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April 20, 2021

Via eFiling

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: *Nopetro LNG, LLC*
Docket No. CP21-

Dear Secretary Bose:

Pursuant to Rule 207 of the rules and regulations of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.207 (2020), Nopetro LNG, LLC (“Applicant”) submits the enclosed Petition for Declaratory Order via eFiling. The Applicant’s filing fee in the amount of \$31,160 was paid via wire transfer on Friday, April 16, 2021, consistent with the Commission’s General Payment Instructions¹ and a copy of the confirmation record is enclosed.

Please do not hesitate to contact the undersigned if you have any questions in this matter.

Respectfully submitted,

/s/ Monique Watson

Monique Watson
Attorney for Nopetro LNG, LLC

Enclosures

¹ Available at https://www.ferc.gov/sites/default/files/2020-04/general-payment-instructions_2.pdf.

Payment Display

Ref. No.: 20211060073300

IMAD: [REDACTED]

OMAD: [REDACTED]

Amount:	31,160.00	Trancode:	DOMESTIC	Payment Method:	FED	Tpl ID:	BCERT
Val. Date:	04/16/2021	Category:		Msg. Type:	1000	Status:	PNRM
Sender:	063112786	Dept.:	BCERT	Bus. Function:	CTR	Dir.:	OUT

Party / Bank Details

Originating Party

Type: Account ID: [REDACTED]
Name: NOPETRO MANAGEMENT LLC
Address: 14 NE 1ST AVE
SUITE 1209
MIAMI FL 33132
Country: US

Receiving Party

Type: ABA ID: 021030004
Name: TREAS NYC/FUNDS TRANSFER DIVISION
Address: WASHINGTON, DC
Receiver Info:

Beneficiary's Bank

Type: ID:
Name:
Address:
Country:
BBK Info:
Advice Meth.
Advice Info:

Beneficiary Party

Type: Account ID: 89000004
Name: FERC
Address:
Country: US
BNF Info:
Advice Meth. NONE
Advice Info:

Debit Fees: 0.00 Credit Fees: 0.00 Waive Fees:

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Nopetro LNG, LLC

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Docket No. CP21-_____

**PETITION FOR DECLARATORY ORDER
OF NOPETRO LNG, LLC**

Jonathan "Jack" Locke
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April 20, 2021

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Nopetro LNG, LLC) **Docket No. CP21-_____**
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**PETITION FOR DECLARATORY ORDER
OF NOPETRO LNG, LLC**

Pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(2) (2020), Nopetro LNG, LLC (“Nopetro”) hereby petitions for a declaratory order confirming that Nopetro’s proposed project that includes a small-scale facility that produces liquefied natural gas (“LNG”) to be transported in International Organization for Standardization (“ISO”) containers via trucks to a dock (the “Dock”), where the LNG-filled containers will be placed onto general cargo waterborne vessels bound for Central and South America and the Caribbean (collectively, the “Project”), is not subject to the Commission’s jurisdiction under the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717, *et seq.* (2018).

Nopetro respectfully requests that the Commission act on this Petition by no later than July 30, 2021, to allow Nopetro to reach a final investment decision, secure financing for construction and meet requests for the Project to begin the process of securing necessary permits and/or commence construction activities in late 2021 or the first quarter of 2022.¹

¹ As required by 18 C.F.R. §§ 381.302(a) and 385.207(a)(2) (2020), Nopetro has submitted the applicable filing fee of \$31,160, consistent with the Commission’s General Payment Instructions and has attached a proof of payment to the cover letter submitted with the filing of this Petition for Declaratory Order. *See* Annual Update of Filing Fees, 174 FERC ¶ 62,108 (2021). *See also* General Payment Instructions, available at < https://www.ferc.gov/sites/default/files/2020-04/general-payment-instructions_2.pdf >.

I. Communication and Correspondence

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, the names and mailing addresses of the persons designated to receive service and to whom correspondence and communication concerning this proceeding should be addressed are as follows:

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II. Description of the Petitioner

The exact legal name of the applicant is Nopetro LNG, LLC. It is a limited liability company organized under the laws of the State of Florida, with its principal place of business at 14 N.E. 1st Ave., Suite 1209, Miami, Florida 33132. Nopetro is a wholly-owned subsidiary of Nopetro-CH4 Holdings, LLC ("Nopetro-CH4 Holdings"), which is also a limited liability company organized under the laws of the State of Florida. Nopetro-CH4 Holdings is owned by CH4 Venture, LLC (38.1759%), Nopetro, LLC (36.8241%) and TLW CNG, LLC (25%), all limited liability companies organized under the laws of the State of Florida.

III. Background

Nopetro intends to design, finance, construct, own, operate and maintain a small-scale facility that produces liquefied natural gas on 60 acres of private land in Port St. Joe, Florida that

will export approximately 3.86 Bcf/year of LNG (the “Facility”).² The Facility will receive natural gas through two lateral lines from St. Joe Natural Gas Company, Inc. (“St. Joe Natural Gas Company”). St. Joe Natural Gas Company is a local distribution company (“LDC”) that is regulated by the Florida Public Service Commission (“Florida PSC”). It operates in accordance with a tariff filed with the Florida PSC.³ The interconnection with St. Joe Natural Gas Company will provide Nopetro with access to stable and economic natural gas supply options.

