No. 25-60455

IN THE

United States Court of Appeals for the Fifth Circuit

LOUISIANA BUCKET BRIGADE; SIERRA CLUB,

Petitioners,

v.

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY;
COURTNEY BURDETTE, in her official capacity as
SECRETARY OF THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondents.

On Petition for Review of Orders of the
Louisiana Department of Environmental Quality

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN PETROLEUM INSTITUTE AS AMICI CURIAE SUPPORTING RESPONDENTS

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2, the undersigned counsel of record certifies that the following persons have an interest in the outcome of this litigation:

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The Chamber of Commerce of the United States of America is a tax-exempt, not-for-profit 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.

The American Petroleum Institute (API) is an incorporated, not-for-profit trade association representing all aspects of America's oil and gas industry. API has no parent corporation, and no publicly held company has 10% or greater ownership in API.

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INTERESTS OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation.[1] The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million 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.

The American Petroleum Institute is a national trade association representing approximately 600 member companies involved in all aspects of the U.S. oil and natural gas industry. API strives to promote safety across the industry globally and boost public policy that enables a strong, viable oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and liquefied natural gas (LNG) exporters, as well as service and supply companies that support all segments of the industry. API advances its policy priorities by collaborating with industry, government, and customer stakeholders to promote continued availability of our nation's abundant oil and natural gas resources for a more secure energy

[1] 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. *See* Fed. R. App. P. 29(a)(4). All parties have consented to the filing of this amicus brief.

future. API frequently participates in proceedings before FERC and other federal agencies, as well as in litigation in state and federal courts.

To those ends, the Chamber and API regularly file *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. Among other things, this case implicates the interest of *amici*'s members and the broader business community in predictable and efficient permitting processes. A stable, reliable permitting system—not just for LNG terminals or for energy projects and infrastructure more generally, but for many other kinds of projects and infrastructure—drives economic growth and helps attract the private investment needed to support the U.S. economy and our national security.

ARGUMENT

As the Louisiana Department of Environmental Quality (LDEQ) and Venture Global CP2 LNG, LLC (Venture Global) explain in their briefs, this Court should deny the petition for review of LDEQ's decision to issue an air permit for the construction of Venture Global's CP2 LNG Terminal. *Amici* submit this brief to provide a broader understanding of the liquefied natural gas (LNG) industry and of various components of the Clean Air Act and Natural Gas Act that further buttress LDEQ's decision to issue the CP2 LNG permit, as well as LDEQ's and Venture Global's arguments for leaving the decision in place.

I. The LNG Industry Is Critical to the U.S. Economy and National Security and Benefits from Predictability in Permitting Decisions.

Understanding the LNG industry is important to understanding the permitting process that forms the context for this case.

Liquefied natural gas is natural gas that has been "supercooled into liquid form" and "reheated back into gas form at natural gas terminals" for transport to customers. *Wash. Gas Light Co. v. FERC*, 532 F.3d 928, 929 n.1 (D.C. Cir. 2008); *cf. Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1085 (9th Cir. 2014) (noting that "the process for liquefying natural gas has been known since the 19th Century and used commercially since the 1950s"). Once natural gas has been liquefied, it can be transported in an LNG tanker to an LNG import terminal, which receives, stores, and processes it. These facilities are "typically sited in coastal areas

with shipping access." *AES Sparrows Point LNG, LLC v. Smith,* 527 F.3d 120, 124 (4th Cir. 2008).

The United States is the world's largest producer and exporter of natural gas.[2] The LNG industry has contributed $408 billion to the U.S. GDP since 2016 and has supported an annual average of 273,000 U.S. jobs.[3] By 2040, LNG exports are projected to add $1.3 trillion to the GDP and an annual average of 495,000 jobs.[4] Moreover, "[h]igher US LNG exports lead to lower overall global emissions [of greenhouse gases] by displacing the more [greenhouse-gas] intensive fuels that would replace them."[5]

The LNG industry's growth comes at a time when LNG infrastructure is needed globally to support the United States' national-security interests and to help U.S. allies. Since the start of the Russia–Ukraine war, "Europe's consumption of

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[2] *See* The Energy Institute, *2024 Statistical Review of World Energy* 37, 39, 42 (73d ed. 2024), https://www.bpb.de/system/files/dokument_pdf/Statistical_Review_of_World_Energy_2024.pdf

[3] S&P Global, *Major New US Industry at a Crossroads: A US LNG Impact Study – Phase 1* (Dec. 17, 2024), https://www.spglobal.com/en/research-insights/special-reports/major-new-us-industry-at-a-crossroads-us-lng-impact-study-phase-1.

