

FERC should follow the actual law, as Commissioner Norman Bay wrote in his dissents to *Shell*, *Emera*, and *Pivotal*. It is time to rectify those mistaken decisions.

## **E. Method of reconsideration**

In disclaiming jurisdiction over small-scale inland LNG export facilities, in former FERC Commissioner Norman Bay's, (Past FERC Chairman), scathing Dissenting Opinions to *Shell*, *Emera*, and *Pivotal* (see Attachments), Bay demonstrated how the interpretation of the Congressional intent, under the NGA, was neither reasonable nor permissible.

As in rulemaking, an agency is permitted to change its position on an issue so long as it explains the decision and the new interpretation is reasonable and permissible in light of the relevant statutory language.

Sarah McKinley of FERC's Office of External Affairs informed WWALS on December 14, 2021, concerning a new 270,000-gallon LNG storage facility that has been proposed for construction within a designated "crash zone" area of the Homestead Air Reserve in Homestead, Florida:

*To receive an official declaration of jurisdiction, you would have to file a motion for declaratory order, and the fee for that is over \$20,000.*

*Neither the Commission nor any other individual or entity can require\*\*\* an entity to file a petition for declaratory order. However, if an individual believes there may be a violation of the Natural Gas Act, they can contact FERC's enforcement hotline (<https://www.ferc.gov/enforcement-legal/enforcement/enforcement-hotline>) or file a formal complaint pursuant to the Commission's regulations (18 CFR 385.206).*

FERC can send an ORDER TO SHOW CAUSE, as it did in June 2020 to New Fortress Energy (NFE) about its Puerto Rico Liquid Natural Gas (LNG) facility:<sup>18</sup>

- In this order, pursuant to Rule 209(a)(2) of the Commission's Rules of Practice and Procedure,<sup>1</sup> we direct New Fortress Energy LLC (New Fortress Energy) to show cause why the liquified natural gas (LNG) handling facility it has constructed adjacent to the San Juan Combined Cycle Power Plant at the Port of San Juan in Puerto Rico*

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<sup>18</sup> 171 FERC ¶ 61,230, New Fortress Energy LLC Docket No. CP20-466-000 ORDER TO SHOW CAUSE (Issued June 18, 2020), <https://www.ferc.gov/sites/default/files/2020-06/C-4-061820.pdf>