

ENSURING SMALL SCALE LNG CERTAINTY AND ACCESS ACT

JULY 18, 2018.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4606]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4606) to provide that applications under the Natural Gas Act for the importation or exportation of small volumes of natural gas shall be granted without modification or delay, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring Small Scale LNG Certainty and Access Act”.

SEC. 2. SMALL SCALE EXPORTATION OR IMPORTATION OF NATURAL GAS.

Section 3(c) of the Natural Gas Act (15 U.S.C. 717b(c)) is amended—

(1) by striking “For purposes” and inserting “(1) For purposes”; and

(2) by adding at the end the following:

“(2) For purposes of subsection (a), and in addition to any importation or exportation of natural gas described in paragraph (1), importation or exportation of natural gas shall be deemed to be consistent with the public interest, and an application for such importation or exportation shall be granted without modification or delay, if—

“(A) the application for such importation or exportation proposes to import or export a volume of natural gas that does not exceed 0.14 billion cubic feet per day; and

“(B) the Commission’s approval of such application does not require an environmental impact statement or an environmental assessment under the National Environmental Policy Act of 1969.”.

PURPOSE AND SUMMARY

H.R. 4606, Ensuring Small Scale LNG Certainty and Access Act was introduced by Rep. Bill Johnson on December 12, 2017. H.R. 4606 expedites the approval process for applications to import and export small quantities of natural gas that qualify for a categorical exclusion under the National Environmental Policy Act (NEPA).

BACKGROUND AND NEED FOR LEGISLATION

American innovation and advancements in drilling technologies have allowed the United States to become the world’s leading producer of oil and gas, putting the nation on track to become a net energy exporter by 2026.¹ Natural gas production is at an all-time high, and reserves are so large that they are predicted to meet domestic demand for almost a century.² For 60 years, the U.S. has been a natural gas importer; however, with rising domestic production and relatively low prices, U.S. natural gas exports, including liquefied natural gas (LNG) exports, now exceed imports.³ While the U.S. has been exporting natural gas through pipelines for decades, the first large scale exports of LNG on ships began in 2016 from the Sabine Pass export facility in Louisiana, followed by the Cove Point facility in Maryland in 2018.⁴ Four additional LNG ex-

¹ See EIA, Annual Energy Outlook 2017.

² U.S. dry natural gas production averaged 73.6 Bcf/d in 2017. See EIA, Short-Term Energy Outlook, July 12, 2018. EIA estimates that as of January 1, 2015, there were about 2,462 trillion cubic feet (Tcf) of technically recoverable resources of dry natural gas in the United States. At the rate of U.S. dry natural gas consumption in 2016 of about 27.5 Tcf per year, the United States has enough natural gas to last about 90 years. See EIA, Frequently Asked Questions.

³ In August 2017, total U.S. natural gas liquefaction capacity in the Lower 48 states increased to 2.8 billion cubic feet per day (Bcf/d) following the completion of the fourth liquefaction unit at the Sabine Pass LNG terminal in Louisiana. With increasing liquefaction capacity and utilization, U.S. LNG exports averaged 1.9 Bcf/d, and capacity utilization averaged 80% this year, based on data through November. See: EIA, *Today in Energy*, August 9, 2017 and December 7, 2017.

⁴ See EIA, U.S. Natural Gas Pipeline Exports and Liquefied U.S. Natural Gas Exports.

port facilities are currently under construction, with an expected total capacity of 9.6 billion cubic feet per day (Bcf/d) by the end of 2019. According to data compiled by the Department of Energy (DOE), the majority of LNG exports to date were delivered to customers in Latin America and Asia.⁵

The Department of Energy exercises jurisdiction over the import and export of natural gas, with authorities derived from section 3 of the Natural Gas Act (NGA) and section 301(b) of the DOE Organization Act. Section 3(a) of the NGA sets forth the standard of review of most LNG export applications:

[N]o 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 having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.⁶

Thus, section 3(a) creates a rebuttable presumption that a proposed export of natural gas is in the public interest. Section 3(c) creates a different standard of review for applications to export natural gas, including LNG, to countries with which the U.S. has in effect a free trade agreement (FTA) requiring the national treatment for trade in natural gas. Section 3(c) requires such applications to be deemed consistent with the public interest, and requires such applications to be granted without modification or delay.

