

171 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

New Fortress Energy LLC

Docket No. CP20-466-000

ORDER TO SHOW CAUSE

(Issued June 18, 2020)

1. In this order, pursuant to Rule 209(a)(2) of the Commission's Rules of Practice and Procedure,¹ we direct New Fortress Energy LLC (New Fortress Energy) to show cause why the liquefied natural gas (LNG) handling facility it has constructed adjacent to the San Juan Combined Cycle Power Plant at the Port of San Juan in Puerto Rico is not subject to the Commission's jurisdiction under section 3 of the Natural Gas Act (NGA).²

I. Background

2. New Fortress Energy, through its local subsidiary NFEnergía, LLC, has constructed and placed into service an LNG import facility in San Juan, Puerto Rico, which will supply LNG to industrial users and microgrids via trucks, as well as supply natural gas to Units 5 and 6 of the adjacent San Juan Combined Cycle Power Plant, owned and operated by the Puerto Rico Electric Power Authority (PREPA).³ Based on information available to the Commission, it appears that the facility consists of a receiving pier for an LNG carrier; an LNG hose that would connect to the LNG carrier; a truck loading facility; skid-mounted regasification units; and potentially, small capacity onshore storage of LNG.⁴ The facilities also likely include piping from the regasification units to deliver natural gas

¹ 18 C.F.R. § 385.209(a)(2) (2019).

² 15 U.S.C. § 717b (2018).

³ New Fortress Energy LLC, Annual Report (Form 10-K), p. 4 (Dec. 31, 2019).

⁴ Q2 2019 Investor Presentation, New Fortress Energy (August 2019) p. 24, <https://ir.newfortressenergy.com/static-files/75d2acf7-ebd5-44cc-91d5-5c6a2e3388f5>.

to the adjacent power plant.⁵ LNG carriers would be docked for numerous days at the facility and would supply LNG directly, or with limited onshore buffer storage, to trucks and to the power plant through the regasification units.⁶

II. Discussion

3. 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.”⁷ NGA section 2(11) 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].”⁸ Further, to date, the facilities which the Commission has viewed as “LNG terminals” for purposes of its jurisdiction have all been (1) connected to a pipeline that delivers gas to or sends gas from the facility and (2) located at the point of import or export such that LNG is directly transferred to or from an ocean-going, bulk-carrier LNG tanker.⁹

4. New Fortress Energy’s LNG facilities in San Juan appear to meet the above criteria, and would therefore be subject to the Commission’s jurisdiction pursuant to

⁵ NFE Business Update, New Fortress Energy (March 18, 2019), p. 10, <https://ir.newfortressenergy.com/static-files/39bfc12d-ea34-4bbb-a997-3315bf0063d8>.

⁶ Maria Miranda, *San Juan powerplant to be supplied natural gas in a few months*, CARIBBEAN BUSINESS (March 15, 2019), <https://caribbeanbusiness.com/san-juan-powerplant-to-be-supplied-natural-gas-in-a-few-months/?cn-reloaded=1>.

⁷ 15 U.S.C. § 717b(e)(1).

⁸ 15 U.S.C. § 717a(11).

⁹ See *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006, at P 11 (2015).

section 3 of the NGA.¹⁰ In *EcoEléctrica, L.P.*¹¹ and *Aguirre Offshore GasPort, LLC*,¹² the Commission exercised its jurisdiction in approving two LNG import facilities in Puerto Rico that function similarly to the New Fortress Energy facilities. Like the facilities constructed by New Fortress Energy, the *EcoEléctrica* facilities deliver regasified LNG to an adjacent power plant.¹³ Further, although the New Fortress facilities do not include a large-scale LNG storage tank similar to the *EcoEléctrica* facilities,¹⁴ in *Aguirre*, the Commission exercised jurisdiction in authorizing, as an LNG terminal, facilities that did not include any LNG storage.

