.S. manufacturing and energy utilities. And because roughly two-thirds (and possibly much more) of gas for export would come from new unconventional gas production,⁶ export is also linked to intensifying environmental and public health impacts from the domestic gas boom. In short, LNG export, of any significant volume, implicates core questions of energy and environmental policy for the nation as a whole.

To be sure, the scope and magnitude of these potential impacts will vary by the amount of LNG export which DOE permits, and how DOE conditions those exports. But even smaller amounts of export would still greatly expand domestic gas demand and production, and would link the U.S. to international gas markets in novel ways. And, after all, the proper scope of export is the open question here which demands a policy response: How *will* DOE structure its decisionmaking around these potentially enormously consequential projects? Unfortunately, that question remains very much unanswered.

A. The Import Guidelines Were Created to Enhance Natural Gas Imports and Provide Little Guidance on Export

The Natural Gas Act provides that DOE may only permit LNG exports which are “not inconsistent with the public interest.”⁷ But, as Deputy Secretary Poneman has said, the Act’s text “does not prescribe what factors should go into the public interest analysis.”⁸ DOE has instead developed its own process through a series of delegation orders and policy guidelines, culminating in the 1984 import guidelines.

Those guidelines are the product of their time and are focused on streamlining gas *imports* at market-responsive prices in order to reduce consumer rates. Before their issuance, DOE operated under a delegation order which required license applicants to affirmatively demonstrate the “[n]ational need for the natural gas to be imported or exported,”⁹ and had denied several import applications that failed to make that demonstration.¹⁰ This stance differed from the view of the Reagan Administration, whose position was that “imported gas should be regulated by the market, with the government’s role limited to foreign and trade policy, broad economic considerations and national security concerns.”¹¹ Accordingly, DOE began a public process to draft new guidelines to “reflect our market-oriented position.”¹² The

⁶ See EIA, *Effects of Increased Natural Gas Exports on Domestic Energy Markets* (2012) at 6, available at http://www.eia.gov/analysis/requests/fe/pdf/fe_lng.pdf.

⁷ 15 U.S.C. § 717b(a).

⁸ Poneman-Wyden Letter, *supra* n.1, at 1.

⁹ DOE Delegation Order No. 0204-54, 44 Fed. Reg. 56,735 (Oct. 2, 1979).

¹⁰ See, e.g., *Tenneco Atlantic Pipeline Company*, Opinion and Order, 1 ERA ¶ 70,103 (Dec. 18, 1978); *El Paso Eastern Company*, Opinion and Order, 1 ERA ¶ 70,104 (Dec. 21, 1978).

¹¹ See 48 Fed. Reg. 34,501, 34,501 (July 29, 1983)

¹² *Id.*

final guidelines therefore take this view, and were designed to conform with the market orientation of “the President’s 1983 National Energy Policy Plan.”¹³

DOE’s goal at the time was chiefly to deregulate a price control system which had resulted in gas price increases in some parts of the country, and replace this system with one that made allowed more direct negotiations on price between buyers and sellers, making import more sustainable.¹⁴ Prior to the 1984 guidelines, this system of price controls, including regulatorily-approved long-term contracts, locked American buyers into a system in which they were paying above market rates for gas.¹⁵ In earlier years, import prices from Canada (the largest supplier) had been negotiated on a “cost-of-service basis,” but later negotiations between the two governments resulted in a series of agreements which supported government-determined pricing.¹⁶ But by the fall of 1982, the Canadian imports were entering the market “at a price that began to be uncompetitive in most U.S. markets” and other imported gas supplies were encountering the same problems, driving up consumer prices.¹⁷ Market participants, accordingly, argued that the price control system was not working and “a more flexible approach to pricing was needed” that would be driven by “direct buyer-seller negotiations.”¹⁸

The U.S. policy goal, in response to this problem, was to limit government interventions while maintaining enough oversight to ensure “a supply of natural gas supplemental to domestic production available on a competitive, market-responsive basis, while avoiding undue dependence on unreliable sources of supply.”¹⁹ In accordance with these goals, DOE established a three part-regulatory inquiry. It would inquire, first, into “[t]he competitiveness of the import,” meaning that the license applicants had to show that the imported gas would be governed by contracts allowing it to compete in the U.S market.²⁰ Next, DOE would consider the “[n]eed for the natural gas,” a question also focused on the “marketability” of the gas in the domestic market compared to U.S. gas.²¹ Third, DOE would look to the “[s]ecurity of supply,” meaning that importers would have to demonstrate the “historical reliability of the supplier to provide a dependable source of gas to the United States and other countries.”²²

These three primary factors, in short, are intended to allow imported gas to flow into the United States at market prices as long as there is room in the market for it and the source of supply is dependable enough to ward off supply shocks. The hope was that allowing such unrestricted import pricing systems would lower gas prices and avoid “severe economic consequences for

¹³ 49 Fed. Reg. 6,684, 6,685 (Feb. 22, 1984).

¹⁴ *Id.* at 6,687.

¹⁵ *Id.* at 6,684,

¹⁶ *Id.* at 6,686.

¹⁷ *Id.*

¹⁸ *Id.* at 6,686-87.

¹⁹ *Id.* at 6,687.

²⁰ *Id.* at 6,688.

²¹ *Id.*

²² *Id.*

the American gas consumer” by avoiding dependence on long-term expensive gas imports if the market would not accept them.²³

Because of this focus on speeding gas to American consumers, the 1984 import guidelines understandably say almost nothing about gas *export*. The delegation order based upon them, accordingly, says only that DOE shall regulate exports “based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate.”²⁴ No further guidance is available.

B. The 1984 Guidelines Are Ill-Suited to Today’s Issues

The world has changed a great deal since the 1984 guidelines. The import price control issues they were designed to solve are no longer pressing, or particularly relevant. Instead, DOE must wrestle with the proper role of LNG exports in the context of a very different U.S. economy, at a time of increasingly severe climate change, and where gas is increasingly produced using potentially hazardous technologies, including hydraulic fracturing (“fracking”). These shifts, as well as the inherent differences between gas imports and gas exports, underline why a fresh policy approach is so urgently needed.

Perhaps the most obvious shift in context since 1984 is that DOE is now dealing with large-scale gas exports for the first time. As a result, the issue which animates the 1984 guidelines -- harm to U.S. consumers from overly-expensive imported gas caused by extensive domestic price controls and poorly-drawn contracts--- is simply not present here. Instead, export economics debates center on the likely impact of linking U.S. gas supplies to the hungry world market. The potential arbitrage opportunity available to exporters to send domestic gas abroad at much higher prices, and the increased demand that such exports would create both raise significant questions about price impacts on U.S. consumers – but not because of the regulatory issues germane in 1984.²⁵ No one is concerned that DOE will set export price contracts at a level which would harm U.S. citizens. Instead, the question is whether the market price increases that exports will necessarily create, if permitted, are in the public interest. Thus, while DOE, in 1984, was seeking to create a market-responsive source of additional supply, free of unnecessary regulatory constraints to lower consumer prices, the question is now how new demands will alter the picture for U.S. consumers if exports compete against U.S. needs without further oversight– a competition which will necessarily raise gas prices.

In addition to this fundamental structural shift, both the source, and the effect, of increased gas consumption raise questions which were not germane in 1984. Most exported gas would be sourced from unconventional gas plays (shales, tight sands, and the like), and would be

²³ *Id.* at 6,684.

²⁴ DOE Delegation Order No. 0204-111 (Feb. 22, 1984).

²⁵ See generally EIA, *Effects of Increased Natural Gas Exports on Domestic Energy Markets* (investigating these questions).

extracted with the fracking process.²⁶ Imported gas, obviously, does not implicate U.S. production impacts and, in any event, those unconventional plays were not available in the 1980s. Now, though, unconventional production is expanding throughout the country, raising major environmental concerns and fomenting a vigorous ongoing public debate over its wisdom and appropriate limits upon production. As a result, the environmental impacts of such production were not germane to the DOE's considerations in the way they are now.

Similarly, the effect of deepening dependence on fossil fuels in the context of global climate change was far less developed in the 1980s. Although the greenhouse effect was known, the full scope and danger of climate change was less apparent, and had not yet been recognized by the government, as it has now.²⁷ Because the government has now recognized that global warming is a pressing threat to public health and welfare, there is a real question whether LNG exports are in the public interest if they expand use of fossil fuels or increase greenhouse gas emissions. DOE was not considering that pressing global crisis in 1984, but that question is central today.

This list of differences could go on for pages. The point, though, is simply that the world has changed: DOE simply faces a different set of problems now than it did decades ago, and it needs the tools to address them. Although consumer protection remains central to DOE's charge, the policy model developed in 1984 to avoid unnecessarily high import prices has very little to do with the questions export raises. To address them, DOE must revisit its guidelines to ensure that they speak to the problems at hand.

C. DOE Must Address New Questions on Export Which the 1984 Guidelines Do Not Cover

The absence of any formal export policy, or clear guidelines, is a pressing problem in light of the scope and importance of the issues raised by the LNG export proposals. These issues span much of the American economy and bear importantly on critical energy and environmental policy questions. The import guidelines are silent on these matters but the vigorous public debate on export demonstrates the great public importance of approaching them with great care.

The questions at stake, in brief, include (but are definitely not limited to) the following:

Impacts on Domestic Consumers. Essentially all parties to this debate concede that LNG exports will raise domestic gas prices, although they differ about the magnitude and scope of these increases, and so differ on their importance. It is clear that LNG exports elevate energy prices while depressing labor income in the rest of the economy, meaning, as a DOE-

²⁶ See *id.*

²⁷ See 74 Fed. Reg. 66,496 (Dec. 15, 2009) (recognizing that greenhouse gas emissions cause climate change, which endangers public health and welfare).

commissioned macroeconomic study puts it, that “[h]ouseholds with incomes solely from wages or transfers will not share” in export revenues.²⁸

This price increase must be of central concern, given the Natural Gas Act’s core purpose of “protect[ing] consumers against exploitation at the hands of natural gas companies.”²⁹ In light of this charge, we are, to say the least, extremely skeptical that DOE can properly allow export-linked consumer price increases which will harm ordinary American wage earners while benefitting a narrow segment of the oil and gas industry. Certainly, the 1984 guidelines provide no support for this proposition: Although they favor market pricing, they do so as an alternative to a rigid price control system that had locked in above-market prices for gas companies. It would be inappropriate to uncritically assume that this market focus is still appropriate in the context of large-scale export, which would significantly raise consumer prices.

