

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Nos. 04-73650 & 04-75240

**CALIFORNIANS FOR RENEWABLE ENERGY, INC.
&
CALIFORNIA PUBLIC UTILITIES COMMISSION**

Petitioners.

v.

FEDERAL ENERGY REGULATORY COMMISSION

Respondent.

On Petition for Review of Orders of the
Federal Energy Regulatory Commission
FERC Docket Nos. CP04-58-000 and CP04-58-001

**BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

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March 29, 2005

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**CORPORATE DISCLOSURE STATEMENT OF
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and the Ninth Circuit's Rules, the Interstate Natural Gas Association of America ("INGAA") files the following Corporate Disclosure Statement:

1. The Interstate Natural Gas Association of America is an incorporated not-for-profit trade association representing virtually all of the interstate natural gas transmission pipeline companies operating in the United States. INGAA advocates regulatory and legislative positions of importance to the natural gas pipeline industry.

2. INGAA has no parent companies, subsidiaries, or affiliates that have issued publicly traded stock. Most INGAA member companies are corporations

with publicly traded stock. INGAA's headquarters and principal place of business is located at 10 G Street, NE, Suite 700, Washington, DC, 20002.

WHEREFORE, INGAA hereby submits its Corporate Disclosure Statement as required by Rule 26.1.

Respectfully submitted,



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**CORPORATE DISCLOSURE STATEMENT OF
NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and the Ninth Circuit's Rules, the Natural Gas Supply Association ("NGSA") files the following Corporate Disclosure Statement:

1. The Natural Gas Supply Association is an incorporated not-for-profit trade association representing the majority of the large integrated and independent companies that produce and market domestic natural gas in the United States.

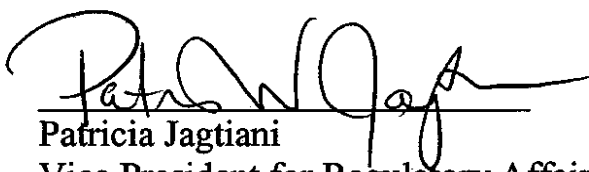
NGSA encourages expanded use of natural gas and a regulatory climate that fosters competitive markets.

2. NGSA has no parent companies, subsidiaries, or affiliates that have issued publicly traded stock. Most NGSA members are corporations with publicly

traded stock. NGSA's headquarters and principal place of business is located at 805 15th Street, NW, Suite 510, Washington, DC, 20005.

WHEREFORE, NGSA hereby submits its Corporate Disclosure Statement as required by Rule 26.1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia Jagtiani', written over a horizontal line.

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March 29, 2005

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INTEREST OF AMICI CURIAE

The question presented in this case, as stated by Respondent Federal Energy Regulatory Commission (“FERC” or “Commission”), is whether FERC properly determined that it has exclusive jurisdiction under Natural Gas Act (“NGA”) Section 3, 15 U.S.C. § 717b, over liquefied natural gas (“LNG”) facilities that Sound Energy Solutions proposes to build and operate in Long Beach, California. As explained below, such LNG facilities are required to import foreign supplies of natural gas that are not produced in North America. Petitioners contend that the siting, construction and operation of LNG import terminals are matters of local concern that should be regulated by state agencies, in this case, the Public Utilities Commission of the State of California (“CPUC”). They further argue that FERC has no statutory authority to regulate such import facilities.

Amici Curiae, Interstate Natural Gas Association of America (“INGAA”) and the Natural Gas Supply Association (“NGSA”), have a substantial interest in the importation of LNG. NGSA represents integrated and independent companies that produce and market natural gas in the United States. Established in 1965, NGSA encourages the expanded use of natural gas and supports regulatory and legislative actions that foster competitive markets. INGAA is a non-profit trade association that represents virtually all of the major interstate and interprovincial natural gas pipeline companies operating in the United States, Canada, and

Mexico. Its members transport over 95 percent of the nation's natural gas through a network of 180,000 miles of pipelines. INGAA advocates regulatory and legislative positions of importance to the natural gas pipeline industry.

