

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRIENDS OF THE EARTH)
1101 15th Street, NW)
Washington, D.C. 20005,)
)
LUKAS ROSS, PROGRAM MANAGER,)
Climate and Energy Program,)
Friends of the Earth,)
1101 15th Street, NW)
Washington, D.C. 20005,)

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE,)
2201 C. Street, NW)
Washington, DC 20520,)
)

Defendant.

Civ No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the United States Department of State (“State Department”) to immediately release non-exempt information concerning the agency’s actions in connection with the recently-formed Joint Task Force on Energy Security (“Task Force”). Plaintiffs Friends of the Earth have an urgent need for the information sought here—including, in particular, information about efforts by 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 how special interests may be influencing the ensuing energy crisis. The Task Force has met, and continues to meet, in secret to discuss a wide-range of policies and commit to long-term courses of action with potentially dire and irreversible implications for climate change and the future of sustainable

energy in the United States and abroad. Accordingly, information about the Task Force is urgently needed to allow the public, Congress, and other stakeholders to exercise meaningful oversight of the State Department's highly consequential actions undertaken in response 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. Significantly, the window in which to exert such meaningful oversight is short; the Task Force is moving quickly to develop and implement plans to respond to the rapidly evolving situation in Europe and mounting public pressure to address rising gas and utility prices. Hence, the usefulness of the requested information hinges on a timely release. Stale information is of little value.

2. The information sought is essential to Plaintiff Friends of the Earth's efforts to monitor and educate the public regarding the State Department's exercise of federal influence and authority to encourage and facilitate public and private investment in the domestic natural gas industry, an industry that is both financially risky and environmentally destructive. The information is also essential to evaluating whether the State Department's actions in connection with the Task Force and its response to the energy crisis will delay or reverse the global energy sector's movement away from fossil fuels, and shed light on the degree to which the agency's actions are unduly influenced by special interests. Additionally, the information will provide vital insight into the fossil fuel industry's well-publicized efforts to use the war to lobby agencies within the federal government—including the State Department—to expand natural gas production and infrastructure, benefiting fossil fuel companies in the short-term while pushing the long-term, exorbitant costs of climate change onto society. This invaluable insight will assist in determining whether closer congressional oversight of the State Department's response to the Russo-Ukrainian War is necessary to ensure that the United States' actions to address the

currently unfolding humanitarian, energy, and environmental crises adequately consider the long-term risks to public health and the environment posed by fossil fuels, as well as protect communities and the stability of our financial system from the fossil fuel industry.

3. Plaintiff Friends of the Earth submitted a FOIA request to the State Department on May 12, 2022.¹ Plaintiff Friends of the Earth requested expedited processing of this FOIA request and submitted a signed declaration and multiple exhibits in support, explaining in detail that expedited processing is necessary to inform the public about how the State Department is working with the European Union through the Task Force (in which Mr. Hochstein plays a prominent role) to refine and implement a plan to address the currently unfolding energy crisis brought on by the Russo-Ukrainian War and develop long-term solutions to ensuring Western nation's energy security. *See* Exhibit 2. For example, Plaintiff's sworn declaration explained that Friends of the Earth provides the public and members of Congress with information about how special interests lobby the State Department. This declaration also noted that this information is highly relevant to and useful for Congress' oversight over the State Department's response to the energy crisis. Plaintiff's declaration further explained that expedited processing was necessary because the State Department and Task force are currently working to develop and implement plans to alleviate the energy crisis in Europe, including by facilitating the expansion of natural gas exports and the related infrastructure, and because the information sought in Friends of the Earth's FOIA request will become substantially less useful if the State Department delays its release until after the agency has exercised the United States' authority and influence to address the energy crisis, including by helping secure financing for new natural gas facilities.

¹ Plaintiff Friends of the Earth's FOIA request, including Lukas Ross's declaration and all attachments, are attached as Exhibit 1 for the Court's convenience.

4. On May 24, 2022, the State Department acknowledged that it had received Friends of the Earth’s FOIA request on May 17, 2022 and granted Friends of the Earth’s request for a fee waiver, but denied FOE’s request for expedited processing. Without addressing any of the information Friends of the Earth provided in its FOIA request or the accompanying declaration—or even acknowledging the existence of Friends of the Earth’s sworn declaration or the evidence contained therein—the State Department only asserted that “[y]our request [for expedited processing] does not demonstrate a ‘compelling need’ for the requested information.”

