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COMMENTS OF THE CENTER FOR ENVIRONMENTAL ACCOUNTABILITY

Comments on the U.S. Department of Energy's Energy, Economic, and Environmental Assessment of U.S. LNG Exports

On Request for Comments

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EXECUTIVE SUMMARY

Under the Natural Gas Act ("NGA"), the U.S. Department of Energy ("DOE") "shall issue" orders approving applications to export natural gas unless it determines that export would "not be consistent with the public interest." 15 U.S.C. § 717b(a). For export to countries with which the United States has free trade agreements, export is "deemed to be consistent with the public interest." *Id.* § 717b(c). This statutory construct places a heavy thumb on the scale in favor of approving export applications—a Congressional "presumption" in favor of the "proposed exportation" of natural gas. *Sierra Club v. DOE*, 867 F.3d 189, 203 (D.C. Cir. 2017) ("*Freeport II*"). Decades of Congressional action, judicial precedent, and DOE's own interpretation of its statutory authority make clear that DOE's duty to assess the public interest is *not* a "broad license to promote the general public welfare." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976). Rather, the text and structure of the NGA requires DOE to focus its public interest analyses on economic criteria such as "the domestic need for the natural gas" and "whether the arrangement is consistent with … promoting competition in the marketplace." *Sabine Pass Liquefaction, LLC*, DOE Order No. 2961, at 29 (May 20, 2011), https://perma.cc/8MAP-6HJR.

But, when President Biden took office, he announced a "government-wide approach to the climate crisis." *Tackling the Climate Crisis at Home and Abroad*, Exec. Order No. 14,008, 86 Fed. Reg. 7,619, 7,622 (Feb. 1, 2021). To advance this project, he directed federal agencies to use the levers of government to achieve "net-

zero emissions, economy-wide, by no later than 2050." *Id.* Without congressional authorization, President Biden directed every federal agency to become a climate regulator. From financial regulation, to government procurement, to defense strategy, just about every action of the Biden Administration took on the flavor of climate regulation.[1]

With the invasion of Ukraine, the U.S. natural gas industry provided a critical lifeline to European allies who had energy supplies from Russia cut off. This placed the administration in a bind with respect to its climate zealotry. Initially, President Biden promised increased exports to fill the gap in Europe's energy needs. [2] But the erstwhile President eventually "surrendered to an army of TikTokers"[3] which had been riled up by the scientific misrepresentations of environmentalist Bill McKibben[4]

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[1] *See, e.g.*, *Climate-Related Financial Risk*, Exec. Order No. 14,030, 86 Fed. Reg. 27,967 (May 20, 2021); Off. of the Fed. Chief Sustainability Officer, Council on Env't Quality, *Net-Zero Emissions Procurement by 2050*, https://perma.cc/FM3W-3WMY; The White House, *National Security Strategy* 27 (Oct. 2022), https://perma.cc/7U2Z-6GAC.

[2] The White House, *Joint Statement Between the United States and the European Commission on European Energy Security* (May 24, 2022), https://perma.cc/NVX5-ZTU9; Sara Schonhardt & Scott Waldman, *Biden Increases LNG Exports as Europe Faces Energy Crisis*, Climate Wire (Mar. 25, 2022), https://tinyurl.com/z4bfnazf.

[3] Editorial Board, *Biden's LNG Export Pause Hits Ukraine*, Wall St. J. (June 21, 2024), https://tinyurl.com/mt8ahe44; Benoît Morenne & Andrew Restuccia, *How the Rockefellers and Billionaire Donors Pressured Biden on LNG Exports*, Wall St. J. (Feb. 8, 2024), https://tinyurl.com/2z977sdz.

[4] Bill McKibben, *A Smoking Gun for Biden's Big Climate Decision?* New Yorker (Oct. 31, 2023), https://perma.cc/E4U6-D7CS; Bill McKibben, *Um, I Think We All Just Won*, The Crucial Years (Jan. 24, 2024), https://tinyurl.com/mrmdkv4s;Editorial Board, *Biden Toys with an LNG Export Permitting Ban,* Wall St. J. (Jan. 22, 2024), https://tinyurl.com/3593ujx5 (calling Bill McKibben "chief climate lobbyist"); Jonah Messinger, *A Major Paper on Liquefied*

and "pause[d]" DOE's adjudication of LNG export applications.[5] The immediate effect was to sow doubt[6] that the United States is committed to its role as "the global guarantor of energy security" that its growing LNG export capacity had allowed it to assume.[7]

One of the proffered justifications for this "pause" was the need to prepare an updated study of the "categories that DOE has considered when evaluating the public interest of LNG exports."[8] But, rather than focus on the issues DOE's limited jurisdiction entails, such as "the security of domestic natural gas supplies" and "promoting competition in the marketplace," *Sabine Pass Liquefaction, LLC*, DOE Order No. 2961, at 29, the Biden Administration's LNG Export Study analyzes all manner of social, environmental, and other issues related to the natural gas industry writ large. The LNG Export Study roams from the lifecycle greenhouse gas emissions of exported LNG to the "induced seismicity" of natural gas production, local land use,

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Natural Gas is Riddled with Errors, The Breakthrough Inst. (July 30, 2024), https://perma.cc/LNM5-CJ2U (pointing out the flaws in the research McKibben touted in his lobbying efforts).

[5] DOE, *DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies* (Jan. 26, 2024),https://perma.cc/ZK3P-EPFK ("Today's action will begin an update of this analysis, and until updated, DOE will pause determinations on pending applications for export of LNG to non-Free Trade Agreement countries.").

[6] Stanley Reed, *Worries in Europe Over the White House Move to Delay Gas Terminals,* N.Y. Times (Jan. 26, 2024), https://tinyurl.com/nzaf46zj.

[7]*The European Commission's Maroš Šefčovič Maps the Way Forward for EU-US Collaboration on Energy Security and Critical Minerals*, Atl. Council (Feb. 16, 2024), https://perma.cc/3NG7-V4RN.

