

178 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Nopetro LNG, LLC

Docket No. CP21-179-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 25, 2022)

1. On April 20, 2021, Nopetro LNG, LLC (Nopetro) filed a petition¹ requesting that the Commission declare that Nopetro's construction and operation of a natural gas liquefaction and truck loading facility and proposed transloading operations in Port St. Joe, Florida, would not be subject to the Commission's jurisdiction under section 3 or section 7 of the Natural Gas Act (NGA).² For the reasons discussed below, we grant the petition.

I. Petition for Declaratory Order

2. Nopetro, a limited liability company organized under the laws of Florida, is wholly owned subsidiary of Nopetro-CH4 Holdings, LLC. Nopetro plans to construct and operate a liquefaction facility, consisting of up to three liquefaction trains, in Port St. Joe, Florida, that will liquify up to 3.86 billion cubic feet (Bcf) per year of natural gas for export. The facility would receive natural gas from St. Joe Natural Gas Company Inc., a local distribution company (LDC) regulated by the Florida Public Service Commission.

3. Liquefied natural gas (LNG) would depart the facility in International Organization for Standardization (ISO) containers via third-party truck operators and travel roughly a quarter of a mile to a dock owned and operated by the St. Joseph's Port (Port). At the dock, the ISO containers would be loaded onto ocean-going general cargo container vessels for export and delivery to markets in the Caribbean, Central America, and

¹ Nopetro submitted a petition for a declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207 (2021).

² 15 U.S.C. §§ 717b, 717f.

South America.¹ The dock would remain available for general public use and subject to the Port's standard scheduling procedures, and could be used to export products other than ISO containers of LNG. Nopetro would construct and own a crane at the dock that would be operated by third-party stevedores and managed by the Port. The crane would be used to load the ISO containers onto ocean-going cargo vessels and, when not in use by Nopetro, would be available for use by others through the Port for a fee. Nopetro states that if this particular dock is unavailable because it is being used by another customer or is out of service, Nopetro could use any of four other general use docks located close to the liquefaction facility and owned and operated by the Port.²

II. Notice, Intervention, Protests, and Comments

4. Notice of Nopetro's petition was published in the *Federal Register* on April 28, 2021,¹ with comments, interventions, and protests due May 24, 2021. The Center for Liquefied Natural Gas, Natural Gas Supply Association, Public Citizen, Inc. (Public Citizen), and Delaware Riverkeeper Network filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.²

5. Comments and protests were filed stating that the Commission must assert jurisdiction over the facility³ and that the facility should be subject to environmental review under the National Environmental Policy Act (NEPA).⁴ Comments were also

¹ The ocean-going vessels would not be dedicated solely to the export of LNG and may include containers filled with other goods.

² Those docks are located in Panama City, Florida; Pensacola, Florida; Mobile, Alabama; and Jacksonville, Florida.

¹ 86 Fed. Reg. 22,401 (2021).

² 18 C.F.R. § 385.214(c) (2021).

³ Public Citizen May 24, 2021 Protest at 1; Delaware Riverkeeper Network May 24, 2021 Protest at 4.

⁴ Cecile Scofield May 7, 2021 Comment at 1.

filed in support of Nopetro's petition, stating the facility would stimulate the local economy in the wake of Hurricane Michael.⁵ Nopetro filed an answer to the protests on June 8, 2021.⁶ The Commission's Rules of Practice and Procedure do not permit answers to protests. Accordingly, we reject Nopetro's answer. We address the protests and comments below.

III. Discussion

6. As discussed below, we find that Nopetro's construction and operation of the liquefaction and truck loading facility and proposed transloading operations, as described in its petition,¹ would not be subject to the Commission's jurisdiction under section 3 or section 7 of the NGA.

A. NGA Section 3 Authority

7. Section 3(a) of the NGA provides for federal jurisdiction over the siting, construction, and operation of facilities used to import or export gas.² To date, the Commission has exercised its Department of Energy (DOE)-delegated section 3 authority to authorize: (1) LNG terminals located at the site of import or export; and (2) the site and facilities at the place of import/export where a pipeline crosses an international

⁵ Florida House Rep. Jason Shoaf June 8, 2021 Comment at 1; United States House Rep. Neal Dunn July 1, 2021 Comment at 1; St. Joe Natural Gas Co., Inc. June 8, 2021 Comment at 1.

