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**UNITED STATES OF AMERICA  
BEFORE THE  
UNITED STATES DEPARTMENT OF ENERGY**

**Commonwealth LNG, LLC**

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**Docket No. 19-134-LNG**

**REQUEST FOR REHEARING OF COMMONWEALTH LNG, LLC**

**I. Introduction**

Pursuant to Section 19(a) of the Natural Gas Act (“NGA”)<sup>1</sup> and Part 590, Subpart E of the U.S. Department of Energy’s (“DOE”) Administrative Procedures,<sup>2</sup> Commonwealth LNG, LLC (“Commonwealth”) respectfully requests rehearing of the U.S. Department of Energy’s (“DOE”) January 26, 2024 pause on all pending applications to export domestically produced liquefied natural gas (“LNG”) to non-Free Trade Agreement (“non-FTA”) nations, while DOE updates its economic and environmental analyses used in evaluating non-FTA export applications.<sup>3</sup>

Commonwealth does not oppose DOE’s efforts to re-visit its economic and environmental analyses, to the extent that DOE explains its intention in doing so is to bolster national energy security and support for our global allies, as well as to meet clean energy goals. However, DOE took the unprecedented step of pausing its review of all non-FTA applications

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<sup>1</sup> 15 U.S.C. § 717r(a).

<sup>2</sup> 10 C.F.R. 590, Subpart E.

<sup>3</sup> *U.S. Dep’t of Energy*, DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies, (issued January 26, 2024), *available at* <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals> (hereinafter referred to as the “Pause”).

while it conducts these studies, including Commonwealth's, which has now been pending with DOE for nearly 4.5 years.<sup>4</sup>

Despite any arguments from DOE to the contrary, the Pause is in effect a final order of DOE staying Commonwealth's non-FTA Application, and will cause substantial harm to Commonwealth. Accordingly, and as discussed in detail below, the Pause is a reviewable agency action directly harming Commonwealth for which Commonwealth seeks rehearing, preserving its rights to seek review in a federal appellate court. More broadly, however, Commonwealth believes that DOE's Pause will be detrimental to ongoing efforts to achieve DOE's stated policy goals, as the export of LNG to non-FTA countries is a critical part of reducing global emissions in the coming years and bridging the green energy transition. Commonwealth will not repeat the arguments made by other parties, including the American Petroleum Institute ("API") on this score, and adopts them herein by reference.

Commonwealth accordingly seeks rehearing of the Pause, and respectfully requests that DOE withdraw the Pause and finalize its review of Commonwealth's Application while it undertakes its broader review of its economic and environmental analyses. Such an action is firmly grounded in principles of fundamental fairness given Commonwealth's unique position as an applicant with a non-FTA export application pending before DOE for over four years—and pending just over one year after DOE issued its June 2018 study "Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports" ("2018 Export Study") that found that exports

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<sup>4</sup> Commonwealth LNG, LLC, Application Requesting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Free Trade Agreement Nations and Non-Free Trade Agreement Nations, DOE/FECM Docket No. 19-134-LNG (Oct. 19, 2019) ("Application").

of LNG to non-FTA nations would have negligible impacts on domestic natural gas prices, while improving the U.S. balance of trade and gross domestic product.

## II. Background

On October 16, 2019, Commonwealth filed its Application with the Department of Energy, Office of Fossil Energy<sup>5</sup> seeking long-term, multi-contract authorization to export up to 9.5 million metric tonnes per annum (“MTPA”) of LNG to free trade agreement (“FTA”) and non-FTA nations. On April 17, 2020, DOE/FECM authorized Commonwealth to export 9.5 MTPA of LNG to FTA nations for a 25-year term.<sup>6</sup> In the FTA Authorization, DOE/FECM expressly noted that Commonwealth’s request to export LNG to non-FTA nations would be addressed in a separate order.<sup>7</sup>

In the nearly four years since DOE/FECM issued the FTA Authorization, Commonwealth has continued to diligently advance its project. On November 17, 2022, the Federal Energy Regulatory Commission (“FERC”) unanimously authorized the siting, construction, and operation of Commonwealth’s facility.<sup>8</sup> On January 19, 2023, FERC denied requests for rehearing of the FERC Authorization, and accordingly Commonwealth’s FERC Authorization is now final at the agency.<sup>9</sup>

In August 2023, Commonwealth submitted to DOE/FECM a “Project Development Update” informing DOE/FECM of its continued efforts to develop the project, despite

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<sup>5</sup> Now known as the DOE Office of Fossil Energy and Carbon Management (“DOE/FECM”).

