

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|---|---|-------------------------------|
| WWALS Watershed Coalition, Inc., |) | Docket No. RM22-21-000 |
| LEAD Agency, Inc., |) | |
| Kissimmee Waterkeeper, |) | |
| Our Santa Fe River, |) | |
| Center for a Sustainable Coast, |) | |
| Three Rivers Waterkeeper, and |) | |
| Lumber Riverkeeper |) | |

**RESPONSE of WWALS Watershed Coalition, Inc.
to opposition comments by EAGLE LNG**

On September 20, 2022, Eagle LNG Partners Jacksonville II LLC (“Eagle LNG”)¹ filed comments in opposition to the Petition by WWALS Watershed Coalition, Inc. (“WWALS”), et al., to the Federal Energy Regulatory Commission (“FERC”) for Rulemaking on oversight of small-scale inland liquefied natural gas (“LNG”) export facilities (the “Petition”). WWALS hereby submits these comments in response.

Commission regulations prohibit answers to an answer unless otherwise authorized [18 CFR § 385.213(a)(2)]. But the Commission generally accepts answers when they provide information that assists its decision-making process. We ask the Commission to permit this answer.

The Pivotal LNG opposition comments mostly rehashed previous FERC decisions without mentioning new evidence and developments, which WWALS supplies in this rebuttal. Consequently, for the reasons explained below, FERC should accept and implement the Petition.

¹ Comments of Eagle LNG Partners Jacksonville LLC under RM22-21-000, Eagle LNG Partners Jacksonville II LLC (“Eagle LNG”), September 20, 2022, FERC Accession Number 20220920-5121, https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20220920-5121

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I. No LNG regulation in the state of Florida

Eagle LNG comment, II.B.: “Petitioners incorrectly assert that “LNG is not regulated in the state of Florida,” and “[t]here are no state or local agencies that approve the siting construction, operation and maintenance of inland LNG export facilities [...] in Florida,” including a facility identified as “Eagle Maxville LNG” as an exemplar facility among others.”

RESPONSE: FERC did not issue a Rulemaking delegating the Commission’s authority under the Natural Gas Act to approve the siting of an LNG plant to another federal, state or local agency. Siting is also relevant to environmental oversight, as the U.S. Department of Energy (“DoE”) noted recently:² “(e) DOE lacks the statutory authority to authorize construction and operation of export facilities, regardless of whether these facilities are deemed jurisdictional by FERC. Therefore, DOE need not review environmental impacts associated with those authorizations.” Given that FERC also handles social and environmental justice issues, apparently those are not covered, either.

A. PHMSA does not have siting authority

PHMSA ensures compliance with the Federal Safety Standards for LNG Facilities under CFR Title 49, Subpart B, Part 193, but “PHMSA does not have siting authority.”³ As a result, developers are siting inland LNG export facilities on very small parcels of land, e.g. under 13 acres, in densely populated communities in Florida. See Case in Point #1 below for American LNG Marketing’s affiliate, LNG Holdings’ LNG export operation in the Hialeah Rail Yard in Miami.

² National Environmental Policy Act Implementing Procedures A Rule by the [Energy Department](#) on [12/04/2020](#) (a) SUPPLEMENTARY INFORMATION: I. Background;(b), (c), (d) II. Comments Received and DOE’s Responses: I. Environmental Documentation Supporting Decisions Made Pursuant to DOE’s Statutory Authority; (e) IV. Compliance With Applicable NEPA Requirements: G. Comments Regarding Review by the Federal Energy Regulatory Commission, Effective January 4, 2021
<https://www.federalregister.gov/documents/2020/12/04/2020-26459/national-environmental-policy-act-implementing-procedures>

³ PHMSA, in Regulating LNG Facilities, LNG Regulatory Documents, PHMSA, accessed October 3, 2022, <https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-regulatory-documents>

“As required by the National Environmental Policy Act (NEPA), FERC prepares environmental assessments or impact statements for proposed LNG facilities under its jurisdiction. FERC is the lead federal agency under NEPA to analyze the environmental, safety, security, and cryogenic design of proposed LNG facilities.”⁴

Without FERC or PHMSA or DoE regulating siting or environmental review of LNG facilities, that leaves state and local agencies.

B. The State of Florida regulates LP but not LNG

The State of Florida does regulate Liquefied Petroleum Gas (LP), but not LNG.

Title XXXIII of 2022 Florida Statutes covers “Liquefied petroleum gas:” “527.01 Definition: As used in this chapter: (1) “Liquefied petroleum gas” means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.”⁵

Liquefied Natural Gas (“LNG”) is not regulated. See [Exhibit A](#) for a Proposal citizens presented to the Treasure Coast Legislative Delegations, including Martin County and Saint Lucie County, at their public meetings on October 19, 2017, to expand the role of the Florida Department of Environmental Protection in order to regulate LNG in the state of Florida at their October 19, 2017, public meeting.

⁴ FERC, in Regulating LNG Facilities, LNG Regulatory Documents, PHMSA, accessed October 3, 2022, <https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-regulatory-documents>

⁵ 2022 Florida Statutes http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0527/0527.html

II. Need for Regulation by FERC

Eagle LNG comment, second paragraph: “Nor have Petitioners established that there is a need for regulation of such facilities that could or should lead the Commission to assert jurisdiction it has consistently disclaimed.”

RESPONSE: FERC disclaimed jurisdiction over small-scale inland LNG facilities without a formal Rulemaking delegating their responsibilities under the National Environmental Policy Act (NEPA) to another federal agency. State and local agencies do not enforce federal regulations for the production, storage and maintenance of LNG facilities in the state of Florida.

Companies are skirting review under the National Environmental Policy Act (“NEPA”) by making false comparisons with other proposed or existing LNG export operations, and the public is barred from participating in the approval process for small-scale inland LNG export projects.

According to the Council on Environmental Quality (CEQ), “42 U.S.C. 4331(a). Section 102 of NEPA establishes procedural requirements, applying that national policy to proposals for major Federal actions significantly affecting the quality of the human environment by requiring Federal agencies to prepare a detailed statement on: (1) the environmental impact of the proposed action; (2) any adverse effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C).”⁶

“NEPA ensures agencies consider the significant environmental consequences of their proposed actions and inform the public about their decision making.”⁷

⁶ NEPA.Gov - National Environmental Policy Act, Council on Environmental Quality (CEQ), accessed October 3, 2022 <https://ceq.doe.gov/>

⁷ *Ibid.*

Unfortunately, because FERC is not acting as the lead agency for small-scale, inland LNG facilities, agencies are not considering environmental consequences.

CASE IN POINT (#1): Floridian Natural Gas Storage, Martin County, Florida,

August 29, 2008

FERC's Order Issuing a Certificate for the Floridian Natural Gas Storage ("Floridian") facility in Martin County, Florida, mentioned required NEPA review:⁸ "On October 31, 2007, in Docket No. CP08-13-000, Floridian Natural Gas Storage Company, LLC (FGS) filed an application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct, operate, and maintain new liquefied natural gas (LNG) storage and pipeline facilities in Martin County, Florida. The Commission has thoroughly considered the environmental issues and impacts associated with this project as required by NEPA and identified appropriate mitigation measures and conditions."

After FERC's initial NEPA review of Floridian, PHMSA changed certain interpretations on the Part 193 regulations in Subpart B. FERC notified Floridian of that change on October 8, 2010, accordingly (see [Exhibit B](#)). Note the emphasis on any LNG Facility "that is not yet in existence or under construction."

Floridian had used SOURCE5 modeling in calculating the Flammable Vapor-Gas Exclusion Zones for their proposed LNG project. Since SOURCE5 modeling no longer satisfied the PHMSA requirements for a source term model, PHMSA notified FERC, and FERC notified all LNG developers, that had used SOURCE5 as a source term model, that they would have to revise their proposed LNG projects accordingly. As the lead federal agency, FERC notified the developers who were impacted by the change, and PHMSA served as a cooperating agency.