The natural gas received at the Facility will be processed into LNG, and Nopetro plans eventually to expand the Facility to three natural gas liquefaction trains. The Facility will not have any bunkering infrastructure, will not be connected to a pipeline that moves LNG from the Facility to the Dock and will not be capable of transferring LNG directly into LNG bulk carriers. Nor will there be a pipeline connecting the Dock to the interstate or intrastate natural gas grid. Instead, a third-party truck operator will transport the LNG in approved ISO containers⁴ from the Facility to a designated area subleased from Nopetro, where the containers will move onward to a third-party stevedore at the Dock. Under the proposed Project design, the truck route is approximately 1,329 feet or roughly a quarter mile from the Facility to the primary Dock where the ocean-going vessels will be loaded with the LNG-filled ISO containers and other containers filled with general cargo.

² On December 28, 2020, Nopetro filed an application for LNG export authorization with the Department of Energy, Office of Fossil Energy in FE Docket No. 20-167-LNG, in which Nopetro requested authority for small-scale export of LNG to (1) any country with which the United States currently has, or in the future may enter into, a free trade agreement requiring national treatment for trade in natural gas and (2) any country with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas with which trade is not prohibited by United States law or policy. On March 23, 2021, DOE granted the requested authorization to export LNG to free trade agreement and non-free trade agreement countries. *See Nopetro LNG, LLC*, FE Docket No. 20-167-LNG, DOE/FE Order No. 4671 (March 23, 2021).

³ *See* Natural Gas Tariff of St. Joe Natural Gas Company, Inc., Original Volume No. 4 (effective July 17, 2008), available at < <https://img1.wsimg.com/blobby/go/78a3cfd6-8df8-4b9d-b233-4b47417d0be4/downloads/tariff.pdf?ver=1609989214783> >.

⁴ Nopetro intends to utilize ISO containers that have been specified as ASME tanks and have been approved by the Department of Transportation for transporting LNG.

At the Dock, the ISO containers will be loaded onto ocean-going general cargo container vessels for export and delivery to emerging markets in the Caribbean, Central America and South America.

The Dock will be owned and operated by St. Joseph's Port (the "Port") and will remain available for general public use and subject to the Port's standard scheduling procedures. Consequently, the general public may utilize the Dock to export products other than LNG-filled ISO containers onto waterborne carriers. Nopetro will own and construct the crane that will be operated by a third-party stevedore and managed by the Port. The crane will be used to load the ISO containers onto waterborne cargo vessels at the Dock and will be available for hire to others by the Port for a fee.

LNG-filled ISO containers will be loaded onto general cargo ships that will transport containerized goods other than LNG.⁵ These vessels cannot directly load natural gas in any form because there is no pipeline from the Facility to the Dock. If the Dock is out-of-service for repairs or not available because it is being used by another Port customer, there are four other Port-owned and operated general-use docks close to the planned Facility (Panama City, FL; Pensacola, FL; Mobile, AL; and Jacksonville, FL) that have sufficient draft for the types of general cargo vessels that Nopetro will use to export the LNG-filled ISO containers. The closest of these docks is approximately 36 miles from the Facility.

⁵ These ocean-going vessels will not be special-use vessels dedicated solely to the export of LNG, but may include containers filled with other goods, such as wood chips. *See, e.g.*, "Port of Port St. Joe to open for business with wood chips export project to Honduras," Florida Ports Council (Oct. 1, 2020), available at < <https://flaports.org/2020/10/01/port-of-port-st-joe-to-open-for-business-with-wood-chips-export-project-to-honduras/> >.

IV. Requested Rulings

In the Commission's recent Order on Show Cause regarding New Fortress Energy LLC,⁶ the Commission observed that it had not been presented with a project that would include a dedicated LNG facility at the point of import or export that only imported or exported LNG through ISO containers; thus, it has not considered whether such a facility would be jurisdictional. Nopetro respectfully submits that while its Project is not located at the point of export and therefore does not fit that precise scenario, LNG produced at Nopetro's Facility will be transported and exported only through ISO containers. Accordingly, this Petition presents an opportunity for the Commission to confirm that because the LNG will be exported only through ISO containers at the Dock, the Project is non-jurisdictional.

Nopetro seeks a ruling that its proposed Project is not subject to the Commission's jurisdiction under sections 3 or 7 of the NGA. Specifically, in order to move forward with its investment and new operations, Nopetro seeks the following rulings:

1. Nopetro's Project, including a possible future expansion of the Facility to three trains, is not an LNG terminal and is not jurisdictional under section 3 of the NGA.
2. None of the other facilities associated with the Project are jurisdictional under NGA Section 3.
3. The planned export of LNG-filled containers via truck movement to the Dock for ultimate transport by a general-use waterborne carrier is not a pipeline movement or otherwise subject to the Commission's jurisdiction under NGA section 7.

⁶ *New Fortress Energy LLC*, 174 FERC ¶ 61,207 at P 18 n.26 (2021) ("*New Fortress*").

