ORAL ARGUMENT NOT YET SCHEDULED

No. 26-1036

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB and NATURAL RESOURCES DEFENSE COUNCIL,
Petitioners,
v.
CHRIS WRIGHT, in his official capacity as Secretary of Energy, United States Department of Energy; UNITED STATES DEPARTMENT OF ENERGY,
Respondents,
VENTURE GLOBAL CP2 LNG, LLC,
Intervenor for Respondents.

On Petition for Review of Orders of the U.S. Department of Energy

UNOPPOSED MOTION OF THE AMERICAN PETROLEUM INSTITUTE AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and D.C. Circuit Rule 29, the American Petroleum Institute ("API") and the Chamber of Commerce of the United States of America (the "Chamber") respectfully move for leave to file the attached brief as *amici curiae* in support of Respondents. Counsel for proposed *amici* has conferred with the parties' counsel. Respondents and Intervenor consent to the filing of the *amici* brief. Petitioners stated that they do not oppose this motion.

API and the Chamber have substantial interests in this case. API is a national trade association representing nearly 600 members involved in all segments of the oil and natural gas industries, including companies that hold, or have applied for, authorizations to export natural gas under the Natural Gas Act and companies that produce, gather, process, and transport the natural gas that supplies the Nation's liquified natural gas export terminals. API participated in the administrative proceedings that resulted in the Categorical Exclusion Rule at issue here, submitting comments supporting the Department of Energy (DOE)'s revisions to its environmental review procedures. The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The attached brief would assist the Court in resolving the petition for review. It addresses DOE's obligations when authorizing exports of natural gas, the division of authority between DOE and the Federal Energy Regulatory Commission, and the practical consequences of vacating DOE's Categorical Exclusion Rule. API and the Chamber offer the perspective of industries and businesses that depend on predictable, efficient, and non-duplicative permitting regimes for energy infrastructure.

All the requirements for an *amici curiae* brief before this Court are satisfied. The attached brief is timely under Federal Rule of Appellate Procedure 29(a)(6), and no party will be prejudiced by its filing. Consistent with D.C. Circuit Rule 29(d), API and the Chamber have coordinated their participation and are filing a single consolidated brief. To *amici*'s knowledge, no other amicus brief is planned in support of Respondents. The accompanying brief therefore will assist the Court without duplicating other amicus presentation. Accordingly, *amici* respectfully request this Court's leave to appear as *amici curiae* and to deem the accompanying proposed brief filed.

Dated: August 20, 2026 Respectfully submitted,

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RULE 26.1 CORPORATE DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the American Petroleum Institute ("API") and the Chamber of Commerce of the United States of America (the "Chamber") respectfully submit these Disclosure Statements.

American Petroleum Institute

API certifies that it is incorporated under the laws of the District of Columbia. API has no parent entity, and no publicly held corporation or similarly situated legal entity has 10% or greater ownership of API.

Chamber of Commerce of the United States of America

The Chamber states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

Respectfully submitted,

/s/ *Varu Chilakamarri*
Varu Chilakamarri
Counsel for the Amici Curiae

Dated: August 20, 2026

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 444 words. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

/s/ *Varu Chilakamarri*
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Dated: August 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2026, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the appellate CM/ECF system and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

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Intervenor for Respondents.

On Petition for Review of Orders of the U.S. Department of Energy

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AMICI CURIAE BRIEF OF THE AMERICAN PETROLEUM INSTITUTE AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENTS

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Respectfully submitted,

/s/ *Varu Chilakamarri*
Varu Chilakamarri
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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), API and the Chamber state that all the parties and intervenors appearing in this Court are listed in the Certificate as to Parties, Rulings Under Review, and Related Cases contained in the Respondent's Brief.

References to the rulings under review and to related cases are likewise set forth in Respondent's Brief. This case is a petition for review of orders issued by the U.S. Department of Energy and a rule promulgated by that agency and was filed directly in this Court. Accordingly, the requirement of Circuit Rule 28(a)(1)(A) to list the parties, intervenors, and *amici* that appeared below does not apply.