DOE's review of applications to export LNG to non-FTA countries is conducted through a public process. While section 3(a) establishes a broad public interest standard and presumption favoring export authorizations, the statute does not define "public interest" or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing applications for export authorizations, including economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. In 2012 and again in 2015, DOE released studies to assess the macroeconomic impacts of LNG exports to inform the decisions on export applications.⁷ These studies generally conclude that LNG exports would provide positive net economic benefits to the U.S.

On September 1, 2017, DOE issued a notice of proposed rule-making to revise its regulations to provide for faster approval of small-scale exports of natural gas, including LNG. The U.S. small-scale LNG export market involves exports of small volumes of natural gas, primarily to countries in the Caribbean, Central America, and South America. The proposed rule provides that DOE, upon receipt of any complete application to export natural gas (including

⁵ See DOE, LNG Reports. Available at: <https://energy.gov/fe/listings/lng-reports>.

⁶ See Section 3 of the Natural Gas Act (15 U.S.C. §717b).

⁷ See DOE, LNG Export Studies. Available at: <https://energy.gov/fe/downloads/lng-export-studies>.

LNG) to non-free trade agreement countries, will grant the application provided that the application meets two criteria: the application proposes to export no more than 0.14 Bcf/day and the proposed export qualifies for a categorical exclusion under DOE's NEPA regulations. For applications meeting these criteria, the exports are considered "small-scale natural gas exports" and are deemed to be in the public interest under the NGA. Exports of natural gas to free trade agreement countries are already deemed to be in the public interest under the Act.

H.R. 4606 amends the NGA to provide DOE with authority to deem small-scale natural gas imports and exports consistent with the public interest and grant approval without modification or delay, provided that the application proposes to export no more than 0.14 Bcf/d, and the proposed exports does not require an environmental impact statement or an environmental assessment under NEPA. It is the Committee's expectation that a proposed small-scale export must qualify for a categorical exclusion under NEPA in order to be considered for expedited treatment. DOE has, by regulation, determined that categorical exclusions do not individually or cumulatively have a significant effect on the environment.

As the Committee's legislative hearing record demonstrates, H.R. 4606 would provide greater regulatory certainty and a clear timetable for moving forward with capital intensive projects that create American jobs. In testimony before the Committee, DOE Assistant Secretary Steven Winberg stated that H.R. 4606 would "have qualifying applications granted without modification or delay, saving several months of review time at a minimum." Charlie Riedl, Executive Director of the Center for Liquefied Natural Gas, testified in support of the legislation on behalf of LNG producers, terminal operators, and developers. Mr. Riedl stated that "[a]dvancing this legislation will provide greater certainty in the permitting process for LNG facilities, thereby accelerating America's rise as a world-class exporter of natural gas, creating U.S. jobs, growing our economy, significantly strengthening global energy security all while reducing emissions and pollution."

The Committee finds that applications to import and export small quantities of natural gas that also qualify for a categorical exclusion under NEPA are consistent with the public interest and should be granted without modification or delay. H.R. 4606 amends section (3c) of the NGA to achieve this objective, while preserving existing environmental laws and regulations. H.R. 4606 specifies that only applications for a volume of gas that does not exceed 0.14 Bcf/day qualify for expedited treatment. To put this relatively small quantity in context, the Energy Information Administration (EIA) reports that U.S. dry natural gas production averaged 73.6 Bcf/day in 2017, and EIA forecasts dry natural gas production will average 80.5 Bcf/d in 2018, establishing a new record.⁸

COMMITTEE ACTION

On January 19, 2018, the Subcommittee on Energy held a hearing on H.R. 4606 entitled "Legislation Addressing LNG Exports

⁸ See EIA, Short-Term Energy Outlook. Released May 8, 2018.

and PURPA Modernization.” The Subcommittee received testimony from:

- Steven Winberg, Assistant Secretary for Fossil Energy, Department of Energy;
- James Danly, General Counsel, Federal Energy Regulatory Commission;
- Charlie Riedl, Executive Director, Center for Liquefied Natural Gas;
- Timothy Sparks, Vice President of Electric Grid Integration, CMS Energy;
- Karl Rábago Executive Director, Pace Energy and Climate Center;
- Travis Kavulla, Vice Chairman, Montana Public Service Commission; and,
- Paul Cicio, President, Industrial Energy Consumers of America.

