UNITED STATES DEPARTMENT OF ENERGY
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Docket No. _-___

American Petroleum Institute, American Exploration & Production Council, Center for Liquefied Natural Gas, Energy Workforce & Technology Council, Interstate Natural Gas Association of America, National Association of Manufacturers, and The US LNG Association's 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

Pursuant to section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a), and section 590.501 of the Department of Energy's rules, 10 C.F.R. § 590.501, the American Petroleum Institute, the American Exploration & Production Council, the Center for Liquefied Natural Gas, the Energy Workforce & Technology Council, the Interstate Natural Gas Association of America, the National Association of Manufacturers, and The US LNG Association (hereinafter, the "Trade Associations") submit this application for rehearing of the Department of Energy's decision to "pause" indefinitely its consideration of pending and future applications to export liquefied natural gas to non-free trade agreement countries (hereinafter, the "Indefinite Pause"). The Trade Associations have a strong interest in the success of U.S. exploration, production, and exportation of liquefied natural gas (LNG), and they represent members negatively affected by the DOE's Indefinite Pause. DOE's Indefinite Pause is illegal; it violates both the Natural Gas Act and the Administrative Procedure Act. The Indefinite Pause is also ill-advised, harming American industry and our international allies. The Trade Associations urge DOE to lift this Indefinite Pause and to resume the statutorily mandated consideration of export applications to non-free trade agreement countries.

STATEMENT OF ERRORS

I. The Indefinite Pause violates the Natural Gas Act. DOE "shall issue" export permits unless it makes a specific finding that the export is not in the public interest. DOE must also give individualized consideration and due process to each applicant. By implementing this blanket Indefinite Pause, DOE has abdicated these mandatory duties. And DOE has done so for the impermissible purpose of giving climate concerns an outsized role in the public-interest analysis; that analysis must turn on the Act's primary purpose of promoting LNG production and economic growth.

II. The Indefinite Pause constitutes agency action unlawfully withheld and unreasonably delayed. DOE is refusing to take action that it is required to take, and it is unduly delaying an already lengthy process.

III. The Indefinite Pause is arbitrary and capricious. DOE has offered little justification for why the Indefinite Pause is needed now while updating the studies that underlie

its public-interest analysis. DOE has also failed to address its roundabout from last July, when DOE publicly defended its current public-interest analysis and the studies upon which it relies. And DOE has not meaningfully addressed the serious reliance interests at stake.

IV. The Indefinite Pause was illegally implemented without notice-and-comment rulemaking. The Indefinite Pause is a substantive rule that affects exporters' rights and the agency's obligations, so it was required to go through notice and comment. Not only did DOE not follow that formal process, but DOE failed to give any notice or an opportunity to respond, blindsiding affected parties.

V. The Indefinite Pause is poor public policy and should be reversed since it undermines other significant U.S. policy goals. U.S. LNG is a boon for the U.S. economy and an essential geopolitical tool for aiding our allies abroad. U.S. LNG also helps reduce CO2 emissions, serving as an essential alternative to coal.

FACTUAL & PROCEDURAL BACKGROUND

A. Liquefied Natural Gas

The United States is the world's leading exporter of LNG. U.S. LNG exports strengthen the U.S. economy, support jobs here at home, and advance global climate progress while promoting American national security interests.

At a time of increasing geopolitical turmoil and uncertainty, the strength of our LNG industry has allowed the United States to become a guarantor of global energy security. Thanks to the shale revolution and bipartisan support for American energy, the U.S. is the largest producer of natural gas—an advantage that allows us to counter the actions of hostile nations. When Russia, which historically accounted for roughly 40 percent of European natural gas supply, invaded Ukraine in 2022, the United States stepped up to help our allies and increased LNG exports to Europe by 141 percent.[1] As U.S. Secretary of State Antony Blinken noted, American producers played a pivotal role in blunting Vladmir Putin's weaponization of energy:

> *The United States has more than doubled our supply of natural gas to the continent – exporting 56 billion cubic meters of liquefied natural gas last year. Because of these and other efforts, Russia's natural gas only accounted for about 16 percent of the EU's natural gas imports by the end of 2022 – compared to 37 percent in March of 2022.*[2]

This energy diplomacy has confirmed just how important U.S. LNG is to American national security and the energy security of our allies. But America's energy advantage

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[1] U.S. Energy Info. Admin., *Europe Was the Main Destination for U.S. LNG Exports in 2022* (Mar. 22, 2023), https://www.eia.gov/todayinenergy/detail.php?id=55920.

[2] Antony J. Blinken, Remarks Before U.S.-EU Energy Council Meeting (Apr. 4, 2023), https://www.state.gov/secretary-antony-j-blinken-remarks-before-u-s-eu-energy-council-meeting/.

could be stifled if policymakers do not issue LNG export permit authorizations in a fair and timely manner. According to the U.S. Energy Information Administration, global demand for natural gas could increase by up to 60 percent by 2050.[3] Curtailing American LNG exports forfeits a hard-won geopolitical advantage to other energy exporting countries—such as Russia—that remain willing and able to supply growing global demand.

U.S. LNG is also a critical tool for reducing greenhouse gas (GHG) emissions abroad. The DOE's own studies demonstrate that U.S. LNG exports to European and Asian markets could reduce life cycle GHG emissions compared to coal use.[4] Thanks to coal-to-gas switching in the power sector, the United States has led the world in reducing CO2 emissions over the past two decades.[5] America can export our emission reductions template to countries—particularly in Asia—to help meet growing energy demand while reducing GHG emissions by displacing dirtier fuels like coal.

B. The Natural Gas Act

Congress has established a comprehensive regulatory regime for the collection and exportation of LNG, striking a careful statutory balance: the Natural Gas Act requires federal authorization for exports to non-free trade agreement (non-FTA) countries but ensures timely review of permit applications and tips the scale heavily in favor of authorization.