⁶ Nopetro June 8, 2021 Answer.

18 C.F.R. § 385.213(a)(2) (2021).

¹ We note that in its request to export natural gas filed with the U.S. Department of Energy, Nopetro contemplates exporting LNG from existing Gulf Coast LNG terminals. *See Nopetro LNG, LLC*, FE Docket No. 20-167-LNG, DOE/FE Order No. 4671 (March 23, 2021). However, our analysis is limited to the scenario presented in Nopetro's petition, which did not include such exports.

² The 1977 Department of Energy (DOE) Organization Act (42 U.S.C. § 7151(b)) placed all section 3 jurisdiction under DOE. The Secretary of Energy subsequently delegated authority to the Commission 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." DOE Delegation Order No. 00-004.00A, section 1.21A (May 16, 2006).

border.³ Additionally, the Commission has declined to exert any place of entry/export authority over non-pipeline facilities that were not located at the actual point of export.⁵

8. Section 3(e)(1) of the NGA states that “[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.”⁴ NGA section 2(11), which was added to the act in 2005, defines an LNG terminal as:

all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States . . . , exported to a foreign country . . . , or transported in interstate commerce by waterborne vessel, but does not include—
(A) waterborne vessels used to deliver natural gas to or from any such facility; or (B) any pipeline or storage facility subject to the jurisdiction of the Commission under [section 7].:

9. The Commission makes jurisdictional determinations concerning projects, including LNG projects, on a case-by-case basis⁵ Further, the vast majority of proposals the Commission has had the opportunity to consider involved large, coastal facilities either receiving natural gas vapor from a transportation pipeline and delivering LNG into a large, ocean going bulk carrier, or receiving LNG from a large bulk carrier and delivering vapor into a pipeline for subsequent transportation. Based on this experience, we have considered three criteria when determining whether a facility is an LNG import or export terminal subject to the Commission’s jurisdiction: (1) whether an LNG terminal

³ In addition to pipelines that cross the international border with Canada and Mexico, the Commission has also asserted authority over the portions of subsea pipelines planned to cross the ‘border’ of the Exclusive Economic Zone between the U.S. and the Bahamas. *See, e.g., Tractebel Calypso Pipeline, LLC*, 106 FERC ¶ 61,273 (2004).

⁵ *See Emera CNG, LLC*, 148 FERC ¶ 61,219 (2014) (*Emera*) (finding that a facility located a quarter mile from the point of export is not an export facility under NGA section 3); *Andalusian Energy, LLC*, 174 FERC ¶ 61,107 (2021) (*Andalusian*) (finding that a facility located 120 to 300 feet from the point of export is not an export facility under NGA section 3).

⁴ 15 U.S.C. § 717b(e)(1).

· 15 U.S.C. § 717a(11).

⁵ *Gulf Oil Limited Partnership*, 148 FERC ¶ 61,029, at P 8 (2014) (citing *Marathon Oil Company*, 53 F.P.C. 2164 (1975)).

would include facilities dedicated to the import or export of LNG;⁶ (2) whether the facility would be located at or near the point of import or export; and (3) whether the facility would receive or send out gas via a pipeline⁷ For LNG terminals operating in interstate commerce the Commission has considered a fourth criterion – whether after leaving the facility the LNG is reintroduced into a pipeline such that the LNG terminal facilitates the interstate transportation of natural gas by pipelines.

10. Nopetro's liquefaction facility is not an LNG terminal subject to our jurisdiction under section 3 of the NGA because it is not located at the point of export such that LNG can be directly transferred to vessels for export⁸ The LNG-filled ISO containers would leave Nopetro's facility and be transported by truck approximately a quarter of a mile to

⁶ See *The Gas Company, LLC*, 142 FERC ¶ 61,036 (2013) (*The Gas Company*) (finding no jurisdiction where the same facilities would be used to import ISO containers full of LNG and other ISO containers filled with general goods).

⁷ See *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006 (2015) (*Pivotal II*) (finding that inland liquefaction facilities that transport ISO containers by truck to the point of export are not LNG terminals).

