UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

Sierra Club, Center for Biological Diversity, Natural Resources Defense Council, and Public Citizen Motion for Leave to Intervene Out of Time, Motion for Leave to Answer, and Answer to Request for Rehearing

On February 26, 2024, Commonwealth LNG, LLC ("Commonwealth") filed a procedurally improper document styled as a request for rehearing of "the Department of Energy's Indefinite 'Pause' of Consideration of Applications for Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations."[1]

Commonwealth's request should be denied as procedurally improper because there is nothing to seek rehearing of. DOE simply announced interim steps to update fact-finding necessary for its adjudication of Commonwealth's pending LNG export application.[2] If DOE nevertheless decides to entertain this flawed request, Sierra Club, Center for Biological Diversity, Natural Resources Defense Council (NRDC), and Public Citizen (collectively "Environmental Advocates") hereby move for leave to intervene out of time to permit these organizations to respond, and move for leave to answer.[3]

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[1] Commonwealth LNG, LLC, Request for Rehearing, DOE/FE Docket No. Docket No. 19-134-LNG (Feb. 26, 2024), https://www.energy.gov/sites/default/files/2024-03/Commonwealth%20Request%20for%20Rehearing%20of%20DOE%20Pause%20%28Feb.%2026%202024%29.pdf [hereinafter "Commonwealth Request"].

[2] DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies, Energy.gov, https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals (Jan. 26, 2024) [hereinafter "DOE Announcement"].

[3] Although DOE's regulations do not permit answers to requests for rehearing unless otherwise permitted by the decisional authority, DOE has accepted answers to requests for rehearing for

DOE's January 26, 2024 announcement was procedurally sound. Commonwealth's complaints demonstrate a fundamental misunderstanding of the scope, purpose, and function of DOE's announcement. Nor is the pause "unfair" to Commonwealth—updating the underlying studies is necessary to address critical developments since 2018 and 2019 that raise serious doubts about the benefits of additional LNG exports. Waiting to resolve pending applications, including Commonwealth's, until those updates are complete is both wise and necessary to protect the public interest.

I. Motion for Leave to Intervene Out of Time

DOE should permit the undersigned to intervene out of time in this docket for the purpose of responding to Commonwealth's improper request for rehearing and challenge to DOE's plan to update its analyses. Environmental Advocates have "good cause" for late intervention, and late intervention will not have an adverse "impact" on this proceeding. 10 C.F.R. § 590.303(d).

Environmental Advocates have good cause because they acted promptly in response to Commonwealth's improper request for rehearing. Until this request was filed, Environmental Advocates had no reason to suspect that Commonwealth would challenge DOE's authority to conduct such studies or to ensure that DOE was able to consider them before acting on non-FTA export applications.[4] Once Commonwealth made this challenge, Environmental Advocates promptly moved to intervene, both to address DOE's authority in this docket and to ensure DOE's ability to properly conduct and consider these studies in other dockets, including others in which one or more movants have already timely intervened. Therefore, although the Advocates did not initially seek to intervene in opposition to Commonwealth's LNG export application,

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good cause when the answers are likely to assist with its decision-making process. *See Alaska LNG Project*, Order Denying Request for Rehearing, DOE/FECM ORDER NO. 3643-D, at 10-11 (June 14, 2023), https://www.energy.gov/sites/default/files/2023-06/ord3643-D_unlocked.pdf

[4] *See, e.g.*, *Algonquin Gas Transmission, LLC Maritimes & Ne. Pipeline, L.L.C.*, 175 FERC ¶ 61,958 at PP 3 (2021) (granting late intervention submitted in response to Commission order requesting additional briefing at the rehearing stage); *Kern & Tule Hydro LLC*, 174 FERC ¶ 61081 at PP 7-8 (granting late intervention where "the nature and extent of the proposed" project was not clear until after the final order was issued).

they now seek party status to address an improper rehearing request that could have broader implications.

On the other hand, intervention at this stage, for the purpose of challenging Commonwealth's improper rehearing request, will not negatively impact the proceeding. The Environmental Advocates are willing to accept the record as it stands to date. DOE has already recognized that additional information, in the form of updating its general studies, is required before it can move forward with considering Commonwealth's application. If DOE follows prior practice, public comments on the updated studies will be automatically incorporated into the records of individual applications, including Commonwealth's. To the extent that the Environmental Advocates comment on those studies, then, their comments will be incorporated into the record here regardless of intervention. Nor is Commonwealth's application currently uncontested—to the contrary, a protest has already asserted that further LNG exports are contrary to the public interest due to impacts on domestic supply and prices.[5] Thus, there will be no disruption caused by the Advocates' late intervention and there will not be prejudice to existing parties.

Thus, Environmental Advocates have good cause and a lack of prejudice sufficient to support intervention out of time. Beyond timeliness, Environmental Advocates easily satisfy DOE's other requirements for intervention. DOE merely requires would-be-intervenors to set out the "facts upon which [their] claim of interest is based" and "the position taken by the movant." 10 C.F.R. § 590.303(b)-(c). As explained in the following section, the Environmental Advocates' position is that Commonwealth's rehearing request should be denied as procedurally improper or alternatively denied on the merits. The organizations' interests are based on the impact that those proposed LNG exports will have on their members and missions.

The Environmental Advocates are organizations focused on protecting public health and the environment with members who will be harmed by increased LNG exports. These organizations have consistently participated in DOE's prior general studies. Moreover, Sierra Club and Center for Biological Diversity were among the organizations that petitioned DOE for rulemaking on LNG exports in 2013; they are thus uniquely qualified to address allegations that

[5] Industrial Energy Consumers of America, Notice of Intervention, Protest, and Comment (Dec. 20, 2019), https://www.energy.gov/sites/prod/files/2019/12/f70/12.20.19_Commonwealth%20LNG_FINAL.pdf [hereinafter "IECA Intervention and Protest"].

DOE's January 2024 announcement represented an unlawful reversal of its denial of that 2013 petition. As of the date of this intervention, no other similarly situated environmental advocate has intervened in this proceeding. Accordingly, there is no other party that could adequately represent the Environmental Advocates' unique interests.

Sierra Club

Commonwealth's request that DOE revoke its plan to update its studies and immediately grant Commonwealth's export application will harm Sierra Club's members by increasing the prices they pay for energy, including both gas and electricity, over a longer term. As DOE and the Energy Information Administration have previously explained, each marginal increase in export volumes is also expected to further increase domestic energy prices. Sierra Club's members will pay more for energy if DOE grants Commonwealth's application.

Expanding LNG exports will further harm Sierra Club members by increasing gas production and associated air pollution, including (but not limited to) emission of greenhouse gasses and ozone precursors. As DOE has recognized, increasing LNG exports will increase gas production,[6] and increasing gas production increases ozone pollution, including risking creation of new or expanded ozone nonattainment areas or exacerbating existing non-attainment.[7] Sierra Club has over 2,400 members in Louisiana, including many in the Barnett Shale region and other areas that will likely be impacted by increased gas production.