Exporting LNG requires federal permits. The Natural Gas Act provides that "no person shall export any natural gas from the United States to a foreign country . . . without first having secured an order . . . authorizing it to do so." 15 U.S.C. § 717b(a). The Federal Energy Regulatory Commission (FERC) reviews and approves applications "for the siting, construction, expansion, or operation of an LNG terminal." *Id.* § 717b(e)(1); *see Ctr. for Biological Diversity v. FERC*, 67 F. 4th 1176, 1188 n.8 (D.C. Cir. 2023). DOE, in turn, is responsible for reviewing exports of LNG from completed facilities. *See W. Va. Pub. Servs. Comm'n v. DOE*, 681 F. 2d 847, 853 n.26 (D.C. Cir. 1982).

The Natural Gas Act requires FERC and DOE to issue permits, and to do so in a timely manner, unless the agencies make a specific adverse finding as to the application in question. Both FERC and DOE "*shall issue* such order upon application, unless, after

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[3] U.S. Energy Info. Admin., *Int'l Energy Outlook 2023* at 13 (Oct. 2023), https://www.eia.gov/outlooks/ieo/pdf/IEO2023_Narrative.pdf.

[4] *See* Timothy J. Skone *et al.*, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* at 9 (May 29, 2014) ("*Life Cycle*"); Selina Roman-White *et al.*, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update* at 21 (Sept. 12, 2019) ("*Life Cycle 2019 Update*").

[5] *See* Energy Institute, *Statistical Review of World Energy Data*, Tab CO2 Emissions (2023), https://www.energyinst.org/statistical-review; Robert Rapier, *Why the U.S. Leads the World in Reducing Carbon Emissions*, Forbes (Feb. 4, 2024), https://www.forbes.com/sites/rrapier/2024/02/04/why-the-us-leads-the-world-in-reducing-carbon-emissions/?sh=27117539541c.

opportunity for hearing, it finds that the proposed exportation . . . will not be consistent with the public interest." 15 U.S.C. § 717b(a) (emphasis added). Exports to countries with which the United States has a free trade agreement are "deemed" to be in the public interest. *Id.* § 717b(c). The Act also directs FERC and DOE to "establish a schedule" for proceedings on applications for permits that "ensure[s] expeditious completion of all such proceedings." *Id.* § 717n(c)(1)(A).

For exports to non-FTA countries, DOE has long assessed the public interest based on "the domestic need for the LNG proposed to be exported," any "threat to the security of domestic natural gas supplies," "market competition," and "a variety of economic, environmental, and international considerations." DOE/FECM, *In re Sierra Club et al.*, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas at 12 (July 18, 2023). DOE also analyzes the environmental impacts of the exports, as required by the National Environmental Policy Act. 42 U.S.C. § 4321 *et seq.* DOE has issued over 40 long-term orders under this framework. Order Denying Petition for Rulemaking at 15.

In conducting its public-interest analysis, DOE relies on economic studies that it has commissioned. *See id.* at 12–14. These studies "examine effects of [LNG] exports on the U.S. economy and energy markets."[6] In the most recent study, issued in 2018, DOE conducted a robust long-term analysis, analyzing 54 different scenarios that ranged from zero exports to over 52 bcf/d by 2040. *Id.* at 13, 108–09.

In 2014, DOE also started considering environmental studies that examine climate concerns in domestic LNG production and use, with one assessing the upstream GHG emissions from the production and transport of LNG,[7] and the others comparing GHG emissions from exported LNG against coal and foreign LNG.[8] DOE has never rejected an export application on the basis of GHG emissions or other concerns about climate change.

Over the past 10 years, DOE has repeatedly updated its studies without pausing consideration of permits pending these updates—which makes sense, since the Natural Gas Act does not authorize DOE to do so. Indeed, in July 2023, DOE rejected a petition from environmental groups asking DOE to reconsider its public-interest analysis and urging DOE to pause its review of applications pending reconsideration. *See* Order Denying Petition for Rulemaking at 9 (noting that petitioners had asked DOE to "[g]rant no more licenses for LNG export . . . until it has completed a final revision of its policy guidelines"). The agency appropriately defended "its extensive, multi-factor public interest analysis" and its consideration of "economic and environmental impacts" and explained that "it is not necessary either to initiate a rulemaking or to develop new policy guidelines." *Id.* at 24–25.

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[6] Sugandha Tuladhar *et al.*, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* at 11 (June 7, 2018) ("*Macroeconomic Outcomes*").

[7] *See* DOE, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* at 33–44 (Aug. 2014) ("*Addendum to Environmental Review*").

[8] *See Life Cycle* at 9*; Life Cycle 2019 Update* at 21.

C. The Indefinite Pause

On January 26, 2024, the Biden Administration announced a "pause on pending decisions on exports . . . until the Department of Energy can update the underlying analyses for authorizations."[9] The Administration stated that "[t]he current economic and environmental analyses DOE uses to underpin its LNG export authorizations"—the same studies that DOE had defended just six months prior—"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.* The Administration characterized this pause as "ambitious climate action," asserting that "climate change is the existential threat of our time." *Id.* The Administration did not announce any timeline for DOE's review of its analysis, did not identify any particular deficiency in the studies on which DOE currently relies, and gave no indication how long the Indefinite Pause would last.

DOE followed with its own announcement confirming that the agency was pausing consideration of all pending and future applications for LNG export to non-FTA countries. DOE explained that "it will initiate a process to update the assessments used" for its public-interest analysis.[10] Reasoning that "the natural gas sector has transformed over the past decade," DOE asserted—in stark contrast to its defense of those assessments last July—that it "must use the most complete, updated, and robust analysis possible" and "reflect these changes when applying the factors to a new public interest determination." *Id.* "[U]ntil updated, DOE will pause determinations on pending applications." *Id.* DOE too has offered no concrete timeline for the pause or its process for updating the analysis, nor identified any specific putative defect in the analyses on which it currently relies.

