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**EXPEDITED PROCESSING REQUESTED**

May 12 2022

FOIA Officer  
U.S. Department of State  
Office of Information Programs and Services  
2201 C Street NW, Ste B266  
Washington, DC 20520

**Re: Request Under The Freedom Of Information Act For Records Concerning  
The United States' Response To The Energy Crisis Precipitated By The  
Russo-Ukrainian War**

This is a request on behalf of Friends of the Earth pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for information concerning the Department of State’s (“DOS”) actions in connection with the recently-formed joint Task Force on Energy Security (“Task Force”) and, in particular, information concerning Amos Hochstein, Senior Advisor for Energy Security and a leading member of the Task Force, to address the impacts from the Russo-Ukrainian War and the ensuing energy crisis. This request first provides background that illustrates the importance of the information at issue and then specifically identifies the information being requested. This request also demonstrates that Friends of the Earth is entitled to expedited processing of its request. Finally, this request demonstrates that Friends of the Earth is entitled to a fee waiver.

**I. BRIEF FACTUAL BACKGROUND**

On February 24, 2022, Russia invaded Ukraine, marking a steep escalation of hostilities between the two nations. Western nations, including the United States, have responded to the ensuing crisis by escalating arms shipments to Ukraine and imposing increasingly severe economic sanctions on Russia, as well as on its political leaders and oligarchs. In turn, Russia has retaliated with economic measures of its own. In particular, Russia has threatened to sharply curtail—or even halt—its shipment of natural gas to European nations. *See* Jake Horton et al, *How Reliant is the World on Russia for Oil and Gas?*, BBC NEWS (May 4, 2022).<sup>1</sup> European officials have described Russia’s threat as “blackmail.” *Matina Stevis-Gridneff et al., Ukraine War Impact Widens: Russia Cuts Gas Flow and Vows More Reprisals*, NY TIMES (Apr. 27,

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<sup>1</sup> In response to Western sanctions, President Putin announced that “unfriendly” nations would have to purchase Russian gas using Russian currency. *See* Jake Horton et al, *How Reliant is the World on Russia for Oil and Gas?*, BBC NEWS (May 4, 2022). The Russian-state-owned energy company Gazprom cut off supplies to Poland and Bulgaria and says it will not restart these until payments are made in rubles. *Id.* Many other European Union member states will face the same issue in mid-May, when their payments are due. *Id.*

2022) (Attach. A). Natural gas currently represents around a quarter of the European Union’s overall energy consumption. See European Commission, *Liquified Natural Gas*, [https://energy.ec.europa.eu/topics/oil-gas-and-coal/liquefied-natural-gas\\_en](https://energy.ec.europa.eu/topics/oil-gas-and-coal/liquefied-natural-gas_en) (last visited May 11, 2022). Currently, over 40% of the European Union’s natural gas come from Russia. Jarrett Renshaw & Timothy Gardner, *U.S. Push to Export LNG Amid Ukraine Crisis Slowed by Climate Concerns, Sources Say*, REUTERS (Mar. 11, 2022) (Attach. B). Accordingly, the disruption in Russian energy supplies threatens the European Union’s energy security and economy, and has also complicated the global gas market. See, e.g., Clifford Krauss, *Europe’s Quest to Replace Russian Gas Faces Plenty of Hurdles*, NY TIMES (May 5, 2022) (Attach. C).

Russia’s use of its natural-gas supplies as leverage in the Russo-Ukrainian War has thrown the dangers of relying on Russian energy imports into sharp relief. The European Union has moved to reduce Russian imports, leaving gas producers in other regions to make up the shortfall. See Attach. C.<sup>2</sup> In particular, the European Union has turned to the United States, the world’s largest producer and exporter of liquified natural gas (“LNG”). *Id.*

The impacts of the Russo-Ukrainian War and ensuing energy crisis have reverberated across borders and oceans. Russia’s unprovoked invasion of Ukraine “has roiled the markets and geopolitics of energy, driving oil and gas prices to their highest levels in nearly a decade and forcing many countries to reconsider their energy supplies.” Jeff Tollefson, *What the War in Ukraine Means for Energy, Climate and Food*, NATURE (Apr. 5, 2022) (Attach. D). To address the resulting energy crisis, on March 25, 2022, President Biden and European Commission President von der Leyen announced a joint Task Force on Energy Security. Press Release, White House, *Fact Sheet: United States and European Commission Announce Task Force to Reduce Europe’s Dependence on Russian Fossil Fuels* (March 25, 2022) (Attach. E). The Task Force is to be co-chaired by representatives from the United States and the European Union, and has two primary goals: (1) to diversify LNG supplies in alignment with climate objectives; and (2) to reduce demand for natural gas. *Id.* Amos Hochstein, DOS’s Senior Advisor for Energy Security, is playing a leading role, including chairing a meeting of the Task Force in April. See Press Release, *Joint Statement Between The United States And The European Commission On European Energy Security* (Apr. 29, 2022) (Attach. F).<sup>3</sup> A businessman and veteran diplomat with experience in Eastern European policy and natural gas extraction and exports, Mr. Hochstein has assumed a leading role in the United States’ foreign policy response to the Russo-Ukrainian War.<sup>4</sup>

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<sup>2</sup> European Union member states have been banned from buying Russian crude oil after the end of 2022, with limited exceptions for Hungary and Slovakia (permitted to purchase Russian crude through 2023). Jake Horton et al., *supra*, note 1.