Expanded LNG export will also require significant shipping traffic. This vessel or tanker traffic will emit air pollutants such as carbon monoxide and ozone-forming nitrogen oxides. Increased ship traffic will also harm wildlife that Sierra Club's members enjoy viewing, etc.,

[6] *See, e.g.*, U.S. EIA, Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets (Oct. 2014) at 12, *available at* https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf (explaining that "[n]atural gas markets in the United States balance in response to increased LNG exports mainly through increased natural gas production," and "[a]cross the different export scenarios and baselines, higher natural gas production satisfies about 61% to 84% of the increase in natural gas demand from LNG exports," with "about three-quarters of this increased production [coming] from shale sources.").

[7] U.S. DOE, Final Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States at 27-32 (Aug. 2014), *available at* https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf.

including the recently-listed threatened giant manta ray,[8] threatened oceanic whitetip shark,[9] and endangered Rice's whale (formerly designated as the Gulf of Mexico population of the Bryde's whale).[10]

If approved, Commonwealth's application will also require new infrastructure with significant direct environmental impacts, including air pollution emissions. These emissions will impact Sierra Club members and others who live, work, or recreate in the vicinity of the proposed projects.

Finally, granting Commonwealth's application will impact Sierra Club and its members because of the additional greenhouse gasses emitted throughout the LNG lifecycle, from production, transportation, liquefaction, and end use. The impacts from climate change are already harming Sierra Club members in numerous ways. Coastal property owners risk losing property to sea level rise. Extreme weather events, including flooding and heat waves, impact members' health, recreation, and livelihoods. Increased frequency and severity of wildfires emits smoke that impacts members' health, harms ecosystems members depend upon, and threatens members' homes. Proposals, such as this one, that encourage long-term use of carbon-intensive fossil fuels will increase and prolong greenhouse gas emissions, increasing the severity of climate change and thus of these harms.

In summary, Commonwealth's request for rehearing seeks to force DOE to immediately approve its pending LNG export application. Doing so would harm Sierra Club members in numerous ways. Sierra Club accordingly contends that the request for rehearing should be denied.

Pursuant to 10 C.F.R. § 590.303(d), Sierra Club identifies the following persons for the official service list:

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[8] Final Rule to List the Giant Manta Ray as Threatened Under the Endangered Species Act, 83 Fed. Reg. 2,916 (Jan. 22, 2018).

[9] Listing the Oceanic Whitetip Shark as Threatened Under the Endangered Species Act, 83 Fed. Reg. 4,153 (Jan. 30, 2018).

[10] Technical Corrections for the Bryde's Whale (Gulf of Mexico Subspecies), 86 Fed. Reg. 47,022 (Aug. 23, 2021).

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Public Citizen

Public Citizen, Inc. moves to intervene in this proceeding. Established in 1971, Public Citizen, Inc. is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We have over 500,000 members and supporters across the United States. Like Sierra Club's members, if Commonwealth's rehearing request is granted and DOE proceeds to approve its application without further analysis, Public Citizen's members will suffer from increased gas prices, air pollution from induced gas production, and environmental harms resulting from greenhouse gas emissions.

Public Citizen also has an organizational interest in this matter. Public Citizen is active before the Federal Energy Regulatory Commission promoting just and reasonable rates. We frequently intervene in U.S. Department of Energy proceedings involving the export of electricity and natural gas. Our Energy Program Director, Tyson Slocum, is an expert on energy market regulatory matters, serving as a witness on the Department of Energy public interest standard in testimony before the U.S. Congress in February 2023.[11] Public Citizen therefore has a particular interest in ensuring DOE keeps to the commitments in its announcement and supporting ongoing efforts to update these studies. Slocum also serves on two federal advisory committees of the U.S. Commodity Futures Trading Commission (the Energy and Environmental Markets and Market Risk advisory committees). Financial details about our organization are on our website.[12]

Pursuant to 10 C.F.R. § 590.303(d), Public Citizen identifies the following person for the official service list:

[11] www.citizen.org/article/house-testimony-energy-legislation/

[12] www.citizen.org/about/annual-report/

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Center for Biological Diversity

The Center for Biological Diversity ("The Center") is a national, nonprofit conservation organization committed to advancing environmental justice and safeguarding ecosystems that support the full biodiversity of life on Earth. The Center uses environmental advocacy to protect wildlife and wildlands from habitat destruction, pollution, climate change, population growth and other human activities.

Commonwealth's rehearing request threatens the interests of the Center and its members in numerous ways. Every greenlighted fossil fuel project unleashes devastating, wide-ranging harms to the climate, communities, wildlife and the air and water we all depend on while slowing the needed transition to equitable, affordable, clean renewable energy alternatives.

The Center's members on the Gulf Coast and across the country are already impacted by climate change, from rising temperatures and sea level rise to stronger storms and other harms. Expansion of LNG exports without adequate consideration of greenhouse gas emissions harms Center members both in the vicinity of these projects and across the nation. The Center has 291 members and more than 9,000 registered supporters in Louisiana, including in areas that will likely be impacted by increased gas production.

Construction and operation of LNG facilities for export can adversely impact protected species of concern to the Center's members through noise pollution, discharge of toxic chemicals, and physical habitat disturbance/alteration.[13] Waste from ships and other port activities can result in loss or degradation of habitat areas and harm to marine life.

A likely increase in ship traffic can also injure and kill a variety of marine animals. For example, the Rice's whale, which is one of the most endangered marine mammals on Earth,

[13] Ports Primer: 7.1 Environmental Impacts, U.S. EPA, https://www.epa.gov/community-port-collaboration/portsprimer-71-environmental-impacts (Jan. 13, 2022); United Nations Econ. And Soc. Comm'n for Asia and the Pacific, Assessment of the Environmental Impact of Port Development (1992), https://www.unescap.org/sites/default/files/pub 1234 fulltext.pdf.

faces a substantial risk of harm from ship strikes that could lead to death due to the significant amount of time it spends near the surface of the water.[14] Center members enjoy viewing, studying, etc. the Rice's whale, giant manta ray, and other species that may be harmed by expansion of LNG exports.

Finally, Commonwealth's request would impact the Center's members by increasing consumer energy prices. Ample research from the DOE, Energy Information Administration, and others demonstrates that increases in U.S. exports has cost American consumers millions of dollars in higher energy costs.[15]

Commonwealth's request for rehearing seeks to undermine DOE's important and necessary work to ensure that approval of LNG exports serves the public interest and considers appropriate environmental, environmental justice, and macroeconomic factors. Approval of permits without appropriate review of these concerns would harm the Center and its members. Accordingly, the Center respectfully asks that the request for rehearing be denied.