<sup>6</sup> *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, Order No. 4521 (Apr. 17, 2020) (Order No. 4521) (“FTA Authorization”).

<sup>7</sup> FTA Authorization at 3.

<sup>8</sup> *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143 (2022) (“FERC Authorization”).

<sup>9</sup> *Commonwealth LNG, LLC*, 182 FERC ¶ 62,033 (2023), appeal pending No. 23-1069 (D.C. Cir., argued Feb. 12, 2024).

DOE/FECM having still refused to act on Commonwealth's Application.<sup>10</sup> In its Project Development Update, Commonwealth informed DOE/FECM as to Commonwealth's engineering activities as Commonwealth prepared for eventual construction of its facility; its continued work with FERC to prepare the project site for eventual construction; and its commercial progress in executing agreements for purchase of LNG from Commonwealth's facility.<sup>11</sup> In addition, on January 11, 2024 (only two weeks prior to DOE announcing the Pause) Commonwealth informed DOE that it had entered into a memorandum of understanding for the capture and sequestration of carbon dioxide from Commonwealth's facility.<sup>12</sup> There can be no question that despite DOE/FECM's unprecedented and unjustified delay in processing Commonwealth's non-FTA application, Commonwealth has diligently continued to develop its project.

In spite of these continued efforts, on January 26, 2024, DOE announced the Pause pending its efforts to "initiate a process to update the assessment used to inform whether additional liquified natural gas (LNG) export authorization requests to non-Free Trade Agreement Countries are in the public interest ... and until updated, DOE will pause determinations on pending applications for export of LNG to non-Free Trade Agreement Countries."<sup>13</sup> The abrupt announcement of the Pause sent shockwaves throughout the nation and the world.<sup>14</sup> Critically, DOE announced the Pause without seeking or benefitting from any

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<sup>10</sup> *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, "Project Development Update" (Aug. 21, 2023).

<sup>11</sup> *Id.*

<sup>12</sup> *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, "Commonwealth LNG Non-Free Trade Agreement (NFTA) Authorization Application Status" (Jan. 11, 2024).

<sup>13</sup> See DOE's Pause, (Jan. 26, 2024) available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>

<sup>14</sup> See bipartisan letter from 23 Members of Congress, including Representatives Carol Miller, Henry Cuellar, Jodey Arrington, and J. Luis Correa, to President Biden, stating that, "We write to voice our concern with your Administration's decision to limit the export of U.S. liquified natural gas (LNG). The Department of Energy's plan to change the criteria used to approve new LNG export projects threatens national security, the economy, and

outside comment, be it from the domestic LNG industry or foreign offtakers. The Pause was issued bluntly and applies to non-FTA applications that were filed mere months prior to the Pause just as forcefully as it applies to Commonwealth's application, which has been sitting with DOE for nearly 4.5 years since it was filed, and 15 months since Commonwealth received its FERC Authorization. Such action is patently unjust and inconsistent with principles of administrative law.

### III. **Procedural Matters**

DOE issued its Pause through a statement on the White House and DOE website rather than by issuing a formal notice to affected dockets, including Commonwealth's, despite acknowledging that it will publish the results of its Pause in each individual LNG docket, a notable discrepancy. Commonwealth considers DOE's Pause to be a final, appealable agency action staying Commonwealth's Application in DOE/FECM Docket No. 19-134-LNG, to which Commonwealth is a party. Accordingly, pursuant to Section 19(a) of the NGA<sup>15</sup> and Part 590, Subpart E of DOE's Administrative Procedures,<sup>16</sup> Commonwealth is exercising its right to seek