[8] DOE, *supra* note 5.

and municipal water supplies. DOE, *Energy, Economic, Environmental Assessment of U.S. LNG Exports*, at S-48 to S-49 (Dec. 2024) ("LNG Export Study"). The LNG Export Study also considers the consequences of the natural gas industry on specific racial demographics within the U.S. This broad sweep of topics may have been interesting to the previous administration's base of environmental activists, but it cannot meaningfully inform DOE's approval process for natural gas exports. These issues are simply not in DOE's "wheelhouse." *Biden v. Nebraska*, 600 U.S. 477, 504 (2023).

President Trump recently ordered DOE to narrow its analysis of the public interest to bring its review of export applications into line with DOE's limited statutory authority. *See* Exec. Order No. 14,154, § 8(a), 90 Fed. Reg. 8,353, 8,357 (Jan. 29, 2025). But even if it were narrowed to its market forecasts, the LNG Export Study's economic modelling is flawed. It relies on outdated policy assumptions and incorporates a flawed "social cost" of greenhouse gas emissions. S-40. DOE should withdraw the LNG Export Study to make clear that its contents can play no role in its performance of its statutory duty to approve natural gas exports that it finds would not be "inconsistent with the public interest." *Sabine Pass Liquefaction, LLC*, DOE Order No. 2961, at 38; *see* 15 U.S.C. § 717b(a).

BACKGROUND

A. The Natural Gas Act

The U.S. Department of Energy is responsible for authorizing exports of domestically produced natural gas, including liquefied natural gas ("LNG"), to foreign countries under section 3 of the Natural Gas Act. 15 U.S.C. § 717b. Section 3 provides that "no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first" securing authorization. *Id.* § 717b(a).

The NGA puts a thumb on the scale in favor of approving LNG exports. DOE "*shall issue* such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest." *Id.* (emphasis added). And for export to countries with which the United States has free trade agreements, export is "deemed to be consistent with the public interest." *Id.* § 717b(c).

The Federal Government implements the NGA by dividing authority between DOE and the Federal Energy Regulatory Commission ("FERC"). DOE receives the applications for the exportation or importation of natural gas to or from a foreign country under 15 U.S.C. § 717b(a). *See* 18 C.F.R. § 153.1. And FERC has "the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." 15 U.S.C. § 717b(e).

This allocation of responsibility affects what is properly within the "public interest" that FERC versus DOE considers. While FERC is "forbidden to rely on the effects of gas exports *as a justification for* denying" a siting application, *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017), DOE "maintains exclusive authority over the export of LNG as a commodity," *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1325 (D.C. Cir. 2021).

B. New Executive Orders

In Executive Order 14,154, titled *Unleashing American Energy*, President Trump declared that it is "in the national interest to unleash America's affordable and reliable energy and natural resources" to restore "American prosperity." § 1, 90 Fed. Reg. 8,353 (Jan. 29, 2025). He further ordered that "all regulatory requirements related to energy" must be "grounded in clearly applicable law." *Id.* § 2(d). The order specifically addresses the public-interest standard that DOE should apply under Section 3 of the NGA. President Trump has ordered that DOE, in "assessing the 'Public Interest,'" "shall consider the economic and employment impacts to the United States and the impact to the security of allies and partners that would result from granting the application." *Id.* § 8(a).

President Trump has also directed the Federal Government to cease incorporating race into its decision making, including in the environmental sphere. Executive Order 14,173, titled *Ending Illegal Discrimination and Restoring Merit-*

Based Opportunity, revoked the Clinton-era executive order, which had required federal action to address so-called "environmental justice" concerns. § 3(a)(i), 90 Fed. Reg. 8,633, 8,634 (Jan. 31, 2025). The order further directs "all executive departments and agencies … to terminate all discriminatory and illegal preferences." *Id.* 8,633. Moreover, Executive Order 14,154 rescinded a Biden-era order which had ordered a "whole-of-government approach to environmental justice." § 4(a)(xii), 90 Fed. Reg. at 8,355 (rescinding Exec. Order. No. 14,096).

C. 2024 LNG Export Study

Issued in the waning days of the Biden Administration, the LNG Export Study asserts that it was drafted to "inform [DOE's] public interest determination." S-1. It analyzes the effects of increasing LNG exports on domestic natural gas supply and prices. S-4 to S-5. It studies the effects of increasing LNG exports on "energy security," meaning the effects on supply globally for American allies and trading partners. S-5. It also explores a wide range of social and environmental issues associated with natural gas production and use, far attenuated from the decision to export a commodity. These include the "ultimate global GHG consequences of U.S. LNG exports," S-6, and the effects of LNG exports on "energy, labor/workforce, economic, environmental, and social justice" considerations, S-8, and discussion of the natural gas industry's effects on "[c]ommunities of color, including those with Black, Indigenous, and Hispanic populations," S-47; *see also* S-50; App'x D.

The LNG Export Study claims this wide scope covers the "range of factors that it evaluates when reviewing an application for authorization of LNG exports." S-9. This scope, according to the Study, can include "1) the domestic need for the natural gas proposed to be exported, 2) whether the proposed exports pose a threat to the security of domestic natural gas supplies, 3) whether the arrangement is consistent with DOE's policy of promoting market competition, and 4) *any other factors* bearing on the public interest as determined by DOE, such as international and *environmental impacts*." S-9 (emphasis added). And the LNG Export Study aims to capture new considerations that it says *should* inform the public interest determinations, such as "[g]lobal climate policy ambition" and (now repealed) "federal Executive Orders defining environmental justice, climate justice, racial equity, sustainability, and energy communities." S-11.

Because hydraulic fracturing—a natural gas production technique—requires a large supply of water, the LNG Export Study focuses on how "water withdrawals" that aid the production of natural gas "can impact local watersheds." S-9; S-48. It considers how both "oil and gas production and transportation activities contribute to habitat loss and degradation for plants and animals." S-49 to S-50. It further explores how communities that host natural gas *production* will be affected by "noise, light pollution, dust, increased traffic, crime, and social disruptions due to the cyclical nature of the production industry." S-8.

The LNG Export Study also presents economic modelling forecasting market demand for LNG exports and concomitant environmental impact. As part of that analysis, it relies on policy scenarios that are already out of date or implausible. Its "Defined Policies" baseline assumes the Inflation Reduction Act and EPA New Source Performance Standards assumes will remain effect and be implemented. S-16; App'x A, at A-15. Another scenario assumes that the Paris Climate Agreement's emissions targets will be met across the globe. S-16. The LNG Export Study also incorporated estimates of the social cost of greenhouse gas emissions, attempting to measure with one metric the effects of the change in greenhouse gas emissions associated with LNG exports. S-40. The methodological flaws in these efforts at economic modelling render the LNG Export Study nearly useless for DOE.