Pursuant to 10 C.F.R. § 590.303(d), the Center identifies the following persons for the official service list:

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[14] Melissa Soldevilla et al., Spatial distribution and dive behavior of Gulf of Mexico Bryde's whales: potential risk of vessel strikes and fisheries interactions, 32 Endang. Species Rsch. 533 (2017) (Prior to 2021, the Rice's whale was thought to be a distinct subspecies of Bryde's whales, known as the Gulf of Mexico Bryde's whale), https://repository.library.noaa.gov/view/noaa/16050.

[15] *See, e.g.*, IEEFA, Gas Exports Cost U.S. Consumers More than $100 Billion Over 16-Month Period (Jan. 29, 2024), https://ieefa.org/resources/gas-exports-cost-us-consumers-more-100-billion-over-16-month-period.

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Natural Resources Defense Council (NRDC)

NRDC is a national non-profit membership organization with more than 3 million members and engaged community participants worldwide, including in domestic areas with significant gas infrastructure development. NRDC has approximately 900 members in Louisiana and hundreds more in areas that will be impacted by increased gas production. NRDC is committed to the preservation and protection of the environment, public health, and natural resources. To this end, NRDC conceives and develops policies that reduce greenhouse gas emissions and other forms of pollution and that accelerate the deployment of energy efficiency and renewable energy. NRDC has a longstanding and active interest in ensuring need-driven and efficient energy resource development, protecting consumers from pipeline overbuild and stranded assets, promoting environmental justice, curbing harmful fossil fuel expansion, expanding clean energy resources, and protecting the public from environmental threats, including the protection of waterbodies and wetlands.

Commonwealth's request to revoke DOE's plan to update its studies and to immediately grant pending LNG export applications will harm NRDC's members by increasing the prices they pay for energy, including both gas and electricity, over a longer term; increasing gas production and associated air pollution, including (but not limited to) emission of greenhouse gasses and ozone precursors; and harming wildlife that NRDC's members enjoy viewing. NRDC contends that the request for rehearing should be denied.

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II. Commonwealth's Rehearing Request Is Procedurally Improper

15 U.S.C. § 717r(a) only permits a "party to a proceeding under this chapter aggrieved by an order issued by the Commission in a proceeding under this chapter" to seek rehearing.[16] Commonwealth's request is improper, because DOE has not issued any order.

As Commonwealth acknowledges, DOE's announcement that it will update its studies was made as a "general announcement on DOE's website" rather than any "formal issuance in affected dockets."[17] DOE simply announced procedural steps it would take before deciding what orders to issue in individual dockets. And insofar as Commonwealth characterizes DOE's announcement as a "rulemaking,"[18] it cannot then be an "order" subject to adjudicatory rehearing.

Nor does the announcement provide any final agency action.[19] Courts regularly consider two factors in deciding whether there has been a final agency action:

(1) "the action must mark the 'consummation" of the agency's decisionmaking process" and "must not be of a merely tentative or interlocutory nature"; and

(2) "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow[.]'"

Bennett v. Spear, 520 U.S. 154, 177–78 (1997) (internal citations omitted).

Here, DOE's action is both tentative and interlocutory. DOE has announced interim steps to be taken within individual adjudications. Only after the studies are updated and DOE

[16] Similarly, 10 C.F.R. § 590.105 only permits a party to seek rehearing "of a final opinion and order, conditional order, or emergency interim order."

[17] Commonwealth Request at 11.

[18] *Id.*

[19] Commonwealth Request at 7-10; *see also* American Petroleum Institute et al., Application for Rehearing of the Department of Energy's Indefinite "Pause" of Consideration of Applications for Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations at 6, No DOE/FE Docket (Feb. 26, 2024), https://www.api.org/-/media/files/misc/2024/02/rehearing-petition-for-lng-pause-as-filed1860164261.pdf [hereinafter "API Request"].

evaluates the individual applications will DOE ultimately issue final orders on pending applications. *See F.T.C. v. Standard Oil Co. of California*, 449 U.S. 232, 241 (1980) (agency decision to initiate complaint proceedings was "not a definitive statement of position" but instead "a threshold determination that further inquiry is warranted"). Nor do legal consequences flow from DOE's announcement—it is not binding and only states the procedure DOE plans to use to gather data that will inform its final decision. *See id.* ("[s]erving only to initiate the proceedings, the issuance of the complaint averring reason to believe has no legal force" sufficient to treat as final action); *Franklin v. Massachusetts*, 505 U.S. 788, 789 (1992) (compiling and presenting census data to inform subsequent presidential statement was not final agency action). Because there is no final "order" from which to seek rehearing, DOE should deny Commonwealth's request as procedurally improper.

III. Commonwealth's Arguments Fail on the Merits

Commonwealth mistakenly argues that the pause constitutes an unlawful stay of Commonwealth's application, that it was a rule published without notice and comment, and that it is unfair. In addition, Commonwealth purports to incorporate the arguments from a separate request, authored by American Petroleum Institute, et al. and not filed in this docket, by reference. Commonwealth Request at 2. The Natural Gas Act does not permit requests for rehearing to incorporate arguments by reference, as Commonwealth and its counsel should be aware. *Allegheny Power v. FERC*, 437 F.3d 1215, 1220 (D.C. Cir. 2006). Nonetheless, in an abundance of caution, we address these arguments as well.

a. DOE Has Not Unlawfully Withheld or Unreasonably Delayed Agency Action

While 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), "the remedy of mandamus is a drastic one, to be invoked only in extraordinary circumstances" that do not exist here, *see 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).

Courts may only address agency action "unlawfully withheld" where the law makes "a specific, unequivocal command," and the requirement is for a "precise, definite act about which an official ha[s] no discretion whatever." *Norton*, 542 U.S. at 63. Thus, a claim for "unlawfully withheld" action requires an explicit statutory deadline, which the Natural Gas Act lacks.[20] No applicant is entitled to export LNG to non-FTA countries: the Natural Gas Act expressly conditions such exports on DOE's determination that they are in the "public interest"—a plainly discretionary determination. 15 U.S.C. § 717b(a). And as discussed further below, the Natural Gas Act further provides DOE the discretion to determine what schedule is appropriate for evaluating such applications. 15 U.S.C. § 717n(c)(1).

Where, as here, Congress has not designated a deadline by which an agency must act, the central question becomes "whether the agency's delay is so egregious as to warrant mandamus." *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). In making that determination, courts generally balance the factors outlined in *Telecommunications Research & Action Center v. Federal Communications Commission*:

> (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.

750 F.2d at 80 (internal quotation marks and citations omitted); *see also Fort Bend Cnty. v. United States Army Corps of Engineers*, 59 F.4th 180, 198 (5th Cir. 2023) (rejecting § 706(1)

[20] The lack of a statutory deadline makes *Ass'n of Am. RR v. Costle*, API Request at 9, distinguishable. That case involved EPA's interpretation of the scope of the regulations it was required to promulgate consistent with a detailed statutory timeline. 562 F. 2d at 1320.

claim where requirement that water control manuals "shall be revised as necessary" was discretionary and failed to mandate a specific schedule).

