

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

OIL & GAS WORKERS
ASSOCIATION,

Plaintiff,

v.

JOSEPH R. BIDEN, JR., in his
official capacity as President of
the United States; THE U.S.
DEPARTMENT OF ENERGY;
JENNIFER GRANHOLM, in her
official capacity as Secretary of
Energy; DAVID M. TURK, in his
official capacity as Deputy
Secretary of Energy; GERI
RICHMOND, in her official
capacity as Under Secretary for
Science and Innovation; BRAD
CRABTREE, in his official
capacity as Assistant Secretary,
Office of Fossil Energy and
Carbon Management; AMY
SWEENEY, in her official
capacity as Director, Office of
Fossil Energy and Carbon
Management,

Defendants.

Civil Action No. 24-646

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a constitutional challenge to President Biden and the Department of Energy’s (“DOE” or “Department”) decision to stop all new approvals of Liquid Natural Gas (“LNG”) exports to non-free trade agreement countries effective immediately—what has been termed the “LNG Export Ban.”¹ This ban ignores legal and regulatory requirements, destabilizes Plaintiff’s industry, and undermines our constitutional framework.

2. This LNG Export Ban is a complete 180-degree change from the agency’s prior position. In July 2023, the Department denied an environmental coalition’s petition asking the agency to cease approving LNG export licenses.² The DOE issued a 35-page order denying the environmental coalition’s petition that asked the DOE to “[g]rant no more licenses for LNG export . . . until it has completed a final revision of its policy guidelines . . . on LNG export.” *Id.* at 9. Instead, the

¹ See R. Liao & S. Stapczynski, Biden’s LNG export ban stalls projects and risks U.S. market share, *World Oil* (Mar. 15, 2024), <https://perma.cc/ZA5F-CPWD>, last visited May 2, 2024.

² DOE, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas at 27 (July 18, 2023), <https://perma.cc/TB8Y-56TV> (“July 2023 Decision”), last visited May 2, 2024.

Department reminded the coalition that “there is no factual or legal basis” for “halt[ing] approval of pending applications to export LNG.” *Id.* at 27.

3. Only six months later, however, the Biden Administration acts as though its July 2023 Decision never happened. On January 26, 2024, the President³ and the DOE⁴ proclaimed by webpage-edict that they will no longer approve any LNG Export applications. This change in position flagrantly disregards: the Natural Gas Act’s mandate to approve LNG Export applications; the decades of DOE policy to review LNG Export applications on a case-by-case basis; the Constitutional separation of powers prohibiting the Executive branch from creating law; the Administrative Procedure Act’s “APA” mandatory notice and comment rule-making procedure; and oil and gas industry’s reliance on exports, including the over 47,000 members of Plaintiff’s association that rely on the existence of a LNG export industry for employment.

³ White House, Statement from President Joe Biden on Decision to Pause Pending Approvals of Liquefied Natural Gas Exports (Jan. 26, 2024), <https://perma.cc/CF99-5V9P>, *last visited* May 9, 2024.

⁴ DOE, DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies (Jan. 26, 2024), <https://perma.cc/LF5T-T9R6>, *last visited* May 9, 2024.

4. Political motivations cannot supersede the Natural Gas Act’s unambiguous mandate that the Secretary “shall issue” an export license “unless, after opportunity for hearing, [the Secretary] finds that the proposed exportation or importation will not be consistent with the public interest.” 15 U.S.C. § 717b(a). Nor can they circumvent the Administrative Procedure Act’s mandatory rulemaking procedures.

5. The Biden Administration cannot be permitted to continue to disregard the Constitution and Federal law. Therefore, this Court should grant the relief requested by Plaintiff, and its members, who are currently being harmed by the unlawful LNG Export Ban.

JURISDICTION AND VENUE

6. Plaintiff seeks declaratory (28 U.S.C. § 2201, 5 U.S.C. § 706) and injunctive relief (28 U.S.C. § 2202, 5 U.S.C. § 705) that the President’s and the DOE’s proclamations pausing LNG exports to non-free trade agreement countries violates the Natural Gas Act (15 U.S.C. § 717b(a)), separation of powers (U.S. Const. art. I, § 1), foreign commerce clause (U.S. Const. art. I, § 8, cl.3), Administrative Procedures Act rulemaking process (5 U.S.C. §§ 706 and 553); and that such action is not authorized by the Natural Gas Act (5 U.S.C. § 706), is

ultra vires (5 U.S.C. § 702), is arbitrary and capricious (5 U.S.C. § 706), and unreasonably delays agency actions (5 U.S.C. § 706).

7. Plaintiff is also seeking to hold unlawful and set aside the President's and the DOE's proclamations pausing LNG exports to non-free trade agreement countries (5 U.S.C. § 706). The federal government has waived sovereign immunity to this action under 5 U.S.C. § 702.

8. This Court has jurisdiction over these federal claims against the federal Defendants (28 U.S.C. §§ 1346, 1361) under 28 U.S.C. § 1331 (federal question), and 5 U.S.C. § 702 (judicial review of agency action – rulemaking).

9. The LNG Export Ban is a final agency action that is judicially reviewable under the Administrative Procedure Act. 5 U.S.C. §§ 704, 706.

10. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because (1) Defendants are United States agencies or officers sued in their official capacities, (2) Plaintiff's members work and reside in the Western District of Louisiana in Lake Charles, LA, (3) no real property is involved, and (4) a substantial part of the events or omissions giving rise to the Complaint occurs within this judicial district.