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

6. Plaintiff Friends of the Earth is a non-profit organization headquartered in Washington, D.C. For more than fifty years, it has championed the causes of a clean and sustainable environment, protection of the nation’s public lands and waterways, and the exposure of political malfeasance and corporate greed. Friends of the Earth utilizes various means of communication to update its 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. Relevant here, Friends of the Earth has been at the forefront of ensuring that the oil and gas industry does not exploit the crisis in Ukraine for either short-term profits or long-term policy concessions. It has risen to this task by developing expert analysis designed to inform members of media, Congress, the Biden

Administration, and the general public. Friends of the Earth is a widely recognized leading voice and source of expert information and analysis for the public regarding the debate over the use of government influence and public programs and funds to subsidize the fossil fuel industry.

Indeed, reports authored by Friends of the Earth staff on the fossil fuel industry's exploitation of the Russo-Ukrainian War for short-term gains have been cited by major national and international news media sources, as well as by members of Congress in various fora. Friends of the Earth is the requester of the records at issue.

7. Plaintiff Lukas Ross is the Program Manager for the Climate and Energy Program at Friends of the Earth. In that role, his primary responsibility is to scrutinize government activity that may impact human health and the environment, and to disseminate information on those activities to the public. To that end, Mr. Ross compiles information obtained both from public sources and through FOIA requests, and uses his expertise and editorial skills to quickly synthesize the information, develop meaningful alerts, reports, fact sheets, infographics, editorials, press releases, and articles, and disseminate those products to Friends of the Earth's members and supporters, journalists and other members of the news media, policymakers, congressional offices, and the public at large. In this way, Mr. Ross helps facilitate and promote Friends of the Earth's primary objective of disseminating information relevant to environmental concerns. Mr. Ross has personally co-authored fact sheets and reports highlighting the risks presented by the fossil fuel industry's short-sighted attempts to use the current crisis in Ukraine to increase dependence on fossil fuels precisely at the time it is imperative to stop using them. Friends of the Earth has disseminated these fact sheets and reports to Friends of the Earth's members and supporters, members of the news media, as well as the public in general by posting them on Friends of the Earth's website. Mr. Ross has also shared

these reports with members of Congress and their staff, as well as with journalists.

Demonstrating both the significant public interest in the topic, and Friends of the Earth's recognized expertise in the subject, Mr. Ross's analyses on the fossil fuel industry's efforts to exploit the Russo-Ukrainian War for short-term gains have been cited by major national and international news sources and members of Congress in various fora. Mr. Ross submitted a sworn declaration in support of the FOIA request at issue as part of his duties at Friends of the Earth. Mr. Ross is the requester of the records at issue.

8. Defendant United States Department of State is partially responsible for engaging with the European Union and developing a coordinated federal response to the Russo-Ukrainian War and ensuing energy crisis. The State Department employs Mr. Hochstein as Senior Advisor for Energy Security. The State Department is also in possession of the information at issue. The State Department is therefore responsible for the actions and omissions challenged herein.

FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

A. The Russo-Ukrainian War and Ensuing Energy Crisis

9. On February 24, 2022, Russia invaded Ukraine. Western nations, including the United States, responded to the escalation of hostilities by increasing arms shipments to Ukraine and imposing severe economic sanctions on Russia, as well as on its political leaders and oligarchs. Russia retaliated with economic measures of its own, including by threatening to sharply curtail—or even halt—its shipment of natural gas to European nations. In late March 2022, Russian President Putin announced that “unfriendly” nations would have to purchase Russian gas using Russian currency. In April 2022, upon the expiration of long-term contracts with the Russian-state-owned energy company, Gazprom, Poland, and Bulgaria refused to comply with Russia's demand. As a result, Gazprom cut off gas supplies to Poland and Bulgaria

and stated that it would not resume supply until payments are made in rubles. In late May, Gazprom cut off gas supplies to Finland just days after Finland formally applied to join NATO.² Finland also refused to pay for Russian gas in rubles. With payments coming due, many other European Union member states are currently facing a similar quandary as they attempt to balance energy security against strict sanctions.³

10. Natural gas currently represents around a quarter of the European Union's overall energy consumption. Prior to the Russo-Ukrainian War, over 40% of the European Union's natural gas was imported from Russia. The disruption in Russian energy supplies therefore threatens the European Union's energy security and economy. Accordingly, the European Union has moved to reduce Russian imports, leaving gas producers in other regions to make up the shortfall. In particular, the European Union has turned to the United States, the world's largest producer and exporter of liquified natural gas ("LNG"). In response, the United States has begun exploring methods to increase LNG exports to the European Union.

