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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

Mexico Pacific Limited LLC Docket No. 22–167–LNG

Motion to Intervene and Protest of Public Citizen, Inc.

Mexico Pacific, owned by a consortium of private equity investors, has sought authorization in multiple steps to export 912.22 billion cubic feet per year (Bcf/year) of U.S. produced natural gas from its proposed export terminal on Mexico's pacific coast (with an additional 133.35 Bcf/year needed for pipeline fuel export terminal fuel) with primary destination to Asian markets. Mexico Pacific had received authorization five years ago to export 621 Bcf/year, and is now seeking permission to export an additional 425.57 Bcf/year.

The application must be denied because it is not consistent with the public interest. Both the applicant and the Department of Energy rely on an obsolete and discredited 2018 macroeconomic study that fails to accurately measure the disruptive impact record natural gas exports are having on U.S. energy markets; the 2018 study assumes economic benefits from the construction and operation of LNG export terminals on U.S. soil and not in Mexico; and the project's orientation towards the Chinese rather than European markets undermines global energy security and violates the public interest. DOE must reject the application. Furthermore, a single U.S. Senator—unable to achieve his legislative objective of eliminating the public interest standard—appears to unduly influence DOE's statutory obligations and undermines Public Citizen's rights as an intervenor in this proceeding.

Motion to Intervene

Public Citizen, Inc. moves to intervene in this proceeding. Established in 1971, Public Citizen, Inc. is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We have over 500,000 members and supporters across the United States. Public Citizen is active before the Federal Energy Regulatory Commission promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. We frequently intervene in U.S. Department of Energy proceedings involving the export of electricity and natural gas. Our Energy Program Director, Tyson Slocum, is an expert on energy market regulatory matters, serving as an expert witness on the Department of Energy public interest standard in testimony before the U.S. Congress in February 2023.[1] Slocum also serves on two federal advisory committees of the U.S. Commodity Futures Trading Commission (the Energy and Environmental Markets and Market Risk advisory committees).Financial details about our organization are on our web site.[2]

[1] www.citizen.org/article/house-testimony-energy-legislation/
[2] www.citizen.org/about/annual-report/

The Application

Mexico Pacific Limited, which seeks to build the Saguaro Energía LNG export terminal at Puerto Libertad on Mexico's west coast, is owned by a consortium of private equity investors, including Quantum Energy Partners (38.2%); AVAIO Capital (24.3%); Tortoise Capital Advisors (11.2%) and former Enron executive Thomas White's DKRW Energy Partners (8%).[3] As Mexico Pacific states in its application, this Mexican LNG export terminal is "particularly well positioned to supply LNG into Asian markets, including markets in Korea, Japan, and China, each of which can be supplied by vessel from the MPL Facility without having to transit the Panama Canal."[4] Mexico Pacific's planned LNG terminal location on Mexico's west coast is optimized for exports to Asia, rather than to Europe. Mexico Pacific confirms in its application that it "will not source natural gas for the MPL Facility from Mexico"—so 100% of the exports will utilize U.S. produced gas.[5]

Mexico Pacific sought and received blanket authorization to export 621 Bcf/year in 2018, which it is now allowed to export that entire volume on an annual basis through 2050 with no annual review. It now seeks authorization to export an additional 425.57 Bcf/year.

Applicants' Plan To Build And Operate A LNG Export Terminal In Mexico Rather Than The United States Is Not Incorporated In the Net Economic Benefit Test

DOE can authorize exports of natural gas to non-FTA countries only if they are "consistent with the public interest".[6] DOE assesses several variables, including net economic impacts, international impacts, the security of domestic natural gas supply, and environmental impacts.[7] DOE—and applicants—heavily rely upon a 2018 macroeconomic study commissioned by DOE.[8] That study assumes net economic benefits in part stemming from the "additional investment" of the construction and operation of LNG export terminals in the United States—many of which cost billions of dollars and employ thousands of workers.[9]

But Mexico Pacific is seeking authorization to export natural gas from an LNG terminal to be built and operated in Mexico. The application fails to provide any modified macroeconomic assessment to calculate a net economic benefit test involving an LNG

[3] Based upon Mexico Pacific's various DOE change in control filings, which may have changed since there has been recent reshuffling of various executives.
[4] At page 8.
[5] At page 9.
[6] 15 USC § 717b.
[7] www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-13427.pdf
[8] www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf
[9] At page 76.

export terminal in Mexico. As a result, the application is clearly deficient and is not consistent with the public interest.