PARTIES

11. Plaintiff Oil and Gas Workers Association (“OGWA”) is a grassroots, independent, nonpartisan 501(c)(6) nonprofit trade association founded in 2015 by a worker in the oil and gas industry. OGWA is dedicated to securing, growing, and sustaining American oil and gas jobs, representing the interests of all individuals working in the U.S. oil and gas industry, as well as those whose jobs are supported by this vital sector. Operating nationwide, OGWA advocates for the oil and gas workforce. It engages with lobbyists, attorneys, consultants, and educators to enhance the industry’s public image and represent American workers in legislative and regulatory matters affecting their jobs. OGWA members work and reside in the Western District of Louisiana including in Lake Charles, LA.

12. Defendants are responsible for promulgating or implementing the LNG Export Ban.

13. Defendant Joseph R. Biden Jr. is the President of the United States. He is sued in his official capacity.

14. Defendant United States Department of Energy is an executive department of the United States government headquartered

in Washington, DC, and is statutorily responsible for administering the LNG Export program.

15. Defendant Jennifer Granholm is the Secretary of the Department of Energy. She administers the LNG export program.

16. Defendant Donald M. Turk is the Deputy Secretary of the Department of Energy. He has a role in promulgating and implementing the LNG Export Ban. He is sued in his official capacity.

17. Defendant Geri Richmond is the Under Secretary for Science and Innovation at the Department of Energy. Her office is responsible for overseeing the Office of Fossil Energy and Carbon Management. She is sued in her official capacity.

18. Defendant Brad Crabtree is the Assistant Secretary of Energy, Office of Fossil Energy and Carbon Management at the Department of Energy. His office is responsible for administering the LNG export program. He is sued in his official capacity.

19. Defendant Amy Sweeney is the Director of the Office of Fossil Energy and Carbon Management, a component of the Department of Energy. Her office is responsible for processing LNG export applications. She is sued in her official capacity.

BACKGROUND

I. The Natural Gas Act Presumes Exports Are in the Public Interest.

20. The Natural Gas Act was enacted by Congress in 1938, for the “principal purpose” of “encourag[ing] the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.” *NAACP v. Fed. Power Comm’n*, 425 U.S. 662, 669-70 (1976).

21. Section 717b(a) of the Natural Gas Act requires entities seeking to export natural gas to a foreign country to apply for and “secure[] an order of the [Secretary of the Department of Energy] authorizing it to do so.” 15 U.S.C. § 717b(a). It further requires that the DOE “shall issue such order upon application, unless, after opportunity for hearing, [the Secretary] finds that the proposed exportation or importation will not be consistent with the public interest.” *Id.*

22. The Natural Gas Act also provides that “the exportation of natural gas to a nation with which there is in effect a free trade agreement . . . shall be deemed to be consistent with the public interest, and applications for such . . . exportation shall be granted without modification or delay.” 15 U.S.C. § 717b(c). This provision expresses Congress’s policy determination that allowing natural gas exports to

free trade agreement nations is always in the public's interest and as such must be granted expeditiously. Whereas an application to export natural gas to any other nation, that does not have a free trade agreement, is presumably in the public's interest.

23. The Natural Gas Act presumes exportation is almost always in the public's interest and therefore mandates approval of LNG exports, unless the DOE affirmatively finds that it would not be. If Congress intended otherwise, it could have expressly required otherwise, as it did for construction of new natural gas pipelines. Converse to an LNG export application, approval to construct a new natural gas pipeline will only be issued "if it is found that . . . the proposed service . . . is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied." 15 U.S.C. § 717f(e).

24. The plain statutory language makes clear that applications for LNG export to a free trade agreement country⁵ must be granted and applications for LNG export to a non-free trade agreement country must

⁵The United States currently has LNG free trade agreements with 18 countries. *See* Stabilis GDS, Inc., DOE/FECM Order No. 4863, at 2 n.4 (Aug. 22, 2022).

be granted unless the Secretary affirmatively finds that granting the application is inconsistent with the public interest. Accordingly, the DOE and appellate courts “ha[ve] consistently interpreted” § 717b(a) “as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.” July 2023 Decision at 9-10.

25. Further, nothing in the Natural Gas Act grants the President, the DOE, any federal officer, or any other agency the authority to halt, pause, or otherwise impede the LNG export approval process under § 717b(a).

II. The Department Considers LNG Export Approval on a Case-by-Case Basis.

26. For forty years, the Department’s adjudications have followed the principles stated in its 1984 Policy Guidelines.⁶ The “stated goals” of the 1984 Policy Guidelines are to “minimize federal control and involvement in energy markets” and “promote a balanced and mixed energy resource system.” *Id.* As recently as the July 2023 Decision, the Department reaffirmed that for non-free trade agreement

⁶ See DOE, New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984) (“1984 Policy Guidelines”).

authorizations the Department “continues to subscribe to the principle set forth in [the] 1984 Policy Guidelines that, under most circumstances, the market is the most efficient means of allocating natural gas supplies.”⁷

27. In implementing the Natural Gas Act the DOE adopted “a regulatory approach to developing LNG export policy based on case-by-case adjudication of export applications” *Id.* at 17. This approach gives the Department flexibility “to take into account new or different facts, the latest supply and demand data, technical analyses, developments in energy security in the United States and abroad, changes in [National Environmental Policy Act] guidance, and other considerations that bear on the public interest as the U.S. and global LNG export markets rapidly develop.” *Id.*

28. “For at least the last decade, DOE’s review has included (and continues to include) an evaluation of: (i) the domestic need for the LNG proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with the DOE’s policy of promoting market

⁷ See July 2023 Decision at 11 (quotation and citation omitted).

competition, and (iv) any other factors bearing on the public interest as determined by the DOE— which, to date, has included a variety of economic, environmental, and international considerations.” *Id.* at 12.