⁷ See *New Fortress Energy LLC*, 174 FERC ¶ 61,207, at P 10 (2021) (*New Fortress*), *reh'g denied*, 176 FERC ¶ 61,031. The natural gas here is received from an LDC pipeline, so this criterion is met.

⁸ *Id.* P 45 (“an LNG terminal receiving LNG transported in interstate commerce by waterborne vessel would be subject to section 7 jurisdiction if any of the gas received at the terminal would be revaporized and injected into a jurisdictional pipeline. Such facilities would be links in an interstate chain, liquefying and regasifying in order to enable gas to be ferried across a stretch of water interrupting what would otherwise be a continual flow of gas by pipeline from one state to another.”).

⁸ In its petition, Nopetro incorrectly argues that the facility would not be an LNG terminal because the LNG produced at the facility would not be reintroduced into a pipeline. Nopetro April 20, 2021 Petition for Declaratory Order at 19. See, however, *New Fortress*, 174 FERC ¶ 61,207 at P 27 (explaining the distinction between LNG facilities operating in interstate commerce, where the Commission exerts jurisdiction only where the liquefaction of gas to LNG enables interstate transportation via pipeline, versus LNG facilities operating in foreign commerce, where the Commission exerts jurisdiction over facilities that receive or send out gas via pipeline).

the general use dock.⁹ At the dock, a crane would load the ISO containers onto general use cargo ships, which would be the point of export. Further, the crane located at the dock would not be subject to NGA section 3 jurisdiction because, as the Commission has previously found, general-use pier facilities are outside the scope of the natural gas facilities to be regulated by the Commission.¹⁰ Here, although the crane would be owned by Nopetro, it would be operated by third-party stevedores, be managed by the Port, and be available for general use. Thus, Nopetro's facility is not an LNG terminal as defined by the NGA.

11. Commenters argue that Nopetro's facility should be considered close enough to the point of export to meet the NGA's definition of an LNG terminal and therefore be subject to the Commission's jurisdiction.¹¹ Public Citizen asserts that Nopetro is trying to evade Commission oversight by locating its liquefaction facility a short distance from the export point.¹² Public Citizen argues that because Nopetro's facility is only a quarter of a mile away from the export point it is in effect directly transferring LNG to an ocean-going LNG tanker, notwithstanding the LNG being trucked in ISO containers from the facility to the export point.¹³ Delaware Riverkeeper Network contends that the Commission should abandon its precedent that requires LNG to be directly transferred to LNG tankers from the LNG facility because nothing in the plain language of the NGA indicates that LNG loaded onto a waterborne vessel from a truck or train is not "direct" enough to be considered located at the point of export.¹⁴

12. We disagree. Section 2(11) of the NGA defines an LNG terminal as including "all natural gas facilities located *onshore* or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is . . . exported to a foreign country from the United States."¹⁵ The term "onshore," when used in conjunction

⁹ If the dock in Port St. Joe is not available, the LNG-filled ISO containers could be trucked to other general use docks located farther away in Panama City, Florida; Pensacola, Florida; Mobile, Alabama; and Jacksonville, Florida.

¹⁰ *The Gas Company*, 142 FERC ¶ 61,036 at P 14; *Andalusian*, 174 FERC ¶ 61,107 at P 11.

¹¹ Public Citizen May 24, 2021 Protest at 1; Delaware Riverkeeper Network May 24, 2021 Protest at 4.

¹² Public Citizen May 24, 2021 Protest at 4.

¹³ *Id.* at 4-5.

¹⁴ Delaware Riverkeeper Network May 24, 2021 Protest at 5.