[4] *Id.*

[5] S&P Global, *Major New US Industry at a Crossroads: A US LNG Impact Study – Phase 2* (Mar. 6, 2025), https://www.spglobal.com/en/research-insights/special-reports/major-new-us-industry-at-a-crossroads-us-lng-impact-study-phase-2.

U.S. natural gas has risen from just 5% of EU demand in 2021 to more than 27% today."[6] The conflict in Iran has only heightened these needs: When Iran sought to close the Strait of Hormuz, it wielded the extraordinary potential to cut off 25% of the global LNG trade.[7] And Iran has attacked the world's largest LNG plant (in the Middle East), which accounts for "approximately 20% of global LNG."[8] Now more than ever, the need for LNG infrastructure is critical to U.S. national-security interests, here and abroad.

To satisfy the demand for LNG infrastructure, companies must run the gauntlet of securing federal and state approvals. This process begins with seeking authorization from the Federal Energy Regulatory Commission under the Natural Gas Act. 15 U.S.C. § 717b. Based on the location of the project, it could also require independent authorizations from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Coast Guard, and federal land-management agencies, as well as a water-quality certification from the appropriate state under the Clean

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[6] Dan Byers, *A Decade That Changed the World: How American LNG Redefined Global Energy*, U.S. Chamber of Commerce (Feb. 23, 2026), https://www.uschamber.com/energy/a-decade-that-changed-the-world-how-american-lng-redefined-global-energy.

[7] Michael Ratner, *et al.*, CONG. RESEARCH SERVICE, R45281, *Iran Conflict and the Strait of Hormuz: Impacts on Oil, Gas, and Other Commodities* (updated Mar. 11, 2026), https://www.congress.gov/crs-product/R45281.

[8] *Id.*

Water Act.[9] Of greatest relevance here, because liquefying, compressing, and exporting LNG leads to emissions of regulated air pollutants, LNG export terminals must obtain air permits under the Clean Air Act. *See infra* at 8–11.

At each stage of the approval process, companies may face challenges from LNG opponents seeking to halt project development, including through serial litigation that is intended to dissuade investors.[10] These efforts pose serious hurdles because companies must secure significant investment at the outset of a project. A single large-scale LNG export terminal can cost between $10 billion and $20 billion to construct, with final investment decisions and engineering, procurement, and

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[9] Paul W. Parfomak & Adam Vann, CONG. RESEARCH SERVICE, R48347, *Federal Energy Regulatory Commission (FERC) Natural Gas Permitting and Litigation* (updated Feb. 19, 2025), https://www.congress.gov/crs-product/R48347.

[10] *See, e.g.*, Aaron Cantú, *Valley Activists Wage Transatlantic Battle to Stop Natural Gas Exports from South Texas*, The Texas Tribune (Apr. 12, 2024), https://www.texastribune.org/2024/04/12/texas-natural-gas-export-terminals-brownsville-europe/ (explaining that because "delays can be damaging" to LNG project sponsors, groups have begun pressuring domestic and foreign banks, insurers, and private equity firms to divest from LNG projects); Maria Gallucci, *Inside the Fight to Stop LNG Export Projects in South Texas*, Canary Media (Feb. 28, 2024), https://www.canarymedia.com/articles/liquefied-natural-gas/inside-the-fight-to-stop-lng-export-projects-in-south-texas (detailing a successful "yearslong effort to block" an LNG export terminal "through legal actions and by pressuring international banks and potential European customers not to support the project," leading to "the developer scrapp[ing] its plans after failing to secure long-term offtake contracts").

construction (EPC) contracts committed years before first production.[11] To secure financing, "the facility's owner generally has to secure [EPC] contracts, usually for up to 80% of the terminal's capacity," long before the project even begins.[12] These projects typically require four to five years from final investment decision to initial operations, making regulatory predictability at the permitting stage essential to securing the financing that enables construction to begin.[13] Predictability in the legal process is thus imperative to the continued growth and success of the LNG industry and, more generally, to the U.S. economy.[14]

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[11] Michael Ratner, CONG. RESEARCH SERVICE, R48038, *Executive Orders and U.S. LNG Exports: Frequently Asked Questions* (updated Feb. 6, 2025), https://crsreports.congress.gov/product/pdf/R/R48038.