Here, each of these factors weighs against alleged unreasonable delay. The pause is temporary and will not reach the years-long delays that courts have generally found to be unreasonable.[21] While Congress indicated DOE should move expeditiously, it declined to set an explicit timeline, instead deferring to DOE. It is entirely reasonable for DOE to conclude that it requires additional, updated analysis to inform its decisions on LNG export applications. The prior analysis is more than 5 years old, and as DOE recognized, drastic changes in the domestic and global gas markets, as well as climate and environmental science, have rendered DOE's prior conclusions stale. The delays at issue seek to protect public health and welfare, while balancing API and its members' pursuit of economic activity. DOE's pursuit of updated general studies will also facilitate a more expedient and streamlined process for evaluating the cumulative effects that the Natural Gas Act and NEPA require DOE to consider. And DOE's transparency in its process empower potentially impacted parties to make informed decisions that may avoid expenditures while DOE's review is pending. As a result, DOE's pause is entirely justified and does not constitute unreasonable delay.

API's cited cases are distinguishable. In *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, for example, delaying a statutorily-mandated hearing based on administrative convenience defeated the statute's aim to empower a party to request a hearing. 17 F. 3d 130, 134 (5th Cir. 1994) (quoting 33 U.S.C. § 919(c)). In *Ensco Offshore Co. v. Salazar*, the delays at issue, caused by "strained" agency resources, violated Outer Continental Shelf Lands Act "text infer[ring] that delays beyond thirty days are unreasonable." 781 F. Supp. 2d 332, 336-40 (E.D. La. 2011). And in *Louisiana v. Biden*, the court held a "pause" on specific oil and gas leases actually meant "stop" where presidential campaign promises demonstrated the agency's intent and the practical outcome was complete cessation of leasing activity. 622 F. Supp. 3d at 276,

[21] *In re American Rivers & Idaho Rivers United*, 372 F.3d at 419 (six-year delay); *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-year delay); *Nader v. Fed. Commc'ns Comm'n*, 520 F.2d 182, 206 (D.C. Cir. 1975) (nine-year delay); *In re A Cmty. Voice*, 878 F.3d at 787 (eight-year delay).

289. Here, however, DOE is operating under the Natural Gas Act, which grants DOE discretion in both the manner and schedule for its "public interest" determinations. 15 U.S.C. §§ 717b(a), 717n(c)(1), 717o. There were never any campaign promises indicating an intent to stop LNG exports; while the undersigned believe President Biden *should* stop all LNG exports, he conspicuously has not stated that he will do so. Nor does DOE's pause prevent ongoing LNG exports or revoke extensive non-FTA authorizations that have already been issued. It is more efficient for DOE to update its studies before proceeding with additional application decisions, rather than issue decisions on applications based on data it knows to be out-of-date. And forcing DOE to prioritize one of the many pending non-FTA applications would necessarily divert resources from consideration of others—the general studies, in contrast, move forward the evaluation of all applications.

b. DOE's Announcement Is Neither A Stay Nor a Denial of Any Export Application

Commonwealth's claim that the "pause" amounts to a "stay" misrepresents DOE's announcement. Commonwealth Application at 7. As noted, there is no "order" or other final agency action involved here. *See supra* Section II. Regardless, DOE's announcement neither "suspends" nor "halts" the agency's evaluation of Commonwealth's application: it merely indicates a shift in focus towards updating the general studies DOE uses to analyze cumulative impacts for the non-FTA applications under review. *See* STAY, Black's Law Dictionary (11th ed. 2019) ("1. The postponement or halting of a proceeding, judgment, or the like. 2. An order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding."). DOE's analysis of Commonwealth's application is therefore still ongoing—DOE has merely provided notice about the additional steps it plans to conduct before it can reach a final decision on Commonwealth's application.

Similarly, API's argument that announcing the pause violates the Natural Gas Act's requirement to consider applications individually[22] completely misses the point. The pause is not "functionally a series of denials of export permits"[23]—in fact, DOE has never denied a non-FTA export authorization, and DOE relied on prior versions of the studies DOE is now updating to

[22] API Request at 11.

[23] *Id.*

justify DOE's prior export approvals. Rather, this temporary pause is needed to collect information that will be used to evaluate individual applications. That is consistent with how DOE has previously used these general studies.[24] And DOE's announcement recognized that it may still issue individual authorizations, as needed for national security.[25] API's argument that DOE has made no findings whatsoever, let alone findings specific to individual applications[26] similarly ignores that DOE has made the policy judgment, consistently since 2014, that general studies evaluating cumulative impacts from LNG exports will conserve resources and result in more efficient processes in individual application dockets.[27] With respect to this specific update, DOE provided ample explanations for why its prior studies are stale and need to be updated. *See infra* subsection f.

c. DOE's Announcement Is Not A Rulemaking, and Did Not Require Notice and Comment

Commonwealth and API's claim that DOE's announcement amounts to a rulemaking fundamentally misunderstands DOE's process for adjudicating non-FTA applications. DOE has historically used its general studies as a means of efficiently conducting the cumulative-impact fact finding required to adjudicate individual applications. DOE reiterated its decision to proceed primarily through adjudications when it denied the 2013 Petition for Rulemaking Regarding Natural Gas Exports ("2013 Petition").[28]

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[24] *See, e.g.*, 79 Fed. Reg. at 32,260-61 ("The purpose of this Notice is to post the LCA GHG Report in the 25 proceedings, and to invite comments on the LCA GHG Report, as applied to the pending matters."); 80 Fed. Reg. 81,302 ("The purpose of this Notice is to enter the 2014 EIA LNG Export Study and the 2015 LNG Export Study in the administrative record of the 29 listed non-FTA export proceedings and to invite comments on these two studies, as applied to each proceeding.").

[25] DOE Announcement.

[26] API Request at 11.

[27] DOE/FE, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas at 12-15 (July 18, 2023), https://www.energy.gov/sites/default/files/2023-07/DOE%20Response%20to%20Sierra%20Club%27s%20Petition%20for%20Rulemaking%207.18.2023%20%28002%29.pdf [hereinafter "Order Denying Petition for Rulemaking"] (explaining DOE's process for collective evidence during non-FTA adjudications, including reliance on DOE's general studies).

