

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Nopetro LNG, LLC

Docket No. CP21-179

**Protest of Public Citizen, Inc.**

Nopetro LNG's April 20 petition for declaratory order threatens to rupture a loophole in the Commission's regulations of LNG exports big enough to pilot a fleet of Q-Max tankers. Nopetro's proposed LNG export operation appears explicitly designed to circumvent the Commission's jurisdiction by placing its liquification facility a mere 1,329 feet from the dock where Nopetro will export the LNG. Having already secured permission from the U.S. Department of Energy to export as much as 51.75 billion cubic feet of gas per year,<sup>1</sup> Nopetro makes the dubious claim that moving shipping containers via truck 1,329 feet from Nopetro's liquification terminal to its export dock should render it exempt from the Commission's regulatory oversight. The Commission must dismiss the petition and treat Nopetro's project as an LNG export terminal subject to FERC regulation.

To provide the Commission with a clear idea of just how short 1,329 feet is, it is almost exactly the distance from FERC's front door at 888 First Street NE to Union Station's Metro side entrance on First Street NE.

Should the Nopetro petition succeed, there will be nothing stopping liquification developers from placing facilities 500 feet or 50 feet from export docks to exploit the Nopetro Loophole. To preserve the Commission's Natural Gas Act authority over LNG export terminals, the petition must be denied.

**About Public Citizen**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers.

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<sup>1</sup> FE Docket No. 20-167-LNG, at page 3, [www.energy.gov/sites/default/files/2021-03/ord4671.pdf](http://www.energy.gov/sites/default/files/2021-03/ord4671.pdf)

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Public Citizen is active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located on our web site.<sup>2</sup>

### **Public Citizen Protest**

Section 3 of the Natural Gas Act states that “no person shall export any natural gas from the United States to a foreign country . . . without first having secured an order of the Commission authorizing it to do so”.<sup>3</sup> Federal law defines *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 . . . exported to a foreign country from the United States”<sup>4</sup>, and further states that FERC “shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal”.<sup>5</sup> Section 7 of the Natural Gas Act states that “No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.”<sup>6</sup>

Nopetro’s petition provides sparse information on its ownership, identifying only a series of limited liability corporations as the ultimate upstream owners. The petition states that Nopetro LNG LLC is a wholly-owned subsidiary of Nopetro-CH<sub>4</sub> Holdings, LLC, which in turn is owned by CH<sub>4</sub> Venture, LLC (38.1759%), Nopetro, LLC (36.8241%) and TLW CNG, LLC (25%).<sup>7</sup>

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<sup>2</sup> [www.citizen.org/about/annual-report](http://www.citizen.org/about/annual-report)

<sup>3</sup> 15 USC § 717b(a).

<sup>4</sup> 15 USC § 717a(11).

<sup>5</sup> 15 USC § 717b(e)(1).

<sup>6</sup> 15 USC § 717f(c)(1)(A).

<sup>7</sup> Nopetro *Petition*, at page 3.

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Nopetro's U.S. Department of Energy application, however, contains far more necessary detail, noting that CH<sub>4</sub> Venture, LLC is owned by Jay Demetree and Hawley Smith; Nopetro, LLC is owned by Jorge Herrera and Jonathan "Jack" Locke; and TLW CNG, LLC is owned by Tom Ward,<sup>8</sup> with media reports describing Mr. Ward as a "natural gas icon".<sup>9</sup>

Nopetro LNG plans to construct, finance and operate a natural gas liquification terminal on 60 acres in the Florida gulf coast town of Port St. Joe. The gas will be delivered to Nopetro's liquification terminal via pipeline. The LNG will be offloaded from Nopetro's liquification terminal via shipping container, and delivered via truck to an export port 1,329 feet away from the liquification terminal. The petition does not indicate whether these trucks will traverse a public road to reach the export dock, or whether the journey will occur entirely on private land. The LNG containers will be loaded on to ships for export by a crane constructed and owned by Nopetro.<sup>10</sup> Nopetro has already obtained the necessary LNG export authorization from the U.S. Department of Energy, and so the natural gas liquified at Nopetro's terminal at Port St. Joe will be exported by Nopetro.