29. Also, the case-by-case approach gives the Department discretion to consider current geopolitical events as they develop.⁸

III. The Department has Repeatedly Concluded that LNG Exports Are In the Public Interest.

30. For decades, the Department, consistent with the Natural Gas Act and multiple studies, has repeatedly affirmatively found that LNG exports are in the public interest.⁹ In fact, the Department has *never* denied an LNG export application on public-interest grounds.

31. For example, in 2013, the Department concluded that the proposed exports “are likely to yield net economic benefits to the United States,” will diversify global LNG markets and international supply options, and will increase energy security for the United States and its

⁸ See Magnolia LNG LLC, DOE/FE Order No. 3909- C (issued Apr. 27, 2022)(cited “Russian invasion of Ukraine” as a justification for authorizing additional exports).

⁹ See, e.g., Phillips Alaska Natural Gas Corp., et al., DOE/FE Order No. 1473, Docket No. 96-99-LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska (Apr. 2, 1999), at 57; Yukon Pacific Corporation, DOE Order No. 350, 1 FE ¶ 70,259 (1989), denied on reh’g, 1 FE ¶ 70,303 (1990), at 17-22.

allies. Lake Charles Exports, LLC, DOE/FE Order No. 3324 (Aug. 7, 2013), at 6.

32. In 2016, the Department found that LNG exports served the public interest because supply exceeded domestic demand and provided substantial economic benefits by reducing the U.S. trade deficit and increasing tax revenues. Lake Charles Exports, LLC, DOE/FE Order No. 3324-A (Jul. 29, 2016), at 121-22.

33. In 2017, the Department found that LNG exports would not impact the domestic LNG supply, would produce net economic benefits, improve international LNG markets and the U.S. trade balance. Lake Charles 15 Exports, LLC, DOE/FE Order No. 4011 (Jun. 29, 2017), at 25; Lake Charles LNG Export Co., LLC, DOE/FE Order No. 4010, (Jun. 29, 2017), at 26.

34. In 2023, the Department confirmed that underlying assumptions from earlier studies “remain consistent with more recent assessments of current and future natural gas supply, demand, and prices,” including the net economic benefits. *See* Freeport LNG Expansion, DOE/FECM Order No. 4961, at 56, 70. It also found that the Energy Information Administration’s projections indicate that the

market can tolerate an increase in exports of natural gas, which will “improve the United States’ ties with its allies and trade partners and make a positive contribution to the United States’ trade balance.” *Id.* at 61. In considering environmental effects, such as greenhouse gases, the Department concluded that “U.S. LNG exports for power production in European and Asian markets will not increase global [greenhouse gas] emissions,” and therefore did not undercut the presumption that LNG exports are in the public interest. *See id.* at 20-21.

35. Since the Obama Administration, the Department “has studied the domestic benefits of LNG exports under multiple presidential administrations . . . and has determined that as U.S. LNG exports increase, domestic production increases to meet global demand.”¹⁰ In fact, based on its own studies, the Department found that “LNG exports could add between \$50-73 billion to the U.S. economy by 2040, and between 220,000 and 453,000 American jobs by 2040.” *Id.*

¹⁰ Letter from Majority Staff to Members of the Subcommittee on Energy, Climate, and Grid Security, U.S. H. of Reps. (Feb. 4, 2024), <https://perma.cc/3U2Y-PGW8>, at 2 (“Subcommittee Letter”), *last visited* May 6, 2024.

36. In 2015, the Department released an export study concluding that an increase in LNG exports increases U.S. gross domestic product by billions of dollars.¹¹

37. In 2018, the Department's export study found that increasing U.S. LNG exports leads to only small increases in U.S. natural gas prices, increases in domestic production, and the increase in exports improve the U.S. trade balance and gross domestic product. 83 Fed. Reg. 67251, 67260, 67269, 67272 (Dec. 28, 2018).

38. The Department's expert studies also analyzed the environmental effects of natural gas production and LNG exports and found that the "U.S. LNG production and exports are the cleanest in the world."¹² Also, "the use of U.S. LNG exports for power production in

¹¹ DOE, The Macroeconomic Impact of Increasing U.S. LNG Exports, conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics on behalf of DOE 8 (Oct. 29, 2015), at 8, <https://perma.cc/ZRH2-X3CX>, last visited May 6, 2024.

¹² Subcommittee Letter, *supra* at 2 (citing Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 Fed. Reg. 48132 (Aug. 15, 2014); Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States, 79 Fed. Reg. 32260 (June 4, 2014); 2019 Update to Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States, 84 Fed. Reg. 49278 (Sep. 19, 2019)).