⁸ 124 FERC ¶ 61,214, ORDER ISSUING CERTIFICATE, August 29, 2008, Docket No. CP08-13-000, FERC Accession Number 20080829-4004, https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20080829-4004

Floridian stopped pursuing that LNG project in 2020. In a letter dated October 1, 2020, to the U. S. Department of Energy,⁹ Floridian advised as follows: “During the April through September 2020 period, Floridian made the decision to stop pursuing the development of its natural gas liquefaction and LNG storage facility projects. Accordingly, Floridian did not engage in any activities to progress the projects.”

⁹ Letter from Floridian Natural Gas Storage to U. S. Department of Energy, dated October 1, 2020, <https://www.energy.gov/sites/default/files/2020/11/f80/2020%20Oct%20FGS%20DOE%20semi%20annual%20report%20%28002%29.pdf>

CASE IN POINT (#2): Carib Energy, Martin County, Florida, September 10, 2014

When Carib Energy (“Carib”) proposed to export LNG from the Floridian Natural Gas Storage facility that had already undergone FERC NEPA review, the U. S. Department of Energy saw no reason for additional NEPA review on the same site. So the DoE Order Granting Export Authorization to Carib Energy from the Floridian Facility in Martin County, Florida,¹⁰ included appropriate issuance of a B5.7 Categorical Exclusion from NEPA review.

“Additionally, as discussed in Section IV.F of this Order, Carib’s exports from the Floridian Facility authorized in this Order fall within the scope of a categorical exclusion from the preparation of an environmental impact statement (EIS) or environmental assessment (EA) under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347 (2000). Consequently, the authorization issued by this Order will not be conditioned on further environmental analysis or review”

“The Department’s regulations at 10 C.F.R. Part 1021, Subpart D, Appendix B5, lists categorical exclusions from NEPA review. Item B5.7 provides a categorical exclusion where approvals or disapprovals of authorizations to import or export natural gas under NGA section 3 involve minor operational changes but not new construction. Carib’s proposed exports from the Floridian Facility fall within the scope of the B5.7 categorical exclusion because the contemplated construction and operations reviewed by FERC will not be changed due to action on Carib’s application. Accordingly, on May 30, 2014, DOE/FE issued a Categorical Exclusion Determination applying a categorical exclusion under NEPA for the current Application.”¹¹

¹⁰ FINAL ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS IN ISO CONTAINERS BY VESSEL TO NON-FREE TRADE AGREEMENT NATIONS IN CENTRAL AMERICA, SOUTH AMERICA, OR THE CARIBBEAN - FE DOCKET NO. 11-141-LNG - DOE/FE ORDER NO. 3487 - SEPTEMBER 10, 2014 <https://www.energy.gov/sites/default/files/2014/09/f18/Carib%20ORDER.pdf>

¹¹ *Ibid.*

“The issuance of a categorical exclusion for the Application supports a determination that no further environmental review of Carib’s Application is required under NEPA.”¹²

American LNG Marketing and Eagle Maxville skirted NEPA review with the U. S. Department of Energy (“DoE”) by making a false comparison with their proposed LNG export operations by citing the Department of Energy’s conclusion for Carib.

¹² *Ibid.*

CASE IN POINT (#3): American LNG Marketing, Hialeah Yard (Miami), August 7, 2015

American LNG Marketing (“American LNG”) cited Carib to the U. S. Department of Energy to skirt NEPA review for its Hialeah Yard facility near Miami, which is located next to a highly populated area and near Miami Springs Senior High School; see [Exhibit C](#).

American LNG is exporting LNG from a non-FERC-jurisdictional LNG facility that was “new construction,” and therefore this is a false comparison between the Carib Energy and American LNG export operations. The actual facility that Carib planned to export LNG from was not new construction: it was the Floridian facility that had undergone NEPA review by FERC. Contrarily, American LNG Marketing is exporting LNG from a facility that is owned and operated by its corporate affiliate, LNG Holdings (Florida) LLC (“LNG Holdings”). No federal agency ever performed a NEPA review for this facility, and apparently not much siting review, considering how close it is to dense population.

“F. Environmental Review Citing DOE/FE’s actions in Carib, DOE/FE Order No. 3487,46 American LNG asserts that DOE/FE does not need to conduct an environmental review of the Hialeah Facility because it is subject to a categorical exclusion from the requirements of NEPA—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5). According to American LNG, categorical exclusion B5.7 applies, in relevant part, to authorizations to import or export natural gas under NGA section 3 that involve minor operational changes but not new construction.”¹³

¹³ UNITED STATES OF AMERICA DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY AMERICAN LNG MARKETING LLC FE DOCKET NO. 14-209-LNG - FINAL OPINION AND ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS IN ISO CONTAINERS LOADED AT THE HIALEAH FACILITY NEAR MEDLEY, FLORIDA, AND EXPORTED BY VESSEL TO NON-FREE TRADE AGREEMENT NATIONS DOE/FE ORDER NO. 3690, August 7, 2015
<https://www.energy.gov/sites/default/files/2015/08/f25/ord3690.pdf>

“American LNG is controlled by Fortress Equity Partners (A) LP and is sponsored by entities related to Fortress Investment Group LLC (Fortress), a diversified global investment management firm. American LNG states that the Hialeah Facility has been constructed, and will be owned and operated, by its corporate affiliate, LNG Holdings (Florida) LLC (LNG Holdings). LNG Holdings is also controlled by Fortress Equity Partners (A) LP. American LNG states that LNG Holdings secured an approximately 13-acre site (Site) for the Hialeah Facility, located on the northern portion of the approximately 242-acre parcel known as the Hialeah Rail Yard. The Hialeah Rail Yard, in turn, is leased primarily to the Florida East Coast Railway.”¹⁴

“F. Environmental Review Citing DOE/FE’s actions in Carib, DOE/FE Order No. 3487,46 American LNG asserts that DOE/FE does not need to conduct an environmental review of the Hialeah Facility because it is subject to a categorical exclusion from the requirements of NEPA—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5). According to American LNG, categorical exclusion B5.7 applies, in relevant part, to authorizations to import or export natural gas under NGA section 3 that involve minor operational changes but not new construction. American LNG provides several arguments in support of this position, including that: (i) construction of the Hialeah Facility is nearly complete and (as of the July 6, 2015 Status Update Letter) all necessary equipment to conduct plant operations has been delivered and installed; (ii) construction and operation of the Hialeah Facility will occur without regard to DOE/FE’s decision on the Application because American LNG has an obligation to supply LNG to the Florida East Coast Railway; and (iii) any exports from the Hialeah Facility will be through ports that do not require modification to accommodate the ISO containers, whether the end user is located in the United States, a FTA country, or a non-FTA country.”¹⁵

¹⁴ Ibid.

¹⁵ Ibid.

CASE IN POINT (#4): Eagle Maxville, Jacksonville, Florida, September 15, 2017

Eagle Maxville cited Carib Energy (“Carib”), American LNG Marketing, and Flint Hills Resources, LP (“Flint Hills”) to the U. S. Department of Energy in order to skirt NEPA review.

These are false comparisons as noted in Case in Point #3 above. Carib Energy planned to export LNG from Floridian’s FERC-jurisdictional LNG production, storage and distribution facility that had undergone a NEPA review by FERC. There has never been a NEPA review for the LNG Holdings facility in Miami, Florida, that is producing, storing and distributing LNG and was “new construction” at the time the Department of Energy authorized its affiliate, American LNG Marketing, to export LNG. American LNG Marketing was therefore not eligible to claim the B5.7 Categorical Exclusion from NEPA review by the DOE. The DOE should not have accepted American LNG Marketing’s claim of the B5.7 Categorical Exclusion from NEPA review on its face, especially when the DOE was aware that the facility was “under construction” at the time it granted export authorization to American LNG. Flint Hills is also a false comparison for reasons discussed in the next section.