Export proponents, of course, maintain that *other* consumer benefits counter-balance these price increases (which they maintain will be minimal), but even if that contention is supportable when these proponents will reap profits at the expense of the general public, this debate is really the point. Exports, in any significant quantity, raise domestic prices, transferring wealth from wage earners to natural gas companies. If countervailing considerations nonetheless can balance these price increases – a point which we doubt in light of the Act’s consumer-protection purpose – DOE needs to explain how, and any such considerations need to be carefully weighed and documented. The 1984 import guidelines, structured simply to increase supply (and hence to lower prices) do not provide a framework to consider these matters. If DOE believes that market price increases can be balanced by other factors, it must articulate that view in a proper public proposal and seek comments from the many Americans that position would affect.

Impacts on Domestic Industry. The same price increases felt by ordinary ratepayers are felt even more acutely by energy-intensive industries and by public gas utilities. Unsurprisingly, both groups have raised serious concerns about DOE’s process. In their view, LNG export above a certain quantity could significantly impede a domestic manufacturing renaissance (and even do net harm to the U.S. trade balance as fewer of these manufactured goods are exported). That view is supported by an extensive analysis appended to recent Dow Chemical comments on the DOE-commissioned macroeconomic study.³⁰ In short, the possibility of diverting significant amounts of natural gas overseas – where gas prices are much higher – raises

²⁸ NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (2012) at 8,

²⁹ See, e.g. *Michigan Gas Co. v. FERC*, 115 F.3d 1266, 1272 (6th Cir. 1997) (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 612 (1944)).

³⁰ Charles River Associates, *U.S. Manufacturing and LNG Exports: Economic Contributions to the U.S. Economy and Impacts on U.S. Natural Gas Prices* (2013), available at:

http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/reply_comments/Peter_A_Molinaro02_25_13.pdf.

economy-wide competitiveness questions that simply were not contemplated by the 1984 guidelines.

These questions are so substantial, in fact, that a serious debate continues even as to the net effect of LNG exports on U.S. GDP. Although the study DOE commissioned finds a net positive trend, an independent study in the record finds that the negative impacts on consumers and industry are enough to depress GDP as a whole.³¹ These economists therefore caution that “policy makers need to be very careful in approving U.S. gas exports.”³² Again, the 1984 guidelines offer no guidance on how DOE should weigh these competing models, or the relative importance of the domestic manufacturing sector and the natural gas export sector, or whether harm to some domestic actors can still be in the “public interest.”

Environmental and Public Health Implications. Large-scale LNG exports implicate at least four distinct sets of environmental and public health questions. First, and most obviously, LNG export requires a large, new, industrial infrastructure; this network of terminals, liquefaction plants, pipelines, and compressors requires careful environmental review. Second, exporting gas stimulates increased gas production – and most of that production will come from unconventional gas sources. According to the expert Shale Gas Production Subcommittee of DOE’s Secretary of Energy Advisory Board, a combination of absent and inadequate regulation means that that production comes with “a real risk of serious environmental consequences.”³³ The likelihood that export will exacerbate these impacts warrant careful analysis and management. Third, LNG export shifts the domestic gas market for electrical utilities, meaning that they are more likely to use coal, rather than gas, in their power plants.³⁴ As a result, LNG exports likely increase CO₂ emissions from U.S. power generation according to the EIA. Fourth, LNG itself is a carbon-intensive fuel,³⁵ with life-cycle emissions significantly greater than that of natural gas. At a minimum, the net climate and environmental impact of using this fuel is concerning. Assessing it requires a careful look at how importing nations are likely to use the fuel in their larger energy mixes. As we have noted, the pressing climate crisis (which was not clearly in view in 1984) thus raises significant questions about whether increased trade in this fossil fuel puts the public at risk.

³¹ Dr. Wallace Tyner, Purdue University, *Comparison of Analysis of Natural Gas Export Impacts from Studies Done by NERA Economic Consultants and Purdue University* (2013) at 5, available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/30_Wallace_Tyner01_14_13.pdf.

³² *Id.*

³³ Shale Gas Production Subcommittee of DOE’s Secretary of Energy Advisory Board, *Second Ninety-Day Report* (2011) at 10, available at: http://www.shalegas.energy.gov/resources/111811_final_report.pdf.

³⁴ See, e.g., *Effects of Increased Natural Gas Exports on Domestic Energy Markets* at 18-19.

³⁵ See Paulina Jaramillo, W. Michael Griffin, H. Scott Matthews, *Comparative Life-Cycle Air Emissions of Coal, Domestic Natural Gas, LNG, and SNG for Electricity Generation*, 41 *Environ. Sci. Technol.* 6,290 (2007), available at:

http://www.ce.cmu.edu/~gdrg/readings/2007/09/13/Jaramillo_ComparativeLCACoalNG.pdf.

Importantly, the Supreme Court has repeatedly instructed that this sort of broad look at environmental considerations is required by the public interest test.³⁶ EPA has also urged that DOE (and FERC, which usually prepares NEPA documents for both agencies) consider the full scope of possible impacts.³⁷ The import guidelines, however, fail to recognize the importance and scope of these environmental obligations and DOE has, thus far, largely limited its consideration of environmental impacts in its export decisionmaking. In the recent *Sabine Pass* orders, it went so far as to assert (albeit in dicta) that many such impacts simply could not and would not be considered.³⁸

This disconnect is striking and deeply problematic. The environmental and energy issues inherent in LNG export are near the center of the policy debate, but DOE's current practice, and the old import guidelines, appear to discourage it from answering them. These questions include: Is it in the public interest to double-down on unconventional gas production or to become a major supplier of fossil fuels to the world market? What conditions, if any, should apply to any such exports to mitigate environmental impacts? How do export authorizations interact with larger U.S. environmental and energy policy? And how should DOE weigh these considerations in its larger public interest analysis? Unfortunately, the 1984 import guidelines, crafted to conform with a decades-old energy plan, do not provide meaningful guidance on these matters. That is not too surprising: Imports of pipeline natural gas in the 1980s simply raise very different (and arguably less pressing) domestic environmental questions than the wholesale export of domestically produced gas as LNG during a time of worsening climate change.

* * *

Along with these and other substantive questions, the old guidelines also fail to address important process questions. The import guidelines established a new rebuttable presumption in favor of import applicants.³⁹ Although the D.C. Circuit allowed this departure from past practice, it did not hold that DOE must take this approach, and emphasized that the presumption must be flexible—simply a starting point for analysis.⁴⁰ Although the presumption is intended to be flexible, applicants have relied on it in practice to urge that protests of export applications must carry a very high burden of proof – in essence that they

³⁶ See *Udall v. Federal Power Comm'n*, 387 U.S. 428, 450 (1967); *NAACP v. Federal Power Comm'n*, 425 U.S. 662, 670 n.4 & 6 (1976).

³⁷ See EPA, *Scoping Comments – The Jordan Cove Energy Project LP*, FERC Dkts. PF12-7 and PF12-17 (Oct. 29, 2012); EPA, *Scoping Comments – Cove Point Liquefaction Project*, FERC Dkt. PF12-16-000 (Nov. 15, 2012); EPA, *Scoping Comments – The Oregon LNG Export Project and Washington Expansion Project*, FERC Dkts. PF12-18 and PF12-20.

³⁸ See Opinion and Order, *Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, Order No. 2961-A (Aug. 7, 2012) at 27-28.

³⁹ See, e.g., 49 Fed. Reg. at 6,688-89. More specifically, the guidelines establish a series of presumptions in favor of import within each of the three considerations they set out.

⁴⁰ *Panhandle Producers and Royalty Owners Ass'n v. Economic Regulatory Admin.*, 822 F.2d 1105, 1111 (D. C. Cir. 1987).

must not only rebut an initial presumption, but carry the case entirely. This approach is, at a minimum, in tension with the Natural Gas Act's mandate to DOE to protect the public interest. Because DOE has an independent obligation to protect the public, it has an independent duty to carefully weigh export applications on a full record – even if a given proceeding lacks an assiduous protestor. This obligation attaches with particular force here because of the exceptional public policy importance of LNG export. As such, this is also an appropriate time to reconsider the scope, application, and extent of any presumption-based approach in LNG proceedings. As DOE expands its consideration of substantive issues, it should also clarify how it will weigh the evidence before it, and what sorts of evidence it will require.

Export, in short, raises important, and difficult, questions which DOE must address if it is to credibly determine whether exports are in the public interest, and, if so, in what volume, and with what conditions. And how DOE weighs these sometimes-competing considerations – its policy orientation – will greatly influence the final outcome. Without conceding that all of these orientations are permitted by the Natural Gas Act, a few examples are illustrative: For instance, if DOE to focus simply on “protect[ing] consumers against exploitation at the hands of natural gas companies,”⁴¹ it might well disfavor any exports raising natural gas prices (perhaps above a certain amount). Or if DOE instead focused more on allowing the gas market to set prices, it might decide to permit all or most LNG terminals and assume that the market price (whatever it is) will be efficient and in the public interest. Or if DOE focused more on the effect of exports on domestic industry and employment it might seek to limit or phase in export to avoid price and supply shocks. Or if DOE was chiefly concerned with ensuring that export did not cause serious environmental harms, it might work to coordinate exports with the Shale Gas Production Subcommittee's recommended regulatory safeguards, or limit or bar export entirely until improved safeguards were in place. Or if DOE were actuated by climate change concerns, it might focus instead of limiting fossil fuel export and extraction as rapidly as possible. Or, of course, DOE might balance these concerns to come up with a limited export policy that attempts to serve multiple interests. The point is simply that DOE's choices are ultimately based (implicitly or explicitly) in policy judgments. The question now is whether the judgments DOE is making under the outdated guidelines properly respond to the complex issues raised by LNG export and appropriately serve the purposes of the Natural Gas Act.

Right now, those judgments remain opaque, as do the underlying criteria which DOE must use to make them. The 1984 import guidelines shed very little light because they are not well-matched to the large questions now before DOE. Before DOE moves forward with its decisions, it should therefore take the time to carefully enunciate a more modern set of policy judgments, and test those with public notice and comment. That sort of transparent process is necessary to get these important decisions right.