[12] *Id.*

[13] *Id.*; Int'l Energy Agency, *Global LNG Capacity Tracker* (2025), https://www.iea.org/data-and-statistics/data-tools/global-lng-capacity-tracker.

[14] *Cf. Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 183 (2025) (noting that some court decisions have "engaged in overly intrusive (and unpredictable) review in NEPA [National Environmental Policy Act] cases," thus "slow[ing] down or block[ing] many projects"); *id.* at 184 ("[In light of NEPA-litigation-driven delays, f]ewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the [NEPA Environmental Impact Statement] and for the builder of the project. And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion.").

II. The Clean Air Act's Cooperative-Federalism Framework Promotes State Flexibility in Permitting Programs.

This case involves one of the many permits that an LNG facility must obtain before construction even begins. The Clean Air Act's cooperative-federalism framework governs the air-permitting process for LNG export terminals. Properly understood, state agencies (like LDEQ) retain discretion in how they implement the Act's requirements, including the permitting program at issue here.

A. States have broad discretion in implementing the Clean Air Act under their respective State Implementation Plans.

The Clean Air Act "establishes a comprehensive program for controlling and improving the nation's air quality through state and federal regulation." *BCCA Appeal Grp. v. EPA*, 355 F.3d 817, 821–22 (5th Cir. 2003). The Act "made the States and the Federal Government partners" in this effort. *GM Corp. v. United States*, 496 U.S. 530, 532 (1990). Accordingly, the Act is "an experiment in cooperative federalism" that assigns different responsibilities to the states and the federal government. *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012) (citations omitted).

The federal government's job is to identify air pollutants and set air-quality standards for those pollutants.[15] 42 U.S.C. §§ 7408, 7409. Yet Congress recognized

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[15] These standards, in technical parlance, are referred to as the National Ambient Air Quality Standards, or NAAQS for a given pollutant.

that "air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3). Consequently, the states are charged with implementing the Act's requirements to meet the federally established standards. *See Michigan v. EPA*, 268 F.3d 1075, 1083 (D.C. Cir. 2001) (EPA's "overarching role is in setting standards, not in implementation"). States enforce the air-quality standards by adopting and administering "state implementation plan[s]" (often called SIPs), which detail how each state will achieve the national air-quality standards. *See* 42 U.S.C. § 7410(a)(1). Congress has afforded states "wide discretion in formulating [their] plan[s]." *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976). So long as a state's emissions comply with national standards, the state "is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation." *Train v. Nat. Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975).

Louisiana has an EPA-approved SIP. *See* 40 C.F.R. § 52.970(c).[16]

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[16] A state's omnibus SIP can be found in 40 C.F.R. ch. 52. In practice, EPA sets different standards for different pollutants, and states in turn propose separate "SIPs" to comply with those and various other requirements of the Act. *E.g.*, 40 C.F.R. § 52.970(c)–(d) (compiling Louisiana's various approved SIP proposals). Each individual approved SIP proposal is referred to by its specific content, such as a "[new-source review] SIP," *Luminant*, 675 F.3d at 921, or an "attainment demonstration SIP," *BCCA*, 355 F.3d at 823, and so on.

B. States have flexibility in administering their "Prevention of Significant Deterioration" permitting programs.

The Act requires SIPs to include "permitting programs for the construction or modification of stationary sources" of air pollution. *Luminant*, 675 F.3d at 922. One such permitting program relates to the state's "Prevention of Significant Deterioration" (PSD) obligations. 42 U.S.C. §§ 7470–7479. These PSD obligations apply to new sources in "attainment" areas—that is, areas that already meet the national air-quality standards for a given pollutant. *Id.* § 7407(d)(1)(A)(ii). PSD requirements are thus "designed to ensure that air quality in attainment areas or areas that are already clean will not degrade." *Alaska Dep't of Envtl. Conservation v. EPA*, 540 U.S. 461, 470 (2004). The permit at issue in this case is a PSD permit.