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[9] White House, *FACT SHEET: Biden-Harris Administration Announces Temporary Pause on Pending Approvals of Liquefied Natural Gas Exports* (Jan. 26, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/fact-sheet-biden-harris-administration-announces-temporary-pause-on-pending-approvals-of-liquefied-natural-gas-exports/ ("White House Fact Sheet"); *see also* White House, *WHAT THEY ARE SAYING: Leaders Praise Biden-Harris Administration Pause on Pending Decisions of Liquefied Natural Gas Exports* (Jan. 27, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/27/what-they-are-saying-leaders-praise-biden-harris-administration-pause-on-pending-decisions-of-liquefied-natural-gas-exports/.

[10] 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://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals ("*DOE Press Release*").

Several projects are currently awaiting an export order from DOE,[11] and more projects are pending at FERC, *id.*, which has not issued a similar "pause."

D. This Application for Rehearing

The Trade Associations bring this application for rehearing to urge DOE to reconsider the Indefinite Pause. The Natural Gas Act permits "[a]ny person, State, municipality, or State commission aggrieved by an order" of the DOE to "apply for a rehearing within thirty days after the issuance of such order." 15 U.S.C. § 717r(a). "No proceeding to review any order . . . shall be brought by any person" in the Court of Appeals "unless such person shall have made application to the [DOE] for rehearing thereon." *Id.*

DOE's Indefinite Pause is final agency action subject to challenge under the Administrative Procedure Act and the Natural Gas Act, based on well-established principles of administrative law. The Trade Associations believe that this Indefinite Pause likely does not constitute an "order" within the meaning of the Natural Gas Act. DOE did not style this Indefinite Pause as an order, and there is no docket specified in which the Trade Associations can file this rehearing application. Nevertheless, the Trade Associations recognize that the Indefinite Pause operates like an order declaring that further LNG export permits will not be issued unless and until DOE completes its new review. And if the Indefinite Pause were deemed to be an order within the meaning of the Natural Gas Act, then the Act's mandatory-review provision would apply. Therefore, to ensure that the Trade Associations protect their ability to challenge the Indefinite Pause in federal court—and in an honest effort to persuade DOE to change its position— the Trade Associations submit this application for rehearing.

The American Petroleum Institute (API) is a national trade association with approximately 600 member companies involved in all segments of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API advances its policy priorities by collaborating with industry, government, and customer stakeholders to promote continued availability of our nation's abundant oil and natural gas resources for a more secure energy future. API frequently participates in proceedings before federal agencies, as well as in litigation in state and federal courts.

The American Exploration & Production Council (AXPC) is the voice of the leading independent U.S. energy producers. AXPC member companies provide the United States and the world with safe, affordable, and reliable energy. AXPC member companies are leaders in innovation and the development of technologies that will ensure our country maintains its energy security and climate leadership. Our members are independent upstream companies with operations in every major oil and natural gas basin in the United States and are some of the nation's top producers of natural gas. It is important to

[11] *See* Jacob Dick, *U.S. LNG Permits Are Frozen, What Now? An NGI Primer for Understanding the Export Pause*, Nat'l Gas Intelligence (Feb. 5, 2024), https://www.naturalgasintel.com/u-s-lng-permits-are-frozen-what-now-an-ngi-primer-for-understanding-the-export-pause/.

note that AXPC member companies produced 54 percent of all U.S. natural gas production in 2022.

The Center for Liquefied Natural Gas (CLNG) advocates for public policies that advance the use of LNG in the United States, and its export internationally. A committee of the Natural Gas Supply Association (NGSA), CLNG represents the full LNG value chain, including large-scale LNG export facilities in the United States, shippers, and multinational developers, providing it with unique insight into the ways in which the vast potential of this abundant, clean and versatile fuel can be fully realized.

The Energy Workforce & Technology Council is the national trade association for the energy technology and services sector, representing over 300 companies and employing more than 650,000 energy workers, manufacturers, and innovators in the energy supply chain. Our workforce is in all 50 states, with representation all over the country. Our membership ranges from large energy services companies with global operations all the way down to small family-owned well-servicing companies that operate locally within the U.S. Energy Workforce member companies provide the United States and the world with energy in the most environmentally safe, efficient, and responsible way possible, and our sector is leading the development of technology that will ensure our country maintains energy security that will power our economy and protect our way of life for generations to come. Our members are active in multiple segments of the natural gas supply chain starting with production of natural gas through well servicing, drilling, well stimulation, completions, and distribution. Many of our companies also produce equipment used in these processes as well as in the liquefaction process to create LNG.

The Interstate Natural Gas Association of America (INGAA) is a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in the United States. INGAA's 27 members represent the vast majority of interstate natural gas transmission pipeline companies in the U.S. INGAA's members, which operate approximately 200,000 miles of interstate natural gas pipelines, serve as an indispensable link between natural gas producers and consumers.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs 13 million men and women, contributes $2.85 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The US LNG Association, also a trade association of the U.S. natural gas and LNG industries, represents U.S. LNG export companies directly affected by the Indefinite Pause and other companies that are EPC contractors and equipment suppliers to the directly affected companies.

The Trade Associations include numerous members adversely affected by the Indefinite Pause, and the Trade Associations have associational standing to challenge this Indefinite Pause on behalf of their members. *See Students for Fair Admissions, Inc. v.*

President and Fellows of Harvard College, 600 U.S. 181, 199 (2023). These "members would otherwise have standing . . . in their own right," having suffered a concrete injury from being denied an export permit contrary to law. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). "[T]he interests" that these organizations "seek[] to protect are germane to the organizations[']purpose" of promoting the U.S. oil and gas industry. *Id.* And "neither the claim asserted nor the relief requested requires the participation of individual members." *Id.*

This application is timely filed within 30 days of the DOE's issuance of the Indefinite Pause, as calculated pursuant to 10 C.F.R. § 590.105.