“E. Environmental Review for Non-FTA Authorization Citing DOE/FE’s actions in three proceedings (American LNG Marketing LLC, DOE/FE Order No. 3690; Flint Hills Resources, LP, DOE/FE Order No. 3829; and Carib Energy (USA) LLC, DOE/FE Order No. 3487), 57 Eagle Maxville asserts that DOE/FE does not need to conduct an environmental review of the Maxville Facility because it is subject to a categorical exclusion from the requirements of NEPA—specifically, categorical exclusion B5.7 (10 C.F.R. Part 1021, Subpart D, Appendix B5). Categorical exclusion B5.7 applies, in relevant part, to authorizations to import or export natural gas under NGA section 3 that involve minor operational changes but not new construction. Eagle Maxville asserts that—like the Flint Hills Resources proceeding— “approval of the

export authorization sought here 'fall[s] within the scope of the B5.7 categorical exclusion because the contemplated construction and operations will not be changed due to action on [the] Application.'"¹⁶

¹⁶ UNITED STATES OF AMERICA - DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY - EAGLE LNG PARTNERS JACKSONVILLE II LLC - FE DOCKET NO. 17-79-LNG - OPINION AND ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS IN ISO CONTAINERS LOADED AT THE EAGLE MAXVILLE FACILITY IN JACKSONVILLE, FLORIDA, AND EXPORTED BY VESSEL TO FREE TRADE AGREEMENT AND NON-FREE TRADE AGREEMENT NATIONS - DOE/FE ORDER NO. 4078, September 15, 2017 https://www.energy.gov/sites/prod/files/2017/09/f36/ord4078_0.pdf

CASE IN POINT (#5): Flint Hills Resources, LP, for LNG sources including Stabilis,

April 13, 2016

Flint Hills Resources, LP (“Flint Hills”) proposes to export LNG sourced from manufacturing facilities in existence as of the date of the application filed with the U. S. Department of Energy.

Flint Hills plans to export LNG sourced from Stabilis, and it does not appear that the Stabilis Facility is currently manufacturing LNG. Similar to the cases of American LNG Marketing and Eagle Maxville, Flint Hills may be making a false comparison with companies that are producing, storing and distributing LNG. Carib Energy appears to be the only company that was actually eligible to claim the B5.7 Categorical Exclusion from NEPA review by the Department of Energy since the company planned to source LNG from an actual FERC-jurisdictional LNG facility.

“Environmental Review. Flint Hills states that the Application is subject to a categorical exclusion from the requirements of the National Environmental Policy Act (“NEPA”) pursuant to exclusion B5.7 at 10 C.F.R. Part 1021, Subpart D, Appendix B, of DOE/FE’s regulations. Item B5.7 provides a categorical exclusion from the requirements of NEPA where approvals of authorizations to export natural gas under NGA Section 3 involve minor operational changes, but not new construction. Flint Hills states that no new construction at the Stabilis Facility is proposed or would be required in order for Flint Hills to export LNG. Flint Hills states that the Stabilis Facility is an existing, operational facility currently producing LNG for exploration and production markets and other industrial fuel applications. Flint Hills claims that none of the operations at the Stabilis Facility would be changed due to DOE/FE’s action on this Application.”¹⁷

¹⁷ UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, OFFICE OF FOSSIL ENERGY, FLINT HILLS RESOURCES, LP) FE DOCKET NO. 15-168-LNG, ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS IN ISO CONTAINERS OR IN BULK LOADED AT THE STABILIS LNG EAGLE FORD, LLC FACILITY IN GEORGE WEST, TEXAS, AND EXPORTED BY VESSEL TO FREE TRADE AGREEMENT NATIONS, DOE/FE ORDER NO. 3809, APRIL 13, 2016
<https://www.energy.gov/sites/prod/files/2016/04/f30/ord3809.pdf>

CASE IN POINT (#6): Stabilis GDS, Inc., various LNG sources, June 21, 2022

Flint Hills says that Stabilis GDS, Inc. (“Stabilis”) will supply Flint Hills with LNG for export. While Flint Hills states that the Stabilis Facility is an “existing, operational facility currently producing LNG,” we cannot locate a FERC Docket under the name, “Stabilis.” Further, in a SEC 10-K published March 20, 2022, Stabilis Solutions, Inc., advised as follows:

“Exporting LNG in large quantities would require additional permits and licenses from various regulatory agencies, including the DOE and the Federal Energy Regulatory Commission (“FERC”).

We do not have these permits at this time but could file for such authorizations in the future.”¹⁸

According to that SEC filing, Stabilis GDS, Inc. is a subsidiary of Stabilis Solutions, Inc.: “On April 8, 2021, Mile High LNG LLC, Stabilis GDS, Inc., Stabilis LNG Eagle Ford LLC and Stabilis Energy Services, LLC, each a wholly owned subsidiary of the Company...”

In Stabilis GDS, Inc.’s application to the U. S. Department of Energy for authorization to export LNG, Appendix C includes a list of thirty-nine LNG manufacturing facilities that are currently in place in the United States, along with the respective port(s) through which Stabilis anticipates exporting the LNG sourced from that facility.¹⁹ All those sources appear to not be FERC jurisdictional.

¹⁸ Stabilis Solutions, Inc. UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 FORM 10-K, March 10, 2022 <https://sec.report/Document/0001628280-22-005738/>

¹⁹ UNITED STATES OF AMERICA DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY In the Matter of:)) STABILIS GDS, INC.)) Docket No. 22- 61 -LNG APPLICATION OF STABILIS GDS, INC. FOR LONG-TERM AND SHORT-TERM MULTI-CONTRACT AUTHORIZATION TO EXPORT SMALL-SCALE LIQUEFIED NATURAL GAS TO FREE TRADE AGREEMENT AND NON-FREE TRADE AGREEMENT NATIONS, June 21, 2022 <https://www.energy.gov/sites/default/files/2022-06/22-61-LNG.pdf>

In Appendix C of Stabilis' DoE application we find this table: "Stabilis Source Facilities Include"

| Supplier | Plant Name | Location | Capacity (g/d) | Export Ports | Primary Gas Supply Basin |
|----------------------------------|-------------------|------------------|-----------------------|---|---------------------------------|
| Pivotal LNG | Trussville | Trussville, AL | 60,000 | Panama City, FL; Savannah, GA; Charleston, SC | Gulf of Mexico |
| Eagle LNG | Maxville | Maxville, FL | 90,000 | FL; Sandiego, CA; Los Angeles, CA | Gulf of Mexico |
| Jax LNG/ Pivotal LNG | Jacksonville | Jacksonville, FL | 120,000 | FL; Savannah, GA; Charleston, SC; Jacksonville, FL; Panama City, FL | Gulf of Mexico |
| Southern Company/ Pivotal LNG | Riverdale | Riverdale, GA | 100,000 | Mobile, AL; Savannah, GA; Charleston, SC; Jacksonville, FL; Panama City, FL | Gulf of Mexico |
| Southern Company/ Pivotal LNG | Cherokee | Ball Ground, GA | 100,000 | Mobile, AL; Savannah, GA; Charleston, SC; Jacksonville, FL; Panama City, FL | Gulf of Mexico |
| Southern Company/ Pivotal | Macon | Macon, GA | 100,000 | Mobile, AL | Gulf of Mexico |
| New Fortress Energy | Miami | Miami, FL | 100,000 | FL; Chicago, IL; Green Bay, WI | Gulf of Mexico |
| Niche LNG/ Pivotal LNG | Towanda | Towanda, PA | 50,000 | Erie, PA; Tacoma, WA; Seattle, WA | Marcellus |

See subsection “B” below for a complaint that was filed with the Office of Inspector General at the U. S. Department of Energy, questioning the eligibility of a small-scale inland LNG export facility to claim a B5.7 Categorical Exclusion from NEPA review by the DOE. Below are copies of email exchanges with: (A) NEPA QUESTION: Council on Environmental Quality; (B) NEPA COMPLAINT: Steven Henderson, Investigative Analyst, DOE-OIG; and (C) transcript of a telephone message received from John Anderson, Director, DOE/FE. We understand Mr. Henderson forwarded the Complaint to the Department of Energy.

A. Email to CEQ questioning B5.7 Categorical Exclusion from NEPA review by U.S. DoE

On February 19, 2018, Cecile Scofield sent an email (see [Exhibit D](#)) to the Council on Environmental Quality (CEQ) questioning B5.7 Categorical Exclusion from NEPA review by the U. S. Department of Energy for an LNG export facility that was “new construction.”