V. Discussion

A. Declaratory Relief is Appropriate

The Commission has discretion to issue declaratory orders to “remove uncertainty,”⁷ particularly uncertainty as to the jurisdictional status of natural gas activities requiring significant investment.⁸ The certainty of a declaratory order is necessary for Nopetro, its potential customers, and its investors to move forward with this new Project, which will link the abundant supplies of clean-burning natural gas produced in the United States with emerging markets outside the United States, including purchasers in such markets that would not otherwise have ready access to U.S.-produced natural gas. This natural gas will serve as a cleaner fuel substitute for the diesel fuel currently consumed throughout these countries.

The Commission makes jurisdictional determinations regarding LNG projects on a case-by-case basis.⁹ As the Commission observed in *New Fortress*, the “vast majority” of proposals considered by the Commission have “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,”¹⁰ which is not the case here. The Commission has considered four criteria when determining whether a facility is an LNG import or export terminal subject to its jurisdiction:

- (1) whether an LNG terminal would include facilities dedicated to the import or export of LNG;
- (2) whether the facility would be located at the point of

⁷ 5 U.S.C. § 554(e); 18 C.F.R. § 385.207(a)(2).

⁸ See, e.g., *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006 (2015) (“*Pivotal*”); *Emera CNG, LLC*, 148 FERC ¶ 61,219 (2014) (“*Emera*”); *Andalusian Energy, LLC*, 174 FERC ¶ 61,107 (2021) (“*Andalusian*”).

⁹ See, e.g., *New Fortress*, 174 FERC ¶ 61,207 at P 10 (citing *Gulf Oil Ltd. P’ship*, 148 FERC ¶ 61,029, at P 8 (2014), citing *Marathon Oil Co.*, 53 F.P.C. 2164 (1975)).

¹⁰ *New Fortress*, 174 FERC ¶ 61,207 at P 10.

import or export; (3) whether the facility would receive or send-out gas via a pipeline; and (4) 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.¹¹

Both the NGA and Commission precedent support granting the declaratory rulings sought herein because Nopetro's Facility is not a jurisdictional LNG terminal under the Commission's criteria.

As demonstrated below, construction, operation, and maintenance of the Project will not fall within the scope of facilities for which the Commission has or should retain jurisdiction under NGA section 3; and the movement of LNG in ISO containers does not involve the transportation of natural gas in interstate commerce via a pipeline as contemplated under NGA section 7. The point of export of the LNG-filled ISO containers, at the Dock, is a general-use pier that is not connected to the interstate or intrastate natural gas transportation system.¹² The Commission has previously declined to exercise its NGA section 3 jurisdiction over such complementary facilities, and the circumstances do not warrant a different result here. Likewise, after leaving the Facility, the LNG will not be reintroduced into a jurisdictional pipeline, or any pipeline, such that Nopetro's Project facilitates the interstate transportation of natural gas by pipeline.¹³ Accordingly, declaratory relief is appropriate and will provide the necessary certainty to move forward with constructing and operating Nopetro's Project.

¹¹ *Id.*

¹² *See, e.g., Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163 at P 43 (2014) ("*Shell*") (observing that the Commission had only "asserted NGA jurisdiction under section 3 or 7 over natural gas pipeline and storage facilities, including LNG facilities, that receive and/or send out gas by pipeline" and finding that waterborne vessels, trucks, and/or trains used to transport LNG were not "natural gas facilities").

¹³ *See id.* at 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").

B. The Project Is Not an LNG Terminal

Under NGA section 3(e), the Commission has jurisdiction over the siting, construction, expansion and operation of LNG terminals.¹⁴ NGA section 2(11), which was added to the NGA in 2005, defines an LNG terminal to include:

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 from a foreign country, exported to a foreign country from the United States, 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].¹⁵

Because NGA section 2(11) is “ambiguous and broad,”¹⁶ the Commission has adopted principles to define and limit its scope.¹⁷ The Commission should follow those principles here and decline to exercise jurisdiction over the Facility and its complementary facilities (ISO containers, trucks, the Dock, crane and waterborne vessels).

A facility’s physical configuration and function determine whether it is an LNG terminal under the NGA.¹⁸ The Project’s characteristics are consistent with those over which the

¹⁴ See 15 U.S.C. § 717b(e), Energy Policy Act of 2005, Pub. L. No. 109-58, § 311, 119 Stat. 594 (2005); *see also Andalusian*, 174 FERC ¶ 61,107 at P 9.

¹⁵ 15 U.S.C. § 717a(11).

¹⁶ *New Fortress*, 174 FERC ¶ 61,207, Comm’n’r Danly Dissent at P 3.

¹⁷ *See Shell*, 148 FERC ¶ 61,163 at P 43 n.78 (observing that “a literal reading of [the] definition of ‘LNG Terminal’ would cause otherwise NGA-exempt gathering, intrastate pipeline, processing, and local distribution facilities to be jurisdictional under Section 3 as LNG terminal facilities if they transport gas that was imported or gas that will be exported.”).

¹⁸ *See New Fortress*, 174 FERC ¶ 61,207 at P 30.