11. Russia's unprovoked invasion of Ukraine and use of its natural-gas supplies as leverage have roiled the international energy market. The market instability has driven oil and gas prices to their highest levels in nearly a decade and forced many countries to reconsider their energy supplies. In the United States, utility and gas prices are soaring while fossil fuel companies report windfall profits.

² Terje Solsvik, *Russia stops gas flows to Finland over payments dispute*, REUTERS (May 22, 2022 3:13 AM EDT) (attached as Exhibit 2 for the Court's convenience).

³ See Nina Chestney, *As deadlines loom, Russia says EU gas clients open payment accounts*, REUTERS (May 19, 2022 11:20 AM EDT) (attached as Exhibit 3 for the Court's convenience).

B. The Joint Task Force

12. On March 25, 2022, President Biden and European Commission President von der Leyen announced a joint Task Force on Energy Security to address the energy crisis spurred by the Russo-Ukrainian War. The Task Force is 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. Mr. Hochstein, former businessman and veteran diplomat with experience in natural gas extraction and exports and recently appointed State Department Senior Advisor for Energy Security, is playing a leading role in the United States' foreign policy response to the Russo-Ukrainian War, including by chairing a meeting of the Task Force in April 2022.

13. 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." 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."

14. Mr. Hochstein has assumed a leading role on the Task Force. According to a recent article published in Politico, Mr. Hochstein's "role is expansive," and he's "often been by the key point of contact backchanneling with European countries seeking to find alternatives to Russian gas." However, prior to returning to federal service, Mr. Hochstein "worked as an executive at natural gas company Tellurian, and promoted liquified natural gas exports."⁴ His close ties to the industry have come under scrutiny as the Task Force works to diversify Europe's

⁴ Max Tani & Sam Stein, *A-mos Powerful Biden Aide*, POLITICO (May 13, 2022 5:52 PM EDT), <https://politi.co/3GwxMGX> (attached as Exhibit 4 for the Court's convenience).

energy supply and break its dependence on Russian gas. Indeed, as Mr. Hochstein has explained, to increase domestic LNG production, new export terminals must be constructed. 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. Accordingly, through the Task Force and other State Department offices, Mr. Hochstein and other federal officials are working to facilitate long-term contractual arrangements between domestic gas extraction and infrastructure companies and European Union member states to allow those facilities to be financed. However, these meetings that decide matters of significant public interest and importance are being held entirely behind closed doors, with no opportunity for public comment or involvement.

15. Although the Task Force has held several meetings with government officials and industry participants, aside from Mr. Hochstein, the Biden Administration has not disclosed the United States' members or their interests. At present, only one industry participant—Cheniere, the largest LNG exporter in the US—has been identified; however, its participation was disclosed not by the State Department, but by executives to shareholders during its first quarter earnings call on May 4, 2022, where it was stated that the company had been actively involved in the Task Force.

16. The lack of transparency has underscored serious concerns that the Task Force may be subject to undue influence and pressure from fossil fuel industry representatives. As reported by Bloomberg reporter Jennifer A. Dlouhy, advocacy group Global Witness wrote to the State Department to accuse the Task Force of violating the Federal Advisory Committee Act

by “illegally operating in secrecy.”⁵ Concerns over the lack of transparency are compounded by reports from various news media sources that United States energy companies are seizing on the impacts of the Russo-Ukrainian War to push the Biden Administration (as well as Congress and the federal courts) to endorse the expansion of natural gas extraction and the construction of new LNG infrastructure. For example, the “unleashing LNG” effort, spearheaded by the largest gas producer in the country EQT, aims to quadruple US export capacity in the next decade.

17. The expansion of domestic natural gas production 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. Additionally, the logistics of how the United States will meet its commitments to increase LNG exports are unclear. Both the export and import of LNG require specialized facilities, the permitting and construction of which take significant time. Thus, investments in new gas fields or LNG infrastructure will have little impact on the current crisis, as those facilities will take years or even *decades* to come online. Despite having little to no short-term value, those facilities will, however, vastly increase greenhouse gas emissions and fossil fuel use for decades to come.

18. The United States’ potential financial commitment to expanding domestic natural gas extraction and LNG infrastructure threatens to lock in decades of production and significantly undermines efforts to move away from fossil fuels at a time that is critical to determining the course of the planet’s future. Although misleadingly heralded as a “cleaner” energy source, the production and transportation of natural gas emits methane, a greenhouse gas

⁵ Jennifer A. Dlouhy, *White House LNG Task Force Compared to Secretive Cheney Group*, BLOOMBERG (May 23, 2022, 5:00 AM), <https://tinyurl.com/yc7ksp27> (attached as Exhibit 5 for the Court’s convenience).

that is more than *twenty-five times* as potent as carbon dioxide at trapping heat in the atmosphere. Additionally, natural gas is still a fossil fuel, and the scientific consensus is that the world must move away from the use of *all* fossil fuels in order to avoid the worst impacts of climate change. 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.” 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. The IPCC warned that averting climate disaster requires immediate and deep reductions across all sectors; it “cannot be achieved through incremental change.” 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.” The IEA determined that to achieve climate goals, there can be no new investments in fossil fuel supplies beyond those committed as of 2021.

