

simply files an application with the DOE for authorization to export LNG, stating that their project is “just like” another inland LNG export facility. DOE accepts such unsubstantiated claims on their face to skirt NEPA review, thus further widening the regulatory gap between federal agencies, and citizens have no recourse.

Without a lead federal agency, such as FERC, there is no system in place that offers the U. S. Departments of Defense 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 for inland LNG export facilities. To exacerbate the problem, rail is now serving as a rolling natural gas pipeline to transport LNG from inland production facilities to Florida’s deep water ports.

B. The consequences of FERC’s regulatory gap need to be addressed

As Commissioner Norman Bay noted in his dissent to Pivotal II:³⁰ “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.” In the present document, we have laid out some of the far-reaching consequences of that gap. As Commissioner Bay noted in his dissent to Emera:³¹ “The Commission’s ability to implement any such national policy may now be subject to the vagaries of where an exporter chooses to put the fence around its facility or by the trucking of gas a short distance to the docks.” Beyond Commissioner Bay’s foresight, LNG is now being transported by rail as well as truck to export. Exporters siting facilities away from the docks avoid FERC oversight, and they cite inappropriate precedents to DoE such as Carib to get Categorical Exclusions from NEPA.

³⁰ **Norman Bay Dissent**, 151 FERC ¶ 61,006 (Apr. 2, 2015), Docket No. RP15-259-000

³¹ **Norman Bay Dissent**, 148 FERC ¶ 61,219 (Sept. 19, 2014), Docket No. CP14-114-000