Amici submit that the importation of supplies of LNG from foreign countries and the siting of the facilities necessary for their importation are matters of urgent national concern that should not be subject to disparate and potentially conflicting state regulation. Amici support FERC's determination in the orders under review, that it has exclusive jurisdiction under the NGA to approve the siting, construction, and operation of LNG import terminals. FERC's determination is based upon sound principles of statutory construction and reflects over thirty years of experience in the regulation of these import facilities. The CPUC's assertion of jurisdiction intrudes upon the federal government's longstanding, and heretofore unchallenged, regulation of LNG imports and import facilities in foreign commerce. That challenge also comes at a time when the need for the development of a comprehensive and consistent national policy on LNG is critical. In order to meet the growing domestic demand for natural gas, the United States will need to rely on substantially increased imports of LNG. Affirmance of the orders under review will remove the uncertainty created by the CPUC's assertion of jurisdiction, and confirm the authority of FERC to regulate the energy infrastructure required to import needed supplies of LNG.

STATEMENT

The orders under review involve a proposal by Sound Energy Solutions (“SES”) to site, construct and operate an LNG import terminal in the Port of Long Beach, California. SES filed an application with FERC in January 2004, for its approval under Section 3 of the NGA. The application was protested by the CPUC, on grounds that FERC lacks jurisdiction under Section 3 of the NGA to review such applications, and that SES should instead apply for a certificate of public convenience and necessity from the state commission. The CPUC argued that it, and not FERC, has jurisdiction over LNG import terminal facilities to be sited in the State of California. The SES application is still pending, but the jurisdictional issue was separately addressed by FERC in the final Declaratory Order and Order on Rehearing that are the subject of this review proceeding.

FERC’s Orders determined that the Commission has exclusive jurisdiction under NGA Section 3 over the siting, construction, and operation of LNG import terminal facilities. FERC acknowledged that Section 3 does not contain the term “facilities.” It relied, however, on the D.C. Circuit decision in Distrigas Corp. v. FPC, 495 F.2d 1057, 1064 (D.C. Cir. 1974) and delegation orders of the Secretary of Energy (“Secretary”). The Distrigas case held that Section 3 provides “plenary and elastic” federal authority over not only the importation of LNG as a commodity, but also the LNG terminal facilities needed to complete the

importation by receiving the LNG from ocean-going tankers, temporarily storing it in its liquid state, and delivering it to interstate or intrastate markets. The Secretary specifically delegated this federal authority over facilities to FERC following passage of the Department of Energy Organization Act of 1977, which abolished the Federal Power Commission, FERC's predecessor, and vested in the Secretary all NGA Section 3 authority.¹ Pursuant to the Secretary's delegation orders,² FERC regulates LNG import facilities and the Department of Energy ("DOE") retains authority over the importation of the commodity.

For over 30 years, FERC and DOE have consistently exercised this division of responsibility without challenge. Because importation of LNG involves foreign commerce, not intrastate commerce, FERC determined that authority to regulate LNG imports, and the facilities required to effect a proposed importation, are subject to federal and not state control. In the orders under review, FERC clarified that it was addressing only the jurisdictional dispute between FERC and the CPUC over SES's proposed LNG import terminal. FERC emphasized that its Orders were not intended to, and did not, affect the roles of other federal, state and local

¹ See §§ 301(b) and 402(g) of the Department of Energy Organization Act of 1977, Pub. L. 95-91, 91 Stat. 565, 578 & 585 (1977).

² DOE Delegation Orders Nos. 0204-111 and 0204-112, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984); see also DOE Delegation Order No. 00-04.00, 67 Fed. Reg. 8946 (Feb. 27, 2002).

agencies under state and federal law over the SES import terminal. Nor do the Orders determine whether SES's application will receive final approval.