ARGUMENT

I. The LNG Export Study Analyzes Factors DOE Cannot Consider

The LNG Export Study would have DOE incorporate its wide-ranging examination of environmental and social factors into its consideration of the public interest as it relates to authorizing the export of natural gas. Most aggressively, the LNG Export Study assumes that DOE can base its public interest determinations on a broad swath environmental effects related to the production that occurs "upstream" and the eventual end-use of natural gas that occurs "downstream" of export. The NGA, however, does not place these issues within DOE's jurisdiction. Instead, DOE

must limit its analysis to the statutory purposes of the NGA—namely the economic effects of an authorization and the effects on the supply of natural gas.[9]

A. The Public-Interest Standard Only Includes Economic and Energy Supply Factors

The LNG Export Study considers a wide range of environmental and social issues related to the natural gas industry that it assumes DOE can factor into its decisions to approve natural gas exports under its public-interest standard. But "the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare." *NAACP,* 425 U.S. at 669. Read in the context of the NGA's text, judicial precedent, and longstanding agency practice, NGA Section 3 instructs DOE to focus only on economic and energy supply considerations directly related to the export of natural gas as a commodity.

Start with the textual evidence. In the original, 1938 version of the NGA, Section 3's public-interest standard for export authorizations was identical to today: "The Commission shall issue such order upon application, unless, after opportunity for

[9] In a rigorous alternative analysis to the LNG Export Study, S&P Global examines the macroeconomic impacts of the "remarkable rise of the U.S. LNG industry" and finds them salutary. *See* S&P Glob., *Major New US Industry at a Crossroads: A US LNG Impact Study—Phase 2* (Mar. 2025), https://tinyurl.com/4ch3acfw ("From a macroeconomic perspective, the Phase 1 Base Case outlook demonstrated that US LNG exports can contribute an additional $1.3 trillion to US GDP through 2040. This Phase 2 report illustrates that the economic impact extends beyond the seven core producing states, with 37% of jobs and 30% of GDP contributions occurring in non-producing areas."); *see also See* S&P Glob., *Major New US Industry at a Crossroads: A US LNG Impact Study—Phase I* (Dec. 2024), https://tinyurl.com/mrs5jcnu.

hearing, it finds that the proposed exportation or importation will not be consistent with the public interest." Natural Gas Act of 1938, 52 Stat. 821, 822, § 3 (June 21, 1938). But Section 7, which regulates approvals of natural gas transportation facilities, included language *specifying* the meaning of "public interest":

> In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and *maintain adequate service at rates lower* than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use *at the lowest possible reasonable rate consistent with the maintenance of adequate service* in the public interest.

52 Stat. at 825, § 7(c) (emphasis added). In other words, applications that lead to lower prices for domestic consumption of natural gas and the provision of adequate supplies of natural gas are consistent with the public interest Congress sought to advance with the NGA.

"Section 3's 'public interest standard' and Section 7's 'public convenience and necessity' standard" have been "long regarded" as "substantially equivalent." *Distrigas Corp. v. FERC*, 495 F.2d 1057, 1065 (D.C. Cir. 1974); *see also Pub. Serv. Comm'n of W. Va. v. Econ. Regul. Admin.*, 777 F.2d 31, 35 (D.C. Cir. 1985).[10] The only relevant difference is that Section 3 places a thumb on the scale in favor of

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[10] Although the 1942 Amendments to Section 7 removed this discussion of "the intention of Congress" in the public interest standard, *see* 1942 Amendments of the Natural Gas Act, Ch. 49, 56 Stat. 83 (1942), "[t]he 1942 amendments to [section] 7, 56 Stat. 83, were not intended to change this declaration of purpose." *Atl. Refin. Co. v. Pub. Serv. Comm'n. of State of N.Y.*, 360 U.S. 378, 388 n.7 (1959).

authorizing exports by assuming that authorization will be granted unless DOE can make "an affirmative showing of inconsistency with the public interest to *deny* an application," while section 7 "requires an affirmative showing of public convenience and necessity to *grant* one." *Panhandle Producers & Royalty Owners Ass'n v. Econ. Reg. Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987). Thus, when section 3 directs DOE to decide whether an export authorization is in the "public interest," statutory history and structure show that the inquiry turns on economic and energy supply considerations. Any environmental consideration would be a "subsidiary purpose[]" to this overarching statutory purpose. *NAACP*, 425 U.S. at 670.

Congress has repeatedly constrained DOE's discretion to reject an import or export authorization as inconsistent with the public interest. In 1992, Congress amended NGA section 3(c) to require that applications to *import* natural gas be "deemed to be consistent with the public interest, and … granted without modification or delay." Energy Policy Act of 1992, Pub. L. No. 102-486, § 201, 106 Stat. 2776, 2866. In the same Act, Congress *required* that "exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest." *Id.* And DOE must grant such export applications "without modification or delay." *Id.*

Congress's liberalization of natural gas markets further confirms that it views economic considerations, and the promotion of competition in particular, as central

to the public interest in the NGA. In the Natural Gas Wellhead Decontrol Act of 1989, Congress permanently eliminated price regulation for natural gas. Pub. L. No. 101-60, § 2(b), 103 Stat. 157, 158 (1989). While the original, 1938 NGA focused on whether an authorization would lower prices, and the current NGA focuses on whether an authorization would increase competition. The "public interest" in the NGA has always turned on *economic* factors.

Indeed, the structure of the NGA would make little sense if the "public interest" allowed DOE to reject natural gas *export* applications on the basis of its objections to environmental issues with natural gas *production* over which it has no control. When DOE considers authorizing exports to countries *with* a free trade agreement ("FTA"), DOE has no discretion and *must* approve it. 15 U.S.C. § 717b(c). With this constraint, DOE "simply lacks the power to act on whatever information might be contained in" a report of upstream, downstream, or climate-related environmental effects. *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004).

