

SMALL-SCALE INLAND LNG EXPORT FACILITIES: FERC MUST CLOSE REGULATORY GAPS

Purpose of Petition for Rulemaking:

The proposed Rulemaking is needed to clear up ambiguity as to federal jurisdiction of *small-scale inland LNG export facilities* and to level the playing field for citizens who are being forced to take on *Big Energy* with virtually no federal support and/or guidance.

In a rush to disclaim jurisdiction over small-scale inland LNG export facilities, Commissioners may have believed they were making a reasonable accommodation to developers who hoped to speed up the approval process for their proposed projects, but the decision does not appear to have been thought through.

Flaws in FERC's reasoning for disclaiming jurisdiction:

First of all, the system for approving proposed LNG export projects was designed to be a collaboration between FERC and PHMSA, with FERC serving as the lead agency.¹

Secondly, PHMSA has not narrowed the description of an LNG "facility" to fit FERC's definition of an LNG "terminal." Under C.F.R. Title 49, Subpart B, Part 193, an "**LNG facility**" means a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas, and an "**LNG plant**" means an LNG facility or system of LNG facilities functioning as a unit." Therefore, small-scale inland LNG export facilities fall, in part, under PHMSA's jurisdiction.²

FERC Failed to Consider Memorandum of Understanding (MOU) executed between FERC and PHMSA:

The MOU was designed to coordinate the siting and safety review of FERC-jurisdictional LNG facilities. Under the *MOU*, the Commission is responsible for determining whether proposed FERC-jurisdictional LNG facilities are in the "public interest," and PHMSA is responsible for ensuring compliance with the Federal Safety Standards. PHMSA reviews LNG project applications and issues a *Letter of Determination* (LOD) to FERC, stating PHMSA's compliance findings. FERC then considers those findings in determining if a proposed project is in the public interest.³

While small-scale inland LNG export facilities are still required to comply with the Federal Safety Standards, PHMSA does not issue a *Letter of Determination* (LOD). For example, no LOD was issued for a small-scale inland LNG export facility that was sited, constructed and is currently operating on a very small parcel of land (under 13 acres) within close proximity to a densely populated community in Miami, Florida. No determination was made as to whether the siting and construction of the facility was in the "public's interest."

FERC failed to consider PHMSA's lack of Siting Authority over LNG Plants:

FERC is responsible for authorizing the siting and construction of onshore or near-shore LNG import or export facilities under Section 3 of the Natural Gas Act, and FERC inspects peak-shaving, LNG satellite, and vehicular fuel LNG plants connected to the interstate gas transmission system.⁴ In disclaiming jurisdiction without a formal Rulemaking delegating their authority under the Natural Gas Act to another agency, FERC remains the only federal agency that has the authority to determine if a proposed inland LNG export facility satisfies the public interest standard.

PHMSA does not perform Environmental Impact Assessments:

The preparation of Environmental Impact Statements and EAs can be arduous and time-consuming, but the inability of an LNG facility to demonstrate compliance with regulations found in CFR Title 49, Subpart B, Part 193, has proven to be a deal-breaker for many proposed FERC-jurisdictional LNG projects, e.g. **Weaver's Cove Energy, LLC; Floridian Natural Gas Storage Company, LLC; and Keyspan LNG, L.P.**⁵

Without an EA, we do not know if PHMSA has “taken a hard look” at potential environmental consequences from the siting, construction and/or operation of an inland LNG export facility [*Kleppe v. Sierra Club*, 427 US 390, 410 (1976)], and since FERC disclaimed jurisdiction without a Rulemaking, there is no mandate for developers to include PHMSA in any approval process.

FERC failed to consider Memorandums of Understanding with Other Federal Agencies:

In addition, in disclaiming jurisdiction, the Commissioners did not consider the *MOU* between FERC and the U. S. Department of Defense (DOD) that requires FERC to consult with the DoD to determine potential impacts to the test, training or operational activities of any active military installation resulting from the siting, construction, expansion, or operation of any LNG terminal and to evaluate environmental impacts under the National Environmental Policy Act (NEPA).⁶

A non-FERC-jurisdictional inland LNG “facility,” that is producing and storing 1,000,000 gallons of LNG per day, can pose the same potential threats to military interests as a FERC-jurisdictional LNG “terminal.”⁷ In disclaiming jurisdiction over inland LNG export facilities that do not meet the Commission’s narrow definition of “terminal,” the Commission has clearly frustrated the intent of this *MOU*.