Commission has previously declined to exercise jurisdiction pursuant to NGA section 3.¹⁹

In *Pivotal*, the Commission explained that:

[i]n determining whether an LNG import or export facility is subject to the Commission's NGA section 3 jurisdiction as an LNG terminal, we have held that the facility must be (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.²⁰

In fact, the Commission pointed out that it has “never issued authorization under [NGA] section 3 to designate points of import or export for gas carried by truck, train, or waterborne vessel or authorized the site of, or construction and operation of, any complementary facility, such as a . . . stand-alone pier, needed to import or export gas by non-pipeline mode of transportation.”²¹

Nopetro's Facility will not receive gas from a jurisdictional interstate pipeline. Rather, Nopetro's Facility will receive gas from a local distribution company over which the Commission has no jurisdiction.²² St. Joe Natural Gas Company is an LDC that is regulated by the State of Florida. The Facility will not send-out LNG by pipeline. All LNG produced at the Facility will be transported in ISO containers to a general-use dock by trucks operated by unaffiliated third parties and then the ISO containers will be loaded via a crane, also operated by an unaffiliated third party, onto general-use cargo vessels. Consequently, Nopetro will transport LNG exclusively by means

¹⁹ See, e.g., *Shell*, 148 FERC ¶ 61,163 at PP 37-43 (reciting the Commission's history of its jurisdiction over LNG facilities before the Energy Policy Act of 2005 amendments, including that the Commission had declined to exercise jurisdiction over LNG facilities that did “not have pipelines connecting the facility to either the interstate or intrastate grid”). See also *New Fortress*, 174 FERC ¶ 61,207, Comm'n'r Danly's dissent at PP 2-9.

²⁰ *Pivotal*, 151 FERC ¶ 61,006 at P 11.

²¹ *Id.* at P 12 n.17. See also *Shell*, 148 FERC ¶ 61,163 at P 47 n.85 (“We do not, however, believe that Congress intended its adoption of section 2(11)'s definition of ‘LNG terminal’ to expand the Commission's NGA jurisdiction to encompass facilities . . . that do not receive gas from a jurisdictional interstate pipeline and which are constructed for the purpose of liquefying gas that can reach the ultimate end users of gas without ever entering a pipeline, simply because waterborne vessels will be one of the non-pipeline modes of transportation that will be used to deliver some of the gas liquefied at the facilities.”). However, regardless of how natural gas is transported, all exports of natural gas require section 3 authorization from the DOE's Office of Fossil Energy, which Nopetro has obtained.

²² 15 U.S.C. § 7171(b).

other than pipeline – via ISO containers. Those ISO containers will be exported to foreign countries – Central and South America as well as the Caribbean – via general cargo container ships.

Nor will there be any pipeline facilities from the Facility to the Dock at the point of export or from the Facility to the ships. The Facility will not have any bunkering infrastructure and will not be capable of transferring LNG directly into LNG bulk carriers. In short, none of the LNG will leave the Facility or the United States by pipeline.

Moreover, the Facility will not be located at the point of export such that LNG is directly transferred from the Facility to an ocean-going, bulk-carrier LNG tanker. The Facility is located about a quarter-mile from the closest point of export (the Dock) and considerably farther from other docks that might be used. The below map and Appendix A show the location of the Facility relative to the Dock.



Source: Nopetro

In *New Fortress*, the Commission observed that while it “has noted that it has thus far only exercised its jurisdiction over facilities located at the point of import or export such that LNG is

directly transferred to or from an ocean-going, bulk-carrier LNG tanker, those statements were meant to distinguish dedicated LNG tankers from general use cargo ships that may transport LNG-filled ISO containers.”²³ Here, no dedicated LNG tankers will be used. Rather, the LNG will be exported in “general use cargo ships that may transport LNG-filled ISO containers,” as well as other goods. Thus, the Nopetro Project falls cleanly within the Commission’s precedents finding that an LNG facility is non-jurisdictional because it is not capable of transferring LNG directly into an LNG vessel.

Other Commission rulings also show that the Facility is not at the point of export. In *Andalusian*, the Commission found that transport by truck using third-party stevedores of an ISO container 120 to 300 feet from a facility to a general-use dock drew a sufficient distinction for jurisdictional purposes between the facility and the point of export.²⁴ Similarly, in *Emera*, the Commission held that a facility designed to fill ISO containers with compressed natural gas (“CNG”) and load the ISO containers onto trucks for transport to a ship for export was not an export facility subject to the Commission’s NGA section 3 jurisdiction.²⁵ The Commission determined that although the facility would receive gas via pipeline and be located one quarter of a mile from the berth where ISO containers were to be loaded onto a ship for export, the facility was not subject to the Commission’s section 3 jurisdiction because it would not be capable of directly transferring CNG into an ocean-going ship for export. In this same vein, the Commission ruled that The Gas Company’s facilities were not a jurisdictional LNG terminal because “the pier

²³ *New Fortress*, 174 FERC ¶ 61,207 at P 18.

²⁴ *Andalusian*, 174 FERC ¶ 61,107 at P 11 (finding that trucking ISO containers over a distance of a quarter mile distinguished the point of export from the facility where the containers were filled).

²⁵ *Emera*, 148 FERC ¶ 61,219 at P 13.

facilities would receive, load, and unload the vessels carrying ISO containers of LNG and were the same facilities currently receiving, loading, and unloading containers filled with other products.”²⁶ Consistent with these rulings, the Facility is not located at the point of export.