When a company then seeks authorization to export natural gas to *non-FTA* countries, the company is seeking authorization to increase *where* it may ship its natural gas, not *whether* the natural gas can be exported. Since DOE has already approved the export of the commodity, the increase in flexibility as to where the natural gas can be shipped does not cause any additional environmental effects. DOE has an existing policy statement explaining that once authorization is approved for export to FTA countries, approval for exporting the same amount to non-FTA

countries under section 3 will be approved on a "non-additive basis." *See Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis*, 86 Fed. Reg. 2,243, 2,245 (Jan. 12, 2021). Accordingly, the LNG Export Study's assumption that applications to export to non-FTA countries should consider upstream environmental effects would make the NGA scheme as a whole incoherent.

Supreme Court precedent reflects this same, narrowed-by-context interpretation of what the "public interest" must mean in the NGA. The Court has explained that the "public interest" standard must "take meaning from the purposes of the regulatory legislation." *NAACP*, 425 U.S. at 669. And when it comes to the NGA, "it is clear that the principal purpose … was to encourage the orderly development of plentiful supplies of … natural gas at reasonable prices." *Id.* 669–70. Indeed, "[t]he primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies." Congress did not entrust to DOE the authority to elevate other "considerations" such as a State's "deep interest in the conservation of its natural resources" over its principle statutory purpose. *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 608–10 (1944). Treating the public-interest standard as an invitation to *reject* natural gas exports on the basis of *environmental concerns* outside DOE's control would undermine the NGA's "principal purpose."

Early practice tracks this reading too. Executive Branch interpretations issued "roughly contemporaneously with enactment of the statute" that "remained

consistent over time" are entitled to "very great respect." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 370, 386 (2024) (quotation omitted). When DOE began considering applications to import natural gas under NGA Section 3 in 1977, it considered "[t]he price proposed to be charged at the point of importation," alongside other economic and supply-focused factors. DOE, Delegation Order No. 0204-54, at 1 (Sept. 24, 1979), https://perma.cc/54U3-3KKD. In 1984, DOE issued policy guidelines "intended to provide a clear definition of public interest." 49 Fed. Reg. 6,684, 6,687 (Feb. 22, 1984). There, DOE explained that "[t]he policy cornerstone of the public interest standard is competition." *Id.* While other relevant considerations were "the security of the foreign supply" and national energy need.[11] *Id.* These considerations align with an exclusive focus on economic and supply considerations and do not encompass end-use greenhouse gas emissions or the upstream effects of production.

The procedural structure for LNG authorization decisions provides further confirmation that the "public interest" should be read narrowly. DOE *only* has authority to approve the import or export of the LNG itself. *See* 18 C.F.R. § 153.1. All concerns related to the siting of LNG facilities fall under FERC's jurisdiction, not DOE's. Given that division of labor, it makes no sense to expect DOE to consider downstream or upstream environmental considerations that fall outside of DOE's

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[11] While the guidelines were initially developed for import applications, DOE later extended them to non-FTA export applications. *See Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, Order Extending Authorization to Export Liquefied Natural Gas from Alaska at 14, Order No. 1473, Docket No. 96-99-LNG (Apr. 2, 1999).

jurisdiction. *Cf. Citizens Action Coal. of Ind. v. FERC*, 125 F.4th 229, 237 (D.C. Cir. 2025) (holding that NEPA does not require FERC to consider alternatives outside its jurisdiction). Indeed, just as FERC need not "address the indirect effects of the anticipated *export* of natural gas … because the Department of Energy, not [FERC], has sole authority to license the export of any natural gas," DOE need not consider effects that arise from the siting of LNG facilities or the production of LNG. *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016); *see also Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1185 (D.C. Cir. 2023) ("*Alaska LNG*"). But this limitation on the "public interest" would rule out a significant portion of the LNG Export Study's considerations, including its evaluation of upstream natural gas *production's* effects on local watershed status, wildlife habitats, and light and noise pollution.

The LNG Export Study's expansive understanding of the "public interest" should also be rejected for another reason: its capacious approach would violate the nondelegation doctrine if put into practice. The LNG Export Study sets out the effects of upstream natural gas consumption and the effects on climate change of its production and use as "factors" that bear on the public interest. S-9. DOE offers no principle to limit what it means by the public interest, so there is no discernible limit to what "any … factors" might mean. Under such a reading, DOE could consider any foreseeable issue that it chooses, and Congress, therefore, has given no "intelligible principle" to DOE to which it could "conform" its determinations. *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 472 (2001). If the breadth of issues covered in the LNG

Export Study can, in fact, be considered in DOE's public interest analysis, Section 3 delegates "vague and indefinite" authority over export and import decisions. *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 225–26 (1943). The LNG Export Study's broad scope may have "textual plausibility" in the seemingly broad public interest standard. *West Virginia v. EPA*, 597 U.S. 697, 721–22 (2022). But even open-ended delegations must be interpreted in context, relying on "common sense." *Id.* at 722–23. Such sense is absent from the LNG Export Study as it would turn DOE's responsibility for natural gas exports into an "open book to which the agency [may] add pages and change the plot line." *Id.* at 723.

To avoid any nondelegation problem, the "public interest" must be read narrowly. Indeed, the Supreme Court has explained that a statute authorizing decisions based on the "public interest" must be narrowed by the context of the whole statutory scheme Congress entrusted DOE with implementing. *N.Y. Cent. Sec. Corp. v. United States*, 287 U.S. 12, 25 (1932) (interpreting the statute while ruling on a nondelegation challenge). Viewed contextually, whatever the environmental effects of the natural gas industry—of which LNG exports are but a part—do not bear a "direct relation" to the export or import decisions that Congress has entrusted to DOE. *Id.* That Congress has tasked other federal agencies with substantive responsibility for regulating these issues further proves that the breadth of issues covered in the LNG export Study are not within the scope of "the public interest" with

which DOE is tasked with promoting. *Cf. Nebraska*, 600 U.S. at 504 (suggesting the importance of whether an action is in an agency's "wheelhouse").