In Florida, strategic partnerships are forming to revitalize underutilized railroad right-of-way (ROW) corridors for siting small-scale inland LNG export projects.⁸ Without a Rulemaking, there is no system in place that offers the DOD and Homeland Security, as well as other cooperating agencies, such as the U. S. Army Corps of Engineers, the U. S. Environmental Protection Agency, and the U. S. Fish and Wildlife Service, an opportunity to participate in the approval process.

FERC is allowing developers to “self-determine” federal jurisdiction:

The rules were written when the U. S. was importing LNG, and regulations have not kept up with new technologies, e.g. the use of MLNG units (similar to the “LNG in a Box” system), or ISO containers used to transport LNG by truck, and rail has become a virtual rolling natural gas pipeline on wheels.⁹ FERC reviews proposed LNG export projects on a case-by-case basis,¹⁰ but without a Rulemaking, there is no mandate requiring that developers file *Petitions for Declaratory Order* with the Commission. By “self-determining” federal jurisdiction, developers are skirting NEPA review and are precluding FERC from exercising their Congressional authority under the Natural Gas Act over the siting, construction and operation of proposed LNG export facilities.

Citizens must continuously file FOIA requests to obtain technical information from PHMSA and other federal agencies. There are no Dockets or public repositories where documents are stored for non-FERC-jurisdictional LNG export facilities. Proposed LNG export projects come to light when the U. S. DOE grants authorization to a facility to export LNG, or after an article appears in a local publication. There are no public meetings where residents of a community have an opportunity to obtain important

information concerning impacts of a proposed project on residents, including potential safety issues; potential impacts of construction of the storage facility on property values; potential impacts on threatened and endangered species; potential impacts on wetlands, vegetation, and wildlife habitat; and potential impacts on cultural resources.

FERC set a Precedent for “Onshore” LNG Export Facilities in 2008:

The **Floridian Natural Gas [LNG] Storage** facility slated for development in Indiantown, Martin County, Florida, was touted as the “largest proposed onshore facility in the U.S.”¹¹ The landlocked site was miles from the coast and incapable of pumping LNG directly into a tankship. On August 29, 2008, the Commission granted Floridian a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to construct and operate its 8 Bcf liquefaction and storage facility (See Docket No. CP08-13-000).

The approval was granted in part on the Commission’s adoption of the findings and conclusions of the *Final Environmental Impact Statement*, which stated that staff believed the proposed facility would comply with the Federal Safety Standards contained in Title 49, Code of Federal Regulations, Part 193.¹² However, Floridian had used a flawed model (Source5¹³) to calculate the Exclusion Zones for Flammable Vapor-Gas, and as a result, Floridian had to revise their project to Phase 1, a 1 Bcf LNG storage tank (See Docket No. CP13-541-000 Issued July 16, 2015). Interestingly, FERC did not disclaim jurisdiction over the revised inland LNG export project. The U. S. DOE authorized LNG exports from the facility based on the initial 8 Bcf storage capacity.¹⁴ The Commission expressed “relief” that Floridian was aware that a proposed “rail addition” would require FERC approval.¹⁵

“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” (See Pivotal LNG’s *Petition for Declaratory Order*, Docket RP15-259-000, April 2, 2015). That statement appears to hold true for the Floridian project.

FERC created a Regulatory Gap:

In order to be awarded LNG export authorization from the U. S. DOE, a developer simply declares that their proposed project “shares the same underlying relevant characteristics as the facilities and proposed activities that Emera and Pivotal LNG, Inc.’s *Petition for Declaratory Order* to which FERC granted exemption.”¹⁶ By accepting such claims on their face, the U. S. DOE is usurping FERC’s ability to determine jurisdiction on a case-by-case basis.

