

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

American LNG Marketing LLC

Docket No. 14-209-LNG

**Application for Rehearing of Public Citizen, Inc.**

Public Citizen submits this timely application for rehearing, per 10 CFR § 590.501. On September 25, the U.S. Department of Energy approved a change in control for American LNG Marketing LLC, where the private equity firm Pennybacker Capital Management LLC is acquiring a physical export facility (Hialeah) just outside of Miami, Florida, along with its export authorization to FTA and non-FTA nations. DOE's regulations presume that any entity that owns 10% or more of the voting securities of an applicant has control of the applicant, and any change in that control must first be approved by DOE.<sup>1</sup> Public Citizen protested the application on August 16, correctly noting that the change in control application failed to reveal what investors, individuals or entities hold "power to direct the management or policies of" Pennybacker Capital Management LLC, as required as part of DOE's change in control regulations.

Applicants replied on August 20, misleadingly claiming that "Pennybacker publicly identifies in its Form ADV filed with [the U.S. Securities and Exchange Commission] the individuals that own or control the power to direct the management or policies of Pennybacker", arguing that "there is no need to 'compel disclosure' of such entities [because] all persons that own or control the power to direct the management or policies of Pennybacker are already publicly disclosed" [emphasis added].

Surprisingly, DOE accepted the misrepresentative claim by applicants as fact, declaring in its September 25 order that "Public Citizen's contention that American LNG has failed to disclose who controls and owns Pennybacker is unsubstantiated. As American LNG's correctly notes in its Answer, all direct and indirect owners of Pennybacker are publicly disclosed in its Form ADV that it files with the Securities and Exchange Commission."

DOE may not have understood the information reported in Pennybacker's ADV, because the filing most certainly does **not** list "all direct and indirect owners of Pennybacker". Exhibit A includes the two relevant pages of Pennybacker's July 12, 2024 ADV form filed with the SEC.

The first page of Exhibit A is Schedule A (*Direct Owners and Executive Officers*), where Pennybacker Capital Management discloses that Vincent Patrick Reyna (Chief Investment Officer); Timothy Parker Berry (Chief Executive Officer); Lindsey Amber Jacot (Chief Financial Officer); and Thomas Henry Beier (President) are each identified as owning less than 5%, and PCM Management Holdco LP is identified as owning between 50% and 75% of Pennybacker.

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<sup>1</sup> [www.federalregister.gov/documents/2014/11/05/2014-25143/procedures-for-changes-in-control-affecting-applications-and-authorizations-to-import-or-export](http://www.federalregister.gov/documents/2014/11/05/2014-25143/procedures-for-changes-in-control-affecting-applications-and-authorizations-to-import-or-export)

Schedule B of Exhibit A lists Pennybacker's "Indirect Owners", including disclosure that PCM MANAGEMENT FEEDER, LP owns 75% or more of PCM Management Holdco LP, and that PCM FEEDER GP, LLC serves as the general manager of both PCM Management Holdco LP. and PCM MANAGEMENT FEEDER, LP. Schedule B then identifies CAVU HOLDINGS, LTD. as owning between 25%-50% of PCM MANAGEMENT FEEDER, LP, with Timothy and Angela Berry each owning between 25%-50% of CAVU HOLDINGS, LTD.

Breaking down the math, and assuming that PCM Management Feeder owns 100% of PCM Management Holdco (it may own less), Cavu Holdings Ltd's ownership stake in Pennybacker could be anywhere from 12.5% and 37.5%, depending on the actual stakes. With the four named executives each owning a maximum of less than 20% (assuming their ownership stakes are each close to 5%), that means that (conservatively) ownership information is undisclosed for between ~42.5% and ~67.5% of Pennybacker Capital Management LLC. Furthermore, the entities or persons that control the general manager (PCM Feeder GP LLC) is not fully disclosed in the ADV filing.

There are clear reporting gaps in DOE's change in control regulations when it comes to loosely-regulated private equity firms. DOE's September 25 order is erroneous, because applicants have not fully disclosed the individuals or entities that own or control the power to direct the management or policies of Pennybacker. DOE's reliance on the sparse ADV disclosures filed with the SEC compound the error.