19. In addition to the nexus between fossil fuels and climate catastrophe, the fossil fuel industry and associated infrastructure is contributing to serious environmental justice problems. Expansion of fossil fuel extraction and use for energy will only perpetuate these grave injustices.⁶ In recent months, there have been numerous notices published in the Federal Register

⁶ Indeed, research has shown that fossil fuels disproportionately harm Black, Brown, Indigenous and low-income communities in many ways and at every phase of their lifecycle. *See, e.g.,* Tim Donaghy & Charlie Jiang, Greenpeace & Gulf Coast Ctr. for L. & Policy, *Red, Black & Green Movement, and Movement for Black Lives, Fossil Fuel Racism: How Phasing Out Oil, Gas, and Coal Can Protect Communities* (2021), available at <https://tinyurl.com/2p9cxth9>; U.S. EPA,

for rulemakings to amend the regulatory requirements applicable to natural gas infrastructure, *see, e.g.* 87 Fed. Reg. 17,281 (Mar. 28, 2022) (seeking public input regarding the U.S. Army Corps of Engineers’ comprehensive review of its nationwide permit 12 requirements applicable to pipelines), as well as numerous applications to expand LNG infrastructure or construct new LNG facilities, *see, e.g.*; 87 Fed. Reg. 24,388 (Apr. 25, 2022) (application from New Fortress Energy Louisiana FLNG LLC for the licensing of a deepwater port); 87 Fed. Reg. 24,613 (Apr. 26 2022) (notice of intent to prepare an environmental impact statement for New Fortress Energy’s application for a deepwater port); 87 Fed. Reg. 29,141 (May 12, 2022); 87 Fed. Reg. 29,151 (May 12, 2022) (application from New Fortress Energy requesting authorization to export LNG from “its proposed deepwater port export terminal project”); 87 Fed. Reg. 30,475 (May 19, 2022) (notice of availability of draft environmental impact statement for proposed natural gas pipeline); 87 Fed. Reg. 31,228 (May 23, 2022) (scoping notice required under National Environmental Policy Act for proposed expansion of natural gas facilities by Northern Natural Gas Company). Most of these applications concern projects in and around the Gulf of Mexico. These new and expanded fossil fuel projects have serious environmental justice implications

Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts, EPA 430-R-21-003 (2021), available at www.epa.gov/cira/social-vulnerability-report. Fossil fuel infrastructure projects are also very often concentrated in and directly harm communities who are already overburdened with air and water pollution, disproportionately high health risks and harms, destruction of natural resources, depression of property values, and other negative impacts. *See, e.g.*, Robert D. Bullard et al., *Toxic Wastes and Race at Twenty: 1987-2007* (2007), <http://www.ejnet.org/ej/twart.pdf>; Adrian Wilson et al., NAACP, Indigenous Env’tl. Network, & Little Village Env’tl. Justice Org., *Coal Blooded: Putting Profits Before People* (2012), <https://naacp.org/resources/coal-blooded-putting-profits-people>; Lesley Fleischman & Marcus Franklin, Clean Air Task Force & NAACP *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, (2017), <https://tinyurl.com/34j6wa2a>; Ryan Emanuel et al, GeoHealth, *Natural Gas Gathering and Transmission Pipelines and Social Vulnerability in the United States*, (May 2021), <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2021GH000442>.

because they have been sited in or near communities where residents are already subjected to degraded air and water quality, and suffer from adverse health impacts associated with that exposure. Natural gas pipeline developments on land are also notorious for disregarding indigenous peoples' rights and irreparably harming culturally significant areas and artifacts.

