UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

New England Winter Gas-Electric Forum Docket No. AD22-9

**Comments of Public Citizen, Inc.**

 The Commission solicited comments to better understand “the electricity and natural gas challenges facing the New England Region.”[[1]](#footnote-1) Just as high natural gas prices in the pre-2008 fracking era rendered ISO-NE, PJM and other RTOs vulnerable to punishing price spikes, today the primary cause of New England’s natural gas crisis are record natural gas exports, exposing the region to global calamities and forcing power generators and households to compete with Europe and Asia for gas. New England now faces threats of gas supply shortages and significant price burdens for New England’s nearly 6 million households because of our permissive policies on gas exports.

While of course action must be taken to empower households to avoid exposure to volatility-priced fossil fuel commodities by promoting renewable power, building electrification and other initiatives that emphasize equitable access to clean energy, there is a critical action that ISO-NE and other stakeholders must take: ask the U.S. Department of Energy to declare that exports of natural gas are inconsistent with the public interest, and ensure that New England’s needs are prioritized over exports.[[2]](#footnote-2)

In addition, ISO-NE and other market participants should request Commission action under 15 USC § 717t–2(a)(4) and establish an RTO for spot natural gas trading in New England in order to improve market transparency.

**Record Natural Gas Exports Result in Spiking Domestic Prices**

Today the United States is both the world’s largest natural gas producer *and* the world’s largest natural gas exporter. Twenty percent of our record domestic gas production is now exported out of the United States.[[3]](#footnote-3)

New England is a net exporter of natural gas, as exports have surged in excess of imports since 2019. Total pipeline exports of natural gas out of New England and into Canada exceed the amount of gas used by the entire Massachusetts power sector.[[4]](#footnote-4)

New England also competes for fuel with the Cove Point LNG export terminal in Maryland. Cove Point LNG, owned by Berkshire Hathaway, Brookfield Asset Management and Dominion Resources, exports 700 million cubic feet per day of LNG. Cove Point is directly connected to the Marcellus Shale, supplied by fracked production via Coterra Energy and Antero Resources, and fed by Williams’ Transco and TC Energy’s Columbia Gas pipelines.[[5]](#footnote-5) New England is therefore forced to compete with exports to Canada via the Maritimes & Northeast Pipeline (owned by Spectra Energy Partners, Emera and ExxonMobil) at Calais, Maine and the routing of gas from the Marcellus to Cove Point LNG.

The Commission’s most recent *Winter Energy Market and Reliability Assessment* concludes that “continued growth in net exports, including from liquified natural gas (LNG) export facilities, will place additional pressure on natural gas prices this winter . . . Traditionally, domestic fundamentals drive U.S. natural gas prices; this winter, international markets will likely also affect U.S. natural gas markets and prices . . . the expansion of LNG export capability has integrated formerly disparate North American regional natural gas markets into the global market . . . In New England, high global LNG prices are contributing to higher winter natural gas futures prices.”[[6]](#footnote-6)

The *Wall Street Journal* reported “that natural-gas exports are pushing domestic prices higher . . . The pinch shows a growing tension between exporters and buyers who have enjoyed cheap gas for more than a decade. Some manufacturing and chemical companies have built entire businesses around low U.S. gas prices . . . Utilities from the Pacific Northwest to New England have filed regulatory requests to raise rates for natural gas this winter, citing a supply squeeze as a result of higher global demand . . . the U.S. is exporting a larger share of its natural gas than it ever has and shale producers aren’t quickly ramping up in response to high prices . . . some of the biggest natural-gas producers have vowed to keep investments in production growth low.”[[7]](#footnote-7)

The National Energy Assistance Directors' Association estimates that household heating costs for the upcoming winter will be 34.3% higher for families using natural gas and 6.9% higher for those relying on electricity.[[8]](#footnote-8)

These high prices are creating significant economic hardship for tens of millions of American families. Twenty-six percent of respondents to a U.S. Census Bureau survey taken in the summer of 2022 said they had forgone necessities like food or medicine to pay their energy bills sometime during the preceding year.[[9]](#footnote-9) Rising energy costs―anchored by higher natural gas prices stemming in part from record LNG exports―are the biggest factor driving inflation in the U.S.[[10]](#footnote-10)

**Department of Energy Export Authorization Background**

DOE is responsible for authorizing exports of U.S. produced natural gas, including LNG, to foreign nations pursuant to section 3 of the Natural Gas Act.[[11]](#footnote-11) 1992 amendments to the Natural Gas Act deemed exports to countries with which the U.S. has a free trade agreement requiring national treatment for trade in natural gas are automatically deemed to be in the public interest. The U.S. has such free trade agreements with 18 countries, only two of which (South Korea and Singapore) are in Asia, with none in Europe.[[12]](#footnote-12) From 2016 through August 2022, only 25% of all LNG exports are to nations with which we have a free trade agreement.[[13]](#footnote-13)

The bulk of LNG exports (75%) are to nations with which we do not have a free trade agreement, and therefore require DOE to only authorize them “it finds that the proposed exportation or importation will not be consistent with the public interest.”