For non-FERC-jurisdictional LNG export projects, in order to export LNG to non-FTA-nations, the U. S. DOE determines whether a proposed project is in the public’s interest,¹⁷ but Congress did not award jurisdictional authority over inland LNG export facilities to the U. S. DOE.

Federal Energy Regulatory Commission “decisions affect people’s lives”¹⁸

As former FERC Commissioner Norman Bay (Past FERC Chairman) opined in his dissenting opinion in Pivotal LNG, “While it is difficult to know what the unintended consequences of today’s order will be, one consequence is not: the Commission creates a significant and unnecessary gap in FERC’s jurisdiction... Residents of a state in which the facility is located, or residents of surrounding states, may reasonably expect the facility to be subject to federal review of its operations and maintenance. While

some states may have the staff and expertise to do this, others may not.” Commissioner Bay’s concerns have come to fruition in the state of Florida.

There are No Local, State or Federal Permits for LNG Facilities in Florida:

In disclaiming jurisdiction over inland LNG export facilities, Commissioners stated that a facility will be required to obtain various local, state, and federal permits.¹⁹ This statement is extremely misleading since LNG is not regulated in the state of Florida. In Florida, “Gas” is regulated by the Florida Department of Agriculture.²⁰ Agents there are not familiar with LNG facilities.

For example, the Florida Department of Environmental Protection listed the above-referenced Floridian Natural Gas Storage facility as a “**Gas Compressor Station.**”²¹ The American Marketing LNG facility in Miami-Dade County (affiliate of New Fortress Energy) was permitted under Florida’s **Industrial Waste Permitting** program under Chapter 24 of the Code of Miami-Dade County,²² and the **Building Permit** for the facility was waived. The head of Public Works in one County explained that the construction of yet another proposed LNG export facility was being overseen by the U. S. DOE. He said he “Googled” it.²³

The following New Fortress Energy LNG projects were sited and constructed without filing a *Petition for Declaratory Order* with FERC:

The **San Juan LNG Terminal** came online in March 2020. On July 28, 2020, PHMSA advised that it does not have a required OPID (Operator Identification Number) on file for “an LNG handling facility under NFEnergia, LLC, that was constructed in San Juan Harbor, Puerto Rico.”²⁴

American LNG Marketing (“the Hialeah Facility”) is owned and operated by its corporate affiliate, LNG Holdings (Florida) LLC (LNG Holdings). The facility is located in the northern portion of the Hialeah Rail Yard that is leased primarily to the Florida East Coast Railway and was the first LNG export facility in the Lower 48 to transport LNG by rail. American LNG “self-determined” that their Hialeah Facility was not subject to FERC jurisdiction. Further, American advised the DOE that construction of the facility was underway and that, “construction and operation of the Hialeah Facility will occur without regard to DOE/FE’s decision on this application because American LNG has an obligation to supply LNG to FECR [Florida East Coast Railway].”²⁵

According to American LNG’s LNG Export Application, “The Facility will enhance the value of existing pipeline infrastructure and add to the local property tax base with very few operating expenditures required from the city of Medley to support the Facility.” This proposed LNG export facility was not located in Medley. The writer notified the U. S. DOE and apparently created quite a stir at the DOE according to a telephone conversation between the writer and Attorney Benjamin Nussdorf, who was serving as a Senior Policy Advisor at the DOE. Former FERC Commissioner Bay was right when he predicted there would be “unintended consequences” from FERC’s decision to disclaim jurisdiction over small-scale inland LNG export facilities.

Categorical Exclusion from NEPA Review Unchallenged by the U. S. Department of Energy (DOE):

American LNG claimed a Categorical Exclusion from the requirements of the National Environmental Protection Act (“NEPA”) pursuant to exclusion B5.7 of DOE/FE’s regulations.²⁶ B5.7 applies to import/export authorizations that involve minor operational changes but not new construction.²⁷ The owner/operator of the American LNG operation is LNG Holdings, et al, and the LNG export facility was clearly “under construction” according to a July 6, 2015, *Status Update Letter*.²⁸

A footnote in the Application justifying use of this Categorical Exclusion references Order No. 3487 issued by the DOE to Carib Energy (USA), LLC) granting authorization to export domestically produced LNG in approved ISO LNG containers from the FERC-jurisdictional Floridian Facility in Martin County, Florida, that was in compliance with NEPA. Contrarily, American LNG is exporting from a non-FERC-jurisdictional facility that skirted NEPA review.