European and Asian markets will not increase [green-house gas] emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production,” and that exports may actually “decrease global [greenhouse gas] emissions.”¹³

39. The Energy Information Administration’s annual reports confirm these findings. In 2023, the Energy Information Administration found that “[a]cross all cases, domestic production outpaces domestic consumption” and that “exports to satisfy growing international demand for natural gas” can “encourage growth in domestic natural gas production.”¹⁴ It also found that “[a] significant portion of production growth is due to [LNG] export demand, which drives the overall increase in natural gas exports.” *Id.*

IV. In July 2023, the Department Denies a Rulemaking Petition and Reaffirms the LNG Export Approval Process.

¹³ DOE, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update—Response to Comments, 85 Fed. Reg. 72-02, 85-86 (Jan. 2, 2020); *see also* Freeport LNG Expansion, L.P., et al., DOE/FECM Order No. 4961, at 21 (relying on 2019 Update).

¹⁴ Annual Energy Outlook 2023, U.S. Energy Info. Admin., at 27 (Mar. 16, 2023), <https://perma.cc/MPF4-W2CZ>, *last visited* May 6, 2024.

40. In July 2023, the Department issued an order formally denying a long-pending rulemaking petition that a coalition of environmental organizations had submitted more than a decade earlier. July 2023 Decision. The coalition had asked the Department to update the 1984 Policy Guidelines for LNG export applications to non-free trade agreement countries. *Id.* at 1.

41. The rulemaking petition urged the Department to update the 1984 Policy Guidelines claiming that they were are out of date. *Id.* at 2. The coalition argued for the Department to change its review of LNG export application from the case-by-case approach to broad generally applicable rules. *Id.* at 8. Also, the petition contended that, in the public-interest analysis, the Department should take into consideration “[t]he ‘net climate and environmental impact’ of using LNG given its life-cycle emissions of greenhouse gases (GHGs), which may put the public at risk.” *Id.* at 7.

42. Specifically, the petition asked the Department to (1) stop granting LNG export licenses; (2) develop new policy guidelines; and (3) conduct a programmatic Environmental Impact Statement. *Id.* at 9.

43. On July 18, 2023, the Department rejected those requests in a 35-page order denying the rulemaking petition.

44. The Department rejected the coalition’s arguments because, among other reasons, the Department, “as affirmed by the D.C. Circuit[,] . . . has consistently interpreted [§ 717b(a)] as creating a rebuttable presumption that a proposed export of natural gas is in the public interest,” and the Department’s long-standing practice of case-by-case adjudication was superior to make these determinations. July 2023 Decision at 10, 17.

45. The Department reiterated its repeated rejection of “the same arguments presented in the Rulemaking Petition” more than ten years before in its Freeport order and in numerous non-free trade agreement export proceedings in the intervening years.¹⁵

¹⁵ *Id.* at 19-20 (discussing Freeport LNG Expansion L.P., et al., DOE/FE Order No. 3282, Docket No. 10-161-LNG, Order Conditionally Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations (May 17, 2013), at 108-09; Freeport LNG Expansion, L.P., et al., DOE/FECM Order No. 4961, at 55; and Sabine Pass Liquefaction, LLC, DOE/FECM Order No. 4800, Docket No. 19-125-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Mar. 16, 2022), at 45–46).

46. The Department resoundingly rejected the coalition's request to cease its review of LNG export applications for five reasons.

47. One, "[t]he best way for [it] to consider and apply the public interest standard to export authorization decisions is through the informal adjudications with which [the Department] has significant experience and that the D.C. Circuit has upheld." *Id.* at 24.

48. Two, under most circumstances adherence to the 1984 Policy Guidelines of minimizing federal involvement and allowing the market to dictate LNG supplies was the most efficient way to conduct its public interest analysis. *Id.* at 25.

49. Three, the Department already "consider[s] a variety of economic and environmental impacts associated with the export of U.S. LNG," through its case-by-case adjudications, which rely on "studies (and study updates) issued through extensive public proceedings in which some Petitioners submitted comments for [the Department's] review." *Id.*

50. Four, individual adjudication is superior to rule-making because it allows intervention and creates a more complete, thorough, and nuanced administrative record. *Id.* at 25-26.

51. Five, case-by-case adjudication still allows for consideration of long-term effects of LNG exports. *Id.* at 26-27. Thus, the Department concluded that “there is no factual or legal basis” for it “to halt approval of pending applications to export LNG to non-[free trade agreement] countries.” *Id.* at 27.

52. In conclusion, the Department reiterated that:

[The Department] has discretion under [Natural Gas Act] section 3(a) [15 U.S.C. § 717b(a)] and the APA to proceed by rulemaking or adjudication in implementing the LNG export regulatory program. Further, [the Department’s] Office of Fossil Energy and Carbon Management has demonstrated that it has a well-functioning adjudicatory process for evaluating applications to export LNG to non-[free trade agreement] countries under [§ 717b(a)], which it has implemented together with a variety of regulatory actions and technical analyses in the 10 years since the Rulemaking Petition was filed. This approach is consistent with applicable legal principles, gives the public and interested stakeholders many opportunities to provide input and participate, and allows [the Department] the flexibility to adapt to changing economic and environmental circumstances. 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 [the Department] considers in an iterative fashion, based on developing facts and circumstances.

Id. at 27-28.

