

Court Holds Coast Guard LNG Terminal Letters of Recommendation Are Unreviewable

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On August 5, 2014, the U.S. Court of Appeals for the Ninth Circuit held that Coast Guard letters of recommendation concerning the siting of liquefied natural gas terminals are not subject to judicial review. In [Columbia Riverkeeper v. United States Coast Guard](#), the court concluded that Coast Guard letters of recommendation are simply that – recommendations from the Coast Guard to the Federal Energy Regulatory Commission (FERC), which has exclusive authority over applications to build LNG terminals. Because the recommendations do not themselves grant, condition, or deny any permit or license, a court has no jurisdiction to review them.

The case was brought by Riverkeeper as part of its effort to oppose an application for the construction of an LNG facility and pipeline along the Columbia River in Oregon. In its decision, the court provides a concise but comprehensive summary of the development of the legal framework governing LNG facility applications. That analysis leads the court to conclude that it lacks jurisdiction to review the Coast Guard's recommendations to the FERC. However, the court points out that the Coast Guard's recommendations are not immune to judicial review. Rather, the issue is one of timing because any FERC final order on an LNG facility application that adopts or fails to adopt Coast Guard recommendations would be reviewable under the U.S. Natural Gas Act.

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