As with other aspects of the Act, "states have the primary role in administering and enforcing the various components of the PSD program." *Id.* at 491 (quoting 57 Fed. Reg. 28,093, 28,095 (1992)). In Louisiana, LDEQ conducts the PSD permitting process pursuant to Louisiana's SIP. *See generally* LAC 33:III:509. LDEQ serves as the legislatively created agency "vested with jurisdiction over matters affecting the regulation of the environment" in Louisiana, "including, but not limited to, the regulation of air quality." *Sierra Club v. LDEQ*, 100 F.4th 555, 561 n.3 (5th Cir. 2024) (quoting *Rise St. James v. LDEQ*, 383 So.3d 956, 961 (La. App. 1 Cir. 2024)).

C. States implement PSD permitting through highly complex and fact-intensive "Best Available Control Technology" determinations.

The PSD program requires new sources to obtain a preconstruction permit. 42 U.S.C. § 7475. To get the permit, the applicant must establish (among other things) that its facility will use the "best available control technology" (BACT) for limiting the emission of regulated pollutants. *Id.* § 7475(a)(4). The Act does not require a specific method for determining BACT. *Alaska*, 540 U.S. at 476 n.7. Indeed, "BACT determinations are intrinsically case-by-case determinations. The analysis 'tak[es] into account energy, environmental, and economic impacts and other costs.'" *Sierra Club v. LDEQ*, 100 F.4th at 570 (quoting 40 C.F.R. § 52.21(b)(12)). "It follows that this analysis requires 'expertise, experience, and procedural mechanisms' from LDEQ's end to conduct as thorough of a review as possible." *Id.* (citation omitted).

BACT itself is a term of art. It speaks of "control technologies," for instance, but also encompasses the "emission limitation[s]" that those control technologies are designed to achieve. *See, e.g.*, *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 329 (2014) (discussing BACT as "an emission limitation"). Likewise, BACT includes the word "best," and its definition refers to the "maximum degree of emission reduction." *See id.* (quoting 42 U.S.C. § 7479(3)). But BACT does not mandate the most protective control technology, irrespective of costs and other factors. As this Court has recognized, some technologies and limitations—which a

facility may voluntarily adopt—go *beyond* BACT. *See Port Arthur Cmty. Action Network v. TCEQ*, 147 F.4th 560, 567 (5th Cir. 2025) (*PACAN III*) (recognizing that TCEQ must issue a permit for a facility that "employs technology that is *at least* BACT," and acknowledging that some permits go "beyond" BACT). BACT's context-specific nature considers both costs and which controls are reasonably "available." *See* 40 C.F.R. § 52.21(b)(12) (BACT is determined "on a case-by-case basis"); *see also Port Arthur Cmty. Action Network v. TCEQ*, 707 S.W.3d 102, 106 (Tex. 2025) (*PACAN II*) (analyzing the term "available" in the BACT context).

To better understand these terms, contrast BACT with another term of art in the Clean Air Act: the lowest achievable emission rate (LAER). *See* 42 U.S.C. § 7503(a)(2). "LAER is a more stringent control technology than BACT." *Sierra Club de Puerto Rico v. EPA*, 815 F.3d 22, 24 (D.C. Cir. 2016). LAER is stricter than BACT because it does not account for cost. *See United States v. EME Homer City Generation, L.P.*, 727 F.3d 274, 288 & n.6 (3d Cir. 2013). BACT, by contrast, considers various factors on a facility-by-facility basis, rather than seeking the most stringent emission controls irrespective of the cost. *See id.* ("BACT determinations are products of the permitting process, tailored to each facility on a case-by-case basis, using cost-benefit analyses specific to each pollution source."). Agencies charged with making BACT determinations must undertake the highly complex task of weighing the "energy, environmental, and economic impacts and other costs"

associated with a new source and must use that weighing to determine the best fit for limiting emissions. *See* LAC 33:III.509.B (defining BACT). So long as the agency "consider[s] all relevant factors and articulate[s] reasons for its decisions," courts "will not disturb [such] technical determinations made within [the agency's] expertise." *Sierra Club v. LDEQ*, 100 F.4th at 571.