V. In January 2024, the Department Reversed Course and Banned LNG Export Applications.

53. On January 26, 2024, President Biden declared that his “Administration is announcing today a temporary pause on pending decisions of Liquefied Natural Gas exports,” effectively undoing the decades-long case-by-case-approach, and disregarding the July 2023 Decision and the 1984 Policy Guidelines.¹⁶

54. That same day, the Department of Energy announced “that it will initiate a process to update the assessments used to inform whether additional liquified natural gas (LNG) export authorization requests to non-free trade agreement countries are in the public interest.”¹⁷ Defendant Secretary of Energy stated, “This practical action

¹⁶ White House, Statement from President Joe Biden on Decision to Pause Pending Approvals of Liquefied Natural Gas Exports (Jan. 26, 2024), <https://perma.cc/CF99-5V9P>, *last visited* May 6, 2024.

¹⁷ See DOE, DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies (Jan. 26, 2024), <https://perma.cc/LF5T-T9R6>, *last visited* May 6, 2024.

will ensure that DOE remains a responsible actor using the most up-to-date economic and environmental analyses.” *Id.* Yet the very next sentence admitted that “[c]onsideration of these factors is not new: [t]hese are the same categories that DOE has considered when evaluating the public interest of LNG exports for more than a decade.” *Id.*

55. The Department did not make these declarations in response to a change in policy enacted by Congress or through the promulgation of a new rule under the APA.

56. And these declarations do not acknowledge: the Natural Gas Act’s presumption that LNG exports are almost always in the public’s interest; the 1984 Policy Guidelines requiring minimal federal intervention; the longstanding case-by-case adjudication policy; the July 2023 Decision rejecting the idea of stopping all LNG export approvals because it is not legally viable; or the numerous expert studies, including ones done by the DOE, concluding that LNG exports are in the public interest and do not increase greenhouse gas emissions.

57. That same day, the White House posted a “fact sheet” and premised its announcement by stating that “climate change is the

existential threat of our time,” and as such the Administration was “announcing a temporary pause on pending decision on exports of Liquefied Natural Gas (LNG) to non-FTA countries until the Department of Energy can update the underlying analyses for authorizations.”¹⁸ It went on to argue that the “current economic and environmental analyses DOE uses to underpin its LNG export authorizations are roughly five years old and no longer adequately account for considerations like potential energy cost increases for American consumers and manufacturers beyond current authorizations or the latest assessment of the impact of greenhouse gas emissions.” *Id.*

58. This Administration’s departure from the Natural Gas Act’s requirements and its agency’s long-standing policies were politically motivated to garner support and voters in an election year. As evidenced by the White House’s posting the very next day of 23 pages of congratulatory messages from environmentalist groups around the country, including many of the same groups who were parties to the

¹⁸ White House, Fact Sheet: Biden-Harris Administration Announces Temporary Pause on Pending Approvals of Liquefied Natural Gas Exports (Jan. 26, 2024), <https://perma.cc/6YNN-GJB9>, last visited May 6, 2024.

July 2023 rulemaking denial.¹⁹ As reported by the media, climate activists celebrated the Administration change in position as a victory. “Charities controlled by members of the Rockefeller family and billionaire donors were key funders of a successful campaign to pressure President Biden to pause new approvals of liquefied natural gas exports from the U.S.”²⁰

59. The Administration admitted that the LNG Export Ban stems in part from international pressure to follow a global agenda opposed to fossil fuels, stating: “Just a few weeks ago, we were all at a U.N. conference where the globe decided that we needed to transition

¹⁹ White House, What They are Saying: Leaders Praise Biden-Harris Administration Pause on Pending Decisions of Liquefied Natural Gas Exports (Jan. 27, 2024), <https://perma.cc/KMP9-P8FC>, *last visited* May 6, 2024.

²⁰ B. Morenne & A. Restuccia, How the Rockefellers and Billionaire Donors Pressured Biden on LNG Exports, Wall St. J. (Feb. 8, 2024), <https://www.wsj.com/us-news/climate-environment/how-the-rockefellers-and-billionaire-donors-pressured-biden-on-lng-exports-c1bf0ff8>, *last visited* May 6, 2024; Coral Davenport, White House Said to Delay Decision on Enormous Natural Gas Export Terminal, N.Y. Times (Jan. 24, 2024); Mark Ruffalo, X (Jan. 26, 2024), <https://perma.cc/3BUH-BZ4K>, *last visited* May 6, 2024.

away from fossil fuels,” and that the next step is to “eventually end[] LNG exports.”²¹

60. The LNG Export Ban has no end date, but is predicted to last fifteen months or longer.²²

61. The Biden Administration acknowledged that addressing the concerns of young climate-focused voters was at least partially responsible for the Biden Administration’s decision to ban LNG exports.²³ When addressing the LNG Export Ban the White House climate adviser stated, “young people have been a central part of the coalition that helped the [P]resident imagine this climate agenda.”²⁴

²¹ NPR, Federal Approval is delayed for some pending liquefied natural gas projects (Jan. 26, 2024), <https://perma.cc/G34Q-CSV5>, last visited May 6, 2024 (interview with White House National Climate Advisor Ali Zaidi).

²² See Ben Lefebvre, Biden reins in gas exports that have raised both US prestige and climate fears, POLITICO (Jan. 26, 2024), <https://perma.cc/G5CU-V3AY>, last visited May 6, 2024 (noting “a person familiar with the plan” said the Department’s review of environmental impacts “could take up to 15 months to finish”).

²³ R. Rapier, How An American LNG Export Pause Could Increase Global Carbon Emissions, Forbes (Jan. 29, 2024), <https://perma.cc/3WQR-84HK>, last visited May 6, 2024.

