

PUBLIC INTEREST REVIEW FOR LNG EXPORTS ARE ESSENTIAL TO PROTECT AMERICANS

Testimony before the Joint Subcommittee on Environment, Manufacturing, and Critical Materials & Subcommittee on Energy, Climate, and Grid Security of the U.S. House Energy and Commerce Committee

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Introduction

I am Tyson Slocum, and I direct the Energy Program at Public Citizen. We are a national consumer advocacy organization with over 500,000 members and supporters nationwide. I serve on two advisory committees to the U.S. Commodity Futures Trading Commission (Energy and Environmental Markets; and Market Risk); am a member of the faculty at the University of Maryland; for two decades have routinely intervened on behalf of households at the Federal Energy Regulatory Commission; and have provided testimony for Congress for years about the detrimental impacts natural gas exports have on raising prices for domestic consumers.¹ My organization's financial details are on our website.²

The purpose of today's legislative hearing is to consider several proposed bills, including two designed to eliminate or reduce regulatory oversight of fossil fuel exports:

- H.R. 647: To repeal restrictions on the export and import of natural gas.³ The legislation eliminates the requirement that exports and imports be “consistent with the public interest”—a standard that has been in place to protect consumers for 85 years. This legislation would remove all routine regulatory review to ensure that exports are not increasing prices for American families, and would allow unregulated exports to China. I do not support this legislation.
- The Promoting Cross-border Energy Infrastructure Act.⁴ The legislation is based upon H.R.575 from the 117th Congress, and S.23 in the 118th Congress. It would require FERC to approve any natural gas pipeline designed to import or export natural gas to or from Canada and Mexico within 30 days of receiving the complete application. This automatic approval eviscerates the Commission's current public interest determination, and will encourage the construction of cross-border pipelines to Mexico designed to re-export U.S.-produced natural gas from LNG terminals in Mexico. The legislation would also remove regulatory review of any modifications to existing cross-border oil and natural gas pipelines. I do not endorse this legislation.

And legislation repealing a fee on methane emissions that exceed standards established by the U.S. Environmental Protection Agency:

- H.R.484, The Natural Gas Tax Repeal Act.⁵

¹ Including 2018 testimony before the U.S. Senate on problems of LNG exports, www.energy.senate.gov/services/files/E86FB560-F2B6-4D3D-B016-F92526D10CD7

² www.citizen.org/about/annual-report/

³ www.congress.gov/bill/118th-congress/house-bill/647, text: https://d1dth6e84htgma.cloudfront.net/06_HR_46aa939aae.pdf

⁴ https://d1dth6e84htgma.cloudfront.net/03_HR_66ea55d203.pdf

⁵ www.congress.gov/bill/118th-congress/house-bill/484/text

My testimony will address these proposed bills, as well as issues related to the impact natural gas exports have on increasing energy costs for American families; the threat of re-exports of U.S. produced gas from Mexican LNG terminals; the need to Congress to address FERC's recent loophole of oversight of smaller-scale LNG export terminals; the importance of FERC improving oversight of natural gas pricing markets; the benefits of the new fee on methane emissions; that no additional Congressional action is needed to encourage electric transmission siting; and legislative proposals to prevent effective EPA regulation of hydrofluoric acid alkylation is premature.

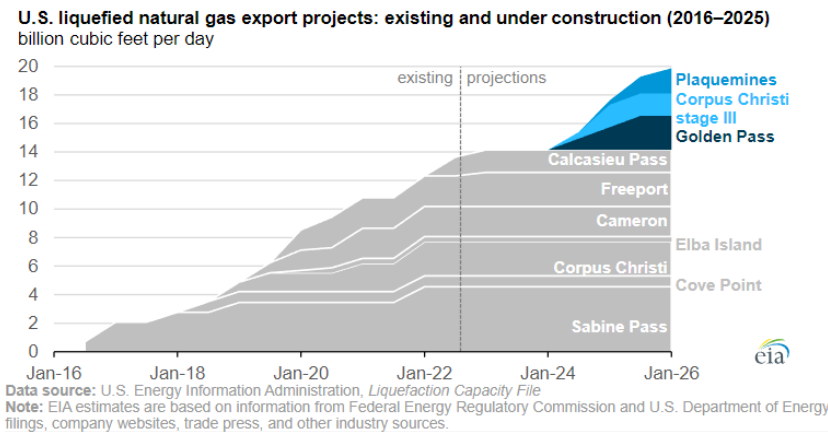
Record Natural Gas Exports Increase Energy Bills For American Families