¹⁵ 15 U.S.C. § 717a(11) (emphasis added).

with “or in State waters,” and combined with the fact that section 3 applies to LNG that is “transported in interstate commerce by waterborne vessel,” connotes that section 2(11) applies to facilities that are located on or near the water or the coast.¹⁶ Although the Commission has not specified that LNG facilities must be within a certain distance from the point of export, we have clarified that LNG terminals must be capable of transferring LNG onto water-borne vessels.¹⁷ Trucking ISO containers filled with LNG from the facility to the point of export where the containers will be loaded onto general cargo ships using facilities that are available for general public use (i.e., the dock and crane), as is the case for the Nopetro facility, does not meet this standard.¹⁸

13. Delaware Riverkeeper Network also argues that even if the Nopetro facility is not an LNG terminal, it is still subject to the Commission’s jurisdiction as an export facility under NGA section 3(a).¹⁹ Delaware Riverkeeper Network claims that section 3(a) applies to export facilities generally, a broader category than just LNG terminals, and if the Commission does not exert jurisdiction under section 3(a) to determine whether the facility is in the public interest, the Commission will be abdicating its responsibility under the NGA.²⁰ Additionally, commenters argue that *Emera* and *Andalusian* are not relevant precedent for our analysis because those cases examined the jurisdiction of compressed natural gas (CNG) facilities rather than LNG facilities.²¹

14. As we explain above, the Commission has to date only exerted its delegated authority under NGA section 3(a) over LNG terminals located at the site of import or export and over facilities at the place of import/export where a pipeline crosses an

¹⁶ *Pivotal LNG, Inc.*, 148 FERC ¶ 61,164 (2014) (*Pivotal I*) (Bay, Comm’r, concurring at 61,826); see also *Pivotal II*, 151 FERC ¶ 61,006 at P 11 (finding inland liquefaction facilities that truck LNG to the point of export are not LNG terminals subject to the Commission’s jurisdiction).

¹⁷ *New Fortress*, 174 FERC ¶ 61,207 at P 17 (citing *Pivotal II*, 151 FERC ¶ 61,006 at P 12).

¹⁸ The Commission has not been presented with a project that would include a dedicated LNG facility at the point of import/export that only imported or exported LNG through ISO containers; thus, we have not considered whether such a facility would be jurisdictional.

¹⁹ Delaware Riverkeeper Network May 24, 2021 Protest at 6.

²⁰ *Id.* at 6-7.

²¹ Public Citizen May 24, 2021 Protest at 4; Delaware Riverkeeper Network May 24, 2021 Protest at 5-6.

international border.²² Although commenters correctly note that *Emera* and *Andalusian* examine the jurisdiction of CNG facilities rather than LNG facilities, these cases are relevant to our analysis. In both *Emera* and *Andalusian*, the Commission disclaimed jurisdiction over facilities that: (1) would be located approximately a quarter of a mile from the point of export; (2) trucked CNG-filled ISO containers to the point of export;²³ and (3) would not be capable of transferring CNG directly into an ocean-going vessel for export.²⁴ With the exception of exporting LNG rather than CNG, Nopetro's facilities are essentially identical. Thus, consistent with *Emera* and *Andalusian*, the Nopetro facility would not be subject to our section 3 jurisdiction over import and export facilities.

B. NGA Section 7 Authority

15. Section 7 of the NGA requires that a natural gas company or person that will be a natural gas company obtain a certificate of public convenience and necessity from the Commission before undertaking jurisdictional transportation and sales for resale of natural gas in interstate commerce or the construction or operation of facilities to engage in natural gas transportation that is subject to the Commission's jurisdiction.²⁵ In interpreting the scope of our NGA section 7 jurisdiction, the Commission has determined that our regulatory authority only applies to the transportation in interstate commerce of gas by pipeline and does not apply to gas transported by other means, including by truck or train.²⁶

16. We find that Nopetro's liquefaction facility and associated transloading operations would not facilitate the interstate transportation of natural gas by pipeline and therefore would not be subject to the Commission's section 7 jurisdiction. The LNG would leave Nopetro's facility in ISO containers and be transported via truck to a dock, where it would be loaded onto ocean-going cargo vessels for export and delivery to the Caribbean, Central America, and South America. None of the LNG sent out from the facility would be regasified and introduced into a domestic downstream interstate pipeline; therefore, the facility is not subject to the Commission's section 7 jurisdiction.

²² *Andalusian*, 174 FERC ¶ 61,107 at P 9.

²³ *Emera*, 148 FERC ¶ 61,219 at P 7; *Andalusian*, 174 FERC ¶ 61,107 at P 4.

²⁴ *Emera*, 148 FERC ¶ 61,219 at P 13; *Andalusian*, 174 FERC ¶ 61,107 at P 11.