Nopetro intends to expand the Facility to include up to three natural gas liquefaction trains to produce LNG. Such an expansion will not cause the Facility or the Dock to become jurisdictional because the expansion will not alter the fundamental character of the Project or its operations. Expanding the Facility to include additional liquefaction trains will simply increase the volume of LNG produced (not to exceed 3.86 Bcf/year). Nopetro will not alter the use of, or operations involving, the LNG based on any increase in volumes produced by the Facility.

The Commission should conclude accordingly that the Facility is not an LNG terminal for NGA section 2(11) purposes because it does not receive or send-out gas via a jurisdictional pipeline, it is not capable of transferring LNG directly into LNG bulk carriers, and it is not located at the point of export.

C. Nopetro’s Project is Distinct From the Facilities in *New Fortress*

The Commission recently considered the jurisdictional status of New Fortress’ dedicated LNG facility at the Port of San Juan.²⁷ The Commission exercised jurisdiction over the facility, finding that: (1) New Fortress had constructed and operates “a dedicated LNG facility;”²⁸ (2) the LNG facility is located at the point of import;²⁹ and (3) the LNG facility is connected to a pipeline.³⁰

²⁶ See *The Gas Company, LLC*, 142 FERC ¶ 61,036, at P 14 (2013) (“*The Gas Co.*” or “*The Gas Company*”); see also *New Fortress*, 174 FERC ¶ 61,207 at P 13.

²⁷ *New Fortress*, 174 FERC ¶ 61,207.

²⁸ *Id.* at PP 12-16.

²⁹ *Id.* at PP 17-21.

³⁰ *Id.* at PP 22-28.

Nopetro's Project differs from the project in *New Fortress* in ways that warrant a different result in this case. Unlike the facilities in *New Fortress*, Nopetro's Facility will not be attached to pipeline facilities that are capable of directly transferring LNG to or from an ocean-going bulk carrier LNG tanker (or any other sized LNG vessel), LNG from Nopetro's Facility will not be transported by pipeline, and the Facility will not be located at the point of export.

Specifically, *New Fortress*' LNG reaches the facility through a floating storage unit that receives LNG from shuttle vessels, which in turn receives LNG via lightering operations with ocean-going, bulk-carrier LNG tankers. Further, *New Fortress* transfers LNG from the shuttle vessel to the floating storage unit ("FSU") through transfer pumps that include permanent piping that extends from the FSU.³¹ The Commission concluded that the *New Fortress* facility therefore is capable of directly transferring LNG from an LNG vessel because the facility connects directly to an LNG vessel via a hose, and those vessels transfer LNG from ocean-going, bulk-carrier LNG tankers to the facility.³² In contrast, Nopetro will receive natural gas from a non-jurisdictional LDC and send-out LNG in ISO containers by truck to be loaded onto general use cargo ships. The Facility will not have bunkering facilities and will be unable to load LNG directly into trucks or ocean-going ships, let alone LNG vessels.

New Fortress' facility distributes LNG in two ways: (1) via truck, following ship-to-truck LNG trans-loading operations; and (2) through a direct natural gas vapor connection to the Puerto Rico Electric Power Authority's San Juan Power Plant. The Commission concluded that *New Fortress* sends-out gas by pipeline because of the piping connecting the *New Fortress* facility to the generating plant. Nopetro, in contrast, has no such piping for delivering LNG and will only

³¹ *Id.* at P 3.

³² *Id.* at P 21.

distribute LNG via ISO containers ultimately transported on a general-use cargo ship to foreign countries.

The following facts regarding the Nopetro Project underscore the differences between the Nopetro and New Fortress facilities and the reasons for a non-jurisdictional finding in this case:

- Nopetro's Facility will not be connected to a power plant (or any other end user) via any piping from the Facility;
- The Nopetro Facility will not have any piping that connects the Facility to the Dock or to any ocean-going LNG bulk carrier (or any LNG vessel);
- There will be no LNG bunkering (fuel transfer) infrastructure extending from Nopetro's Facility to the Dock or to any ocean-going LNG bulk carrier (or any LNG vessel);
- The truck-loading operation moving LNG-filled ISO containers will be run by third-party stevedores;
- The truck-loading operation will not include a pipeline system that can move natural gas or LNG from the Facility to the Dock or from the Facility to the general-use cargo ships, and the trucks will be owned and operated by third parties;
- The crane that loads the ISO containers onto the general cargo ships will be operated by third-party stevedores. And, the Port will schedule the usage of the crane for a fee;
- Bulk-carrier LNG tankers, or LNG vessels of any kind, will not be involved in Nopetro's operation, as the ISO containers will only be moved on general cargo ships capable of moving ISO containers of all kinds of general cargo. The cargo ships will not be solely dedicated to moving LNG-filled ISO containers; thus, there

are no identifiable natural gas facilities because the general cargo ships will not move only LNG-filled ISO containers; and the Facility will not be located at the point of export, as the Dock will be the point of export.

In sum, *New Fortress* does not dictate a finding of jurisdiction in this case and the Commission's case-specific analysis of Nopetro's facts should result in a determination that the Nopetro Facility is not an LNG terminal under NGA section 2(11) and NGA section 3.