The latitude given to state agencies in making such determinations is particularly important in light of the serious consequences for permit violations. While states make BACT determinations and enforce permit limits in the first instance, EPA may also pursue a civil action against permit-holders if a facility violates the standards set out in its permit. 42 U.S.C. § 7413(b)(1). EPA may seek injunctive relief and a civil penalty of over $120,000 per day for *each violation*. *Id.*; *Civil Monetary Penalty Inflation Adjustment*, 90 Fed. Reg. 1375 (Jan. 8, 2025); *see United States v. Luminant Generation Co., L.L.C.*, 905 F.3d 874, 883 & n.13 (5th Cir. 2018), *pet. for rehearing granted*, 929 F.3d 316 (5th Cir. 2019), *dismissed*, 2019 WL 3778363 (5th Cir.). The Act also authorizes citizen suits to enforce permit compliance, which may include steep civil penalties. *CleanCOALition v. TXU Power*, 536 F.3d 469, 471–73 (5th Cir. 2008); *see also Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp.*, 123 F.4th 309, 311 (5th Cir. 2024) (en banc) (affirming over $14 million in civil penalties in citizen suit).

The prospect of such penalties heightens the importance of allowing state agencies the proper latitude to make the fact-dependent determinations regarding the various aspects of a PSD permit. The threat of penalties also incentivizes permit applicants to establish with reliable certainty that their new facilities will operate within the limits set out in their permits.

III. Federal Courts Should Not Flyspeck State Agencies' Administration of Their PSD Permitting Programs.

Cooperative federalism and BACT's case-specific analysis give states broad discretion in making PSD permitting decisions. But that flexibility would be nullified if reviewing courts could easily second-guess the states' detailed decisions. They may not. As binding precedent reflects, courts must deferentially review a state agency's technical findings under the Clean Air Act when exercising review pursuant to the Natural Gas Act's unique judicial-review provision.

A. The Supreme Court and this Court's precedents reinforce that courts should not second-guess state agencies' BACT determinations.

State agencies are charged with ensuring that new emission sources do not cause areas that are attaining national air-quality standards to backslide into nonattainment. When a state agency's decision is reviewed by a court for consistency with the relevant state's BACT definition, judicial deference to the agency's technical determinations is mandatory.

Start with the Clean Air Act. The Supreme Court has emphasized that a state's BACT determination under the Act should be "second guess[ed]" only "relatively rare[ly]." *Alaska*, 540 U.S. at 490 & n.14 (citation omitted). A state's judgment may be displaced only when the "state agency's BACT determination is 'not based on a reasoned analysis.'" *Id.* This Court, too, has recognized states' latitude to administer PSD programs under their respective SIPs. When Sierra Club invited this Court to second-guess LDEQ's BACT determination on Commonwealth LNG's PSD permit, the Court "decline[d] to wade into th[o]se hyper-technical waters and supplant LDEQ's careful [BACT] determinations, made with the benefit of time-consuming testing and extensive analysis." *Sierra Club v. LDEQ*, 100 F.4th at 571. Cases from Texas applied the same deferential review. *See PACAN III*, 147 F.4th at 566–67 (rejecting PSD permit challenge applying Texas's definition of BACT); *see also Shrimpers & Fishermen of RGV v. TCEQ*, 968 F.3d 419, 424–25 (5th Cir. 2020) (dismissing PSD permit challenge for lack of standing after state agency determined challengers were not "affected persons" under Texas law).

Further counseling deference is the fact that this Court reviews these permitting actions under *state* law—both the state's BACT definition and state-law principles governing judicial review of agency actions. *Sierra Club v. LDEQ*, 100 F.4th at 571–72 (applying Louisiana law). Under those standards, Louisiana courts may reverse a permitting action only when the agency's decision was "without

reason." *Id.* (quoting *Save Our Hills v. LDEQ*, 266 So.3d 916, 927 (La. App. 1 Cir. 2018)). And even then, courts upset agency decisions only when the challenger's "substantial rights" "have been prejudiced." *Id.* (quoting La. R.S. § 49:978.1(G)(5)).