<sup>3</sup> Mr. Hochstein was appointed to serve as DOS’s Senior Advisor for Energy Security on August 10, 2021. Press Statement, Dep’t of State, *Senior Advisor for Energy Security* (Aug. 10, 2021).

<sup>4</sup> During the Obama Administration, Mr. Hochstein served in several positions in the State Department, including Special Envoy and Coordinator for International Energy Affairs. In 2017, Mr. Hochstein left the public sector and joined Tellurian, a LNG company, as the Senior Vice

As part of the Task Force’s plan to achieve its goals, the Biden Administration pledged to increase domestic LNG exports to the European Union by at least 15 billion cubic meters, with “expected increases going forward.” Attach. E. The Biden Administration has also pledged to “maintain[] an enabling regulatory environment with procedures to review and expeditiously act upon applications to permit any additional export LNG capacities.” *Id.* However, the logistics of how the United States will meet its commitments to increase LNG exports are unclear. Both the export and import of LNG requires specialized facilities. There are 37 LNG terminals in European Union member states. Although more are planned, they will not be completed for several years, and therefore will not alleviate the immediate energy crisis. *See* Rebecca Leber, *Europe Can Lead The Way Through An Energy Crisis Without More Fossil Fuels*, VOX (Mar. 26, 2022) (Attach. G).

Until recently, low prices for U.S. natural gas have dissuaded new drillers from investing in new wells or infrastructure. *Id.* Currently, 10 export facilities await permits, long-term buyers, and investors. *Id.* Now, with the Russo-Ukrainian War driving new demand for natural gas, United States energy companies are pushing the Biden Administration to increase natural gas extraction and infrastructure even more. The “unleashing LNG” effort, spearheaded by the largest gas producer in the country EQT, aims to quadruple US export capacity in the next decade. *See* Attach. C; Paul J. Gough, *EQT Unveils Nationwide Plan to ‘Unleash LNG’ to Solve Energy Crisis, Reduce Emissions*, PITTSBURGH BUS. TIMES (Mar. 9, 2022) (Attach. H). At the same time, the Task Force is actively exploring ways to bolster LNG exports from the United States to Europe. *See* Atl. Council, *Senior US Energy Official Amos Hochstein on the West’s Response to Russia and ‘Critical Need’ to Diversify its Energy Supply* (Mar. 28, 2022) (Attach. I).

Although the Task Force has held several meetings with government officials and industry participants, the Biden Administration has not disclosed the United States’ members or their interests. *See* Attach. F.<sup>5</sup> The lack of transparency has raised serious concerns that the Task Force may be subject to undue influence and pressure from fossil fuel industry representatives who, according to various news media sources, are pushing for a dangerous expansion of natural gas extraction and LNG infrastructure that threatens to lock in decades of production, causing irreversible environmental and socio-economic destruction. *See, e.g.*, Collin Rees, *Groups Call Out U.S.-EU ‘Joint Task Force for Energy Security’ For Lack Of Transparency And Climate Criteria*, OILCHANGE INT’L (Apr. 14, 2022) (Attach. J); Attach. Q; Attach. P. The Task Force’s next meeting is set for June 2022. Attach. F.

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President for Marketing. He also served as a member of the Supervisory Board for Naftogaz, a Ukrainian gas company.

<sup>5</sup> Cheniere, the largest LNG exporter in the US, admitted to shareholders during its Q1 earnings call on May 4, 2022 that it had been an active participant. *See* Cheniere Energy, Inc., *Cheniere Energy’s (LNG) CEO Jack Fusco on Q1 2022 Results - Earnings Call Transcript*, SEEKING ALPHA (May 4, 2022), available at <https://seekingalpha.com/article/4506931-cheniere-energys-lng-ceo-jack-fusco-on-q1-2022-results-earnings-call-transcript>.

The potential expansion of natural gas extraction and new LNG infrastructure comes at a time that is critical to determining the course of the planet’s future. As the International Panel on Climate Change (“IPCC”) warned with “extremely high confidence, “[t]he cumulative scientific evidence is unequivocal: Climate change is a threat to human well-being and planetary health. Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a livable and sustainable future for all.” IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers* 35 (2022). Indeed, projected greenhouse gas emissions over the lifetime of existing and currently planned fossil fuel infrastructure will push global warming past 1.5 degrees Celsius, the generally accepted threshold that will avoid the worst impacts of climate change. IPCC, *Climate Change 2022: Mitigation of Climate Change* SPM-19 (2022). The IPCC warned that averting climate disaster requires immediate and deep reductions across all sectors; it “cannot be achieved through incremental change.” *Id.* at TS-32.

The International Energy Agency (“IEA”) has likewise concluded that to limit the long-term increase in global temperatures to 1.5 degrees Celsius, there must be “a complete transformation of how we produce, transport and consume energy.” IEA, *Net Zero by 2050: A Roadmap for the Global Energy Sector* 2 (May 2021). The IEA determined that to achieve climate goals, there can be no new investments in fossil fuel supplies beyond those committed as of 2021. *Id.* at 11. Instead, the United States (and other nations) must move to reduce emissions to *zero as soon as possible*.<sup>6</sup> Accordingly, all fossil fuels—including natural gas—must be phased out to meet global emissions targets.<sup>7</sup> Despite the fossil fuel industry’s protestations, multiple reports have outlined how Europe could get off Russian gas and meet its energy needs without fossil fuels. *See, e.g.,* Attach. G; Agora Energiewende, *Regaining Europe’s Energy Sovereignty: 15 Priority Actions for RePowerEU* (Mar. 2022) (report suggesting pathways to cutting the European Union’s overall gas usage by 32% by 2027) (Attach. X); Bellona Europa et al., *EU Can Stop Russian Gas Imports by 2025: Accelerating Clean Energy Avoids Fossil Lock-in* (2022) (concluding that combining a clean energy expansion with accelerated energy efficiency efforts would replace about two-thirds of the demand for Russian gas as soon as 2025) (Attach. Y).