In 2023, the United States is the world's largest natural gas and petroleum producer and exporter on the planet. Sixty percent of our domestically-produced petroleum is now exported,⁶ and 20% of our natural gas is now allocated for export.⁷ These numbers will only increase as domestic demand continues to flatten and export infrastructure capacity continues to expand. While oil markets—and domestic gasoline prices—have long been directly influenced by global calamities, natural gas had been insulated from Our record natural gas exports have radically upended domestic energy markets, forcing American families to compete with

Berlin and Beijing for U.S. produced energy. Natural gas exports are directly responsible for Americans paying higher prices to heat and cool their homes. Current statutes and regulations clearly present little challenge to domestic gas production, and offer minimal impediments to their export to foreign countries. Congress should be strengthening, not weakening, public interest protections for gas exports.

SEPTEMBER 6, 2022

U.S. LNG export capacity to grow as three additional projects begin construction



The United States is far and away the largest natural gas producer in the world: we alone account for 25% of the entire world's production every day, outproducing the next two biggest (Russia and Iran) *combined*,⁸ with U.S. natural gas production reaching an all-

⁶ <https://twitter.com/TysonSlocum/status/1617998886660112384>

⁷ www.citizen.org/article/letter-to-dept-of-energy-to-protect-consumers-from-lng-exports/

⁸ www.eia.gov/international/data/world/natural-gas/dry-natural-gas-production

time high in 2022.⁹ At the same time, natural gas exports have exploded. Exports via pipeline to Mexico and Canada, combined with Liquefied Natural Gas (LNG) exports by ship today account for 20% of domestic gas production—up from 6% in 2015. And in 2023 the United States will claim the title as biggest LNG exporter in the world.¹⁰

These record exports have come with a tragic cost: American households, power producers and other consumers are now forced to directly compete with their counterparts in Berlin and Beijing, which has globalized domestic benchmark prices, exposing Americans to higher prices and increased volatility.

The Federal Energy Regulatory Commission’s 2022-23 *Winter Energy Market and Reliability Assessment* concludes that “continued growth in net exports, including from liquefied natural gas (LNG) export facilities, will place additional pressure on natural gas prices this winter . . . Traditionally, domestic fundamentals drive U.S. natural gas prices; this winter, international markets will

LNG is natural gas that has been cooled to -260° F, changing it from its natural vapor state into a liquid that is 1/600th of its original volume, making it more economical to transport via ship.

likely also affect U.S. natural gas markets and prices . . . the expansion of LNG export capability has integrated formerly disparate North American regional natural gas markets into the global market . . . In New England, high global LNG prices are contributing to higher winter natural gas futures prices.”¹¹

USA Today reports that record LNG exports are directly contributing to punishing high energy bills for American families.¹²

The U.S. Energy Information Administration notes that “2022 average wholesale U.S. natural gas spot price at the Henry Hub was the highest in real and nominal terms since 2008” – which was the era just prior to the fracking boom,¹³ and reports that the “U.S. residential price of electricity will average 14.8 cents per kilowatthour in 2022, up 7.5% from 2021. Higher retail electricity prices largely reflect an increase in wholesale power prices driven by rising natural gas prices.”¹⁴

⁹ www.eia.gov/naturalgas/weekly/archivenew_ngwu/2023/01_12/

¹⁰ Stephen Stapczynski, “US Surges to Top of LNG Exporter Ranks on Breakneck Growth,” January 2, 2023, Bloomberg, www.bloomberg.com/news/articles/2023-01-03/us-surges-to-top-of-lng-exporter-ranks-on-breakneck-growth

¹¹ <https://ferc.gov/media/report-2022-2023-winter-assessment>

¹² Medora Lee, “Electricity bills may continue to shock you even as overall inflation eases”, January 24, 2023, www.usatoday.com/story/money/personalfinance/2023/01/24/electricity-prices-inflation/11089430002/