While a SIP approved under the Clean Air Act has the force and effect of federal law, *id.* at 563–65, the Court has respected a SIP's state-law character by deferring to state-court SIP interpretations, *see PACAN III*, 147 F.4th at 566–67. Indeed, when faced with substantial disagreement over the meaning of Texas's BACT definition, this Court recently certified the question to the Supreme Court of Texas, concluding that "[c]omity interests" favored certification "because the resolution of th[e] case impact[ed] the procedures of a major state regulator." *Port Arthur Cmty. Action Network v. TCEQ*, 92 F.4th 1150, 1152 (5th Cir. 2024) (*PACAN I*).

Because states "have the primary role in administering and enforcing the various components of the PSD program," *Alaska*, 540 U.S. at 491, federal courts should be reluctant to interfere in state permitting decisions, especially ones that reasonably apply the technical and fact-specific BACT framework.

B. The Natural Gas Act's unique judicial-review mechanism underscores that judicial review of LNG permit challenges should be efficient and should avoid needless disruptions.

Ordinarily, under the Clean Air Act's cooperative-federalism framework, a challenge to a state agency's PSD permit would proceed in state court. *S. Tex. Envtl.*

Justice Network v. TCEQ, 165 F.4th 356, 365 (5th Cir. 2026); *see Rise St. James v. LDEQ*, 383 So.3d at 961 (reviewing challenge to PSD permit outside LNG context). But Congress provided for streamlined federal-court review for LNG projects in the Natural Gas Act.

The NGA is "a comprehensive scheme of federal regulation" governing "the construction, expansion, and operation of LNG terminals." *Sierra Club v. LDEQ*, 100 F.4th at 563 (quoting *N. Nat. Gas Co. v. State Corp. Comm'n of Kan.*, 372 U.S. 84, 91 (1963), and citing 15 U.S.C. § 717b(e)(1)). "Congress enacted the Natural Gas Act with the 'principal purpose' of 'encourag[ing] the orderly development of plentiful supplies of . . . natural gas at reasonable prices.'" *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 202 (D.C. Cir. 2017) (quoting *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669–70 (1976)).

To prevent the delay associated with some states' permitting of LNG terminals, Congress granted "exclusive authority" to FERC for most permits associated with LNG terminals. *AES Sparrows Point LNG*, 527 F.3d at 125. "[T]his grant of exclusive authority to FERC leaves state and local governments with no residual power to site LNG terminals or to take actions that would effectively approve or deny such siting." *Id.* The NGA exempts the Clean Air Act from FERC's purview, allowing states to carry out their air-permitting regimes for LNG terminals.

But Congress's mandate for an efficient and orderly approach extends to all LNG permitting actions.

Consider the NGA's judicial-review provision, 15 U.S.C. § 717r, which governs FERC actions, the permitting actions of other federal agencies, and the permitting actions of state agencies "acting pursuant to Federal law" for LNG terminals, *Sierra Club v. LDEQ*, 100 F.4th at 563–64. For air permits like the one at issue here, the NGA vests jurisdiction to review agency actions in the "United States Court of Appeals for the circuit in which a facility . . . is proposed to be constructed, expanded, or operated." 15 U.S.C. § 717r(d).[17] Congress did this to ensure "the speedy resolution of matters concerning natural-gas facilities." *Town of Weymouth v. Mass. Dep't of Envtl. Prot.*, 961 F.3d 34, 58 (1st Cir. 2020), *vacated on reh'g*, 973 F.3d 143 (1st Cir. 2020) (granting remand without vacatur to prevent disruption); Jacob Dweck, *et al.*, *Liquefied Natural Gas (LNG) Litigation After the Energy Policy Act of 2005: State Powers in LNG Terminal Siting*, 27 ENERGY L.J. 473, 474, 484 (2006) (Congress amended the NGA to "streamline the process for approving [LNG] projects" and gave LNG "project developers immediate access to the federal judiciary by providing for expedited review in federal court of any order or action, or alleged inaction, by a federal or state agency acting under the authority

[17] By contrast, the NGA directs judicial review of FERC orders to either the applicable regional circuit or the D.C. Circuit. *See* 15 U.S.C. § 717r(b).

of federal law"). Further, courts are required to "set any action brought under this subsection for expedited consideration." 15 U.S.C. § 717r(d)(5). And where a court concludes that an agency decision hindering an LNG project is unlawful, the Act requires the court to set a "reasonable schedule and deadline for the agency to act on remand." *Id.* § 717r(d)(3).