20. On May 18, 2022, the European Commission issued the REPowerEU Plan, which details the European Union's "response to the hardships and global energy market disruption caused by Russia's invasion of Ukraine." The plan has four primary elements: save energy; diversify supplies; quickly substitute fossil fuels by accelerating Europe's clean energy transition; and smartly combine investments and reforms. A related new initiative, the EU Energy Platform, is working to implement REPowerEU's goal of supply diversification, including through the creation of a proposed "joint purchasing mechanism" for member states to negotiate the purchase of LNG imports as a bargaining unit.⁷

21. Congress has held oversight hearings regarding the energy crisis precipitated by the Russo-Ukrainian War and the fossil fuel industry's efforts to exploit the crisis for its own monetary gain. Senator Schumer has suggested that further government action is necessary, arguing that "[i]nstead of giving Americans a break at the gas pump, [fossil fuel companies have] used their gushing profits to reward shareholders with stock buybacks, which demands answers and inquiry."

C. The Freedom of Information Act

22. "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the

⁷ European Commission Press Release IP/22/3131, REPowerEU: A Plan to Rapidly Reduce Dependence on Russian Fossil Fuels and Fast Forward the Green Transition (May 18, 2022), <https://bit.ly/38ZXHdI> (attached as Exhibit 6 for the Court's convenience).

governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citations omitted). FOIA was enacted to “permit access to official information long shielded unnecessarily from public view” by creating a “right to secure such information from possibly unwilling official hands.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). “[D]isclosure, not secrecy, is the dominant objective of the Act.” *John Doe*, 493 U.S. at 152 (citation omitted).

23. FOIA requires agencies of the federal government to conduct a reasonable search for requested records and to release them to a requester, unless one of nine specific statutory exemptions applies to the requested information. 5 U.S.C. § 552(a)(3), (b).

24. FOIA requires federal agencies to release all non-exempt segregable information that is requested. *Id.* § 552(b).

25. FOIA allows requesters to seek expedited processing of requests “in cases in which the person requesting the record demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E). An agency must determine whether or not to grant a request for expedited processing “within [ten] days after the date of the request.” *Id.* § 552(a)(6)(E)(ii)(I). “Agency action to deny . . . a request for expedited processing . . . shall be subject to judicial review.” *Id.* § 552(a)(6)(E)(iii). An agency must provide some reasonable explanation for the denial of a request for expedited processing. *See, e.g., Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (finding that where an agency “provided no explanation for its flat assertion” that a requester had not met the standards for expedited processing, the agency’s rejection of expedited processing “does not stand up to judicial review”).

26. FOIA defines “compelling need” to mean “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.” 5 U.S.C. § 552(a)(6)(E)(ii)(II). State Department regulations implementing FOIA likewise specify that requests “shall receive expedited processing when a requestor demonstrates that . . . [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.” 33 C.F.R. § 171.11(f)(2). As explained by the D.C. Circuit, 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).

27. In “unusual circumstances,” an agency may extend FOIA’s standard deadline by an additional ten working days and, in these circumstances, must specify “the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

28. Agency action to deny a request for expedited processing is “subject to judicial review” immediately. 5 U.S.C. § 552(a)(6)(E)(iii). Judicial review of such a denial “shall be based on the record before the agency at the time of the determination.” *Id.*

D. Friends of the Earth’s FOIA Request

29. Plaintiff Friends of the Earth has serious concerns that the State Department’s response to the energy crisis precipitated by the Russo-Ukrainian War and spearheaded by Mr. Hochstein, may be subject to undue influence by special interests, especially by fossil fuel industries. Demonstrating this concern, Friends of the Earth has published and disseminated fact

sheets and reports highlighting the fossil fuel industry's efforts to exploit the crisis in Ukraine for short-term gains. One such report, entitled *Big Oil's Wartime Bonus*, highlights the fact that “[s]everal [major fossil fuel] companies have baldly touted their intention to profit off the war via increased drilling and exports,” and shows that in the leadup and aftermath of Russia's invasion of Ukraine, the twenty largest US-based fossil fuel companies expanded share repurchase programs and boosted dividends, even as gas prices soar.⁸

30. Another Friends of the Earth report, entitled *All-American Oligarchs: The Big Oil CEOs Profiting From War In Ukraine*, explains that fossil fuel companies “are using the rapid spike in profit and personal wealth to cash out and pay off wealthy investors and insiders.” The report further explains that fossil fuel company “CEOs are billions of dollars richer than they were at the start of the Biden Administration, and have sold shares in their companies worth millions of dollars in the weeks since the war.” The companies then “us[e] their windfall profits on share buybacks and dividends that further enrich their executives and shareholders.”⁹

31. Exacerbating these concerns, the State Department has appointed Mr. Hochstein, a former executive of an LNG company, to act on behalf of the United States to increase LNG exports to Europe. The fossil fuel industry is calling unapologetically for a quadrupling of domestic LNG exports by 2030 as part of its “unleashing LNG” initiative, and on information and belief, is currently exploring ways to subsidize the expansion of natural gas production and transportation. For example, Friends of the Earth has previously reported on proposed policy

⁸ Lukas Ross et al., *Big Oil's Wartime Bonus* (Apr. 5, 2022), <https://bit.ly/3NBo9ZU> (included as Attachment K to Friends of the Earth's FOIA request, which is attached as Exhibit 1 for the Court's convenience).