¹³ www.eia.gov/naturalgas/weekly/archivenew_ngwu/2023/01_12/

¹⁴ www.eia.gov/outlooks/steo/

The National Energy Assistance Directors' Association estimates that household heating costs will be 34.3% higher for families using natural gas and 6.9% higher for those relying on electricity this winter.¹⁵

The *Wall Street Journal* reports “that natural-gas exports are pushing domestic prices higher . . . The pinch shows a growing tension between exporters and buyers who have enjoyed cheap gas for more than a decade. Some manufacturing and chemical companies have built entire businesses around low U.S. gas prices . . . Utilities from the Pacific Northwest to New England have filed regulatory requests to raise rates for natural gas this winter, citing a supply squeeze as a result of higher global demand . . . the U.S. is exporting a larger share of its natural gas than it ever has and shale producers aren't quickly ramping up in response to high prices . . . some of the biggest natural-gas producers have vowed to keep investments in production growth low.”¹⁶ Therefore so-called capital discipline is keeping a check on domestic production not rising on pace with exports in order to ensure domestic producers will enjoy higher prices.

There are several legislative proposals for today's hearing that would suspend various environmental compliance for critical mineral mining and production. In general, such approaches should—at a minimum—be subject to notice and opportunity for public intervention and comment, so that communities and experts have a chance to challenge environmental exemptions.

These high prices are creating significant economic hardship for tens of millions of American families. Twenty-six percent of respondents to a U.S. Census Bureau survey taken in the summer of 2022 said they had forgone necessities like food or medicine to pay their energy bills sometime during the preceding year.¹⁷ Rising energy costs—anchored by higher natural gas prices stemming in part from record LNG exports—are the biggest factor driving inflation in the U.S.¹⁸

While sanctions in response to the 2022 Russian Federation invasion of Ukraine constrained Russian supply, raised European gas benchmarks above other global benchmarks, and led to a reorientation of U.S. LNG exports from Asia to Europe, 2023 will likely see diminished U.S. LNG exports to Europe and a return to increased flows to Asia. Europe has been reluctant to sign long-term LNG contracts, thereby disincentivizing commitments to the continent.¹⁹ And at the end of the day, U.S. LNG exports will chase whatever country is willing to pay the highest price, which typically will be Asia:

¹⁵ <https://neada.org/wp-content/uploads/2022/09/winter2022-23PR.pdf>

¹⁶ Collin Eaton and Katherine Blunt, "Natural-Gas Exports Lift Prices for U.S. Utilities Ahead of Winter," November 7, 2021, www.wsj.com/articles/natural-gas-exports-lift-prices-for-u-s-utilities-ahead-of-winter-11636281000

¹⁷ www.census.gov/data/tables/2022/demo/hhp/hhp48.html

¹⁸ www.bls.gov/cpi/

¹⁹ Justin Jacobs, "US companies say EU climate goals are deterring new gas deals," February 6, 2023, www.ft.com/content/5f13fee7-dc04-4f47-bd06-cfbb3c444011

Russia's invasion of Ukraine last February upended long-standing expectations about natural gas supplies to Europe and resulted in elevated global gas prices as countries bid for LNG to fill the void. But U.S. suppliers can only produce so much LNG, and how much of it ends up in Europe versus Asia or other gas-consuming regions in 2023 and beyond will depend largely on market forces — in other words, who needs the LNG more and is willing to pay up for it.²⁰

How U.S. Department of Energy Currently Authorizes Natural Gas Exports

DOE is responsible for authorizing exports of U.S. produced natural gas, including LNG, to foreign nations pursuant to section 3 of the Natural Gas Act.²¹ 1992 amendments to the Natural Gas Act deemed exports to countries with which the U.S. has a free trade agreement requiring national treatment for trade in natural gas are automatically deemed to be in the public interest. The U.S. has such free trade agreements with 18 countries, only two of which (South Korea and Singapore) are in Asia, with none in Europe.²² From 2016 through November 2022, only 23.5% of all LNG exports are to nations with which we have a free trade agreement.²³

The bulk of LNG exports (76.5%) are to nations with which we do not have free trade agreements, and therefore require DOE to only authorize them “it finds that the proposed exportation or importation will not be consistent with the public interest.”