ARGUMENT

The Trade Associations bring this application for rehearing to encourage DOE to resume its statutorily mandated consideration of export applications and to protect the opportunity for judicial review of DOE's improper Indefinite Pause. The Indefinite Pause is unlawful under both the Natural Gas Act and the Administrative Procedure Act. First, the Indefinite Pause is "not in accordance with the law" because it contradicts the Natural Gas Act's clear mandate that DOE *shall* issue export permits unless it makes a specific finding that the permit is not in the public interest. 5 U.S.C. § 706(2)(A). Second, the Indefinite Pause will result in export permits "unlawfully withheld or unreasonably delayed." *Id.* § 706(1). Third, the Indefinite Pause is arbitrary and capricious. *Id.* § 706(2)(A). About seven months ago, DOE publicly said that its current public-interest analysis did not need to be reexamined. DOE has now abruptly changed its position without explanation, offering very little reasoning for its pause and failing to address the disruption its pause has and will continue to cause. Fourth, the Indefinite Pause does not comply with "procedure required by law," because DOE failed to undergo notice-and-comment rulemaking before implementing the Indefinite Pause. *Id.* § 706(2)(D). The Indefinite Pause also undermines broader U.S. policy, harming U.S. industry and consumers.

I. THE INDEFINITE PAUSE VIOLATES THE NATURAL GAS ACT.

The Natural Gas Act dictates that DOE "shall issue" an export permit, "unless, after opportunity for hearing, it finds that the proposed exportation . . . will not be consistent with the public interest." 15 U.S.C. § 717b(a). DOE's Indefinite Pause violates several aspects of this statutory command. By pausing its consideration of all export applications, DOE has failed to fulfill its mandatory duty that it "shall issue" a permit. DOE has also denied applicants the individualized consideration and due process that DOE must afford each application. And DOE has violated these commands with an eye towards stretching the public-interest analysis far beyond its statutory moorings.

A. The Indefinite Pause violates the requirement that DOE "shall issue" export orders absent a mandatory statutory finding.

The Natural Gas Act provides that export permits "*shall issue*" unless DOE makes a specific finding that that the project would "not be consistent with the public interest." 15 U.S.C. § 717b(a) (emphasis added). This is a statutory command. *New England Fuel*

Inst. v. Econ. Reg. Admin., 875 F. 2d 882, 883 (D.C. Cir. 1989). "Shall" is "mandatory," producing "an obligation impervious to . . . discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). It "connotes a requirement" and "a command." *Kingdomware Techs. v. United States*, 579 U.S. 162, 171-72 (2016). Put simply, DOE *must* issue an export order unless it makes a specific finding, based on the record before it, that the export is inconsistent with the public interest.

As with all mandatory duties, DOE has no authority to avoid, pause, or delay its duty. *See Ass'n of Am. RR v. Costle*, 562 F. 2d 1310, 1320 (D.C. Cir. 1977) (holding that agency had no discretion to delay the issuance of regulations that a statute mandated the agency "shall publish"); *see Louisiana v. Biden*, 622 F. Supp. 3d 267, 276, 293 (W.D. La. 2022) (enjoining pause on gas and oil leases because the governing statute required that the agency "make the [Outer Continental Shelf] available for expeditious development" and "administer a leasing program"); *see Texas v. United States*, 524 F. Supp. 3d 598, 651–52 (S.D. Tex. 2021) (enjoining 100-day pause on deportations because the statute provided that the government "shall" deport non-citizens).

The mandate here is particularly firm, given the statutory scheme. The Act "sets out a general presumption . . . favoring authorization." *Ctr. for Biological Diversity*, 67 F. 4th at 1188 (quoting *W. Va. Pub. Servs. Comm'n*, 681 F. 2d at 856). The application must be granted *unless* there is "'an affirmative showing of inconsistency with the public interest.'" *Sierra Club v. Dep't of Energy*, 867 F. 3d 189, 203 (D.C. Cir. 2017) (quoting *Panhandle Producers & Royalty Owners Ass'n v. Econ. Reg. Admin.*, 822 F. 2d 1105, 1111 (D.C. Cir. 1987)). DOE has itself long recognized this "rebuttable presumption that a proposed export of natural gas to non-FTA countries is in the public interest." Policy Statement on Export Commencement Deadlines in Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25,273 (Apr. 26, 2023). And this is a strong presumption; it is the *challenger* to an export application that must show that the order is not in the public interest, not the applicant. *See Panhandle Producers*, 822 F. 2d at 1111. The default is to grant the application.

This presumption stands in stark contrast to the permissive language found elsewhere in the Act. For example, the Natural Gas Act also requires that an interstate pipeline obtain a "certificate of public convenience and necessity" before building a pipeline for interstate transfer and sale of natural gas. 15 U.S.C. § 717f(c)(1). This certificate should be granted if FERC finds that this transport and sale "is or will be required by the present or future public convenience and necessity." *Id.* § 717f(e). "[O]therwise, such application shall be denied." *Id.* "A certificate of public convenience and necessity requires as a condition to its granting that the commission make a positive finding of consistency with the public interest." *Cia Mexicana De Gas, S.A. v. Fed. Power Comm'n*, 167 F. 2d 804, 806 (5th Cir. 1948). "An export permit, on the other hand, must be issued unless the commission makes a negative finding . . . ." *Id.*[12]

[12] The presumption is even stronger—it is irrebuttable—for exports to and imports from countries with which the U.S. has free trade agreements; such exports and imports are *deemed* "consistent with the public interest" by statute. 15 U.S.C. § 717b(c). Thus, once FERC has approved the siting and construction of an export facility, DOE has no authority to deny an application to export LNG to FTA countries; they "shall be granted without

DOE has acted contrary to this clear statutory mandate by indefinitely declining to consider all pending and future applications. DOE has not purported to find that the Indefinite Pause itself would be in the public interest—though the Natural Gas Act would not authorize an across-the-board moratorium on that basis. Instead, DOE has implemented this Indefinite Pause based solely on its stated intention to spend more time *reassessing* its public-interest analysis and *updating* the studies that underlie that analysis. By that logic, DOE signals that it is incapable of concluding on the record established through individual proceedings that the permit applications before it would not be in the public interest. Accordingly, DOE seems to suggest that it is currently incapable under the Natural Gas Act of lawfully denying a permit application.