“NEPA established CEQ within the Executive Office of the President to ensure that Federal agencies meet their obligations under NEPA. CEQ oversees NEPA implementation, principally through issuing guidance and interpreting regulations that implement NEPA's procedural requirements. CEQ also reviews and approves Federal agency NEPA procedures, approves alternative arrangements for compliance with NEPA for emergencies, and helps to resolve disputes between Federal agencies and with other governmental entities and members of the public.”²⁰

B. Complaint filed with U.S. DoE about Categorical Exclusion from NEPA

Cecile Scofield filed a complaint with Steven Henderson, Investigative Analyst, Office of Inspector General, U. S. Department of Energy, for a company that claimed Categorical Exclusion from NEPA review by the DOE. See [Exhibit E](#) for the complaint and related email exchanges.

²⁰ NEPA.GOV - NATIONAL ENVIRONMENTAL POLICY ACT - The Council on Environmental Quality, accessed October 3, 2022 <https://ceq.doe.gov/>

C. DoE FE Voicemail about NEPA Categorical Exclusion for “Hialeah Yard” facility.

John Anderson, Director, DOE/FE, left voicemail for Cecile Scofield on December 18, 2015, concerning Categorical Exclusion from NEPA review claimed by the “Hialeah Yard” facility. The facility is actually the American LNG export operation located at 6800 NW 72nd St., Miami, Florida. That facility has since been owned by New Fortress Energy (“NFE”), and now by Softbank of Japan. A transcript of that voicemail is in [Exhibit F](#).

That voicemail says that in the absence of FERC oversight, PHMSA does look at NEPA, but the only example it gives is for “a facility that is subject of an Export Application and that is already existing, and there is only an operational change, is entitled to a Categorical Exclusion Determination from the preparation of an environmental impact statement or environmental assessment.”

Thus LNG permit applicants have incentive to cite cases such as Carib, which got such a Categorical Exclusion because it was sourcing LNG from pre-existing Floridian. But new facilities should not get such Exclusions, and without FERC, there appears to be no NEPA oversight for new small, inland LNG facilities.

BACKGROUND: Cecile Scofield contacted FERC on June 1, 2015, looking for Draft Environmental Impact Statements for two LNG export projects: one for TICO Development Partners, LLC (Titusville), and the other, LNG Holdings (Florida), LLC. Both TICO and American LNG Marketing/LNG Holdings (“Hialeah”), had been authorized by the DOE to export LNG, and both are affiliates of New Fortress Energy. There were no FERC Dockets for these LNG operations. In a telephone conversation on June 16, 2015, FERC Attorney Vivian Chum advised Ms. Scofield that FERC had “pulled back jurisdiction for inland LNG facilities about a year ago” and that FERC was “only regulating import/export facilities involving tankers/ships.”

Under regulations that were in place in 2015, the DOE was required to conduct an environmental review pursuant to NEPA before granting an application to export natural gas to non-FTA countries. In the subject telephone message, John Anderson, Director of Fossil Energy at the DOE, explained how American LNG Marketing escaped NEPA review by claiming a B5.7 Categorical Exclusion. American LNG Marketing was sourcing LNG from its affiliate, LNG Holdings, that was not “already existing” when the DOE granted export approval.

Without having to retain legal counsel, residents who live within close proximity to the LNG Holdings’ LNG liquefaction, storage and distribution facility have little to no recourse. Further, as of November 25, 2015, PHMSA had not received documents needed for siting review. The first export occurred on February 5, 2016.

B5.7: Import or export natural gas, with operational changes

From November 14, 2011, through January 3, 2021, the full text of this categorical exclusion was:

“Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.”²¹

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

Prior to November 14, 2011, the full text of this categorical exclusion was:

²¹ NEPA POLICY AND COMPLIANCE – Categorical Exclusion Determinations: B5.7, accessed October 3, 2022, <https://www.energy.gov/nepa/listings/categorical-exclusion-determinations-b57>

“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

CASE IN POINT (#7): American LNG Marketing, Titusville, Florida, May 29, 2015

The U. S. Department of Energy authorized LNG exports from this American LNG Marketing, Titusville, Florida, facility (“Titusville”) that, if constructed and operated, would have been in violation of Title 49, Subpart B, Part 193.2155(b).

A. Citizens advised PHMSA of lack of environmental oversight

Citizens contacted PHMSA’s Legal Department, and PHMSA required the applicant to provide an Environmental Assessment. If the Titusville facility had been under FERC oversight, FERC would have required that Environmental Assessment.

“An LNG storage tank must not be located within a horizontal distance of one mile (1.6 km) from the ends, or 1/4 mile (0.4 km) from the nearest point of a runway, whichever is longer. The height of LNG structures in the vicinity of an airport must also comply with Federal Aviation Administration requirements in [14 CFR Section 1.1](#).”²²

The U. S. Department of Energy granted a Long-Term, Multi-Contract Authorization to American LNG Marketing to export LNG from a proposed facility in Titusville, Florida.²³

If constructed and operated without a Variance from the PHMSA, the facility would have been in violation of Title 49, Subpart B, Part 193. Citizens retained an attorney to ensure compliance with all of the Federal Safety Standards for Liquefied Natural Gas Facilities: see [Exhibit G](#). As of October 2, 2018, PHMSA had not received the relevant site drawings, maps and other supporting documents (see

²² Title 49, Subtitle B, Part § 193.2155(b) Structural requirements, Accessed October 3, 2022, <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-193/subpart-C/subject-group-ECFR6eaa9429e2079dc/section-193.2155>

²³ UNITED STATES OF AMERICA DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY - AMERICAN LNG MARKETING LLC - FE DOCKET NO. 15-19-LNG - ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS 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 - MAY 29, 2015 <https://www.energy.gov/sites/prod/files/2015/05/f22/ord3656.pdf>

[Exhibit F](#)) and denied, without prejudice, the request for a special permit for a Variance. The site is located less than one mile from the Space Coast Regional Airport.

See [Exhibit H](#) for an email exchange with PHMSA, which is evidence that “The disconnect between FERC, PHMSA and the Department of Energy is mind boggling.”

B. Titusville told DoE it expects to start operations in 2023 or 2024

According to its Semi-Annual Report to DoE, dated September 30, 2022 (see [Exhibit I](#)), development activities for the American LNG Marketing facility in Titusville, Florida, are ongoing with a likely commercial operation date in late 2023 or early 2024.

So apparently Titusville is planning to proceed without environmental review or variance. As of our last communication with PHMSA on September 17, 2018, PHMSA had not received the required Environmental Assessment that is needed to approve or deny the company’s Variance request (see [Exhibit H](#)). Citizens retained an attorney to ensure compliance with Title 49, Subpart B, Part 193.2155(b), i.e. proximity of an airport runway to an LNG storage tank (see [Exhibit G](#), Attorney Letter dated November 2, 2016). By a letter dated October 2, 2018, to New Fortress Energy Management, PHMSA denied the Variance request, without prejudice, pending receipt of the relevant site drawings and other required information (see [Exhibit J](#)).

Finally, we do not know what the reference in the Semi-Annual Report to “ongoing regulatory processes” means.

III. DoE Categorical Exclusion revision widened regulatory gap with FERC, January 4, 2021

The U.S. Department of Energy (“DoE”) relied on a flawed premise when it revised its NEPA exclusion rule. In order to avoid unnecessary duplication of NEPA reviews performed by FERC or other federal agencies, under a recent Rulemaking, the U. S. Department of Energy revised application of the B5.7 Categorical Exclusion. The problem is that, for non-FERC-jurisdictional small-scale inland LNG export production, storage and distribution facilities, the DoE is relying on non-existent NEPA reviews. Thus DoE widened the regulatory gap with FERC.

