

Pushing Pause on Liquefied Natural Gas Exports: Can the Department of Energy Halt LNG Exports to Save the Planet?

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The Biden-Harris Administration recently interrupted the normal, export-friendly operation of the Natural Gas Act, triggering a lawsuit against the administration by fifteen states. The White House announced “a temporary pause on pending decisions on exports of Liquefied Natural Gas (LNG) to non-FTA [non-Free Trade Agreement] countries until the Department of Energy can update the underlying analyses for authorizations.” The announcement makes clear from the outset that the pause is motivated by concerns about global climate change, which the Biden Administration has called “the existential threat of our time.” This raises a question: Are the new “environmental analyses” of climate change that the administration is expected to propose actually needed to inform the Department of Energy’s export authorization decisions?

No. Because the environmental analysis contemplated by the announced “pause” on LNG exports would obtain information beyond the Department of Energy’s jurisdiction, that analysis is unnecessary. The Department of Energy lacks statutory authority to consider the putative global climate impacts of LNG when determining whether approval of LNG export authorizations to non-Free Trade Agreement countries is in the public interest. In effect, the announcement “pauses” the Department’s statutory mission for the purpose of conducting new environmental analyses that are unnecessary to deciding whether to approve or deny export authorizations. While these analyses are being done, the Department of Energy will neglect to discharge its statutory obligations.

To explain, we first provide high-level background on the Natural Gas Act, or NGA, and the history of U.S. LNG imports and exports. Second, we review the recently announced pause of LNG export authorizations to understand what types of analysis are contemplated by the White House. Third, we examine the NGA and the National Environmental Policy Act, or NEPA, to understand what types of analysis were contemplated by Congress. Fourth, we explain that the upstream and downstream environmental impacts on which the White House is focused lie outside DOE’s authority under the NGA and therefore need not be evaluated by DOE under the NGA or NEPA. Thus, we conclude that there is no statutory basis for the White House to suspend LNG export authorizations pending evaluation of such environmental impacts.

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