The Natural Gas Act does not give DOE the power to pause indefinitely its consideration of orders—which it "shall issue" under Act—while awaiting the completion of the rulemaking process. The statute provides that DOE must act "upon application," 15 U.S.C. § 717b(a), meaning *promptly* after the export application has been received. *See Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F. 3d 130, 134 (5th Cir. 1994) (holding that agency did not have discretion to delay hearing where the governing statute provided that the agency "shall" hold a hearing "upon application"). The Act makes "no provision for a delay in the timing" of the export orders. *Ass'n of Am. RR*, 562 F. 2d at 1320; *see Louisiana*, 622 F. Supp. 3d at 276, 289 (enjoining pause on gas and oil leases "pending the completion of a comprehensive review of Federal oil and gas permitting and leasing practices" because "no statutory authority . . . authorizes" a pause pending review). Nor can such a provision be implied from the Act, for the statutory scheme contemplates that agencies must act expeditiously; the Act explicitly directs FERC and DOE to proceed on a schedule that "ensure[s] expeditious completion of all such proceedings." 15 U.S.C. § 717n(c)(1). DOE thus "is under a duty to act by either granting or denying a permit application within a reasonable time." *Ensco Offshore Co. v. Salazar*, 781 F. Supp. 2d 332, 336 (E.D. La. 2011) (holding that Department of Interior had a "non-discretionary duty . . . to act, favorably or unfavorably, on drilling permit applications" in a "time-sensitive" manner).

DOE's past practice confirms that the Natural Gas Act does not permit such a pause. "[A] need to assess priorities does not necessarily mean a pause on government functions." *Texas*, 524 F. Supp. 3d at 655. DOE has repeatedly updated the studies upon which it relies over the past ten years. Yet DOE has refused to pause its consideration of export permits pending these updates. And DOE refused to implement a similar pause in July 2023. That prior understanding reflects the Act's firm mandate that DOE must expeditiously rule on pending applications.

DOE has not identified with any specificity *what* it believes or fears is inadequate in the analyses as they exist now. Nor has it articulated any limiting principle to its perceived authority to indefinitely halt export authorizations based on putative concerns with the underlying analyses—if DOE can do what it has just done, there is nothing to stop

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modification or delay." *Id.* DOE has also deemed "small volume exports" to be categorically in the public interest. 10 C.F.R. § 590.208. These mandatory authorizations underscore the strong presumption in favor of granting export applications, including to non-FTA countries.

it from doing it one year or six months after it conducts the updates to its analysis on which it claims to now be working. DOE is permitted to "perform[] a comprehensive review" of its public-interest analysis. *Louisiana*, 622 F. Supp. 3d at 293. But it is not allowed to "ignor[e] acts of Congress and stop[]" its consideration of export applications "while the review is being completed." *Id.*

B. The Indefinite Pause violates the requirement that DOE may deny an export permit based only on an individual determination about the application, not based on a blanket ban.

The Natural Gas Act allows DOE to deny a permit only if it makes a specific determination "after opportunity for hearing" that issuing a particular permit would not be in the public interest. 15 U.S.C. § 717b(a). DOE's blanket refusal to grant new permits is inconsistent with this clear statutory command. This Indefinite Pause is functionally a series of denials of export permits. But DOE has not given the applicants any opportunity for a hearing before issuing this blanket pause. Nor has DOE made an "express finding" as to any particular application. *W. Va. Pub. Servs. Comm'n*, 681 F. 2d at 856. The Act requires that each export application be considered on a case-by-case basis. To deny an "application" to export LNG from a particular terminal, DOE must find that this *particular* "proposed exportation" is not consistent with the public interest. 15 U.S.C. § 717b(a). DOE has not considered each application on its own merits based upon the record established before it. Indeed, it has made no findings at all.

C. "Public interest" cannot be read so broadly as to include generalized concerns about global climate change or to allow those concerns to dominate the "public interest" analysis.

DOE's Indefinite Pause also rests on a misapplication of the Natural Gas Act's public-interest analysis—separate and apart from its lack of statutory authority to issue a "pause" in the first place. The Natural Gas Act allows an application to be denied only if the export would "not be consistent with the public interest," based on a specific record and after opportunity for the applicant to be heard. 15 U.S.C. § 717b(a). In justifying the pause, DOE stated that it plans to "update the assessments used to inform whether additional [LNG export orders] are in the public interest." *See DOE Press Release*. DOE's stated justification could be read to incorporate climate concerns, *see id.*—concerns not contemplated by Congress, the courts interpreting the Natural Gas Act, and prior agency interpretations of the Act. Indeed, the Indefinite Pause is predicated on the notion that, given these climate concerns, further LNG exports may not be in the public interest, raising the specter that this pause will evolve into an outright ban.[13] DOE may not distort the Act's mandate in an attempt to implement climate policies.

To this point, climate concerns have played no role in export applications. In 2014, DOE began considering a study that calculated the upstream GHG emissions from production and transport of LNG.[14] But DOE has never rejected an application on that

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[13] *See* DOE, *Unpacking the Misconceptions Surrounding the DOE's LNG Update* (Feb. 8, 2024), https://www.energy.gov/articles/unpacking-misconceptions-surrounding-does-lng-update ("*Unpacking Misconceptions*").

[14] *See Addendum to Environmental Review* at 33–44.

basis. Nor has DOE considered downstream GHG emissions from the use of LNG. And for good reason: the Natural Gas Act does not allow generalized climate concerns to be part of the public-interest analysis.