5. Moreover, New Fortress Energy's facilities are not similar to those the Commission has found to be non-jurisdictional. The Commission has interpreted the definition of an LNG terminal under section 2(11) of the NGA as excluding: (1) facilities where the LNG would be subsequently shipped via vessel, truck, or train and not sent out by pipeline;¹⁵ (2) inland LNG facilities that are incapable of directly loading LNG onto ocean-going, bulk-carriers for transfer;¹⁶ and (3) proposals where there are no dedicated LNG

¹⁰ Because the definition of LNG terminal includes natural gas "transported in interstate commerce by waterborne vessel," the Commission's jurisdiction would also extend to LNG terminals in Puerto Rico that receive LNG produced in the United States.

¹¹ *EcoEléctrica, L.P.*, 75 FERC ¶ 61,157 (1996) (*EcoEléctrica*) (authorizing an LNG import terminal consisting of: (1) a marine terminal with a pier for unloading LNG tankers; (2) an LNG storage tank; (3) an LNG vaporization system; and (4) various other ancillary equipment, which would transfer regasified LNG from the terminal to an adjacent power plant and a powerplant approximately 1.6 miles away).

¹² *Aguirre Offshore GasPort, LLC*, 152 FERC ¶ 61,071 (2015) (*Aguirre*) (authorizing an offshore berthing platform and a 3.8-mile-long subsea pipeline that would deliver gas to a power plant).

¹³ The *EcoEléctrica* facilities also deliver gas to a nearby powerplant via an approximately 1.6-mile-long pipeline.

¹⁴ As noted above, the New Fortress Energy facility may include small-scale onshore storage.

¹⁵ *Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163 (2014) (finding that an LNG import facility would not be jurisdictional because it would not ultimately regasify the LNG and inject it into a pipeline).

¹⁶ *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006 (2015) (finding that inland liquefaction facilities that trucked LNG in International Standards Organization (ISO) containers for export were not LNG terminals).

facilities.¹⁷ Here, it appears that New Fortress Energy has constructed dedicated LNG facilities that directly offload LNG from tankers, regasify the LNG, and then transport the natural gas to an adjacent power plant, presumably via a short pipeline.¹⁸

6. Given the above, it appears that New Fortress Energy's LNG import facilities located in San Juan are subject to the Commission's jurisdiction, and New Fortress Energy is directed to show cause why its construction and operation of the subject facilities are not subject to the prior authorization requirements of section 3 of the NGA.¹⁹

¹⁷ *The Gas Company, LLC*, 142 FERC ¶ 61,036, at P 14 (2013) (finding facilities to be non-jurisdictional that would be used to facilitate the transportation of LNG in ISO containers, because the ships would also carry ISO containers filled with other goods, and the port's existing equipment would be used to handle both LNG ISO containers and containers filled with other products, such that there would be no identifiable "natural gas facilities").

¹⁸ The Commission's jurisdiction over the LNG terminal does not turn on whether the Commission has jurisdiction over the pipeline connecting the LNG terminal to the power plant. For example, the EcoEléctrica LNG terminal connects to a non-jurisdictional pipeline that delivers gas to a nearby powerplant. Additionally, in *Annova LNG Common Infrastructure, LLC* and *Texas LNG Brownsville LLC*, the Commission approved LNG export terminals that would be supplied via non-jurisdictional intrastate pipelines. *Annova LNG Common Infrastructure, LLC*, 169 FERC ¶ 61,132, at P 4 (2019), *order on reh'g*, 170 FERC ¶ 61,140 (2020) ("The terminal will receive natural gas via a tie-in to a non-jurisdictional intrastate natural gas pipeline to be constructed from a receipt point on the existing intrastate pipeline of Valley Crossing Pipeline, LLC, approximately nine miles away from the terminal site."); *Texas LNG Brownsville LLC*, 169 FERC ¶ 61,130, at P 4 (2019), *order on reh'g*, 170 FERC ¶ 61,139 (2020) ("The terminal will receive natural gas via an approximately 10.2-mile-long non-jurisdictional intrastate natural gas pipeline that would interconnect with the Valley Crossing Pipeline.").

¹⁹ Because the Commission does not have complete information regarding the facilities, New Fortress Energy must include a detailed description of the facilities and their operation.

The Commission orders:

Within 30 days, New Fortress Energy is directed to show cause why its San Juan LNG facilities are not subject to Commission jurisdiction under section 3 of the NGA.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.