Non-existent NEPA Reviews cannot be duplicated:

According to American LNG’s Business Model, American LNG intends to purchase some or all of the output of the Hialeah Facility from LNG Holdings. Again, there was no NEPA review for this facility, and while the Commission is concerned about duplication of NEPA reviews, there can be no duplication where no initial review exists.

American LNG stated that the Hialeah Facility will be connected to the domestic natural gas supply market through an interconnection constructed by Florida Gas Transmission, and the proposed exports of LNG typically will be loaded at the Hialeah Facility into approved ISO containers (truck or rail mounted), then transported to and loaded onto container ships or roll-on/roll-off ocean-going carriers for export at the nearby Port of Miami or other ports in Florida capable of handling ISO containers without modification, including Port Everglades, Port Canaveral, Port of Palm Beach, and Port of Jacksonville. American LNG further states that it will purchase some or all of the output of the Hialeah Facility from LNG Holdings.²⁹

American LNG, Miami, Florida – PHMSA never received required data for analysis:

The Pipeline and Hazardous Materials Administration (PHMSA) never received the required data and information needed to perform their CFR Title 49, Subpart B, Part 193 analysis. At one point, Julie Halliday, formerly of PHMSA’s Engineering and Research Division, pleaded with the company to provide the required detail. In an email to Matt Davis at Florida East Coast Industries (Fortress Investment Group) dated **November 25, 2015**, that was obtained by FOIA request, Ms. Halliday wrote: “As a reminder, for our siting review, reference questions G7 and DS1 for a list of specific items to post for us to download. The siting review requires significant effort from our end and is not performed on site. Our ability to conduct this in a timely manner depends on the completeness of these documents. There is often a request for additional information. Please inform Mike [Khayata] and Joe when these documents have been posted and provide instructions on how to access the files.”³⁰

The first LNG export from this facility occurred on **February 5, 2016**, approximately 8 weeks after PHMSA’s last communication. The destination was Barbados.³¹

American LNG Marketing, Titusville, Florida (sister company of the Hialeah Facility):

The company proposed to site, construct and operate an LNG export facility in another densely populated area of Florida. American LNG stated that TICO has secured an approximately 65-acre site (Site) in Titusville, Florida, for the proposed Titusville Facility. American LNG stated that construction of the Titusville Facility was expected to commence in February 2015. “American LNG anticipates that the Titusville Facility will have a total production capacity of 1,000,000 gallons of LNG per day (82.6 million cubic feet of natural gas per day), with a storage capacity of approximately 5,000,000 gallons. American LNG states that it will purchase some or all of the output of the proposed Titusville Facility from TICO.”

Again, the DOE authorized LNG exports from this facility (See American LNG Marketing LLC, FE Docket No. 15-19-LNG- Order granting long-term, multi-contract authorization to export LNG in ISO containers loaded at the proposed Titusville facility in Titusville, Florida, and exported by vessel to Free Trade Agreement Nations – DOE/FE Order No. 3656).

An abutter to the site filed a formal request with PHMSA’s Legal Department to see if the facility would be subject to compliance with Title 49, Subpart B, Part 193.2155(b) concerning siting of an LNG tank within one mile of an airport runway (Space Coast Regional Airport is 5/8th of a mile away). As a result, PHMSA requested that the developer provide PHMSA with an *Environmental Assessment*.³² Concerned citizens retained an attorney to ensure compliance all of the Federal Safety Standards for LNG Facilities. Please note that, whenever an *Environmental Assessment* is required, proposed LNG projects seem to die on the vine. This appears to have been the case with the proposed Titusville LNG project.