"Public interest," as used in the Natural Gas Act, "is properly framed by the purposes of the . . . statute." *W. Va. Pub. Servs. Comm'n*, 681 F. 2d at 855. The "principal purpose" of the Act, as the Supreme Court has recognized, is "to encourage 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); *accord Fed. Power Comm'n v. Hope Nat'l Gas Co.*, 320 U.S. 591, 610 (1944). Initial drafts of the Act provided that the Federal Power "Commission could deny an application only upon a finding that 'the proposed transportation would impair the sufficiency of the supply of natural gas within the United States.'" *W. Va. Pub. Servs. Comm'n*, 681 F. 2d at 855 (quoting H.R. 11662, 74th Cong., 2d Sess. § 3 (1936); S. 4480, 74th Cong., 2d Sess. § 3 (1936)). The Act was amended to its current standard—the order shall be issued unless "the proposed exportation or importation will not be consistent with the public interest"—to reflect that the Commission reviewed "both export and import proposals." *Id.* (quoting 15 U.S.C. § 717b(a)). That drafting history illustrates that Congress had no intent of giving agencies limitless discretion to decide what constitutes the public interest.

Longstanding practice confirms that the public-interest analysis must be tethered to production and economic growth. FERC and DOE have long interpreted "public interest" to primarily turn on specific criteria related to domestic and global energy needs and demands. *See W. Va. Pub. Servs. Comm'n*, 681 F. 2d at 865 (noting the "broad range of factors" that play into "decisions on import applications," namely "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").

DOE generally also considers domestic environmental impacts under NEPA. That does not include, however, GHG emissions from LNG exports. These attenuated effects are not proximately related to the export permit, *see Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004), and so are not reasonably included with the statute's concept of "public interest." *See Ctr. for Biological Diversity v. Dep't of Interior*, 563 F. 3d 466, 484–86 (D.C. Cir. 2009) (holding that Department of Interior had no authority under the Outer Continental Shelf Leasing Act to consider the downstream effects of climate change in implementing a plan for oil and gas leases). "The use of the words 'public interest'" in the Act "is not a broad license to promote the general public welfare" but is instead "a charge to promote the orderly production of" natural gas. *NAACP*, 425 U.S. at 669–70. Just as ending discrimination at power companies is not encompassed within DOE's power to regulate in the public interest, *see id.*, "public interest" cannot be read so capaciously as to encompass generalized concerns about climate change—at least not without raising nondelegation and major questions concerns. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 458 (2001) ("Congress must lay down an intelligible principle to which the person or body authorized to act is directed to conform.") (internal quotation marks, alteration, and emphasis omitted); *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (Congress is assumed not to delegate to agencies issues of great political or economic significance).

Indeed, DOE has itself recognized that the Natural Gas Act does not permit it to consider such indirect effects. In December 2020, DOE issued a final rule establishing that, for its NEPA analysis, it cannot consider any upstream or downstream effects of LNG exports to non-FTA countries. *See* National Environmental Policy Act Implementing Procedures, 85 Fed. Reg. 78,197 (Dec. 4, 2020). As DOE reasoned, its NEPA analysis must be limited to the scope of its authority under the Natural Gas Act, and the Act only gives DOE authority over the "export" of LNG. *Id.* at 78,198. That is, DOE's scope is limited to considering "the potential environmental impacts starting at the point of delivery to the export vessel, and extending to the territorial waters of the receiving country." *Id.* at 78,199. FERC has exclusive authority over the siting, construction, and operation of LNG facilities, so it is responsible for considering upstream LNG effects. *Id.* at 78,199. And foreign countries are responsible for "the regasification and ultimate burning of LNG in foreign countries," so they are responsible for any downstream effects. *Id.* at 78,200. Under its own regulations, then, DOE is not permitted to consider the indirect climate effects of LNG.

The indirect effects of GHG emissions may not drive the public-interest analysis. The primary purpose of the Natural Gas Act is "to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices." *NAACP*, 425 U.S. at 669–70. No "subsidiary" consideration may usurp that primary purpose. *Id.* at 670. Distorting the public-interest analysis to prioritize broader concerns about global climate change would do just that.

II. AGENCY ACTION HAS BEEN UNLAWFULLY WITHHELD AND WILL BE UNREASONABLY DELAYED.

The Indefinite Pause is itself an unlawful action taken by DOE. But by implementing this pause, DOE is also unlawfully *withholding* agency action on export applications. 5 U.S.C. § 706(1). The Natural Gas Act mandates that DOE "shall issue" an export order, yet DOE has indefinitely paused all consideration of those orders. So DOE is refusing to "take a *discrete* agency action that it is *required to take*." *Norton v. So. Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004).

These export orders will soon be unreasonably delayed, if they are not already. 5 U.S.C. § 706(1). The Natural Gas Act contemplates expedited action on an export application; DOE is not permitted to indefinitely delay a duty that it "shall" perform in an "expeditious" manner. 15 U.S.C. §§ 717b(a), 717n(c)(1)(A). And the APA demands that DOE act "within a reasonable time." 5 U.S.C. § 555(b). The export application process is already lengthy, currently averaging nearly a year. (And the process has gotten notably longer under the Biden Administration; the average time to issue an application was 155 days under Obama, 49 days under Trump, and 330 days under Biden.[15]) Yet DOE has set no definite timeline for its Indefinite Pause. Secretary Granholm suggested that it would be "months long," and a senior advisor in the Biden Administration has predicted "10 to

[15] *See* Curtis Williams, *US Reviews of Gas-Export Permits Slow Under Biden Administration*, Reuters (Oct. 30, 2023), https://www.reuters.com/business/energy/us-reviews-gas-export-permits-slow-under-biden-administration-2023-10-30/.

14 months"[16]—speculation that is cold comfort for regulated parties. *Cf. Salazar*, 781 F. Supp. 2d at 339 (enjoining blanket moratorium on drilling permits because the government had unreasonably delayed its issuance of permits for four months).