D. None of the Other Facilities Associated With the Project Are Jurisdictional Under NGA Section 3

The Nopetro Facility is not jurisdictional under NGA section 3 for the reasons discussed above. Furthermore, the Commission's jurisdiction under NGA section 3 does not extend to other facilities involved in the Project. The LNG-filled ISO containers, trucks, crane movement, and waterborne vessel movement do not constitute "natural gas facilities" that are used to export LNG in foreign commerce. None of these facilities are natural gas facilities as that term is used in section 2(11) of the NGA. Instead, they are akin to facilities over which the Commission has declined to exercise jurisdiction.

In *Andalusian* and *Emera*, the Commission determined that general-use port facilities handling ISO containers are outside the scope of the natural gas facilities to be regulated by the Commission.³³ In *Andalusian*, the Commission explained that the "CNG-filled ISO containers would leave Andalusian's facility and be transported on truck chassis approximately one quarter mile during Phase I, and 120 to 300 feet during Phase II, to the general use dock. At the dock, cranes would load the ISO containers onto cargo ships, which would be the point of export."³⁴

³³ *Andalusian*, 174 FERC ¶ 61,107 at P 11; *Emera*, 148 FERC ¶ 61,219 at P 20.

³⁴ *Andalusian*, 174 FERC ¶ 61,107 at P 11.

Similarly, in *Emera*, CNG-filled ISO containers would be trucked about a quarter mile from Emera's facility to the port where the containers would be loaded onto an ocean-going carrier.³⁵ In both cases, the Commission found the port facilities to be non-jurisdictional. The Commission affirmed this determination in the LNG context in *New Fortress*, stating that "the Commission would not be exerting jurisdiction over the wharves themselves. Rather, the Commission's jurisdiction would extend only to the facility constructed by New Fortress Energy for the purpose of importing LNG."³⁶

In *The Gas Company*, the Commission found that existing pier facilities that would receive, load, and unload vessels carrying LNG-filled ISO containers, which were the same facilities already receiving, loading, and unloading containers filled with other products, did not constitute "natural gas facilities" as that term is used in NGA section 2(11) and thus were not an LNG terminal.³⁷ The Gas Company's operations also included transporting LNG in ISO containers from the pier by truck or general-use barge to various other points in Hawaii to be revaporized. The Commission also concluded that these operations were not jurisdictional under NGA sections 2(11) and 3.³⁸

Similarly, in *Emera*, the Commission observed that it would have no jurisdiction "over the truck traffic between [Emera's] CNG facility and the site where ISO containers [would] be transferred to and from ocean-going carriers." In fact, the Commission noted that it had "never

³⁵ *Emera*, 148 FERC ¶ 61,219 at P 7.

³⁶ *New Fortress*, 174 FERC ¶ 61,207 at P 12.

³⁷ *The Gas Co.*, 142 FERC ¶ 61,036 at P 14 (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").

³⁸ *Id.*

issued authorization under section 3 to designate points of import or export for gas carried by truck, train, or waterborne vessel or authorized the site of, or construction and operation of, any complementary facility, such as a road, bridge, railway, or stand-alone pier, needed to import or export gas by a non-pipeline mode of transportation.”³⁹

The port facilities at the Dock that Nopetro will use to load its ISO containers of LNG onto container ships are general-use facilities that will handle ISO containers with a variety of cargo, including, potentially, wood chips.⁴⁰ In fact, the existing pier facilities where the LNG-filled ISO containers will be loaded onto general cargo vessels are the same facilities currently receiving, loading, and unloading containers filled with other products.⁴¹ These pier facilities do not constitute “natural gas facilities” as that term is used in the NGA section 2(11) definition. As was the case in *Andalusian, Emera* and *The Gas Company*, the Dock will process cargo other than natural gas. Nopetro’s use of the port facilities to export LNG does not render those generally-accessible facilities jurisdictional under NGA section 3.

Further, as in those cases, Nopetro’s movement of loading LNG-filled ISO containers onto trucks for transport to the Dock and the use of a crane to load the ISO containers onto a general-use cargo ship does not make those facilities jurisdictional under NGA section 3.⁴² Moreover, the waterborne carriers onto which Nopetro’s ISO containers are loaded are general-use cargo ships that will not be solely dedicated to moving LNG-filled ISO containers. They will not be bulk-carrier LNG tankers. Consistent with the Commission’s precedents, these general-use cargo ships should likewise be found to be non-jurisdictional.

³⁹ 148 FERC ¶ 61,219 at P 13.

⁴⁰ *Cf. The Gas Co.*, 142 FERC ¶ 61,036 at P 14.

⁴¹ *Cf. id.*

⁴² *See, e.g., Emera*, 148 FERC ¶ 61,219 at P 15.

For all these reasons, the Commission should decline to exercise NGA section 3 jurisdiction over the Project.