Nopetro claims that, according to FERC precedent, its liquification terminal and its export operations at a dock 1,329 feet away are not an LNG terminal as defined by federal law because the exports are not being delivered to marine vessels via pipeline. Nopetro seeks a determination from the Commission that its proposed Port St. Joe liquification and export operations are not subject to FERC's jurisdiction under sections 3 or 7 of the Natural Gas Act.<sup>11</sup>

The unambiguous intent of the Natural Gas Act is that that "no person shall export any natural gas from the United States to a foreign country . . . without first

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<sup>8</sup> Nopetro Application, FE Docket No. 20-167-LNG, at page 4, [www.energy.gov/sites/prod/files/2021/01/f82/20-167-LNG.pdf](http://www.energy.gov/sites/prod/files/2021/01/f82/20-167-LNG.pdf)

<sup>9</sup> Ryan Collins, "Tom Ward Sees an Opportunity in Shale His Old Company Spurned," *Bloomberg*, April 26, 2017, [www.bloomberg.com/news/articles/2017-04-26/tom-ward-sees-an-opportunity-in-shale-his-old-company-spurned](http://www.bloomberg.com/news/articles/2017-04-26/tom-ward-sees-an-opportunity-in-shale-his-old-company-spurned)

<sup>10</sup> Nopetro *Petition*, at pages 3-5.

<sup>11</sup> Nopetro *Petition*, at page 6.

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having secured an order of the Commission authorizing it to do so”.<sup>12</sup> The Nopetro petition clearly states that its proposed natural gas liquification facility in Port St. Joe is intended to produce LNG destined for export—and not for domestic consumption. Furthermore, the U.S. Department of Energy has granted authorization for Nopetro LNG LLC to export as much as 51.75 billion cubic feet of LNG per year.<sup>13</sup>

The 1,329 feet between Nopetro’s LNG terminal and the export dock is such a short distance that even in the Florida summer heat traversing the route by foot would be a brief, pleasant stroll. To claim that an LNG terminal located a stone’s throw from an export dock renders the facility to not be subject to FERC’s regulation would eviscerate the Commission’s NGA authority and likely usher a wave of similar LNG export terminals located within shouting distance from an export dock in an effort to evade Commission oversight.

Nopetro cites previous Commission decisions in an attempt to justify their claim that their natural gas liquification terminal located 1,329 feet from its export dock should be exempt from oversight. Those prior FERC decisions, however, did not address a unique situation like Nopetro’s where a liquification terminal designed to export natural gas is located a short walk from the export dock. For example, Nopetro cites *Gulf Oil Limited Partnership* (148 FERC ¶ 61,029), in which the Commission stated that its “jurisdiction does not extend to deliveries of natural gas by truck, train, or barge.” But *Gulf Oil* concerned a company that was marketing the LNG only for domestic consumption and was not part of an affiliated LNG export operation. Petitioners also cite *Pivotal LNG, Inc.* (151 FERC ¶ 61,006), but that case exempted inland, landlocked LNG processing facilities that were not 1,329 feet away from the export dock. Nopetro cites *Emera CNG LLC* (148 FERC ¶ 61,219) and *Andalusian Energy, LLC* (174 FERC ¶ 61,107), both of which involve a different product (CNG), so they are not relevant here. Finally, Nopetro cites *Shell U.S. Gas & Power, LLC* (148 FERC ¶ 61,163). There, however, the Commission’s Order explicitly noted that “all the LNG leaving Geismar [Shell’s LNG facility] is delivered in its liquid state to the ultimate end users in the United States” [at 47]. Again, *Shell* was explicitly not part of an export operation.

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<sup>12</sup> 15 USC § 717b(a).

<sup>13</sup> FE Docket No. 20-167-LNG, at page 3, [www.energy.gov/sites/default/files/2021-03/ord4671.pdf](http://www.energy.gov/sites/default/files/2021-03/ord4671.pdf)

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Moving LNG by truck 1,329 feet via shipping container, as Nopetro proposes, results in LNG “directly transferred to or from an ocean-going, bulk-carrier LNG tanker.”<sup>14</sup>

Respectfully submitted,

Tyson Slocum, Energy Program Director  
Public Citizen, Inc.  
215 Pennsylvania Ave SE  
Washington, DC 20003  
(202) 454-5191  
tslocum@citizen.org

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<sup>14</sup> *Pivotal*, 151 FERC ¶ 61,006 at P 11.

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