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<sup>6</sup> *See, e.g.,* David Roberts, *More Natural Gas Isn’t A “Middle Ground”—It’s A Climate Disaster*, VOX (Mar. 30, 2019), available at <https://www.vox.com/energy-and-environment/2019/5/30/18643819/climate-change-natural-gas-middle-ground>.

<sup>7</sup> Because natural gas is less carbon-intensive than coal, it has been heralded as a “cleaner” energy source. However, this is a false perception. There is simply too much carbon in the natural gas we have discovered to meet climate targets; in other words, the carbon content of the “developed reserves” of fossil fuels around the world, i.e., “already-operating or under-construction fields and mines,” far exceeds the emissions targets that will limit global warming to 1.5 degrees Celsius. *See* David Roberts, *supra* note 6. Additionally, the production and transportation of natural gas emits methane, a greenhouse gas that is more than 25 times as potent as carbon dioxide at trapping heat in the atmosphere. *See* U.S. EPA, *Importance of Methane*, <https://tinyurl.com/mrz8vv2p> (last visited May 10, 2022).

## II. REQUESTED RECORDS

Pursuant to FOIA, 5 U.S.C. § 552(a)(3), Friends of the Earth requests information concerning Amos Hochstein’s actions in his official capacity as DOS’s Senior Advisor for Energy Security. Specifically, Friends of the Earth requests the following:

- Any and all ethics forms, agreements, or documentation for Amos Hochstein, Senior Advisor for Energy Security, including but not limited to: ethics agreements; recusal agreements, lists, or other documentation; written waivers; regulatory exemptions; conflict of interest disclosures or other documentation; and disclosures of investments in and/or divestments from fossil fuel companies from August 10, 2021 through the date the records search is made for this request;
- Communications between Mr. Hochstein and the DOS’s Office of the Assistant Legal Advisor for Ethics and Financial Disclosure from August 10, 2021 through the date the records search is made for this request;
- Communications between Mr. Hochstein and members of and participants in the Task Force from March 25, 2022 through the date the records search is made for this request;
- All calendar entries from Mr. Hochstein’s official calendar from August 10, 2021 through the date the records search is made for this request, including but not limited to: calendar entry titles; dates; times; meeting locations; meeting attendees; and the meeting descriptions from the electronic calendar entries; and
- Any communications generated or received by Mr. Hochstein concerning the encouragement or facilitation of the expansion of domestic natural gas production and infrastructure from August 10, 2021 through the date the records search is made for this request.

## III. REQUEST FOR EXPEDITED PROCESSING

FOIA requires that “each agency shall promulgate regulations . . . providing for expedited processing of requests for records in cases in which the person requesting the records demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). The statute specifies that “compelling need” means, “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v)(II). DOS regulations implementing FOIA require that FOIA requests be processed on an expedited basis when the requester “demonstrates that a ‘compelling need’ for the information exists.” 22 C.F.R. § 171.11(f). The regulations provide that “[a] ‘compelling need’ is deemed to exist where the requester can demonstrate” that, *inter alia*, “[t]he information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.” *Id.* § 171.11(f)(2).

Requesters seeking expedited processing on this basis “must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public in general, not just to a particular segment or group.” *Id.* Agencies must respond to expedited requests within 10 days. 5 U.S.C. § 552(a)(6)(E)(ii)(I); *accord* 22 C.F.R. § 171.11(f)(4).

**A. Friends Of The Earth Is Primarily Engaged In Information Dissemination**

As suggested by FOIA’s plain meaning and legislative history, the term “primarily engaged in disseminating information” means that “information dissemination be the main [and not merely an incidental] activity of the requestor.” *Allied Progress v. CFPB*, No. 17-686 (CKK), 2017 WL 1750263, at \*3 (D.D.C. May 4, 2017) (quoting *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012)). Publishing information “need not be [the organization’s] sole occupation,” *id.*, but must be a primary activity in furtherance of the organization’s mission, *see Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding that the plaintiff was “primarily engaged in disseminating information” where the “plaintiff disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement by the Department of Justice”).

As explained in the attached declaration, “Friends of the Earth’s primary objective” is “disseminating information relevant to environmental concerns.” Decl. Lukas Ross ¶ 3. Indeed, one of Friends of the Earth’s primary missions is “to change the perception of the public, media, and policymakers—and effect policy change—with hard-hitting, well-reasoned policy analysis and advocacy campaigns that describe what needs to be done.” Friends of the Earth, *What We Do*, <https://foe.org/about-us/> (last visited May 10, 2022). To that end, a key aspect of Friends of the Earth’s recent work is investigation and publication of how the fossil fuel industry continues to benefit from the fossil fuel export boom that threatens our climate and puts our oceans at risk. *See* Friends of the Earth, *Fossil Fuels*, <https://foe.org/projects/fossil-fuels/?issue=5> (last visited May 10, 2022). In particular, oil and gas companies have taken advantage of federal and state subsidies and a lax regulatory environment to reach record profits, even as gas prices continue to soar. *See generally* Friends of the Earth et al., *Big Oil’s Wartime Bonus* (Apr. 5, 2022) (Attach. K). Prior to the Russo-Ukrainian War, Friends of the Earth was a prominent opponent of federal subsidies for the expansion of LNG exports, and worked to compile and disseminate information to the general public, Congress, and policymakers highlighting the risk to the climate, communities, and investors of allowing export facilities to qualify for tax incentives. *See, e.g.*, Alleen Brown, *Biden Subsidies for Liquid Natural Gas Could Doom International Climate Goals*, THE INTERCEPT (June 21, 2021) (Attach. L) (citing Friends of the Earth’s research); Decl. Lukas Ross ¶ 4.