²⁵ 15 U.S.C. § 717f.

²⁶ See *Pivotal I*, 148 FERC ¶ 61,164 at P 7 (citing *Exemption of Certain Transport and/or Sales of LNG from the Requirements of Section 7(c) of the NGA*, 35 Fed. Reg. 3,076 (Feb. 17, 1970); *Order Terminating Proposed Rulemaking Proceeding*, 49 FPC 1078 (1973)); see also *Gulf Oil Limited Partnership*, 148 FERC ¶ 61,029, at P 8 (2014).

C. Regulatory Gap

17. Commenters argue that finding the Nopetro facility and associated transloading operations non-jurisdictional would create a regulatory gap.²⁷ Specifically, commenters point to the DOE’s new rule creating a categorical exclusion under NEPA for “[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the [NGA] and any associated transportation of natural gas by marine vessel.”²⁸ Commenters argue that, as a result of this categorical exclusion, Nopetro’s facility will not be subject to NEPA review unless the Commission finds it jurisdictional, thus resulting in a regulatory gap.²⁹

18. As the court explained in *ExxonMobil Gas Marketing Company v. FERC*, the “need for regulation cannot alone create authority to regulate,” and “jurisdiction may not be presumed based solely on the fact that there is not an express withholding of jurisdiction.” As discussed above, we find that Nopetro’s facility is not a jurisdictional LNG terminal or otherwise subject to the Commission’s jurisdiction³⁰ However, we note that although the facility is not subject to our environmental review, the facility has been subject to NEPA review through DOE’s issuance of a categorical exclusion, and Nopetro will be required to obtain various local, state, and federal permits³¹ Additionally, the trucking operations will be subject to the U.S. Department of Transportation’s regulations, and Nopetro’s export operations will be subject to the regulations and requirements of the U.S. Environmental Protection Agency under the Clean Water Act, Clean Air Act, and the Hazardous Materials Transportation Act.³²

²⁷ Delaware Riverkeeper Network May 24, 2021 Comment at 6; Cecile Scofield May 7, 2021 Comment at 1.

²⁸ Delaware Riverkeeper Network May 24, 2021 Comment at 6 (quoting NEPA Implementing Procedures, DOE, 85 Fed. Reg. 78,197, 78,205 (2020)).

²⁹ Delaware Riverkeeper Network May 24, 2021 Comment at 7; Cecile Scofield May 7, 2021 Comment at 1.

³⁰ 297 F.3d 1071, 1088 (D.C. Cir. 2002).

³¹ To the extent that Commenters argue that this action requires review under NEPA, our action is categorically excluded. See 18 C.F.R. § 380.4(a)(1) (2021).

³² See DOE Categorical Exclusion Determination, Nopetro LNG, LLC, FE Docket No. 20-167-LNG, March 22, 2021.

³¹ Nopetro April 20, 2021 Petition for Declaratory Order at 23.

³² *Id.*

IV. Conclusion

19. For the foregoing reasons, we find that Nopetro's liquefaction and truck loading facility and associated transloading operations in Port St. Joe would not be subject to the Commission's jurisdiction under section 3 or section 7 of the NGA.

The Commission orders:

Nopetro LNG, LLC's petition for declaratory order is granted.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Nopetro LNG, LLC

Docket No. CP21-179-000

(Issued March 25, 2022)

DANLY, Commissioner, *concurring*:

I concur with the Commission's finding that Nopetro LNG, LLC's liquefaction and truck loading facility and associated transloading operations in Port St. Joe, Florida would not be subject to the Commission's jurisdiction¹ under section 3 or section 7 of the Natural Gas Act. I write separately merely to express my continued disagreement with the Commission's expansive view of its jurisdiction in *New Fortress Energy, LLC*

For these reasons, I respectfully concur.

James P. Danly
Commissioner

¹ See *Nopetro LNG, LLC*, 178 FERC ¶ 61,168 (2022).

· 15 U.S.C. §§ 717b, 717f.

See *New Fortress Energy LLC*, 174 FERC ¶ 61,207 (Danly, Comm'r, dissenting), *reh'g denied*, 176 FERC ¶ 61,031 (2021) (Danly, Comm'r, dissenting).