ARGUMENT

I. There is Clear Federal Authority over Siting, Construction, and Operation of LNG Import Facilities

Contrary to the CPUC's assertion, authority under NGA Section 3 to regulate the siting, construction, and operation of LNG facilities rests with FERC and the Secretary. FERC and the courts have reasonably interpreted NGA Section 3 to define clear federal authority to regulate LNG import facilities. This statutory authority, which is equivalent to FERC's authority to regulate interstate gas facilities under NGA Section 7, necessarily includes the authority to review and approve (or disapprove) the siting of facilities and to regulate the construction and operation of import facilities because such facilities are indispensable to LNG imports. When Congress amended NGA Section 3 in 1992, it gave no indication that it intended — as CPUC claims — to alter the previously unquestioned authority of FERC to regulate LNG import facilities. Clear federal authority to regulate LNG in foreign commerce existed before the 1992 amendments, and still exists today. That authority preempted regulation by the CPUC or any other state before EPACKT, and does so now. The Secretary has delegated to FERC responsibility for granting or denying approvals for the siting, construction and

operation of facilities, while DOE retains authority to approve import of the commodity.

This framework of federal regulation does not mean, however, that states are wholly removed from the LNG approval process. To the contrary, within the framework of federal law, states play an important role in approval of LNG import facilities. The states will continue to exercise authority to implement the Clean Water Act³, the Clean Air Act⁴, and the Coastal Zone Management Act.⁵ Under the Coastal Zone Management Act, for example, states have authority to issue a consistency determination for all new projects located on their coastlines prior to construction. FERC cannot approve a project and authorize the siting, construction, and operation of LNG import terminal facilities without a “consistency” determination from the state. Moreover, here FERC and the Port of Long Beach will prepare an environmental impact statement in compliance with both NEPA and the California Environmental Quality Act.

While some aspects of these important arguments are examined herein, to avoid redundancy, INGAA and NGSA hereby adopt by reference the detailed analysis of these issues in the Brief of Respondent FERC.

³ Water Pollution Prevention and Control (Clean Water Act) 33 U.S.C. §§ 1251-1387 (2000).

⁴ Air Pollution Prevention and Control (Clean Air Act) 42 U.S.C. §§ 7401-7671q (2000).

⁵ Coastal Zone Management Act, 16 U.S.C. §§ 1451-1465 (2000).

II. LNG Imports Are a Key Component of the Nation's Energy Policy

A. The U.S. Economy Requires LNG Imports

Upholding FERC's Declaratory Order is essential to the development of a viable U.S. LNG industry, which will require siting of new LNG import terminals throughout the United States. LNG is a key component of a prudent national portfolio of energy resources needed to serve American consumers. The United States has embraced the economic and environmental benefits of natural gas, particularly for power generation. The nation is currently experiencing increasing tightness between supply and demand. Concerns about price volatility and reliability of supply have caused Congress, the White House, and DOE to evaluate options aimed at relieving these problems. A consensus has developed that increased imports of LNG are required and that more LNG import terminals are necessary in order to meet increasing demand. The importance of LNG imports is evident from federal legislation promoting LNG imports and the construction of import facilities, federal regulatory policies promoting development of LNG

import facilities and from recent comprehensive studies and reports on energy supply and policies.⁶

⁶ For example, Section 201 of the Energy Policy Act of 1992 amended Section 3 of the Natural Gas Act so that the importation or exportation of LNG “shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.” 15 U.S.C. § 717b (2000). Section 106 of the Maritime Transportation Security Act of 2002 extended the provisions of the Deepwater Port Act of 1974 to natural gas terminals. That Act required prompt decision on applications, streamlined environmental review and removed regulatory barriers to the applicant’s exclusive use of the facility. 33 U.S.C. §§ 1501-07 (2000).

FERC, in Hackberry LNG Terminal, L.L.C., 101 FERC ¶ 61,294 (2002), adopted a new policy that exempts a new terminal operator from open access requirements and permits negotiated rates and terms and conditions of service (*i.e.*, no tariff or rate schedules required). FERC states that “[t]his approach may provide incentives to develop additional energy infrastructure to increase much-needed supply in the United States. . .” 101 FERC at P 23.