Indeed, when DOE recently authorized exports for an applicant seeking to build LNG terminals in Mexico rather than the United States, it noted in its order:

> *DOE also acknowledges that proposals to re-export U.S.-sourced natural gas in the form of LNG from Mexico or Canada to non-FTA countries raise public interest considerations that are not present for domestic exports of LNG. In the case of re-exports, the U.S. economy does not receive a significant portion of the benefits DOE has recognized for LNG exported directly from the United States, particularly with respect to the jobs and infrastructure investment associated with construction and operation of liquefication facilities. Additionally, as noted in the EA, long-term consequences may arise from the fact that foreign infrastructure is not directly subject to U.S. environmental laws. For these reasons, DOE will carefully consider the development of this market segment.*[10]

DOE cannot find that Mexico Pacific's application is consistent with the public interest until the agency performs a new macroeconomic analysis that incorporates net economic assessments of an LNG terminal built and operated outside of the United States.

In addition, the limited partners supplying the capital for Mexico Pacific's private equity investors are unknown, and therefore the net economic benefits cannot be calculated, as the limited partners financially benefiting from the project could be located in China or other nations other than the United States.

Mexico Pacific's Exports Will Likely Be Destined for China, Undermining The Public Interest

Mexico Pacific's application is clear that the position of the planned LNG terminal on Mexico's west coast is designed to facilitate exports to Asia rather than Europe, and specifically lists China as a destination of its exports. But the application provides no detailed assessment of any global energy security or other public interest benefits from sending U.S. produced natural gas to China.

By virtue of its nearly 110 Billion cubic meters (Bcm) of contracted LNG volumes, China has now emerged as the global swing supplier, able to unilaterally impact global prices by reselling its contracted LNG depending upon fluctuations in domestic and global demand. As a result, Mexico Pacific's LNG exports to China effectively cede control of the global LNG market from the United States to China by empowering China to resell any contracted or delivered volumes of U.S. produced gas. [11] LNG exports to China are not in the public interest.

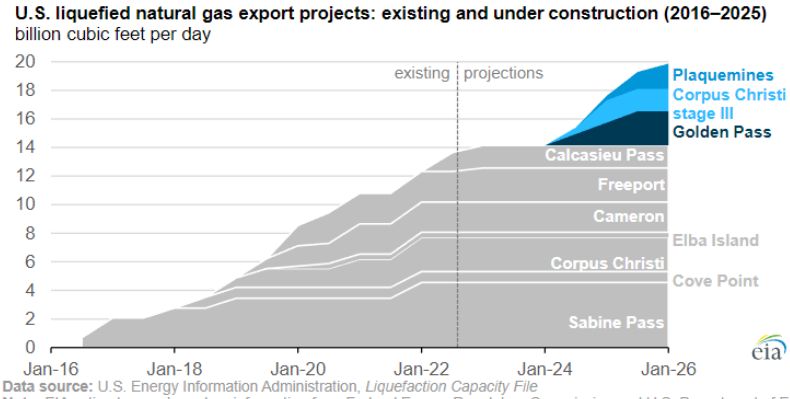
[10] 18-145-LNG, at pages 7-8, www.energy.gov/sites/default/files/2022-12/ord4365-B_0.pdf
[11] www.energyflux.news/p/chinese-whispers-european-jitters

Mexico Pacific's Exports Are Not Consistent With The Public Interest As They Will Exacerbate Domestic Supply Shortages And Threaten Higher Domestic Energy Prices

In 2023, the United States is the world's largest natural gas and petroleum producer and exporter on the planet. Sixty percent of our domestically produced petroleum is now exported,[12] and 20% of our natural gas is now allocated for export.[13] These numbers will only increase as domestic demand continues to flatten and export infrastructure capacity continues to expand. While oil markets—and domestic gasoline prices—have long been directly influenced by global calamities, natural gas had been insulated from upheaval beyond our shores. But LNG exports now directly tether American consumers to global disruptions, radically upending domestic energy markets, forcing American families to compete with Berlin and Beijing for U.S. produced energy. Natural gas exports are directly responsible for Americans paying higher prices to heat and cool their homes. Current statutes and regulations clearly present little challenge to domestic gas production, and offer minimal impediments to their export to foreign countries. Congress should be strengthening, not weakening, public interest protections for gas exports.

