UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Saguaro Connector Pipeline, LLC Docket No. CP23-29

**Protest of Public Citizen, Inc.**

 On December 20, 2020, Oneok submitted an application to site and operate a natural gas international boundary pipeline to export natural gas from Texas to Estados Unidos Mexicanos. Oneok proposes a 48-inch diameter pipeline with capacity to export 2.834 billion cubic feet per day and an operating pressure of 1,480 pounds per square inch.[[1]](#footnote-1) The application states that Oneok’s planned 155 mile long pipeline subject to Texas (and not FERC) jurisdiction bringing fracked natural gas from the Permian basin at the Waha hub will connect to Oneok’s proposed border crossing.[[2]](#footnote-2) The application states that the natural gas exported at the border crossing will connect with a pipeline in Mexico “which will extend to a natural gas export facility under development on the West Coast of Mexico.”[[3]](#footnote-3) So Oneok’s border crossing will bridge a seamless and interconnected export infrastructure that begins in Texas’ Permian basin and extends to LNG export terminals on Mexico’s pacific coast. Under Oneok’s proposal, Mexico will only serve as a land mass conduit to export U.S. produced gas to foreign nations with whom we do not necessarily have free trade agreements. Oneok is therefore punching a destabilizing loophole in the Natural Gas Act, and exploiting the automatic public interest treatment granted to Mexico to re-export U.S. produced gas to countries like China that do not qualify for automatic public interest determination.

 The Commission must set the matter for evidentiary hearing, because the application fails to demonstrate that the export pipeline is in the public interest. America’s status as the largest natural gas exporter on earth has radically upended domestic energy markets, contributing to physical supply shortages and exposing households and power generators to wild price volatility, forcing domestic consumers to compete with their counterparts in Berlin and Beijing.

 The application states that Oneok’s proposed border crossing “will deliver natural gas supplies from the Waha Hub in Pecos County, Texas, to Mexico to meet international demand for natural gas . . . [and connect with a new pipeline in Mexico] which has a planned delivery to a natural gas export facility under development on the West Coast of Mexico.”[[4]](#footnote-4) The application, therefore, explicitly states that exports of U.S. produced natural gas through the proposed border are not destined for consumption within Mexico, but rather designed to be liquified at facilities on Mexico’s pacific coast for export out of Mexico―most likely to Asia. Therefore Mexico is a conduit and not an export destination.

 But when the application seeks to convince the Commission that the facility is in the public interest, it describes a conflicting set of facts:

*Section 3(c) of the NGA provides that: “[T]he exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such . . . exportation shall be granted without modification or delay.” The United States and Mexico are parties to a free trade agreement. Specifically, the United States and Mexico are signatories to the United States-Mexico-Canada Agreement, which eliminates barriers to trade in natural gas between the two nations. Accordingly, Saguaro’s requested NGA Section 3 authorization and Presidential Permit should be granted “without modification or delay.”[[5]](#footnote-5)*

 Both of these things cannot be true. Either Oneok is proposing the border crossing as part of an integrated financial investment to move U.S. natural gas from Texas to Mexico’s pacific coast for export to Asia, or Oneok is exporting U.S. gas to Mexico. Oneok cannot claim the Natural Gas Act’s free trade agreement public interest guarantee when the explicit design of the facility to export the gas out of Mexico to other foreign nations, including those like China with whom we do not have a free trade agreement.

 The legislative history of the Energy Policy Act of 1992 demonstrates that the Natural Gas Act amendments do not endorse re-exports of U.S. produced gas from Mexico as qualifying for the automatic public interest designation.

The Natural Gas Act language designating exports to countries with free trade agreements deemed to be in the public interest were added as Section 201 of the Energy Policy Act of 1992.[[6]](#footnote-6) At the time of passage, the United States only had a free trade agreement with Canada that included natural gas treatment, and there were active negotiations with Mexico on the North American Free Trade Agreement. The congressional record makes clear that the purpose of Section 201 was to promote a North American natural gas market that would benefit consumers―and not tolerate the use of a free trade agreement public interest determination to freely re-export to nations with whom no free trade agreement exists.