The National Petroleum Council, a federal advisory committee to the Secretary of Energy, issued a report titled “Balancing Natural Gas Policy” in September of 2003. That report projected that traditional producing areas would only supply 75% of gas demand and that new resources, such as LNG and Arctic gas could supply 20-25% of demand. Vol. I at 6. The report projected that LNG imports could grow from .6 Bcf/day in 2000 to 15.0 Bcf/day by 2025 (based on growth from the current 4 existing terminals to 9 additional terminals and 7 expansions off existing and future terminals). Vol. II at 193. However, the report noted that this “aggressive outlook. . . will require streamlined permitting” and specifically recommended a coordinated effort among federal, state and local agencies led by FERC. Vol. II at 198. The report also took note of FERC’s recent positive changes in its regulatory process and active leadership role in the Cove Point and Elba Island reactivations and in the implementation of memoranda of understanding with other federal agencies. *Id.*

The National Commission on Energy Policy, a bipartisan group of energy experts from industry, government, labor, academia, and environmental and consumer groups, issued, in December of 2004, a report titled “Ending the Energy Stalemate: a Bipartisan Strategy to Meet America’s Energy Challenge.” The Commission supported a “strong federal role in the siting of LNG facilities.” The Commission also endorsed “cooperative federalism” as the regulatory framework,

The importance of LNG to the nation's energy supply was recently summarized by Federal Reserve Chairman Alan Greenspan in testimony before the House Committee on Energy and Commerce. On June 11, 2003, he explained: "If North American natural gas markets are to function with the flexibility exhibited by oil, unlimited access to the vast world reserves of gas is required. Markets need to be able to effectively adjust to unexpected shortfalls in domestic supply."⁷

The public health and safety and the economic well-being of the nation depend upon the importation of additional, competitively priced supplies of LNG. The U.S. Energy Information Administration ("EIA") Annual Energy Outlook for 2005 estimates that LNG imports will account for as much as 21 percent of the

which it described as follows: the Coast Guard having authority over offshore terminals, FERC having authority over on-shore terminals, states carrying out their part through Coastal Zone Management Act ("CZMA") "consistency reviews" and joint environmental reviews being carried out by FERC and state agencies responsible for issuing permits under the Clean Water Act, Clean Air Act and the CZMA. Report at 48. The Commission commended FERC for recognizing the role of states and other stakeholders in its process, but noted that FERC has the last word in approving and conditioning onshore LNG facilities. Finally, the Commission stated that regulators should take into account the nation's need for new supplies "so that siting and permitting decisions can reflect this important national interest goal." Report at 48-49.

See also North American Energy Working Group, "North American Natural Gas Vision" at 18 (January 2005)(senior American, Canadian, and Mexican energy officials' report indicates that state and local authorities can impede siting of LNG facilities), available at <http://www.pi.energy.gov/pdf/library/NAEWGGasVision2005.pdf>.

⁷ House Committee on Energy and Commerce, Prepared Witness Testimony of the Honorable Alan Greenspan, Chairman, Federal Reserve Board, June 10, 2003.

total U.S. natural gas supply by 2025.⁸ Growing demand for natural gas has placed significant stress on the available supplies of domestically produced gas and imports from Canada. The current tight supply-demand balance has fostered higher prices for natural gas. Consequently, the nation's industrial base, which is dependent upon the availability of adequate and reasonably priced natural gas supplies, is under increasing economic pressure as demand for this efficient and clean-burning fuel continues to grow.

A 2003 study by The National Petroleum Council ("NPC")⁹ predicts that, while traditional North American producing areas will provide 75 percent of the long-term U.S. gas needs, these areas will be unable to meet projected demand. The report found that greater energy efficiency and conservation are vital near-term and long-term mechanisms for moderating price levels and reducing volatility. However, it also found that power generators and industrial consumers are more dependent on gas-fired equipment and less able to respond to higher gas prices by utilizing alternate sources of energy. It concluded that new, large-scale

⁸ Annual Energy Outlook 2005, Energy Information Administration at 69 (Feb. 2005).

⁹ "Balancing Natural Gas Policy – Fueling the Demands of a Growing Economy," September 2003, available at <http://www.npc.org>. The National Petroleum Council is a federal advisory committee to the Secretary of Energy. See also INGAA Foundation, "An Updated Assessment of Pipeline and Storage Infrastructure for the North American Gas Market," (July 2004) (over \$60 billion must be spent on infrastructure, including LNG, to accommodate North American demand growth that could reach 30 Tcf by 2020), available at <http://www.ingaa.org>.

resources such as LNG and Alaskan gas are needed to meet the demand. Imports must make up the difference between domestic production and consumption. The NPC study concluded that the United States needs to expand existing LNG import terminals and add several new terminals in order to meet growing demand.

