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U.S. Department of Energy
Office of Fossil Energy and Carbon Management
Office of Natural Gas Regulatory Activities
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**Re: Commonwealth LNG, LLC – DOE/FECM Docket No. 19-134-LNG
Notice of Related Judicial Opinion and Request for Immediate Action**

In support of Commonwealth LNG, LLC's ("Commonwealth") application to export liquefied natural gas ("LNG") to non-Free Trade Agreement ("non-FTA") nations,¹ currently pending with the U.S. Department of Energy ("DOE"), Office of Fossil Energy and Carbon Management ("DOE/FECM") in DOE/FECM Docket No. 19-134-LNG, Commonwealth hereby submits to DOE/FECM notice of the July 1, 2024 Memorandum Ruling and Judgment in *State of Louisiana, et al. v. Biden, et al.*² In *State of Louisiana*, a federal judge enjoined DOE's January 26, 2024 pause on all pending applications to export domestically produced LNG to non-FTA nations.³ As DOE's Pause has been enjoined, DOE is now required by court order to continue to fulfill its mandate under the Natural Gas Act ("NGA") to review and approve applications to export LNG to non-FTA nations absent a showing that such exports are inconsistent with the public interest.⁴ In light of the decision in *State of Louisiana* and DOE's mandate under the NGA, Commonwealth respectfully requests that DOE promptly approve Commonwealth's long-pending non-FTA Application.

¹ *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) ("non-FTA Application").

² *State of Louisiana, et al. v. Biden, et al.*, No. 24-00406, Docs. 72 & 73 (W.D. La.) (July 1, 2024).

³ *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").

⁴ 15 U.S.C. § 717b(a); see also *Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017); *W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982) ("*West Virginia*") (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).

Background

On October 16, 2019, Commonwealth filed its non-FTA Application with the Department of Energy, Office of Fossil Energy⁵ 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.⁶ 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.⁷

In the four plus 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.⁸ On January 19, 2023, FERC denied requests for rehearing of the FERC Authorization, and accordingly Commonwealth’s FERC Authorization is final.⁹

In August 2023, Commonwealth submitted to DOE/FECM a “Project Development Update” informing DOE/FECM of its continued efforts to develop the project, despite DOE/FECM having still refused to act on Commonwealth’s non-FTA Application.¹⁰ In its Project Development Update, Commonwealth informed DOE/FECM as to Commonwealth’s engineering activities to prepare for the 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.¹¹

Despite Commonwealth’s continued efforts to develop its facility, and despite having fulfilled all prerequisites DOE has required of prior applicants, DOE/FECM continued to decline to act on Commonwealth’s non-FTA Application. 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.”¹² The abrupt announcement of the Pause sent shockwaves throughout the nation and the world.¹³ In response, several states challenged the legality of the Pause in federal court and moved for a preliminary injunction against the Pause.

⁵ Now known as the DOE Office of Fossil Energy and Carbon Management.

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

⁷ FTA Authorization at 3.

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

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

¹⁰ *Commonwealth LNG, LLC*, DOE/FECM Docket No. 19-134-LNG, “Project Development Update” (Aug. 21, 2023).

¹¹ *Id.*

¹² 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>.

¹³ 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

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On July 1, 2024, U.S. District Court Judge James Cain issued an order that “ENJOINED AND RESTRAINED” DOE and relevant federal officials “from halting and/or pausing the approval process for pending and future applications for LNG exports of liquified natural gas to non-FTA countries, effective immediately.”¹⁴ The court denied the government’s motion to dismiss the case and granted the states’ motion for a preliminary injunction. In so doing, the court concluded that the states are likely to succeed on their claims that the Pause is contrary to the NGA, exceeds DOE’s statutory authority, violates procedural requirements under the Administrative Procedure Act, and is arbitrary and capricious.¹⁵ The court held that the Pause was irreparably harming the states and that the equities and public interest weighed in favor of enjoining the Pause.¹⁶ Importantly, as to the practical effect of the court’s injunction, the court explained:

A preliminary injunction would *require the DOE to process the pending applications* in accordance with the NGA, as currently written, and in accordance with § 717(a), which not only creates a rebuttable presumption that a proposed export of natural gas is in the public interest and 15 U.S.C. § 717n(c)(1)(A) but requires the DOE *to act expeditiously* upon application.¹⁷

Request for Immediate Action

Despite Commonwealth’s demonstrable progress in developing its facility from a regulatory, commercial, and technical perspective,¹⁸ Commonwealth’s non-FTA Application has been pending at DOE for nearly 20 months since Commonwealth received its FERC Authorization. As indicated in Exhibit A attached to this

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 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/>.

¹⁴ *State of Louisiana*, No. 24-00406, Judgment, Doc. 73 (emphasis in original).

¹⁵ *Id.*, Memorandum Ruling, Doc. 72, at 57.

¹⁶ *Id.* at 55-57.

¹⁷ *Id.* at 24 (emphasis added).

¹⁸ See *i.e.* Commonwealth’s Aug. 21, 2023 Project Development Update.

filing, this is over five times greater than the average time it has taken DOE to issue a non-FTA authorization after FERC has approved the construction and operation of the associated greenfield terminal, which averaged just under 4 months.

DOE has not been presented with any compelling arguments demonstrating that approving Commonwealth's non-FTA Application would be inconsistent with the public interest. In response to Commonwealth's October 16, 2019 non-FTA Application, a single protest was filed that raised concerns regarding the impacts of LNG exports on manufacturing and energy consumers.¹⁹ However, DOE has stated that "exports of LNG from the lower-48 states, in volumes up to and including 52.8 billion cubic feet per day ("Bcf/d") of natural gas, will not be inconsistent with the public interest."²⁰ In announcing the Pause, DOE stated that 48 Bcf/d of LNG exports to non-FTA nations had been approved.²¹ As Commonwealth's pending non-FTA Application seeks authorization to export only 1.21 Bcf/d of LNG to non-FTA nations, approval of Commonwealth's non-FTA Application will not cause an exceedance of the volume of cumulative LNG exports to non-FTA nations that DOE explicitly stated was not inconsistent with the public interest. DOE has never stated that it is no longer relying on 52.8 Bcf/d as the current level of LNG exports to non-FTA nations that are determined to not be inconsistent with the public interest.

Commonwealth appreciates DOE's desire to update the economic and environmental analyses it relies on to evaluate non-FTA LNG export applications. The court's decision in *State of Louisiana*, however, made clear that DOE may not "pause" its duties under Section 3 of the NGA while it does so. Accordingly, and in light of the court's decision in *State of Louisiana*, Commonwealth respectfully requests that DOE/FECM immediately act on Commonwealth's long-pending non-FTA Application, in accordance with DOE's responsibilities under the NGA.²²

If you have any questions regarding this filing, please contact me at (202) 778-9014 or at david.wochner@klgates.com.

Best regards,



David L. Wochner
Counsel for Commonwealth LNG, LLC

¹⁹ See *Commonwealth LNG, LLC*, Notice of Intervention, Protest, and Comment of Industrial Energy Consumers of America, DOE/FE Docket No. 19-134-LNG (Dec. 20, 2019).

²⁰ DOE, Study on Macroeconomic Outcomes of LNG Exports; Response to Comments Received on Study, 83 Fed. Reg. 67,251, 67,273 (Dec. 28, 2018); see also *Magnolia LNG, LLC*, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, p. 65, Docket No. 13-132-LNG, DOE/FECM Order No. 3909-C (Apr. 27, 2022).

²¹ 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>.

²² 15 U.S.C. § 717n(c)(1)(A) (instructing DOE to ensure "expeditious completion of all such proceedings.")

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 3rd day of July, 2024 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Timothy J Furdyna
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Counsel for Commonwealth LNG, LLC