⁹ Friends of the Earth et al., *All-American Oligarchs: The Big Oil CEOs Profiting From War In Ukraine* (Mar. 10, 2022), <https://tinyurl.com/ypz9xdnc> ((included as Attachment O to Friends of the Earth's FOIA request, which is attached as Exhibit 1 for the Court's convenience).

changes that would allow the use of the United States' Export-Import Bank to finance new LNG facilities. While the fossil fuel industry continues to press the Biden Administration, Congress, and even federal courts to endorse the construction of new LNG facilities, Mr. Hochstein is engaging in private meetings with members of the Task Force, his European Union counterparts, and representatives from the fossil fuel industry to develop and implement the United States' response to the energy crisis. Hence, in light of his close ties to the fossil fuel industry, Mr. Hochstein's role as a driver of the United States' policy response to the energy crisis is a matter of significant and immediate public concern.

32. In light of Friends of the Earth's well-founded concerns that the State Department's actions regarding the Task Force and the energy crisis may be subject to undue influence from special interests associated with fossil fuel industries, Friends of the Earth submitted a FOIA request to the State Department on May 12, 2022. Friends of the Earth's FOIA request sought records pertaining to the agency'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. Specifically, Friends of the Earth requested “information concerning Amos Hochstein's actions in his official capacity as the State Department's Senior Advisor for Energy Security,” including:

- 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 [State Department'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.

33. Because the value of the requested information hinges on its timely release, Friends of the Earth's FOIA request also included a detailed request for expedited processing supported by a sworn declaration. Friends of the Earth first explained that it is primarily engaged in information dissemination. For example, Friends of the Earth attested that its "primary objective" is "disseminating information relevant to environmental concerns." Indeed, "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."

34. Friends of the Earth next explained that its request involved an urgency to inform the public about actual government activity. For instance, Friends of the Earth explained that the records requested concern the actions of a high-level government official acting on behalf of the United States government to facilitate and encourage the expansion of an industry that much of the public considers to be a risk to public health and the environment. 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, is corroborated by the “[n]umerous 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.”¹⁰ The records Friends of the Earth requests also “clearly pertain to matters that are ‘the subject of a currently unfolding story.’” Friends of the Earth explained that the next meeting of the Task Force in which Mr. Hochstein plays a leading role is June 2022. At this meeting, the Task Force will continue to refine and implement Europe’s plan for the energy crisis, including additional LNG supplies and the EU Energy Purchasing Platform for the joint purchase of non-Russian natural gas, LNG and hydrogen. Thus, 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.” Moreover, as Friends of the Earth explained,

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 [the State Department’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.

In other words, the nature of the United States’ involvement in the Task Force—i.e., its support for potential contractual commitments, as well as new contractual mechanisms to support the export of certain quantities of fossil fuels—delimits the timeframe in which the requested information is valuable; the public should be permitted to scrutinize and voice objections to the State Department’s dealings *before* it binds the United States to a long-term and environmentally

¹⁰ Friends of the Earth included these news articles as attachments to its FOIA request, which is attached to this Complaint in its entirety as Exhibit 1 for the Court’s convenience.

destructive course of action. Friends of the Earth concluded that “any delay in processing its request will compromise significant recognized interests in facilitating meaningful public debate regarding high-profile government action.”

35. In a sworn declaration accompanying the FOIA request, Lukas Ross, Program Manager for the Climate and Energy Program at Friends of the Earth, provided additional detailed information in support of Friends of the Earth’s request for expedited processing. For example, Mr. Ross explained that his “primary responsibility” in his role at Friends of the Earth “is to scrutinize government activity that may impact human health and the environment, and to disseminate information on those activities to the public.” Mr. Ross also explained that he “compile[s] information obtained both from public sources and through FOIA requests, and use[s] [his] expertise and editorial skills to quickly synthesize the information, develop meaningful alerts, reports, fact sheets, infographics, editorials, press releases, and articles, and disseminate those products to Friends of the Earth’s members and supporters, journalists and other members of the news media, policymakers, congressional offices, and the public at large.” Mr. Ross has “personally co-authored fact sheets and reports highlighting the risks presented by the fossil fuel industry’s short-sighted attempts to use the current energy crisis to increase our dependence on natural gas precisely at the time it is imperative to stop using fossil fuels.” He “ha[s] shared these reports with members of Congress and their staff, Friends of the Earth’s members and supporters, and journalists, as well as with the general public by posting them on Friends of the Earth’s website.” Mr. Ross noted that “these reports have received significant and widespread coverage in several national and international publications, which demonstrates both the significant public interest in the topic, and Friends of the Earth’s recognized expertise in the subject.”