D. DOE's Practices to Date Demonstrate Why New Guidelines Are Needed

⁴¹ See, e.g. *Michigan Gas Co. v. FERC*, 115 F.3d at 1272.

To its credit, DOE has sometimes recognized that case-by-case adjudication based on the import guidelines is not sufficient. But its efforts to address the larger questions have, so far, been halting, at best. DOE officials have offered public statements indicating that the agency will look beyond the guidelines, but the only order DOE has issued on this wave of LNG export applications shows almost none of that promised broad thinking. Such orders generally provide a poor venue to enunciate and explore policy changes. And while DOE has, to its credit, requested broad public comments on an economic study it commissioned, this process's outcomes are unclear, and do not appear tethered to any particular policy proposal. These processes, in short, do not substitute for a public policymaking process.

i. Informal checklists of possible considerations are not sufficient policy statements

DOE officials have acknowledged that LNG export raises policy questions beyond the import guidelines. Those statements are welcome, but they are vague. Rather than expressing a coherent policy view, they simply list a changing collection of other factors to consider, without explaining their relative importance. This approach offers the public little guidance on DOE's decisionmaking process.

The first such list of which we are aware comes from 2011 testimony from Deputy Assistant Secretary Christopher Smith. He told a Senate Committee that "a wide range of criteria" would be considered, "including":

- Domestic need for the natural gas proposed for export
- Adequacy of domestic natural gas supply
- U.S. energy security
- Impact on the U.S. economy (GDP), consumers, and industry
- Jobs creation
- U.S. balance of trade
- International considerations
- Environmental considerations
- Consistency with DOE's long-standing policy of promoting competition in the marketplace through free negotiation of trade arrangements
- Other issues raised by commenters and/or intervenors deemed relevant to the proceeding.⁴²

In December 2012, Deputy Secretary Poneman offered a similar list in response to a request from Senator Wyden for further details on DOE's decisionmaking process.⁴³ His list, notably, adds impacts "impact on domestic natural gas prices" as a consideration, and drops

⁴² Statement of Deputy Assistant Secretary Christopher Smith Before the Committee on Energy and Natural Resources, United States Senate, *The Department of Energy's Role in Liquefied Natural Gas Export Applications* (Nov. 8, 2011) at 4.

⁴³ Poneman-Wyden Letter, *supra* n.1, at 1.

“consistency” with DOE’s market policies – suggesting something of a departure from the import guidelines’ focus on market pricing.⁴⁴

Then in March of this year, Deputy Assistant Secretary Smith offered yet another revised list to a House Subcommittee, this time omitting any reference to the “U.S. balance of trade” or to impacts on “industry.”⁴⁵

These changing and unspecified lists are unsatisfactory. While we appreciate the DOE’s efforts to broadly engage these issues, the lists offer no guidance on how DOE will weigh the many issues before it. Nor does DOE explain how it will gather and assess evidence on these issues, or even which particular points are of importance (there are, for instance, many international and environmental “considerations” which DOE might focus upon). And because the issues DOE chooses to highlight vary from time to time, it is not even clear which concerns enter into the analysis in the first place.

For this reason, the consideration lists do not substitute for a full policy statement. They do not provide meaningful guidance to applicants or to potential protestors on which arguments and information will be most useful to DOE. Nor, critically, do they provide a forum for the public, as a whole, to weigh in on this vital public policy question. They identify issues, without resolving them. In practice, as we next discuss, this has meant that DOE has fallen back on the inapposite import guidelines.

ii. DOE’s LNG Export Decisions Further Demonstrate the Need for Clear Policy Guidance

DOE has ruled on only one of the LNG export applications now before it. That ruling, *Sabine Pass*,⁴⁶ is driven by the policies of the import guidelines, despite the broader analysis which DOE’s public issue lists seem to suggest. At a time when a policy review is obviously warranted, it follows decades-old policy guidance. But even that order evinces some discomfort with continued exports, noting, for the first time, that “the cumulative impact of these export authorizations could pose a threat to the public interest.”⁴⁷ DOE should act on this concern by revisiting its export policies to ensure that they provide sufficient guidance to meet this potential threat.

The limits of *Sabine Pass*, and its earlier orders, underline why DOE needs to take a hard look at its activities. Again, the import guidelines established only one definite criterion for export: “a consideration of the domestic need for the gas to be exported,” leaving all other issues to DOE’s

⁴⁴ See *id.*

⁴⁵ Statement of Deputy Assistant Secretary Christopher Smith Before the Oversight and Government Reform Committee, United States House of Representatives, *The Department of Energy’s Program Regulating Liquefied Natural Gas Export Applications* (Mar. 19, 2013) at 3.

⁴⁶ *Sabine Pass*, Order 2961, *supra* n.2.

⁴⁷ *Id.* at 33.

discretion.⁴⁸ Although the delegation order which implemented the guidelines has been rescinded for more than a decade,⁴⁹ DOE nonetheless indicated that it would “continue[] to focus” on this consideration, along with “DOE’s policy of promoting competition in the marketplace” and the security of domestic energy supplies.⁵⁰

DOE focused accordingly. It granted an export license on the primary basis that the studies submitted by the applicant “indicate that the existing and future supply of domestic natural gas is sufficient to simultaneously support the proposed LNG export volumes as well as domestic natural gas demand” over the period of the authorization.⁵¹ Applying a particularly heavy presumption in favor of the applicant, DOE did not investigate this matter itself. Instead, it relied on the fact that two protestors in that docket had not submitted “a rebuttal study” as sufficient to support its decision.⁵² And though DOE noted that those protestors had also “alleged a variety of negative consequences,” it did not find that they outweighed the applicant’s claims of other economic benefits from its project.⁵³ Finally, as noted above, when DOE did finally (in a subsequent order) consider environmental impacts, it essentially declined to consider any impacts outside of the terminal site itself.⁵⁴

The result is that the *Sabine Pass* orders furthered a potential LNG export boom without considering almost any of the pressing public policy questions inherent in that boom. DOE did not look far beyond the strictures of the import guidelines and the (now defunct) delegation order that accompanied them. It conducted no independent studies. Instead, it relied only on those few members of the public who happened to protest the application. Because the protestors did not contest this particular license with detailed rebuttal studies, DOE felt it was appropriate to begin a seismic shift in the gas markets without any broader process. Nor did it articulate a coherent vision for export policy, or even really acknowledge that the export boom poses qualitatively different challenges than the pipeline imports which it usually considers.⁵⁵

⁴⁸ 49 Fed. Reg. at 6,690.

⁴⁹ See Redelegation Order No. 00-002.04 (Jan. 8, 2002) (rescinding earlier delegation order).

⁵⁰ *Sabine Pass*, Order 2961, at 28-29.

⁵¹ *Id.* at 31.

⁵² *See id.*

⁵³ *Id.*

⁵⁴ *See Sabine Pass*, Order 2961-A, *supra* n. 31, at 28-29.

⁵⁵ DOE’s two earlier opinions considering relatively substantial LNG exports are likewise unilluminating. Those opinions both address potential LNG exports from Alaska, and were issued more than a decade ago. Given their circumstances, they of course do not give serious attention to the implications of the nationwide shift towards gas export that is now before DOE. Nor do they seriously consider issues related to gas extraction, or to climate change – both acutely pressing in today’s carbon-constrained world. Both opinions are instead driven by the same consideration of immediate domestic need that the import guidelines impose. *See generally* DOE/FE, *Phillips Alaska, Opinion and Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, Order No. 1473 (Apr. 2, 1999); DOE/FE, *Yukon Pacific, Order Granting Authorization to Export Liquefied Natural Gas from Alaska*, Order No. 350 (Nov. 16, 1989).

Thus, despite DOE's public statements, its actual decisions to date have been notably limited by the constraints of the import guidelines. The domestic supply question for a given quantity of export at a particular terminal remains the agency's focus. Other issues, no matter how practically important they are, receive short shrift. And the core pro-market program of the 1980s continues to guide DOE policy, regardless of the large, new questions which export poses.

These failings demonstrate why simply working out DOE's position in further individual proceedings is not likely to be successful. Those proceedings are inherently limited to their participants and the particular issues around particular terminals (even if considered cumulatively with others). As adjudicatory proceedings, they afford no obvious opportunity for DOE to publicly announce, and seek comment upon, a shift in policy. Nor are they open to many important interests or for general public comment. Although DOE could, in principle, nonetheless enunciate a shift in policy through an order in such a proceeding, it is, at bottom, an awkward setting, one that discourages full discussion and durable settlement of these large issues.

While we, of course, encourage DOE to think broadly in its individual cases, *Sabine Pass* provides little ground for optimism. Rather than continuing to *de facto* follow the 1984 policy (perhaps with a few additional considerations), DOE would do much better to pull back and offer a coherent policy structure for notice and comment.

iii. DOE's Economic Studies Also Show Why a Broader Process is Important

DOE has sought public comment on one aspect of its decisionmaking, an economic study which it commissioned, but that process is limited, with unclear outcomes. Although it might usefully inform new policy guidelines, it does not substitute for them.

To DOE's credit, after *Sabine Pass* it recognized that the growing demand for LNG export required additional analysis. It therefore commissioned a two-part economic study looking at the economic impacts of large-scale export; EIA conducted the first part of that study and a private contractor, NERA, conducted the second.⁵⁶ As DOE explained, "[t]he purpose to the LNG Export Study was to evaluate the cumulative economic impact of the *Sabine Pass* authorization any future requests for authority to export LNG."⁵⁷

DOE sought public comment on the study, but limited comments to the economic issues in the study, explaining that it might "disregard" other comments.⁵⁸ It also made clear that, though it intended to place the study and comments upon it in the record for individual LNG proceedings, it was "not establishing a new proceeding or docket" for the study itself.⁵⁹ DOE

⁵⁶ See 77 Fed. Reg. 73,627, 73,268 (Dec. 11, 2012).

⁵⁷ *Id.*

⁵⁸ *Id.* at 73,629.