B. New Executive Orders and Longstanding Categorical Exclusions Illustrate the Limits of the "Public Interest" Determination

President Trump's recent executive orders require DOE to reject the Biden Administration's faulty interpretation of the "public interest." President Trump has now ordered that DOE, in "assessing the 'Public Interest,'" "shall consider the economic and employment impacts to the United States and the impact to the security of allies and partners that would result from granting the application." Exec. Order No. 14,154, § 8(a), 90 Fed. Reg. at 8,355. As discussed above, this direction appropriately narrow's DOE's analysis of export applications consistent with the meaning of "public interest" in section 3 of the NGA. In any event, DOE "must implement the President's policy directives to the extent permitted by law." *Sherley v. Sebelius*, 689 F.3d 776, 784 (D.C. Cir. 2012).

Moreover, the LNG Export Study's consideration of upstream and downstream environmental considerations stands in tension with DOE's NEPA regulations that are still in effect. Given 10 C.F.R. pt. 1021, subpt. D., app. B, B5.7 ("B5.7"), DOE *categorically* does not need to study the environmental effects of "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act." In justifying this categorical exclusion ("catex"), DOE has explained that transportation-related

environmental effects are "the only source of potential environmental impacts resulting from DOE's decision regarding authorizations under section 3 of the NGA," 85 Fed. Reg. 78,197, 78,198 (Dec. 4, 2020), and the provision specifically excludes consideration of "any associated transportation of natural gas by marine vessel," B5.7.

This tension is especially clear in the context of environmental effects that occur from the downstream use of LNG outside the country. When DOE first proposed the current version of B5.7, it explained that "the regasification and ultimate burning of LNG in foreign countries are beyond the scope of DOE's" environmental considerations. 85 Fed. Reg. 25,340, 25,341 (May 1, 2020). Congress's reforms to NEPA in the Fiscal Responsibility Act of 2023 ("FRA") confirm the validity of this approach. The FRA revises NEPA's definition of a "major federal action," the trigger for an environmental review, to *exclude* "extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States." 42 U.S.C. § 4336e(10)(B)(vi).

In the initial 2020 proposal to revise B5.7, DOE explained that it would limit its environmental reviews to "focus exclusively on NEPA review of potential environmental impacts resulting from actions occurring at or after the point of export." 85 Fed. Reg. at 25,341. DOE supports this conclusion with cites to the D.C. Circuit case law explaining the divided and, consequently, limited responsibilities of FERC and DOE for LNG exports. *Id.* at 25,341 n.6. The D.C. Circuit has since

reaffirmed the ramifications of this division on the required scope of environmental reviews. *See, e.g.*, *Alaska LNG*, 67 F.4th at 1185.

Yet, the LNG Export Study considers a host of upstream and downstream environmental effects and even specifically considers the effects of transporting natural gas. S-8. It is difficult to see how it is appropriate for DOE to consider those environmental effects for NGA Section 3 purposes, when it categorically excludes studying them for NEPA purposes. Because it is "axiomatic that an agency is bound by its own regulations," the Biden DOE should have properly limited the scope of the Natural Gas Export Study. *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979).

II. The LNG Export Study Expects DOE to Engage in Unlawful Race-Based Action

The LNG Export Study considers a range of "social justice" factors. S-8. This includes discussion of the effects of natural gas production and transportation on "[c]ommunities of color, including those with Black, Indigenous, and Hispanic populations." S-47; *see also* S-50. The LNG Export Study implies that DOE should be more hesitant to approve LNG projects that will take place in areas with larger concentrations of racial minorities than similar projects in areas with different demographics. Such issues are outside DOE's statutory remit. Decisions around the siting and construction of LNG export terminals are not DOE's to make. *See supra*

Part I.A. Such decisions rest with FERC. But, such race-conscious decision making would also violate the Constitution and recent Executive Orders.

A. Race-Based Project Approvals Violate the Constitution

The Fifth Amendment prohibits the federal government from discriminating based on race. *Adarand Constructors v. Pena*, 515 U.S. 200, 215–16 (1995); *Bolling v. Sharpe*, 347 U.S. 497 (1954). There are no "benign" racial classifications, because such distinctions "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Shaw v. Reno*, 509 U.S. 630, 642–43 (1993) (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). Racial and ethnic classifications "stimulate our society's latent race consciousness," *id.* at 643 (quoting *United Jewish Orgs. v. Carey*, 430 U.S. 144, 173 (1977) (Brennan, J., concurring)), "perpetuat[e] the very racial divisions the polity seeks to transcend," *Schuette v. BAMN*, 572 U.S. 291, 308 (2014), and "delay the time when race will become … truly irrelevant," *Adarand*, 515 U.S. at 229. Accordingly, "all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." *Id.* at 227.

Governmental classification of environmental effects on the basis of the race of the members of communities where such effects may be felt is no exception. It is well-established that governments trigger strict scrutiny by enforcing the law based on the race of the defendant. *See, e.g.*, *United States v. Manuel*, 992 F.2d 272, 275 (10th

Cir. 1993); *Zahra v. Town of Southold*, 48 F.3d 674, 683 (2d Cir. 1995); *cf. Oyler v. Boles*, 368 U.S. 448, 456 (1962). And the same is true about government action intentionally taken based on the racial make-up of a given area. For instance, intentionally gerrymandering voting districts on the basis of a community's racial makeup must satisfy strict scrutiny, even when that gerrymandering is done to help racial minorities. *Shaw*, 509 U.S. at 649–52. And the same principles would include DOE evaluating export authorizations based on the race of the people in the area surrounding an LNG facility or affected by the natural gas industry generally.

Government action based on race is constitutional only if it satisfies strict scrutiny, which requires a compelling governmental interest and narrow tailoring to that end. *See Students for Fair Admissions, Inc.* ("*SFFA*") *v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). It is doubtful that DOE could satisfy this exacting standard.

The only governmental interest that would seem to be served by race-conscious, environmental-justice-focused LNG export approvals is the government's interest in creating "an equitable, inclusive, and sustainable economy." Exec. Order No. 14,096 § 1, 88 Fed. Reg. 25,251, 25251 (Apr. 26, 2023). But that merely relabels the "diversity" rationales that the Supreme Court rejected as not "compelling" in *Students for Fair Admissions*, 600 U.S. at 214–15. Whether in the context of four-year colleges or air or water quality, neither "racial diversity" nor "racial balance" is a compelling interest. *Id.* at 214–15, 223; *see also Fisher v. Univ. of Tex.*, 570 U.S.

297, 311 (2013) ("Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'"). Alternatively, perhaps DOE would invoke an interest in remedying general, societal discrimination. But that, too, would be insufficient to satisfy strict scrutiny. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989).

