

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."³

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

³ *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006, (2 April 2015), Norman Bay, Commissioner, dissenting, in FERC Docket No. RP15-259-000.