/s/ *Varu Chilakamarri*
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GLOSSARY

API	American Petroleum Institute
Chamber	Chamber of Commerce of the United States of America
DOE	United States Department of Energy
EIS	Environmental Impact Statement
Exclusion Rule or Rule	National Environmental Policy Act Implementing Procedures, 85 Fed. Reg. 78,197 (Dec. 4, 2020)
FERC	Federal Energy Regulatory Commission
FTA	Free Trade Agreement
JA	Joint Appendix
LNG	Liquefied Natural Gas
NEPA	National Environmental Policy Act
NGA	Natural Gas Act

IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

API is a national trade association that represents nearly 600 members involved in all segments of the oil and natural gas industries. API's members include corporations that produce, process, store, transport, and market oil and natural gas products, as well as companies that support the oil and natural gas sectors. API harnesses its members' expertise to research and advocate for economically efficient and environmentally sound approaches to the production and supply of energy resources. API's members include companies that hold, or have applied for, authorizations to export natural gas under Section 3 of the Natural Gas Act, as well as companies that produce, gather, process, and transport the natural gas that supplies the Nation's Liquefied Natural Gas (LNG) export terminals. API participated in the administrative proceedings that resulted in the Categorical Exclusion Rule at issue here, submitting comments on the Department of Energy's (DOE) proposed revisions to its NEPA procedures. *See Comments of the Am. Petroleum Inst.*, DOE-HQ-2020-0017 (June 1, 2020), *available at* https://tinyurl.com/y98ap55f (supporting categorical exclusion as it would streamline DOE's NEPA review, better

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[1] *Amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

align that review with DOE's limited statutory role, and reduce duplication with FERC's environmental-review responsibilities).

The Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

This case concerns legal and policy issues related to the environmental review that must precede a federal authorization to export natural gas as a commodity—a threshold approval on which billions of dollars of investment in energy infrastructure depend. *Amici* and their members have substantial interests in the continued development of that infrastructure, in the efficient and non-duplicative administration of the National Environmental Policy Act (NEPA), and in ensuring that predictable, consistent, and rational policy governs natural gas exports. *Amici* submit this brief to explain the legal principles that demand this Court deny the petition for review, and to describe the broader, harmful consequences of the relief that Petitioners seek—consequences that extend beyond the single authorization or LNG company at issue.

SUMMARY OF ARGUMENT

Petitioners' challenge arises from one export authorization for one terminal in Cameron Parish, Louisiana. But the relief they seek extends far beyond that single project. Petitioners ask this Court not only to vacate the orders authorizing exports from that terminal, but to vacate the Categorical Exclusion Rule itself. 85 Fed. Reg. 78,197 (Dec. 4, 2020). That Rule provides a narrow categorical exclusion from NEPA review for DOE's authorizations of LNG exports to non-Free Trade Agreement (FTA) countries and the associated marine transportation of LNG. Because the Rule establishes the general NEPA process for DOE's export authorizations under Section 3, vacatur would affect every pending and future export application. Vacatur would impose project-by-project environmental-review obligations on this entire class of authorizations and unnecessarily reintroduce delay into a permitting process on which an entire, nearly trillion-dollar industry depends. That outcome is unwarranted for several reasons.

First, the Rule reflects the long-settled bifurcation of authority under the Natural Gas Act between FERC, which approves the siting, construction, and operation of LNG terminals, and DOE, which authorizes the export of natural gas as a commodity. Petitioners' theory that DOE's retained authority to *disapprove* terminal construction at an earlier stage of the process somehow obligates DOE to conduct a second environmental review of terminal impacts at a subsequent stage of the process (approval of exports) is at odds with the statutory regime.

Second, DOE is entitled to substantial deference in defining the scope of its own environmental review. *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025). DOE reasonably determined that its NEPA obligations extend to the effects of the action it takes—authorizing the export of a commodity—and that those effects begin at the point of export and are limited to marine transport. It then determined, on a well-supported technical record, that this class of actions normally does not have significant environmental effects. That is a textbook use of a categorical exclusion. The Rule does not automatically exempt every export authorization from further NEPA review but instead requires DOE to determine whether project-specific circumstances warrant preparation of an environmental assessment or environmental impact statement before applying the categorical exclusion. 85 Fed. Reg. at 78,199, 78,201. Because the Rule is applied on a case-by-case basis, subject to extraordinary-circumstances screening, Petitioners cannot carry the heavy burden of a facial challenge.