FERC OR NON-FERC? Homestead, Florida, Peak-Shaving Facility:

A new 270,000-gallon LNG peak-shaving facility has been proposed for Homestead, Florida. Part of the Park of Commerce LNG site is located in the “secondary crash zone” for the Homestead Air Reserve Base.³³ The facility will not be producing LNG, but we understand LNG will be supplied by the American LNG export facility in Miami. The stored LNG will be regasified and returned to the grid at the Homestead facility. If gas from the American LNG export facility is ultimately transported interstate via pipeline, should the Commission exert jurisdiction over the liquefaction facility in Miami? We do not know if the facility will file a *Petition for Declaratory Order* with the Commission. A citizen has alerted PHMSA about this proposed project.

U. S. Department of Energy is usurping FERC’s authority under the Natural Gas Act:

Companies, such as Strom Inc., Crystal River, Florida, that planned to utilize a new “Plug-and-Play” system are receiving authorization from the DOE to export LNG to both FTA and non-FTA-nations.

In Strom’s Application to the DOE to export LNG, Strom opined that their proposed project **will not be subject to FERC jurisdiction by the Natural Gas Act because the company “shares the same underlying relevant characteristics as the facilities and proposed activities that Emera and Pivotal LNG, Inc.’s Petition for Declaratory Order to which FERC granted exemption”** (See Strom, Inc.’s Application to the DOE for long-term authorization to export LNG to non-FTA countries, Footnote 16). Interestingly, Strom had filed a *Petition for Declaratory Order* with FERC, but the company failed to include the application fee (\$24,260), and FERC closed the Docket.³⁴ The DOE was aware of this fact when it granted export authorization.

In Conclusion: FERC said to file a Petition for Declaratory Order

An email was sent to FERC, outlining the salient terms of the proposed Strom, Inc., LNG export project. FERC responded as follows: On May 23, 2018 at 10:54 AM Sarah McKinley <Sarah.McKinley@ferc.gov> wrote: Is this e-mail meant to serve as a Petition for Declaratory Order? If that's what you are proposing I recommend that you contact the Secretary's Office to find out **how to properly file that petition.**

In 2015, when pressed on the fact that the Hialeah LNG export facility was not eligible to claim a B5.7 Categorical Exclusion from NEPA review because the facility was "new construction," John Anderson, Director of FE at the DOE, told the writer that "they had found a loophole."

Expecting citizens to continue policing these small-scale inland LNG export operations without FERC's guidance and support is dangerous and unfair. Your consideration of this *Petition for a new Rulemaking* is strongly encouraged.

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¹ MOU FERC AND DOT, 08/31/2018

<https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/64706/ferc-phmsa-mou.pdf>

² CFR Title 49, 08/02/2022

<https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-193>

³ MOU FERC AND DOT (see footnote 1)

⁴ Regulating LNG Facilities: FERC

<https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-regulatory-documents>

⁵ 133 FERC ¶ 61,054: **Weaver's Cove Energy LLC**, Docket No. CP04-36-006, "...terminal property and falls within the thermal exclusion zone [Part 193.2057]"

FERC OEP/DG2E/LNGE, Docket No. CP08-13-000: **Floridian Natural Gas Storage Company, LLC**, authorization will only be granted if the facilities are in compliance with PHMSA's, Subpart B, Part 19

112 FERC ¶ 61,028 (2005), order on reh'g, 114 FERC ¶ 61,054 (2006): **Keyspan LNG, L.P.**: Exclusion Zones would extend offsite.

<https://cms.ferc.gov/sites/default/files/2020-05/DC06-1097KeySpan.pdf>

⁶ MOU FERC AND DOD

<https://www.ferc.gov/sites/default/files/202004/MOUwiththeSecretaryofDefensetoensurecoordinationofLNGfacilitiessthatmay affectanactivemilitaryinstallation.pdf>

⁷EIS - PNG LNG Project: "...terrorists unfortunately have demonstrated that even a small quantity of flammable material can lead to major consequences."

https://pnglng.com/media/PNG-LNG-Media/Files/Environment/EIS/eis_attachment01.pdf

⁸Parallel Infrastructure – ENERGY INFRASTRUCTURE – Strategic partnering opportunities for energy distribution systems (*found on company's website – website has since been modified*): "...energy companies and utilities need new ways to move fuel to households and utilities. Right-of-way corridors are the solution."

