

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Delaware River Partners LLC

Docket No. CP20-522

Bradford County Real Estate Partners LLC

Docket No. CP20-524

**Protest of Public Citizen, Inc.**

On September 11 and September 18, Delaware River Partners LLC and Bradford County Real Estate Partners LLC, two affiliates of the foreign financial holding company SoftBank Group Corp., filed separate petitions for declaratory orders a week apart seeking Commission determinations that two facilities— Bradford County Real Estate Partners’ proposed landlocked liquification facility in Pennsylvania’s Marcellus Shale, and the Delaware River Partners LNG export port in New Jersey—should be exempt from Sections 3 and 7 of the Natural Gas Act. Because the two projects are being developed as a financially and logistically linked interstate LNG export system, the Commission should consolidate the two petitions and reject both as being inconsistent with the Commission’s obligations under the Natural Gas Act and the Commission’s regulations.

The SoftBank Group Corp. petitioners seek to dodge FERC oversight of LNG export operations. Should the SoftBank Group Corp. petitioners prevail, the consequence will be the evisceration of the Commission’s authority to regulate exports of natural gas. The resulting loophole from granting the petitions will incentivize future natural gas export projects to develop separate but financially and logistically connected interstate LNG facilities among various affiliates in order to evade Natural Gas Act jurisdiction. None of the prior Commission cases granting exemptions include facts relevant to what the SoftBank Group Corp. affiliates are attempting to do here. It is contrary to the public interest, the plain reading of the Natural Gas Act and Commission precedent, to grant the SoftBank Group Corp. petitions. The petitioners’ contention that directly affiliated LNG export operations should be exempt from Commission oversight is wrong.

## **About Public Citizen, Inc.**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located on our web site.<sup>1</sup> Public Citizen intervened in Docket No. CP20-522 on September 21 and in Docket No. CP20-524 on September 29.

## **The Commission Must Consolidate Dockets CP20-522 and CP20-524**

On September 11, Delaware River Partners LLC filed a petition for declaratory order to which FERC assigned Docket No. CP20-522. Delaware River Partners LLC is a subsidiary of Fortress Transportation & Infrastructure Investors LLC,<sup>2</sup> which is exclusively managed and run by an affiliate of Fortress Investment Group LLC,<sup>3</sup> which was acquired in 2017 by SoftBank Group Corp., a financial holding company based in Minato City, Tokyo, Japan.<sup>4</sup> In filings with the U.S. Securities and Exchange Commission, Fortress Transportation and Infrastructure Investors LLC notes the myriad ways in which its independence is compromised by SoftBank Group Corp.: “There are conflicts of interest in our relationship” with Fortress Investment Group LLC, with the former heavily dependent upon the SoftBank Group Corp. affiliate for its operations.<sup>5</sup>

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<sup>1</sup> [www.citizen.org/about/annual-report/](http://www.citizen.org/about/annual-report/)

<sup>2</sup> [www.sec.gov/ix?doc=/Archives/edgar/data/1590364/000159036420000002/ftai-20191231.htm](http://www.sec.gov/ix?doc=/Archives/edgar/data/1590364/000159036420000002/ftai-20191231.htm) (at p. 66).

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> The 10-k report filed February 28, 2020, states (at 5 & note 16) that Fortress Transportation & Infrastructure Investors paid its manager FIG LLC, an affiliate of SoftBank Group’s Fortress Investment Group affiliate, approximately \$72 million in fees and reimbursements in 2019, and that the management services agreement enforces significant financial penalties should SoftBank’s affiliate no longer manage Fortress Transportation & Infrastructure Investors LLC. The 10-k (at page 11) warns of significant conflicts of interest with Fortress Investment Group: “Our key agreements, including our Management Agreement, the Partnership Agreement, and our operating agreement were negotiated among related parties, and their respective terms, including fees and other amounts payable, may not be as favorable to us as terms negotiated on an arm’s-length basis with unaffiliated parties. Our independent directors may not vigorously enforce the provisions of our Management Agreement against our Manager. For example, our independent directors may refrain from terminating our Manager because doing so could result in the loss of key personnel.”

[www.sec.gov/ix?doc=/Archives/edgar/data/1590364/000159036420000002/ftai-20191231.htm](http://www.sec.gov/ix?doc=/Archives/edgar/data/1590364/000159036420000002/ftai-20191231.htm)

On September 18, Bradford County Real Estate Partners LLC filed a petition for declaratory order to which FERC assigned Docket No. CP20-524. Bradford County Real Estate Partners LLC is a subsidiary of New Fortress Energy LLC,<sup>6</sup> which “is majority-owned by a private equity fund managed by an affiliate of Fortress Investment Group LLC.”<sup>7</sup> As stated above, Fortress Investment Group LLC is a wholly-owned subsidiary of SoftBank Group Corp.<sup>8</sup>

Therefore both Delaware River Partners LLC and Bradford County Real Estate Partners LLC are affiliates of the foreign financial holding company SoftBank Group.

