

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

Nos. 04-73650 and 04-75240

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

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

**JOINT BRIEF OF INTERVENORS IN SUPPORT OF
RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION**

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**CORPORATE DISCLOSURE STATEMENT OF
CALIFORNIA LNG PROJECT CORPORATION D/B/A
SOUND ENERGY SOLUTIONS**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, California LNG Project Corporation doing business as Sound Energy Solutions (“SES”) files the following Corporate Disclosure Statement:

SES, a California corporation, is a wholly owned subsidiary of the Mitsubishi Corporation. Mitsubishi Corporation is a Japanese corporation whose stock is publicly traded on Japanese and European stock exchanges including the London Stock Exchange. SES’s headquarters and principal place of business is located at 301 East Ocean Boulevard, Suite 1510, Long Beach, California 90802.

SES was formed for the purpose of constructing and operating a terminal for the importation of liquefied natural gas (“LNG”) at the Port of Long Beach, California, and has sought authority from the Federal Energy Regulatory Commission, pursuant to Section 3 of the Natural Gas Act, to site, construct and operate an LNG terminal.

Respectfully submitted,

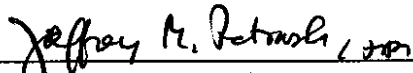


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**CORPORATE DISCLOSURE STATEMENT
OF AMERICAN GAS ASSOCIATION**

Pursuant to Rule 26.1 of the Federal Rule of Appellate Procedure, the American Gas Association files the following Corporate Disclosure Statement. The American Gas Association is a trade association composed of 192 local natural gas distribution utilities that serve customers in all fifty of the United States, AGA member companies deliver natural gas to more than 53 million homes, businesses and industries throughout the United States. AGA member companies take service from virtually every interstate natural gas pipeline regulated by the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. § 717 *et seq.* AGA undertakes advocacy activities on behalf of its members, including advocating policies that will ensure adequate supplies of reasonably priced natural gas for the nation's consumers. AGA has no parent companies, subsidiaries or affiliates that have issued securities to the public.

Respectfully submitted,



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**CORPORATE DISCLOSURE STATEMENT
OF CONOCOPHILLIPS COMPANY**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure,
ConocoPhillips Company, hereby provides this Corporate Disclosure Statement.

ConocoPhillips Company engages in the exploration, development and
production of natural gas and relies upon the availability of transportation on
various interstate and other natural gas pipeline systems throughout the United
States to move its gas from production areas to markets.

ConocoPhillips Company, a Delaware corporation, is a wholly owned
subsidiary of ConocoPhillips Holding Company, a Delaware corporation, which in
turn is a wholly owned subsidiary of ConocoPhillips, a Delaware corporation and a
publicly traded company.

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STATEMENT OF JURISDICTION

Intervenors in support of Respondent, Sound Energy Solutions (“SES”), American Gas Association (“AGA”), and ConocoPhillips Company (“ConocoPhillips”) adopt the Statement of Jurisdiction contained in the Brief of Respondent Federal Energy Regulatory Commission (“FERC” or “Commission”).

STATEMENT OF THE ISSUE

Did FERC properly determine that it has exclusive jurisdiction under Natural Gas Act (“NGA”) Section 3 over liquefied natural gas (“LNG”) import facilities that SES proposes to build and operate in Long Beach, California.

STATUTES AND REGULATIONS

The applicable statutes and regulations are contained in the addendum to FERC’s brief.

STATEMENT OF THE CASE AND FACTS

Joint Intervenors adopt the Statement of the Case and the Statement of Facts contained in FERC’s brief.

SUMMARY OF ARGUMENT

FERC correctly determined that it has exclusive authority under NGA Section 3 to regulate the siting, construction, and operation of LNG import

facilities.¹ LNG cannot be imported into the U.S. without the approval, under NGA Section 3, of a site and the specific facilities needed to receive, store, vaporize, and deliver the imported supplies from foreign commerce into intrastate or interstate markets. The approval of the importation of LNG and the facilities needed for the importation to be completed are “two sides” of a single transaction in foreign commerce. Since such facilities are indispensable to the importation, the federal government must regulate both the import of the commodity and the requisite facilities. In Sections 301(b) and 402(f) of the Department of Energy Organization Act of 1977 (“DOE Act”), Congress transferred all authority under NGA Section 3 to the Secretary of Energy.² Pursuant to a long-standing delegation by the Secretary of Energy dividing responsibility for administering Section 3 between the Department of Energy (“DOE”) and FERC, DOE regulates the import of the commodity and FERC regulates the siting, construction, and operation of the LNG import facilities.³ This two-sided federal regulatory scheme has been in place for almost 30 years, and was renewed by the Secretary of Energy after

¹ FERC’s orders address only its authority, delegated by the Secretary of Energy, under NGA Section 3 to regulate the siting, construction, and operation of on-shore LNG import terminals. Congress has assigned the regulation of the siting, construction and operation of off-shore LNG import terminals to another agency of the federal government, the Department of Transportation, in the Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064 (2002).