Seven currently operating LNG terminals (Sabine Pass, Cove Point, Elba Island, Corpus Christi I and II, Cameron, Freeport and Calcasieu Pass) have received authorizations from DOE to export to non-free trade agreement countries, and will have combined export capacity of 14 billion cubic feet per day before the end of 2022. Three additional terminals authorized to export and under construction (Plaquemines, Corpus Christi III and Golden Pass will boost export capacity to nearly 20 million Bcf/d by 2025.[[14]](#footnote-14)

As a result, the U.S. catapulted from zero LNG exports prior to 2016 to the largest LNG exporter in the world today. More than 20% of natural gas produced in the U.S. was exported in the first six months of 2022, up from 11.5% in 2017.

Courts have long interpreted the intent of the Natural Gas Act public interest determination “was to protect consumers against exploitation at the hands of natural gas companies.”[[15]](#footnote-15)

Congress left it to the executive branch to define what factors would determine exports to be consistent with the public interest. DOE assesses several variables, including net economic impacts, international impacts, the security of domestic natural gas supply, and environmental impacts.[[16]](#footnote-16)

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

The most recent of these reports was conducted in 2018 during the Trump Administration, when LNG exports were still in relative infancy. *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* was prepared by NERA Economic Consulting for DOE.[[17]](#footnote-17) This study has aged poorly, as it assumed that consumer welfare―which it defines as the present value measure of the standard of living of all U.S. households―was directly and beneficially linked with higher LNG exports.[[18]](#footnote-18) The 2018 study gave only a 3% probability that significant LNG exports would result in domestic prices above $10/MMBtu, concluding that “increasing U.S. LNG exports under any given set of assumptions about U.S. natural gas resources and their production leads to only small increases in U.S. natural gas prices.”[[19]](#footnote-19) Furthermore, the study claims that “as U.S. LNG exports increase . . . households who hold shares in companies that own liquefaction plants receive additional income from take-or-pay tolling charges for LNG exports. These additional sources of income for U.S. consumers outweigh the income loss associated with higher energy prices.”[[20]](#footnote-20)

DOE relies upon the conclusions of this 2018 study to help determine whether exports will be consistent with the public interest.

**ISO-NE and Stakeholders Must Ask DOE To Revise Its Public Interest Review of LNG Exports**

Despite the statutory requirement that the U.S. Department of Energy only authorize those natural gas exports that are consistent with the public interest, the agency currently performs no analysis on the harmful impacts exports are having on fuel availability and pricing in the New England market. It is imperative that ISO-NE and other stakeholders write to the U.S. Department of Energy and request immediate action by the agency to determine that natural gas exports are harming the public interest, and take action to ensure that domestic fuel needs in New England are prioritized over exports.

**ISO-NE and Stakeholders Must Urge Commission Action to Improve Transparency for Natural Gas Spot Markets**

A natural gas index price is derived from trades within specific geographical boundaries that market participants voluntarily report to a price index developer. Price index developers are private, for-profit companies that classify most of the voluntarily-reported data as proprietary, that the index developers then commodify and sell only to those that can afford the very expensive subscription fees.[[21]](#footnote-21)

 These voluntarily-reported transactions determine the price of natural gas for millions of households and businesses across the country, as market participants reference index prices in their physical and financial transactions: natural gas pipelines and Regional Transmission Organizations feature natural gas indices in their FERC-jurisdictional tariffs for various terms and conditions of service; state utility commissions rely on natural gas indices as benchmarks when setting rates; and many natural gas financial derivative contracts used in hedging and speculation settle against the natural gas price indices.[[22]](#footnote-22) In a way, hundreds of billions of dollars of energy transactions rely upon voluntarily-reported price indexes—a 21st century version of a smoke-filled, price-fixing establishment. Such natural gas markets―including those in New England―are a profoundly non-transparent, uncompetitive natural gas pricing system.

Voluntary price indexes, whether for natural gas or the London Interbank Offered Rate (LIBOR), have systemically been vulnerable to market manipulation, as they feature bilateral transactions that are too illiquid and uncompetitive to be reliable or trustworthy reflections of market prices. Instead of codifying safe harbor protections, the Commission should scrap this NOPR and initiate a proceeding to find a replacement for voluntarily-reported price indexes.

Federal law provides a clear alternative for FERC to pursue, as **15 USC § 717t–2(a)(4)** states that “the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services . . . ***The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing*** ***price discovery or market transparency***” [emphasis added]. Such “an electronic information system” could be based on actual transactions, and not limited to those voluntarily reported, and would be freely available to all interested parties through a platform hosted by the Commission, rather than the proprietary, commodified data model of the index publishers. It could operate as a type of RTO/ISO for natural gas spot markets.