On December 5, 2019, the Pipeline and Hazardous Materials Safety Administration granted a special permit to an affiliate of SoftBank Group Corp., Energy Transport Solutions,<sup>9</sup> to ship LNG by rail only between the Bradford County Real Estate Partners LLC Pennsylvania liquification facility and the New Jersey port owned by Delaware River Partners LLC, “with no intermediate stops”<sup>10</sup> in between, for the purpose of exporting the LNG out of the United States: “. . . the special permit to facilitate shipments to customers who are principally exporters of LNG to foreign markets. . . the ultimate end-users of this LNG will be foreign generators of power for residential, commercial and industrial purposes.” [emphasis added]<sup>11</sup> Therefore, under the terms of the special permit to ship LNG by rail, this SoftBank Group Corp. affiliate explicitly acknowledges the direct financial and logistical connections between the Pennsylvania LNG facility and the New Jersey port to export LNG. It is also important to note that the SoftBank Group Corp. affiliate never mentioned in its 2017 PHMSA application that should the special permit be granted, it would use that permit to

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<sup>6</sup> [www.sec.gov/Archives/edgar/data/1749723/000114036118042889/s002392x7\\_ex21-1.htm](http://www.sec.gov/Archives/edgar/data/1749723/000114036118042889/s002392x7_ex21-1.htm)

<sup>7</sup> Note 24, *Related party transactions*, New Fortress Energy LLC 10-k filed March 4, 2020, [www.sec.gov/Archives/edgar/data/1749723/000114036120004834/form10k.htm](http://www.sec.gov/Archives/edgar/data/1749723/000114036120004834/form10k.htm)

<sup>8</sup> The hedge fund Elliott Management is one of SoftBank’s largest shareholders. See Jenny Strasburg and Bradley Hope “Elliott Management Builds More Than \$2.5 Billion Stake in SoftBank,” *The Wall Street Journal*, February 6, 2020, [www.wsj.com/articles/elliott-management-builds-more-than-2-5-billion-stake-in-softbank-11581015340](http://www.wsj.com/articles/elliott-management-builds-more-than-2-5-billion-stake-in-softbank-11581015340)

<sup>9</sup> Energy Transport Solutions is a subsidiary of New Fortress Energy LLC.

<sup>10</sup> [www.sec.gov/Archives/edgar/data/1749723/000114036118042889/s002392x7\\_ex21-1.htm](http://www.sec.gov/Archives/edgar/data/1749723/000114036118042889/s002392x7_ex21-1.htm). As explained above, that entity is majority-owned by a private equity fund managed by an affiliate of Fortress Investment Group LLC, which is a wholly-owned subsidiary of SoftBank Group Corp.

<sup>11</sup> [www.phmsa.dot.gov/safe-transportation-energy-products/liquefied-natural-gas-transportation-rail](http://www.phmsa.dot.gov/safe-transportation-energy-products/liquefied-natural-gas-transportation-rail)

<sup>11</sup> [www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/safe-transportation-energy-products/72911/environmental-assessment.pdf](http://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/safe-transportation-energy-products/72911/environmental-assessment.pdf)

support an argument that FERC lacks jurisdiction under Sections 3 and 7 of the Natural Gas Act.

Not only do the petitioners in these separate dockets share affiliation, but the projects—the LNG liquification facility developed by Bradford County Real Estate Partners LLC, and the LNG export facility developed by Delaware River Partners LLC—are a financially and logistically interconnected LNG export system among affiliates. SoftBank Group Corp. affiliates propose to construct two liquefaction trains with LNG production capacity of 3.6 million gallons per day and an LNG storage tank in Wyalusing Township, Pennsylvania,<sup>12</sup> deliver the LNG through interstate rail transportation using SoftBank affiliates, terminating at the SoftBank-affiliated LNG transloading operations at the deep-water seaport and industrial logistics center in Gibbstown, NJ, where the natural gas that was originally liquified by SoftBank affiliates in Wyalusing will be loaded onto ships destined for export out of the United States.<sup>13</sup> SoftBank Group Corp. affiliates will be the only entities involved in the liquification, transport and export of LNG.

The Commission should therefore consolidate the two Petitions and base any order on the combined proceedings.

### **The Commission Must Reject The Petitions And Assert Jurisdiction Over Both Projects**

Section 3 of the Natural Gas Act states that “no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so”<sup>14</sup> and “The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.”<sup>15</sup> The Natural Gas Act defines *LNG terminal* to include “all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign

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<sup>12</sup> Bradford County Real Estate Partners LLC *Petition*, Docket No. CP20-524, at page 3.

<sup>13</sup> Delaware River Partners LLC *Petition*, Docket No. CP20-522.

<sup>14</sup> 15 USC § 717b(a).

<sup>15</sup> 15 USC § 717b(e)(1).

country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel.”<sup>16</sup> Based upon the plain reading of federal law, the Commission has clear jurisdiction over both petitioners, since both petitioners are affiliates developing a financially and logistically connected LNG export system.

Section 7 of the Natural Gas Act states that “No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.”<sup>17</sup> Again, the plain reading of federal law requires both petitioners to first obtain “a certificate of public convenience and necessity” from the Commission.

Petitioners cite previous Commission decisions in an effort to justify their claim that their LNG projects, assessed separately, should be exempt from oversight under the Natural Gas Act. Those decisions, however, did not address situations in which the facilities were financially and logistically affiliated operations. For example, Petitioners cite *Gulf Oil Limited Partnership* (148 FERC ¶ 61,029), in which the Commission stated that its “jurisdiction does not extend to deliveries of natural gas by truck, train, or barge.” But *Gulf Oil* concerned a company that was marketing the LNG only for domestic consumption and its LNG facility was not part of an affiliated LNG export operation. Petitioners also cite *Pivotal LNG, Inc.* (151 FERC ¶ 61,006), but that case exempted inland, landlocked LNG processing facilities that did not feature logistically connected and affiliated export facilities. Petitioners additionally cite *Emera* (148 FERC ¶ 61,219), which involves a different product (CNG), so it is not relevant here. Finally, Petitioners cite *Shell U.S. Gas & Power, LLC* (148 FERC ¶ 61,163). There, however, the Commission’s Order explicitly noted that “all the LNG leaving Geismar [Shell’s LNG facility] is delivered in its liquid state to the ultimate end users in the United States.” [at 47] Again, *Shell* was explicitly not part of an *export* operation.

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<sup>16</sup> 15 USC § 717a(11).

<sup>17</sup> 15 USC § 717f(c)(1)(A).

Respectfully submitted,

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