While the United States can no longer rely solely on domestic gas sources to satisfy growing demand, natural gas supplies are plentiful throughout the rest of the world. Ninety-six percent of the world's proven natural gas reserves are located outside of North America.¹⁰ To reach markets in the United States, these supplies must be liquefied and delivered by cryogenic ocean-going tankers, received and stored in cryogenic facilities, and then re-gasified for delivery to markets. LNG is thus a logical, effective and necessary component in the portfolio of solutions for the nation's energy needs. In order to meet demand, the United States needs to construct, expand and operate more LNG import terminals to bring natural gas to this country. A uniform and coordinated national policy is indispensable to facilitate the construction of this critical energy infrastructure.

¹⁰ Testimony of J. Mark Robinson, Director, Office of Energy Projects, FERC, before the Subcommittee on Energy of the Committee on Energy and Natural Resources, U.S. Senate at 2 (Feb. 15, 2005).

B. Participation in the Worldwide LNG Industry Requires the Application of Sophisticated Technology and Substantial Economic Investment

LNG is the liquid form of the natural gas people use in their homes for cooking and heating. Natural gas is also used as fuel for generating electricity, and as the raw material for manufacturing a wide variety of products, from fibers for clothing, to plastics for healthcare, computing, and furnishings. Natural gas makes up about one-fourth of all energy consumed in the United States each year.¹¹

Natural gas does not occur in a liquid state in nature and must be converted to a liquid state through a super-cooling process called liquefaction. Once liquefied, the gas must be maintained in a liquid state by specially designed cryogenic equipment aboard ocean-going tankers and at LNG import terminals. LNG is converted back to gas at LNG terminal by vaporizers that warm the gas. The entire process — production, liquefaction, shipping, receiving, storage, and re-vaporization — requires a large investment in sophisticated technology. The development of a typical LNG project can involve the expenditures of billions of dollars.¹²

¹¹ University of Houston Law Center Institute for Energy, Law & Enterprise, Introduction to LNG at 4 (Jan. 2003) available at http://www.energy.uh.edu/LNG/documents/IELE_introduction_to_LNG.pdf.

¹² For a discussion of the LNG industry, see University of Houston Law Center Institute for Energy, Law, & Enterprise, Introduction to LNG (Jan. 2003) available at http://www.energy.uh.edu/LNG/documents/IELE_introduction_to_LNG.pdf.

There are large reserves of natural gas around the world in countries that have no significant nearby market for their output. Such gas reserves, sometimes described as “stranded” supplies, are found far from developed gas markets in North Africa, West Africa, South America, the Caribbean, the Middle East, Indonesia, Malaysia, Northwestern Australia, Russia, and Alaska. According to World Oil, for the year 2001, worldwide proven reserves of natural gas were 5,919 Tcf.¹³ Some of the natural gas from these stranded producing areas is already being liquefied for shipping to markets including Japan, Taiwan, Korea, Europe and the United States. Liquefaction terminals are currently operating in 12 exporting countries, while regassification terminals are operating in 12 importing countries.¹⁴ Growth in LNG demand has resulted in orders for new LNG tankers,¹⁵ as well as development of new LNG receiving terminals in several countries.

C. The Outcome of this Case Could Determine the Future Availability to the United States of Overseas Gas Supplies

The outcome of this case could have a significant impact on the national energy policy of the United States. Historically, LNG has been imported into the

¹³ World Oil, World Trends, August 2002.

¹⁴ See discussion and data tables on the California Energy Commission website entitled “LNG Worldwide,” available at <http://www.energy.ca.gov/lng/international.html> (last visited Mar. 28, 2005).

¹⁵ More than 150 LNG ocean tankers transport more than 110 million metric tons of LNG annually to more than 40 ports around the world. Center for Liquefied Natural Gas, LNG Vessel Safety, available at http://www.lngfacts.org/marine_information/vessel_safety.html (last visited Mar. 24, 2005).

