5. Pivotal asserts that none of the named LNG facilities constitute an "LNG Terminal" as defined by NGA section 2(11), since they are all located inland, unlike the border-crossing pipelines and coastal LNG terminals that the Commission has traditionally regulated under NGA section 3. Pivotal further avers that there is no regulatory gap or public policy rationale that would justify exercise of the Commission's NGA section 3 jurisdiction.

Analysis of how FERC failed to follow the law

Under the Natural Gas Act (NGA), the intent of Congress to regulate the importation and exportation of natural gas was not ambiguous. See 15 U.S. Code 717b(a): *"[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so."* There is no exception for whether the natural gas is to be used as vehicular fuel (*Shell)*, nor compressed or not (*Emera*), nor liquid or not (*Pivotal*), nor how far the facility is from the ocean. The Commission frustrated the intent of Congress in considering the manner in which Compressed Natural Gas (CNG) was transported to ocean-going carriers for export in *Emera,* and compounded that frustration in *Pivotal*.

Section 3 of the Natural Gas Act gave jurisdictional authority over siting, construction, operation and maintenance of onshore and near-shore LNG import or export facilities to FERC. Quoting former Commissioner Norman Bay's Dissenting Opinion in *Emera*, the Commission's jurisdiction under the NGA "should not turn on a 440-yard truck journey."

In disclaiming jurisdiction over small-scale LNG export facilities, the majority failed to address the plain language of the NGA and, especially in *Pivotal,* has conflated Section 3(e) of the NGA, which relates to "LNG Terminals" and Section 7, which covers "transportation facilities."

Nothing in Section 3 conditions Commission's jurisdiction upon existence of a pipeline running to the port of export. FERC has substituted its policy judgment for that of Congress and has undermined national uniformity with respect to the import or export of natural gas.

Section 1(a) declares "[f]ederal regulation" of "transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." Section 1(b) provides that the Act **"shall"** apply to "the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation."

Whether pumped into a tanker ship or pumped into an ISO or other container that is transported by truck and/or rail to the dock, natural gas is still being exported. Narrowing the definition of "LNG Terminal" does not change that fact.

Some consequences of FERC's failure to follow the law

By misreading and conflating Section 3(e) of the Natural Gas Act that relates to "LNG Terminals" with Section 7 that covers "transportation facilities," FERC has created its own exemption, with these consequences among others:

- FERC has substituted its policy judgment for that of Congress.
- FERC has undermined national uniformity with respect to the import or export of gas.