On April 18, 2018, the Subcommittee on Energy met in open markup session and forwarded H.R. 4606, without amendment, to the full Committee by a record vote of 19 yeas and 14 nays. On May 9, 2018, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 4606, as amended, favorably reported to the House by a record vote of 35 yeas and 15 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 66

BILL: H.R. 4606, Ensuring Small Scale LNG Certainty and Access Act

AMENDMENT: A motion by Mr. Walden to order H.R. 4606 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 35 yeas and 15 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Upton	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel			
Mr. Burgess	X			Mr. Green	X		
Mrs. Blackburn				Ms. DeGette		X	
Mr. Scalise	X			Mr. Doyle	X		
Mr. Latta	X			Ms. Schakowsky			
Mrs. McMorris Rodgers	X			Mr. Butterfield	X		
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Guthrie	X			Mr. Sarbanes		X	
Mr. Olson	X			Mr. McNerney	X		
Mr. McKinley	X			Mr. Welch		X	
Mr. Kinzinger	X			Mr. Lujan	X		
Mr. Griffith	X			Mr. Tonko		X	
Mr. Bilirakis	X			Ms. Clarke		X	
Mr. Johnson	X			Mr. Loeb sack		X	
Mr. Long	X			Mr. Schrader	X		
Mr. Bucshon	X			Mr. Kennedy		X	
Mr. Flores	X			Mr. Cardenas			
Mrs. Brooks	X			Mr. Ruiz		X	
Mr. Mullin	X			Mr. Peters		X	
Mr. Hudson	X			Ms. Dingell		X	
Mr. Collins							
Mr. Cramer	X						
Mr. Walberg	X						
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						
Mr. Duncan	X						

5/09/18

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 4006 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 23, 2018.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4606, the Ensuring Small Scale LNG Certainty and Access Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 4606—Ensuring Small Scale LNG Certainty and Access Act

H.R. 4606 would require the Department of Energy (DOE) to approve any application to export or import less than 0.14 billion cubic feet (bcf) of natural gas per day to or from any country with which the United States does not have an applicable free trade agreement (FTA). CBO expects that expediting those applications would reduce the time to approve them by several months, which could affect both the number of applications and the volume of gas exported and imported.

Changes in the price of gas, in the level of production of gas on federal lands, or a combination of the two could change the payments associated with production on federal lands. (Those payments are recorded as decreases in direct spending.) CBO expects that any additional demand for gas exports under the bill would be met by a commensurate increase in supply, which would result in no significant change in the price of gas. In addition, CBO expects that any increase in the production of gas would probably occur in states that accounted for more than 80 percent of gas exports over the 2012–2016 period. Because those states, including Michigan, Texas, and New York, contain only small amounts of federal land (between 0.5 percent and 10 percent of the total land area in each

state), CBO estimates that any increase in the production of gas on federal lands would be small.

Using information provided by DOE, CBO also estimates that expediting applications to import small quantities of gas would have negligible effects on the price and quantity of gas produced in the United States, primarily because the quantity of gas imported from non-FTA countries has been very small in recent years. Over the 2013–2017 period, imports from those countries average 0.27 bcf per day (about 0.3 percent of the amount of gas produced domestically over that period). In addition, CBO expects that any effects from increased imports would probably be offset by the effects of increased exports. In 2017, imports from non-FTA countries totaled less than one-seventh of the amount of exports to those countries, and CBO expects that the United States will continue to be a net exporter to non-FTA countries over the next 10 years.

Because enacting H.R. 4606 could affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that any such effects would not be significant in any year. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 4606 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 4606 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On April 12, 2018, CBO transmitted a cost estimate for S. 1981, the Small Scale LNG Access Act of 2017, as ordered reported by the Senate Committee on Energy and Natural Resources on March 8, 2018. The two bills contain similar provisions, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to expedite the approval process for applications to import and export small quantities of natural gas that qualify for a categorical exclusion under NEPA.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 4006 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 5239 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 4006 contains no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Ensuring Small Scale LNG Certainty and Access Act.”

