

C. Some consequences of FERC's failure to follow the law

By misreading and conflating Section 3(e) of the Natural Gas Act that relates to "LNG Terminals" with Section 7 that covers "transportation facilities," FERC has created its own exemption, with these consequences among others:

- FERC has substituted its policy judgment for that of Congress.
- FERC has undermined national uniformity with respect to the import or export of gas.
- When Congress has spoken, it is not for FERC to call a congressional directive "over expansive."
- FERC has created a significant and unnecessary gap in FERC's jurisdiction that has left the public and the environment in harm's way.
- Rail is becoming a *virtual rolling natural gas pipeline on wheels* for the distribution of LNG from non-FERC-jurisdictional inland LNG production facilities.

Well-known examples of the problem include the New Fortress Energy in Wyalusing Township, Pennsylvania, inland LNG facility with a special permit from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Agency (PHMSA)³ to ship LNG 200 miles by rail or truck to an LNG export terminal in Gibbstown, New Jersey.

Exacerbating the problem, the U. S. Department of Energy ("DoE") Office of Fossil Energy ("FE") is authorizing LNG exports from facilities where federal jurisdiction is unknown and where there are unanswered questions concerning compliance with the Federal Safety Standards for LNG Facilities and NEPA, including multiple facilities in Florida.

i. Pennsylvania and New Jersey

The situation is adequately summarized in a Protest and Motion to Intervene by Sierra Club and PennFuture:⁴

On September 18, 2020, Bradford County Real Estate Partners LLC ("Bradford") filed a Petition for a Declaratory Order seeking an order by FERC that it did not have jurisdiction to regulate Bradford's natural gas liquefaction and truck and rail loading facility in Wyalusing Township, Pennsylvania ("Wyalusing LNG facility") under either Section 3 or Section 7 of the Natural Gas Act ("NGA"). FERC created a docket for that petition

³ PHMSA, December 5, 2019, GRANTEE: Energy Transport Solutions, LLC, Doral, FL, DOT-SP 20534
<https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/safe-transportation-energy-products/72906/dot-20534.pdf>

⁴ Protest and Motion to Intervene in CP20-524 of Sierra Club and PennFuture, FERC Accession #: 20201023-5166, Docket No. CP20-524-000,
https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20201023-5166