36. As Mr. Ross explained, “Mr. Hochstein is working to encourage and facilitate the expansion of natural gas extraction and infrastructure. At the same time, the fossil fuel industry continues to pressure the Biden Administration and federal agencies to explore ways to subsidize new LNG facilities and infrastructure.” However, because new natural gas export facilities and infrastructure will take years—if not decades—to construct, “expanding domestic natural gas production and exports” to address the immediate crisis will not have any impact on the immediate energy crisis and thus, “is short-sighted and makes little sense.” Moreover, “the construction of new LNG facilities will increase greenhouse gas emissions, making it harder to stay below the 1.5-degree Celsius threshold scientists agree will avoid the worst climate impacts,” thereby “deepen[ing] the climate crisis and increase[ing] the long-term risks posed by global warming.” Mr. Ross pointed out that responding to the energy crisis by increasing natural gas production “is particularly untenable because several reports have outlined how Europe could get off Russian gas and meet its energy needs without fossil fuels.”

37. Mr. Ross highlighted the fact that the State Department’s “development and implementation of its policy responses to the energy crisis are occurring behind closed doors without any participation from the public or non-governmental organizations.” Mr. Ross explained that “[w]ithout public input, [the State Department] risks basing its determination of whether to encourage and/or facilitate the expansion of domestic natural gas extraction and infrastructure solely on the fossil fuel industry’s interests and self-serving representations.” Moreover, Mr. Ross noted the public’s “significant interest in ensuring that public funds are not redirected towards propping up an industry that is environmentally destructive, particularly where sustainable pathways forward exist.”

38. Mr. Ross's declaration explained that "Friends of the Earth's FOIA request will provide information directly relevant to the ongoing public debate regarding the appropriate use of public programs and funds to benefit the fossil fuel industry." He also attested that the information sought by Friends of the Earth's FOIA request will allow it "to quickly respond to the fossil fuel industry's lobbying efforts by disseminating information to its members, Congress, and the public at large to ensure that [the State Department] and the Task Force receives input from all stakeholders."

39. Mr. Ross's declaration asserted that "[a]ny delay in processing Friends of the Earth's request will seriously compromise Friends of the Earth's and the public's interests in meaningfully participating in debates over such important and pressing issues as the appropriate use of federal programs and funds to facilitate the expansion of natural gas extraction and infrastructure, the government's support of an industry that has brought the world to the brink of climate catastrophe, and the outsized influence that industry lobbyists exercise over policymakers." Mr. Ross further explained that "any delay in the processing of Friends of the Earth's request risks delivering information that is ultimately of limited utility." As Mr. Ross detailed, "[o]nce financing" for natural gas facilities and LNG infrastructure "is secured and the long-term contracts are signed, there will be little the government or public can do to prevent the dangerous expansion of natural gas production." Additionally, as Mr. Ross noted, in light of "mounting Congressional and public pressure on the Biden Administration to address rising energy prices," federal officials have a "a sense of urgency . . . to solve the crisis quickly (or at least, appear to be working to solve the crisis quickly), underscoring the importance of monitoring [the State Department's] actions." Thus, as Mr. Ross argued, "any delay in the processing of Friends of the Earth's request would preclude Friends of the Earth, the public, and

Congress's access to information directly relevant to legislative proposals and negotiations regarding the fossil fuel industry's exploitation of the Russo-Ukrainian War to its own benefit."

Mr. Ross concluded that "it is of paramount importance that Friends of the Earth, the public, and Congress understand how [the State Department] and Mr. Hochstein plan to exercise the United States' authority and influence to address the energy crisis while there is still time for meaningful course correction."

40. Friends of the Earth's FOIA request included a well-substantiated request for a fee waiver, offering a detailed explanation as to why the disclosure of the requested information is "in the public interest because it is likely to contribute significantly to the public understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). For example, Friends of the Earth explained that it is a non-profit organization with no commercial interest in the requested information, and that the requested information would be "meaningfully informative as to the types of communications between [State Department] 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 [the State Department'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." In sum, Mr. Ross offered a highly detailed explanation of why "Friends of the Earth more than satisfies the requirements necessary to qualify for expedited processing."