Further, it is doubtful that DOE could claim the one relevant interest that has been recognized as "compelling"—remedying specific, intentional discrimination by the government. *SFFA*, 600 U.S. at 207. There is no indication in the LNG Export Authorization Study of how export authorizations could be construed as such. And that alone is dispositive: "because classifications based on race are potentially so harmful to the entire body politic, it is especially important that the reasons for any such classification be clearly identified and unquestionably legitimate." *Croson*, 488 U.S. at 505; *accord Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) (noting that the discrimination the government seeks to redress "must be identified discrimination" to qualify as a compelling interest, and that the government must have "strong basis in evidence" that identifies "that discrimination, public or private, with some specificity before [it] may use race-conscious relief").

In any event, it's unclear how denying a company's request to export natural gas could be "narrowly tailored" to remedying intentional race discrimination by anyone. To satisfy the narrow tailoring requirement, any race-conscious action must be "necessary" to achieving that compelling interest. *SFFA*, 600 U.S. at 207. But

whatever past race discrimination occurred can surely be remedied more directly than by denying a company's request to export natural gas.

B. Race-Based Project Approvals Contradict Recent Executive Orders

An environmental-justice-based LNG approval is now also in tension with recent executive orders. Executive Order 14,173, titled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, specifically revokes a Clinton-era executive order, which had required federal action to address environmental justice concerns. § 3(a)(i), 90 Fed. Reg. at 8,634. Similarly, Executive Order 14,154, titled *Unleashing American Energy*, rescinded a Biden-era order which had ordered a "whole-of-government approach to environmental justice." Exec. Order No. 14,154, § 4(a)(xii), 90 Fed. Reg. at 8,355. And Executive Order 14,151, titled *Ending Radical and Wasteful Government DEI Programs and Preferencing*, terminated "'environmental justice' offices and positions." § 2(b)(i), 90 Fed. Reg. 8,339, 8,339 (Jan. 29, 2025).

It is doubtful that approving LNG exports based on the race of people who live near plants or are affected by the natural gas industry could square with the new Administration's policy or interpretation of the law. Indeed, Executive Order 14,173 orders "all executive departments and agencies (agencies) to terminate all discriminatory and illegal preferences," including in "activities" and "enforcement actions." § 2, 90 Fed. Reg. at 8,633.

The D.C. Circuit's decision in *Vecinos para el Bienestar de la Comunidad Costera v. FERC* does not require DOE to continue considering environmental justice factors. 6 F.4th 1321. The court recognized that FERC's obligation to consider environmental justice emerged from Executive Order 12,898, which President Trump has since rescinded. *Id.* at 1330. And FERC's orders approving LNG pipelines under section 7 were vacated only because those orders rested on NEPA environmental analyses that, in the court's view, failed to adequately explain the agency's methodological choices. *Id.* at 1331. The court has not held that the NGA requires consideration of environmental justice. *See also City of Port Isabel v. FERC*, 111 F.4th 1198, 1206–07 (D.C. Cir. 2024) (requiring consideration of environmental justice, but for the same reasons).

III. The LNG Export Study's Economic Modelling Relies On Outdated and Flawed Assumptions That Underestimate Global LNG Demand

The LNG Export Study incorporates into the economic modelling central to the report flawed assumptions about future public policies. DOE should have anticipated these issues, as it released the LNG Export Study after the re-election of Donald Trump to the presidency. President Trump had campaigned against many of the policies DOE bakes into its baseline. But, despite how predictable the incoming administration's policy changes would be, DOE proceeded to issue a study with modeling that would immediately become out of date. These deficiencies are compounded by the incorporation of the Biden Administration's deeply flawed social

cost of carbon metric. These significant methodological problems provide a sufficient basis for DOE to discard the LNG Export Study and recenter its public interest analysis on factors actually within DOE's jurisdiction. *See* S-40 to S-42.

A. Already Out-of-date Policy Assumptions Render the LNG Export Study's Economic Models Useless for Policymaking

Table 3 of the LNG Export Study's Summary lists the policies that it includes in its modelling assumptions in its "Defined Policies," "Commitments," and "Net Zero" scenarios. S-16. The study provides "[a]n analysis of the global market demand for U.S. LNG" based on these scenarios. S-1. The level of demand, of course, then feeds into the "emissions impacts" and other effects that are the topic of the Study's multiple volumes. S-1; App'x A. But the policy scenarios embed the previous administration's "whole-of-government" climate agenda. President Trump has already eliminated many of these policies and his administration has announced that it will dismantle most of the rest. The other policy assumptions, primarily green energy tax credits from the Bipartisan Infrastructure Law and the Inflation Reduction Act, will also face a significant overhaul as the now-Republican controlled Congress works to enact a comprehensive tax reform package through the reconciliation process.[12]

[12] Kelsey Brugger, *Green Credits Not a Hill to Die On for Supportive Republicans*, Politico (Mar. 12, 2025), https://perma.cc/5XT7-E64C.

In the "Defined Policies" category that is supposed to represent a current policy baseline, the LNG Export Study lists the Environmental Protection Agency's New Source Performance Standards[13] for Greenhouse Gas Emissions from powerplants, a comprehensive plan to reduce emissions from the power sector. S-16. Trump promised to repeal these rules on the campaign trail[14] and his administration has already announced that the EPA will take action to begin repealing the rule.[15] The "Defined Policies" scenario also assumes complete implementation of the "Bipartisan Infrastructure Law" and the "Inflation Reduction Act," which will almost certainly undergo significant change in any reconciliation package the Republican Congress passes. Even if some of the credits remain, elimination of many of the other "green" energy tax credits in these statutes presents an attractive option for Republicans looking for budget savings to pay for tax reductions and other policy priorities.[16] The Study's Appendix A, lists many of these tax credits as "policies included under the

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[13] *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units*, 89 Fed. Reg. 39,798 (May 9, 2024).

[14] Timothy Gardner, *Trump Would Axe Biden Clean Power Rules, Speed Power Plant Approvals, Campaign Says*, Reuters (Aug. 30, 2024), https://tinyurl.com/4mbj9amm

[15] EPA Press Office, *Trump EPA Announces Reconsideration of Biden-Harris Rule, "Clean Power Plan 2.0", That Prioritized Shutting Down Power Plants While Raising Costs on American Families*, EPA (Mar. 12, 2025), https://perma.cc/KBT7-D3VJ.