The upshot is clear. Through the NGA, Congress expressed its intent that LNG permitting decisions, and judicial review of those decisions, be resolved expeditiously and without undue disruption. Moreover, nothing in the NGA suggests that the Clean Air Act's cooperative framework is to be disregarded in NGA judicial-review proceedings. Judicial caution is thus warranted before overturning such decisions, particularly given the nature of a typical LNG permitting decision made by a state agency under the Clean Air Act.

IV. This Court Should Not Upset LDEQ's BACT Determination or Disrupt the Development of the CP2 LNG Export Terminal.

Those principles support denial of the petition for review. Venture Global proposed to construct the CP2 LNG export terminal in Cameron Parish, Louisiana—a natural gas liquefaction, storage, and export facility with the capacity to liquefy up to 28 million metric tons of natural gas per year. LDEQ Br. 7–9. Along with the various federal authorizations it must secure, Venture Global must obtain a PSD permit from LDEQ before building the CP2 LNG terminal. Venture Global filed a lengthy application with LDEQ in July 2022, identifying components of its planned

terminal that may cause emissions—including turbines, hot-oil heaters, acid gas thermal oxidizers, amine storage tanks, and flares. *See id.* at 17. LDEQ then conducted an extensive, multi-year technical review, requesting and receiving several rounds of supplemental technical information from Venture Global. *Id.* at 16–17. After seeking public comment and holding a hearing at which Petitioners and their affiliates raised many of the same objections presented here, LDEQ determined that Venture Global's permit application satisfied BACT requirements for each of the proposed terminal's numerous emissions sources. *Id.* at 17, 19–20. LDEQ articulated reasons for each of its determinations, including identifying distinct characteristics of the proposed CP2 LNG terminal—its dedicated LNG "power island" configuration and its source-specific fuel mix—that distinguish it from other projects that may have different emission limits as BACT. *Id.* at 25. LDEQ further determined that emissions from the CP2 LNG facility would not cause or contribute to a violation of any applicable national air-quality standards. *Id.* at 19, 24.

Faced with this thorough review, Petitioners do not object to the control technologies that LDEQ permitted. Instead, Petitioners seek vacatur of the *entire* permit based on one category of sources (combustion turbines) and three pollutant limits they claim are higher than their preferred limits—a 2.5 ppm NO_x limit rather than 2.0, a 5.0 ppmvd CO limit rather than 2.0, and a 3.0 ppmvd VOC limit rather

than their preferred lower values. LDEQ Br. 46–48. And even then, Petitioners principally complain only that LDEQ inadequately *explained* why it declined to adopt marginally lower limits imposed at other, non-comparable facilities. But as LDEQ explains in its brief, the administrative record refutes that claim. *Id.* LDEQ directly addressed Petitioners' comparator arguments and explained why those facilities (primarily traditional utility-grid power plants) are not readily comparable to the CP2 LNG facility's dedicated power-island configuration and source-specific fuel mix. *Id.* at 46–52. And LDEQ provided detailed, source-specific reasons for the challenged limits. Indeed, the only comparable LNG facility in the record (the Calcasieu Pass LNG Project) received the same 2.5 ppm NO_x BACT determination that LDEQ selected for the CP2 LNG facility. *Id.* at 52.

This Court rejected materially indistinguishable arguments in *Sierra Club v. LDEQ*, declining to "wade into th[o]se hyper-technical waters and supplant LDEQ's careful determinations, made with the benefit of time-consuming testing and extensive analysis." 100 F.4th at 571. The Court should do the same here.

CONCLUSION

The Court should deny the petition for review.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7) because it contains 4,785 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief 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 Office Word 2010 in 14-point Times New Roman font.

/s/ Beau Carter
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I certify that on May 26, 2026, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Beau Carter
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