[28] *Id.* at 16-17 ("Most norms that emerge from a rulemaking are equally capable of emerging (legitimately) from an adjudication, and accordingly agencies have "very broad discretion

Here, DOE's announcement continues that adjudicatory practice, identifying the intermediate steps DOE is taking as part of those specific adjudications—i.e., updating the general studies to reflect current circumstances and facts. Distinguishing Adjudication and Rulemaking, 32 Fed. Prac. & Proc. Judicial Review § 8116 (2d ed.) ("Adjudication is the process for determining facts and applying relevant law to them to determine individual rights or duties. . . . Rulemaking is a process designed for supporting and making generally applicable policy decisions that seek to promote societal goals or values."). Nor has DOE revoked or modified otherwise applicable legal requirements. *Contra Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) ("EPA's stay, in other words, is essentially an order delaying the rule's effective date, and this court has held that such orders are tantamount to amending or revoking a rule."). Neither Commonwealth nor any other applicant is *entitled* to export LNG to non-FTA countries. They may only do so after DOE determines that those exports are in the public interest, based on a complete administrative record and following any "additional procedures" that DOE deems necessary. 15 U.S.C. § 717b(a); 10 C.F.R. §§ 590.404 10, 590.310. While revising its regulations to amend the legal framework underpinning a "public interest" determination might qualify as a rulemaking, DOE has made clear that it does not intend to do so here. *See infra* Section f. Rather, DOE's announcement merely provides transparency about how DOE plans to develop the factual record needed to apply its existing framework.[29] Notice and comment is not required for interim, informal adjudicatory fact-finding like this. *Nat'l Biodiesel Bd. v. Env't Prot. Agency*, 843 F.3d 1010, 1017–18 (D.C. Cir. 2016) (rejecting argument that agency order was rulemaking subject to notice and comment where it "was a straightforward instance of adjudication").

Even if DOE's announcement was merely a step taken in its ongoing adjudication of individual export applications, the announcement plainly was not the type of legislative rulemaking that requires formal notice and comment. In determining whether a rulemaking requires notice and comment, the D.C. Circuit applies a three-part test: "(1) the Agency's own

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whether to proceed by way of adjudication or rulemaking[.]") (quoting *Qwest Servs. Corp. v. F.C.C.*, 509 F.3d 531, 536 (D.C. Cir. 2007) (internal citations omitted).

[29] DOE Announcement ("Consideration of these factors is not new: These are the same categories that DOE has considered when evaluating the public interest of LNG exports for more than a decade. But the data and global circumstances relevant to these factors has changed over time, and DOE must reflect these changes when applying the factors to a new public interest determination.").

characterization of the action; (2) whether the action was published in the Federal Register or the Code of Federal Regulations; and (3) whether the action has binding effects on private parties or on the agency." *Molycorp, Inc. v. U.S. E.P.A.*, 197 F.3d 543, 545 (D.C. Cir. 1999). Ultimately, the "focus of the inquiry is whether the agency action partakes of the fundamental characteristic of a regulation, i.e., that it has the force of law." *Id.* Here, none of these factors support treating DOE's announcement as a rulemaking. DOE's announcement took the form of a press release; it has not published its announcement in the Federal Register or the Code of Federal Regulations. DOE characterized its announcement as simply notifying the public about how it plans to proceed. DOE's announcement is not a mandatory directive to staff or otherwise structured as a binding announcement. And DOE expressly contemplates that it may still issue authorizations, as needed for national security.

d. Under the Natural Gas Act, DOE Can and Must Conduct An Independent Evaluation of Whether Applications for Export to Non-FTA Countries Are In The Public Interest

The Natural Gas Act provides that DOE "shall issue" a requested export approval "unless, after opportunity for hearing, [DOE] finds that the proposed exportation or importation will not be consistent with the public interest." 15 U.S.C. § 717b(a). Commonwealth mistakenly argues that under this section, DOE somehow lacks the obligation or even authority to conduct its own investigation into whether a particular application is consistent with the public interest; Commonwealth instead seems to suggest that DOE can only deny an application when a third party has protested it. Commonwealth Request at 9-10. Commonwealth is wrong. Commonwealth further ignores the fact that there was such a protest in this proceeding, arguing that Commonwealth's proposed exports were contrary to the public interest and raising some of the very economic issues that DOE is now investigating.[30]

When it comes to exports to Free Trade Agreement countries, Congress enacted an explicitly irrebuttable presumption favoring approval. 15 U.S.C. § 717b(c). Congress could have done the same for the exports to non-Free Trade Agreement countries at issue here, but it did not. Thus, although DOE has interpreted section 717b(a) to create a presumption favoring approval applicable to non-Free Trade Agreement countries, that presumption is necessarily rebuttable.

[30] IECA Intervention and Protest.

Even insofar as Congress has determined that LNG exports provide some public benefits, Congress has *not* "already determined that exports of LNG to non-FTA nations are in the public interest," Commonwealth Request at 9, because Congress has explicitly left open the possibility that any given non-FTA application will carry harms that outweigh its potential benefits.

Insofar as Commonwealth suggests (at 9) that DOE must approve a non-FTA application unless some other party affirmatively shows that exports are not in the public interest, it ignores DOE's obligation to evaluate LNG exports and discretion in how to do so. 15 U.S.C. § 717n(c)(1); *see also* 15 U.S.C. § 717o (granting DOE discretion to "perform any and all acts . . . as it may find necessary or appropriate"). DOE must ensure its decisions are based on a complete record and it has authority to require "additional procedures" at any time. 10 C.F.R. §§ 590.310, 590.404. As DOE's announcement recognized, recent data raises serious doubts about whether new LNG exports are in the public interest.[31] It is within DOE's discretion to investigate further by updating its cumulative impact studies with the latest information.

1. DOE can set the schedule

Unlike NEPA, the Natural Gas Act provides DOE broad discretion in determining the correct procedures/process to carry out its obligations. *See Fort Pierce Util. Auth. of City of Fort Pierce v. Fed. Power Comm'n*, 526 F.2d 993, 999 (5th Cir. 1976) ("The courts have given expansive powers to the Commission in regard to its choice of methods of fulfilling its functions under the Act. As long as the Commission provides an adequate forum in which all interested parties may present their positions, the Commission has broad discretion in determining in what proceeding an issue will be decided.") (internal citations omitted); *Tenneco Oil Co. v. Fed. Power Comm'n*, 442 F.2d 489, 497 (5th Cir. 1971) ("The complexities of the problem demanded Commission flexibility and judgment, and the courts have traditionally construed the Act to give the Commission expansive powers in regard to its choice of methods for fulfilling its functions under the Act."). In fact, 15 U.S.C. § 717n(c)(1) expressly grants discretion to establish the schedule for reviewing LNG export applications. *See also* 15 U.S.C. § 717o. And here, DOE has

[31] *See, e.g.*, Unpacking Misconceptions (discussing 2023 data from the Energy Information Administration indicating that LNG exports increase domestic prices and global gas demand will peak this decade).

determined that the pause is necessary to make a rational and informed decision on the Natural Gas Act's central question: whether the pending applications are contrary to the public interest.