Seven currently operating LNG terminals (Sabine Pass, Cove Point, Elba Island, Corpus Christi I and II, Cameron, Freeport and Calcasieu Pass) have received authorizations from DOE to export to non-free trade agreement countries, and will have combined export capacity of 14 billion cubic feet per day before the end of 2022. Three additional terminals authorized to export and under construction (Plaquemines, Corpus Christi III and Golden Pass will boost export capacity to nearly 20 million Bcf/d by 2025.²⁴

As a result, the U.S. catapulted from zero LNG exports prior to 2016 to the largest LNG exporter in the world today. Nearly 20% of natural gas produced in the U.S. was exported in 2022, up from 11.5% in 2017.

²⁰ Richard Pratt, “Portfolio Players Take On Critical Roles In Rapidly Commoditizing Global LNG Market,” February 1, 2023, <https://rbnenergy.com/two-of-us-portfolio-players-take-on-critical-roles-in-rapidly-commoditizing-global-lng-market>

²¹ 15 USC § 717b.

²² The other 16 nations are Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama and Peru.

²³ www.energy.gov/fecm/articles/lng-monthly-2022

²⁴ www.eia.gov/todayinenergy/detail.php?id=53719

Courts have long interpreted the intent of the Natural Gas Act public interest determination “was to protect consumers against exploitation at the hands of natural gas companies.”²⁵

On June 8, 2022 the Freeport LNG export terminal in Texas experienced a massive explosion that has kept the facility offline for 8 months. PHMSA concluded that human error and equipment malfunctions caused the blast.

Congress left it to the executive branch to define what factors would determine exports to be consistent with the public interest. DOE assesses several variables, including net economic impacts, international impacts, the security of domestic natural gas supply, and environmental impacts.²⁶

DOE’s 2018 *Policy Statement Regarding Long-Term Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries* makes clear that Section 16 of the Natural Gas

Act gives it authority to “amend, and rescind such [export] orders . . . as it may find necessary or appropriate . . .” to satisfy its statutory responsibilities.²⁷

Over the years, DOE has commissioned macroeconomic studies to determine whether LNG exports provide net economic benefits, in order to be consistent with the public interest. These studies attempt to estimate the impact exports have on domestic energy prices, and the economic contributions that LNG exports have for employment and other contributions to gross domestic product.

The most recent of these reports was conducted in 2018 during the Trump Administration, when LNG exports were still in relative infancy. *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* was prepared by NERA Economic Consulting for DOE.²⁸ This study has aged poorly, as it assumed that consumer welfare—which it defines as the present value measure of the standard of living of all U.S. households—was directly and beneficially linked with higher LNG exports.²⁹ The 2018 study gave only a 3% probability that significant LNG exports would result in domestic prices above \$10/MMBtu, concluding that “increasing U.S. LNG exports under any given set of assumptions about U.S. natural gas resources and their production leads to only small increases in U.S. natural gas prices.”³⁰ Furthermore, the study claims that “as U.S. LNG exports increase . . . households who hold shares in companies that own liquefaction plants receive additional income from take-or-pay tolling charges for LNG exports. These additional sources of income for U.S. consumers

²⁵ *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

²⁶ www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-13427.pdf

²⁷ www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-13427.pdf

²⁸ www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf

²⁹ At page 20.

³⁰ At page 55.

outweigh the income loss associated with higher energy prices.”³¹ DOE relies upon the conclusions of this discredited 2018 study to help determine whether exports will be consistent with the public interest.

DOE currently performs no distributional analysis to measure the impact that LNG exports may have on families at different incomes, and provides no assessment of the impact exports have on energy burdens of communities of color. Utility bill burdens are regressive, meaning lower-income families pay larger proportions of their income on such necessities compared to their more affluent neighbors. With natural gas representing the largest share of fuel (37%) for electric power generation in the U.S., combined with many families’ reliance on natural gas for home heating, the export-driven energy spikes are resulting in profound energy insecurity for millions of Americans.

A distributional incidence analysis that measures the impact higher natural gas prices have on households at different income quintiles is necessary to demonstrate whether LNG exports are consistent with the public interest. DOE’s failure to measure the price impacts for vulnerable populations renders its current methodological approaches inadequate to capture the adverse pricing dynamics impacting millions of households.

Providing price impacts by population quintile is one necessary reform; the other must be a geographic assessment of these price impacts. Because different regions of the country have unique energy profiles—including the types of home heating fuels, and the proportion of gas used in regional power generation—geographic modeling of the price impacts of LNG exports must also be determined.