Nor have Petitioners shown that the Rule is invalid as applied here, or that the DOE orders under review are deficient. Applying the Rule on a project-specific basis, DOE determined that CP2's authorization presented no extraordinary circumstances warranting additional NEPA review and therefore fell within the categorical exclusion, while independently finding that Petitioners had not shown the requested exports to be inconsistent with the public interest.

Finally, the Nation has a compelling interest in the timely development of energy infrastructure. That depends on a predictable and non-duplicative permitting regime, of which the Categorical Exclusion Rule is a key component. Thus, even if the Court were to find merit in any aspect of the petition, vacatur would not be the appropriate remedy. Under this Court's settled framework, any identified deficiency could readily be cured on remand, while vacatur would be highly disruptive to *amici*'s members and to the broader energy sector.

ARGUMENT

I. The Court Should Preserve the Long-Standing Bifurcation of Authority Between DOE and FERC Under the Natural Gas Act.

As this Court has explained, regulation of LNG exports involves a "tangled web of regulatory processes." *Sierra Club v. FERC*, 827 F.3d 36, 40 (D.C. Cir. 2016) (*Freeport I*). But the basic allocation of responsibilities is straightforward. FERC exercises authority over siting, construction, and operation of LNG export terminals and serves as the lead agency for LNG terminal review and NEPA compliance, while DOE separately authorizes exports under Section 3 of the Natural Gas Act. *Id.* at 40–41; 15 U.S.C. § 717n(b)(1). This Court recently reaffirmed that distinction, noting:

> No person may build or operate facilities in the United States for the purpose of exporting domestic natural gas without the authorization of FERC . . . . And no person may export natural gas using those approved facilities without obtaining the Department of Energy's authorization.

Sierra Club v. DOE, 134 F.4th 568, 570 (D.C. Cir. 2025).

Petitioners' challenge rests on a premise that is fundamentally inconsistent with this structure: Petitioners assume that some agency must determine whether the environmental impacts of an LNG terminal are justified by the specific exports that the terminal may facilitate. But the statute demonstrates otherwise.

For exports to Free Trade Agreement (FTA) nations, DOE must grant authorization "without modification or delay." 15 U.S.C. § 717b(c). As this Court has recognized, where exports are directed to FTA nations, "the only potential public-interest analysis ever made is the Commission's when approving the siting, construction, expansion or operation of an LNG terminal." *Freeport I*, 827 F.3d at 41. Thus, an LNG terminal may receive FERC authorization to site, construct, and operate under the Natural Gas Act without any separate DOE public-interest balancing of terminal export impacts. Petitioners' theory is difficult to square with that feature of the statute. If Congress believed that DOE was responsible for determining whether the potential harms associated with a particular terminal are justified by the exports it may enable, one would expect such review to be required whenever an LNG terminal is authorized. Yet Congress created a regime in which an LNG terminal may receive FERC authorization and export to FTA nations without any comparable DOE balancing of terminal impacts against export benefits. DOE's separate public-interest review arises only for exports to non-FTA nations and addresses a different question: whether exports to those nations would be inconsistent with the public interest. 15 U.S.C. § 717b(a). It does not transform DOE into a secondary terminal-siting agency or require duplication of environmental analyses already committed to FERC's jurisdiction.

Indeed, Congress has expressly ratified this bifurcated regime. After DOE and FERC had operated for decades under their respective statutory authorities, Congress expressly designated FERC as the lead agency for LNG terminal approvals and NEPA compliance in the Energy Policy Act of 2005. *See* 15 U.S.C. § 717n(b)(1). That designation undercuts Petitioners' suggestion that Congress expected DOE to conduct a parallel review of LNG terminal impacts. *Cf. FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 156 (2000) (acknowledging that Congress may ratify an established administrative interpretation through subsequent legislation enacted against that backdrop).

