

The result reached by the majority also suggests that, if the boundaries of a facility do not encompass the actual point of export, it cannot be an “export facility” under section 3. But the Department of Energy Delegation Order providing the Commission with authority over export facilities differentiates between the place of export and the facilities necessary to implement that export, and gives no indication that the former must be located within the latter. *See* DOE Delegation Order No. 00-004.00A, at ¶ 1.21.A (delegating to FERC, with respect to “the imports and exports of natural gas,” the authority to “[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports”).

As a policy matter, one could certainly debate the merits of whether or not FERC should assert jurisdiction over Emera’s export facility. But where Congress has spoken there is no room for such a debate. Here, Congress’s intent is clear: federal regulation over the sale of gas in foreign commerce “is necessary in the public interest.” 15 U.S.C. § 717(a).

That Congress might require federal oversight of foreign commerce should not be a surprise. *See, e.g., Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976) (“the Federal Government must speak with one voice when regulating commercial relations with foreign governments”). The Commission itself has previously recognized that “[t]he nation’s energy needs are best served by a uniform national policy” applicable to the export or import of natural gas in foreign commerce. *Sound Energy Solutions*, 106 FERC ¶ 61,279, P 27 (2004). 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.

In my view, regardless of the manner in which the CNG leaves Emera’s plant, the facility should be called what it is: a natural gas export facility. Accordingly, I respectfully dissent from the determination that Emera’s facilities are not subject to the Commission’s jurisdiction under section 3 of the Natural Gas Act.

Norman C. Bay
Commissioner