²⁴ Z. Budryk, White House official cites young, climate-focused voters as key Biden constituency after LNG announcement, The Hill, <https://thehill.com/policy/energy-environment/4431868-white-house-official-cites-young-climate-focused-voters-key-biden-constituency-natural-gas-pause/>, last visited May 14, 2024.

62. Other reporting claims that, John Podesta, Senior Advisor to the Biden Administration is an architect of the LNG Export Ban and would benefit Podesta's brother who is a lobbyist for foreign interests—including Russian LNG oligarchs—who stand to benefit significantly from the Ban.²⁵

63. To date, the Administration has not published anything in the Federal Register that explains, justifies, or even relates to its LNG Export Ban. It has not opened a rulemaking docket, nor has it called for public comment.

VI. The LNG Export Ban Harms Plaintiff's Members.

64. The Biden administration's LNG Export Ban initiated on January 26, 2024, threatens severe harm to OGWA's members. This ban, which halts all pending and new approvals of LNG exports to non-free trade agreement countries, undermines the stability and growth of the oil and gas industry—directly impacting the workers OGWA represents.

²⁵ See A. Goodman, John Podesta Was Behind Biden's Decision To Pause Natural Gas Exports. His Lobbyist Brother Stands To Benefit, Wash. Free Beacon (Feb. 15, 2024), <https://perma.cc/P3JW-AZSA>, last visited May 6, 2024.

65. By abruptly discontinuing the approval process for LNG exports, the administration's policy imposes substantial operational disruptions and financial losses on companies employing OGWA's over 47,000 members nationwide. These companies are now forced to navigate an uncertain regulatory environment, potentially leading to job losses and reduced investment in the oil and gas sector, thereby endangering the livelihoods of OGWA's members.

66. At least one OWGA member is employed in the LNG export industry that is directly injured by the LNG Export Ban. Invalidating the LNG Export Ban is germane to OGWA's purpose of securing, growing, and sustaining American oil and gas jobs. Given the nationwide impact of the LNG Export Ban on the entire LNG industry, all OGWA members are affected by the ban. Neither the purely legal claims, nor the declaratory or injunctive relief requested, require a fact-specific inquiry that would require individual member participation.

67. The injuries that OGWA and its members will suffer due to the LNG Export Ban are substantial and ongoing. These include, but are not limited to, loss of market opportunities, increased operational costs, and significant disruptions in strategic planning and investment.

The ban not only threatens the employment of those in the oil and gas industry but also violates established legal norms and statutory mandates which have historically supported the industry's growth and sustainability.

CLAIMS FOR RELIEF

COUNT I

The LNG Export Ban Is Contrary to Law (5 U.S.C. § 706; 15 U.S.C. § 717b(a))

68. Plaintiff repeats and incorporates by reference each of the Complaint's allegations stated above.

69. The LNG Export Ban is a final agency action. It marks the consummation of the agency's decision-making process because it conclusively decides that all new LNG export applications will not be considered, for an undisclosed amount of time, until the Department completes updates to unidentified economic and environmental analyses.

70. Because of this action, LNG entities cannot even apply for consideration. Before the LNG Export Ban, entities were entitled to have their applications considered by the Secretary and presumably

granted unless the Secretary affirmatively found that it was not in the public's interest.

71. Under the APA, a court must “hold unlawful and set aside agency action” that is “not in accordance with law” or is “in excess of statutory . . . authority[] or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

72. By prohibiting consideration of all new LNG export applications, the LNG Export Ban violates the Natural Gas Act's mandate that the Secretary “shall issue such order upon application, unless, after opportunity for hearing, [the Secretary] finds that the proposed exportation or importation will not be consistent with the public interest.” 15 U.S.C. § 717b(a).

73. The Natural Gas Act does not give the Secretary discretion to decline to even consider applications. Instead, the Secretary must consider an LNG export application and grant it unless there is an affirmative finding that granting the application is not in the public interest.

74. The LNG Export Ban’s blanket prohibition on considering all future applications, for an indefinite period of time, violates the Natural Gas Act’s unambiguous command.

COUNT II

The LNG Export Ban Is Unconstitutional (Separation of Powers and Foreign Commerce Clause) (U.S. Const. art. I, §§ 1, 8, cl. 3; 5 U.S.C. § 706)

75. Plaintiff repeats and incorporates by reference each of the Complaint’s allegations stated above.

76. “All legislative Powers,” including the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,” is vested with Congress U.S. Const. art. I, §§ 1, 8, cl. 3 (emphases added).

77. The LNG Export Ban regulates foreign commerce by prohibiting all new LNG export approvals to non-free trade agreement countries.

78. Congress enjoys this power exclusively. Defendants lack the authority to create law or regulate foreign commerce without congressional authorization. Therefore, the LNG Export Ban violates Article I of the Constitution.

79. This claim is brought under the APA and under the *Larson* doctrine.

COUNT III
The LNG Export Ban Violates the APA’s Notice-and-Comment Requirement
(5 U.S.C. § 706)

80. Plaintiff repeats and incorporates by reference each of the Complaint’s allegations stated above.

81. A “reviewing court shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

82. The purpose of the notice-and-comment rulemaking is to give the public the “opportunity to participate in the rule making through submission of written data, views, or arguments” 5 U.S.C. § 553(c).

83. This process gives the agency the opportunity to avoid errors and make a more informed decision by receiving different perspectives, data, analyses, rather than making a rule in a bureaucratic vacuum.