41. Although Friends of the Earth received confirmation via United States Postal Service certified mail tracking that the State Department received Friends of the Earth's

expedited FOIA request on May 16, 2022, Friends of the Earth did not receive any acknowledgment of its request for over a week.¹¹

42. On May 24, 2022, Mr. Ross left a voicemail message with the State Department's FOIA office requesting confirmation that the agency had received Friends of the Earth's FOIA request.

43. On May 24, 2022, the State Department emailed Friends of the Earth acknowledging that it had received Friends of the Earth's FOIA request on May 17, 2022 and assigning it the tracking number F-2022-08430. In its email, the State Department granted Friends of the Earth's request for a fee waiver.¹²

44. The State Department's May 24, 2022 email acknowledging receipt of Friends of the Earth's FOIA request denied Friends of the Earth's request for expedited processing. Without addressing any of the detailed explanations provided in Friends of the Earth's FOIA request or in Mr. Ross's declaration—and, in fact, totally ignoring the evidence supplied therein—the State Department asserted that “[y]our request does not demonstrate a ‘compelling need’ for the requested information.”

45. The State Department's May 24, 2022 email also informed Friends of the Earth that the agency would not comply with FOIA's requirement to provide a determination within twenty working days. Instead, the State Department asserted that “unusual circumstances” applied to excuse its failure to comply with the statutory deadline, including “the need to search for and collect requested records from other Department offices or Foreign Service posts.”

¹¹ Friends of the Earth's certified mail receipt and delivery confirmation are attached as Exhibit 7 for the Court's convenience.

¹² The State Department's May 24, 2022 email is attached as Exhibit 8 for the Court's convenience.

46. Although FOIA explicitly requires that agencies claiming an extension of deadlines due to “unusual circumstances” must inform the requester of “the date on which a determination is expected to be dispatched,” 5 U.S.C. § 552(a)(6)(B)(i), the State Department failed to provide any such information. Instead, the State Department’s email stated that Friends of the Earth would have to contact the agency’s FOIA Requester Service Center or the FOIA Public Liaison to obtain “an estimated date of completion.”

47. On May 25, 2022, Friends of the Earth contacted the State Department’s FOIA Requester Service Center at the email address provided in the agency’s May 24, 2022 communication.¹³ In its email, Friends of the Earth reminded the State Department that “FOIA mandates fulfillment of requests within [twenty] working days, and provides a one-time extension of an additional [ten] working days in unusual circumstances,” and that in those circumstances, the agency “must specify “the date on which a determination is expected to be dispatched.” Without conceding the propriety of the State Department’s invocation of “unusual circumstances,” Friends of the Earth “request[ed] that [the State Department] provide, at its earliest opportunity, an estimated date of completion,” which cannot be later than ten working days after the agency received Friends of the Earth’s FOIA request. Friends of the Earth also “express[ed] its strong disagreement with [the State Department’s] decision to deny its request for expedited processing.”

48. As of the filing of this Complaint, Friends of the Earth has not received any further communication from the State Department regarding this request. The State Department

¹³ Friends of the Earth’s May 25, 2022 email is attached as Exhibit 9 for the Court’s convenience.

has not responded to Plaintiffs' May 25, 2022 email, nor has it provided an estimated date of completion for this FOIA request.

49. The State Department has not released any information responsive to Friends of the Earth's FOIA request, nor made any determination as to what information will be produced and what information will be withheld.

PLAINTIFFS' CLAIMS FOR RELIEF

50. Plaintiffs incorporate all above paragraphs by reference herein.

51. By denying Plaintiffs' request for expedited processing of its FOIA request, the State Department is in violation of FOIA, 5 U.S.C. § 552(a)(6)(E)(iii).

52. By failing to provide any explanation for its denial of Plaintiffs' request for expedited processing of its FOIA request, the State Department is in violation of FOIA, 5 U.S.C. § 552(a)(6)(E)(iii).

53. By failing to provide Plaintiffs all non-exempt information that they have requested under FOIA, the State Department is in violation of FOIA, 5 U.S.C. § 552(a)(3).

54. Plaintiffs have a right to obtain the requested information, and the State Department has no lawful basis for withholding it.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that the State Department is in violation of FOIA;
2. Order the State Department to grant Plaintiffs' request for expedited processing for the FOIA request at issue in this case;

3. Enjoin the agency from withholding responsive information and order Defendant to immediately release to Plaintiffs all non-exempt information responsive to Plaintiffs' FOIA request at issue in this case;
4. Award Plaintiffs their costs and attorneys' fees; and
5. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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