Particularly relevant here, Friends of the Earth has been at the forefront of efforts to ensure that the humanitarian and energy crises in Ukraine and Europe at large must not be used by self-serving opportunists in the fossil fuel industry to roll back climate commitments or delay efforts to move beyond fossil fuels. When the Biden Administration announced the joint Task Force and United States’ commitments to “maintaining an enabling regulatory environment with procedures to review and expeditiously act upon applications to permit any additional export LNG capacities,” Friends of the Earth was ready with a rapid response analysis highlighting how

an increase in fossil fuel exports was both dangerous for the climate and a false solution to the geopolitical challenge posed by Russian aggression. *See* Friends of the Earth, *Biden Sides With Big Oil Barons and Wall Street In EU Gas Deal* (Mar. 25, 2022) (Attach. M); *accord* Decl. Lukas Ross ¶ 4. This analysis subsequently informed the reporting of outlets like Yahoo News. *See* Ben Adler, *Biden Pledges To Help Europe Kick Its Dependence On Russian Energy*, YAHOO! NEWS (Mar. 25, 2022) (Attach. N). Friends of the Earth has continued to compile, synthesize, and disseminate information relevant to the fossil fuel industry’s efforts to exploit the Russo-Ukrainian War and resulting energy crisis to garner short-term profits and/or long-term policy concessions. *See* Decl. Lukas Ross ¶¶ 5-7. Friends of the Earth has risen to the task by compiling several expert analyses designed to inform members of media, Congress, the Biden administration, and the general public. *See* Attach M; Friends of the Earth et al., *All-American Oligarchs: The Big Oil CEOs Profiting From War In Ukraine* (Mar. 10, 2022) (Attach. O). These analyses have received national media coverage and have been explicitly referenced by members of Congress in various fora. *See* Decl. Lukas Ross ¶ 6; Attachs. T-W. Friends of the Earth’s request will further those efforts by providing information relevant to DOS’s engagement with the European Union and the fossil fuel industry regarding the ongoing energy crisis, and the fossil fuel industry’s efforts to influence the development and implementation of the United States’ responses. Decl. Lukas Ross ¶¶ 9-11.

Thus, Friends of the Earth has easily demonstrated that it “intend[s] to disseminate the information obtained,” *see* Decl. Lukas Ross ¶ 10; that its “core mission . . . is to inform public understanding on operations and activities of government,” including by “gather[ing] and disseminat[ing] information that is likely to contribute significantly to the public understanding of executive branch operations and activities,” *see id.* ¶¶ 5-10; and that it “intend[s] to give the public access to documents transmitted via FOIA,” *see id.* ¶¶ 3, 10. *Prot. Democracy Proj. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). These representations establish that Friends of the Earth is “primarily engaged in disseminating information.” *Id.*

## **B. The Request Involves An Urgency To Inform The Public About Actual And Alleged Federal Government Activity**

Three factors are pertinent to assessing whether there is an urgency to inform: “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). Because Friends of the Earth’s request seeks information concerning Mr. Hochstein’s actions and activities undertaken in his official capacity as DOS’s Senior Advisor for Energy Security, there can be no debate that Friends of the Earth’s request concerns federal government activity and thus satisfies the third element. As demonstrated below, Friends of the Earth’s request likewise satisfies the first two elements and thus qualifies for expedited processing.

1. ***Friends Of The Earth Has Demonstrated That Its Request Concerns A Matter Of Current Exigency***

It is beyond legitimate dispute that the records requested “pertain to a matter of current exigency to the public.” This factor is satisfied where the requested records implicate matters that are “currently unfolding.” *Al-Fayed*, 254 F.3d at 310. Here, the records requested pertain to DOS’s engagement with the European Union and the fossil fuel industry to, *inter alia*, discuss, facilitate, and/or promote the expansion of domestic natural gas extraction and infrastructure development in response to the energy crisis precipitated by the Russo-Ukrainian War, despite the impending climate crisis and the existence of viable sustainable alternatives—e.g., justly sourced renewables and increased energy efficiency—to meeting energy demands. As of the date of this letter, the Russo-Ukrainian War is ongoing, and Russia continues to threaten the European Union’s energy supplies. The impacts of Russia’s actions and threats continue to reverberate through the global economy; in the United States, utility and gas prices are soaring while fossil fuel companies report windfall profits. *See* Attach. K (Friends of the Earth report discussing the fossil fuel industry’s efforts to direct windfall profits into the hands of their shareholders); Attach. T (Washington Post article discussing same). The European Union has released its initial plan to get Europe through the immediate crisis, and continues work with the United States through the Task Force, in which Mr. Hochstein plays a prominent role, to refine and implement that plan and develop long-term solutions to ensuring Western nation’s energy security. The Task Force’s next meeting is planned for June 2022. Accordingly, the records Friends of the Earth requested clearly pertain to matters that are “the subject of a currently unfolding story.” *Al-Fayed*, 254 F.3d at 310.