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clean energy goals" (Feb. 5, 2024) available at <https://i.ntd.com/assets/uploads/2024/02/id971095-LNG-Export-Ban-Letter-to-POTUS-2.5.23.pdf>; See also letter from by 35 officials, including former energy secretaries Rick Perry and Dan Brouillette, sent to Biden administration officials stating that, "It is imperative that we reverse this action and continue to advance our economic, energy, and geopolitical interests while leading on environmental progress" (Feb. 12, 2024); Statement of Senator John Cornyn that "President Biden's pause as he calls it, has thrown future LNG projects into limbo, and our allies are understandably spooked," available at <https://www.congress.gov/118/crec/2024/01/30/170/17/modified/CREC-2024-01-30-pt1-PgS280.htm>; Op-ed from Andrea Di Giuseppe, President of the Committee on International Trade of the Foreign Affairs Commission of the Chamber of Deputies within the Italian Parliament, writing that "European companies, most recently Germany's state-owned SEFE, have signed such long-term contracts, but they are dependent on new facilities being built in the U.S. to handle future demand. The recent U.S. decision puts it all at risk, just as Europe's transition away from relying on volatile neighbours is almost complete." EURACTIV, (Feb. 22, 2024) available at <https://www.euractiv.com/section/energy-environment/opinion/us-pause-on-new-lng-exports-undermines-the-energy-security-of-its-european-allies/>; The Pause has also drawn condemnation from the editorial board of the Washington Post. See also Washington Post Editorial Board, "Biden's LNG Decision is a Win for Political Symbolism, Not the Climate" (Jan. 29, 2024) available at <https://www.washingtonpost.com/opinions/2024/01/29/biden-lng-natural-gas-exports-europe/>.

<sup>15</sup> 15 U.S.C. § 717r(a).

<sup>16</sup> 10 C.F.R. 590, Subpart E.

rehearing of the Pause as it pertains to Commonwealth's Application, and is preserving its right to appeal the Pause in federal court.

#### IV. **Concise Statement of Errors**

1. DOE's Pause is a final, appealable agency action that stays Commonwealth's non-FTA Application. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967) (“[t]he cases dealing with judicial review of administrative actions have interpreted the ‘finality’ element in a pragmatic way.”) This *de facto* stay is arbitrary and capricious as it indefinitely withholds agency action on Commonwealth's Application without a proper explanation as to why it is in the public interest to do so. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962) (requiring agencies to “articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”) The basis for the Pause also violates Section 3 of the NGA and is inconsistent with D.C. Circuit precedent as it is based on a misapplication of the public interest standard in Section 3 of the NGA. *W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982) (“section 3 sets out a general presumption favoring...such authorization.”)
2. DOE's Pause is a rule issued without the opportunity for notice and comment in violation of the Administrative Procedure Act (“APA”). 5 U.S.C. § 553.
3. The Pause, as it applies to Commonwealth, violates principles of fundamental fairness.

## V. Request for Rehearing

### A. DOE's Pause Constitutes A Stay Of Commonwealth's Non-FTA Application And Is Inconsistent With The Natural Gas Act.

DOE's Pause is a final agency action that has a present binding effect on Commonwealth, effectively staying Commonwealth's non-FTA Application and resulting in direct detrimental effects on Commonwealth. No matter how DOE elected to announce the Pause, *i.e.*, through a formal issuance to affected dockets or via an announcement on its website or the White House website, the actions taken by DOE and the resulting impact on Commonwealth constitute a final agency action.

Courts reviewing appeals from final agency action, including under the APA,<sup>17</sup> take a “pragmatic” and “flexible” view of finality. The Supreme Court discussed “final agency action” in some detail in *FTC v. Standard Oil Co.*,<sup>18</sup> relying heavily on its earlier decision in *Abbott Laboratories v. Gardner*.<sup>19</sup> The Court noted first that “[t]he cases dealing with judicial review of administrative actions have interpreted the ‘finality’ element in a pragmatic way” and have therefore taken a “‘flexible view’” of the matter.<sup>20</sup>

In considering whether an agency's action is final, courts look to the following criteria: (1) whether the challenged administrative action is a “definitive” statement” of an agency's position; (2) whether the action has a “‘direct and immediate . . . effect on the day-to-day business’ of the complaining parties”; (3) whether the action has “the status of law” in that “‘immediate compliance with the terms [should be] expected’”; and (4) does the appeal present a

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<sup>17</sup> 5 U.S.C. § 704.

<sup>18</sup> 449 U.S. 232 (1980) (“*Standard Oil*”).

