

Bold Alliance • Earthjustice • Earthworks • Friends of the Earth US • Gulf Restoration Network •
League of Conservation Voters • Sierra Club • Western Organization of Resource Councils

September 6, 2018

Dear Member of Congress,

On behalf of our members, we write to express our opposition to H.R. 4606, Ensuring Small Scale LNG Certainty and Access Act. H.R. 4606 amends Section 3(c) of the Natural Gas Act to require the Department of Energy (DOE) to grant applications for natural gas imports or exports with daily volumes below 0.14 bcf (billion cubic feet) that do not require an environmental analysis under the National Environmental Policy Act (NEPA)¹. This legislation seeks to codify a Department of Energy rulemaking that was finalized in July.

This legislation exacerbates two problems for communities supporting property rights and protections for their air, water, climate, wildlife, and public health. First, H.R. 4606 unilaterally declares all low volume natural gas exports or imports in the public interest. This determination eases the path toward natural gas companies taking private land by eminent domain. Because DOE applies categorical exclusions to most applications at the volume limit in the rule and the bill, it is very unlikely that these projects would ever be subject to a NEPA review, limiting the power of communities neighboring these facilities to participate in our Government's environmental decisions.

H.R. 4606 May Lead to More Takings of Private Land by Eminent Domain

H.R. 4606 tramples upon community consent and private property rights by potentially subjecting more private land to takings by eminent domain. The Natural Gas Act confers upon holders of a Certificate of Public Convenience and Necessity (CPCN) the ability to take private land by eminent domain.² H.R. 4606 mandates that these lower volume natural gas imports/exports are in the public interest, effectively requiring FERC issue these permit seekers a CPCN. If permittees cannot negotiate agreements with private landowners, current law allows permittees to seize their land through eminent domain. Fast tracking takings of private land will only alienate landowners and communities. It could also undermine the purpose of this bill by leading to needless litigation and additional delays.

The Federal Government conferring upon a natural gas export project applicant (sometimes foreign-owned) the power to seize Americans' private property undermines basic notions of public use and what is truly in the public's interest. Where individual low volume exports do meet the public's interest, current law allows DOE discretion to make that decision. H.R. 4606, by contrast, removes this discretion. Policymakers concerned about government overreach, energy security, private property rights, local control, protection of air, water, climate, wildlife, or public health should not support legislation that both condones taking private land and removes the public's voice from our Government's decision-making.

Waiving NEPA Undermines Community Consent and Public Participation in Our Government's Decisions

On July 25, 2018, the Department of Energy (DOE) finalized a rule that would expedite approvals for these identical export projects.³ While the rule technically requires NEPA compliance, it also categorically excludes (CX) most of these projects from any NEPA Environmental Impact Statement (EIS) or Environmental Assessment (EA). By codifying the DOE rule, this legislation reduces the ability of communities directly impacted by these projects to give meaningful input during the review process.

NEPA, often referred to as the environmental “Magna Carta”, requires federal agencies to publicly disclose their plans to build facilities, assess the environmental impacts of their actions, and give the public a voice in the decision-making process. For nearly fifty years, NEPA has provided certainty and predictability through a transparent process well understood by federal regulators, permit applicants, and affected communities. NEPA ensures that Americans can take part in the review and development of projects affecting our social, economic, and environmental health. The process provides an opportunity for communities to learn about proposed natural gas import/export facilities and offers agencies the chance to receive valuable public input. And it works. Public input has improved agency consideration of project alternatives and resulted in better community, environmental, and economic outcomes.

Ultimately, NEPA is a source of strength and predictability. It helps lay the foundation for a company's social license to operate (SLTO), lowers investment risk, and reduces uncertainty as compared to jurisdictions without a similar public outreach process. Waiving NEPA increases project uncertainty and delay by inviting needless litigation and stoking community opposition.

By codifying the DOE rule, this legislation locks in a waiver that increases project uncertainty and delay by inviting community opposition. It would essentially rubberstamp profit-driven corporations' plans to build rushed and risk-filled projects that put our communities in danger. All while cutting out the same communities from having a voice in the decision. The bill is fundamentally unfair because it silences the very communities that are bound to bear the burdens of having these facilities virtually in their backyards. Moreover, this legislation will inevitably lower the environmental performance of these facilities because it seeks to eliminate any mechanism to hold the facilities' builder/operator accountable for the dangerous consequences of inadequate construction or operation.

Conclusion

Drilling for oil and gas results in pollution of air, water, climate, wildlife, and harms public health. Exporting America's resources to foreign nations while creating domestic environmental and public health impacts is not in the public interest. Nor is cutting the public out of the process by which we express our interest. Congress should not create laws to export our natural resources wealth at the expense of our environment while simultaneously limiting the rights of Americans to comment on natural gas export projects in their communities. We therefore respectfully urge a no vote on H.R. 4606.

¹ 42 U.S.C. 4321 et seq. (1970)

² Section 7(h) of the Natural Gas Act: When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation... it may acquire the same by the exercise of the right of eminent domain

³ 83 Fed Reg. 35106 (July 25, 2018)