⁹The **Natural Gas Act of 1938** was the first occurrence of the [federal government](#) regulating the [natural gas](#) industry. The passage of the Act gave the [Federal Power Commission](#) (FPC) control over regulation of interstate natural gas sales. FPC became FERC. Regulatory functions of Section 3 transferred to Secretary of Energy in 1977. Regulating imports or exports of natural gas, subsequently delegated to FERC: authority to approve construction and operation of facilities, the site, and with respect to natural gas that involves the construction of new domestic facilities, place of entry for imports or exit for exports (DOE Delegation Order No. 00-004.00, 67 Fed. Reg. 8,946 (2002).

¹⁰Gulf Oil Limited Partnership, 148 FERC ¶ 61,029 (2014) (Docket No. CP14-132-000)

¹¹*Reuters*

<https://www.reuters.com/article/lng-florida-onshore/largest-onshore-lng-plant-proposed-in-florida-idUKN1622636520071116>

¹²FERC, OEP/DG2E/LNGE, Docket No. CP08-13-000, Floridian Natural Gas Storage Company, LLC, letter to Bradley Williams dated October 8, 2010 (see footnote 5)

¹³PHMSA Letter to John Keppel and Michael Miozza dated July 7, 2010: "SOURCE5 can no longer be used to comply with out vapor gas dispersion exclusion zone requirements."

¹⁴U. S. Department of Energy Authorized LNG Exports from Floridian Natural Gas (Quantities in Bcf/d)

Exporter	FE Docket No.	DOE/FE Order No.	Date	FTA Nations	Non-FTA Nations
Carib Energy (USA) LLC	11-71-LNG	2993	07/17/11	.04	
Carib Energy (USA) LLC	11-141-LNG	3487	09/10/14		.04
Carib Energy (USA) LLC	16-98-LNG	3937	11/28/16		.004
Advanced Energy Solutions, LLC	13-104-LNG	3360	11/14/13		.02
Floridian Natural Gas Storage Company, LLC*	15-39-LNG	3691	07/31/15	.04	
Floridian Natural gas Storage Company, LLC*	15-39-LNG	3744	11/25/15		.04
<i>*Less portion of volume under contract to Carib</i>					
Total Bcf/day				.08	.104
Total Bcf/year				29.2	37.96

¹⁵Extemporaneous Notes from telephone conversation with FERC Atty. Jack Kendall and the writer on November 3, 2014, at approximately 11:30 a.m.: Atty. Kendall advised that he had found the 2014 FNGA Annual Convention (June 20, 2014) PowerPoint presentation, and he said they “were relieved that there was a notation noting that Floridian Natural Gas Association’s planned “Rail Addition” required FERC approval.”

https://documen.site/download/floridian-natural-gas-storage-company-martin-county-florida_pdf

¹⁶Strom, Inc., 15-78-LNG – Application for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Nations (Application replaces FE Docket No. 14-57-LNG and 14-58-LNG.

https://www.energy.gov/sites/prod/files/2015/05/f22/15_78_lng.pdf

On October 21, 2014, in Order No. 3537, DOE/FE authorized Strom to export domestically produced LNG in a volume equivalent to 28.21 Bcf/yr of natural gas from the proposed Facility to any country with which the United States has a FTA requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. or policy (FTA countries). *Strom, Inc.*, DOE/FE Order No. 3537, FE Docket No. 14-56-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Proposed Strom LNG Terminal in Crystal River, Florida, and Exported by Vessel to Free Trade Agreement Nations (Oct. 21, 2014). The volume sought in this Application is not additive to the volume approved for export in that order.

<https://www.energy.gov/fecm/strom-inc-fe-dkt-no-15-78-lng>

¹⁷Office of Fossil Energy and Carbon Management: DOE’s Role in LNG Sector The **Natural Gas Act** (NGA) requires FE to make public interest determinations on applications to export LNG to countries where the U.S. does not have existing free trade agreements. The NGA directs DOE to evaluate applications to export LNG to non-FTA countries.