² Pub. L. 95-91, approved August 4, 1977, 91 Stat. 565, 578, 585 (1977).

³ See DOE Delegation Order No. 0204-112, 49 Fed. Reg. 6684 (Feb. 22, 1984).

enactment of Section 201 of the Energy Policy Act of 1992 (“EPAct”), which was intended to facilitate import of LNG.⁴

The California Public Utilities Commission’s (“CPUC”) assertion of jurisdiction over the LNG import facilities encroaches on the federal government’s exclusive authority over foreign commerce and disrupts the long-standing federal regulatory scheme for regulating LNG import facilities under NGA Section 3. The CPUC’s restrictive interpretation of FERC’s authority under NGA Section 3 misreads the NGA, misunderstands the effect of the DOE Act on Section 3, and ignores the significance of the Secretary of Energy’s orders specifically delegating authority to FERC to regulate LNG import facilities. The CPUC also misapprehends Section 201 of EPAct, which did not revoke FERC’s long-standing delegated authority to regulate LNG import facilities.

FERC’s regulation of SES’s proposed LNG import facilities does not infringe upon the State’s interest in protecting the public health and safety. The FERC’s orders recognize and accommodate that interest and reconcile it with the national interest in LNG imports. The safety and environmental impact of the SES import facilities will be evaluated by numerous state, local, and federal agencies and authorities in the joint California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”) review of the SES LNG import

⁴ 106 Stat. 2776, 2866 (1992). *See* Delegation Order No. 00-004.00, 67 Fed. Reg. 8946 (Feb. 27, 2002).

project. Additionally, before beginning operation, the SES LNG import project must obtain permits from a multitude of state, federal, regional, and local agencies.

Uniform and exclusive federal regulation of LNG imports and the facilities that make such imports physically possible is essential if the United States is to meet its growing demand for natural gas, a major portion of which will be supplied through increased imports of LNG. In Section 201 of EPAct, Congress expressed a national policy favoring such imports. The CPUC's position would frustrate that policy by enabling each coastal or border state to veto LNG imports, or condition them based upon its own parochial perspective, instead of from the prospective of the national interest.

ARGUMENT

Joint Intervenors support FERC's determination that it has exclusive authority under NGA Section 3 to regulate the siting, construction, and operation of LNG import facilities. Joint Intervenors also concur with the discussion and argument on this jurisdictional question presented in FERC's brief. FERC's declaratory ruling that it has exclusive jurisdiction over the siting, construction and operation of the import facilities SES has proposed is consistent with NGA Section 3, with judicial precedent thereunder, with the Secretary of Energy's Delegation Orders, and with almost 30 years of administrative decisions concerning LNG imports since NGA Section 3 authority was vested in the Secretary. FERC's orders conclusively explain why the CPUC's reading of NGA Section 3 is

erroneous. Not only is the CPUC's reading inaccurate and unreasonable, but it also ignores the "practical and historical realities" of FERC's exercise of its NGA Section 3 authority. Brief of Respondent FERC ("FERC Br.") at 24.⁵ The CPUC's construction of Section 3 would undermine the national policy favoring LNG imports, expressed in Section 201 of EPA Act. It would also result in shifting regulation of such imports from federal authorities required to assess them from a national perspective to state authorities focused on local concerns. In place of a uniform national approach, the CPUC would substitute multiple and differing local standards. The CPUC's position is founded on its contention that Section 3 does not mention "facilities." It also does not mention liquefied natural gas, but neither the CPUC nor any case has ever questioned that LNG is natural gas under the NGA. The CPUC's arguments, at bottom, advocate state regulatory intrusion into the regulation of foreign commerce that the Founders reserved to the federal government in the Commerce Clause of the Constitution (art. I. § 8 cl. 3). In contrast to the CPUC's construction, FERC's interpretation of its NGA Section 3 authority is reasonable and should be affirmed under the test set forth in *Chevron, U.S.A. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837, 842-45 (1984) ("*Chevron*"); and *American Rivers v. FERC*, 201 F.3d 1186 (9th Cir. 1999).

⁵ The briefs of Amici Indicated Members of Congress and the Amicus California Earth Corps raise virtually identical arguments to those made by the CPUC. Joint Intervenors agree with FERC that this Court lacks jurisdiction to consider the issues raised by CARE. FERC Br. at 41-43.

Joint Intervenors will not reiterate FERC's arguments. Instead, they submit the following considerations in support of FERC's orders.

A. A Uniform and Coordinated System of Federal Regulation Is Necessary For The Import of LNG and the Facilities That Make Such Imports Possible.