⁵⁹ *Id.*

indicated that it would address the study and comments on a “case-by-case basis” within the LNG export process, rather than, for instance, part of a larger policy rulemaking.⁶⁰ Despite these constraints, more than 180,000 people commented on the study, indicating the exceptional breadth and intensity of public interest in DOE’s decisionmaking process.⁶¹

The trouble is that this process, despite the vociferous comment period, does not provide DOE, the public, or applicants, with any indication of how DOE proposes to *use* the information it has received. Nor does it unambiguously give the public the chance to comment upon DOE’s policy choices, or seek review of those choices in court. To be sure, DOE’s actions in individual cases will ultimately indicate a policy direction based on the study, but, at that point, it will be too late. If DOE proposes a new policy, there will be no room for public notice and comment upon it because it will appear within a narrow adjudicatory decision which is not subject to public review. Or, if DOE continues to follow the 1984 guidelines, the public will have no opportunity to comment upon DOE’s continuing application of those outdated principles in this context, and to new data. Further, because the vast majority of the commenters are not parties to those cases, most of the public will have no ability to seek review of DOE’s decisions or ensure that their comments are heeded. In essence, DOE is skipping critical steps. Rather than using the economic study, and comments thereon, to inform policy, offer that policy for comment, and then apply it to individual cases, it is simply rushing ahead to individual “case-by-case” decisions, in the absence of any policy review.

This is a mistake. The economic study itself does not clearly indicate a direction for DOE to take. It shows that exports will generally harm wage earners and benefit gas exporters. But whether DOE chooses to favor one group or another (or strike some sort of balance) as a matter of policy remains unclear. And the study, of course, does not touch on many other areas relevant to the public interest, including environmental impacts. The study, in other words, may influence policy, but it does not set policy.

iv. New Policy Guidelines Are Needed

In sum, neither DOE’s public statements, nor its sole modern LNG export decision, nor its limited comment period on economic aspects of LNG exports suffice. DOE’s progress for making export decisions is fragmented, opaque, and unduly governed by policy judgments that were never intended to address today’s situation. DOE would do well to move forward by revisiting its policy, before case-by-case export decisions create a *de facto* policy which may or may not be in the public interest.

E. Further Guidance Is Also Needed on DOE’s Public Interest Monitoring Process

⁶⁰ *Id.*

⁶¹ Sierra Club and many of the other petitioning groups, for instance, submitted extensive comments raising concerns with the study.

In the *Sabine Pass* process, DOE also articulated a “continuing duty to protect the public interest.”⁶² It indicated that changes in gas supply or demand could alter whether Sabine Pass’s exports were in the public interest by, for instance, restricting supply in response to environmental concerns, or by increasing demand in the power sector.⁶³ DOE indicated that it would “monitor these conditions” to ensure that exports “do not subsequently lead to a reduction in the supply of natural gas needed to meet essential domestic needs.”⁶⁴ It suggested that it might take appropriate action to rescind or modify export approvals, with notice and a hearing (if need be), in those circumstances.⁶⁵ This ongoing monitoring duty, too, requires clarification through a new policy process.

There are several problems with the monitoring conditions DOE has set out (though they are far better than nothing). Plainly, they are rooted, like the rest of the decision, in the 1984 import guidelines, which were designed to protect gas supply. As a result, they only obliquely touch on other possible reasons to restrict or modify exports. Such reasons might include concerns over the environmental and social impacts of large-scale gas exports and the production needed to support them, unforeseen harms to the industrial sector, or a need to curtail fossil fuel use in light of the urgent global climate crisis, which continues to intensify. Other reasons might also apply. The point here is that both the substance and structure of DOE’s continuing public interest monitoring duty turns on DOE’s policy judgments about the public interest. Accordingly, as DOE revisits those guidelines, it should also explain how any modified policy affects its monitoring and enforcement criteria.

IV. Petition for Relief

We are not the only voice calling for a more coherent policy process on LNG export. Senator Wyden has asked DOE to explain “how DOE will establish the actual decision-making criteria to be used in making the required export determinations ... and the manner in which these criteria will be promulgated.”⁶⁶ Groups as disparate as the Natural Resources Defense Council⁶⁷ and Dow Chemical⁶⁸ have made essentially the same request. The public deserves clarity, and that begins with a clear export policy.

⁶² *Sabine Pass*, Order No. 2961, *supra* n. 2, at 31-32.

⁶³ *Id.*

⁶⁴ *Id.* at 32.

⁶⁵ *Id.* at 33.

⁶⁶ Letter from Senator Ron Wyden to Secretary Steven Chu (Oct. 23, 2012). DOE, unfortunately, answered this letter only by reiterating its checklist of issues, without providing more substance.

⁶⁷ Kathleen Kennedy, NRDC, *Initial Comments on the NERA Study* (2013), available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/kennedy_em01_24_13.pdf.

⁶⁸ Peter Molinaro, Dow Chemical, *Reply Comments on the NERA Study* (2013), http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/reply_comments/Peter_A_Molinaro02_25_13.pdf.

DOE should pursue this policy-making process on the basis of full information. It has several channels in which to gather this information. Two are particularly important (though this list is not exclusive):

The economic studies DOE has commissioned (in addition to further work to correct deficiencies in that work noted by many commenters) provide one useful set of data once that work has been completed. DOE should open a formal docket, independent of any particular terminal, in which to consider them, and to respond to the many comments it received.

The National Environmental Policy Act (NEPA), provides another critical channel. As we have explained at length in protests and comments filed with DOE, NEPA requires an Environmental Impact Statement (EIS) for every major Federal action which could significantly affect “the quality of the human environment.”⁶⁹ NEPA’s “purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action.”⁷⁰ This means that “[t]he NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.”⁷¹ NEPA is often used to make programmatic decisions of this sort,⁷² and would be enormously helpful to DOE and to the public here. DOE should therefore prepare (or work with FERC to prepare) a programmatic EIS, fully considering the environmental and public health impacts of possible levels of LNG export. This document would essentially parallel the programmatic economic study which DOE is already conducting, and would be a necessary complement to it. Indeed, the EIS could directly test alternative approaches to LNG export policy for their likely environmental impacts.

These processes would provide DOE with much of the information it needs to make a coherent, well-supported decision on LNG export, as the Natural Gas Act requires, beginning by proposing modern policy guidelines. That process would be public, fair, and comprehensive. Through it, DOE could propose different emphases for U.S. policy, considering, for instance, whether the simple market need analysis of the 1984 guidelines is appropriate, or whether a broader analysis is more likely to serve the public – including, for instance, the factors that we, and DOE officials, have cited as important. The policy should also set forth the ways in which DOE will weigh evidence before it, and how it will manage the cumulative impacts of the many applications it is now considering. And it should explain how DOE will monitor any exports to ensure consistency with the public interest in the future.

In view of the potential importance of LNG exports, for both good and ill, and the extremely lively public debate surrounding the issue, this petition makes a modest request: DOE should look before it leaps. As DOE has already recognized, at least in part, these extraordinary requests require careful process. DOE has worked to include the public in its policy-making

⁶⁹ 42 U.S.C. § 4332(C).

⁷⁰ 40 C.F.R. § 1500.1(c).

⁷¹ *Id.*

⁷² *See* 40 C.F.R. § 1502.14(b)-(c).

even in less unusual times: The 1984 import guidelines themselves were developed through a public notice and comment process and a DOE-sponsored conference.⁷³ No less care is warranted here.

We therefore petition DOE to do the following:

- (1) Grant no more licenses for LNG export to non-Free Trade Agreement nations until it has completed a final revision of its policy guidelines, focusing on LNG export.
- (2) Conduct an Administrative Procedure Act compliant notice-and-comment process, including public hearings as warranted, to develop a new set of gas export policy guidelines which specifically and carefully articulate DOE's policy orientation on export, and the factors which it will primarily consider in individual export dockets.
- (3) Support the development of these guidelines with a thorough, careful, economic study and with a full programmatic Environmental Impact Statement.

V. Conclusion

LNG export is a major national policy decision, and it deserves a commensurately careful process. For the foregoing reasons, a key part of that process is a careful, public review of the dated policy guidelines which now influence the process.

Thank you for considering this petition. In view of the importance of the issues, we request a written response within 45 days of your receipt of this document.

Sincerely,



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⁷³ See 48 Fed. Reg. 34,501 (July 29, 1983) (requesting comments on proposed import/export policy and announcing a public conference).

(ORAL ARGUMENT NOT YET SCHEDULED)

Docket No. 23-1065

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

In Re Sierra Club, Center for Biological Diversity, Delaware Riverkeeper
Network, Friends of the Earth, and Environment America,

Petitioners.

Petitioners' Addendum of Declarations

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DECLARATION OF CATHERINE COLLENTINE

I, Catherine Collentine, declare as follows:

1. I am of legal age and competent to give this declaration, and all matters in this declaration are based on my own personal knowledge unless otherwise specified.
2. I am the Director of Sierra Club's Beyond Dirty Fuels Campaign. In this capacity, I lead our fight to slow and stop the construction of new oil and fracked gas export terminals and related infrastructure across the country.
3. Sierra Club is the nation's oldest grassroots organization dedicated to the protection and preservation of the environment. Sierra Club has approximately 800,000 members nationwide in each of the 50 states, and is dedicated to exploring, enjoying, and protecting the wild places of the earth.
4. Sierra Club's membership includes persons who live on or near, or recreate in and along, rivers, marshes, wetlands, and coasts that will be impacted by the construction and operation of proposed and approved gas export infrastructure along the Gulf Coast and elsewhere throughout the country. Members of Sierra Club use these areas, including the Calcasieu River and the surrounding marshes, for example, for outdoor recreation and scientific study of various kinds, including nature study, birdwatching, observing wildlife (including protected species), photography, fishing, canoeing,

kayaking, solitude, and a variety of other activities. Proposed gas export facilities, like the Commonwealth and Calcasieu Pass II facilities, would interfere with Sierra Club's members' use and enjoyment of these waters.

5. Sierra Club's Beyond Dirty Fuels Campaign is dedicated to averting the worst impacts of the climate crisis through slowing or stopping the expansion of fossil fuel production and infrastructure, and protecting the environment and communities from the environmental impacts of these projects. Part of this program involves opposing the construction and operation of new oil and gas export terminals and associated infrastructure, including pipelines and compressor stations. We have several Campaign Representatives, a Campaign Manager, two organizers, and other staff who work on these issues. We work with Sierra Club members and volunteers to organize rallies, disseminate information, attend public meetings, submit comments to state and federal permitting agencies, and more.
6. Our Sierra Club team is working hard to protect the environment and the public from the construction of gas export infrastructure. Sierra Club's concerns with these facilities encompass the protection of wildlands, wildlife, and habitat, including threatened and endangered species, water resources, wetlands and other special aquatic sites, averting catastrophic climate change,

and improving air quality and public health in areas where our members live and recreate.