Moreover, even accepting Petitioners' premise that DOE retained some residual authority over LNG terminals, it does not follow that DOE must conduct a second environmental review of terminal construction and operation during a later export-authorization proceeding. Congress designated FERC as the lead agency for LNG terminal review and NEPA compliance, and DOE has historically participated in that process as a cooperating agency, including in the case of CP2's FERC authorization proceeding. *See Sierra Club v. DOE*, 867 F.3d 189, 193 (D.C. Cir. 2017) (*Freeport II*); *see also* Final Environmental Impact Statement at 1-4, JA__-__. Residual authority over terminal approvals, if any exists, could help explain DOE's participation in the FERC-led review process; it does not establish that Congress intended terminal impacts to be reconsidered after the fact during a separate non-FTA export proceeding addressing a different statutory question.

Petitioners respond that DOE remains the only agency capable of evaluating the "big picture" of LNG exports. Petitioners' Br. 2, 25, 42. But that argument assumes the very premise in dispute. Congress did not create a single, integrated approval process in which one agency weighs all project impacts and benefits in a single proceeding. Instead, Congress resolved certain policy determinations at the outset—including prioritizing energy infrastructure and approving exports to FTA countries—and established a scheme to effectuate those determinations across distinct regulatory decision points.

II. DOE's NEPA Determinations are Entitled to Substantial Deference Under *Seven County*.

A. Congress Has Ratified Categorical Exclusions and Assigned the Relevant Determination to Agency Judgment.

NEPA requires agencies to assess the environmental consequences of federal actions, but it does not require the same form or level of review in every case. Congress has expressly recognized categorical exclusions as a legitimate form of NEPA compliance, defining them as categories of actions that an agency "has determined" normally does not significantly affect the quality of the human environment. 42 U.S.C. § 4336e(1). The statute's text thus makes clear that a categorical exclusion necessarily reflects an exercise of agency judgment. Congress did not define categorical exclusions by reference to what a court later concludes is environmentally significant; it defined them by reference to what an agency has determined normally lacks significant environmental effects.

In the NEPA context, that principle is reinforced by the Supreme Court's recent decision in *Seven County Infrastructure Coalition v. Eagle County*. The Court held that agency judgments regarding the scope and content of environmental review fall within a "broad zone of reasonableness" subject to substantial judicial deference and cautioned that courts should not "micromanage" agency decisions concerning the depth and breadth of environmental analysis. *Seven County*, 605 U.S. at 181, 183–84. The Court further explained that NEPA review should focus on the environmental effects of the project and the agency action before the decisionmaker, and that agencies need not analyze the effects of separate upstream or downstream projects that are distinct in time or place from the action under review or lie beyond the agency's statutory authority. *Id*. at 188-190. Although *Seven County* involved an environmental impact statement rather than a categorical exclusion, its reasoning applies with equal force here.

The Court recognized that NEPA review should focus on the "project at hand," not separate upstream or downstream projects. *Id.* at 182, 187. DOE made the same determination here. Its action is the authorization of natural gas exports as a commodity, not the production of natural gas upstream, the construction of LNG terminals, or the downstream use of exported gas. In doing so, DOE made the sort of "fact-dependent, context-specific, and policy-laden choices" regarding the appropriate scope of environmental review that *Seven County* held fall within an agency's broad zone of reasonableness. *Id.* at 183. The promulgation of the categorical exclusion therefore required the same type of line-drawing judgment.

This Court's post-*Seven County* decisions reinforce this deferential framework. In reviewing NEPA challenges, the court has repeatedly emphasized that agencies possess "substantial discretion" in conducting environmental review and that courts should afford "substantial deference" to agency choices falling within a broad zone of reasonableness. *Sierra Club v. FERC*, 145 F.4th 74 (D.C. Cir. 2025); *see also Sierra Club v. FERC*, 153 F.4th 1295 (D.C. Cir. 2025) (describing *Seven County* as a "course correction," and observing that "after Seven County, the era of searching NEPA review is over—or at least it should be"). As explained below, the Rule comfortably satisfies that standard.