Section 2. Small scale exportation or importation of natural gas

Section 2 amends section 3(c) of the NGA to provide that applications for importation or exportation of natural gas shall be deemed to be consistent with the public interest and an application shall be granted without modification or delay, if the following two criteria are met: the application proposes to import or export a volume of natural gas that does not exceed 0.14 Bcf/day and the proposal qualifies for a categorical exclusion under NEPA regulations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

NATURAL GAS ACT

* * * * *

EXPORTATION OR IMPORTATION OF NATURAL GAS; LNG TERMINALS

SEC. 3. (a) After six months from the date on which this act takes effect 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 having secured an order of the Commission authorizing it to do so. The Commission 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. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a “first sale” within the meaning of section 2(21) of the Natural Gas Policy Act of 1978; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) **For purposes** (1) *For purposes* of subsection (a), the importation of the natural gas referred to in subsection (b), or the 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, and applications for such importation or exportation shall be granted without modification or delay.

(2) *For purposes of subsection (a), and in addition to any importation or exportation of natural gas described in paragraph (1), importation or exportation of natural gas shall be deemed to be consistent with the public interest, and an application for such importation or exportation shall be granted without modification or delay, if—*

(A) *the application for such importation or exportation proposes to import or export a volume of natural gas that does not exceed 0.14 billion cubic feet per day; and*

(B) *the Commission’s approval of such application does not require an environmental impact statement or an environmental assessment under the National Environmental Policy Act of 1969.*

(d) Except as specifically provided in this Act, nothing in this Act affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e)(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in

this Act, nothing in this Act is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 3A;

(C) decide the matter in accordance with this subsection; and

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

(ii) condition an order on—

(I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;

(II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or

(III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.

(C) Subparagraph (B) shall cease to have effect on January 1, 2030.

(4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.

(f)(1) In this subsection, the term “military installation”—

(A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and

(B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.

(3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or

operation of liquefied natural gas facilities affecting the training or activities of an active military installation.

* * * * *

DISSENTING VIEWS

Since 2011, companies have filed more than 50 applications with the Department of Energy (DOE) to export liquefied natural gas (LNG). To date, DOE has granted final authorizations for LNG exports to non-Free Trade Agreement (FTA) countries on 29 applications.¹ The approved applications authorize the export of 21.35 billion cubic feet per day (Bcf/d) of natural gas to non-FTA countries,² and the pending applications collectively seek to export an additional 32.68 Bcf/d of LNG.

In 2017, DOE proposed a rule to expedite approval of “small-scale natural gas exports.”³ The rule would deem small-scale exports to non-FTA countries to be in the public interest, so long as applications propose to export LNG at a volume of not more than 0.14 Bcf/d and DOE’s approval of the application would not require an environmental review under the National Environmental Policy Act (NEPA).⁴ DOE will grant applications meeting the criteria on an expedited basis, without the need for notice or comment. DOE asserts “this proposed rule, and the 45-day comment period for this proposed rule, would constitute the notice and opportunity for hearing on all prospective small-scale natural gas export applications.”⁵ The small-scale LNG rule was expected to be finalized in May.⁶

ANALYSIS OF H.R. 4606

H.R. 4606 amends NGA section 3(c) to deem applications for “importation or exportation of a volume of natural gas that does not exceed 0.14 billion cubic feet per day” to be in the public interest. A project must also qualify for a NEPA categorical exclusion to take advantage of the bill’s provisions.

This bill is ostensibly intended to codify DOE’s small-scale LNG rule; however, proponents have not justified the need for swift Congressional action on a proposed rule that is in the process of being finalized. There are drawbacks to codifying a proposed rule with such a prescriptive volume requirement. For example, should the circumstance arise where exporting 0.14 Bcf/d of LNG is no longer in the public interest, then Congress would have to enact a *new*

¹ Department of Energy, *Long Term Applications Received by DOE/FE to Export Domestically Produced LNG from Lower-48 States* (Jun. 26, 2018) (www.energy.gov/sites/prod/files/2018/06/f53/Summary%20of%20LNG%20Export%20Applications%200.pdf).