<sup>19</sup> 387 U.S. 136 (1967) (“*Abbott Laboratories*”).

<sup>20</sup> *Standard Oil*, 449 U.S. at 239-40, (quoting *Abbott Laboratories*, 387 U.S. at 149-50).

legal question “fit for judicial resolution.”<sup>21</sup> In considering finality, courts also look to “a realistic assessment of the nature and effect of the order” as opposed to “the administrative agency’s characterization of its action.”<sup>22</sup> An agency thus cannot escape review by attempting to characterize its order as nonfinal or by labeling an order as a mere announcement.

Considering these factors, the Pause has the effect of staying Commonwealth’s Application. In announcing the Pause, DOE stated unequivocally that “until [DOE’s economic and environmental analyses are] updated, DOE will pause determinations on pending applications for export of LNG to non-Free Trade Agreement countries.”<sup>23</sup> This formal Pause in reviewing Commonwealth’s Application will have an immediate and direct negative impact on Commonwealth. As stated previously to DOE in prior project updates, Commonwealth was proceeding with finalizing long-term LNG offtake arrangements with customers as well as the terms of its contract to construct its facility (“EPC Contract”). With a formal statement from DOE that it will not grant Commonwealth’s Application for an indefinite period of time, Commonwealth is placed into an extremely disadvantageous position when negotiating with these customers and is prevented from finalizing the terms of its EPC Contract. This unanticipated and unwarranted delay severely hinders Commonwealth’s ability to finance the construction and operation of Commonwealth’s export facility.

DOE’s Pause also binds agency staff—particularly DOE/FECM, the arm of DOE charged with reviewing and approving FTA and non-FTA applications—from fulfilling its duties. The Pause imposes an obligation on DOE/FECM and binds staff and applicants unless and until the

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<sup>21</sup> *Id.*, (quoting *Abbott Laboratories*, 387 U.S. at 151-54).

<sup>22</sup> *Fidelity Television, Inc. v. FCC*, 502 F.2d 443, 448 (D.C. Cir. 1974) (per curiam); *Isbrandtsen Co. v. United States*, 211 F.2d 51, 55 (D.C. Cir.) (requirements of finality are not satisfied by agency’s label).

<sup>23</sup> See DOE’s Pause, (Jan. 26, 2024) available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>.



review process is updated at some future point and a final decision is issued to update the public interest analysis.<sup>24</sup>

Finally, DOE’s reasoning in promulgating the Pause presents a legal question “fit for judicial resolution.”<sup>25</sup> The NGA is clear that DOE “shall” approve requests to export LNG to non-FTA nations “unless, after opportunity for hearing” it is determined the exports “will not be consistent with the public interest.”<sup>26</sup> The express wording of Section 3 of the NGA “sets out a general presumption favoring...authorization.”<sup>27</sup> As dictated by the NGA and significant precedent from the U.S. Court of Appeals for the D.C. Circuit, DOE must authorize non-FTA exports unless it has been affirmatively shown to DOE that such exports would be inconsistent with the public interest.<sup>28</sup> In announcing the Pause, however, DOE has turned this statutory construction on its head, stating that “DOE has been given the responsibility by Congress to evaluate the public interest of proposed exports to countries with which the United States does not have a Free Trade Agreement.”<sup>29</sup> This is not so; Congress has already determined that exports of LNG to non-FTA nations are in the public interest.<sup>30</sup> DOE’s statutory authority is to determine whether this presumption has been overcome.

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<sup>24</sup> See, e.g., *Carter/Mondale Presidential Committee v. FEC*, 711 F.2d 279, 290 (D.C. Cir. 1983) (agency made clear it had imposed an obligation required to be paid); *G.T. Terminal Packaging Co., Inc. v. Hawman*, 870 F.2d 77, 80 (2d Cir. 1989) (question is whether the “decision settled the practical relationship between the parties.”).

<sup>25</sup> *Standard Oil*, 449 U.S. at 239-40, (quoting *Abbott Laboratories*, 387 U.S. at 141-154).

<sup>26</sup> 15 U.S.C. § 717b(a).

<sup>27</sup> *W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982) (“*West Virginia*”).

<sup>28</sup> *Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017); *West Virginia*, 681 F.2d at 856 (construing this as containing a “general presumption favoring [export] authorization”); *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) (explaining that there must be “an affirmative showing of inconsistency with the public interest” to deny the application).