That the records requested relate to matters that are of urgent interest to the American public—if not the global public—is further evidenced by the numerous newspaper articles concerning the European Union’s dependence on Russian natural gas, the United States’ efforts to reduce that dependence, the participation of a former industry executive in policy deliberations that could imminently benefit his former colleagues, and concerns over the expansion of fossil fuels at this critical point in the fight against climate change. *See, e.g.*, Attachs. A-D; Attach. G; Attach. N; Attachs. T-W.<sup>8</sup> The intense media interest in the United States’ response to the energy crisis corroborates the public’s concerns over the federal government’s role in the expansion of the fossil fuel industry, as well as the undue influence that the fossil fuel industry may exercise over policymakers. Indeed, as widely reported by the media, the fossil fuel industry is currently seizing on the war’s impacts to push its long-term interests, including by pressuring Congress and federal courts to endorse the construction of new natural gas infrastructure. *See, e.g.*, Lee Fang, *Fossil Fuel Lobbyists Continue To Seize On Russia’s War In Ukraine To Push Long-Term Interests*, THE INTERCEPT (Apr. 25, 2022) (Attach. P). However, investments in new gas fields that will take years—or even decades—to come into production will have little impact on the current crisis but will vastly increase greenhouse gas emissions and fossil fuel use for decades to come. *See id.*; Fiona Harvey, *Oil And Gas Companies Are Looking At A Bonanza From The Ukraine War*, THE GUARDIAN (Mar. 10 2022) (Attach. Q). Accordingly, DOS’s decision to develop and implement plans to increase domestic natural gas extraction and expand existing

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<sup>8</sup> Notably, many of these news articles expressly reference Friends of the Earth’s reports on these issues, *see* Attach. K; Attach. O. *See, e.g.*, Attachs. T-W.

infrastructure would not only do little to alleviate the current energy crisis, but would also amount to a significant roll-back of the Biden Administration's oft-repeated campaign goal of ending the United States' dependence on fossil fuels and aggressively addressing climate change. Because the records Friends of the Earth seeks relate to this pressing issue, there is unquestionably a "compelling need" to process Friends of the Earth's request expeditiously. *See Wadelton v. Dep't of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013) (reporting that courts have found a "compelling need" to exist when the subject matter of the request was "central to a pressing issue of the day").

Accordingly, the records Friends of the Earth requests clearly pertain to matters that are "the subject of a currently unfolding story." *Al-Fayed*, 254 F.3d at 310.

**2. *Friends Of The Earth Has Demonstrated That The Consequences Of Delaying Its Request Severely Compromise The Public's Significant Interest In Participating In The Ongoing Debate Surrounding The United States' Response To The Energy Crisis***

Because Friends of the Earth's request implicates matters that are currently being debated and acted upon, the consequences of delaying any response are severe and prejudicial. As explained above, the federal government's response to the energy crisis is a matter of significant public interest. If production of the requested records is unduly delayed, Friends of the Earth, the public at large, and Congress will be precluded from exercising meaningful oversight of DOS's actions and activities responding to the crisis—and the extent to which those actions are influenced by special-interest groups—before the agency commits to a course of action that cannot easily be undone. For example, as Mr. Hochstein has explained, to increase domestic LNG production, new export terminals must be constructed. *See* Attach. I. Although several terminals have gone through all or part of the permitting process, they have not been constructed because of a lack of financing, which requires long-term contracts. *Id.* Through the Task Force and other DOS offices, the United States is working to facilitate long-term contractual arrangements between domestic gas infrastructure and European Union member states to allow those facilities to be financed. *Id.* Once those contracts are signed and the facilities permitted and approved, the expansion of natural gas production is essentially a *fait accompli*. *Accord* Decl. Lukas Ross ¶¶ 7, 11.

Additionally, mounting Congressional and public pressure on the Biden Administration to address rising energy prices has conferred a sense of urgency on federal officials, underscoring the importance of monitoring DOS's actions. *See* Evan Halper et al., *Gas Prices Reach Record Highs As Biden Calls Inflation Top Priority*, WASH. POST (May 10, 2022) (Attach. R). Without countervailing input from Friends of the Earth or the public, the fossil fuel industry's lobbying efforts could persuade DOS that it is in the public interest to act quickly to promote public and private investment in the expansion of natural gas exports, clearing the way for the construction of infrastructure that will have little impact on short-term energy prices even as they deepen the peril the world faces due to climate change. The fact that the Task Force is headed by a prominent former industry executive only heightens these concerns. Accordingly, it is essential that information concerning DOS's activities in this space—including information about influence from special interests—is available to the public and to Congress while there is

time for meaningful course correction. *See Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (“[S]tale information is of little value.”).

More broadly, delay of Friends of the Earth’s request will also preclude Friends of the Earth, the public at large, and Congress “from obtaining in a timely fashion information vital to the current and ongoing debate surrounding” the propriety of high-profile government action—i.e., the use of federal influence and authority to encourage and facilitate public and private investment in an industry that is financially risky and environmentally destructive. Being closed off from such a debate is itself a harm in an open democracy. *See Elec. Frontier Found. v. Off. of Dir. of Nat’l Intelligence*, 2007 WL 4208311, at \*7 (N.D. Cal. Nov. 27, 2007) (“[O]ngoing public and congressional debates about issues of vital national importance cannot be restarted or wound back.”). Indeed, to ensure that the United States’ response to the energy crisis will not delay or reverse the global energy sector’s movement away from fossil fuels, Congress and the public must have a complete understanding of DOS’s actions in connection with the Task Force and how the Task Force may be influenced by special-interest groups. To that end, as set forth in the attached declaration, Friends of the Earth has met with numerous congressional offices to discuss and provide information concerning the fossil fuel industry’s efforts use to war to lobby agencies within the federal government—including DOS—to expand natural gas production and infrastructure, benefiting fossil fuel companies in the short-term while pushing the long-term costs of climate change onto society. *See Decl. Lukas Ross* ¶ 6.

