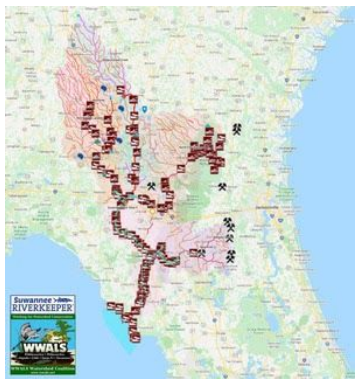


September 28, 2020

To: Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
kimberly.bose@ferc.gov

Cc: Toyia Johnson
FERC FOIA Public Liaison
foia-ceii@ferc.gov
202-502-6088

Re: Freedom of Information Act Request for Copy of PETITION FOR DECLARATORY ORDER filed by New Fortress Energy, Miami, Florida



Dear Ms. Bose and Ms. Johnson:

Pursuant to the Freedom of Information Act (FOIA) outlined in Title 5 of the U.S. Code, Section 552, as amended in 2007, John S. Quarterman on behalf of WWALS Watershed Coalition, Inc., an IRS 501(c)(3) educational nonprofit corporation, hereby requests a copy of the *Petition for Declaratory Order* that was filed with the Federal Energy Regulatory Commission (“Commission”) according to 18 C.F.R. §385.207(a)(2) (2020) seeking a determination as to the Commission’s jurisdiction under Section 3 or Section 7 of the Natural Gas Act, 15 U.S.C. §§ 717b, 717f (2018), or a Commission Order to Show Cause for why none has been filed.

I am willing to pay a reasonable fee, although I do not see why there should be much cost for emailing a PDF of the requested Petition for Declaratory Order or Commission Order to Show Cause.

I am requesting this information in order to inform the public about a matter of public safety.

The requested Petition or Order should be regarding the following Liquefied Natural Gas (LNG) export facility:

Name of Facility: New Fortress Energy a/k/a NFE; American LNG Marketing; LNG Holdings (Florida) LLC; and Miami LNG (the “Facility”)

Parent Company: Fortress Investment Group

Location: 6800 NW 72nd Street, Miami, Florida (under 13-acre site adjacent to densely populated Miami Springs, Florida, neighborhood)

Liquefaction Trains: 1

LNG Liquefaction: 8,260,000 Cubic Feet/Day

Onsite Storage Capacity: 22,302,000 Cubic Feet

LNG Storage at the Dock: We do not know if there are special holding areas at the docks for the loaded LNG ISO containers or where/how the empty containers are degasified and stored between uses.

Boil-Off Gas: We do not know how boil-off gas and vapors are being handled at the Facility or whether boil-off gas is being flared.

LNG Distribution: LNG is transported from the Facility by truck and/or rail in 10,000-gallon ISO Containers that are loaded onto to roll-on/roll-off ships at Port of Miami and Port

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WWALS is an IRS 501(c)(3) nonprofit charity est. June 2012

WWALS Watershed Coalition advocates for conservation and stewardship of the Withlacoochee, Willacoochee, Alapaha, Little, Santa Fe, and Suwannee River watersheds in south Georgia and north Florida through education, awareness, environmental monitoring, and citizen activities.

Suwannee RIVERKEEPER® is a program and a paid staff position of WWALS.



Everglades, Florida. Destinations include both Free Trade Agreement (FTA) and non-FTA nations, e.g. Barbados, Haiti and the Bahamas, and the Facility now has the ability to transport LNG in 30,000-gallon Rail Tank Cars.

Date of First LNG Export from the Facility: February 5, 2016

Pipeline Connections: While the Facility has both liquefaction and onsite storage capacity, we do not know if there are any pipeline interconnections from the Facility to the storage tanks or from the ISO containers to any local distribution company (LDC) pipelines. There is potential that the LNG loaded into ISO containers at the Facility and then transported by truck and/or rail to waterborne vessels could ultimately be regasified and delivered into an LDC pipeline to meet the LDC's peaking or other needs.

FERC Docket Number: We have not been able to find a relevant FERC docket number, and we are mystified as to why there does not seem to be one.

New Fortress Energy (the "Facility") is a "natural gas facility" according to the traditional definition. "The Commission's jurisdiction under section 3 of the Natural Gas Act extends to export facilities, not merely "LNG terminals." The two are not identical. Under section 2(11), "LNG terminal" is defined to include facilities used for import, export, or interstate commerce. An LNG terminal is simply one type of export facility. There is no evidence to suggest that Congress sought to limit export facilities to "coastal LNG terminals that are accessible to oceangoing, bulk-carrier LNG tankers and that are connected to pipelines that deliver gas to or take gas away from the terminal."¹

The Commission disclaimed jurisdiction over small-scale inland LNG export facilities without a formal Rulemaking process where FERC's authority under the NGA was delegated to other federal agencies. As a result, the Commission created a regulatory gap, and without a mandate requiring the filing of a *Petition for Declaratory Order*, there is great potential for a developer to circumvent the Commission's jurisdiction. For example, selling LNG to gas markets that can only be reached by truck and/or rail, where the gas can be reinjected into LDC systems, circumvents Section 7 jurisdiction.

Regulatory agencies create regulations according to rules and processes defined by the Administrative Procedure Act (APA). The APA defines a "rule" or "regulation" as... "[T]he whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. The Commission should answer the question of federal jurisdiction for proposed small-scale inland LNG export projects as opposed to developers self-determining jurisdiction, e.g. Strom, Inc., Crystal River, Florida.

There was no comprehensive regulatory regime that governed the construction and operation of the NFE facility. Further, the Pipeline and Hazardous Materials Safety Administration (PHMSA) does not have Congressional authority under the Natural Gas Act to approve the siting, construction, operation and maintenance of LNG export facilities. There is no other federal, state or local agency claiming jurisdiction over the Miami LNG export operation. The Facility skirted National Environmental Policy Act (NEPA) review by the U. S. Department of

¹ *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006, (2 April 2015), Norman Bay, Commissioner, dissenting, in FERC Docket No. RP15-259-000.

Energy by claiming a B5.7 Categorical Exclusion² that the Facility was not eligible to claim. The Building Permit for the Facility was waived. In response to a FOIA request, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has advised that there are no models, documents or communications on file anywhere that demonstrate that this Facility has complied with the *Federal Safety Standards for LNG Facilities* and, in particular, CFR Title 49, Part 193.2057 and 193.2059.

Commission jurisdiction over the Facility would be in accordance with Section 3 of the Natural Gas Act that states, “no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so.” In the event no such *Petition for Declaratory Order* exists, please furnish a copy of the Commission’s issuance of an order directing New Fortress Energy to “show cause” as to why their New Fortress Energy Miami LNG export facility is not subject to the Commission’s jurisdiction under Section 3 of the NGA.

Thank you for your consideration.

For the rivers and the aquifer,

John S. Quarterman
Suwannee RIVERKEEPER®
/s
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www.suwanneeriverkeeper.org

² “Categorical Exclusion Determinations: B5.7,” Department of Energy Office of NEPA Policy and Compliance, <https://www.energy.gov/nepa/categorical-exclusion-determinations-b57>