(a) “DOE revises categorical exclusion (CX) B5.7 to focus exclusively on the analysis of potential environmental impacts resulting from activities occurring at or after the point of export, which are within the scope of DOE’s export authorization authority under the NGA.”²⁴

(b) “In virtually all of its recent LNG export proceedings, DOE has referenced in its export orders the environmental documents prepared by the Federal Energy Regulatory Commission (FERC).”²⁵

(c) “FERC, not DOE, reviews the potential environmental impacts of the construction and operation of the LNG terminals. Under the revised CX, DOE’s NEPA review is tailored to its statutory authority and will not unnecessarily duplicate the documents that FERC or other agencies prepare under their statutory authorities.”²⁶

²⁴ National Environmental Policy Act Implementing Procedures A Rule by the [Energy Department](#) on [12/04/2020](#) (a) SUPPLEMENTARY INFORMATION: I. Background;(b), (c), (d) II. Comments Received and DOE’s Responses: I. Environmental Documentation Supporting Decisions Made Pursuant to DOE’s Statutory Authority; (e) IV. Compliance With Applicable NEPA Requirements: G. Comments Regarding Review by the Federal Energy Regulatory Commission, Effective January 4, 2021 <https://www.federalregister.gov/documents/2020/12/04/2020-26459/national-environmental-policy-act-implementing-procedures>

²⁵ *Ibid.*

²⁶ *Ibid.*

(d) “Under the revised CX, DOE’s NEPA review is tailored to its statutory authority and will not unnecessarily duplicate the documents that FERC or other agencies prepare under their statutory authorities.”²⁷

(e) “DOE lacks the statutory authority to authorize construction and operation of export facilities, regardless of whether these facilities are deemed jurisdictional by FERC. Therefore, DOE need not review environmental impacts associated with those authorizations. For a proposed export facility outside FERC jurisdiction, another Federal agency, such as MARAD [U. S. Department of Transportation Maritime Administration] or BOEM [Bureau of Ocean Energy Management], would typically be responsible for completing the NEPA review.”²⁸

DoE seems to be reaching at straws here, because we find no evidence that MARAD or BOEM do NEPA review for LNG facilities. State and local authorities do not do such review. So apparently nobody does.

²⁷ *Ibid.*

²⁸ *Ibid.*

IV. PHMSA expects FERC NEPA document before issuing Letter of Determination, August 31, 2018

According to a Memorandum of Understanding between FERC and PHMSA:²⁹ “PHMSA will issue a Letter of Determination to FERC no later than 30 days prior to the estimated issuance date of FERC's final NEPA document. If PHMSA determines it will be unable to complete its review and issue its Letter of Determination 30 days prior, it will notify FERC, describing the reasons for delay and declare a new date to complete its review and letter. The Letter of Determination represents PHMSA's determination on the proposed LNG facility's compliance with the requirements of Part 193, Subpart B. The issuance of the Letter of Determination does not abrogate PHMSA's continuing authority and responsibility over the applicant's compliance with Part 193 during construction and future operation of the facility.”

For PHMSA-jurisdictional LNG export facilities, there is no “Letter of Determination” representing PHMSA's determination on a proposed LNG facility's compliance with the requirements of Part 193, Subpart B, nor does PHMSA have any publicly-accessible files or Dockets containing pertinent documents and/or information.

²⁹ MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF TRANSPORTATION AND THE FEDERAL ENERGY REGULATORY COMMISSION REGARDING LIQUEFIED NATURAL GAS TRANSPORTATION FACILITIES - Responsibilities of Agencies - PHMSA - 2.(b) , August 31, 2018
<https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/news/64706/ferc-phmsa-mou.pdf>

V. Summary

The “Cases in Point” in **II. Need for Regulation by FERC** above demonstrate that the Federal Energy Regulatory Commission must review applications to site, construct, and operate LNG small-scale inland export facilities on a case-by-case basis in order to promote responsible siting of the facilities and to ensure public safety. The other sections above spell out that the state of Florida does not regulate LNG, and that other federal agencies expect NEPA review by FERC, and do not perform that review themselves.

A. PHMSA, DoE, etc. left with no lead agency

When FERC disclaimed jurisdiction over small-scale inland LNG facilities, PHMSA appears to have been left holding the bag. PHMSA does not hold public meetings where abutters of proposed LNG export projects have an opportunity to meet with developers and ask important questions. There are no Dockets or publicly-accessible files. Citizens must file FOIA requests with PHMSA and other federal agents in fruitless attempts to obtain environmental or other pertinent information about proposed inland LNG export operations.

Agents at PHMSA’s Southern Region in Atlanta, that oversees Florida, did not know what Thermal Exclusion Zones were for Thermal Radiation and Flammable Vapor-Gas Dispersion, and one agent questioned why PHMSA was “regulating these things in the first place” since “PHMSA knows about pipes.” PHMSA was alerted to the airport issue for the proposed Titusville project when a citizen, who lives across the street from the proposed site, asked PHMSA’s legal department if the federal safety standard concerning proximity of an airport runway to an LNG storage tank were applicable.

Since FERC disclaimed jurisdiction over small-scale inland LNG production, storage and distribution facilities, a developer “self-determines” if a proposed LNG export project is FERC-jurisdictional and then

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

Citizens have little recourse against this regulatory run-around. As Commissioner Bay also noted in his dissent to Pivotal II: “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.” States and local authorities, at least in Florida, have not taken upon themselves the burden of review of operations, maintenance, or environmental effects, of small, inland, LNG facilities. Which means there is, so far as we can find, no such review, at least in Florida.

Eagle LNG asserted in the introduction of its opposition comments:³² “Petitioners have offered no legitimate basis under the law for the Commission to revisit its conclusion, reaffirmed as recently as March and again in July of this year, that inland LNG facilities that produce LNG for export, but are not located on or near the water or the coast and do not transfer their output by pipeline, are not “LNG terminals” subject to regulation as such under section 3 of the Natural Gas Act (“NGA”).”

Actually, in our petition we cited and included Norman Bays’ dissents to Shell,³³ Emera,³⁴ and Pivotal II,³⁵ and those dissents spell out how those decisions of the Commission do not follow the NGA. Eagle LNG’s opposition comments further complain (in their section I) that Petitioners did not participate in the 2014 and 2015 Shell, Emera, or Pivotal II cases, that Petitioners do not directly appeal those cases, and that “Petitioners improperly seek to relitigate case-specific matters on a generic basis.” It would be quite a burden to expect citizens affected by LNG to understand the long-term implications of every FERC decision at the time they are made, even to decide which ones to participate in. Appealing such cases without having been party to them is not plausible. And, as we have demonstrated in the present document, the effects of those three 2014 and 2015 FERC decisions, Shell, Emera, and Pivotal II, reach far beyond specific cases. For that matter, there are no specific FERC cases for most small, inland, LNG

³² Comments of Eagle LNG Partners Jacksonville LLC under RM22-21-000, Eagle LNG Partners Jacksonville II LLC (“Eagle LNG”), September 20, 2022, FERC Accession Number 20220920-5121, https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20220920-5121

³³ Shell, **Norman Bay Dissent**, 148 FERC ¶ 61,219 (Sept. 19, 2014), Docket No. CP14-114-000

³⁴ Emera, **Norman Bay Dissent**, 148 FERC ¶ 61,219 (Sept. 19, 2014), Docket No. CP14-114-000

³⁵ Pivotal II, **Norman Bay Dissent**, 151 FERC ¶ 61,006 (Apr. 2, 2015), Docket No. RP15-259-000

facilities, because of those earlier FERC decisions. Eagle LNG has not cited any FERC cases in which the issues we demonstrate in the present document have been considered, especially not the far-reaching consequences across many LNG sites and affected areas of the regulatory gap FERC opened in 2014 and 2015.

The purpose of the present document and of the Petition is not to litigate the outcome of a Rulemaking. It is to advocate opening a Rulemaking in which the reasons for revisiting, reconsidering, and possibly revoking those previous FERC decisions can be discussed.

C. Conclusion: FERC should issue a NOPR

For the foregoing reasons, the Commission should issue a Notice of Proposed Rulemaking (“NOPR”) to revisit, reconsider, and ideally revoke its previous decisions against oversight of inland LNG facilities, in order to address the economic, environmental, and safety problems caused by those previous decisions, thus closing the significant and unnecessary gap FERC created in its own jurisdiction.