A central component of both of the approaches are quantifying the impact higher prices have on communities of color. The Biden Administration’s energy justice initiatives must translate to assessing the impact LNG exports have on communities of color.

Congress Intended The 1992 Natural Gas Act Amendments To Promote a North American Gas Market For the Benefit of American Consumers—Not To Promote Unfettered Exports

The legislative history of the Energy Policy Act of 1992 demonstrates that the Natural Gas Act amendments do not endorse re-exports of U.S. produced gas from Mexico as qualifying for the automatic public interest designation.

³¹ At page 67.

The Natural Gas Act language designating exports to countries with free trade agreements deemed to be in the public interest were added as Section 201 of the Energy Policy Act of 1992.³² At the time of passage, the United States only had a free trade agreement with Canada that included natural gas treatment, and there were active negotiations with Mexico on the North American Free Trade Agreement. The congressional record makes clear that the purpose of Section 201 was to promote a North American natural gas market that would benefit consumers—and not tolerate the use of a free trade agreement public interest determination to freely re-export to nations with whom no free trade agreement exists.

The Report of the Committee of Energy and Commerce (Rept. 102-474, Part 1) noted that Section 201 was intended to establish fewer restrictions on natural gas imports from Canada and Mexico, ensuring that such imports would be treated “more like domestic American natural gas production” by designating them as “first sale” status; barred FERC “or state regulators from treating these imports differently than domestic gas”; making “the current import approval process purely automatic, so that this procedure—which domestic gas does not undergo—cannot cause any delays”; and “ease regulation of Mexican gas imports if a free trade agreement with Mexico is reached.”³³

U.S. Rep. Phillip Sharp (D-Indiana) further elaborated congressional intent when he spoke on the floor of Congress in support of the conference report on the Energy Policy Act of 1992:

*the conferees did agree to expressly forbid discrimination against imported natural gas . . . [and ensures] a broad policy of free and competitive wellhead markets in North America by, in effect, deregulating Canadian natural gas imports in section 201 . . . As for section 201, we note it applies, for example, to imports of Canadian natural gas into the United States; exports of natural gas to Canada from the United States; and imports of liquified natural gas into the United States . . . Finally, as drafted, the new fast track process would not be available for LNG exports to, for example, Pacific rim nations other than Canada.*³⁴

And U.S. Representative Barbara B. Kennelly (D-Connecticut) spoke on the House floor on remarks May 20, 1992 that “section 201 of this bill eases existing rules for

³² www.congress.gov/102/statute/STATUTE-106/STATUTE-106-Pg2776.pdf

³³ Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 4 of 6, at pages 2731-2732. <https://babel.hathitrust.org/cgi/pt?id=pst.000023406209>

³⁴ Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 6 of 6, pages 4555, 4557 and 4560. <https://babel.hathitrust.org/cgi/pt?id=pst.000023406032>

importing natural gas thereby protecting this region's [New England's] access to affordable, clean burning natural gas.”³⁵

The congressional record elaborated that Section 201 “is intended to increase the free flow of natural gas **throughout the North American market**” [emphasis added].³⁶

U.S. Rep. Norman F. Lent (R-NY) noted the importance of Section 201 to protect his state’s consumers:

*The Energy Policy Act of 1992 contains important provisions that remove regulatory barriers which hinder the importation of natural gas from countries with which the United States has entered into a free trade agreement requiring national treatment for trade in natural gas. Currently, this means Canadian gas must be treated the same as domestic gas. Once the North American Free Trade Agreement is ratified, this will also apply to Mexican gas. Section 201 of this act is vital to assuring that U.S. regulators do not interfere with the importation of natural gas to customers in the United States. Its provisions provide critical protection to the citizens of my home state, New York, who receive supplemental volumes of natural gas from Canada. The purpose of these provisions is not to give imported natural gas an advantage, but to ensure a level playing field for imported gas . . . Section 201(b) deems the importation to the United States, and exportation from the United States, of natural gas consistent with the public interest. By making this determination, applications for import of Canadian natural gas are granted automatic approval. The result is, imported natural gas is not subjected to burdensome import licensing proceedings that place it at a disadvantage relative to domestically produced gas . . . these provisions are good competitive policy. U.S. producers supply over 92 percent of the natural gas needs in this country. Fair treatment of imports helps maintain healthy competition in the United States without posing any threat to U.S. producers. Greater access to a variety of natural gas sources will help create a more stable natural gas market so that more U.S. consumers will benefit from this economic and environmentally sound source of energy.*³⁷