United States through terminals at onshore, coastal locations. There are currently five such onshore terminals in operation in the United States — four in the continental United States and one in Puerto Rico. There are 12 applications currently pending before the FERC to construct new or expanded terminals.¹⁶

Recent advances in technology have also made it possible to construct and operate

¹⁶ In recent years, FERC has approved the reactivation and expansion of the existing terminals, and the siting of three new onshore import terminals. See Distrigas of Massachusetts Corp., 57 FERC ¶ 61,295 (1991) (authorization for expansion of vaporization capacity), order granting clarification, 58 FERC ¶ 61,297 (1992), order amending certificate, 69 FERC ¶ 62,045 (1994); EcoElectrica, L.P., 75 FERC ¶ 61,157 (1996) (authorization to site, construct and operate new LNG import terminal); Southern LNG, Inc., 89 FERC ¶ 61,314 (1999) (preliminary determination on siting, construction, recommissioning and operation of import terminal), order issuing certificate and denying reh'g, 90 FERC ¶ 61,257 (2000), preliminary determination on amended application, 94 FERC ¶ 61,188, order issuing certificate, 96 FERC ¶ 61,083 (2001); Distrigas of Massachusetts, LLC, 94 FERC ¶ 61,008 (2001) (expansion of vaporization capacity); Trunkline LNG Co., 94 FERC ¶ 62,270 (2001) (minor expansion of vaporization capacity); Cove Point LNG Limited Partnership, 97 FERC ¶ 61,043 (authorization for siting, construction and recommissioning of import terminal), order on reh'g, 97 FERC ¶ 61,276 (2001), further order on reh'g, 98 FERC ¶ 61,270 (2002); CMS Trunkline LNG Co., 100 FERC ¶ 61,217 (preliminary determination on storage and sendout expansion), order issuing certificate and denying reh'g, 101 FERC ¶ 61,300 (2002); Southern LNG Inc., 101 FERC ¶ 61,187 (2002) (preliminary determination on expansion of docking, storage and sendout facilities), order authorizing expansion and denying reh'g, 103 FERC ¶ 61,029 (2003); Hackberry LNG Terminal, LLC, 101 FERC ¶ 61,294 (2002) (preliminary determination on siting, construction and operation of new import terminal), order issuing certificate and on reh'g, sub nom. Cameron LNG, LLC, 104 FERC ¶ 61,269 (2003); Freeport LNG Development, L.P., 107 FERC ¶ 61,278 (2004) (authorization to site, construct and operate new import terminal to serve intrastate market); Trunkline LNG Co., 108 FERC ¶ 61,251 (2004) (authorization to install unloading facilities and to increase vaporization/sendout capacity); Sabine Pass LNG, L.P., 109 FERC ¶ 61,324 (2004) (authorization to site, construct and operate new import terminal).

LNG import terminals at offshore, marine locations. Offshore terminals located in federal waters are not subject to FERC regulation under the NGA; they are regulated by the U.S. Coast Guard under amendments to the Deepwater Port Act passed by Congress in 2002.¹⁷ Three applications for offshore LNG terminal projects have been granted to date.¹⁸

The CPUC's contentions present a direct challenge to FERC's ongoing regulation of import terminals that casts a shadow over all FERC onshore regulatory activity to date. If FERC's Orders were to be set aside by this Court on the grounds the CPUC asserts, long-standing federal programs for review and authorization of the siting, construction and operation of onshore LNG import terminals could be gravely impaired if not eliminated — including the federal role in evaluating the environmental, safety, and security impacts of proposed projects.

Three federal agencies currently share in the oversight of the safety and security of LNG import terminals.¹⁹ FERC is responsible for authorizing the siting, construction and operation of onshore LNG import terminals and is the lead

¹⁷ Maritime Transportation Security Act of 2002, Pub. L. 107-295, § 106, 116 Stat. 2064, 2086 (2002) (Deepwater Port Act).

¹⁸ Gulf Landing, LLC, Docket No. USCG-2004-16860 (Feb. 12, 2005); El Paso Energy Bridge Gulf of Mexico, L.L.C., Docket No. USCG-2003-14294 (May 26, 2004); and Port Pelican, L.L.C., Docket No. USCG-2004-14134 (Nov. 14, 2003).