7. Through my role as the Campaign Director, I am familiar with the processes by which proposed gas export facilities are approved and permitted. In particular, I am aware that, under the Natural Gas Act, the Federal Energy Regulatory Commission authorizes the construction of the actual gas export facilities themselves, and the Department of Energy (“DOE”) authorizes the export of gas as a commodity to the global market. Further, I am aware that DOE is prohibited from authorizing exports to countries that do not have a free trade agreement with the United States unless doing so is consistent with the public interest. And I am aware that, to date, DOE has never issued guidelines or regulations defining how it will determine when proposed gas exports are or are not consistent with the public interest. In the absence of such guidance, DOE routinely approves proposed gas exports to non-free-trade agreement countries as consistent with the public interest.
8. As part of our campaign, Sierra Club, alongside several allied organizations, submitted a petition to DOE in 2013 urging the Department to issue rules or guidance defining how the agency would determine whether proposed gas exports are or are not “consistent with the public interest,” in accordance with the Natural Gas Act. To date, DOE has yet to respond to that petition.

9. Sierra Club members, and the Sierra Club Beyond Dirty Fuels Campaign itself, are harmed by DOE's failure to timely respond to our 2013 petition. DOE's failure to timely respond to our 2013 petition has deprived Sierra Club members, and the Sierra Club itself, of the opportunity to participate in whatever administrative processes flow from the agency's ultimate decision on the petition. Further, DOE's failure to clarify and systematize how it determines when proposed exports are or are not consistent with the public interest increases the likelihood that DOE will continue to approve liquified natural gas ("LNG") exports, as it creates the opportunity for the agency to neglect to meaningfully consider key impacts associated with gas exports. For example, the agency routinely authorizes proposed exports without evaluating the impacts of the gas export facilities at issue on their host communities and without meaningfully considering the climate change impacts associated with extracting, refining, transporting, and burning the gas to be exported. And DOE has never considered the implications of increased gas exports on the price of domestic gas for low-income ratepayers.

(Increased gas exports cause the price of domestic gas to increase.)


10. It is my understanding that if DOE responds to Sierra Club's 2013 petition affirmatively, and issues rules or guidance defining how it will determine when proposed LNG exports are or are not consistent with the public interest,

the agency may ultimately refuse, on public interest grounds, to authorize proposed exports from proposed gas export facilities. This, in turn, may cause these facilities' developers to abandon their proposed projects, and protect the interests of our members and Sierra Club itself.

11. Should DOE respond to the 2013 petition, Sierra Club, and the Beyond Dirty Fuels Campaign in particular, would participate in any administrative processes that may emanate from whatever decision the agency makes, including any public comment period or public hearing that may be associated with that decision.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on March 06, 2023.



Catherine Collentine

DECLARATION OF JOHN ALLAIRE

I, John Allaire, declare as follows:

1. I am of legal age and competent to give this declaration, and all matters in this declaration are based on my own personal knowledge unless otherwise specified.

Background

2. I am 67 years old and live in Holly Beach, Louisiana. I've lived on my property at 621 Gulf Beach Highway in Holly Beach (70631) on and off for approximately the past 24 years, and continuously since 2020. My property is in Cameron Parish, which is adjacent to Calcasieu Parish. I have no current plans to move out of the area.
3. My property encompasses approximately 311 acres of coastal marshland and forest, and over 3,200 feet of coastline along the Gulf of Mexico. These ecosystems host many species of plants and animals, and several rare and sensitive species, including the federally threatened Eastern Black Rail (a small bird). Many species of migrating birds frequent the property, and many roost in the Cheniere forests immediately adjacent to the Gulf Coast to rest after having crossed the Gulf from South America and the Caribbean.
4. As explained in more detail below, I am an active birder, hunter, and fisherman. I hunt for ducks and other animals more than 70 days each year,

mostly on my property, and fish, mostly on my property, hundreds of days each year. I am also a bird lover, and regularly get outside on my property and in nearby areas to look for birds and other animals, including the Eastern Black Rail.

5. I am an active member of the Sierra Club. I have been a Sierra Club member for three years. I support Sierra Club's mission to protect wild places and appreciate the long history of working on important environmental issues and wide reach of organization. Specifically, I regularly sign onto online Sierra Club petitions, attend Sierra Club events and webinars, and read the Sierra Club's magazine and newsletters. Since 2018, I have also regularly and consistently participated in the Sierra Club's work to fight liquified natural gas ("LNG") export infrastructure in my area by submitting comments and attending public hearings relating to proposed LNG export infrastructure. To this point, I have attended every public hearing on the proposed Commonwealth LNG export facility, submitted comments at every opportunity, and participated in press and media outreach relating to the proposed facility. I plan to continue to participate in the Sierra Club's ongoing work to oppose the Commonwealth LNG export facility and other proposed LNG export facilities in my immediate area, including the proposed Calcasieu Pass II LNG export facility. I would participate in any public

comment period and public hearing regarding the “public interest” factors the Department of Energy (“DOE”) should consider when deciding whether or not to authorize non-free-trade agreement gas exports.

LNG Exports and the Proposed Commonwealth LNG Export Facility

6. I am aware of the process for authorizing proposed LNG export facilities under the Natural Gas Act. In particular, I am familiar with the processes by which the Federal Energy Regulatory Commission (“FERC”) authorizes the construction of the actual LNG export facilities themselves, and DOE authorizes the export of gas as a commodity to the global market. Further, I am aware that DOE is prohibited from authorizing exports to countries that do not have a free trade agreement with the United States unless doing so is consistent with the public interest. And I am aware that, to date, DOE has never issued guidelines or regulations defining how it will determine when proposed LNG exports are or are not consistent with the public interest.
7. I am also aware that the Sierra Club, in 2013, along with several other environmental organizations, submitted a formal petition to DOE asking the agency to issue guidelines or regulations defining how it will determine when proposed LNG exports are or are not consistent with the public interest, and that DOE has yet to respond to that petition. In my view, DOE’s failure to issue guidelines or regulations is particularly problematic, given the increase

in proposed LNG export facilities, particularly along the Gulf Coast where I live.

8. One such LNG facility is the proposed Commonwealth LNG export facility in Cameron Parish, Louisiana. If constructed and operated, the facility would be one of the largest polluters in the Gulf region. The project would export between 8.5 and 9.5 million tons per year of LNG, and the emissions resulting from downstream use of this exported gas would be equivalent to the annual emissions from 14 coal-burning power plants combined. The proposed Commonwealth LNG facility is one of seven proposed or permitted LNG export terminals in the Cameron Parish and Calcasieu Parish region that I am aware of. These facilities include the Venture Global Calcasieu Pass, Cameron LNG, and Cheniere Energy Sabine Pass export terminals, which are now operational, the Driftwood and Lake Charles LNG export facilities, which are permitted and are under construction (the Lake Charles facility has authorization to begin site preparation), and the proposed Calcasieu Pass II, G2 Net Zero, and Magnolia export facilities.
9. I am aware that FERC has authorized the construction of the Commonwealth LNG export facility, and that DOE has authorized exports from the facility to countries with which the United States has a free trade agreement. However, I am also aware that DOE has not yet authorized exports from the facility to

countries with which the United States does not have a free trade agreement.

Construction of the Commonwealth facility has not yet begun.

10. To build the Commonwealth LNG export facility, its owner and developer, Commonwealth LNG, LLC, plans to fill much of the wetlands on its property using approximately 1,432,900 cubic yards of fill material, build a massive facility that would operate on 118.8 acres of a 393-acre property, dredge a huge channel to accommodate the coming and going of LNG export vessels, install four 200 to 300-foot tall smoke stacks for flaring the gas, and a sea wall, to help protect the facility of tidal swells. According to the Environmental Impact Statement for the project, this will require destroying much of the forests and wetlands on the project site.¹
11. Construction and operation of the facility is likely to substantially and irreversibly harm my property, decrease my use and enjoyment of my property, and impact the species that live on and near my property.
12. If built, the Commonwealth facility would be located on the property immediately adjacent to mine. I have been quite close with the former owners of that plot for many years, and even helped to build the access roads to the site and install the fence and lock that Commonwealth is now using to secure

¹ The final EIS for the project is available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220909-3017&optimized=false.

the site. For decades, the property's owners allowed me and my family to come onto their property to access the marshes, river, and beach for fishing, hunting, animal watching, and recreating, and I have allowed them to access my property for the same reasons.

13. In constructing the facility, Commonwealth LNG, LLC plans to fill much of the wetland on its property, thereby reducing the habitat available to native species. I am concerned that this will negatively impact fish and bird stocks in the area. The wetlands on Commonwealth's property (as well as my own property) serve as an important nursery for juvenile shrimp, crabs, and fish, and habitat for local and migratory birds, including ducks and neo-tropical species from Central and South America. As noted, I am an avid fisherman, and I go out fishing in the area (including on my property, immediately adjacent to the proposed Commonwealth site) more than 200 times each year. I am concerned that the facility's plan to fill the wetland will diminish fish stocks, which would reduce my enjoyment of and desire to fish so frequently on and near my property. Likewise, I am a passionate and experienced hunter; I hunt on or near my property for ducks more than 60 days per year, and also regularly hunt for other animals, including alligators and feral hogs on my property. I am concerned that Commonwealth's plan to fill the wetlands on its property will reduce bird and animal stocks and thereby

diminish the quality of my hunting and cause me to reduce the amount of times I go out each year. I raised my children, who are now grown and who also live in the area, to hunt and fish, and they regularly join me to hunt and fish on and near my property. If built and operated, I fear that the Commonwealth LNG export facility will negatively and substantially impact this special family tradition.