API claims that the Natural Gas Act's instruction to make a determination about LNG exports "upon application" requires DOE to act immediately, without any delay for review. But API ignores that DOE must evaluate whether applications are in the "public interest, 15 U.S.C. § 717b(a), DOE has discretion to establish the schedule, 15 U.S.C. § 717n(c)(1), and DOE may only issue authorizations "after completion and review of the record," 10 C.F.R. § 590.404. Here, the records in pending application proceedings were demonstrably incomplete; the general studies that DOE has historically relied upon are outdated so DOE can no longer rely on them. Moreover, DOE may institute "additional procedures," such as general studies—at any time. 10 C.F.R. § 590.310. For over a decade, DOE has consistently used the process of general studies to conduct the requisite cumulative impact review and efficiently collect comprehensive public comments[32]—and DOE has regularly relied on those studies as part of the record in each individual application proceeding.[33] DOE must postpone decisions on individual applications until it has a complete record, including this holistic review.

Insofar as API relies on the Natural Gas Act's instruction to move "expeditiously,"[34] DOE's announcement further that aim. The general studies streamline the process by enabling the efficient evaluation of issues that are common to each non-FTA application. As it has

[32] *See, e.g.*, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States*, 79 Fed. Reg. 32,260 (June 4, 2014) (describing lifecycle analysis of cumulative, lifecycle greenhouse gas impacts related to 25 then-pending applications for non-FTA exports); 80 Fed. Reg. 81,301 ("DOE/FE has explained that, in deciding whether to grant a non-FTA export application, it considers in its decisionmaking the cumulative impacts of the total volume of all final non-FTA export authorizations. DOE/FE has further stated that it will assess the cumulative impacts of each succeeding request for export authorization on the public interest with due regard to the effect on domestic natural gas supply and demand fundamentals.").

[33] *See, e.g.*, 79 Fed. Reg. at 32,260-61 ("The purpose of this Notice is to post the LCA GHG Report in the 25 proceedings, and to invite comments on the LCA GHG Report, as applied to the pending matters."); 80 Fed. Reg. 81,302 ("The purpose of this Notice is to enter the 2014 EIA LNG Export Study and the 2015 LNG Export Study in the administrative record of the 29 listed non-FTA export proceedings and to invite comments on these two studies, as applied to each proceeding.").

[34] API Request at 10 (citing 15 U.S.C. § 717n(c)(1)).

repeatedly acknowledged,[35] DOE must update these studies in order to have complete records, based on current circumstances, in pending application proceedings. And as noted, DOE has the discretion and obligation to do so.

2. DOE can consider climate

Finally, API's assertion that the pause gives climate change impacts an outsized role in the public interest evaluation entirely ignores that DOE highlighted the need to re-evaluate domestic gas supply and price impacts on American consumers, which are central to DOE's obligations under the Natural Gas Act.[36] DOE similarly identified the need to better understand implications for global strategic interests.[37] Either of these rationales, standing alone, would justify updated analysis and a pause in approving new exports.[38]

Regardless, climate change is plainly within the scope of DOE's obligation to consider the "public interest" under the Natural Gas Act.[39] The Supreme Court has recognized that "there

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[35] DOE Announcement; *see also, e.g.*, Policy Statement on Export Commencement Deadlines in Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25272-01, 25,277 (Apr. 26, 2023) [hereinafter "Extension Policy"] ("[N]ew DOE decisions regarding non-FTA exports . . . should be made on the basis of the latest market information and analytical approaches at the time of DOE's decision."); Order Denying Petition for Rulemaking at 25 ("DOE remains committed to conducting relevant economic and environmental analyses, including updating existing studies, as appropriate.").

[36] DOE Announcement (identifying "the affordability of energy and economic opportunities for all Americans; strengthening energy security here in the US and with our allies; and protecting Americans against climate change and winning the clean energy future" as justifications for the pause and updated studies); Unpacking Misconceptions ("We need to know what these expanded exports mean for available domestic consumption, for American industries, and household energy prices.").

[37] Unpacking Misconceptions ("Supply and demand are shifting rapidly at home and around the world. The U.S. should know how its resources are and will be utilized, and what the need will be as countries around the world commit to reducing emissions and their use of fossil fuels.").

[38] *W. Va. Pub. Servs. Comm'n*, 681 F. 2d at 855, 865 (discussing factors relevant to the Natural Gas Act "public interest" determination, including "the ultimate costs to the consumers," "the security of supply, effects on U. S. balance of payments, and national and regional needs, as well as costs").

[39] Cases determining the scope of other statutes are irrelevant here. *Contra* API Request at 12 (citing *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004); *Ctr. for Biological Diversity v. Dep't of Interior*, 563 F. 3d 466, 484– 86 (D.C. Cir. 2009)).

are undoubtedly other subsidiary purposes contained in" the Natural Gas Act, including authority to consider conservation and environmental questions. *Nat'l Ass'n for Advancement of Colored People v. Fed. Power Comm'n*, 425 U.S. 662, 670, 96 S. Ct. 1806, 1811–12 & n. 6 (1976). In a closely related context regarding FERC's approval of interstate gas pipelines, the D.C. Circuit has repeatedly affirmed that the Natural Gas Act and NEPA require analysis of reasonably foreseeable upstream and downstream greenhouse gas effects. *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) ("*Sabal Trail*"); *Food & Water Watch v. FERC*, 28 F.4th 277, 288-89 (D.C. Cir. 2022); *see also W. Virginia Pub. Servs. Comm'n v. U. S. Dep't of Energy*, 681 F.2d 847, 865 (D.C. Cir. 1982) (recognizing that there are a "broad range of factors besides the ultimate costs to the consumers" that must factor into the "public interest" analysis). These holdings apply with equal force to DOE's approval of LNG exports. *Vecinos para el Bienestar de la Comunidad Costera*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) (holding that climate change bears on analysis of the public interest under Natural Gas Act section 3). And DOE confirmed this in its denial of the petition for rulemaking last year.[40] Because it is well settled that climate change impacts are part of DOE's "public interest" inquiry under the Natural Gas Act, there are no non-delegation/major questions issues here.[41]

API also wrongly invokes the December 2020 categorical exclusion,[42] which was arbitrary, capricious, and contrary to law. Most egregiously, in promulgating the 2020 exclusion, DOE improperly excluded from NEPA review *all* impacts occurring upstream of the point of export, claiming that "the agency has no authority to prevent" them, citing *Sierra Club v. FERC,* 827 F.3d 36 (D.C. Cir. 2016) ("*Freeport I*").[43] This is the exact opposite of *Freeport I*'s explicit and central holding. *Freeport I* held that **FERC** had no authority to prevent these impacts,

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[40] Order Denying Petition for Rulemaking at 12.