<https://www.energy.gov/fecm/articles/does-role-lng-sector>

¹⁸FERC 07/23/22 “Open Meeting” (Quoting Commissioner): “The Commission must be assured it is receiving accurate communications that are necessary for it to adequately conduct its regulatory oversight,” and the “quality of the decision the Commission makes in regulatory proceedings hinges on the quality of the information ‘we’ receive.”

¹⁹**Pivotal LNG, Inc.**, 151 FERC ¶ 61,006 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION Before Commissioners: Cheryl A. LaFleur, Chairman; Philip D. Moeller, Tony Clark, Norman C. Bay, and Colette D. Honorable. Docket No. RP15-259-000 ORDER ON PETITION FOR DECLARATORY ORDER (Issued April 2, 2015): “As noted in the September 2014 Declaratory Order, these LNG facilities are regulated by various federal, state, and local agencies.”

https://www.aga.org/sites/default/files/150402_pivotal_order_rp15-259-000.pdf

²⁰**The Florida Department of Agriculture and Consumer Services (FDACS)** is responsible for licensing individuals and businesses that sell, transport, dispense or store liquefied petroleum (LP) gas and that manufacture, install, service or repair LP gas containers, systems or appliances. FDACS inspects facilities where LP gas is sold or stored and investigates accidents involving LP gas or equipment.

<https://www.fdacs.gov/Business-Services/LP-Gas-Licenses>

²¹FDEP’s database: Major SIC Code for the Floridian facility is listed as “49 – Electric, Gas and Sanitary Services” and the Facility Type is listed as “Gas Compressor Station.”

²²Email, Mayra Flagler, Miami-Dade Government, November 9, 2018: Miami-Dade [Florida] LNG Facility is permitted under our Industrial Waste Permitting program as required by Chapter 24 of the Code of Miami-Dade County.”

²³Extemporaneous notes from telephone conversation between the writer and Head of Public Works Department.

²⁴Email dated 07/28/20 from Buddy Secor (PHMSA)

²⁵American LNG Marketing LLC’s Application for Long-Term Authorization to Export Liquefied Natural Gas (Docket No. 14-209-LNG):

https://www.energy.gov/sites/prod/files/2015/05/f22/14_209_lng.pdf

²⁶Ibid.

²⁷*Office of NEPA POLICY AND COMPLIANCE – CATEGORICAL EXCLUSION DETERMINATIONS B5.7 Prior to November 14, 2011*, the full text of this categorical exclusion was:

B5.7 Import/export natural gas, no new construction

Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and only requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations.

²⁸Letter from American LNG to DOE dated 07/06/15 RE: 14-209-LNG: “All underground surface and foundation work at the Hialeah Facility is complete. All equipment necessary to conduct plant operations has been manufactured, delivered and installed. All of the remaining activity relates to the installation of above-ground piping and electrical connections between the skids in our modular design. Holdings has obtained all necessary governmental approvals to construct Hialeah Facility.”

https://www.energy.gov/sites/prod/files/2015/07/f24/Status%20Update%2007_06_15_0.pdf

²⁹American LNG Marketing LLC’s Application for Long-Term Export Authorization (see footnote 25)

³⁰Excerpts from Emails from Julie Halliday, PHMSA to Developer. PHMSA’s repeated attempts to receive data required for analysis obtained via FOIA request.

From	To	Date	Comments
Julie Halliday, PHMSA (Washington, D.C.)	Matt.Davis@feci.com ; bmcelmurray@fortress.com ; prichards@fortress.com ; et al FECI = Florida East Coast Industries Fortress = Fortress Investment Group or New Fortress Energy?	09/01/15	In the event you have not been able to locate information/documents discussed during our call, please find attached the LNG inspection forms. For our siting review, please reference questions G7 and DS1 for a list of specific items. Also attached are two checklists to assist with the siting review. ...project may not require vapor barriers for dispersion control or might use something else. We look forward to reviewing documents a.s.a.p. and seeing you on 21 st . Applicant should submit: G7: Design Spill Package DS1: Design Criteria for Design Spills
Julie Halliday, PHMSA	See above	10/06/15	“Just a quick update and looking for a target date to receive documents for the siting review.” Siting review will be performed by my colleague Joe Sieve instead of Roy Lucas. Process and evaluation will be the same as previously described. There had been discussion about creating a site from which we could download documents. Please provide access to Joe, Mike and me. Will this be available soon? It would be helpful if we could have access to the documents as soon as possible in case there are questions that arise which typically occurs.
Brennen McElmurray, Fortress	Julie Halliday, PHMSA	10/06/15	“Thank you for the note.” Matt Davis will be our POC for the inspection but