³⁵ Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 5 of 6, page 3868. <https://babel.hathitrust.org/cgi/pt?id=pst.000023406063>

³⁶ Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 5 of 6, page 3729, <https://babel.hathitrust.org/cgi/pt?id=pst.000023406063>

³⁷ at page 4578-4579

Mexico Will Rely On U.S. Produced Gas To Emerging As A Major LNG Exporter To Asia—Demonstrating The Need For Public Interest Evaluations To Protect American Consumers

One of the proposed bills subject to today’s legislative hearing—the *Promoting Cross-border Energy Infrastructure Act*—would require FERC to approve the siting and construction of a cross-border natural gas pipeline in 30 days, thereby repealing the current public interest standard of review. This would detrimentally impact American consumers, because the legislation would allow for unregulated U.S. gas exports to Asia. There are multiple LNG export terminal projects being built on Mexico’s pacific coast to serve Asian markets. Exports from Mexico’s pacific coast avoid the expense and time of scheduling travel through the Panama Canal faced by LNG export terminals located on the U.S. gulf coast. Because Mexico does not currently produce enough natural gas for its domestic needs—let alone to export—U.S. produced gas would supply these proposed LNG export terminals on Mexico’s pacific coast.

Bloomberg notes that the LNG export terminals planned for Mexico’s pacific coast will rely almost exclusively on U.S. produced natural gas for those exports:

Mexico—which imports nearly all of the natural gas it burns—has laid out a somewhat surprising mission: to become one of the world’s top exporters of the fuel, and fast. Although natural gas exports from Mexico are today non-existent, seeing as it produces too little of the power-plant fuel to supply even its own domestic needs, the country’s physical proximity to booming US reserves positions it well to supply American gas to hungry buyers in Europe and Asia. With US shale in mind, a total of eight liquified natural gas export projects have been proposed south of the border boasting annual combined capacity of 50.2 million tons. Some of the operations aim to come online as soon as next year. If they’re all completed, the Latin American newcomer would join a very small club of nations that ship abroad the superchilled fuel—commonly called LNG — clocking in at No. 4 behind only the US, Australia and Qatar. And unlike those other three export heavyweights, Mexico would mostly be shipping out gas that it imported in the first place.³⁸

Companies developing LNG export terminals “have cited strong offtaker interest in Asia for their projects under development on Mexico’s West Coast.”³⁹ Sempra’s Costa Azul and Vista Pacifico LNG export terminals; Saguaro LNG⁴⁰ and Amigo

³⁸ Sergio Chapa, “Mexico Plans to Become an Export Hub With US-Drilled Natural Gas,” August 12, 2022, www.bloomberg.com/news/articles/2022-08-12/mexico-plans-to-become-lng-export-hub-using-american-drilled-natural-gas

³⁹ Andrew Baker, “U.S. Firms Advancing Mexico LNG Export Plans as Asian Buyers Line Up Supply,” *Natural Gas Intelligence*, December 28, 2022, www.naturalgasintel.com/u-s-firms-advancing-mexico-lng-export-plans-as-asian-buyers-line-up-supply/

⁴⁰ <https://mexicopacific.com/>

LNG⁴¹ will all rely on Permian basin gas and are possible export conduits for Oneok's proposed border crossing.

This isn't hypothetical. On December 20, 2022, Oneok, Inc. submitted an application with FERC to construct a natural gas border crossing pipeline with Mexico. Oneok's application specifically mentions the free trade agreement with Mexico, and therefore requests that FERC automatically find it to be in the public interest. The border crossing would directly connect with the Waha hub in the Texas Permian Basin via Oneok's proposed 155 mile pipeline. Oneok states in the application that the gas would travel from its border crossing facility on a new pipeline to directly supply LNG export terminals on Mexico's pacific coast.⁴² So Oneok's border crossing will bridge a seamless and interconnected export infrastructure that begins in Texas' Permian basin and extends to LNG export terminals on Mexico's pacific coast. Under Oneok's proposal, Mexico will only serve as a land mass conduit to export U.S. produced gas to foreign nations with whom we do not necessarily have free trade agreements, like China.