B. DOE Reasonably Defined the Scope of its NEPA Obligations.

DOE exercised its discretion reasonably. The Rule did not simply declare LNG export authorizations categorically excluded. Rather, DOE first determined the scope of its NEPA obligations under Section 3 of the Natural Gas Act and then assessed whether the environmental effects remaining within that scope normally posed the potential for significant environmental impacts. 85 Fed. Reg. 78,198–202. The Rule explained that DOE's action is the authorization of natural-gas exports as a commodity and that DOE's environmental review should therefore focus on effects resulting from activities occurring at or after the point of export and within the scope of DOE's export-authorization authority. *Id.* at 78,198–99.

What remained within that scope was the marine transportation of LNG, as DOE determined that terminal construction and operation, upstream production activities, and downstream consumption fell outside the scope of its review for independent reasons grounded in statutory authority, causation, and foreseeability. *Id.* at 78,198–201. Petitioners contend that each of these decisions was arbitrary, but their claims do not withstand scrutiny.

Petitioners principally attack DOE's treatment of upstream production and downstream consumption, but they conflate DOE's Natural Gas Act authority to consider market effects with DOE's NEPA obligations. The fact that DOE may consider certain market and economic effects in carrying out its public-interest review under the Natural Gas Act does not mean that NEPA requires environmental review of every consequence that could eventually flow from those effects. As *Seven County* explained, the fact that a consequence of an upstream or downstream project may be broadly foreseeable does not mean that it must be included within the agency's NEPA analysis. 605 U.S. at 187, 189-190.

First, DOE's market studies have long projected that export authorizations can affect domestic production and prices. But DOE reasonably distinguished between broad market information that may inform the NGA public-interest inquiry and localized environmental impacts subject to NEPA. 85 Fed. Reg. at

78,201. That distinction is entirely sensible. Market effects may be predictable enough to inform economic analysis while still leaving DOE unable to determine where, when, and under what circumstances future production would occur, what particular or local environmental resources would be affected, or whether any resulting impacts would be attributable to the export authorization rather than independent market and regulatory decisions. *See id.*

This Court endorsed precisely that reasoning in *Freeport II*. There, the Court upheld DOE's refusal to conduct project-specific environmental analysis of export-induced production because DOE "could not estimate the locale of production" and therefore could not meaningfully evaluate corresponding local environmental impacts. 867 F.3d at 199. DOE reasonably concluded that attempting to do so would be "more misleading than informative." *Id.* The Court likewise upheld DOE's treatment of other indirect effects whose causal chain depended on numerous intervening market responses. *Id.* at 195–99. *Freeport II* thus confirms that DOE may reasonably conclude that broad market consequences do not necessarily translate into reliably predictable environmental impacts that can be analyzed in a sufficiently concrete and useful manner to inform agency decisionmaking.[2]

Second, similar considerations apply to downstream consumption. The difficulty is not merely estimating emissions but determining what those estimates mean. Increased LNG exports may displace other fuels, alter energy consumption patterns, or trigger other market responses that affect net emissions and climate impacts in difficult-to-predict ways. *See Alaska LNG*, 134 F.4th at 575. DOE could therefore reasonably conclude that aggregate emissions estimates, standing alone, do not provide sufficiently concrete information regarding the location, magnitude, or environmental consequences of future production and consumption to warrant further NEPA analysis. That conclusion is fully consistent with this Court's LNG precedents. Most recently, this Court upheld DOE's treatment of downstream greenhouse-gas emissions and climate effects, recognizing the substantial uncertainty associated with global energy markets, substitution effects,

[2] In *Sierra Club v. DOE*, 134 F.4th 568, 575 (D.C. Cir. 2025) (*Alaska LNG*), the Court similarly observed that, because FERC lacked authority over export approvals and therefore had no obligation to analyze downstream emissions, "[b]y a parity of reasoning, one might conclude" that DOE has no NEPA obligation to analyze upstream effects arising from the construction and operation of facilities that DOE likewise lacks authority to approve. *Id.* at 577. Although the Court did not resolve that question, the observation underscores the reasonableness of DOE's decision to limit its review to effects falling within its own statutory responsibilities.

and foreign energy consumption. *Alaska LNG*, 134 F.4th at 574-76. The Court approved DOE's determination that the impacts of downstream foreign emissions were not reasonably foreseeable and discussed DOE's 2020 Categorical Exclusion Rule, noting DOE's subsequent conclusion that downstream emissions are too attenuated and lack a sufficiently close causal relationship to an export authorization. *Id.* at 577 n.23, 580–81.