14. I am also an avid birder. Many species of birds, including several migratory birds and the federally threatened Eastern Black Rail, frequent my property, and I regularly go out to observe them. I spotted a Black Rail on my property on February 21, 2023, for example. What is more, the Audubon Society regularly visits my property to conduct surveys of the local Eastern Black Rail population. I fear that Commonwealth's plan to fill the wetlands on its property will impact the frequency with which I and others can observe the myriad species of birds that inhabit my property and nearby areas, including the Eastern Black Rail. FERC estimates that approximately 30 Eastern Black Rails will be killed during construction of the project, for example.
15. To construct the facility, Commonwealth LNG, LLC plans to bulldoze much of the forests (known as Chenieres) on its property along the Gulf Coast, reducing the available habitat for migrating birds. Chenieres serve as an important habitat for migrating birds coming north from South America and

the Caribbean.² After flying over the Gulf of Mexico, many species of migrating birds come to the Chenieres along the Gulf Coast to rest and recuperate. For many years now, going out to observe the migrating birds along the Chenieres has been an important tradition for me and my family. I am concerned that Commonwealth's plan to destroy this important habitat will harm the populations of these migrating birds or otherwise dissuade them from roosting in the immediate area, thereby decreasing the likelihood for me and my family to observe these migrating birds.

16. Filling the wetlands will likely also have negative implications for drainage in the area, particularly as it relates to the nearby Calcasieu River. Without adequate drainage, I fear that filling the wetlands on Commonwealth's property will likely result in significant flooding on my property. This could harm the wetlands on my property by flooding them with excess water. I have worked hard to maintain and improve the wetlands on my property over the years. I received a grant from the U.S. Fish and Wildlife Service to improve marsh and forest habitat on my property, for example. Further, flooding on my property could also impact my residence, as discussed below.

² Wylie Barrow et al., *Cheniere Forest as Stopover Habitat for Migrant Landbirds: Immediate Effects of Hurricane Rita* (2007), available at https://pubs.usgs.gov/circ/1306/pdf/c1306_ch6_d.pdf.

17. The sea wall intended to insulate the proposed Commonwealth LNG facility will likely deflect tidal swells towards my property. My property includes over 3,200 feet of beachfront along the Gulf of Mexico. This beachfront has receded approximately 70 meters in the last 17 years as a result of coastal erosion and hurricanes. Indeed, four major hurricanes have hit the area in the last 17 years, and one (Hurricane Rita) destroyed my then-permanent residence. My wife and I now live out of an RV on the property, as a result. I am concerned that Commonwealth's sea wall, by deflecting tidal swells towards my property, will exacerbate this process and increase the speed, scope, and severity of coastal erosion on my property. I am also concerned that, by emitting so much greenhouse gas emissions, the project will contribute to climate change, which in turn will increase the frequency and severity of the hurricanes that hit the area and damage my property.
18. As noted, to construct the Commonwealth facility, developers plan to dredge a channel in the Calcasieu River to accommodate the ships that will transport the LNG being exported. I fear that this dredging will negatively impact the beach along my property. I walk the beach on my property 4 to 5 times each week with my Labrador Retrievers and grandchildren, and, in so doing, I have noticed a terrible side effect of dredge spoils from the Calcasieu Pass export facility being dumped in the Gulf offshore of my property. In dredging

the marine berth for the nearby Venture Global Calcasieu Pass LNG export terminal, which is approximately one mile from my property and which is now operational, its owner and operator, Venture Global, excavated thousands of cubic yards of sludge from the bottom of their marine berth. As a result of prevailing tides, much of this sludge ended up on and near my property. Starting in March 2022, when walking my beach with my dogs and grandkids, I noticed that in many places one could step down, and quickly sink up to your ankle or knees in black, viscous sludge. The texture of the sludge is thicker than pudding, and can be hard to extricate yourself from, especially for small children and dogs. As a result, I have not allowed my dogs or grandkids to wade or swim in the Gulf on any of my beachfront property, for fear that they'll encounter this black sludge. I fear that dredging the channel for the Commonwealth LNG export facility (and for the proposed Calcasieu Pass II LNG export facility, which will also be located nearby) will increase the amount of this nasty, black sludge that migrates onto my beachfront.

19. I am also concerned that the noise and light pollution associated with operating the Commonwealth facility will diminish my use and enjoyment of my property. I raised my children on this property, and we have always enjoyed the tremendous stargazing its rural, bucolic location has afforded us.

For example, my son and I would regularly go out to the beach to watch the space shuttle cross the sky at night. Since it began operations, however, the Calcasieu Pass LNG export facility has lit up the sky near my property. A friend came to visit the property recently from Las Vegas, Nevada, and commented that the light pollution coming off of the Calcasieu Pass facility reminded him of the Las Vegas skyline. I fear that, if constructed and operated as intended, the Commonwealth LNG export facility and Calcasieu Pass II LNG export facility will exacerbate this light pollution problem, and drastically impact my ability to stargaze from my property or in the nearby area.

20. Likewise, my family and I have long enjoyed the quiet, serene environment my property, and the nearby area, offers. Oftentimes, all one could hear is the birds and the wind. As noted, I am an avid birder, hunter, and fisherman, and rely on this quiet to hear and identify birds and other animals. Since it began operations, the Calcasieu Pass LNG export facility has upended this peaceful quietness. The facility operates two 197-foot flares and two 66-foot flares approximately one mile from my property that, when operated, they emit sounds comparable to thunder or jet planes. Venture Global said that they would only operate the flares in emergencies, when loading the shipping vessels with gas, and during startup, shutdown, and maintenance events; but,


based on my observations, the facility operated its flares on 84 of its first 90 days of operation in 2022. The flaring systems for the proposed Commonwealth LNG export facility will be located only 750 feet from my property boundary. I fear that the noise pollution associated with these flaring systems will prove intolerable, and force me to avoid enjoying the outdoors when they're in operation. Further, I also fear that the noise, smoke, and light pollution associated with these flaring systems will impact the birds and other animals that inhabit the area, and thereby impact my experience hunting, fishing, and birdwatching on my property and in the nearby area.

21. It is my understanding that if DOE responds to the Sierra Club's 2013 petition affirmatively, and issues rules or guidance defining how it will determine when proposed LNG exports are or are not consistent with the public interest, the agency may ultimately refuse, on public interest grounds, to authorize proposed exports from the Commonwealth facility (and other nearby facilities, like the Calcasieu Pass II facility) to none-free-trade countries. This, in turn, may cause Commonwealth LNG, LLC (and Venture Global, in the case of the Calcasieu Pass II facility) to abandon their proposed projects, thereby protecting my property and my interests in fishing, hunting, birdwatching, beach-walking, stargazing, and peace and quiet in the area.

22. Should the Department of Energy respond to the 2013 petition, I would participate in any administrative processes that may emanate from whatever decision the agency makes, including any public comment period or public hearing that may be associated with that decision.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on March 7th, 2023.


John Allaire

DECLARATION OF BRETT HARTL

I, Brett Hartl, make the following declaration:

1. I am a resident of Prescott, AZ.
2. I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
3. I am the Government Affairs Director at the Center for Biological Diversity (“Center”), and I work out of our Washington, D.C., and Arizona offices. I have worked at the Center since 2013.
4. I am also a member of the Center and have been a member of the Center since 2013. As a member, I rely on the Center to represent my interests in conserving native species and their habitats. I support its efforts to secure a future for all species, great or small, and to prevent development, pollution, and climate change from driving species extinct.
5. I hold a bachelor’s degree from Prescott College in conservation biology, and a law degree from Lewis and Clark Law School. Prior to law school, I spent five years as a field biologist working with endangered species in the northwest Hawaiian Islands, Kauai, and Southern California.
6. The Center is a member organization incorporated under the laws of the State of California. It is recognized as a not-for-profit corporation under section

501(c)(3) of the United States Internal Revenue Code. The Center has 81,843 active members across the country. The Center is based in Tucson, AZ, and works throughout the entire United States. Our other major offices are in Washington D.C., Oakland and Portland.

7. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and water, and public health through science, policy, and environmental law. Based on an understanding that the health and welfare of human societies are closely linked to the condition of the natural environment, the Center works to protect natural resources like air, water, and land and to secure a future for animals and plants hovering on the brink of extinction. We work to protect the ecosystems they need to survive, for the species and for the people that interact with, depend on, and cherish these natural resources.
8. In my professional capacity as the Government Affairs Director at the Center, I monitor and oversee national policy issues that impact endangered species, energy, climate, and environmental protection broadly, including the advancement of environmentally beneficial policies. The Center advances work on national policy issues through the filing administrative rulemaking petitions under the Administrative Procedure Act, direct advocacy with

federal agency officials and other policy work including, formal commenting, legislative lobbying, and litigation.

9. Protection of endangered and threatened species is a core organizational focus of the Center. Whether large or small, we believe all species have an intrinsic right to live. The United States and the world at large are currently in the midst of a biodiversity crisis: the diversity of life that sustains ecological systems and human cultures around the world are collapsing. As a result, the Center works tirelessly to protect endangered and threatened species through advocacy, litigation, education campaigns, conservation of critical habitats for species, and holding federal agencies accountable to their duties to protect species as directed by Congress, especially with respect to the consultation obligations that arise under the Endangered Species Act.
10. Many of the species the Center works to protect throughout the country rely on a stable climate to survive and ultimately achieve recovery including the polar bear, ringed seal, bearded seal, numerous coral species, the 'I'iwi, numerous Florida Key species, the Western glacier stonefly and more. To that end, the Center has longstanding programs and employed a variety of campaigns and legal efforts to address climate change and greenhouse gas emissions through the Center's Climate Law Institute, public lands program, oceans program, and endangered species program.

11. One example of such efforts was a 2013 petition filed by the Center, the Sierra Club, Environment America, Friends of the Earth, and other environmental organizations to the United States Department of Energy requesting the agency issue rules outlining how it will make “public interest” determinations when evaluating whether or not to approve the export of liquified natural gas under the Natural Gas Act. Despite the central importance of a public interest determination in the Natural Gas Act and other laws regulating the import and export of fossil fuels, the Department of Energy has never squarely addressed the factors that it weighs in such a determination. Given the substantial direct and indirect harms to endangered species, the environmental, and the climate from the expansion of export terminals for liquified natural gas, the failure of the Department of Energy was, and continues to be, a top priority for the Center in its efforts to address and reduce the harms of climate change.
12. The failure of the Department of Energy continues to harm the Center’s ability to fulfil its core missions of protecting endangered species and the well being of people, all of whom depending on healthy, functioning ecosystems to live and thrive. If the Department of Energy were to commence a rulemaking to define this key statutory requirement, we would be involved during and through the rulemaking process to its completion, and

would use such regulatory language to further additional efforts and campaigns in the future to address climate change.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of February 2023, in Prescott, AZ.