Respectfully submitted this 17th day of October, 2022.

John S. Quarterman, Suwannee RIVERKEEPER®
/s
WWALS Watershed Coalition, Inc.
PO Box 88, Hahira, GA 31632
850-290-2350
wwalswatershed@gmail.com
www.wwals.net

Exhibits

Exhibit A: Citizen Proposal to regulate LNG in Florida, October 19, 2017

Below is the text of a Proposal that citizens presented to the Treasure Coast Legislative Delegations, including Martin County and Saint Lucie County, Florida, at their public meetings on October 19, 2017. It recommends having the Florida Department of Environmental Protection (“FDEP”) regulate LNG.

Expanded Role of FDEP in Liquefied Natural Gas Production, Storage and Transport

Criteria must be established for the safe siting, construction and operation of LNG facilities and require that such facilities obtain a Permit from the Florida Department of Environmental Protection to protect the public health and environment in Florida.

Permit Application Process should include:

1. The location of the proposed facility
2. A description of alternative locations for the proposed facility, if any
3. Demonstration that the proposal is compatible with surrounding environment and safety of neighboring populations
4. The need for the proposed facility
5. Specification of tank manufacturing design standard and design capacity for each tank
6. The facility capacity, including volume stored in loaded 10,000-gallon ISO containers
7. Expected sources of natural gas
8. Possible environmental impacts of the proposed facility and facility features with procedures to mitigate

9. Report prepared by independent qualified person that evaluates capability and preparedness of fire departments in the vicinity of the proposed facility who would respond to a release of LNG or fire involving LNG, detailing any deficiencies with cost estimate for remedying
10. Proof of liability insurance covering proposed LNG operations
11. Written listing of applicable NFPA (National Fire Protection Association) requirements
12. Maps of floodplains
13. Such other information as FDEP determines is necessary to approve or deny Permit request.

Criteria for Siting and Operations of Facilities:

1. All LNG facilities must comply with the requirements of the provisions of the current edition of NFPA 59A Standard for the Production, Storage, and Handling of LNG.
2. Transfers of LNG to trucks or rail cars must also comply with the applicable provisions of the October 1, 2013, edition of the United States Department of Transportation's Pipeline Safety Regulations, 49 CFR Part 193, Subchapter D.
3. Facilities that transfer LNG to and from marine vessels shall be designed, built and operated in accordance with 49 CFR Part 193, Subchapter D and/or the July 1, 2013, edition of the United States Coast Guard's Navigation and Navigable Waters Regulations, 33 CFR Part 127, as applicable.
4. FDEP will determine if the information provided indicates need for additional training, personnel, or equipment to enable local fire departments to respond effectively to any release or fire involving LNG at the facility. If additional training, personnel, or equipment is needed, it shall be provided by the applicant before beginning operation of the facility.

5. FDEP shall consider the physical, flammability, and explosivity characteristics of LNG in determining compliance, including risks to persons and property in the neighboring area of an LNG facility and risks from transportation accidents.
6. Public Participation: Hearings, comments, or participation by Federal, State or local government bodies or members of the public, relative to any permit proceedings, shall be conducted.

Exhibit B: FERC informed Floridian of PHMSA re-interpretations, October 8,

2010

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
OFFICE OF ENERGY PROJECTS

In Reply Refer To:

OEP/DG2E/LNGE

Docket No. CP08-13-000

Floridian Natural Gas Storage Company, LLC

October 8, 2010

Mr. Bradley Williams
Floridian Natural Gas Storage Company, LLC
1000 Louisiana Street, Suite 4361
Houston, TX 77002

RE: PHMSA Interpretations on the Part 193 Exclusion Zone Regulations

Dear Mr. Williams:

On August 29, 2008, the Commission granted a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act for Floridian Natural Gas Storage Company, LLC's (FGS) proposed LNG facility in the above referenced docket. This decision was based 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.

On July 7 and 16, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation issued two written interpretations concerning the flammable vapor-gas exclusion zone requirements contained in Title 49, Code of Federal Regulations, Part 193.2059. These letters are included for your reference as enclosures 1 and 2. As indicated by PHMSA, the new interpretations apply to any liquefied natural gas facility "that is not yet in existence or under construction."

In accordance with the August 29, 2008 order, FGS must receive written authorization from the Commission prior to constructing any facilities associated with the above referenced docket. Such

authorization will only be granted following a determination that the facilities are in compliance with the interpretations issued by PHMSA on the Part 193 regulations in Subpart B. Prior to requesting construction authorization, please provide the information described in enclosure 3 to assist in our review.

File your response in accordance with the provisions of the Commission's Rules of Practice and Procedure. The response must be filed with the Secretary of the Commission at:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

File all responses under oath (18 CFR 385.2005) by an authorized FGS representative and include the name, position, and telephone number of the respondent to each item.

If you have any questions concerning this data request, please contact Andrew Kohout at 202-502-8053.

Thank you for your cooperation.

Sincerely,

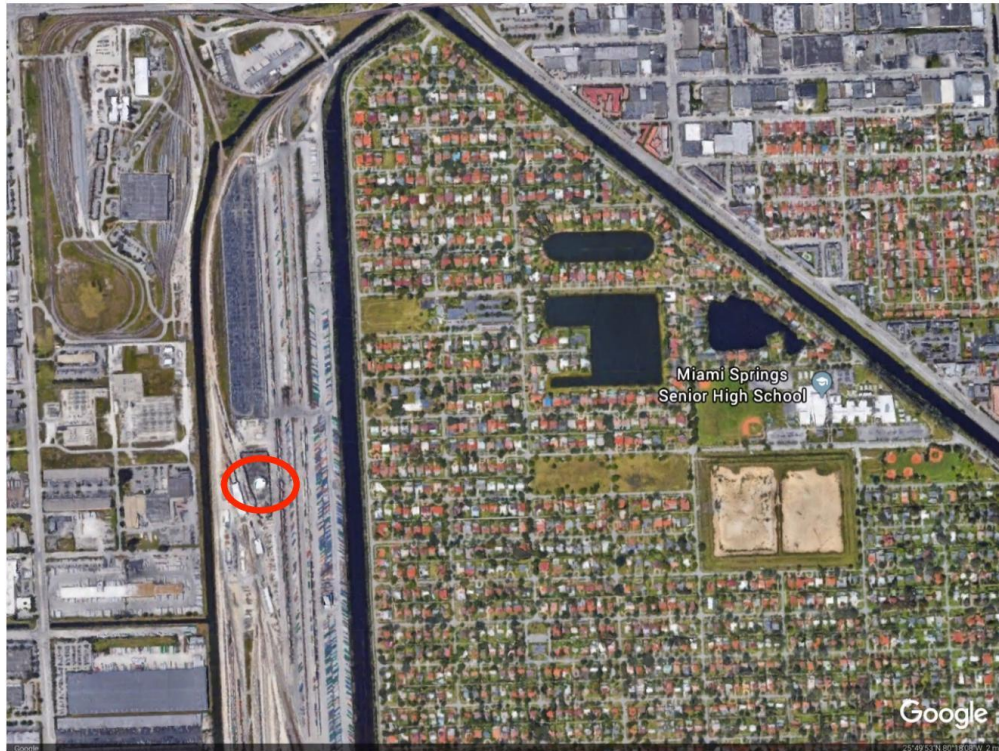
Jeff C. Wright
Director
Office of Energy Projects

Enclosures

cc: Public File, Docket No. CP08-13-000

Exhibit C: Aerial of Hialeah Yard LNG and nearby populated area

Hialeah Rail Yard LNG Facility as seen by Google Earth.



The red circle indicates where the LNG facility is.