Finally, DOE's conclusions are reinforced by *Seven County*. The Supreme Court emphasized that agencies are not required to analyze the environmental effects of projects that are separate in time or place from the action under review and need not examine activities over which they lack regulatory authority. *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 188–90. Those principles directly support DOE's determination that terminal construction and operation, upstream production activities, and downstream foreign consumption fall outside the proper scope of DOE's NEPA obligations. At a minimum, DOE's conclusions represent the sort of "fact-dependent, context-specific, and policy-laden choices" regarding scope, causation, and significance that fall within an agency's broad zone of reasonableness. *Id.* at 183. Petitioners may prefer different lines, but NEPA does not authorize a court to require an agency to redraw them merely because another approach is conceivable. *Id.* at 181, 183–84.

C. The Rule's case-by-case safeguards defeat Petitioners' challenge to the Rule and its application here.

The Categorical Exclusion Rule is not self-executing, nor is it inflexible. Before applying it, DOE must review the proposed action under 10 C.F.R. § 1021.410, determine that no extraordinary circumstances are present that would warrant further environmental review, confirm that the action satisfies the "integral elements" specified in Appendix B to subpart D of DOE's regulations, and document its determination. 85 Fed. Reg. at 78,199, 78,201 ("[T]he proposed CX would be applied on a case-by-case basis," and only after DOE determines that the authorization "presents no extraordinary circumstances warranting preparation of an EA or EIS."). DOE correctly did so here. Consistent with the Rule's case-by-case requirements, DOE determined that CP2's authorization presented no extraordinary circumstances warranting further NEPA review and therefore fell within the categorical exclusion. *See* Authorization Order at 55-57, JA__-__ ; Rehearing Order at 43-44, JA__-__; *see also* U.S. Respondents' Br. 29-30, 37-39.

Those case-by-case safeguards answer another of Petitioners' core complaints. Petitioners' most concrete objection is that concentrated vessel traffic in the Gulf could affect the Rice's whale. Petitioners' Br. 66–68. Whatever the merits of that concern, it is a project- and place-specific concern, and the Rule directs it to the application stage, where DOE must consider whether extraordinary circumstances preclude categorical treatment. A categorical exclusion that is administered subject to precisely that screening cannot be said to be facially invalid in all its applications. *See Sherley v. Sebelius*, 644 F.3d 388, 397 (D.C. Cir. 2011) (a rule is only facially invalid if the challenger can establish "that no set of circumstances exists under which the [rule] would be valid").

Petitioners' criticisms of DOE's treatment of vessel emissions fare no better. A categorical exclusion does not require an agency to establish that every project within the category is environmentally insignificant, nor does it become invalid because future projects may present circumstances different from those reflected in the agency's underlying studies. Congress authorized agencies to identify categories of actions that "normally" do not significantly affect the environment, 42 U.S.C. § 4336e(1), and DOE reasonably concluded—based on prior NEPA reviews, technical support documents, and decades of experience with LNG transportation by marine vessels—that such transportation normally does not pose the potential for significant environmental impacts. 85 Fed. Reg. at 78,201–02. Petitioners' contention that a particular project may generate significantly greater vessel traffic, involve sensitive species, or present other localized concerns therefore does not undermine the categorical determination itself.