III. THE INDEFINITE PAUSE IS ARBITRARY AND CAPRICIOUS.

The Indefinite Pause is also arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency must provide "a reasoned explanation" for its actions, especially when it "changes its existing position." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016). In offering its reasoning, an agency may not "rel[y] on factors which Congress has not intended it to consider, entirely fail[] to consider an important aspect of the problem, offer[] an explanation for its decision that runs counter to the evidence before the agency, or [be] so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). In short, an agency must examine "the relevant data" and make a "rational connection between the facts found and the choice made." *Id.*

To start, DOE has "offered barely any explanation" for its Indefinite Pause. *Navarro*, 579 U.S. at 222. DOE put out a short press release announcing the pause, *see DOE Press Release*, and then followed up with a press release responding to "myths" about the Indefinite Pause, *see Unpacking Misconceptions*. These press releases do not constitute the detailed rulemaking required by the APA and the Natural Gas Act and are contrary to the process in which DOE typically engages in taking similar actions that significantly affect applications before it.

DOE asserts, without elaboration, that the Indefinite Pause is necessary while DOE updates the studies underlying its public-interest assessment. But the agency has not identified any statutory or regulatory authority for the Indefinite Pause. Nor has the agency explained why an Indefinite Pause is necessary at this time when the agency has repeatedly continued to consider export applications while updating its studies. *See Texas*, 524 F. Supp. 3d at 654 (deportation pause was arbitrary and capricious because the government had not sufficiently explained "how the 100-day pause would actually aid DHS in its reset of priorities, redirection of resources, and management of COVID-19 challenges").

DOE has not even meaningfully explained why the studies must be updated. The little justification it has offered is not persuasive. DOE says that its current economic study, from 2018, is fatally outdated because exports have increased from about 4 billion cubic feet per day (bcf/d) to nearly 12 bcf/d, and the cumulative approved capacity is now at 48 bcf/d. *See Unpacking Misconceptions*. But the current economic study planned for such growth; at the time of the study, DOE had received applications for a cumulative capacity of nearly 52 bcf/d, and the study assessed the effects of actual exports up to 30.7 bcf/d, all the way out to 2040. *Macroeconomic Outcomes* at 22, 61.[17] And the study

[16] *US Energy Secretary Says LNG Pause Will Not Impact Relations With Allies,* Reuters (Feb. 22, 2024), https://www.reuters.com/business/energy/us-energy-secretary-says-lng-pause-will-not-impact-relations-with-allies-2024-02-21/.

[17] DOE also suggests that further export permits are not necessary because the current cumulative approved capacity is 48 bcf/d, "over three times our current export capacity."

concluded that permitting such exports would have a net positive impact on U.S. consumers. *See id.* at 20. DOE likewise reasons that its prior environmental studies are outdated, but it identifies no particular deficiency in those studies. These studies concluded that U.S. LNG exports will not lead to a net increase in GHG emissions and may in fact lead to a net decrease as U.S. LNG replaces coal abroad. *See Addendum to Environmental Review* at 44; *Life Cycle 2019 Update* at 24. DOE has provided no affirmative evidence undermining these conclusions, instead simply reasoning that this data is several years old and so may no longer be correct. Although an agency "cannot ignore new and better data," *Dist. Hosp. Partners, LP v. Burwell*, 786 F. 3d 46, 57 (D.C. Cir. 2015) (emphasis omitted), an agency may not disregard prior data simply based on its age without identifying deficiencies therein.

DOE's lack of explanation is even more puzzling given that the agency has recently addressed these issues—and came to different conclusions than DOE now asserts. In 2020, DOE explained that it did not have the authority under the Natural Gas Act to consider upstream or downstream GHG emissions because such considerations stretch beyond the export of LNG. *See* NEPA Implementing Procedures, 85 Fed. Reg. at 78,198. And in July 2023, the agency reaffirmed its public-interest framework. Environmental groups petitioned DOE to reevaluate its public-interest analysis and "to promulgate new regulations or guidance" for the process. Order Denying Rulemaking at 1. In particular, the environmental groups argued that DOE should place greater emphasis on domestic environmental concerns and broader climate concerns. *Id.* at 7. DOE rejected their request. As DOE explained, it has "established a decision-making process . . . that responds to the complex issues raised by LNG export and appropriately serves the Natural Gas Act." *Id.* at 4 (internal quotation marks and alterations omitted). This includes consideration of existing "studies and other technical analyses [developed] through extensive public processes to establish a baseline understanding of potential economic, life cycle greenhouse gas (GHG), and upstream environmental impacts of export authorizations." *Id.* at 12–13 (footnote omitted). Now, six months later, DOE has deemed that decision-making process so deficient that the agency must pause it pending further review.

DOE has not even "display[ed] awareness that it is changing position," *Encino Motorcars*, 579 U.S. at 221—from its long-standing practice of updating the public-interest analysis without a "pause," or its rulemaking establishing that it cannot consider GHG emissions, or its recent affirmation that its public-interest analysis is sufficient. DOE may not "depart from [these] prior polic[ies] *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

The agency has also failed to address "the significant reliance interests involved." *Encino Motorcars*, 579 U.S. at 222. LNG exports involve "far-ranging economic investments and natural gas supply commitments," from both "U.S. and global" parties. DOE, Policy Statement Regarding Long-Term Authorizations to Export Natural Gas to

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Unpacking Misconceptions. But as DOE knows, cumulative approved capacity does not equal eventual actual exports. Some projects are unable to garner sufficient investments and so ultimately do not use their export permits. Other projects do not build to their full authorized capacity.

Non-Free Trade Agreement Countries, 83 Fed. Reg. 28,843 (June 21, 2018). Export agreements and transactions have a long timeline, and regulated parties rely on DOE's prompt action. "Obtaining a DOE authorization to export LNG to non-FTA countries is an important step for most projects in their path toward financing and construction."[18] This Indefinite Pause is extremely disruptive, leaving exporters and purchasers in an untenable position. DOE has itself previously recognized these reliance interests, assuring regulated parties in 2018 that it "takes very seriously the investment-backed expectations of private parties subject to its regulatory jurisdiction." Policy Statement Regarding Long-Term Authorizations, 83 Fed. Reg. 28,843. DOE offers no explanation now for why it has acted in this manner, contrary to its previous public statements about protecting investment-backed expectations—threatening these projects if not their entire corporate livelihoods.

