

IV. THE COMMISSION DOES NOT ADDRESS JURISDICTIONAL QUESTIONS ON A CASE-BY-CASE BASIS FOR SMALL-SCALE INLAND LNG EXPORT FACILITIES.

From Pivotal III.B: *“To the extent the Commission believes it should exercise jurisdiction over any LNG facilities operating beyond this boundary, it should maintain its longstanding approach of addressing jurisdictional questions on a case-by-case basis. The recent order to show cause and assertion of jurisdiction over New Fortress Energy LLC’s Port of San Juan facility is a good example of orderly implementation of this practice.”*

Response: The New Fortress Energy LLC’s Port of San Juan facility is actually a great example that makes the case for the Petitioners. We couldn’t have a better example to demonstrate why this proposed Rulemaking is needed. We agree that FERC should be reviewing proposed LNG export projects on a case-by-case basis, but without a mandate requiring developers to file a Petition for Declaratory Order, it is easier for them to beg forgiveness than ask permission.

What happened in San Juan? In a March 10, 2020, letter to FERC,¹⁸ thousands of concerned citizens from “Faith Groups” (a community of Christian churches in the San Juan area) wrote: “The purpose of this letter is to request your urgent intervention and exercise of jurisdiction in relation to the on-going construction and proposed operation of a natural gas (LNG) terminal in the Bay of San Juan by New Fortress Energy LLC (NFE).”

On July 31, 2020, numerous organizations filed a “Joint Protest and Motion to Intervene of Comité Pro Seguridad y el Ambiente del Barrio Sabana, et. al. under CP20-466”,¹⁹ which reads on page 20: “By failing to seek FERC authorization prior to the construction of the LNG Terminal, New Fortress Energy demonstrated abject disregard for the safety and health of the San Juan community, and for local legislation. The careful and coordinated review prescribed by the National Environmental Policy Act ensures that facilities are not constructed without full consideration of the impacts on the community and environment within which that facility will be built. NEPA also ensures robust public participation, ensuring that the public interest is considered in all permitting and certification decisions. New Fortress Energy acted directly against the public interest by preventing any meaningful consideration of the health and safety impacts to the community when the company chose to construct the San Juan facility without securing the prior authorization of FERC.”

FERC issued the **Order to Show Cause** on June 18, 2020,²⁰ about three months later.

¹⁸ “Re: San Juan Natural Gas Terminal,” eleven Puerto Rican ministers, March 10, 2020, <https://ieefa.org/wp-content/uploads/2020/05/Faith-Groups-Letter-to-FERC-LNG-NFE-PREPA-San-Juan.pdf>

¹⁹ Joint Protest and Motion to Intervene of Comité Pro Seguridad y el Ambiente del Barrio Sabana, et. al. under CP20-466. FERC Accession Number 20200731-5026, July 31, 2020, https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20200731-5026

²⁰ New Fortress Energy LLC, 174 FERC ¶ 61,207, ORDER ON SHOW CAUSE, March 19, 2021, Docket No. CP20-466-000,