Petitioners' reliance on *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007), is also misplaced for the reasons DOE gave in the Rule. 85 Fed. Reg. at 78,200. For example, unlike the fuels-reduction exclusion at issue there, which the court concluded was based on an inadequate record and swept in actions with materially different environmental profiles across widely varying landscapes, the Rule here covers a narrow and homogeneous class: the marine transport of a single commodity by vessels subject to uniform international and domestic safety regimes. As DOE reasonably explained, the potential effects "are not expected to vary significantly based on the type or volume of natural gas to be exported." *Id.*

III. If This Court Were to Agree With Any of Petitioners' Claims, Remand Without Vacatur Would Be the Appropriate Remedy for Any Errors.

If there were merit to any of Petitioners' claims of legal error, this Court's precedent dictates that vacatur would be the wrong remedy.

The Nation's interest in the development of energy infrastructure is not merely a matter of current policy preference; it is embedded in the statute that DOE administers. The "principal purpose" of the Natural Gas Act is "to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669–70 (1976); 15 U.S.C. § 717(a).

Authorizing natural gas exports is one of the principal means by which DOE carries out that purpose: export demand is what draws new gas supply, pipelines, and liquefaction capacity into development, making the export-authorization function under Section 3 an integral part of the "orderly development of plentiful supplies." That objective is realized through infrastructure that must be financed, built, and operated, and it depends on a federal review process capable of producing timely and durable decisions. DOE adopted the Categorical Exclusion Rule to serve that end, explaining that the revision would "improve the efficiency of the DOE decision-making process by saving time and expense in the NEPA compliance process" while "eliminating unnecessary environmental documentation for these actions that DOE has determined normally do not have significant effects." 85 Fed. Reg. at 78,197. The relief Petitioners seek would not only vacate the specific orders at issue in this case but vacate the Rule itself for every export authorization. The severe consequences of doing so confirm that if there is merit to any of petitioners' claims of legal error, vacatur would be clearly the wrong remedy for any such deficiency.

A. U.S. LNG exports deliver established economic benefits and advance national security interests.

In roughly a decade, the United States went from exporting essentially no LNG from the lower 48 states to becoming the world's largest LNG exporter. That transformation was not inevitable. It was the product of private investment made against the backdrop of a federal permitting framework on which market participants relied for timely and durable authorizations.

The scale of what is at stake is documented. A recent study by S&P Global, supported by the Chamber, projects that U.S. LNG is on track to become the Nation's second-largest net export industry by 2031, trailing only civilian aircraft and parts. *See* S&P Global, *Price and Economic Impacts of an Accelerating Export Industry: A U.S. LNG Impact Study—Phase 4*, at 17 (July 2026) (hereinafter, *U.S. LNG Impact Study*), available at https://tinyurl.com/ty6vavzn. The study projects that the industry will contribute approximately $1.4 trillion to U.S. gross domestic product and support roughly 555,000 jobs annually through 2040, and that more than $1 trillion in investment across the supply chain is at stake over that period. *Id.* at 20. Those benefits are not confined to producing regions: the study estimates that approximately 42% of the associated jobs and 33% of the GDP contributions accrue in states that do not themselves produce natural gas. *Id.* at 21.

The security dimension is equally concrete, and DOE addressed it in the order under review. DOE found that CP2's exports would "improve energy security for many U.S. allies and trading partners." Authorization Order at 51-54, JA__-__. That finding reflects recent experience. U.S. LNG has backfilled a substantial share of the pipeline gas that Europe had previously imported from Russia, and U.S. cargoes remain central to European allies' efforts to reduce their dependence on Russian supply—particularly as the European Union prepares to ban Russian gas beginning in 2027. *See id.* at 52–54, JA__-__ (the United States "supplied nearly half of Europe's LNG imports in 2023," and CP2 "will be a source of global supplies for the EU . . . particularly if a ban on Russian supplies takes effect in 2027 as CP2 LNG is commencing exports"); *see also U.S. LNG Impact Study* (explaining how U.S. LNG provides a critical alternative to Russian gas, and without it, EU implementation of its 2027 Russian-gas ban "would be challenging").

B. These consequences confirm that under this Court's precedent, vacatur would not be the appropriate remedy for any deficiencies found by the Court.