In addition, it appears that Pennybacker operates an unlicensed and unregulated physical LNG export facility, as its Hialeah facility never obtained approval by the Federal Energy Regulatory Commission, despite clear statutory directives requiring it. Section 311(c)(2)(e)(1) of the 2005 Energy Policy Act amended Section 3 of the Natural Gas Act to declare that FERC "shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal."<sup>2</sup> Section 311(b) of the 2005 Energy Policy Act incorporated eight separate and distinct activities in its definition of "LNG terminal," which covers "all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel".<sup>3</sup>

Respectfully submitted,  
*Tyson Slocum*  
Tyson Slocum, Energy Program Director  
Public Citizen, Inc.  
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<sup>2</sup> 15 USC §717b(e)(1).

<sup>3</sup> 15 USC § 717a(11).

# EXHIBIT A

- (1) *controlled* by or under common *control* with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of \$25 million or more on the last day of its most recent fiscal year?
- (2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year?

## Schedule A

### Direct Owners and Executive Officers

- Complete Schedule A only if you are submitting an initial application or report. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
- Direct Owners and Executive Officers. List below the names of:
  - each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required if you are registered or applying for registration and cannot be more than one individual), director, and any other individuals with similar status or functions;
  - if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);  
Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
  - if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
  - in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
  - if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
- Do you have any indirect owners to be reported on Schedule B?  Yes  No
- In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
- Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
- Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%  
A - 5% but less than 10% C - 25% but less than 50% E - 75% or more
- (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.  
(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.  
(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
REYNA, VINCENT, PATRICK	I	MEMBER AND CHIEF INVESTMENT OFFICER	01/2009	NA	Y	N	4414603
BERRY, TIMOTHY, PARKER	I	MANAGER; CHIEF EXECUTIVE OFFICER	04/2006	NA	Y	N	4171442
JACOT, LINDSEY, AMBER	I	CHIEF COMPLIANCE OFFICER/CHIEF FINANCIAL OFFICER	03/2020	NA	Y	N	6874309
BEIER, THOMAS, HENRY	I	PRESIDENT	01/2023	NA	Y	N	7528180
PCM MANAGEMENT HOLDCO, LP	DE	SHAREHOLDER	05/2024	D	Y	N	

## Schedule B

### Indirect Owners

- Complete Schedule B only if you are submitting an initial application or report. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
- Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:
  - in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;  
  
For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
  - in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;
  - in the case of an owner that is a trust, the trust and each trustee; and
  - in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.
- Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are: C - 25% but less than 50% E - 75% or more  
D - 50% but less than 75% F - Other (general partner, trustee, or elected manager)
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.  
(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.  
(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
BERRY, TIMOTHY, PARKER	I	CAVU HOLDINGS, LTD.	LIMITED PARTNER	12/2005	C	Y	N	4171442
Berry, Angela, Michelle	I	CAVU HOLDINGS, LTD.	LIMITED PARTNER	12/2005	C	Y	N	7755182
PCM MANAGEMENT FEEDER, LP	DE	PCM MANAGEMENT HOLDCO, LP	LIMITED PARTNER	05/2024	E	Y	N	
CAVU HOLDINGS, LTD.	DE	PCM MANAGEMENT FEEDER, LP	SHAREHOLDER	06/2019	C	Y	N	
PCM FEEDER GP, LLC	DE	PCM MANAGEMENT HOLDCO, LP	GENERAL PARTNER	05/2024	F	Y	N	
PCM FEEDER GP, LLC	DE	PCM MANAGEMENT FEEDER, LP	GENERAL PARTNER	05/2024	F	Y	N	

#### Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

PCM FEEDER GP, LLC does not have a CRD, IRS or Employer ID number.

#### Schedule R

No Information Filed

#### DRP Pages

##### CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

##### REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

##### CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

#### Part 2

##### Exemption from brochure delivery requirements for SEC-registered advisers

SEC rules exempt SEC-registered advisers from delivering a firm brochure to some kinds of clients. If these exemptions excuse you from delivering a brochure to *all* of your advisory clients, you do not have to prepare a brochure.

Yes No

## VERIFICATION

Pursuant to 10 CFR § 590.103(b), I, Tyson Slocum, declare that I am Energy Program Director for Public Citizen, Inc. and am authorized to make this verification; that I have authored and read the foregoing filing 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 that the foregoing is true and correct. Executed on October 1, 2024.

*Tyson Slocum*  
Tyson Slocum  
Energy Program Director  
Public Citizen, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the applicant and intervenors for this docketed proceeding in accordance with 10 CFR § 590.107(b). Dated at Washington, DC this 1<sup>st</sup> day of October 2024.

Signed,

*Tyson Slocum*

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