² DOE includes authorizations for export of compressed natural gas in this estimate.

³ Department of Energy, *Small-Scale Natural Gas Exports*, 82 Fed. Reg. 41570 (Sept. 1, 2017) (proposed rule).

⁴ DOE may determine that an application qualifies for a categorical exclusion from the preparation or adoption of an environmental impact statement or environmental assessment under NEPA. DOE’s list of categorical exclusions can be found at 10 CFR part 1021.410, appendices A and B.

⁵ See Department of Energy, *Small-Scale Natural Gas Exports*, 82 Fed. Reg. 41570 at 41573 (Sept. 1, 2017).

⁶ Office of Management and Budget, Office of Information and Regulatory Affairs, View Rule—Small-Scale Natural Gas Exports (Section 610 Review) (www.reginfo.gov/public/do/eAgendaViewRule?publd=201804&RIN=1901-AB43) (accessed Jul. 12, 2018).

law to make any changes. And, based on DOE's requests for public input on the appropriate volume limit for a small-scale application, there is more than a remote likelihood that the volume limit of 0.14 Bcf/d could change in DOE's final rule.

The policy goals and priorities of the proposed small-scale LNG rule are also concerning. It declares that all small-scale exports are *always* in the public interest, and removes longstanding consumer protections. It also prevents the public from having an opportunity to know about or provide input on export proposals and violates the public hearing requirements of the NGA. Most importantly, there continues to be no justification for any of these changes to the existing approval process.⁷

Significantly, the proposal fails to prevent applicants from using this new process to evade the public interest determinations required for large-scale exports. Because there is no limit on the number of small-scale applications an entity can have, an applicant could skirt requirements for larger exports by segmenting a proposal into smaller pieces.

An unrestricted export policy could lead to even higher levels of LNG exports, which could have significant impacts on domestic natural gas prices and adversely affect American consumers and manufacturers. Unfettered exports would exacerbate climate change by incenting widespread fossil fuel extraction and displacing carbon-free sources of power.⁸ High methane leak rates and increased demand would likely offset any climate benefits associated with natural gas use.⁹ To undertake such a policy at a time when the methane pollution level from U.S. oil and gas operations "could warm the planet as much as coal in the short term" is completely reckless.¹⁰

CONCLUSION

Ultimately, H.R. 4606 is a bill in search of a problem. It would prematurely and unnecessarily enshrine a Trump Administration pro-fossil fuel proposed rule into law. Approving another bill to expand natural gas exports would incent widespread fossil fuel extraction and higher domestic natural gas prices, with serious climate, public health, and economic consequences for American consumers and manufacturers.

⁷ Sierra Club, *Comments on the Department of Energy's proposed "Small-Scale Natural Gas Exports"* (Oct. 16, 2017) (www.regulations.gov/document?D=DOE-HQ-2017-0018-0077); Industrial Energy Consumers of America, *Comments on the Department of Energy's proposed "Small-Scale Natural Gas Exports"* (Oct. 16, 2017) (www.regulations.gov/document?D=DOE-HQ-2017-0018-0065).

⁸ Christine Shearer et al., Environmental Research Letters, *The effect of natural gas supply on US renewable energy and CO2 emissions* (Sept. 24, 2014) (iopscience.iop.org/article/10.1088/1748-9326/9/9/094008).

⁹ Alexander Q. Gilbert and Benjamin K. Sovacool, Energy, *US liquefied natural gas (LNG) exports: Boom or bust for the global climate?* (Dec. 15, 2017) (doi.org/10.1016/j.energy.2017.11.098).

¹⁰ Ramon Alvarez, et al., *Science*, *Assessment of methane emissions from the U.S. oil and gas supply chain* (Jun. 21, 2018) (science.sciencemag.org/content/early/2018/06/20/science.aar7204); *The Natural Gas Industry Has a Leak Problem*, *New York Times* (Jun. 21, 2018) (www.nytimes.com/2018/06/21/climate/methane-leaks.html?smid=tw-nyclimate&smtyp=cur).

For the reasons stated above, we dissent from the views contained in the Committee's report.

FRANK PALLONE, Jr.,
Ranking Member.

BOBBY RUSH,
Ranking Member,
Subcommittee on Energy.

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