¹⁹ Sound Energy Solutions, 107 FERC ¶ 61,263 at P 76 (2004).

federal agency under the National Environmental Policy Act (“NEPA”)²⁰ to analyze the environmental, safety, security, and cryogenic design of proposed facilities. The Research and Special Programs Administration of the Department of Transportation (“DOT”) has the authority to promulgate and enforce safety regulations and standards, as well as siting requirements that FERC, as lead agency under NEPA, ensures will be satisfied by any proposed project.²¹ In fact, DOT regulations are only the starting point for FERC’s safety review. FERC has implemented more stringent requirements for onshore terminals than are required by the DOT minimum safety standards, and LNG facilities are subject to regular joint DOT/FERC staff regulatory reviews and site inspections on at least a biennial basis, or more frequently as circumstances warrant.²² The U.S. Coast Guard has authority over the security and safety of LNG vessels.²³

In February, 2004, FERC, DOT and the U.S. Coast Guard entered into an interagency agreement to ensure they would continue to work in a coordinated manner to address the full range of safety and security issues involved in the

²⁰ National Environmental Policy Act, 42 U.S.C. §§ 4312-4370f (2000).

²¹ Sound Energy Solutions, 107 FERC at P 76 (2004).

²² Sabine Pass LNG, L.P., 109 FERC ¶ 61,324, 62,560 (2004).

²³ Sound Energy Solutions, 107 FERC at P76 (2004).

regulation of LNG import terminals facilities and LNG tanker operations.²⁴ The CPUC's assertion of exclusive authority to regulate LNG import terminals in the state threatens this carefully delineated division of responsibility among these federal agencies.

Everyone involved in the process of reviewing applications for new and expanded LNG import terminals — the applicant, federal and state agencies, environmental groups, and the public at large — will benefit from judicial confirmation of the existing regulatory approach. Regulatory certainty serves the interests of the entire nation. This is especially true in the area of safety and security. A uniform national regulatory scheme is essential to ensure that a consistent safety and security system is kept in place. Through these agencies, the federal government has been regulating LNG import terminal facilities for over 30 years. States lack the national perspective and authority to provide a uniform regulatory system for these facilities that will be so critical to the nation's energy future. The CPUC's challenge of FERC's assertion of jurisdiction puts these programs at risk.

²⁴ Press Release, "Commission, Coast Guard, DOT Sign Interagency Agreement to Coordinate Review of LNG Terminal Safety, Security" (Feb. 11, 2004), available at <http://www.ferc.gov/press-room/pr-archives/2004/2004-1/02-11-04-interagency.asp>.

This case is not simply a dispute between FERC and the CPUC over regulation of one LNG import terminal in California. The CPUC's primary argument is that FERC has no jurisdiction over LNG import terminal facilities whatsoever, no matter where they are located. While the CPUC believes that FERC, and its predecessor, the FPC, never had authority to regulate import facilities, the CPUC alternatively argues that whatever authority FERC might have had was expressly taken away by Congress in the 1992 Energy Policy Act. As FERC correctly determined, however, the sole purpose of the 1992 legislation was to facilitate the importation of natural gas and LNG, and to provide that LNG imports are presumptively in the national interest. Under the CPUC's theory, however, California or any other coastal or border state, could decide whether siting a terminal may be permitted under the NGA. Such states could, therefore, prevent the importation of LNG by vetoing the location of a proposed site for LNG import facilities. The CPUC also claims that FERC has no authority under any other section of the NGA, on the assumption that none the of re-vaporized LNG will leave the state. The ramifications of this jurisdictional dispute thus go far beyond this particular project, and imperil a uniform policy expressed by Congress in NGA Section 3.

D. An Adverse Decision by this Court Could Impair the United States' Ability to Compete for LNG Supplies in the Worldwide Market

The United States is not alone in seeking increased access to available LNG supplies. There is a growing demand for natural gas throughout the world, and there will be increased competition among importing countries to obtain needed supplies. Worldwide LNG trade has existed for over 40 years and many consuming regions, Japan and Europe in particular, have long-established commercial relationships with LNG suppliers. The billions of dollars in investment needed to bring additional gas supplies to the United States, however, will not be invested in an environment of uncertain regulatory treatment or conflicting jurisdictional claims. The CPUC's assertion of jurisdiction creates precisely the sort of regulatory uncertainty that can delay or even prevent the siting of new import terminals and discourage the substantial capital investment required to develop an LNG project to bring supplies to the United States. The risk of inconsistent state siting decisions, delays in siting decisions, or state rejection of sites will place the United States at a significant disadvantage vis-à-vis other countries when competing for gas supplies in the world-wide LNG market. The United States needs to speak with "one voice" with the regard to the approval of the siting, construction and operation of LNG import terminals. That voice, under NGA Section 3, is found in the federal government.