FERC's LNG Export Loophole

On March 25, 2022, FERC approved a petition by Nopetro LNG to exempt the planned export terminal in the Florida panhandle from the Commission's oversight.⁴³ The Commission justified the exemption because the facility's three liquification trains would be located 1,300 feet from the export dock, where trucks (rather than a pipeline) would traverse the quarter-mile with LNG-filled ISO shipping containers. FERC concluded that this 1300 foot gap effectively severs its oversight of the planned facility. We have sued FERC in the DC Circuit to challenge the Commission's order.⁴⁴ If the erroneous order is allowed to stand, we predict a wave of similar facilities designed explicitly to exploit the Commission's new design loophole. When large-scale LNG terminals cost billions of dollars and take years to build, FERC's Nopetro loophole will incentivize smaller scale facilities that cost \$50-\$80 million and can be built in 12 months absent FERC oversight, posing risks to communities.⁴⁵

Congress Should Ensure FERC Protects Consumers From Natural Gas Index Price Gouging

A natural gas index price is derived from trades within specific geographical boundaries that market participants voluntarily report to a price index developer. Price index developers are private, for-profit companies that classify most of the voluntarily-reported data as proprietary, that the index developers then

⁴¹ www.lngalliance.com

⁴² www.citizen.org/article/oneok-saguaro-natural-gas-export/

⁴³ www.citizen.org/article/rehearing-request-of-nopetro-lng-export-order/

⁴⁴ U.S. Court of Appeals DC Circuit docket # 22-1251, www.citizen.org/litigation/public-citizen-v-ferc-2/

⁴⁵ www.citizen.org/article/tyson-slocum-port-st-joe-nopetro-lng/

commodify and sell only to those that can afford the very expensive subscription fees.

These voluntarily-reported transactions determine the price of natural gas for millions of households and businesses across the country, as market participants reference index prices in their physical and financial transactions: natural gas pipelines and Regional Transmission Organizations feature natural gas indices in their FERC-jurisdictional tariffs for various terms and conditions of service; state utility commissions rely on natural gas indices as benchmarks when setting rates; and many natural gas financial derivative contracts used in hedging and speculation settle against the natural gas price indices.⁴⁶ In a way, hundreds of billions of dollars of energy transactions rely upon voluntarily-reported price indexes—a 21st century version of a smoke-filled, price-fixing establishment.

Federal law requires the Commission to ensure that spot natural gas price indices feature adequate price discovery and market transparency. Spot natural gas price indices are structurally non-competitive and the voluntary nature of reporting trades renders them susceptible to market manipulation. The rest of the world has been replacing voluntary price indices for benchmarks with far larger economic impacts that U.S. natural gas spot prices (such as replacing the London Interbank Offered Rate (LIBOR) with the Secured Overnight Financing Rate (SOFR)). The Commission should therefore establish an electronic information system, as authorized by 15 USC § 717t–2(a)(4), which states that “the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services . . . *The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing price discovery or market transparency*” [emphasis added]. Such “an electronic information system” could be based on actual transactions, and not limited to those voluntarily reported, and would be freely available to all interested parties through a platform hosted by the Commission, rather than the proprietary, commodified data model of the index publishers.

Indeed, FERC conceived of the idea of having authority to create its own electronic natural gas price reporting system. In testimony before the House Committee on Energy and Commerce on February 10, 2005, FERC's general counsel Cynthia A. Marlette included in her prepared testimony a section entitled Price Transparency in Natural Gas and Electric Markets, where she declared:

It would be helpful if the Congress clarified the Commission's authority to require the development of an electronic price reporting system, and if the Congress gave the Commission the ability to require all electric market participants to participate in such a reporting system . . . and make it publicly available.⁴⁷

⁴⁶ NOPR, at 4.

