

SMALL-SCALE INLAND LNG EXPORT FACILITIES: FERC MUST CLOSE REGULATORY GAPS

Purpose of Petition for Rulemaking:

The proposed Rulemaking is needed to clear up ambiguity as to federal jurisdiction of *small-scale inland LNG export facilities* and to level the playing field for citizens who are being forced to take on *Big Energy* with virtually no federal support and/or guidance.

In a rush to disclaim jurisdiction over small-scale inland LNG export facilities, Commissioners may have believed they were making a reasonable accommodation to developers who hoped to speed up the approval process for their proposed projects, but the decision does not appear to have been thought through.

Flaws in FERC's reasoning for disclaiming jurisdiction:

First of all, the system for approving proposed LNG export projects was designed to be a collaboration between FERC and PHMSA, with FERC serving as the lead agency.¹

Secondly, PHMSA has not narrowed the description of an LNG "facility" to fit FERC's definition of an LNG "terminal." Under C.F.R. Title 49, Subpart B, Part 193, an "**LNG facility**" means a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas, and an "**LNG plant**" means an LNG facility or system of LNG facilities functioning as a unit." Therefore, small-scale inland LNG export facilities fall, in part, under PHMSA's jurisdiction.²

FERC Failed to Consider Memorandum of Understanding (MOU) executed between FERC and PHMSA:

The MOU was designed to coordinate the siting and safety review of FERC-jurisdictional LNG facilities. Under the *MOU*, the Commission is responsible for determining whether proposed FERC-jurisdictional LNG facilities are in the "public interest," and PHMSA is responsible for ensuring compliance with the Federal Safety Standards. PHMSA reviews LNG project applications and issues a *Letter of Determination* (LOD) to FERC, stating PHMSA's compliance findings. FERC then considers those findings in determining if a proposed project is in the public interest.³

While small-scale inland LNG export facilities are still required to comply with the Federal Safety Standards, PHMSA does not issue a *Letter of Determination* (LOD). For example, no LOD was issued for a small-scale inland LNG export facility that was sited, constructed and is currently operating on a very small parcel of land (under 13 acres) within close proximity to a densely populated community in Miami, Florida. No determination was made as to whether the siting and construction of the facility was in the "public's interest."

FERC failed to consider PHMSA's lack of Siting Authority over LNG Plants:

FERC is responsible for authorizing the siting and construction of onshore or near-shore LNG import or export facilities under Section 3 of the Natural Gas Act, and FERC inspects peak-shaving, LNG satellite, and vehicular fuel LNG plants connected to the interstate gas transmission system.⁴ In disclaiming jurisdiction without a formal Rulemaking delegating their authority under the Natural Gas Act to another agency, FERC remains the only federal agency that has the authority to determine if a proposed inland LNG export facility satisfies the public interest standard.