Congressional staff and members have affirmed the value of Friends of the Earth’s fact sheets and reports to the public and to Congress. *Id.* However, to have any meaningful impact on the debate, information about how DOS has used the Task Force or other offices (or plans to use the Task Force or other offices) to respond to the energy crisis—information implicated by the records Friends of the Earth seeks—must be released and disseminated quickly; any delay in processing Friends of the Earth’s request only diminishes the value of the information to Friends of the Earth, the public, and Congress. *Id.* ¶¶ 6, 10-11; *see also Elec. Frontier Found.*, 2007 WL 4208311, at \*7; *Prot. Democracy Proj.*, 263 F. Supp. 3d at 299 (finding that a delay in processing FOIA request would compromise a significant recognized interest where the information sought was highly relevant to ongoing debates regarding “high profile government action”).

For all these reasons, Friends of the Earth has demonstrated that any delay in processing its request will compromise significant recognized interests in facilitating meaningful public debate regarding high-profile government action.

**C. Friends Of The Earth Has Demonstrated That The Information Is Urgently Needed**

Although DOS regulations implementing FOIA explain that information is “urgently needed” where “[t]he information has a particular value that will be lost if not disseminated quickly,” 22 C.F.R. § 171.11(b)(2), FOIA “does not authorize an agency to offer its own definition of ‘compelling need,’” *Al-Fayed*, 254 F.3d at 307. As the D.C. Circuit explained in *Al-Fayed*, the term “compelling need” “is defined by FOIA itself, and because the definition applies across the government,” individual agency interpretations or elaborations of that definition—

“whether through case-specific determinations or through regulations”—are afforded no deference. *Id.*

We need not delve into the thorny subject of deference here, as it is clear that under the circumstances of this request, the two inquiries essentially merge. As explained, this request concerns a matter of current exigency—i.e., is the subject of a currently unfolding story. Likewise, this request implicates matters that are of significant public interest and that are currently being debated and acted upon by federal officials *now*. The unfolding energy crisis will reach a head this winter, when European energy demand peaks. Hence, solutions must be developed and implemented quickly. Delaying any response to this request risks precluding the public from exercising meaningful oversight of the potential expansion of natural gas extraction and production, a matter of significant public concern. Under these circumstances, Friends of the Earth has thus also demonstrated that the “information has a particular value that will be lost if not disseminated quickly.” Accordingly, it is clear that the requested information is also “urgently needed,” as that term is defined by DOS. *See* 22 C.F.R. § 171.11(b)(2).

#### IV. REQUEST FOR A FEE WAIVER

Regarding fee waivers, FOIA provides that “[d]ocuments shall be furnished without any charge or at a charge reduced below the [regular fee schedule] if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). DOS’s regulations specify that it will provide a full or partial fee waiver if the requester demonstrates “that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 22 C.F.R. § 171.16(a). DOS’s regulations implementing FOIA further explain that to demonstrate that disclosure is in the public interest, the requestor must demonstrate that:

- (i) The subject of the request . . . concern[s] identifiable operations or activities of the Federal Government . . .
- (ii) Disclosure of the requested records . . . [is] meaningfully informative about government operations or activities in order to be ‘likely to contribute’ to an increased public understanding of those operations or activities . . .
- (iii) The disclosure . . . contribute[s] to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester . . . [and]
- (iv) The public's understanding of the subject in question . . . [will] be enhanced by the disclosure to a significant extent.

*Id.* To demonstrate that the requested disclosure is not primarily in the commercial interest of the requester, the Department will consider “[t]he existence and magnitude of [any] commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the

requested disclosure; and, if so, [t]he primary interest in disclosure, i.e., whether disclosure is primarily in the commercial interest of the requester.” *Id.* Significantly, “[r]equests for purposes of writing a book, an article, or other publication will not be considered a commercial purpose.” *Id.*

**A. The FOIA Request Directly Concerns The Activities Or Operations Of The Federal Government.**

It is beyond legitimate dispute that this request directly concerns the activities or operations of the federal government. 22 C.F.R. § 171.16(a)(1)(i). The request involves records relating to the actions, communications, and activities of federal officials in their official capacity, and thus clearly relates to the activities or operations of the federal government. Indeed, Mr. Hochstein’s decisions and efforts to further the United States’ policy goals with respect to global energy markets and security are taken at the direction of the Biden Administration, and thus are direct actions taken by the DOS or its representatives. As such, this request directly concerns the activities or operations of the federal government

**B. The FOIA Request Is Likely To Contribute To The Public Understanding Of Those Activities and Operations**

This FOIA request is likely to contribute to the public understanding of the activities and operations of the Federal Government in several distinct ways. The requested information has not been publicly disclosed, despite requests from interested parties and news media. *See* 22 C.F.R. § 171.16(a)(1)(ii) (providing that “[t]he disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding”). Therefore, the requested information is both new and will help to confirm or clarify information that has been made public, in particular, information regarding the federal government’s efforts to encourage or facilitate the expansion of domestic natural gas production and investments in fossil fuel infrastructure. Indeed, the FOIA request will help clarify, for the first time, DOS’s efforts to develop and implement a plan to reduce European dependence on Russian natural gas exports; the role of renewable energy (if any) in DOS’s solution to the energy crisis; DOS’s efforts to secure financing for domestic LNG facilities; the influence of special interest groups on DOS’s decisions and actions; and DOS’s and the European Union’s consideration of climate change. These crucial pieces of information will contribute to the public’s understanding of the federal government’s decision-making process regarding the energy crisis, particularly as it relates to the unprecedented climate crisis. Specifically, the records requested will be meaningfully informative as to the types of communications between DOS officials, their European Union counterparts, and the fossil fuel industry; the types of policy decisions that are being made; and whether/how those decisions are being considered. The records may also shed light on DOS’s support of ongoing and expanded fossil fuel extraction in the U.S., as well as what—if any—processes the federal government has undertaken to protect communities and the stability of our financial system from this industry.