E. LNG From the Facility Will Not Be Reintroduced Into a Pipeline

Even if the Commission finds that the Nopetro Facility is not an LNG terminal, as it should, in *New Fortress*, the Commission stated that it must also evaluate whether after leaving an LNG-producing facility the LNG will be reintroduced into a pipeline. The Commission explained that “when examining LNG facilities operating in interstate commerce, the Commission exerts jurisdiction only where the conversion of natural gas into LNG enables interstate transportation of such gas by pipeline. If the LNG does not reenter a pipeline system, this does not occur. In fact, this is the precise set of facts that the Commission considered in [*Pivotal*] and found the facilities to be non-jurisdictional.”⁴³ The Commission also addressed this issue in *Shell*, finding that where LNG produced at Shell’s facility left by non-pipeline means and was not reintroduced into a pipeline, the “upstream transportation of gas by an interstate pipeline would not affect [the Commission’s] finding that Shell’s operation [of the LNG facility] will not be subject to section 7 jurisdiction.”⁴⁴

The LNG produced at Nopetro’s Facility and placed in ISO containers will not be reintroduced into a pipeline. Rather, the LNG will be shipped in ISO containers to Central and South America and the Caribbean, where the ISO containers on arrival will be transported via truck to their destination. The use of ISO containers allows Nopetro to reach purchasers who might not otherwise have access. The Commission should therefore find that the LNG will not be

⁴³ *New Fortress*, 174 FERC ¶ 61,207 at P 27.

⁴⁴ *See, e.g., Shell*, 148 FERC ¶ 61,163 at P 34.

reintroduced into the pipeline and will not be subject to the Commission's jurisdiction under NGA section 3.

F. The Commission Does Not Have Jurisdiction Over The Project Under NGA Section 7

The Commission has jurisdiction under NGA section 7 over the transportation and sale for resale of natural gas in interstate commerce and the construction, extension, and abandonment of the related facilities.⁴⁵ It is well-settled that the Commission's jurisdiction over transportation and sales in interstate commerce under NGA section 7 only applies to gas that is transported by pipeline.⁴⁶ The Commission has interpreted its jurisdiction to be limited to transportation by pipeline "because Congress enacted the NGA specifically to address *pipeline*-related abuses."⁴⁷

All the natural gas that will be liquefied at Nopetro's Facility will be exported in foreign commerce to Central and South America and the Caribbean. Thus, on its face, the Commission's NGA section 7 jurisdiction over transportation and sales of gas for resale in interstate commerce is not implicated by Nopetro's proposal. *See* 15 U.S.C. § 717(a) (defining "interstate commerce" to include only commerce within the United States).

The Commission has a long history of declining to exercise jurisdiction over the movement of LNG by non-pipeline modes of transportation.⁴⁸ NGA section 7 speaks to stationary physical facilities, not trucks, ISO containers, docks and cranes.⁴⁹ For example, section 7(a) authorizes the

⁴⁵ 15 U.S.C. § 717f.

⁴⁶ *See, e.g., Emera*, 148 FERC ¶ 61,219 at P 19.

⁴⁷ *Id.* at P 13 and n.15 (emphasis in original) (citing *Exemption of Certain Transp. and/or Sales of LNG from the Requirements of Section 7(c) of the NGA*, 49 FPC 1078, at 1079 (1973)).

⁴⁸ *See, e.g., Marathon Oil Co.*, 53 FPC 2164, at 2175 (1975); *New England LNG Co., Inc.*, 49 FPC 1460 (1973) (transportation of LNG by truck); *Distrigas of Massachusetts Corp.*, 55 FPC 3121 (1976) (transportation of LNG by barge and truck).

⁴⁹ The waterborne vessels also are not stationary physical facilities.

Commission to “direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas . . . to the public”⁵⁰ Likewise, section 7(b) of the NGA requires Commission approval for a natural gas pipeline company to “abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities.”⁵¹ The Commission has found that section 7 is “phrased in terms of ‘extend,’ ‘physical connection,’ ‘abandon,’ and ‘construct,’ all of which relate to stationary, not movable, facilities.”⁵²

Further, the Commission has found that there are situations where the liquefaction of gas is not subject to section 7 jurisdiction over the transportation of gas because the purpose of liquefying the gas is to transform it into what is, in effect, an end product, with no intent for any of that LNG to be regasified and introduced into a pipeline in the United States.⁵³ As explained in *Air Products*, the concern when presented with an independent LNG facility is whether a circumvention of NGA jurisdiction over the interstate transportation of gas by pipeline could result “merely because liquefaction of the gas was interposed on what would otherwise have been a continuous flow of natural gas in an *interstate* pipeline system.”⁵⁴ Here there is no circumvention of the Commission’s jurisdiction because the complementary facilities (truck movement to the Dock and the crane’s loading of the ISO containers onto the waterborne vessel) do not constitute

⁵⁰ 15 U.S.C. § 717f(a).

⁵¹ 15 U.S.C. § 717f(b).

⁵² See *Emera*, 148 FERC ¶ 61,219 at P 19 and n.21.

⁵³ See, e.g., *Air Products and Chemicals, Inc.*, 58 FERC ¶ 61,199, at 61,618-619 (1992) (observing that the Commission has no jurisdiction over transportation of LNG by means other than pipeline and that the Commission has long-standing precedent finding that its section 7 jurisdiction does not extend to facilities used solely for the purpose of liquefying gas to transform it into an end product for sale and delivery in its liquid state to end users, with no intent for any of the LNG to be reintroduced into a pipeline).