[16] Andres Picon, '*Low-hanging fruit': GOP Puts Target on Green Energy After Budget Win*, Politico (Feb. 26, 2025), https://perma.cc/Z8NW-CWVB.

Defined Policies scenario." A-50. But this list is likely a list of programs bound for the congressional chopping block.

For the "Commitments" scenario, the LNG Export Study assumes that the United States will "reduce economy-wide greenhouse gas emissions by 51% in 2030 and 100% by 2050 relative to 2005." S-16. These targets are the product of one of President Biden's first executive orders[17] and his administration's pledge under the Paris Agreement.[18] President Trump, of course, ended the Biden Administration's "whole-of-government" climate agenda in one of his first executive orders[19] and withdrew the United States from the Paris Agreement.[20] Instead, President Trump is reorienting federal policy around "unleash[ing] America's affordable and reliable energy and natural resources."[21] The United States no longer has the "Commitments," such as they were, that the LNG Export Study uses for its models.

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[17] *Tackling the Climate Crisis at Home and Abroad,* Exec. Order No. 14,008, 86 Fed. Reg. 7,619.

[18] *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, The White House (Apr. 22, 2021), https://perma.cc/8NK3-DQ9C; *see also* UNFCCC, *The United States of America Nationally Determined Contribution: Reducing Greenhouse Gases in the U.S.: A 2030 Emissions Target* (2021), https://perma.cc/4WR7-K4CR.

[19] *Unleashing American Energy*, Exec. Order No. 14,154, 90 Fed. Reg. 8,353.

[20] *Putting America First in International Environmental Agreements*, Exec. Order No. 14,162, 90 Fed. Reg. 8,455, 8,455 (Jan. 30, 2025).

[21] *Unleashing American Energy*, Exec. Order No. 14,154, 90 Fed. Reg. at 8,353.

The LNG Export Study's "Commitments" scenario also "assumes that all global regions meet stated climate commitments" made during the 2021 COP 26 conference held in Glasgow, Scotland, "while countries without pledges are assumed" to decarbonize at a rate of eight percent per year. S-16. These assumptions were, of course, questionable well before President Trump punctured the global climate pledge balloon—countries have long been welching on their Paris Agreement decarbonization targets and are increasingly failing to make the updates to their targets that the Paris Agreement requires.[22]

Given how poorly the LNG Export Study's policy assumptions fail to match reality, DOE *must not use it* as in any way predictive of what future demand for LNG will look like. Incorporating such flawed policy modeling into its public interest assessments would be detrimental to American interests and inconsistent with DOE's obligations under the Natural Gas Act.

B. *The LNG Export Study Incorporates the 2023 Social Cost of Carbon—A Fatally Flawed Metric*

The social costs of greenhouse gases—synecdochically called the SCC—is a modeled future welfare cost of the global climate change impacts caused by emitting

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[22] Doug Specht, *Only 15 Countries Have Met the Latest Paris Agreement Deadline. Is Any Nation Serious About Tackling Climate Change?*, The Conversation (Mar. 19, 2025), https://perma.cc/A3QN-NLT2.

a metric ton of carbon dioxide[23] in a given year discounted to establish a present value. The LNG Export Study uses the SCC to assign such a cost to LNG estimates. For the "Defined Policies" scenario, the study contrives a SCC of $84 billion to $250 billion based on the scenario's modelled exports for the 2020–2050 time frame. This estimated range, however, in no way reflects real world costs or climate damages that can be ascribed to LNG exports. DOE uses the SCC that EPA developed in 2023 as part of a rulemaking imposing rules on the oil and gas industry's methane emissions. S-40. This 2023 SCC relies on damage functions that use the flawed emissions scenario, RCP8.5, as their baseline scenario. This, taken together with arbitrarily low discount rates results in an inflated SCC.

But the SCC is an inherently flawed metric that gives a veneer of scientific legitimacy to an economic metric that masks the uncertainty of its many inputs and the inherently value-laden nature of the many assumptions that feed into it. The SCC uses assumptions about emissions (which amount to assumptions about the future behavior of billions of people, many yet unborn), temperature rise, damages, and discount rates, and throws out a single number. And because each of these components is grounded in "science," the resulting number is supposed to be taken seriously as a measure of climate harms.

[23] The global warming potential of other greenhouse gases to convert emissions of these gases into units of carbon dioxide equivalent.

But the huge range of calculated SCC values puts the lie to these claims. Richard Tol, an Economist with the University of Sussex, observed that "[p]ublished estimates [of the SCC] range from [negative $]771 [per ton of carbon dioxide] to [positive $]216,035 [per ton of carbon dioxide]. Research cannot reduce the span of credible estimates by much, as the future is uncertain and ethical parameters are key."[24] John Pezzey of the Australian National University has explained that the models used to calculate a SCC "will always be disputed," and points in particular to the inherent unreliability of two of the SCC's key inputs: the damage function and the discounting function.[25] The damage function "translate[s] changes in temperature and other physical impacts of climate change into monetized estimates of net economic damages."[26]

The damage function, is a particularly unreliable component of the SCC because, as Pezzey explains, the "statistical analyses" that undergird damage functions necessarily "rest[ ] on untestable, far-out-of-sample extrapolation."[27]

> Estimating the damage to welfare from more heatwaves or hurricanes in 2050 or 2100 caused by an extra tonne of CO_2 emitted now is so unfathomable because normal scientific methods [ ] cannot apply. First,

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[24] Richard Tol (@RichardTol), X (Feb. 22, 2021, 2:12 AM), https://perma.cc/3BYS-983D.

[25] John C. V. Pezzey, *Why the Social Cost of Carbon Will Always Be Disputed*, 10 WIREs Climate Change, art. no. e558 (Nov. 12, 2018), https://doi.org/10.1002/wcc.558.

[26] EPA, *Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* 45 (Nov. 2023), https://perma.cc/KHY9-HLEM.

[27] Pezzey, *supra* note [25].