Because the Rule and the orders under review serve a compelling interest that is embedded in the statute that DOE administers, the consequences of setting them aside bear directly on the question of what remedy to provide for any deficiencies found by the Court. Under this Court's well-settled precedent, whether to vacate a defective order or to remand it without vacatur turns on "the seriousness of the order's deficiencies (and thus the extent of doubt whether the agency chose correctly) and the disruptive consequences of an interim change that may itself be changed." *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 150–

51 (D.C. Cir. 1993). Both factors favor remand if the Court were to find that any error occurred.

The first factor requires a legal inquiry into the likelihood and seriousness of an agency error, not a weighing of consequences. For the reasons discussed, DOE correctly construed Section 3 and reasonably defined the scope of its NEPA review, and its line-drawing is entitled to substantial deference. *Supra* Parts I–II. But even if the Court were to identify some shortfall, it would be of the curable kind—a matter of further explanation rather than substantive authority. *Seven County* makes the point directly, noting that even where "an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency's ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS." *Seven County*, 605 U.S. at 185. Indeed, the Court explained in a strikingly similar context that, "if the EIS drew the line on the effects of separate upstream or downstream projects too narrowly, that mistake would not necessarily require a court to vacate the agency's approval of the . . . project." *Id.* That is precisely the error that Petitioners allege here, and there is no reason to believe that the agency would disapprove the project if it were required to expand its environmental analysis. This Court has applied the same principle, declining to vacate where "there is a serious possibility that the [agency] will be able to substantiate its decision on remand." *Allied-Signal*, 988 F.2d at 151 (citing *Int'l Union, UMW v. FMSHA*, 920 F.2d 960, 967 (D.C. Cir. 1991)); *see also City of Port Isabel v. FERC*, 130 F.4th 1034, 1038 (D.C. Cir. 2025) (on panel rehearing) (granting rehearing in part and remanding without vacatur because FERC's NEPA-related procedural errors did not justify "throwing the projects and those reliant upon them into disarray" through vacatur); *Food & Water Watch v. FERC*, 28 F.4th 277, 291–92 (D.C. Cir. 2022) (remanding without vacating a FERC certificate despite a NEPA violation).

The second factor also favors remand over vacatur, because the disruptive consequences of vacatur would be severe. Indeed, DOE has emphasized that obtaining non-FTA export authorization is an important step in the financing and development of LNG projects, and the agency continues to process applications and amendments involving additional export capacity. *See* U.S. Department of Energy, *Liquefied Natural Gas (LNG) Exports: March 2026* (reporting 44 non-FTA authorizations totaling 56.3 Bcf/d and more than 36 Bcf/d of capacity in operation or construction), available at https://tinyurl.com/5d752ww4. Vacatur of the orders under review alone—and vacatur of the Rule—would inject uncertainty into an active pipeline of LNG export proceedings and into investment decisions across a sector that DOE regulates through a common authorization framework.

That disruption would also extend beyond U.S. sponsors to the allied trading partners that have reorganized their energy supply around U.S. LNG. By the European Union's own accounting, EU pipeline-gas imports from the U.S. have tripled, and the United States has become the EU's single largest LNG supplier, even as Russia's share of the EU's pipeline-gas imports has fallen from roughly 40% in 2021 to about 6% in 2025. *See* European Council, *Where Does the EU's Gas Come From?*, available at https://tinyurl.com/yy6er3av. Introducing fresh uncertainty into U.S. export authorizations at that juncture—as the EU's 2027 ban on Russian gas takes effect—would fall hardest on the very allies that DOE's public-interest finding sought to support.

Petitioners' submission that vacatur would be costless because CP2's exports are not expected until 2027, Petitioners' Br. 69, understates the injury considerably. The harm is not limited to interrupted deliveries; it is the loss of the regulatory certainty on which multi-year, multi-billion-dollar investment decisions depend—certainty that is not restored merely because a project has not yet commenced commercial operation.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to deny the petition for review. In the alternative, should the Court identify any deficiency in the Rule or the orders under review, the Court should remand without vacatur.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) and Circuit Rule 32(e)(1) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 5219 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2026, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the appellate CM/ECF system and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

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