

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New Fortress Energy LLC

Docket No. CP20-466-000

(Issued March 19, 2021)

GLICK, Chairman, and CLEMENTS, Commissioner, *concurring*:

1. We concur in today’s order finding New Fortress Energy LLC’s (New Fortress Energy) liquefied natural gas (LNG) facility subject to the Commission’s jurisdiction under section 3 of the Natural Gas Act (NGA). We write separately to explain our view that it is time to reconsider our precedent in *Shell U.S. Gas & Power, LLC (Shell)*, which held that a facility must be connected to a pipeline to be a jurisdictional LNG terminal.¹
2. There is no such limitation in the plain language of the NGA. Section 3(e)(1) of the NGA states that “[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.”² NGA section 2(11), which was added to the NGA in 2005, defines an LNG terminal as: “all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States . . . , exported to a foreign country . . . , or transported in interstate commerce by waterborne vessel, but does not include– (A) waterborne vessels used to deliver natural gas to or from any such facility; or (B) any pipeline or storage facility subject to the jurisdiction of the Commission under [section 7].”³
3. Nowhere does the statute say that a facility must be connected to a pipeline to qualify as an LNG terminal and, thus, come within the Commission’s jurisdiction under section 3.⁴ We should revisit *Shell* to ensure that we are carrying out our statutory responsibilities under the letter of the law.

¹ *Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163, P 43 (2014).

² 15 U.S.C. § 717b(e)(1) (2018).

³ 15 U.S.C. § 717a(11).

⁴ *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1725 (2020) (“[T]his Court may not narrow a provision’s reach by inserting words Congress chose to omit.”); *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1900 (2019) (plurality opinion) (The Court’s “duty [is] to respect not only what Congress wrote but, as importantly, what it didn’t