Scientists’ warnings regarding the impacts of climate change have become increasingly dire, and the need to immediately reduce greenhouse gas emissions to zero has never been clearer. The question of whether to address the short-term energy crisis by increasing fossil fuel

production despite the long-term risks is fraught and is of increasing importance in light of global events. Hence, there has been considerable public interest in the various efforts by federal agencies—including DOS—to support (or curtail) domestic fossil fuel production. To that end, through these records, Friends of the Earth expects to significantly increase the public’s understanding of the development and implementation of the United States response to the energy crisis, whether and to what extent the fossil fuel sector will receive public funds to invest in infrastructure, and whether and to what extent the fossil fuel industry is influencing the United States’ policy goals. A broad sector of the public is concerned that the federal government is legitimizing and supporting ongoing and expanded fossil fuel extraction despite the array of harms that this industry poses on the ecosystem, public health, and even the financial system. Additionally, as demonstrated by various news articles, *see, e.g.*, Attach. F, the public is deeply concerned about the effects of increasing natural gas extraction on climate change, as well as the undue influence the fossil fuel industry may exercise over the development and implementation of United States energy policy. Accordingly, information concerning the federal government’s consideration of the long-term risks to public health and the environment posed by fossil fuel is essential to the public’s understanding of the federal government’s response to the energy crisis. The contents of the request are therefore meaningfully informative, and will contribute to the understanding of a reasonably broad audience because they relate to information about the actions of a federal agency on matters that directly affect the everyday lives of Americans and have a nexus to environmental, energy, geopolitical, and economic impacts.

The public is always well-served when it knows how the government conducts its activities, particularly matters touching on important questions about how agencies are implementing their statutory duties or about how Congress should enact further legislation to ensure that agencies are complying with congressional intent. The records produced from this FOIA request will produce the most reliable information available to the public on these important matters ongoing within the agency, and, indeed, in most cases this is the only way that the public has to gain insight. Hence, there can be no dispute that disclosure of the requested records to the public will significantly contribute to educating the public about DOS operations, activities, and decisionmaking. We will utilize the released records and our organizational expertise to help our members, lawmakers, activists, the general public, and the media to increase their understanding of these important issues.

**C. Disclosure Will Contribute To The Understanding Of A Reasonably Broad Audience Of Interested Persons**

Pursuant to DOS regulations implementing FOIA, when considering whether the requested disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, the agency will consider the “requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public.” 22 C.F.R. § 171.16(a)(1)(iii). “It shall be presumed that a representative of the news media will satisfy this consideration.” *Id.*

Friends of the Earth qualifies as a representative of the news media and thus, presumptively satisfies this factor. As explained above, Friends of the Earth is primarily engaged in information dissemination and has a demonstrated “expertise in the subject area [of fossil fuel

extraction].” 22 C.F.R. § 171.16(a)(1)(iii). Friends of the Earth “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *See* 5 U.S.C. § 552(a)(4)(A)(ii); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 800 F.2d 1381, 1387 (D.C. Cir. 1989). Friends of the Earth has extensive and well-exercised means to keep the public informed on the operations and activities of the federal government. Friends of the Earth does not merely obtain information and then contact members of the press to relate that information; rather, we independently analyze the information, draft our own reports and articles on the issues, and disseminate the information broadly through our own publications to our members and other interested persons. *See, e.g.*, Attach. K; Attach. O. Accordingly, Friends of the Earth has met this criterion for a fee waiver.

In any event, even if not considered a member of the news media, disclosure of the requested information to Friends of the Earth will undoubtedly “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” 22 C.F.R. § 171.16(a)(1)(iii). As extensively explained above, the disclosure of the information requested will contribute to the understanding of a reasonably broad audience because it concerns issues that are controversial and highly impactful to Americans’ daily lives, including on decisions to encourage and facilitate the expansion of natural gas extraction, production, and transportation despite the risks of climate change. The public will benefit from the broad disclosure of the requested information by better understanding the federal government’s assessment of the risks presented by various responses to the energy crisis, policy choices, and decisionmaking processes.

Moreover, Friends of the Earth has the intent and ability to disseminate this information broadly as it has a large member base of individuals with a strong interest in matters that concern the environmental and energy policy of the United States. Friends of the Earth has a demonstrated “expertise in the subject area [of fossil fuel extraction] as well as the . . . ability and intention to effectively convey information to the public.” 22 C.F.R. § 171.16(a)(1)(iii). Friends of the Earth has over 1.7 million members and activists across the United States who place a priority on ensuring that the federal government takes proper considerations for the impacts of its actions on the environment and public health. This starts with knowing what the government is doing, who they are in communications with, and what is being asked of policymakers.