[41] *See, e.g.*, *Alaska LNG Project LLC*, Order on Rehearing at 15, DOE/FE Docket No. 14-96-LNG, Order No. 3643-B (Apr. 15, 2021), https://www.energy.gov/sites/default/files/2021-04/ord3643b.pdf ("granting Sierra Club's Rehearing Request for the purpose of conducting two Alaska-specific environmental studies: (i) a life cycle analysis calculating the GHG emissions for LNG exported from Alaska and transported by vessel to markets in Asia and potentially in other regions, and (ii) an upstream study examining aspects of natural gas production on the North Slope of Alaska"). *Contra* API Request at 12.

[42] API Request at 13.

[43] 85 Fed. Reg. at 25,341; *accord* Final Rule, 85 Fed. Reg. 78,197, 78,198.

specifically because **DOE** had retained "exclusive" authority to do so.[44] Because DOE *has* such authority, the categorical exclusion was adopted unlawfully, cannot be relied upon here, and provides no evidence to suggest that all environmental effects occurring before the point of exports will be insignificant. And DOE has now admitted that the findings in the 2020 categorical exclusion are wrong; e.g., DOE can and must examine the upstream and downstream greenhouse gas impacts.[45] DOE should therefore reject API's attempt to invoke this categorical exclusion.[46]

e. DOE's Announcement Is Not Unfair to Commonwealth

Commonwealth complains that DOE's pause is unfair because the company submitted its application over four years ago. Per DOE policy, however, DOE put its consideration of the application on hold until FERC approved the project, in November 2022. *Commonwealth LNG, LLC*, Order Granting Authorization Under Section 3 of the Natural Gas Act, FERC Docket Docket Nos. CP19-502-000, CP19-502-001, 181 FERC ¶ 61,143 (Nov. 17, 2022). Shortly thereafter, DOE began expressing doubts about the continuing validity of older analyses. In its policy statement on extensions of LNG export commencement deadlines, DOE noted concerns that "public interest analysis supporting each non-FTA authorization" may become stale "as the natural gas market and supporting analyses continue to evolve." 88 Fed. Reg. 25272-01, 25,277 (Apr. 26, 2023). As part of this announcement, DOE also recognized that "regulatory overhang" resulting from projects that had received non-FTA export authorizations but failed to move forward was clouding its ability to accurately evaluate whether new applications, like Commonwealth's, would be in the public interest. And in June 2023, DOE expressed further concerns about its older general studies being outdated. *See, e.g.*, DOE/FE Order 3643-D at 51, Docket No. 14-96-LNG (June 14, 2023) ("It defies explanation how a report issued nine years ago—when the U.S. and global LNG market were far less developed—could provide factual support for Intervenors' arguments about global market demand for U.S. LNG today."). Thus,

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[44] 827 F.3d at 40-41, 46.

[45] *See, e.g.*, Unpacking Misconceptions ("It is imperative to know what . . . the CO2 and methane emissions related to the projects mean for the communities they operate in, where it's produced and inevitably used.").

[46] DOE should also rescind this unlawful categorical exclusion.

DOE's recognition that it needs to update its general studies should not have been a surprise to Commonwealth.

Nor does DOE's approval of Freeport LNG's application to increase the capacity of its existing facility (without new construction or facilities) demonstrate any unfairness to Commonwealth. *Contra* Commonwealth Application at 12-13. DOE's review is tied to the order in which *FERC* approves projects, so the order of applications to *DOE* isn't dispositive. FERC approved Freeport's application roughly 6 months before Commonwealth's.[47] And DOE issued its policy statement on extension requests—identifying major limitations with its ability to determine whether, based on current information, additional LNG exports are in the public interest—less than two months after approving Freeport's uprate application. Therefore, it is neither surprising nor unfair that DOE has determined it requires additional information before it can move forward with Commonwealth's application.

f. DOE Has Provided Sufficient Justification for the Pause.

Because DOE's announcement only represents interim steps within individual adjudications, DOE need not justify it. But even if such a justification is required, DOE has provided it. In addition to its announcement,[48] DOE provided multiple documents explaining the implications of and rationale for updating the studies and pausing approvals while those studies are pending.[49]

At the outset, DOE has repeatedly explained that it "must use the most complete, updated, and robust analysis possible."[50] This is consistent with DOE's recognition that its

[47] *See Freeport LNG Dev., L.P., et al.*, Order Amending Section 3 Authorization, FERC Docket No. CP21-470-000, 180 FERC ¶ 61,055 (July 29, 2022).

[48] DOE Announcement.

[49] *See, e.g.*, Unpacking Misconceptions; DOE/FECM, The Temporary Pause on Review of Pending Applications to Export Liquefied Natural Gas, https://www.energy.gov/sites/default/files/2024-02/The%20Temporary%20Pause%20on%20Review%20of%20Pending%20Applications%20to%20Export%20Liquefied%20Natural%20Gas_0.pdf [hereinafter "The Temporary Pause"].

[50] DOE Announcement; *see also, e.g.*, Extension Policy, 88 Fed. Reg. at 25,277 ("[N]ew DOE decisions regarding non-FTA exports . . . should be made on the basis of the latest market information and analytical approaches at the time of DOE's decision.").

public interest analyses "may become stale . . . as the natural gas market and supporting analyses continue to evolve."[51] While DOE has previously posited that seven years may be a threshold for staleness, it has never indicated that more frequent updates may be required.

DOE explained that it must update its analysis now because "a lot has changed" since 2018 and 2019 when the studies were last issued.[52] For example, LNG export volumes have drastically increased in recent years.[53] DOE "need[s] to know what these expanded exports mean for available domestic consumption, for American industries, and household energy prices."[54] Citing 2023 data from the Energy Information Administration, DOE further explained that "[u]pdating our analysis using the latest data will help mitigate risks of future decisions that could cause domestic consumers and manufacturers to face higher energy prices."[55] Separately, DOE highlighted "Russia's invasion of Ukraine and use of energy as a weapon to undermine European and global security" as new information requiring further analysis.[56] And DOE recognized that it needs to account for "an unprecedented [global] build-out of clean energy and increased climate commitments by our allies" as well as "the most recent International Energy Agency (IEA) reference scenario show[ing] global demand for natural gas peaking this decade."[57] Updating the studies is necessary to ensure that DOE has the "best information to fully understand and evaluate its effects on communities at home and examine the role of natural gas and LNG in a net zero economy."[58] Each of these developments is sufficient to justify updating DOE's general studies.

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[51] Extension Policy, 88 Fed. Reg. at 25,277.

[52] Unpacking Misconceptions.

[53] *Id.* (explaining that "U.S. LNG exports have more than tripled, making the United States the largest exporter of LNG" and DOE has "authorized additional volumes representing well over three times today's currently operating export capacity — in projects that are under construction or awaiting a final investment decision").

[54] *Id.*

[55] *Id.*

[56] The Temporary Pause.

[57] Unpacking Misconceptions.