SEPTEMBER 6, 2022

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



Data source: U.S. Energy Information Administration, *Liquefaction Capacity File*
Note: EIA estimates are based on information from Federal Energy Regulatory Commission and U.S. Department of Energy filings, company websites, trade press, and other industry sources.

The United States is far and away the largest natural gas producer in the world: we alone account for 25% of the entire world's production every day, outproducing the next two biggest (Russia and Iran) *combined*,[14] with U.S. natural gas production reaching an all-time high in 2022.[15] At the same time, natural gas exports have exploded. Exports via pipeline to Mexico and Canada, combined with Liquified Natural Gas (LNG) exports by ship today account for 20% of domestic gas production—up from 6% in 2015. And in 2023 the United States will claim the title as biggest LNG exporter in the world.[16] But because of continued capital discipline by domestic fracking producers, production is failing to keep up with record exports.

[12] https://twitter.com/TysonSlocum/status/1617998886660112384
[13] www.citizen.org/article/letter-to-dept-of-energy-to-protect-consumers-from-lng-exports/
[14] www.eia.gov/international/data/world/natural-gas/dry-natural-gas-production
[15] www.eia.gov/naturalgas/weekly/archivenew_ngwu/2023/01_12/
[16] Stephen Stapczynski, "US Surges to Top of LNG Exporter Ranks on Breakneck Growth," January 2, 2023, Bloomberg, www.bloomberg.com/news/articles/2023-01-03/us-surges-to-top-of-lng-exporter-ranks-on-breakneck-growth

These record exports have come with a tragic cost: American households, power producers and other consumers are now forced to directly compete with their counterparts in Berlin and Beijing, which has globalized domestic benchmark prices, exposing Americans to higher prices and increased volatility.[17] Spot benchmark natural gas prices on the west and east coast United States have been higher than prices in Ukraine.[18]

The Federal Energy Regulatory Commission's 2022-23 *Winter Energy Market and Reliability Assessment* concludes that "continued growth in net exports, including from liquified natural gas (LNG) export facilities, will place additional pressure on natural gas prices this winter . . . Traditionally, domestic fundamentals drive U.S. natural gas prices; this winter, international markets will likely also affect U.S. natural gas markets and prices . . . the expansion of LNG export capability has integrated formerly disparate North American regional natural gas markets into the global market . . . In New England, high global LNG prices are contributing to higher winter natural gas futures prices."[19]

USA Today reports that record LNG exports are directly contributing to punishing high energy bills for American families.[20]

The U.S. Energy Information Administration notes that "2022 average wholesale U.S. natural gas spot price at the Henry Hub was the highest in real and nominal terms since 2008"—which was the era just prior to the fracking boom,[21] and reports that the "U.S. residential price of electricity will average 14.8 cents per kilowatthour in 2022, up 7.5% from 2021. Higher retail electricity prices largely reflect an increase in wholesale power prices driven by rising natural gas prices."[22]

The National Energy Assistance Directors' Association estimates that household heating costs will be 34.3% higher for families using natural gas and 6.9% higher for those relying on electricity this winter.[23] Twenty-seven percent of American households experience energy insecurity due to spiking natural gas prices.[24]

The *Wall Street Journal* reports "that natural-gas exports are pushing domestic prices higher . . . The pinch shows a growing tension between exporters and buyers who have enjoyed cheap gas for more than a decade. Some manufacturing and chemical

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[17] "Surging US LNG exports hike domestic gas prices amid global supply crunch," www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/surging-us-lng-exports-hike-domestic-gas-prices-amid-global-supply-crunch-67508815

[18] See www.eia.gov/todayinenergy/detail.php?id=55279 and www.naturalgasintel.com/haynesville-output-to-top-16-bcf-d-as-total-lower-48-production-continues-to-climb/