IV. THE INDEFINITE PAUSE DID NOT UNDERGO THE REQUIRED NOTICE-AND-COMMENT RULEMAKING.

Finally, DOE unlawfully implemented this Indefinite Pause without going through notice-and-comment rulemaking. 5 U.S.C. § 706(2)(D). Before engaging in substantive rulemaking, an agency is required to provide affected parties with "notice" and "an opportunity to participate in the rule making." *Id.* § 553(b)–(c). The APA provides only two exceptions: First, "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" are exempt. *Id.* § 553(b)(A). Second, agencies may show "good cause" for bypassing notice-and-comment rulemaking where it would be "impracticable, unnecessary, or contrary to the public interest." *Id.* § 553(b)(B).

DOE has not suggested that it had good cause to bypass notice and comment. And this pause is a substantive rule. So it was required to go through notice-and-comment rulemaking. *See Louisiana*, 622 F. Supp. 3d at 295–96 (reaching same conclusion for pause on oil and gas leases).

Substantive rules "have the force and effect of law." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015) (internal quotation marks omitted). In contrast, interpretive rules are those "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." *Perez*, 575 U.S. at 97 (internal quotation marks omitted). And procedural rules are "internal house-keeping measures" that "do not themselves alter the rights or interests of parties" but instead "alter the manner in which the parties present themselves or their viewpoints to the agency." *Am. Fed. of Labor & Cong. of Indus. Orgs. v. NLRB*, 57 F. 4th 1023, 1034–35 (D.C. Cir. 2023).

This Indefinite Pause is not a procedural rule, for it impacts applicants' substantive rights and DOE's obligations. The Natural Gas Act provides that DOE *must* issue an export permit unless it makes an affirmative finding, based on the record established before it, that the permit is not consistent with the public interest. By declining to consider or issue export orders, DOE falls short of fulfilling its statutory obligation and is denying exporters entitled permits. *See Texas*, 524 F. Supp. 3d at 659 (100-day deportation pause "effectively commands that DHS stop performing its obligation . . . to remove persons").

[18] Office of Fossil Energy and Carbon Management, *DOE's Role in LNG Sector* (Jan. 31, 2024), https://www.energy.gov/fecm/articles/does-role-lng-sector.

Nor is it an interpretive rule, for the Indefinite Pause leaves no room for discretion or individualized determinations. DOE has indicated that, until the studies are updated, it "*will* pause determinations on pending applications." *DOE Press Release* (emphasis added).

DOE provided no formal or informal notice prior to implementing this Indefinite Pause. Nor did DOE give affected parties any opportunity to be heard. That procedural infirmity compounds the need for DOE to reconsider this Indefinite Pause.

V. THE INDEFINITE PAUSE UNDERMINES OTHER SIGNIFICANT U.S. POLICY GOALS.

In addition to being contrary to the law, the Indefinite Pause could significantly hamper U.S. policy goals in several areas. The United States is the largest producer of natural gas in the world, and as of 2023 became the largest exporter of LNG. Halting pending and future LNG export authorizations is the wrong policy at the wrong time.

The Indefinite Pause is extremely disruptive to domestic industry. LNG export terminals are capital intensive projects which spur billions in investment in local communities, creating thousands of jobs and bolstering local economic development.

The Indefinite Pause also undermines our international relationships and cedes one of the most important geopolitical tools our country possesses. This fact played out when U.S. producers assisted our European allies during Russia's invasion of Ukraine, as U.S LNG helped stave off the worst-case scenarios of the continent's energy crisis. Global demand for LNG is expected to grow, and curtailing future LNG exports will only empower other natural gas producing countries and potentially force several of America's most important allies to turn to unreliable, hostile nations for their energy supply.

Beyond hampering U.S. energy leadership and jeopardizing American jobs, inserting instability into the LNG export approval process through the Indefinite Pause would undermine global efforts to reduce GHG emissions. The United States leads the world in CO2 emissions reductions largely thanks to coal-to-natural gas fuel switching in the power sector. At a time when global coal consumption has soared to record highs, eclipsing 8.3 billion tons in 2022,[19] the United States can export our emission reduction success story to countries still heavily reliant on coal.

Finally, it is critical to the success of U.S. innovation and dominance that the Federal Government maintains a transparent approval process with predictable timelines for LNG export projects. DOE should be working with FERC to make the permitting process more transparent, more predictable, and more efficient and expeditious. But the Indefinite Pause promotes secrecy, uncertainty, and delay.

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[19] Anmar Frangoul, *IEA Says Coal Use Hit an All-Time High Last Year—And Global Demand Will Persist Near Record Levels*, CNBC (July 27, 2023), https://www.cnbc.com/2023/07/27/coal-consumption-hit-an-all-time-high-in-2022-ieasays.html#:~:text=According%20to%20the%20IEA%2C%20coal,a%20record%20high%20last%20year.&text=Coal%20consumption%20increased%20by%203.3,International%20Energy%20Agency%20said%20Thursday.

Conclusion

For these reasons, the Trade Associations urge DOE to reconsider and lift this unlawful and ill-advised Indefinite Pause.

Respectfully submitted,

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Dated this 26th day of February, 2024.

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103(b), I, John Wagner, hereby certify that I am a duly authorized representative of the American Petroleum Institute, 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 Trade Associations, the foregoing documents and in the above captioned proceeding.

Dated this 26th day of February, 2024.

John Wagner
Vice President and Deputy General Counsel
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VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), I, John Wagner, swear and affirm that I am authorized to execute this verification, that I have read the foregoing document, and that facts stated herein are true and correct to the best of my knowledge, information, and belief.

Dated this 26th day of February, 2024.

John Wagner
Vice President and Deputy General Counsel
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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 590.107(b), there being no known parties, no applicant, and no docket, I certify that service has been effected as best possible by serving all documents on the Office of Fossil Energy.

Dated this 26th day of February, 2024.

John Wagner
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