Brett Hartl

DECLARATION OF MELANIE OLDHAM

I, Melanie Oldham, hereby declare as follows:

1. I am over the age of eighteen and competent to make this declaration. The statements made herein are based upon my personal knowledge and experience.
2. I am a resident of Freeport, Texas and have been for over 10 years. I have been a resident of Brazoria County, Texas for over 40 years.
3. I am a member of the Center for Biological Diversity (“the Center”). As a member, I rely on the Center to represent my interests in addressing climate change, the environmental and justice impacts of fossil fuel development, and conserving native species and their habitats. Since becoming a member, I regularly receive information from the Center about action alerts, events, and details about endangered species and how the Center is working to protect those species.
4. I am a member of the Sierra Club and have been a member for 8 years. The Sierra Club works to, among other things, promote the responsible use of the earth's ecosystems and resources and to protect and restore the quality of the natural and human environment. I appreciate the work they do and likewise support their efforts.

5. I also founded the organization, Citizens for Clean Air & Clean Water in Brazoria County (formerly “Better Brazoria”) in 2014. The organization was founded to educate Freeport Residents about environmental issues and advocate for solutions to protect and improve air and water quality.
6. For example, Better Brazoria regularly holds community meetings to raise awareness about potentially harmful air and water pollution events in Freeport. I have regularly hosted and attended these membership meetings or specially called meetings by Better Brazoria about certain LNG facilities like Freeport LNG.
7. Through these organizations I am a huge advocate for the protection of wildlife, human health, and natural resources through the preservation of the environment and biodiversity.
8. I rely on Sierra Club and the Center to represent my interests in maintaining the natural environment and resources, including wildlife and air quality in a variety of forums, including legal action.
9. I live less than 4 miles from the Freeport LNG Pretreatment facility. I am an advocate for the protection of Brazoria County and its residents because I am concerned about physical and monetary damage to my home and property in the event of a disaster along the pipelines of active and proposed LNG facilities and export terminals.

10. As an advocate for my community, I have held public meetings, met with Senate members and House Representatives, signed petitions, commented on proposed LNG projects, organized and attended local and national actions opposing LNG projects, and participated in digital campaigns against the expansion of LNG.
11. Through these efforts and others, I have actively opposed the construction and continued operation of LNG facilities like Freeport LNG, Texas Port Arthur LNG, West Delta LNG, and others.
12. For example, I researched permits and other materials at my local library, worked with attorneys to draft comments to FERC and PHMSA, attended FERC commissioner meetings, and met with the Texas Commission on Environmental Quality voicing my concerns surrounding Freeport LNG.
13. I believe that LNG is dirty, dangerous, and not regulated closely enough. The Freeport LNG explosions have made me increasingly aware of how dangerous these plants can be. And the toxins emitted from these facilities are a threat to my health and others. From fracking to pretreatment and shipment, LNG development and export facilities are dangerous for my entire community and the Freeport LNG explosion is just one part of that issue.
14. I believe LNG expansion is a death sentence for my community. It increases the amount of already existing air toxins like methane, decreases air and

water quality, and causes cancer. And the risk of additional explosions at the plants or on ships in and around the port has us all on edge.

15. DOE's failure to respond to the petition and create rules for evaluating whether export projects are truly in the public interest negatively affects me and my community. It limits our ability to comment on how the public interest should be assessed when considering these LNG export applications. And it means that decision-making is more likely to be ad hoc, without adequate and consistent consideration of community health and environmental impacts.
16. If DOE responds to this petition, it would alleviate some of my concerns because it would at least allow me and my community the opportunity to provide meaningful input on how DOE considers and creates rules for public interest determinations. Additionally, these rules would allow me and my community to make more informed comments as we participate in challenging future LNG projects.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this March 7, 2023 in Freeport, Texas.

/s/ Melanie Oldham
Melanie Oldham

DECLARATION OF MAYA VAN ROSSUM

Pursuant to 28 U.S.C. § 1746, I, Maya van Rossum, hereby declare:

1. I reside at 716 South Roberts Road, Bryn Mawr, Delaware County, Pennsylvania, 19010. My residence is within the Delaware River Basin. In addition I own a part time residence at 263 Lebanon Road, Glen Spey, NY. This part time home is located within the Delaware River Basin.

2. I earned my Juris Doctor from Pace University School of Law, and then earned a Masters of Law in Corporate Finance from Widener University School of Law. While at Pace University, I secured a certificate for pursuing a special program focused on environmental law and participated in the Environmental Law Clinic that pursued legal work addressing River issues. In 1992 I worked as the staff attorney in the Environmental Law Clinic at Widener University School of Law where I engaged in advocacy and litigation on behalf of the Delaware Riverkeeper Network while providing support to Law Clinic students similarly engaged. In 1994, I came to work for the Delaware Riverkeeper Network ("DRN") as the organization's Executive Director. In 1996, I was appointed Delaware Riverkeeper and leader of the Delaware Riverkeeper Network. I am also a member of the Delaware Riverkeeper Network.

3. DRN was established in 1988. It is a nonprofit 501(c)(3) membership organization. DRN advocates for the protection of the Delaware River, its tributary streams, and the habitats and communities of the Delaware River Watershed. The mission of DRN is to champion the rights of communities to a Delaware River and tributary streams that are free flowing, clean, healthy and abundant with a diversity of life.

4. The DRN office is located at 925 Canal Street, Suite 3701, Bristol, PA 19007. Currently there are 22 staff members and numerous volunteers. The volunteer network is fluid, constantly changing, and project-specific. The exact number changes on a year-to-year basis. Thousands of individuals have done work for us in the past, undertaking water quality monitoring, stream clean ups, habitat restoration projects, and/or getting actively engaged in defending the Delaware River, its watershed, habitats and ecosystems through, for example, letter writing, participation in the public process, organizing activities and events, sharing information, and educating others to become involved.

5. DRN's professional staff and volunteers work throughout the entire Delaware River Watershed, including the four watershed states of Pennsylvania, New Jersey, Delaware, and New York. DRN is also involved at the national level and in other states in the United States to the extent involvement advances our mission and goals as an organization. DRN and its volunteers maintain a breadth of

knowledge about the environment, as well as expertise specific to rivers and watersheds. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, technical analyses, and public education. In addition, DRN takes steps necessary to ensure the enforcement of environmental laws, including pursuing legal actions as needed and appropriate.

6. Our membership provides irreplaceable participation in, and support for, DRN advocacy, restoration, scientific monitoring and data collection, education and litigation initiatives. Membership is demonstrated in a number of different ways, including but not limited to: making donations, participating in events, signing letters targeted to decision-makers, participating in DRN public information sessions, helping distribute DRN information including alerts and fact sheets, responding to DRN calls for action on projects and issues, volunteering as a water quality monitor, assisting with DRN restoration projects or actively communicating with DRN about our work and issues of concern in the Watershed, signing up and/or donating financial support. DRN basic membership is free of charge.

7. DRN has on the order of 25,000 members, the vast majority of whom live, work, and/or recreate within the Delaware River Basin. We represent the recreational, educational, and aesthetic interest of our members who enjoy many outdoor activities in the Delaware River Basin, including camping, boating, swimming, fishing, birdwatching, hunting and hiking. Additionally, we represent the

economic interests of many of our members who own businesses that rely on a clean river ecosystem, such as ecotourism activities, fishing, or boating. Furthermore, DRN also represents the health interests of those who use the Delaware River watershed's resources for drinking, cooking, farming, swimming, or gardening. And we support the protection and restoration of the Delaware River, its tributaries and watershed, and the creation and honoring of constitutional environmental rights for the benefit of present and future generations.

8. DRN has members who use and enjoy the areas to be impacted by the LNG export operations that are proposed to be sited on the Delaware River. These members will be harmed by impacts to their aesthetic interests and sense of safety in their own community due to the unknown risks of transporting LNG by truck and railcar through their community. Members will be harmed by the detrimental effects on aesthetic and recreational uses of wetlands, forests, and parks near LNG export operations, including but not limited to birding, fishing, wildlife-spotting, nature walks, and hiking. DRN members will be harmed by the pollution and ecological damages that will be associated with the construction and operation of LNG export operations. Injuries will take the form of diminished aesthetic beauty of these natural systems; diminished recreational enjoyment due to the temporary and permanent ecological damage that will be inflicted; the permanent loss of ecological resources they value personally, professionally and aesthetically; damaged family values and

enjoyment of healthy natural spaces; and the enduring fear of accident, incident, injury and/or explosion. DRN members will be damaged by injuries to their health and their sense of wellbeing and safety that result from LNG export operations near properties they own as well as public parks they enjoy and have contributed financially (either through direct donations or through tax dollar contributions) to help preserve. DRN members will suffer from declining property values resulting from construction, operation and maintenance of LNG export operations as well as from economic harms to their communities resulting from businesses adversely impacted by the construction, operation and maintenance of these heavy industrial projects. DRN members will be damaged by the adverse impacts that will result from increased climate instability resulting from methane and other greenhouse gas emissions resulting from Project construction, operation and maintenance and the ramifications of climate instability on sea level rise as well as increased flooding and flood damages in the Delaware River system.

9. An important service that DRN provides to its members is providing them with information about federal, state, and private actions that may impact our members' recreational, aesthetic, and economic interests. We obtain this information by closely tracking projects as they move through regulatory and local approval processes, and by submitting requests under laws such as the federal Freedom of Information Act, Pennsylvania's Right to Know Law, New Jersey's Open Public

Records Act, New York's Freedom of Information Law, and Delaware's Freedom of Information Act, for relevant applications, government analyses, and other environmental documents. Our professional staff then uses their expert knowledge and experience to interpret the information obtained, communicate with our members and help our members understand the direct, indirect, cumulative and synergistic ramifications of the actions and/or decisions proposed. We help communities understand the public process around government decisionmaking and how they can be involved. The amount of time and resources DRN spends on providing these services depends on the thoroughness and availability of environmental regulations and documents. The more thorough and comprehensive these regulations and documents are, the easier it is for DRN to communicate to its members about the action's effects on their interests, and less resources are spent on providing that service.

10. Many DRN members are concerned with the expansion of natural gas infrastructure within the Delaware River Watershed and the resulting impact the construction, operation and/or maintenance activities have on the streams, rivers, wetlands, forests and ecological systems of the four states of the Delaware River watershed. DRN members rely on DRN to help make their voices heard via individual and collective participation in the legal and regulatory processes put in

place to ensure sound decisionmaking by various government entities and agencies, including the Department of Energy.