<sup>29</sup> See DOE’s Pause, (Jan. 26, 2024) available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>.

<sup>30</sup> *West Virginia*, 681 F.2d at 856 (explaining that Section 3 of the NGA includes “language which requires approval of an application unless there is an express finding that the proposed activity would not be consistent with the public interest.”)

The record in Commonwealth’s non-FTA proceeding does not disclose that DOE has been presented with any argument that would allow the agency to overturn the presumption that exports are in the public interest. In response to its notice of Commonwealth’s Application, DOE received a single protest providing no such basis,<sup>31</sup> to which Commonwealth promptly and fully responded.<sup>32</sup> No other opposition to Commonwealth’s Application was expressed for the next three years, while DOE continued to authorize additional non-FTA exports of LNG. DOE never indicated to Commonwealth that it needed additional information in order to act on the Application, or respond to any argument that Commonwealth’s request was inconsistent with the public interest. Regardless, in the Pause DOE said just this – that it could not act on the Application without reviewing prior economic and environmental analyses. To *sua sponte* pause consideration of Commonwealth’s application for reasons never before disclosed to Commonwealth nor expressed in the docket is the definition of arbitrary and capricious,<sup>33</sup> and runs contrary to the intent of Congress as laid out in Section 3 of the NGA. This is a substantial question “fit for judicial resolution.”<sup>34</sup>

Accordingly, as discussed above the Pause is a final agency action staying Commonwealth’s Application, entirely premised on a gross mischaracterization of DOE’s role under Section 3 of the NGA.<sup>35</sup> DOE must lift the Pause on Commonwealth’s Application and

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<sup>31</sup> *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, “Notice of Intervention, Protest, and Comment of Industrial Energy Consumers of America” (Dec. 20, 2019).

<sup>32</sup> *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, “Answer of Commonwealth LNG, LLC to Notice of Intervention, Protest, and Comment” (Jan. 6, 2020).

<sup>33</sup> *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962) (requiring agencies to “articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”)

<sup>34</sup> *Standard Oil*, 449 U.S. at 239-40, (quoting *Abbott Laboratories*, 387 U.S. at 141-154).

<sup>35</sup> Commonwealth further quotes the testimony of David Turk, Deputy Secretary of DOE, before a Full Committee Hearing of the Senate Committee on Energy and Natural Resources, that “Congress, through the Natural Gas Act, has given DOE the responsibility to evaluate whether authorizations for the export of LNG to non-free trade agreement (FTA) countries is consistent with the ‘public interest.’” (Feb. 8, 2024) *available at* <https://www.energy.senate.gov/services/files/12C4B00D-BFF3-4D11-9CD7-E462B156BF61>.

continue to review and act on the Application concurrently with its updates to economic and environmental analyses.

**B. The Pause Is A Rule Issued In Violation Of The Administrative Procedure Act.**

DOE issued the Pause as a general announcement on DOE’s website, as opposed to a formal issuance in affected dockets.<sup>36</sup> If DOE’s purpose was to avoid having the Pause labeled as a formal rule, it is unavailing. The Pause is a “substantive rule,” as it “establishe[d] a standard of conduct which has the force of law”<sup>37</sup> and has “mandatory language” rendering the Pause binding.<sup>38</sup> As noted above the Pause binds DOE and DOE staff (*i.e.*, DOE/FECM) from executing its statutorily mandated duties under the NGA for an undisclosed length of time.<sup>39</sup> The Pause makes clear that despite the NGA’s clear charge for DOE to review and act on applications to export LNG, DOE cannot do so until certain studies are completed.<sup>40</sup> The Pause similarly binds Commonwealth to this determination, leaving Commonwealth and all other applicants with no other avenues of relief to have DOE act on its Application. The Pause is, therefore,) a binding agency rule that DOE issued without undergoing the APA’s mandated notice-and-comment procedures that serve as a bedrock of U.S. administrative law.<sup>41</sup>

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<sup>36</sup> See DOE’s Pause, (Jan. 26, 2024) available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>.

<sup>37</sup> *Pac. Gas & Elec. Co. v. Fed. Power Com’n*, 506 F.2d 33, 38 (D.C. Cir. 1974).