The Report of the Committee of Energy and Commerce (Rept. 102-474, Part 1) noted that Section 201 was intended to establish fewer restrictions on natural gas imports from Canada and Mexico, ensuring that such imports would be treated “more like domestic American natural gas production” by designating them as “first sale” status; barred FERC “or state regulators from treating these imports differently than domestic gas”; making “the current import approval process purely automatic, so that this procedure―which domestic gas does not undergo―cannot cause any delays”; and “ease regulation of Mexican gas imports if a free trade agreement with Mexico is reached.”[[7]](#footnote-7)

U.S. Rep. Phillip Sharp (D-Indiana) further elaborated congressional intent when he spoke on the floor of Congress in support of the conference report on the Energy Policy Act of 1992:

*the conferees did agree to expressly forbid discrimination against imported natural gas . . . [and ensures] a broad policy of free and competitive wellhead markets in North America by, in effect, deregulating Canadian natural gas imports in section 201 . . . As for section 201, we note it applies, for example, to imports of Canadian natural gas into the United States; exports of natural gas to Canada from the United States; and imports of liquified natural gas into the United States . . . Finally, as drafted, the new fast track process would not be available for LNG exports to, for example, Pacific rim nations other than Canada.*[[8]](#footnote-8)

 And U.S. Representative Barbara B. Kennelly (D-Connecticut) spoke on the House floor on remarks May 20, 1992 that “section 201 of this bill eases existing rules for importing natural gas thereby protecting this region's [New England’s] access to affordable, clean burning natural gas.”[[9]](#footnote-9)

 The congressional record elaborated that Section 201 “is intended to increase the free flow of natural gas ***throughout the North American market***” [emphasis added].[[10]](#footnote-10)

 U.S. Rep. Norman F. Lent (R-NY) noted the importance of Section 201 to protect his state’s consumers:

*The Energy Policy Act of 1992 contains important provisions that remove regulatory barriers which hinder the importation of natural gas from countries with which the United States has entered into a free trade agreement requiring national treatment for trade in natural gas. Currently, this means Canadian gas must be treated the same as domestic gas. Once the North American Free Trade Agreement is ratified, this will also apply to Mexican gas. Section 201 of this act is vital to assuring that U.S. regulators do not interfere with the importation of natural gas to customers in the United States. Its provisions provide critical protection to the citizens of my home state, New York, who receive supplemental volumes of natural gas from Canada. The purpose of these provisions is not to give imported natural gas an advantage, but to ensure a level playing field for imported gas . . . Section 201(b) deems the importation to the United States, and exportation from the United States, of natural gas consistent with the public interest. By making this determination, applications for import of Canadian natural gas are granted automatic approval. The result is, imported natural gas is not subjected to burdensome import licensing proceedings that place it at a disadvantage relative to domestically produced gas . . . these provisions are good competitive policy. U.S. producers supply over 92 percent of the natural gas needs in this country. Fair treatment of imports helps maintain healthy competition in the United States without posing any threat to U.S. producers. Greater access to a variety of natural gas sources will help create a more stable natural gas market so that more U.S. consumers will benefit from this economic and environmentally sound source of energy.*[[11]](#footnote-11)

 *Bloomberg* notes that the LNG export terminals planned for Mexico’s pacific coast will rely almost exclusively on U.S. produced natural gas for those exports:

*Mexico—which imports nearly all of the natural gas it burns—has laid out a somewhat surprising mission: to become one of the world’s top exporters of the fuel, and fast. Although natural gas exports from Mexico are today non-existent, seeing as it produces too little of the power-plant fuel to supply even its own domestic needs, the country’s physical proximity to booming US reserves positions it well to supply American gas to hungry buyers in Europe and Asia. With US shale in mind, a total of eight liquified natural gas export projects have been proposed south of the border boasting annual combined capacity of 50.2 million tons. Some of the operations aim to come online as soon as next year. If they’re all completed, the Latin American newcomer would join a very small club of nations that ship abroad the superchilled fuel—commonly called LNG —clocking in at No. 4 behind only the US, Australia and Qatar. And unlike those other three export heavyweights, Mexico would mostly be shipping out gas that it imported in the first place.[[12]](#footnote-12)*