⁵⁴ *Id.* at 61,619 (emphasis added). Air Products’ processing (i.e., liquefaction) of gas was for economic reasons (i.e., to sell the RLM as final fuel product), rather than “*essential* to make the gas fit for pipeline transportation.” *Id.* at 61,619 (quoting *Texas Eastern Transmission Corp.*, 43 FERC ¶ 61,044 at 61,129 (1988)).

natural gas facilities or pipeline facilities and the LNG is not destined for another point in the United States.

The movement of the LNG-filled ISO containers from the Facility to trucks, from the trucks to the crane, and from the crane to the Dock should not be viewed as part of an interstate pipeline movement. The Facility will receive natural gas via a non-jurisdictional local distribution company. The interstate movement, if any, is broken when the natural gas enters the LDC facilities. Nor does an interstate movement occur with the third-party truck movement of LNG-filled ISO containers to the Dock and the crane's movement of those containers to the general cargo ship. As discussed above, the Commission does not view such movements as interstate pipeline movements. In addition, the LNG is never regasified and injected into a jurisdictional pipeline. Consequently, the Commission should rule that its section 7 jurisdiction will not attach to the Project.⁵⁵

G. Nopetro's Requested Rulings Do Not Present a Regulatory Gap

As the Commission recognized in *New Fortress*,⁵⁶ “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.” The facilities which Nopetro has petitioned the Commission to find non-jurisdictional will remain regulated by various federal, state, and local agencies. Nopetro's Facility, the pipeline delivering the gas to the Facility, and the trucking operations will be subject to the U.S. Department of Transportation's (“DOT”) regulations and

⁵⁵ *Cf. Emera*, 148 FERC ¶ 61,219 at PP 19-20; *Andalusian*, 174 FERC ¶ 61,107 at P 13.

⁵⁶ 174 FERC ¶ 61,207 at P 32 (citing *ExxonMobil Gas Marketing Co. v. FERC*, 49 297 F.3d 1071, 1088 (D.C. Cir. 2002)).

requirements addressing the transportation and storage of hazardous materials.⁵⁷ The LDC that will deliver gas to the Facility is subject to regulation by the Florida PSC. The port authorities also will exercise oversight. In addition, the facilities and activities involved in Nopetro's export operations will be subject to regulations and requirements of the U.S. Environmental Protection Agency under its various enabling statutes, including the Clean Water Act, Clean Air Act, and the Hazardous Materials Transportation Act. Thus, there is no evidence of a need for regulation on public interest grounds. In short, there is no regulatory gap implicated by Nopetro's requested rulings.⁵⁸

VI. Request for Expedited Consideration

Nopetro respectfully requests that the Commission issue a declaratory order no later than July 30, 2021. Expedient review of the instant Petition is necessary to keep up with the inherently fast-moving natural gas and LNG markets. Nopetro respectfully submits that prompt action by the Commission is not only necessary for Nopetro to definitively move forward with the process of securing all necessary permits and/or commence constructing the Facility, but is also consistent with the public interest.

⁵⁷ DOT's regulations are set forth in Title 49 of the U.S. Code of Federal Regulations. DOT's Office of Pipeline and Hazardous Materials Safety Administration develops and coordinates implementation of hazardous materials regulations with DOT's various operating administrations, including the Office of Pipeline Safety, Federal Highway Administration, and Federal Railroad Administration.

⁵⁸ Although review under NEPA is categorically excluded, 18 C.F.R. § 380.4(a)(1) (2020), Nopetro notes that it is actively pursuing several different strategies to lower its greenhouse gas footprint including utilizing: (1) a portion of renewable electricity (*i.e.*, wind turbines) to power the plant; (2) biogas feedstock (from landfills, dairy farms, etc.) for a portion of the gas requirements; and (3) carbon capture utilization and storage technology as part of the liquefaction process. Nopetro anticipates using one or more of these strategies to produce "Green LNG." *See* Kenneth B. Medlock III, Steven R. Miles, and Marcia Hook, "'Green LNG' – A Pathway for Natural Gas in An ESG Future," *Forbes* (Oct. 26, 2020), available at < <https://www.forbes.com/sites/thebakersinstitute/2020/10/26/green-lng--a-pathway-for-natural-gas-in-an-esg-future/?sh=13cd505a66e9> >. Moreover, Nopetro is proposing this Project to displace diesel and No. 2 oil consumption throughout Central and South America as well as the Caribbean. Natural gas is a clean alternative to diesel for these regions and Nopetro's LNG exports will significantly reduce GHGs in the aggregate. Lastly, in the spirit of the DOE Small-Scale Export Rule, Nopetro is targeting inland customers, which are harder to reach but accessible with ISO container deliveries, to maximize the impact of its cleaner fuel project. *See Small-Scale Natural Gas Exports*, FE Docket No. 17-86-R, 83 Fed. Reg. 35106 (effective Aug. 24, 2018).

VII. Conclusion

For the reasons set forth above, Nopetro respectfully requests that the Commission grant the declaratory rulings sought herein by July 30, 2021.

Respectfully submitted,

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APPENDIX A

MAP OF NOPETRO FACILITY

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