<sup>38</sup> *Gen. Elec. Co. v. EPA*, 290 F.3d 377, 383 (D.C. Cir. 2002).

<sup>39</sup> See *supra* P 8.

<sup>40</sup> See DOE’s Pause, (Jan. 26, 2024) available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>.

<sup>41</sup> 5 U.S.C. § 553.

**C. The Pause Is Fundamentally Unfair As Applied To Commonwealth.**

DOE applies the Pause broadly to all pending non-FTA applicants, regardless of how long an application has been pending with DOE, the investment of the developer, the level of reliance on the statute and prior DOE practice, or the stage of development of the project. The Pause, however, does not impact all applicants similarly. Commonwealth is the only party awaiting a non-FTA authorization that has already received FERC authorization for its greenfield LNG export facility. FERC unanimously issued Commonwealth's Authorization over 15 months ago, and Commonwealth's non-FTA application has been pending with DOE for 4.5 years. DOE paints with a broad brush describing the Pause as merely "temporary" and having little impact.<sup>42</sup> The impact of the Pause on Commonwealth, however, is substantially greater than other developers, given the state of development of Commonwealth's facility from a regulatory, commercial, financial, and engineering perspective, as opposed to an applicant that is in the earlier stages of developing a project and does not yet have a FERC authorization.

The impacts are compounded when DOE takes into account its unprecedented delay in acting on Commonwealth's application. In March, 2023, four months after Commonwealth received its FERC Authorization, DOE authorized exports of LNG to non-FTA nations in the Freeport docket.<sup>43</sup> In so doing, DOE determined that "Based on the substantial administrative record, DOE has determined that it has not been shown that [Freeport's] proposed increase in exports of LNG to non-FTA countries will be inconsistent with the public interest, as would be required to deny the Application under NGA section 3(a)."<sup>44</sup> DOE further explained that

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<sup>42</sup> See DOE's Pause, (Jan. 26, 2024) available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>.

<sup>43</sup> *Freeport LNG Expansion, L.P.*, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FECM Docket No. 21-98-LNG, DOE/FECM Order No. 4961 (Mar. 3, 2023) ("*Freeport*").

<sup>44</sup> *Freeport* at 8.

“[t]hese exports can diversify global LNG supplies and improve energy security for U.S. allies and trading partners in Europe and elsewhere.”<sup>45</sup> What enabled DOE to come to this conclusion in *Freeport*, but state generally that DOE cannot do so for Commonwealth? This is particularly astounding when one considers that Commonwealth filed its October 2019 Application approximately two years prior to the September 2021 application approved in *Freeport*.

Commonwealth appreciates the desire of DOE to update its economic and environmental analyses to ensure exports of LNG align with our national interests. But DOE must recognize that broadly applying a Pause to all pending applications, regardless of the context of the proceedings with DOE has paused, will have exponentially greater impacts on applicants such as Commonwealth than it will on others. For these reasons, the Pause as it applies to Commonwealth violates principles of fundamental fairness.

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<sup>45</sup> *Id.*

## VI. Conclusion

For the foregoing reasons, Commonwealth respectfully requests DOE grant rehearing of the Pause and clarify that DOE will not Pause its consideration of Commonwealth's Application during the pendency of DOE's updates to its economic and environmental analyses.

Respectfully submitted,  
/s/ David L. Wochner  
David L. Wochner  
Tim Furdyna  
Stuart B. Robbins  
K&L GATES LLP  
1601 K Street, NW  
Washington, DC 20006  
Phone: 202-778-9014  
Email: david.wochner@klgates.com

*Counsel for Commonwealth LNG, LLC*

**UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

<b>In the Matter of</b>	)	
	)	<b>FECM Docket No. 19-134-LNG</b>
<b>Commonwealth LNG, LLC</b>	)	

**VERIFICATION**

I, Farhad Arabi, declare that I am President and CEO for Commonwealth LNG, LLC, and am duly authorized to make this Verification; that I have read the foregoing instrument and that the facts therein stated are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Houston, Texas on February 26, 2024.

/s/  
Farhad Arabi  
President and CEO  
Commonwealth LNG, LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this 26th day of February, 2024, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Timothy J. Furdyna  
*Counsel for Commonwealth LNG, LLC*