⁴⁷ At pages 28-29, www.govinfo.gov/content/pkg/CHRG-109hhr99906/pdf/CHRG-109hhr99906.pdf

Methane Fee Repeal Unwarranted

Section 60113 of the Inflation Reduction Act (Public Law 117-169) establishes a fee on emissions of methane from the oil and gas industry, starting at \$900 per ton in 2024 and increasing to \$1,500 per ton by 2026. The section also provides \$1.5 billion in grants to the oil and gas industry for compliance assistance for the new fee, including money to purchase equipment to capture methane emissions. Furthermore, companies are fully exempt from paying the fee if they are in successful compliance with EPA's methane emissions reduction rule.⁴⁸ While the fee covers some emissions that the EPA's rule does not—including offshore operations and LNG export terminals—the law provides ample incentives for industry to avoid paying the fee. In addition, companies like Range Resources have been able to underreport methane emissions by exploiting loopholes in the reporting of the use of certain oil-field devices.⁴⁹ Therefore, we view H.R.484 as unnecessary, and we oppose the legislation.

Recent Congressional and FERC Action on Electricity Transmission Is More Than Sufficient To Ensure New Capacity

On April 21, 2022, FERC proposed a rulemaking *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation* that would establish 20 year, dynamic long term planning for proposed transmission projects; would elevate states from stakeholders to decisionmakers on project selection and cost allocation; eliminate Construction Work In Progress incentive rates; and require incumbent utilities interested in new transmission to collaborate with non-affiliates.⁵⁰

On November 15, 2021, President Biden signed H.R.3684 into law, establishing new authority for FERC to expedite transmission siting, and a \$10 billion loan fund to help finance transmission projects like Dayton Power's.⁵¹ And on August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022.⁵² Section 50151 (*Transmission Facility Financing*) of the IRA appropriates \$2 billion for a direct loan program for the development of transmission projects, and Section 50152 (*Grants to Facilitate the Siting of Interstate Electricity Transmission Lines*) spends \$760 million for grants aimed at facilitating the siting of transmission lines.

⁴⁸ www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

⁴⁹ Zachary Mider, "Methane 'Loophole' Shows Risk of Gaming New US Climate Bill," August 10, 2022, www.bloomberg.com/news/articles/2022-08-10/methane-loophole-shows-risk-of-gaming-new-us-climate-bill

⁵⁰ Docket No. RM21-17.

⁵¹ www.congress.gov/bill/117th-congress/house-bill/3684/text

⁵² www.congress.gov/bill/117th-congress/house-bill/5376

In December 2020, FERC proposed a new rulemaking to adopt the statutory changes stemming from the infrastructure bill, including expansion of "national interest electric transmission corridors"; ensuring that states are involved in the pre-filing process; requiring an "Environmental Justice Public Engagement Plan" and an Applicant Code of Conduct to ensure the project's responsiveness to landowners.⁵³

And in June 2022, FERC proposed a rulemaking to expedite interconnection procedures to bring new electric generation facilities to the grid, as current procedures often result in unnecessary years-long queues.⁵⁴

The combination of these FERC actions will ensure that needed generation resources will be able to deliver affordable, reliable and clean energy for Americans.

Legislation To Prevent Effective EPA Regulation of Hydrofluoric Acid Alkylation Is Premature

One of the proposed bills considered in today's hearing would stop the EPA from requiring oil refineries utilizing hydrofluoric acid alkylation to explore less hazardous alternatives.⁵⁵ About 40% of America's refining capacity currently utilizes hydrofluoric acid as a catalyst to produce alkylate. Alkylate is valuable for its high octane, low volatility and low sulfur content for gasoline. But prior to the proposed EPA rule, some domestic refiners—including Chevron—have adopted ionic-liquid alkylation as a safer alternative to hydrofluoric acid. Congress should permit the EPA to move forward with its proposal in an effort to work with domestic refiners to improve the public safety of their operations.⁵⁶

This concludes my testimony.

⁵³ Docket No. RM22-7, www.govinfo.gov/content/pkg/FR-2023-01-17/pdf/2022-27716.pdf

⁵⁴ Docket RM22-14, www.ferc.gov/news-events/news/ferc-proposes-interconnection-reforms-address-queue-backlogs

⁵⁵ https://d1dth6e84htgma.cloudfront.net/10_HR_59e00433e4.pdf

⁵⁶ Housley Carr, "For Refiners, Are There Viable Alternatives To HF Alkylation?" February 5, 2023, <https://rbnenergy.com/whats-it-all-all-about-alky-part-3-for-refiners-are-there-viable-alternatives-to-hf-alkylation>