The rest of the world has turned away from such voluntary reporting indexes. As a member of the U.S. Commodity Futures Trading Commission’s Market Risk Advisory Committee,[[23]](#footnote-23) Public Citizen participated in deliberations on the logistics of transitioning away from scandal-plagued LIBOR towards its likely replacement, the Secured Overnight Financing Rate (SOFR). Similar to the voluntarily-reported natural gas indices, LIBOR is an interest rate index that measures the rates at which banks borrow from one another, and is calculated based on the voluntary submissions by a dozen of the world’s largest banks. As much as $300 *trillion* worth of transactions around the world—from the interest rate on your home mortgage, credit cards and automobile loans, and trillions of dollars of derivatives swaps—were tied or referenced to LIBOR. Banks exploited this voluntary submission standard by reporting rates that financially advantaged their positions, thereby manipulating the rates impacting trillions of dollars in transactions. In the end, major Wall Street banks acknowledged they manipulated LIBOR and paid nearly $10 billion in penalties for operating the global financial system like a cartel.

SOFR is the estimated overnight borrowing cost collateralized by Treasury securities. The advantage of SOFR vs. LIBOR is that, unlike the voluntary reporting nature of LIBOR, SOFR is based on actual transaction data. It is therefore a reliable indicator of a bank’s overnight borrowing costs.

Our CFTC Market Risk Advisory Committee deliberations detailed the logistical challenges associated with moving trillions of dollars of derivative contracts off LIBOR and on to SOFR, a process that showed that when market participants, consumer advocates and regulators work together, complex problems can be reformed. If the Federal Reserve and the CFTC can develop an orderly, coherent process to move the global economy off of LIBOR, surely FERC can do the same for the much smaller, but just as scandal-prone, natural gas spot indices. And Congress empowered the Commission to do so at 15 USC § 717t–2(a)(4).

Market prices can provide effective signals to producers and consumers if the market is competitive and functioning normally. But spiking natural gas prices due to war, climate-induced disasters and other calamities are rendering aspects of our energy markets to be dysfunctional.[[24]](#footnote-24) occurred during significant market dysfunction: many producers were unable to respond to high spot prices because their production was frozen and shut-in. Voluntarily-reported spot indices are devoid of effective transparency and competition, allowing a handful of traders to set prices.

 Respectfully submitted,

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1. May 19, 2022 *Notice*. [↑](#footnote-ref-1)
2. See www.citizen.org/consumerpetitionlngexports/ [↑](#footnote-ref-2)
3. www.citizen.org/news/as-winter-approaches-fossil-fuel-exports-drive-up-consumer-prices/ [↑](#footnote-ref-3)
4. 2021 data, www.eia.gov/naturalgas/ [↑](#footnote-ref-4)
5. Lindsay Schneider, "Could a New LNG Export Terminal Be Coming to the Marcellus/Utica's Backyard?", RBN Energy, October 23, 2022, https://rbnenergy.com/philadelphia-freedom-could-a-new-lng-export-terminal-be-coming-to-themarcellus-utica [↑](#footnote-ref-5)
6. https://ferc.gov/media/report-2022-2023-winter-assessment [↑](#footnote-ref-6)
7. Collin Eaton and Katherine Blunt, "Natural-Gas Exports Lift Prices for U.S. Utilities Ahead of Winter," November 7, 2021, www.wsj.com/articles/natural-gas-exports-lift-prices-for-u-s-utilities-ahead-of-winter-11636281000 [↑](#footnote-ref-7)
8. https://neada.org/wp-content/uploads/2022/09/winter2022-23PR.pdf [↑](#footnote-ref-8)
9. www.census.gov/data/tables/2022/demo/hhp/hhp48.html [↑](#footnote-ref-9)
10. www.bls.gov/cpi/ [↑](#footnote-ref-10)
11. 15 USC § 717b. [↑](#footnote-ref-11)
12. The other 16 nations are Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama and Peru. [↑](#footnote-ref-12)
13. www.energy.gov/fecm/articles/lng-monthly-2022 [↑](#footnote-ref-13)
14. www.eia.gov/todayinenergy/detail.php?id=53719 [↑](#footnote-ref-14)
15. *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944). [↑](#footnote-ref-15)
16. www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-13427.pdf [↑](#footnote-ref-16)
17. www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf [↑](#footnote-ref-17)
18. At page 20. [↑](#footnote-ref-18)
19. At page 55. [↑](#footnote-ref-19)
20. At page 67. [↑](#footnote-ref-20)
21. For more background, see www.citizen.org/article/natural-gas-spot-prices-in-need-of-reform/ [↑](#footnote-ref-21)
22. NOPR, at 4. [↑](#footnote-ref-22)
23. www.cftc.gov/About/AdvisoryCommittees/MRAC [↑](#footnote-ref-23)
24. See www.citizen.org/wp-content/uploads/CFTCBehnam.docx and www.citizen.org/article/modernizing-electricity-market-design/ [↑](#footnote-ref-24)