			you are more than welcome to reach out to anyone directly or through him.”
Julie Halliday, PHMSA	Matt.Davis@feci.com	11/13/15	“Have the siting documents been uploaded”?
Julie Halliday, PHMSA	Matt.Davis@feci.com , et al	11/25/15	“As a reminder, for our siting review, reference questions G7 and DS1 for a list of specific items to post for us to download. The siting review requires significant effort from our end and is not performed on site. Our ability to conduct this in a timely manner depends on the completeness of these documents. There is often a request for additional information. Please inform Mike [Khayata-PHMSA] and Joe, cc’d above, when these documents have been posted and provide instructions on how to access the files.”

³¹From Department of Energy Vessel-Borne Domestically Produced LNG Export Reports:

Date of Export	Supplier
02/05/16	American LNG Marketing, LLC, exported 744 Mcf of Natural Gas in ISO Containers to Barbados from Seaboard Marine, Miami, Florida [Note: 1 Mcf = 1,000 Cubic Feet of Natural Gas]

³²Detail: TICO requested that PHMSA grant an approximate 40% variance to C.F.R. Title 49, Part 193.2155(b) that states: “An LNG storage tank must not be located within a horizontal distance of one mile (1.6 km) from the ends, or ¼ mile (0.4 km) from the nearest point of a runway [airport runway], whichever is longer.”

Mr. Dan Ward lives at 120 Secluded Way in Titusville. In a letter to PHMSA, Dan noted the lengthy history of aircraft crashes at the Space Coast Regional Airport and the fact that the airport houses one of the largest student flight schools in the world, Bristow Academy. In his communication with PHMSA, Dan outlined additional risks to the site, including threat of tornadoes and hurricanes; 14,428 people residing within 2 miles of the site; and the location is a “busy and growing suburban area.”

TICO’s parent company, Florida East Coast Industries, made a presentation about their proposed LNG project at a Titusville City Council Meeting. Their method of satisfying the Public Safety concerns was to state that **their plant is safe, there will not be any accidents affecting the public, and there are no environmental concerns**. They will not furnish written documents to the public, they require the public to trust them, and they require the public to live with the added risks associated with living next to property zoned for Heavy Industrial Use.

³³*South Dade News Leader*, June 25, 2021:

Council approves first round for Liquefied Natural Gas Facility

A six-member Homestead City Council considered the application for a liquefied natural gas facility on 11.5 acres in the Park of Commerce. Constructing a 2.3 mile extension to connect the storage facility would create about 30 construction jobs under the \$58 million project, to begin in 2022 for completion in 2023. The proposed facility would have a capacity of 270,000 gallons of LNG in three large tanks. When converted to natural gas, which would not occur on-site, the stored LNG could service all gas customers south of the airport for about two days. Applicant's presentation said a quarter-acre slice of the property is in the secondary crash zone for the Air Reserve Base, including just pieces of the perimeter wall and the storm-water pond. The Air Base has not objected to the application.

³⁴On March 24, 2014, Strom, Inc. pursuant to section 207(a)(2) of FERC's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2013) filed a *Petition for Declaratory Order*. In the *Petition*, Strom contended that, "since this is a portable system and not a LNG terminal as defined by the NGA and not a facility as defined by law, that no FERC permit is required. Strom failed to include the \$24,260 filing fee when the company filed the *Petition*, and Strom did not provide any explanation to FERC as to why the company should be granted a waiver of the fee based on economic hardship. As a result, FERC never ruled on the *Petition* and closed the Docket. Strom then proceeded to file an application with the DOE and obtained authorization to export millions of gallons of LNG from the facility.