

## VI. FERC DOES REVISIT LONGSTANDING PRECEDENT.

Pivotal III.A.: “In the mid-2010s, the Commission issued a series of orders providing additional clarity on the bounds of its jurisdiction to address new circumstances brought on by innovative new applications for LNG. This process has provided clear guardrails and boundaries that have provided certainty to the nascent, but growing small-scale natural gas liquefaction, storage, trucking, and marine transport industry. The Commission has facilitated this growth with reasonable interpretations of law and should not now disturb the regulatory certainty it has created.”

New Fortress Energy LLC (“NFE”) made much the same argument in its attempt to skirt FERC oversight of its San Juan LNG facility.<sup>21</sup> NFE cited many of the same “mid-2010s” cases, including FERC’s April 2, 2015 Order on Pivotal LNG’s Request for Declaratory Order.<sup>22</sup> FERC nonetheless took up oversight of that NFE San Juan facility.

Clearly FERC can and does make decisions unconstrained by those “mid-2010s” orders. Rather than doing so piece-meal and only after massive protest, as happened in that Puerto Rico case, FERC needs a more systematic way to handle oversight of small, inland LNG facilities.

---

<sup>21</sup> “Motion for Leave to Answer and Answer of New Fortress Energy LLC to July 31, 2020 Joint Protest and Motion to Intervene by the coalition of special interest groups in Puerto Rico under CP20-466,” FERC Accession Number 20200814-5271, August 14, 2020, [https://elibrary.ferc.gov/eLibrary/docinfo?accession\\_number=20200814-5271](https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20200814-5271)

<sup>22</sup> *Pivotal LNG, Inc. (“Pivotal” or “Pivotal II”)*, 151 FERC ¶ 61,006 (Apr. 2, 2015), Docket No. RP15-259-000, [https://elibrary.ferc.gov/eLibrary/docinfo?accession\\_number=20150402-3057](https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20150402-3057)