> there are no adequate comparators for testing damage functions at the necessary scale; second, there are no agreed, quantitatively stable laws underlying damage modeling; and third, slow Earth-system response times greatly limit climate damage learning (how much any damage observed decades from now can improve a damage function for likely warming in the century after that).[28]

Testing extended climate projections is generally harder than testing predictions in other earth sciences, given both the climate's immense complexity, and the unprecedented degree of temperature rise predicted by many climate scientists.[29] While stable underlying laws make climate modeling based on past observations meaningful, those observations do not contain data with modes and rates of change equivalent to those predicted.[30]

This problem becomes more complicated when predictions move from climate science to social science. Pezzey explains that:

> The Earth system including people, each with complex brains, is vastly harder to model than the system without humanity that pure climate science models. Though important progress has been made in analyzing complex system dynamics … such analysis falls far short of any consensus about the nature, or even existence, of quantitatively stable laws for humanity's responses to unprecedented, centennial climate change.[31]

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[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

Isaac Asimov's classic sci-fi novel, *Foundation*, imagines a future where future human activity can be mathematically predicted through a statical modeling technique called "psychohistory." Needless to say, no such technique exists or, likely, could exist. The biggest impact on global carbon emissions over the last two decades have been the COVID-19 pandemic and the 2008 financial crisis, neither of which could be found in prior modelling.

Thus, as Pezzey explains, the "claim that statistical and structural modeling of local or sectoral damage from short-run warming or other geophysical changes can be used to predict global damage from similar changes sustained globally over decades in the far future, cannot be directly tested on any useful timescale."[32] There are simply no viable comparators for testing any damage function that might be chosen. "For this reason alone, deep disputes among climate economists … about damage functions will remain unresolved for decades, maybe forever."[33]

The particular damage functions chosen in EPA's 2023 SCC estimates are not just speculative, but provably wrong because they rely on an outdated, factually incorrect emissions scenario called RCP8.5. While sometimes labeled as a "business as usual scenario," RCP8.5 is now widely regarded as implausibly extreme.[34] While

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[32] *Id.*

[33] *Id.*

[34] Roger Pielke Jr., *The Biden Administration Abandons RCP8.*5, The Honest Broker (Feb. 17, 2023), https://perma.cc/7TFD-MD3T.

the latest projections of the International Energy Agency expect a median warming of around 2.4°C by 2100, RCP8.5 projects a temperature rise of around 5°C.[35]

When it began to update its SCC methodology, EPA acknowledged the weakness of models that depended on RCP8.5 and excised it from its own emissions projections.[36] RCP8.5 is so unlike all other projections of emissions that EPA felt the need to explain that SSP5-8.5 is the "only SSP-RCP pairing with CO2 emissions projections outside the 1st to 99th percentile range of RFF-SPs."[37] In other words, it is the only scenario EPA considers that it considers to be so implausible as to be impossible. But EPA did not *completely* remove RCP8.5 from its SCC estimation. Instead, while effectively disavowing the scenario in its emissions projections, EPA maintains RCP8.5 in its damage functions.[38]

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[35] Int'l Energy Agency, *World Energy Outlook 2023*, at 22 (2023), https://perma.cc/RP4K-RUUD; Zeke Hausfather & Glen P. Peters, Comment, *Emissions—The "Business As Usual" Story Is Misleading*, 577 Nature 618, 618 (2020); Zeke Hausfather, *Explainer: The High-Emissions 'RCP8.5' Global Warming Scenario*, CarbonBrief (Aug. 21, 2019), https://perma.cc/C5L8-W2Z3.

[36] EPA, *External Review Draft of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* (Sept. 2022), https://perma.cc/29TV-WYKL.

[37] *Id.* at 24.

[38] EPA, *Report on the Social Cost of Greenhouse Gases. supra* note 26, at 47 (Nov. 2023); *See also* Roger Pielke Jr., *Secret Sauce: You'll Never Guess What Drives the Biden Administration's Social Cost of Carbon*, The Honest Broker (Dec. 4, 2023), https://rogerpielkejr.substack.com/p/secret-sauce ("The damage functions are where RCP8.5 sneaks in and steals the show. Each of [EPA's] damage functions is based on RCP8.5 and not EPA's emissions scenarios or climate projections. Sneaky. Uncool. Not science.").

Beyond the damage function, the other key methodological choice in any calculation of the SCC is setting the "discount rate," which purports to capture the value of avoided future harms in present dollars. The LNG Export Study's analysis of the social cost of carbon applies three different "discount rates": 1.5%, 2.0%, and 2.5%. S-40.

But the LNG Export Study never acknowledges that the choice of the discount rate boils down to a value judgment about how much people living today should value benefits to those living in the future relative to costs born in the present. As UVA economist Jason Johnston explains, "there is no general agreement over whether the discount rate should be based on how much people *should*, as an ethical matter, discount the consumption of future generations or instead on the basis of current rates of return to capital investments that people *actually require* before investing." *Climate Rationality: From Bias to Balance* 477 (Cambridge Univ. Press 2021) (citing Robert S. Pindyck, *Climate Change Policy: What Do the Models Tell Us?*, 51 J. Econ. Literature 860, 863–65 (2013)). The use of one discount rate rather than another reflects a value judgment, not any advance in climate science, damage attribution, or macroeconomic modeling.

In its technical documents, the EPA acknowledges that "[t]he selection of rates on the lower end of that range tend to emerge from ethical concerns."[39] In other words, selection from the lower end of higher discount rates does not reflect a way of dealing with uncertainty; instead, it is a reflection of the different ways that the (flawed) damage functions value future costs. But contrary to the EPA, a *higher* discount rate would also emerge from ethical concerns, just different ones from those dominant in the milieu of the environmental bureaucracy.

The LNG Export Study does not contextualize the inherent uncertainty surrounding its SCC calculations. Its failure to do so leaves the public with the impression that LNG will result in tens of billions of dollars of damages from climate change. The DOE should withdraw the study and must not allow the SCC's methodological flaws to inform whether LNG exports are consistent with the public interest.

CONCLUSION

For these reasons, the Center for Environmental Accountability urges DOE to replace the LNG Export Study with a document that limits its analysis to permissible considerations and does not rely upon a "social cost of carbon" estimate.

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[39] EPA, *External Review Draft of Report on the Social Cost of Greenhouse Gases*, *supra* note 36, at 61 (Sept. 2022).

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