Exhibit D: NEPA/CEQ Questions and Feedback, February 19, 2018

From:Cecile<dawson.chris@comcast.net>

2/19/2018 10:14 AM

To fn-ceq-nepa@ceq.eop.gov, auusersupport@hq.doe.gov

The United States Department of Energy authorizes Liquefied Natural Gas exports. LNG facilities can claim Categorical Exclusion from NEPA review by the DOE, such as B5.7:

QUESTION: In their application to the DOE for authorization to export LNG, the company claimed a B5.7 Categorical Exclusion from NEPA, while clearly stating they were in the process of constructing the facility (that was not a “minor operational change”). The LNG production, storage and transport facility is, in fact, a new facility. The DOE did not perform a NEPA review for the project, and the public was excluded from the approval process for this LNG export facility.

What is the recourse for the people who live in the neighborhood where this facility was sited, constructed and is operating on a 12-acre site in a densely populated area, producing and exporting millions of gallons of LNG?

Exhibit E: Complaint filed with U.S. DoE about Categorical Exclusion from NEPA

Exhibit E.1 is the complaint, and Exhibit D.2 is email evidence that CEQ got it and discussed it.

Exhibit E.1: Complaint to DoE by Cecile Scofield to Steven Henderson, March 27, 2018

From: CECILE T SCOFIELD <dawson.chris@comcast.net>

3/27/2018 12:23 AM

To: [Steven Henderson](#)

Sent to CEQ (NEPA) 2/19/18

The United States Department of Energy authorizes Liquefied Natural Gas exports. LNG facilities can claim Categorical Exclusion from NEPA review by the DOE, such as B5.7:

B5.7: Import or export natural gas, with operational changes

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.

QUESTION: In their application to the DOE for authorization to export LNG, the company claimed a B5.7 Categorical Exclusion from NEPA, while clearly stating they were in the process of constructing the facility (that was not a “minor operational change”). The LNG production, storage and transport facility is, in fact, a new facility. The DOE did not perform a NEPA review for the project, and the public was excluded from the approval process for this LNG export facility.

What is the recourse for the people who live in the neighborhood where this facility was sited, constructed and is operating on a 12-acre site in a densely populated area, producing and exporting millions of gallons of LNG?

1. Lawsuits – Enforcement of the NEPA process is by a citizen suit provision meaning anyone can bring a lawsuit against the responsible Federal agency for violation of NEPA. If the federal agency does not properly follow the process of analysis, documentation, disclosure, and consideration in decision making the agency is vulnerable to a lawsuit which begins with an injunction requiring immediate stoppage of work and may take considerable time, effort and cost in attorney fees and court costs to resolve.

2. Environmental Assessment/Finding of No Significant Impact

3. A federal agency can determine that a Categorical Exclusion (CATEX) does not apply to a proposed action. The federal agency may then prepare an Environmental Assessment (EA). The EA determines whether or not a federal action has the potential to cause significant environmental effects. Each federal agency has adopted its own NEPA procedures for the preparation of EAs. See NEPA procedures adopted by each federal agency.

Generally, the EA includes a brief discussion of:

- The need for the proposal

- Alternatives (when there is an unresolved conflict concerning alternative uses of available resources)

- The environmental impacts of the proposed action and alternatives
- A listing of agencies and persons consulted.

Based on the EA, the following actions can occur:

- If the agency determines that the action will not have significant environmental impacts, the agency will issue a Finding of No Significant Impact (FONSI). A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.

- If the EA determines that the environmental impacts of a proposed Federal action will be significant, an Environmental Impact Statement is prepared.

I look forward to speaking with you in the morning.

Exhibit E.2: Complaint discussion, Steven Henderson to Cecile Scofield, March 26, 2018

RE: OIG Complaint

Email from CECILE T SCOFIELD: OIG Complaint

On March 26, 2018 at 5:05 PM "Henderson, Steven" <Steven.Henderson@hq.doe.gov> wrote:
Great! I will contact you tomorrow morning around 9:00AM EST.

Thank you,

Steven Henderson

Investigative Analyst

DOE-OIG

-----Original Message-----

From: CECILE T SCOFIELD [mailto:dawson.chris@comcast.net]

Sent: Monday, March 26, 2018 4:58 PM

To: Henderson, Steven <Steven.Henderson@hq.doe.gov>

Subject: Re: OIG Complaint

I will be available tomorrow morning or later this evening.

774-526-4738

On March 26, 2018 at 2:26 PM "Henderson, Steven" <Steven.Henderson@hq.doe.gov> wrote:
Cecil Scofield,

Are you available today to discuss the allegations within your complaint?

Steven Henderson

Investigative Analyst

202-586-8917

Exhibit F: Transcript, DoE FE Voicemail, NEPA Categorical Exclusion, “Hialeah Yard”, Dec. 18, 2015

Hello, Cecile. This is John Anderson from the U. S. Department of Energy. I am returning your call that you sent me on December 18th, [2015] and I understand you have talked with some of my colleagues that you have spoken with or sent emails to them.

Cecile, your question related to what governmental authority grants the license to the Hialeah American LNG facility to operate, and the fact is that that facility is not under FERC jurisdiction, that FERC has disclaimed jurisdiction, and these small-scale inland facilities are not FERC-jurisdictional.

Large-scale LNG export facilities are FERC-jurisdictional, and FERC was given that authority under the Natural Gas Act. These small-scale facilities therefore - the operation and construction of the facilities -are local authorization for construction permits.

The Department of Energy does not get involved with these small-scale facilities and their construction and operations, but we do look at these facilities under the National Environmental Policy Act – under NEPA - and In this case for the Hialeah Rail Yard facility, the Department granted that facility a Categorical Exclusion Determination under 10 CFR 1021 Subpart D of Appendix B5.7 that says that a facility that is subject of an Export Application and that is already existing, and there is only an operational change, is entitled to a Categorical Exclusion Determination from the preparation of an environmental impact statement or environmental assessment. So the Department granted a Categorical Exclusion to that facility prior to issuing an authorization to export from that facility.

So hopefully that gives you the information you were looking for. The Department doesn't have any other authority to regulate the operation and construction of that facility, and I think those are the questions you had asked so, take care.”

Exhibit G: Guy Yudin & Foster, LLP to PHMSA Re: NFE Titusville, November 2,

2016

GUY YUDIN & FOSTER, LLP.
ATTORNEYS AT LAW
55 East Ocean Boulevard
Stuart, Florida 34994

JOHN S. YUDIN**

JOANNE M. FOSTER***

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*** ** FLORIDA BAR CERTIFIED / ADMIRALTY & MARITIME LAW ALSO ADMITTED IN DISTRICT OF COLUMBIA

11/2/2016

Mr. M. Buddy Secor, Jr., PE
Operations Supervisor
Engineering and Research Division
Pipeline and Hazardous Materials Safety Administration
East Building, Room E22-109
1200 New Jersey Avenue, SE
Washington, DC 20590
Via <https://www.regulations.gov/>; fax (202) 493-2251 & US Mail to:
Docket Management System:
U.S. Department of Transportation, Docket Operations
M-30, West Building Ground Floor, Room W12-140
1200 New Jersey Avenue SE. Washington, DC 20590.

**RE: DOCKET NO. PHMSA-2016-0073 -- NEW FORTRESS ENERGY/TICO
DEVELOPMENT PARTNERS, LLC. (TICO) – REQUEST FOR SPECIAL
PERMIT FOR VARIANCE FROM TITLE 49 SECTION 193.2155(b) FOR
PROPOSED LIQUEFIED NATURAL GAS (“LNG”) PRODUCTION AND
DISTRIBUTION FACILITY IN TITUSVILLE, FLORIDA (THE “TICO
TITUSVILLE SITE”)**

Dear Mr. Secor:

Our office has been retained by United Florida Residents, LLC, and Oak Point Mobile Homeowners Association, Inc. (hereinafter collectively referred to as our “clients”) to provide the following comments in response to Docket # PHMSA-2016-0073 -- New Fortress Energy/TICO Development Partners, LLC. Request for Special Permit for Variance from Title 49 Section 193.255(b) to construct an LNG production and distribution facility at the TICO Titusville Site.

As set forth in TICO’s application and the above referenced Request for Special Permit, we understand the Applicant intends for the TICO Titusville Site to produce 1,000,000 gallons (82.6 million cubic feet) of LNG per day. We also understand LNG will be hauled by truck and/or rail from the TICO Titusville Site around the State for export from Florida’s deep water ports.

