

Federal Court Halts Ban on Liquefied Natural Gas Exports

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On July 1, 2024, the Western District of Louisiana ruled in favor of the plaintiffs in the case, *State of Louisiana et al. v. Joseph R. Biden Jr. et al.* No. 2:24-CV-00406 (W.D. La. July 1, 2024), ordering that the Biden Administration's ban on the export of liquefied natural gas ("LNG") be stayed in its entirety, effective immediately. Plaintiffs in this case are sixteen (16) states (Louisiana, Alabama, Alaska, Arkansas, Florida, Georgia, Kansas, Mississippi, Montana, Nebraska, Oklahoma, South Carolina, Texas, Utah, West Virginia, and Wyoming) who jointly filed to challenge the Biden Administration's LNG export ban to countries without a free trade agreement ("non-FTA countries") in violation of the Administrative Procedure Act ("APA"), Congressional Review Act, and the United States Constitution. Under this ban, the Department of Energy ("DOE") halted permit approvals to export LNG to non-FTA countries while the agency reviewed how the shipments affect climate change, the economy, and national security. The Court granted the plaintiffs' request for a preliminary injunction, which will freeze the Biden Administration's LNG ban in its entirety while litigation is pending and will stop the Administration's delay of consideration of projects aimed at the exportation of LNG. This ruling has nationwide impacts.

Top Takeaways

1. The Biden Administration's ban departs from historical precedent and the legal requirements for the approval process of LNG export licenses, especially considering the DOE's relatively recent dismissal of a similar petition, stating that there is "no factual or legal basis" for "halt[ing] approval of pending applications to export LNG." DOE, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas at 27 (July 18, 2023), <https://perma.cc/TB8Y-56TV>.
2. While the instant decision is a major win for the LNG industry, given the DOE can continue scrutinizing proposals for new LNG exports, the short-term practical effects of the ruling are likely to be minimal. This ban creates uncertainty for American citizens employed in LNG production and exportation and likely discourages new investments.

Overview

The United States is the largest producer and largest exporter of LNG in the world. In 2023, it was reported that 88.9% of the total U.S. LNG exports were to non-Free Trade Agreement countries, and the remaining 11.1% went to Free Trade Agreement countries. [Natural Gas Imports and Exports Monthly February 2024.pdf \(energy.gov\)](#). The domestic LNG market is not only crucial to the United States' capital expenditures and job markets, but also critical to global energy markets.

In January of 2024, President Joe Biden and his administration announced a temporary and possibly indefinite hold on pending decisions of LNG exports. The DOE also announced that it was pausing determinations of applications to export LNG exports to all but eighteen (18)

countries to “update the assessments used to inform whether additional LNG export authorization requests to non-FTA countries are in the public interest.”

Leading foreign and domestic business groups seeking to quash their dependence on Russian natural gas have expressed concern. In a letter dated January 26, 2024, the U.S. Chamber of Commerce, Business Europe, and Keidanren (Japan Business Federation) wrote to President Biden expressing concern with the pause on new LNG export license applications. <https://www.keidanren.or.jp/en/policy/2024/011.pdf>. The groups noted their dependence on U.S. LNG imports for energy security and urged President Biden to reconsider his decision “in light of the unique and vital role of American natural gas in meeting the critical energy security and Paris Agreement objectives that our nations share.” *Id.* Similarly, on March 18, 2024, nearly 150 state and local chambers from thirty-five states joined the U.S. Chamber of Commerce in a letter to the DOE expressing their concerns about the recent moratorium on LNG export license applications. https://www.uschamber.com/assets/documents/240318_Coalition_LNGExports_Sec.-Granholm.pdf. Sixteen states – including Louisiana, Texas, and West Virginia – took matters a step further and filed a civil action in the United States District Court for the Western District of Louisiana.

These sixteen states filed suit against President Biden and the DOE moving for a preliminary injunction on the Biden Administration’s LNG export ban. The states argued that the ban exceeded statutory authority, abused the federal government’s discretionary authority, posed significant harm to the economy, and violated the Natural Gas Act (NGA), which governs LNG exports and strives to “encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.” More importantly for purposes of the injunction, Plaintiffs argued that the LNG ban inflicted significant harms to each individual state, including loss of jobs and revenue streams. Louisiana, for example, is home to 18,000 jobs rooted in LNG production and export. LNG production has contributed to more than \$175 million in state tax revenue and had over \$4.4 billion in statewide economic impact. Thus, the LNG export ban could cost Louisiana thousands of jobs and deprive the state of weighty revenues.

The Biden Administration responded to plaintiffs’ Complaint and Motion for Preliminary Injunction with a Motion to Dismiss for Failure to State a Claim and a Motion to Dismiss for Lack of Jurisdiction. Defendants contended:

1. That the Western District of Louisiana did not have jurisdiction,
2. Plaintiffs failed to establish standing,
3. Plaintiffs did not challenge a final agency action under the APA, and,
4. Plaintiffs failed to state a claim for relief.

Less than two weeks after the hearing, on July 1, 2024, U.S. District Judge James Cain, Jr. ruled in favor of the plaintiffs, granting the preliminary injunction and finding that the states demonstrated there was “evidence of harm” caused by the ban “specifically to Louisiana, Texas, and West Virginia in the loss of revenues, market share, and deprivation of a procedural right.” DOE, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas at 46 (July 18, 2023), <https://perma.cc/TB8Y-56TV>. In temporarily blocking the ban on new LNG approvals,

Judge Cain stated that the states will likely succeed in their case, citing the evidence the states presented showing loss of revenues and deferred investments in LNG projects due to the Biden Administration's actions and noting that the DOE had failed to provide a "detailed justification" for stopping the permit approval process when it had continued to process applications during previous updates to the agency's analyses. The Court also noted its confusion with the Biden Administration's decision to halt the LNG approval process in the first place, given the Natural Gas Act's "express language that applications are to be processed expeditiously" and the DOE's July 2023 decision on essentially the same topic. The Court was of course referring to the DOE's July 2023 order denying a petition for rulemaking on LNG exports, in which the DOE acknowledged that "there is no factual or legal basis" to "halt approval of pending applications to export LNG." DOE, Order Denying Petition for Rulemaking on Exports of Liquefied Natural Gas at 27 (July 18, 2023), <https://perma.cc/TB8Y-56TV>. The Court had strong words regarding the DOE's decision to halt the permit approval process for LNG exports to non-FTA countries stating that it is "completely without reason or logic and is perhaps the epiphany of ideocracy."

The Biden Administration, fighting to uphold the ban, filed an appeal to the Fifth Circuit Court of Appeals on August 5, 2024.

Conclusion

This victory for the energy industry may be short-lived as everyday Americans, business groups, and global energy markets await the Fifth Circuit Court of Appeals decision on whether to permanently strike down the LNG ban. The potential implications of this ruling on the global natural gas supply are significant, as countries in Europe and Asia, in need of a reliable natural gas supply, may now be forced to seek natural gas from sources other than the United States.

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