84. A foundational premise of administrative law is to provide due process protections to the public when the unelected agencies make

decisions, through adjudication or rulemaking, that have the force and effect of law and affect the public's rights and obligations.

85. The LNG Export Ban is a not an internal DOE policy, practice, or procedure. Rather it is a substantive, binding agency action affecting the public's rights and obligations.

86. The LNG Export Ban does not give the Secretary discretion to grant export applications unless it would contravene the public interest.

87. No exceptions to the notice-and-comment requirement apply to the LNG Export Ban.

88. No good cause exists for failure to undertake notice-and-comment on the LNG Export Ban. In fact, the Department does not even rely on the good-cause exception, which waives any good-cause-exception argument.

89. Nonetheless, any good-cause argument would fail because no emergency situation exists, and a delay would not result in serious harm.

90. There is no administrative record, let alone evidence in the record, that the Department had good cause to exempt the LNG Export Ban from the APA's notice-and-comment process.

91. Additionally, the LNG Export Ban is not a logical outgrowth of any proposed rule because there is no proposed LNG Export Ban rule.

92. Failure to submit a substantive rule through the notice and comment process renders the rule unenforceable. It is uncontested that the LNG Export Ban did not go through the notice and comment process pursuant to 5 U.S.C. § 553; the ban itself is substantive in nature, and no good cause exception applies to exempt the ban from the notice and comment requirement. Therefore, Defendants LNG Export Ban violate the APA's rulemaking procedure.

COUNT IV

The LNG Export Ban Is Not Authorized by Statute (5 U.S.C. § 706)

93. Plaintiff repeats and incorporates by reference each of the Complaint's allegations stated above.

94. Under the APA, a court must "hold unlawful and set aside agency action" that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

95. An agency only has the authority and power to act in accordance with the laws enacted by Congress.

96. Courts are inherently skeptical of an agency's asserted authority to take action that has a deep economic and political significance. This is because courts presume that Congress makes major policy decisions and does not delegate that decision-making authority to agencies.

97. In order to rebut the skepticism, the major questions doctrine requires the Government to point to clear congressional authorization to regulate in that manner.

98. It is not enough for the agency to justify its actions on a colorable textual basis. Rather, the Congressional authorization for that specific action must be unambiguously clear.

99. The LNG Export Ban is precisely the type of action with deep economic and political significance that requires clear Congressional authority. LNG exports account for billions of dollars to the economy and thousands of jobs; can significantly affect the geopolitical climate; present issues of national security; and has been

the subject of proposed legislation and public attention in and outside of Congress.

100. Defendants do not have statutory authority, nor have they identified any statutory authority, let alone clear statutory authority. Therefore, the LNG Export Ban is beyond the Department's authority.

COUNT V

The Actions of the Department and Its Officials Are Ultra Vires

101. Plaintiff repeats and incorporates by reference each of the Complaint's allegations stated above.

102. As discussed *supra*, Defendants lack statutory authority for the LNG Export Ban. Moreover, the Ban directly contradicts the Natural Gas Act's mandate that LNG export applications must be issued unless there is an affirmative finding the specific proposed export would be inconsistent with the public interest.

103. Therefore, the actions of the Department and its officials (Defendants Granholm, Turk, Richmond, Crabtree, and Sweeney) in issuing and enforcing the LNG Export Ban are outside their statutory authority and *ultra vires*.

104. This *ultra vires* challenge is brought under the APA, or alternatively, under the common law.

COUNT VI
President Biden's Proclamation Is Ultra Vires

105. Plaintiff repeats and incorporates by reference each of the Complaint's allegations stated above.

106. Article II of the Constitution vests the President with executive power, none of which includes the power to create, enact, or declare laws, nor does it include the power to regulate foreign commerce. Both of those powers vest solely with the Legislature under Article I.

107. The LNG Export Ban, as announced by the President, contradict existing federal law, the Natural Gas Act, and regulate foreign commerce by prohibiting any new LNG export applications. Therefore, the President's actions were *ultra vires* because he does not have the Constitutional or statutory authority to substantiate his actions in announcing the LNG Export Ban.

108. As such, *ultra vires* review is appropriate to determine whether the President has violated the Constitution, the statute under

which the challenged action was taken, or other statutes, or did not have statutory authority to take a particular action.

COUNT VII
The LNG Export Ban Is Arbitrary and Capricious
(5 U.S.C. § 706)

109. Plaintiff repeats and incorporates by reference each of the Complaint's allegations stated above.

110. Under the APA, a court must "hold unlawful and set aside agency action" that is arbitrary or capricious or otherwise not in accordance with law or is contrary to the Constitution. 5 U.S.C. § 706(2)(A).

111. An agency may not depart from a prior position, decision, or interpretation *sub silentio*. The agency must display awareness that it is changing position by carefully comparing the agency's prior statements to ensure that the agency has recognized the change, reasoned through it without factual or legal error, balanced all relevant interests affected by the change, and provided a detailed justification for the change. An agency cannot shift its understanding of the law between those two times, deny or downplay the shift, and escape vacatur under the APA. Here, the July 2023 Decision and the LNG

Export Ban are irreconcilable. The Department's failure to acknowledge the existence of the July 2023 Decision and to provide legally sound reasoning and detailed justification for the change renders its actions as arbitrary and capricious.

112. An agency must substantiate its decisions by reasonably explaining and analyzing all relevant factors and evidence. It cannot rely on conclusory statements to prove it considered the relevant statutory factors, and it cannot advance arguments in court without first presenting them in the administrative record.