 And companies developing the LNG export terminals “have cited strong offtaker interest in Asia for their projects under development on Mexico’s West Coast.”[[13]](#footnote-13) Sempra's Costa Azul and Vista Pacifico LNG export terminals; Saguaro LNG[[14]](#footnote-14) and Amigo LNG[[15]](#footnote-15) will all rely on Permian basin gas and are possible export conduits for Oneok’s proposed border crossing.

 Today the United States is the largest natural gas exporter in the world, and these record exports are destabilizing domestic energy markets, resulting in physical supply shortages and higher prices.[[16]](#footnote-16) Oneok’s proposed Saguaro border crossing will significantly expand those export volumes, thereby exacerbating the negative impacts exports are having on U.S. and FERC-jurisdictional energy markets. The Commission cannot consider Oneok’s application as being consistent with the public interest until it has held an evidentiary hearing.

 Finally, the application makes an unsupported claim in footnote 11 that the LNG export terminals on Mexico’s pacific coast supplied via Oneok’s border crossing will result in natural gas displacing coal power plants. The application provides no supporting documentation to support this claim. In reality, it is more likely that LNG exports bolster existing natural gas infrastructure at the expense of investment growth in renewables like wind and solar. Regardless, the Commission cannot grant a public interest determination based upon an unsupported environmental benefit claim.

 Respectfully submitted,

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1. Application, at page 3. [↑](#footnote-ref-1)
2. Application, at page 4. [↑](#footnote-ref-2)
3. Application, at page 4. [↑](#footnote-ref-3)
4. Application, at page 6. [↑](#footnote-ref-4)
5. Application, at page 6. [↑](#footnote-ref-5)
6. www.congress.gov/102/statute/STATUTE-106/STATUTE-106-Pg2776.pdf [↑](#footnote-ref-6)
7. Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 4 of 6, at pages 2731-2732. https://babel.hathitrust.org/cgi/pt?id=pst.000023406209 [↑](#footnote-ref-7)
8. Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 6 of 6, pages 4555, 4557 and 4560. https://babel.hathitrust.org/cgi/pt?id=pst.000023406032 [↑](#footnote-ref-8)
9. Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 5 of 6, page 3868. https://babel.hathitrust.org/cgi/pt?id=pst.000023406063 [↑](#footnote-ref-9)
10. Legislative history of the Energy Policy Act of 1992, prepared for the Committee on Energy and Natural Resources, United States Senate; by the Congressional Research Service, Library of Congress, November 1994, Volume 5 of 6, page 3729, https://babel.hathitrust.org/cgi/pt?id=pst.000023406063 [↑](#footnote-ref-10)
11. at page 4578-4579 [↑](#footnote-ref-11)
12. Sergio Chapa, “Mexico Plans to Become an Export Hub With US-Drilled Natural Gas,” August 12, 2022, www.bloomberg.com/news/articles/2022-08-12/mexico-plans-to-become-lng-export-hub-using-american-drilled-natural-gas [↑](#footnote-ref-12)
13. Andrew Baker, “U.S. Firms Advancing Mexico LNG Export Plans as Asian Buyers Line Up Supply,” *Natural Gas Intelligence*, December 28, 2022, www.naturalgasintel.com/u-s-firms-advancing-mexico-lng-export-plans-as-asian-buyers-line-up-supply/ [↑](#footnote-ref-13)
14. https://mexicopacific.com/ [↑](#footnote-ref-14)
15. www.lngalliance.com [↑](#footnote-ref-15)
16. www.citizen.org/article/letter-to-dept-of-energy-to-protect-consumers-from-lng-exports/ [↑](#footnote-ref-16)