To that end, Friends of the Earth utilizes various means of communication to update our members and activists, as well as the media and general public, on government activities that may impact human health and the environment. These methods include, but certainly are not limited to, providing essential information in easy-to-read reports, a quarterly news magazine, fact sheets, press statements, public hearings and events, phone calls, letters to the editor, blogs, email alerts, and webpage updates. *See, e.g.*, Attach. K; Attach. M; Attach. O; Decl. Lukas Ross ¶ 3. Specifically for this request, Friends of the Earth plans to alert the public, members of Congress, policymakers, and activists as to recent government meetings and activities undertaken as part of federal programs that legitimize and support fossil fuel extraction, especially amid the Russo-Ukrainian War and ensuing energy crisis and its impacts on the global climate crisis. As a result of its partnerships with other non-profit organizations and journalists, and its respected role in public education, Friends of the Earth is well-positioned to disseminate

the requested information to its partners and the media, who will in turn disseminate the information across their networks of members and supporters, amplifying the organization's reach.

In summary, as a well-known non-profit organization with a large following, experience in news dissemination, and multiple partnerships with other non-profit groups, the news media, and Congressional offices, Friends of the Earth will most certainly have the ability to disseminate this information to a reasonably broad audience. As Friends of the Earth is a non-profit committed “to chang[ing] the perception of the public, media, and policymakers—and effect[ing] policy change—with hard-hitting, well-reasoned policy analysis and advocacy campaigns that describe what needs to be done,”<sup>9</sup> including through the investigation and publication of how the fossil fuel industry continues to benefit from the fossil fuel export boom that threatens our climate and puts our oceans at risk,<sup>10</sup> actions taken by a federal agency to encourage and facilitate the expansion of the fossil fuel industry are directly correlated both with the expertise of Friends of the Earth and with the interests of its supporters and partners.

**D. The Disclosure Will Enhance The Public's Understanding Of The Subject To A Significant Extent**

As exhaustively detailed above, the information requested is of high importance to all American people and certainly Friends of the Earth's large member base, who have interests in environmental and energy policy. The information requested is new and would help clarify the government's decisionmaking process and rationale with respect to highly consequential decisions and actions related to the United States' responses to the current energy crisis and how that response will impact global climate change. The contents of the request are therefore meaningfully informative, and Friends of the Earth intends to take the information disclosed and compile, distill, and disseminate policy analyses, news alerts, reports, and articles to inform the public, members of Congress, policymakers, and activists as to recent government meetings and activities undertaken as part of federal programs and activities that legitimize and support fossil fuel extraction, especially amid the Russo-Ukrainian War and ensuing energy crisis. In light of Friends of the Earth's established record of significantly contributing to the public's understanding of and discourse on closely related subjects, there is no reason to doubt similar a outcome will occur here. Accordingly, considering the foregoing, Friends of the Earth has more than adequately demonstrated that disclosure will significantly enhance the public's understanding of the United States' responses to the Russo-Ukrainian War and ensuing energy and climate crises. *See* 22 C.F.R. § 171.16(a)(1)(iv).

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<sup>9</sup> Friends of the Earth, *What We Do*, <https://foe.org/about-us/> (last visited May 10, 2022).

<sup>10</sup> Friends of the Earth, *Fossil Fuels*, <https://foe.org/projects/fossil-fuels/?issue=5> (last visited May 10, 2022).

**E. Friends Of The Earth Does Not Have A Commercial Interest That Would be Furthered By The Requested Disclosure**

Friends of the Earth is a not-for-profit charitable organization with no commercial interest in or use for the information requested. 22 C.F.R. § 171.16(a)(2). There is no “existence” or “magnitude” to any commercial interest associated with this request, and Friends of the Earth’s “primary interest in disclosure” is simply to benefit the public interest by informing the public and other members of the media as to government activities. *Id.* § 171.16(a)(2)(i). The organization’s main purpose in requesting the documents is to increase public knowledge and participation in the government process so fundamental to the effective working of a democracy.<sup>11</sup> The requested information will be broadly disseminated to the public, and will be used to educate and inform the public regarding the federal government’s decisionmaking processes and actions responding to the energy crisis. Thus, Friends of the Earth’s request is not rooted in a purpose that furthers its commercial, trade or profit interests. *See* Off. Mgmt. & Budget, *Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 Fed. Reg. 10,012, 10,017-18 (Mar. 27, 1987); 22 C.F.R. § 171.16(a)(2). Accordingly, Friends of the Earth does not have a commercial interest in the disclosure of the requested information.

For the reasons outlined above, Friends of the Earth is entitled to a fee waiver for this request. As a non-profit, public interest organization, Friends of the Earth has extremely limited financial resources with which to cover the copying and search expenses of this request. If the request for a fee waiver is denied and any expenses associated with this request are in excess of \$25.00, please obtain Friends of the Earth’s approval before any such charges are incurred.

**CONCLUSION**

We look forward to receiving the agency’s final, expedited response within 10 working days. Thank you for your prompt attention to this matter. Please email me at [lizzie@eubankslegal.com](mailto:lizzie@eubankslegal.com) with any questions about this FOIA request. Please also include Lukas Ross at [lross@foe.org](mailto:lross@foe.org) on all correspondence.

Respectfully submitted,

/s/Elizabeth L. Lewis  
Elizabeth L. Lewis  
Associate Attorney

Enclosures: Attachments A-Y

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<sup>11</sup> As explained above, *supra* at 13-14, Friends of the Earth also qualifies as a “representative of the news media,” and is further entitled to document search and review without charge (as well as the first 100 pages of paper copies free of charge). *See* 22 C.F.R. § 171.14 (b)(5)(ii)(C) (“representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”).