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### III. BACKGROUND

#### A. FERC did not follow legislative intent

An **Act of Congress** is a statute enacted by the United States Congress. It can either be a Public Law, relating to the general public, or a Private Law, relating to specific institutions or individuals. Congress ensures agencies follow legislative intent, and agencies are not allowed to make arbitrary decisions.<sup>2</sup> An agency must “articulate a satisfactory explanation for its action.” An agency’s interpretation is not owed deference if “there is reason to suspect that the interpretation does not reflect the agency’s fair and considered judgment on the matter in question.”

FERC failed to provide a reasoned explanation in disclaiming jurisdiction over small-scale inland LNG export facilities. FERC did this in Orders responding to three Petitions for Declaratory Order: *Shell*, *Emera*, and *Pivotal*. Each of the three petitioners requested that FERC disclaim jurisdiction over their operations involving importing or exporting natural gas. Commissioner Norman Bay filed Dissenting Opinions in each of these three cases, which are included in each of the cited orders, and which we have also included in the Attachments of this Petition. In the brief quotations below from these Orders we have added some **emphasis in red**.

##### i. *Shell U.S. Gas & Power, LLC (“Shell”)*, [148 FERC ¶ 61,163 \(Sept. 4, 2014\)](#), Docket No. RP14-52-000

1. On October 16, 2013, Shell U.S. Gas & Power, LLC (Shell) filed a petition in Docket No. RP14-52-000. Shell requests the Commission declare that, by virtue of the exemption in section 1(d) of the Natural Gas Act (NGA) for the transportation and sale of natural gas that will be used as **vehicular fuel**, Shell will not be subject to any provisions of the NGA as a result of its importing liquefied natural gas (LNG) from Canada, liquefying domestic gas, and transporting Canadian and domestic LNG by truck, train, and waterborne vessel between states for the

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<sup>2</sup> APA; 5 U.S.C. § 706(2)(A).