The nature and extent of production of LNG at such a facility along with the geographic location of the TICO Titusville Site causes grave concerns for our clients with regard to their health, safety and well being. These concerns exist despite whether the facility is constructed with or without a special permit. Specifically, members of United Florida Residents, LLC, and their families reside less than 2,100 feet from the TICO property boundary, while Oak Point Mobile Homeowners Association, Inc. is even closer at a distance of less than 200 feet. We would also note that Palm Harbor Mobile Village sits approximately 400 to 500 feet from the TICO property. Thus, the population within two miles of the TICO Titusville Site is in excess of 14,000 people.

Our clients are rightfully concerned about the serious risks associated with the dangerous process of converting natural gas into LNG for storage and/or transport. By approving a hazardous facility such as this so near a population center, PHMSA would be placing 14,000+ members of the public in harms way. Given the well documented volatility associated with processing LNG, any accidental or intentional spill or breach of an LNG containment tank, including piping, almost certainly would result in a catastrophic loss of life. Furthermore, with the tremendous potential for a disastrous event, it would be foolish for anyone to ignore the real possibility of terrorism at this site given the proximity to a population center.

Our clients also object to the location of this facility because pursuant to §193.2155 (b), 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, whichever is longer. The TICO Titusville facility at best, is located only 3/5th of a mile from Space Coast Regional Airport, giving further credence to the potential for terrorism at the TICO site.

Additionally we note that in an effort to substantially minimize the grave risks of operating such a site near a population center, the Pipeline Safety Act, includes provisions concerning LNG facility siting. 49 U.S.C. § 60103 encourages remote siting

of LNG facilities; consideration of general safety; consideration of geophysical risks; consideration of proximity to population centers; consideration of adequacy of emergency services; consideration of operator qualifications; and security measures, all of which are sorely lacking with the TICO Titusville Site.

Lastly, we note that in addition to creating airport setbacks to minimize risks to the public, CFR Title 49 provides numerous other rules and regulations issued by the Department of Transportation and Homeland Security, such as § 193.2057 – Thermal Radiation Protection; § 193.2059 – Flammable Vapor-Gas Dispersion Protection; and Subpart F (Operations – Emergency Procedures), §193.2509. It is apparent the TICO Titusville Site will not meet any of these requirements which are also designed to minimize the risks to the public.

Based upon the significant potential for catastrophic impacts to a population center, we expect PHMSA to demand the TICO Titusville Site demonstrate full compliance with all of the requirements of CFR Title 49, the Pipeline Safety Act as well as any and all other requirements which have been enacted to ensure a minimization of the risks to the public. We also expect that for all the above reasons, PHMSA will deny TICO's request for special permit for variance from 49 CFR 193.2155(b) to operate a LNG facility, as such authorization would clearly frustrate the entire purpose of the regulatory scheme which is designed to protect the public from the grave risks associated with LNG facilities.

Sincerely,

GUY YUDIN & FOSTER, LLP.

[signed]

John S. Yudin, Esq.

For the firm

Cc: congressman.posey@mail.house.gov

Exhibit H: Email exchange with PHMSA about Titusville LNG, September 20, 2018

CECILE T SCOFIELD<dawson.chris@comcast.net>

9/20/2018 9:53 AM

To [Secor, Buddy \(PHMSA\)](#)

Thank you for your quick response.

The disconnect between FERC, PHMSA and the Department of Energy is mind-boggling.

Cecile

On September 17, 2018 at 5:24 PM [Secor, Buddy \(PHMSA\)](#) wrote:

That is correct.

From: CECILE T SCOFIELD <dawson.chris@comcast.net>

Sent: Monday, September 17, 2018 5:17 PM

To: Secor, Buddy (PHMSA)

Subject: LNG - TITUSVILLE, FLORIDA - EMAIL TO PHMSA 9/17/18

Quick Question (see excerpts from April 2, 2018, Semi-Annual Report to the Department of Energy below): I do not believe that PHMSA ever received the Environmental Assessment you are requiring prior to approving the Variance request for this facility in order to skirt Title 49, Part 193.2155(b). Is that correct? Please advise accordingly. Thanks...

Cecile Scofield
Palm City, FL

Exhibit I: Titusville Semi-Annual Report to DoE, September 30, 2022

UNITED STATES OF AMERICA DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY
AMERICAN LNG MARKETING LLC) FE DOCKET NO. 15-19-LNG
ORDER GRANTING LONG-TERM, MULTI-CONTRACT AUTHORIZATION TO EXPORT LIQUEFIED NATURAL
GAS 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
John S. Decker jdecker@velaw.com Tel +1.202.639.6599 Fax +1.202.879.8899
Vinson & Elkins LLP Attorneys at Law Austin Dallas Dubai Houston London Los Angeles New York
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September 30, 2022

Dated September 30, 2022
Natalie Wood Office of Natural Gas Regulatory Activities
U.S. Department of Energy FE-34
P.O. Box 44375
Washington, DC 20026

Re: American LNG Marketing LLC, DOE/FE Docket No. 15-19-LNG Semi-Annual Report

Dear Ms. Wood: Pursuant to Ordering Paragraph J of DOE/FE Order No. 3656, American LNG Marketing LLC ("American LNG") hereby submits its semi-annual report describing the progress of the proposed liquefaction facility.

Development activities for the Titusville facility are ongoing, with a likely commercial operation date in late 2023 or early 2024 due to current market dynamics and ongoing regulatory processes. American LNG and its affiliates are in negotiations with potential counterparties for sales of exported LNG. Exports of LNG from the Titusville Facility will commence sometime thereafter depending on the outcome of the ongoing discussions. Please contact me if you have any questions. Respectfully submitted, /s/ John S. Decker John S. Decker Attorney for American LNG Marketing LLC

Please contact me if you have any questions.

Respectfully submitted, /s/ John S. Decker

John S. Decker Attorney for American LNG Marketing LLC

Exhibit J: PHMSA denial of TICO variance from 49 CFR 193.2155(b), October 2, 2018

U.S. Department
of Transportation

[Stamped:] OCT 2 2018

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Pipeline and Hazardous Materials Safety Administration

Mr. Matthew Davis
Senior Land Use and Environmental Planner
New Fortress Energy Management, LLC
8350 NW 52TM Terrace, Suite 300
Doral, Florida 33166

PHMSA-2016-0073

Dear Mr. Davis:

On April 13, 2016, TICO Development Partners LLC (TICO), wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) and requested a special permit for variance from the Federal Pipeline Safety Regulations of 49 CFR 193.2155(b), concerning structural requirements for operating a liquefied natural gas (LNG) facility.

On October 12, 2016, PHMSA published TICO's request in the Federal Register (FR 81 62796). A Draft Environmental Assessment (DEA) was not submitted with the application. On November 15, 2016, staff from TICO and PHMSA met to discuss the requirements of the DEA. During the discussion, PHMSA reminded TICO that the application process includes the submission of site drawings, maps, and other supporting documents. TICO asked that the meeting re-convene the following day (November 16, 2016), to obtain the LNG site drawings from its construction firm and present them to PHMSA. PHMSA staff agreed to the meeting but TICO's construction engineer was not available to meet on November 16, 2016. TICO expressed an intent to reschedule the follow-up meeting, provide the required supporting documents, and further discuss the requirements of the DEA. To date, TICO has not provided the documents necessary for PHMSA to move forward with consideration of the special permit request.

Accordingly, PHMSA is denying this request, without prejudice, because it remains incomplete. If provided with copies of the relevant site drawings and other requested information, PHMSA would consider a new special permit request from TICO.

My staff would be pleased to discuss this matter or any other regulatory matter with you. John Gale, Director, Standards and Rulemaking Division, may be contacted at 202-366-0434 on regulatory matters. Kenneth Lee, Director, Engineering and Research Division, may be contacted at 202-366-2694 on technical matters specific to this special permit application.

Sincerely,

[signed]

Afan K- Mayberry MS

Associate Administrator

Office of Pipeline Safety