11. DRN members have communicated their concerns to me and my staff regarding the harms to their aesthetic and recreational interests, to their property values, to the quality of their lives, to the natural resources they value, to their businesses and/or the economies that would suffer from the construction, operation, and maintenance of LNG export operations. DRN represents our members' interests that will be negatively affected by inadequate public interest review of LNG export operations in bringing this action.

12. As the Delaware Riverkeeper and as a member of DRN, I personally have enjoyed areas that would be impacted by LNG export operations. I have personally visited the streams, wetlands, and adjacent forested areas in the watershed, by myself, with my family, with friends, and/or with colleagues, for recreational, personal and/or professional reasons and have plans to return to these areas for recreational purposes, including among other things, boating, hiking, nature walks, wildlife observation and enjoyment as well as for professional purposes. I enjoy my visits to these areas whether in my professional or personal capacity or as a parent. I often include my family in my enjoyment of the areas of the watershed where I work, and find them beautiful and unique natural areas important to share with my children for their personal and educational growth. I have a great

appreciation for the public lands and scenery contained within the watershed to be affected by proposed LNG export operations, including but not limited to the main stem Delaware River, Little Tinicum Island, Riverfront Park, Monds Island, Chester Island, Darby Creek, the John Heinz National Wildlife Refuge, Mantua Creek, and Woodbury Creek.

13. In my capacity as the Delaware Riverkeeper, a mother, and a person who enjoys the out of doors, I will be personally and professionally harmed by the damage that will be inflicted by the construction and operational activities of the Dock 2 Project. For example, I regularly boat the Delaware River, including the reaches that would be affected by LNG export operations, having to see the natural areas around the River permanently altered and damaged by these operations would have a deeply disturbing, depressing and upsetting impact on me; especially the knowledge of how the healthy ecosystems that were present are now permanently transformed. In addition, the knowledge that the River and its habitats are subject to a massive fracked gas infrastructure project that could fail and cause irreparable harm to the environment to nearby communities and even to myself were I present at the wrong time is scary and troubling. I would have the same negative experience while revisiting (by boat or foot) the many streams and public parks that will be in the vicinity of LNG export operations.

14. I have spent my entire professional career, since 1992, working to advocate for and protect the genetically unique population of Atlantic Sturgeon the Delaware River, along with other special species such as shad, American eel, striped bass etc. But the Atlantic sturgeon holds a particularly special place in my heart. The knowledge of the multiple harms that LNG export operations pose for the continued existence of the Delaware River Atlantic Sturgeon, including the dredging and vessel strike impacts, is deeply disturbing. I often talk with my children about this special species and engage them in educational and advocacy opportunities. My daughter has commented on her own regarding her concerns about threats to this species, particularly from dredging, and my son has expressed a deep interest in this prehistoric fish. The harms this project poses to this species is of particularly deep and emotional concern to me and my family.

15. I fully expect my personal, professional, recreational, and family trips to the many natural systems that would be affected by LNG export operations will continue in the near and far future as they include some of the most special places in our region. My personal, recreational, family and professional activities in the past and future have, and will continue, to be composed of hiking, boating, and otherwise enjoying the River waters, the forests, the wildlife and the natural scenic beauty of these areas.

16. My use and enjoyment of the natural beauty of these areas and my joy in sharing it with my children and other family will be negatively affected by the dredging of sediments, damage to submerged aquatic vegetation, damage to mussel populations, harm to endangered sturgeon from vessel strikes, increased vessel traffic, and other harms to the watershed caused by LNG export operations. These activities will negatively affect the way I interact with these natural areas on an aesthetic, recreational, professional, and family level.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of March, 2023.



Maya K. van Rossum,
the Delaware Riverkeeper

DECLARATION OF HALLIE G. TEMPLETON

I, Hallie G. Templeton, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge.

If called to testify in these proceedings, I could and would testify to these facts.

2. I am the Legal Director for Friends of the Earth, Inc (Friends). Friends is a tax exempt, nonprofit environmental advocacy organization founded in 1969.

Friends of the Earth is headquartered and incorporated in the District of Columbia with an additional office space in Berkeley, California. Friends is a part of Friends of the Earth International, a federation of grassroots groups working in 76 countries on today's most urgent environmental and social issues. Friends of the Earth International is the world's largest grassroots environmental federation. In the United States, Friends has more than 273,000 members in all 50 states and more than 5.9 million activists.

3. Friends' mission is to defend the environment and champion a healthier and more just world by collectively ensuring environmental and social justice, human dignity, and respect for human rights. Pursuant to this mission, Friends staff and members are dedicated to fighting climate change and advocating for clean energy alternatives. Climate change is a pervasive and urgent priority that intersects with each of our organization's primary

programs: Climate & Energy Justice, Oceans & Vessels, Food & Agriculture, and Finance & Economic Systems. Nearly all of our campaigns directly engage in administrative and legal advocacy to protect the environment and society from climate change, pollution, and industrialization, in particular by engaging in efforts to reduce greenhouse gas emissions and fossil fuel reliance.

4. Friends relies on sound science and the law to create and advocate for innovative strategies to conserve natural resources and protect public health and the environment. Working to promote effective climate change policies and to reduce air pollution throughout the United States is a core element of our mission. To these ends, Friends has a long history of engaging in rulemaking efforts before federal agencies, including the Department of Energy (DOE), to better regulate and reduce fossil fuel development. When necessary, we utilize litigation to support these efforts. Friends' work on climate change frequently appears in its publications, membership communications, quarterly newsmagazine, social media feeds, and throughout its website at www.foe.org.
5. Friends promotes policies and actions to control climate change, especially by addressing the extraction and use of fossil fuels that produce greenhouse gases. We have advocated for the reduction of greenhouse gas emissions in

the U.S. by at least 195% below 2005 levels by the year 2030 (calculated at 14 gigatonnes annually), with the aim of meeting the national goal of limiting warming to 1.5 degrees Celsius. As part of this work, one of our primary targets is to stop fossil fuel expansion, phase-down production, and reduce fossil fuel consumption, including limiting the movement of Liquefied Natural Gas, through imports, exports, and domestically via pipeline networks. One strategy taken by Friends is to focus the attention of the public, our members, and government decision makers on government decisions and policies that further entrench reliance on fossil fuels. Another strategy is advocating for the adoption of local, state, and federal policies that promote or compel the transition to and implementation of clean, efficient, and justly-sourced renewable energy technologies.

6. Friends has also worked to protect the environment and human health from the impacts of the LNG sector, including advocacy regarding DOE decisions to permit LNG exports. For more than ten years, Friends has been part of the organized coalition advocating for the implementation of a formalized framework for how DOE determines whether proposed gas exports are or are not “[]consistent with the “public interest,” per the Natural Gas Act. In 2013, Friends and our coalition partners submitted a petition urging DOE to take such action. On October 27, 2022, after waiting for nearly a decade with no

response from the agency, we followed up with a letter to DOE asking for a response and pointing out the urgent need for action.

7. As Legal Director, I am familiar with Friends' efforts to educate and inform our members and activists, including outreach to members on climate issues. I can therefore say that Friends' members are aware of the direct link that fossil fuels have to climate change, as well as the associated, urgent threats to public health, welfare, and the environment. Moreover, Friends' members rely on the organization to ensure federal agencies to provide necessary and relevant information concerning approvals and decisions related to fossil fuels and climate change, including the DOE's analysis of whether LNG exports are in the "public interest." Our members also rely on the organization to represent their interests by participating in rulemaking and other regulatory processes. DOE's failure to issue standards that meaningfully guide the agency's "public interest" determinations deprives Friends and our members and our staff of these important benefits.
8. Friends and its mission, as well as our staff and our members, are directly harmed by the DOE's failure to set meaningful standards for future public interest determinations. *Ad hoc* public interest determinations frustrate Friends' mission and will directly prevent it from accomplishing its goals,

including the reduction of harmful pollution and protection of the health and welfare of the nation.

9. Friends' membership includes persons who live on or near, or recreate in and along, the coast of the Gulf of Mexico, where LNG export terminals are heavily concentrated and have disproportionate adverse impacts on the nearby ecosystem and communities. Our members utilize these coastal areas for recreation and enjoyment, including hunting, fishing, boating, camping, hiking, wildlife viewing (including protected species), photography, and more. Additional LNG development would interfere with our members' use and enjoyment of these coastal areas. In recent history, the domestic fossil fuel industry has attempted to increase access to global markets. It is my understanding at the time of this declaration that approximately 25 new LNG facilities—primarily along the Gulf Coast—are either under construction, approved, or proposed; and LNG exports are projected to increase by 149 percent by 2030. This buildout will continue to disproportionately harm Gulf Coast communities, which include our members, that are already overburdened by climate change impacts, as well as fossil fuel infrastructure and activities. Indeed, the majority of these terminals are planned in communities that are amongst the worst in the country for air toxics cancer risk. If left unchecked, DOE's ad hoc public interest determinations that fail

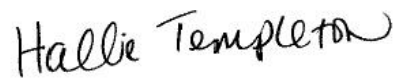
to take into account important considerations like public health and climate impacts will continue to increase fossil fuel reliance – both domestically and abroad – and all of its harmful consequences, directly affecting Friends, its staff, and its members.

10. DOE is mandated to provide a timely response to our 2013 petition; however, over 10 years have passed without any response. At its core, this failure undermines Friends' mission to meaningfully address ongoing expansion of fossil fuels and the associated impacts of climate change, and diminishes our efforts and achievements in this area. Furthermore, this failure irrevocably damages the educational, recreational, spiritual, and conservation interests pursued by Friends staff and members.
11. These harms can be redressed by requiring DOE to comply with its mandatory duty to meaningfully respond to our 2013 petition. If DOE responds to our 2013 petition affirmatively, and issues rules or guidance defining how it will determine when proposed LNG exports are or are not consistent with the public interest, the agency may ultimately refuse, on public interest grounds, to authorize proposed exports to none free-trade countries.
12. If DOE were to respond to the 2013 petition, Friends would participate in any administrative processes that may emanate from whatever decision the

agency ultimately makes, including any public comment period or public hearing that may be associated with that decision.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on March 1, 2023 in Nashville, Tennessee.



Hallie G. Templeton