[19] https://ferc.gov/media/report-2022-2023-winter-assessment

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

[21] www.eia.gov/naturalgas/weekly/archivenew_ngwu/2023/01_12/

[22] www.eia.gov/outlooks/steo/

[23] https://neada.org/wp-content/uploads/2022/09/winter2022-23PR.pdf

[24] https://twitter.com/Ben_Inskeep/status/1641139943736049666

companies have built entire businesses around low U.S. gas prices . . . Utilities from the Pacific Northwest to New England have filed regulatory requests to raise rates for natural gas this winter, citing a supply squeeze as a result of higher global demand . . . the U.S. is exporting a larger share of its natural gas than it ever has and shale producers aren't quickly ramping up in response to high prices . . . some of the biggest natural-gas producers have vowed to keep investments in production growth low."[25] Therefore so-called capital discipline is keeping a check on domestic production not rising on pace with exports in order to ensure domestic producers will enjoy higher prices.

Natural gas futures fell 25% after the June 8, 2022 explosion took the Freeport LNG export terminal out of commission, as traders understood that reduced natural gas exports would result in increased supply for American consumers.[26]

These high prices are creating significant economic hardship for tens of millions of American families. Twenty-six percent of respondents to a U.S. Census Bureau survey taken in the summer of 2022 said they had forgone necessities like food or medicine to pay their energy bills sometime during the preceding year.[27] Rising energy costs—anchored by higher natural gas prices stemming in part from record LNG exports—are the biggest factor driving inflation in the U.S.[28]

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

The most recent of these reports was conducted in 2018 during the Trump Administration, when LNG exports were still in relative infancy. *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* was prepared by NERA Economic Consulting for DOE.[29] This study has aged poorly, as it assumed that consumer welfare—which it defines as the present value measure of the standard of living of all U.S. households—was directly and beneficially linked with higher LNG exports.[30] The 2018 study gave only a 3% probability that significant LNG exports would result in domestic prices above $10/MMBtu, concluding that "increasing U.S. LNG exports under any given set of assumptions about U.S. natural gas resources and their production leads to only small increases in U.S. natural gas prices."[31] Furthermore, the

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

[26] Ryan Dezember, Natural-Gas Prices Plunge After Extended Outage at Texas LNG Facility, The Wall Street Journal, June 14, 2022, www.wsj.com/articles/natural-gas-prices-plunge-after-extended-outage-at-texas-lng-facility-11655235895

[27] www.census.gov/data/tables/2022/demo/hhp/hhp48.html

[28] www.bls.gov/cpi/

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

[30] At page 20.

[31] At page 55.

study claims that "as U.S. LNG exports increase . . . households who hold shares in companies that own liquefaction plants receive additional income from take-or-pay tolling charges for LNG exports. These additional sources of income for U.S. consumers outweigh the income loss associated with higher energy prices."[32] DOE relies upon the conclusions of this discredited 2018 study to help determine whether exports will be consistent with the public interest.

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

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

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

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

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

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

The Natural Gas Act language designating exports to countries with free trade agreements deemed to be in the public interest were added as Section 201 of the Energy

[32] At page 67.

Policy Act of 1992.[33] At the time of passage, the United States only had a free trade agreement with Canada that included natural gas treatment, and there were active negotiations with Mexico on the North American Free Trade Agreement. The congressional record makes clear that the purpose of Section 201 was to promote a North American natural gas market that would benefit consumers—and not tolerate the use of a free trade agreement public interest determination to freely re-export to nations with whom no free trade agreement exists.

The Report of the Committee of Energy and Commerce (Rept. 102-474, Part 1) noted that Section 201 was intended to establish fewer restrictions on natural gas imports from Canada and Mexico, ensuring that such imports would be treated "more like domestic American natural gas production" by designating them as "first sale" status; barred FERC "or state regulators from treating these imports differently than domestic gas"; making "the current import approval process purely automatic, so that this procedure—which domestic gas does not undergo—cannot cause any delays"; and "ease regulation of Mexican gas imports if a free trade agreement with Mexico is reached."[34]

