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alert

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LNG Project Does Not Require FERC Approval or Oversight

In what promises to be the first in a series of rulings concerning the jurisdiction of the Federal Energy Regulatory Commission (FERC) over liquefied and compressed natural gas (LNG and CNG) projects and activities, FERC concluded recently that an LNG project in Pennsylvania is not subject to its jurisdiction under the Natural Gas Act (NGA). Whether a planned project is subject to FERC's jurisdiction can have a significant impact in terms of the timing and costs associated with the commercialization of an LNG, CNG or natural gas play. This recent order, issued on July 17, provides regulatory assurance to help streamline the commercialization of future projects.

The July 17 order responds to an April 1, 2014, filing by Gulf Oil Limited Partnership (Gulf) of a petition for declaratory order seeking a finding of nonjurisdictional status over Gulf's construction, ownership and operation of a natural gas liquefaction facility in Northeastern Pennsylvania. Gulf explained that it would receive natural gas from a gathering pipeline system located in the Marcellus Shale region.[1] Once it liquefied the natural gas, Gulf explained it would then deliver the LNG by tanker truck to customers in Pennsylvania and the Northeast to be used to supply vehicular and high-horsepower engine fuel, and to serve local distribution company (LDC) peak-shaving facilities.

In granting the petition, the Commission agreed 1) the liquefaction services to be provided by Gulf do not implicate the agency's jurisdiction over the transportation of gas in interstate commerce by jurisdictional pipelines and 2) once sold by Gulf, the LNG would not be transported "at any point by pipeline facilities subject to [FERC]'s section 7 jurisdiction." The Commission also agreed with Gulf that the project was not "motivated by a desire to circumvent the Commission's section 7 jurisdiction."[2] Further, assuaging Gulf's concerns, FERC found that section 7 of the NGA would not be implicated retroactively if LNG delivered to an LDC's peak-shaving facility were to displace gas supplies being transported on an interstate pipeline or be delivered by the LDC to an interconnected interstate pipeline.[3]

Although the result in the Gulf order was not unexpected, this ruling should help break the logjam of similar requests seeking jurisdictional rulings on planned LNG and CNG activities. Those requests include filings in recent months by Shell, Pivotal, Emera and Strom, all of which are still pending before FERC.[4] Those requests propose different sources for natural gas supplies and different uses for the LNG and CNG from their respective proposed facilities. The numerous requests evidence the

Related practice areas:

Energy and Utility Law

For more information, please contact any of the individuals listed below:

Joseph H. Fagan DC, CT
jfagan@daypitney.com
(202) 218 3901

Florence K.S. Davis CT, MD
fkdavis@daypitney.com
(860) 275 0360

David T. Doot CT
dtdoot@daypitney.com
(860) 275 0102
(202) 218 3903

James B. Blackburn NY
jblackburn@daypitney.com
(202) 218 3905

Thomas C. Havens NY
thavens@daypitney.com
(212) 297 5802

increased investor and industry activity and interest in small- and mid-scale liquefaction and compression projects to serve new LNG and CNG markets with relatively low-cost domestic natural gas supplies. For such projects to proceed, though, developers and financiers need certainty as to the scope of regulation that FERC will impose on these projects. FERC's Gulf Order and orders soon to follow for these other proposed projects will provide the additional regulatory clarity needed to allow these and future projects to take better advantage of the ongoing gas renaissance in the country.

[1] Petition for Declaratory Order Seeking Confirmation of the Non-Jurisdictional Status of a Liquefied Natural Gas Production Facility and Request for Expedited Action, Docket No. CP14-132, at 2 (April 1, 2014) (Gulf Petition).

[2] Gulf Order at 4 citing *Air Products and Chemicals, Inc.*, 58 FERC ¶ 61,199 at 61,619 (1992) (describing circumstances and citing precedents in which the Commission found the liquefaction of gas would constitute "an integral part of the interstate flow" subject to the Commission's jurisdiction under section 7 of the NGA).

[3] Gulf Order at 4.

[4] FERC Docket Nos. RP14-52 (Shell), RP14-732 (Pivotal), CP14-114 (Emera) and CP14-121 (Strom).

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