E. Affirmance by this Court Will Not Diminish the Lawful Role of the States in the Permitting Process

While the approval of the importation of foreign supplies of LNG and the facilities required for importation is a matter of national concern, under existing law, State and local governments play a significant role in the review of project proposals. They will continue to do so if FERC's authority is confirmed. The industry's experience with LNG permitting has shown that FERC devotes significant resources to working cooperatively with state and local agencies on environmental and safety issues. In its role as the lead agency for reviewing project proposals under NEPA, FERC is required to solicit and analyze the views of all interested state and federal agencies and all other federal, state and local permitting agencies are "participating agencies" for purposes of the NEPA process.²⁵ In that way, all interested federal, state and local government agencies can come together in one concurrent and comprehensive review, so that all parties have substantive input and balanced decisions can be made. Indeed, FERC has acknowledged the CPUC's role in ensuring safe and reliable utility service for Californian consumers, and stated its goal of working cooperatively with the CPUC and other state and local authorities to protect the safety of residents and minimize adverse environmental impacts.

²⁵ 18 C.F.R. § 380.10 (2004).

Affirmance of FERC's Declaratory Order by this Court will confirm FERC's exclusive siting authority under Section 3 of the NGA as well as the inclusive nature of FERC's review process. States will continue to exercise authority under other federal legislation, including the Coastal Zone Management Act. See *supra* notes 3-5 and accompanying text.

F. Natural Gas is Sold in a National Market

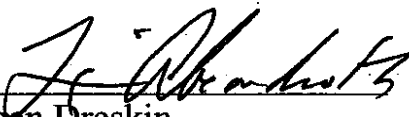
As pointed out in the Brief of Joint Respondent-Intervenors, the U.S. natural gas market is, in reality, a single, national market. A decision by a state to delay or reject a facility that could import a large amount of natural gas²⁶ will have impacts on the natural gas market not only within that state, but across the nation. Thus, state control of the siting, construction and operations of LNG terminals could, in effect, dictate flow and pricing of natural gas supplies across the country. Uniform federal regulation is critical to avoid patchwork regulation and the detrimental effects of such disparate regulation on compliance and operating costs, competition, and consumer prices.

²⁶ Major LNG import terminals typically process one billion cubic feet per day ("bcfd") or more of natural gas. An influx of such large quantities of natural gas, into a market area will materially impact supply, demand, and pricing at the local and national level.

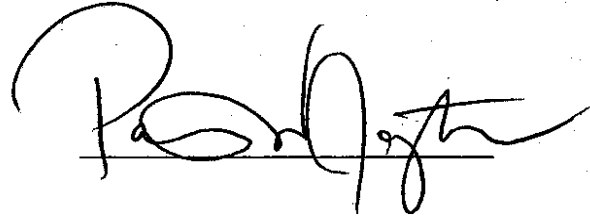
CONCLUSION

The current U.S. natural gas supply-demand imbalance creates an urgent need for increased LNG imports. A uniform federal policy on LNG facility siting is necessary to protect the national interest, secure new sources of competitively priced natural gas, avoid inconsistent state policies on imports, ensure public safety, and protect the environment and the interests of all consumers. For these reasons, the Petitions for Review should be denied.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that this Brief is proportionately spaced, has a typeface of 14-points or more, and contains 5,273 words.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Brief of *Amici Curiae* Interstate Natural Gas Association of America and the Natural Gas Supply Association in Support of Respondent Federal Energy Regulatory Commission, to be served upon each person designated on the official service list compiled by the Clerk of the Court of Appeals for the Ninth Circuit in this proceeding.

Dated this 29th day of March 2005.



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