



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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March 27, 2024

Michael E. Gans, Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street, Room 24.329
St. Louis, MO 63102

Re: *Liberty Energy, Inc., et al. v. SEC* (No. 24-1624, lead case No. 24-1522),
Letter Regarding Notice of Pending Emergency Motion (Mar. 26, 2024)

Dear Mr. Gans:

Respondent Securities and Exchange Commission (“Commission”) opposes the request of petitioners Liberty Energy, Inc. and Nomad Proppant Services, LLC for emergency relief from this Court. These consolidated proceedings under 28 U.S.C. § 2112 challenge Final Rules adopted by the Commission that require registration statements and annual reports to disclose certain information about climate-related risks that registrants determine have or will likely have a material impact on their business. *See* Ltr. Ex. 1, Ex. A, at 24–35 (summary of Final Rules); *id.* Ex. 2, at 4–5.

Liberty Energy and Nomad seek an emergency administrative stay and stay pending judicial review of the Final Rules based on briefing addressed to a different court and involving only their petition, and they do so without having first asked the Commission for a stay as required by applicable rules.¹ But they have identified no imminent harm justifying such emergency relief or a stay pending judicial review. And in another case also consolidated before this Court under

¹ Under the Federal Rules of Appellate Procedure, petitioners “must ordinarily move first before the agency for a stay pending review of its decision or order” before seeking a stay in the courts of appeals, Fed. R. App. P. 18(a)(1), or show that moving for such relief before the agency “would be impracticable,” *id.* 18(a)(2)(A)(i); *see also* 15 U.S.C. § 78y(c)(2).

Section 2112, a separate group of petitioners have now sought a stay as well, which counsels in favor of following established procedures for considering stay motions.²

Rather than following those procedures, Liberty Energy and Nomad instead insist that this Court should act based on the claimed “time sensitivity” that “there is currently no stay in place.” Ltr. 2. But nothing in petitioners’ letter, nor in any of their previous briefing, identifies actions they must take before the conclusion of the ordinary process for seeking a stay. The Final Rules do not require Liberty Energy to make any disclosures until March 2026 at the earliest. *See* Ltr. Ex. 2, at 5. And these petitioners point to no immediate actions that they must take in preparation for that deadline. Indeed, Liberty Energy—like many other companies—already publicly discloses certain climate-related risks. Form 10-K, 5–9, 16–17 (filed Feb. 9, 2024).³

Given Liberty Energy and Nomad’s failure to establish a need for emergency action, this Court should not act based on briefing addressed to a different court in a case involving only one of the consolidated petitions. Especially in light of the emergency motion for a stay pending judicial review filed by petitioners in *Chamber of Commerce*, the Commission instead requests that this Court order re-briefing on these petitioners’ motion so that the two motions may be considered together—which will be more efficient for the parties and the Court. Finally, if the Court does not request such re-briefing, it should deny petitioners’ request for an administrative stay and stay pending judicial review for the reasons stated in the Commission’s filings in the Fifth Circuit. Ltr. Ex. 2.

² Shortly after this Court ordered the Commission to respond to Liberty Energy and Nomad’s letter, petitioners in *Chamber of Commerce of the United States of America v. SEC* (No. 24-1628) filed an emergency motion for a stay in this Court. Doc. 5377362, filed Mar. 26, 2024.

³ https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/1694028/000169402824000006/lbrt-20231231.htm#ieb55d73eb8aa4e25a45951d6d9948a5e_16.

Respectfully submitted,

/s/ John R. Rady

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