113. Defendants have failed to provide a reasonable explanation and analysis of all the relevant factors and evidence to justify the LNG Export Ban.

114. The Department's failure to reasonably explain its departure from the decades of specific factual findings that LNG exports are in the public interest is arbitrary and capricious.

115. Also, an agency may not depart from a prior policy *sub silentio* or simply disregard rules still on the books, but rather it must display awareness that it is changing position. The LNG Export Ban departed *sub silentio* from at least five longstanding agency policies: (1)

case-by-case determinations; (2) reliance on market forces instead of agency intervention; (3) presuming an application will be granted; (4) accounting for environmental concerns; and (5) consideration of foreign affairs and allied security.

116. Therefore, the LNG Export Ban is arbitrary and capricious because the Department does not acknowledge or explain its change in position.

117. An agency cannot entirely fail to consider an important aspect of the problem. The Department failed to consider numerous important aspects of the problem, such as the LNG Export Ban's impact: on national security; Plaintiff's members employment opportunities and economic growth; other downstream industries; schools and charities that rely on funding from LNG exports; and pollution, including environmental harm that could result from increasing foreign reliance on energy sources that are worse for the environment than LNG.

118. Each of those failures is yet another reason the LNG Export Ban is arbitrary and capricious under the APA.

119. An agency must provide a reasoned analysis of considered alternatives that are within the ambit of the existing policy when an agency rescinds or alters a prior policy. As identified above, the Department failed to consider alternatives within the scope of those longstanding policies, let alone provide a reasoned analysis of those alternatives before concluding to rescind the policies. Therefore, the LNG Export Ban is arbitrary and capricious because the Department failed to consider less disruptive, or any, alternatives.

120. An agency must take into consideration the reliance interests of those affected by the action. For decades, numerous States, entities, industries, and employees, such as Plaintiff's members, have relied on the Natural Gas Act's mandatory approval of LNG export applications, unless found to be against public interest, and the Department's longstanding case-by-case approach to LNG export applications. Entities have invested and filed export applications in reliance on the previous system. The Department's failure even to consider these reliance interests renders the LNG Export Ban arbitrary and capricious.

121. An agency must consider the costs and benefits associated with the LNG Export Ban. The Department's failure to consider the costs and benefits of the LNG Export Ban renders its action arbitrary and capricious.

122. An agency may not have pretextual or conflicting explanations of its actions. The LNG Export Ban purports to be in the interest of climate change, but this Administration has provided conflicting justifications such as to fulfill a global agenda, sway voters, appease climate activists. The LNG Export Ban is irreconcilable with: The Natural Gas Act; the July 2023 Decision; the 1984 Policy Guidelines; the decades-long practice of a case-by-case approach; and the numerous environmental studies concluding that LNG exports do not negatively contribute to greenhouse gas emissions.

123. The LNG Export Ban is devoid of legal or factual reasoning or justification, and there is a significant mismatch between the justification given by Defendants and the administrative record. It appears that the Administration reversed course in an election year after an intense pressure campaign departing from its robustly supported decision just six months prior, which reaffirmed decades of

policy. Here, Defendants suggest that the reason for the LNG Export Ban is that the export application process needs to be halted to conduct an environmental review. But the real reason for the LNG Export Ban is obvious: politics. Defendants caved to a sustained political pressure campaign in an election year and, as a result, disregarded the law.

124. For any one of the numerous reasons discussed *supra*, the Department's LNG Export Ban is arbitrary and capricious.

COUNT VIII
The LNG Export Ban Unreasonably Delays Agency Action (5
U.S.C. § 706)

125. Plaintiff repeats and incorporates by reference each of the Complaint's allegations stated above.

126. A "reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

127. An agency unreasonably delays action when (1) it failed to take a discrete agency action that it is required to take and (2) that delay was unreasonable.

128. The Natural Gas Act mandates that LNG export applications to non-free trade agreement countries are presumed to be in the public's interest and must be approved, unless affirmative

findings are made that it is not in the public's interest. The LNG Export Ban is not reasonable because it contradicts the Natural Gas Act, is not authorized by law, and delays all approvals for an indefinite amount of time. Therefore, Defendants have unlawfully delayed the statutorily required LNG Export application decisions.

PRAYER FOR RELIEF

Plaintiff requests the following relief:

- A. Declare that the LNG Export Ban is contrary to law and in excess of statutory authority under the APA, or that it is an *ultra vires* action;
- B. Declare that the LNG Export Ban is arbitrary and capricious and unlawful under the APA;
- C. Declare that the LNG Export Ban violates the APA because it was promulgated without notice and comment;
- D. Declare that the LNG Export Ban violates 15 U.S.C. § 717b(a);
- E. Declare the LNG Export Ban violates Article I of the Constitution;
- F. Declare that President Biden's Proclamation is *ultra vires*;

- G. Vacate the LNG Export Ban as unlawful;
- H. Stay the LNG Export Ban under 5 U.S.C. § 705;
- I. Preliminarily and permanently enjoin, without bond,

Defendants from halting or attempting to halt the consideration of LNG Export applications;

- J. Grant all other relief to which Plaintiff is entitled, including but not limited to attorneys' fees and costs.

Respectfully submitted this 16th day of May, 2024.

/s/ Jim Baehr

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** Pro Hac Vice application
forthcoming*