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

> *the conferees did agree to expressly forbid discrimination against imported natural gas . . . [and ensures] a broad policy of free and competitive wellhead markets in North America by, in effect, deregulating Canadian natural gas imports in section 201 . . . As for section 201, we note it applies, for example, to imports of Canadian natural gas into the United States; exports of natural gas to Canada from the United States; and imports of liquified natural gas into the United States . . . Finally, as drafted, the new fast track process would not be available for LNG exports to, for example, Pacific rim nations other than Canada.*[35]

And U.S. Representative Barbara B. Kennelly (D-Connecticut) spoke on the House floor on remarks May 20, 1992 that "section 201 of this bill eases existing rules for importing natural gas thereby protecting this region's [New England's] access to affordable, clean burning natural gas."[36]

[33] www.congress.gov/102/statute/STATUTE-106/STATUTE-106-Pg2776.pdf

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

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

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

The congressional record elaborated that Section 201 "is intended to increase the free flow of natural gas ***throughout the North American market***" [emphasis added].[37]

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

> *The Energy Policy Act of 1992 contains important provisions that remove regulatory barriers which hinder the importation of natural gas from countries with which the United States has entered into a free trade agreement requiring national treatment for trade in natural gas. Currently, this means Canadian gas must be treated the same as domestic gas. Once the North American Free Trade Agreement is ratified, this will also apply to Mexican gas. Section 201 of this act is vital to assuring that U.S. regulators do not interfere with the importation of natural gas to customers in the United States. Its provisions provide critical protection to the citizens of my home state, New York, who receive supplemental volumes of natural gas from Canada. The purpose of these provisions is not to give imported natural gas an advantage, but to ensure a level playing field for imported gas . . . Section 201(b) deems the importation to the United States, and exportation from the United States, of natural gas consistent with the public interest. By making this determination, applications for import of Canadian natural gas are granted automatic approval. The result is, imported natural gas is not subjected to burdensome import licensing proceedings that place it at a disadvantage relative to domestically produced gas . . . these provisions are good competitive policy. U.S. producers supply over 92 percent of the natural gas needs in this country. Fair treatment of imports helps maintain healthy competition in the United States without posing any threat to U.S. producers. Greater access to a variety of natural gas sources will help create a more stable natural gas market so that more U.S. consumers will benefit from this economic and environmentally sound source of energy.*[38]

A Single U.S. Senator Appears To Have Undue Influence Over DOE's Statutory Responsibilities, Undermining The Rights Of Intervenors

News reports suggest that two DOE authorizations of natural gas exports in December 2022 were tied to the undue influence of a single U.S. Senator:

> *Senator Ted Cruz, a Texas Republican who has been pressuring the Biden administration to approve LNG permits, had been blocking confirmation of four Biden energy department nominees. A congressional source said Cruz immediately lifted his holds on those nominees after the permits were approved.*[39]

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

[38] at page 4578-4579

[39] Timothy Gardner, "U.S. allows Sempra to re-export LNG from Mexico," December 21, 2022, www.reuters.com/business/energy/us-allows-sempra-re-export-lng-mexico-2022-12-20/

Senator Cruz has failed in his efforts to garner enough support for his legislation eliminating the public interest standard for natural gas exports.[40] But what Senator Cruz fails to accomplish legislatively, he aims to achieve through less scrupulous means that appear to unduly influence DOE's statutory responsibilities to uphold the public interest. Public Citizen therefore requests that the Department of Energy make public as part of this docketed proceeding any and all communications involving Senator Cruz's efforts to influence the approval of this application.

Respectfully submitted,

Tyson Slocum

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[40] www.cruz.senate.gov/newsroom/press-releases/sens-cruz-capito-cramer-kennedy-fight-to-expedite-us-natural-gas-exports

VERIFICATION

Pursuant to 10 CFR § 590.103(b), I, Tyson Slocum, declare that I am Energy Program Director for Public Citizen, Inc. and am authorized to make this verification; that I have authored and read the foregoing filing and that the facts therein stated are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.SC § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on April 3, 2023.

Tyson Slocum
Tyson Slocum
Energy Program Director
Public Citizen, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the applicant and intervenors for this docketed proceeding in accordance with 10 CFR § 590.107(b). Dated at Washington, DC this 3rd day of April 2023.

Signed,

Tyson Slocum

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