[58] *Id.*

API's argument (at 15) that DOE's announcement arbitrarily reverses its 2023 denial of a petition for rulemaking fundamentally misunderstands both DOE's prior denial and its 2024 announcement. In denying the petition for rulemaking, DOE concluded that a rulemaking was not required because "[t]he best way for DOE to consider and apply the public interest standard to export authorization decisions is through the informal adjudication[]" framework. Order Denying Petition for Rulemaking at 24. DOE specifically emphasized the flexibility of that approach and its ability to adapt and incorporate new information:

> Precisely because the U.S. LNG market and related issues—including climate change considerations and global energy security—are dynamic, the LNG export program is best served by continuing to update the economic and environmental studies, analytical approaches, and public interest factors that DOE considers in an iterative fashion, based on developing facts and circumstances.

Id. at 28. Most relevant here, DOE noted that it "remains committed to conducting relevant economic and environmental analyses, including updating existing studies, as appropriate." *Id.* at 25. Far from reversing course, DOE's recent announcement is consistent with this approach. DOE is simply updating the studies, as expected.

DOE's announcement also falls far short of providing the other actions requested in the petition for rulemaking—most notably, providing notice and comment rulemaking or guidance revamping the legal framework it applies to LNG export applications.[59] In its January 2024 announcement, DOE made clear that it will continue to apply the same factors it has relied on for "more than a decade."[60] The petition also requested DOE to "articulate how DOE will monitor any approved export terminals to ensure that they continue to be in the public interest."[61] DOE's January 2024 announcement failed to address this issue, explicitly noting that the pause "will not affect already authorized

[59] *See* Sierra Club et al., Petition for Rulemaking Regarding Natural Gas Export Policy at 4 (Apr. 8, 2013), https://www.energy.gov/sites/default/files/2023-07/04.08.2013_Sierra%20Club%20Petition%20for%20Rulemaking%20Regarding%20Nat%20Gas%20Export%20Policy_0.pdf [hereinafter "2013 Rulemaking Petition"]

[60] DOE Announcement ("Consideration of these factors is not new: These are the same categories that DOE has considered when evaluating the public interest of LNG exports for more than a decade.").

[61] 2013 Rulemaking Petition at 4.

exports."[62] Nor did DOE's announcement address the petitioners' request for a programmatic environmental review under NEPA.[63] Thus, as much as we disagree with DOE's decision to deny that petition, its January 2024 announcement is entirely consistent with that denial.

g. Pausing LNG Export Approvals to Allow Time to Update DOE's General Studies Is Wise and the Need to Do So Is Well Supported.

In its "Unpacking Misconceptions Surrounding DOE's LNG Update," DOE has already considered API's policy arguments and rejected each one as a "myth."[64] For example, API's claim that the pause eliminates the alleged local economic benefits of LNG exports ignores that (1) "there will be no domestic jobs displaced" due to the pause,[65] and (2) recent evidence demonstrates LNG exports increase domestic prices, offsetting potential economic benefits.[66] API's claims about international relationships/geopolitical tools ignore that the U.S. already exports more than enough LNG to meet our allies needs.[67] And API's fanciful claim that LNG reduces global GHGs ignores the growing global clean energy transition and the inconsistency of any fossil fuels with global emission reduction targets.[68]

Finally, API's argument for a transparent and predictable process cuts the other way. Updating these studies is predictable: DOE has done this process multiple times before. DOE's announcement provides transparency. It was within DOE's discretion to simply select this course of action without notifying the public. But by providing notice to the public that the studies will

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[62] DOE Announcement.

[63] 2013 Rulemaking Petition at 19.

[64] Unpacking Misconceptions.

[65] *Id.*

[66] *Id.* ("This action is actually meant to best inform how we can avoid a situation that leads to higher prices at home.").

[67] *Id.* ("The Department is committed to ensuring our partners' energy security needs are met, and if needed, it can determine if exceptions should be made for immediate national security needs.").

[68] *Id.* ("Ultimately, this action is a recognition that LNG exports result in greenhouse gas emissions – CO2 and methane – and we must have the best information to fully understand and evaluate its effects on communities at home and examine the role of natural gas and LNG in a net zero economy.").

be coming, DOE has provided interested parties clarity about what to expect from DOE's process.

IV. Conclusion

For these reasons, DOE should grant the Environmental Advocate's motion for leave to intervene out of time, permit the Environmental Advocates to answer Commonwealth's request for rehearing, and reject Commonwealth's request, either as procedurally improper or on the merits.

Signed,

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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

SIERRA CLUB CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I, Louisa Eberle, hereby certify that I am a duly authorized representative of the Sierra Club, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Sierra Club, the foregoing documents and in the above captioned proceeding.

Executed at Denver, CO on March 12, 2024

/s/ Louisa Eberle
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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

SIERRA CLUB VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), I, Louisa Eberle, hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Denver, CO on March 12, 2024

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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 590.107, I, Louisa Eberle, hereby certify that I caused the above documents to be served on the persons included on the official service list for this docket, as provided by DOE/FE, on March 12, 2024.

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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

PUBLIC CITIZEN CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I hereby certify that I am a duly authorized representative of Public Citizen, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of Public Citizen, the foregoing documents and in the above captioned proceeding.

Executed at Washington, DC on March 12, 2024

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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

PUBLIC CITIZEN VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), I hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Washington, DC on March 12, 2024

/s/ Tyson Slocum
Tyson Slocum, Energy Program Director
Public Citizen, Inc.
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tslocum@citizen.org
Representative for Public Citizen

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

CENTER FOR BIOLOGICAL DIVERSITY CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I hereby certify that I am a duly authorized representative of the Center for Biological Diversity, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of the Center for Biological Diversity, the foregoing documents and in the above captioned proceeding.

Executed at Washington, DC on March 12, 2024

/s/ Jason Rylander
Jason C. Rylander
Legal Director, Climate Law Institute
Center For Biological Diversity
202-744-2244
jrylander@biologicaldiversity.org
Attorney for Center for Biological Diversity

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

CENTER FOR BIOLOGICAL DIVERSITY VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), I hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Washington, DC on March 12, 2024

/s/ Jason Rylander
Jason C. Rylander
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Center For Biological Diversity
202-744-2244
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Attorney for Center for Biological Diversity

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
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IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

NRDC CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I hereby certify that I am a duly authorized representative of the NRDC, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy and Carbon Management, on behalf of NRDC, the foregoing documents and in the above captioned proceeding.

Executed at Washington, DC on March 12, 2024

/s Caroline Reiser
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(202) 717-8341
Attorney for NRDC

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	
Commonwealth LNG, LLC	**)**	**Docket No. 19-134-LNG**
	)	

NRDC VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), I hereby verify under penalty of perjury that I am authorized to execute this verification, that I have read the foregoing document, and that the facts stated therein are true and correct to the best of my knowledge.

Executed at Washington, DC on March 12, 2024

/s Caroline Reiser
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