FERC's orders provide a detailed description of the background, development and operation of the current federal regulation of LNG imports, and of the facilities required to effectuate such imports. As FERC explained, in order to obtain NGA Section 3 import authorization under the Secretary of Energy's delegations, two separate applications are required: one must be submitted to the DOE's Office of Fossil Energy ("OFE") to import the commodity; the other must be submitted to FERC, seeking approval of the siting, construction and operation of the facilities needed to carry out import of the LNG. Excerpts of Record of CPUC ("ER") at 223. FERC correctly rejected the CPUC's claim that the CPUC alone can regulate the LNG import facilities, while DOE authorizes the importation of the commodity.

At the outset, Joint Intervenors note that, throughout its brief,⁶ the CPUC maintains that imports of LNG are approved by FERC. This assertion is in error. FERC has never had the authority to approve the importation of LNG or natural gas under NGA Section 3. Pursuant to Section 301(b) of the DOE Act⁷ the

⁶ See, e.g., Opening Brief of CPUC ("CPUC Br.") at 16, 21, 22-23.

⁷ § 301(b), 91 Stat. 565, 578 (1977).

authority previously exercised by the Federal Power Commission (FPC) over LNG imports and LNG import facilities under NGA Section 3 was transferred to DOE. In view of the foreign policy implications of the import and export of natural gas in foreign commerce, administration of NGA Section 3 was transferred to a member of the President's cabinet, specifically, the Secretary of Energy.⁸ The DOE Act further provides in Section 402(f)⁹ that

“[n]o function ... which regulates the exports or imports of natural gas ... shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.”

Congress also gave the Secretary the authority to assign, in whole or in part, his authority to regulate exports and imports of natural gas to FERC.¹⁰

⁸ In the Policy Guidelines accompanying the 1984 delegation orders, DOE explains that:

Under the Department of Energy Organization Act, the Secretary of energy was given responsibility for implementing the provisions of the Natural Gas Act relating to natural gas imports and exports. This authority ... was given to the Secretary in recognition that a policy official accountable to the President should have jurisdiction over the regulation of gas imports to the extent that the regulatory decisions affect national and international energy policy, foreign policy, and national security interests. 49 Fed. Reg. at 6688 (Feb. 22, 1984).

In specifically delegating authority to FERC for the siting, and approval of construction and operation of import and export facilities, the delegation order states that “[n]othing in this Order shall preclude the Secretary from exercising any of his authority so delegated whenever ... necessary” Delegation Order No. 0204-112, 49 Fed. Reg. at 6691. *See also*, Paragraph 3.2 in Delegation Order No. 00-004.00, 67 Fed. Reg. 8946, 8947 (Feb. 27, 2002).

⁹ 42 U.S.C. § 7172(f) (2000).

¹⁰ 42 U.S.C. § 7172(e) and (f) (2000).

The Secretary of Energy subsequently delegated to FERC his authority to regulate LNG import facilities, previously exercised by the FPC, while retaining authority under Section 3 to approve the import of the commodity.¹¹ The Secretary's delegation to FERC of the authority to regulate LNG import facilities occurred shortly after the court's decision in *Distrigas Corp. v. FPC*, 495 F.2d 1057 (D.C. Cir. 1974) ("*Distrigas*"). In that case, the D.C. Circuit determined that NGA Section 3 provided FERC's predecessor, the FPC, with the authority to regulate such import facilities that is as broad, if not broader, than its authority to regulate gas pipelines in interstate commerce under Section 7 of the NGA. The DOE Act was adopted 40 months after *Distrigas*. If not bound by the D.C. Circuit's authoritative interpretation of the NGA, the Secretary was certainly entitled to rely upon it in delegating NGA Section 3 jurisdiction over LNG import facilities to the FPC. As this court has held, "judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Brand X Internet Services v. FCC*, 345 F.3d 1120, 1132 (9th Cir. 2003), *cert. granted*, 73 U.S.L.W. 331 (U.S. Dec. 3, 2004) (No. 04-277) (quoting *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312-13 (1994)).

¹¹ See, DOE Delegation Order Nos. 0204-112 and 0204-111, 49 Fed. Reg. 6684, 6690 (Feb. 22, 1984).

FERC's NGA Section 3 jurisdiction derives solely from the Secretary's Delegation Orders. It has no authority to contest this delegation. *High Country Resources and Glacier Energy Co. v. FERC*, 255 F.3d 741, 748 (9th Cir. 2001); *Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659, 663 (D.C. Cir. 1996). It must, therefore, review the siting, construction, and operation of LNG import facilities as the Secretary's Delegation Orders require. The CPUC's dispute, therefore, is not really with FERC, but rather with Congress' assignment of all Section 3 authority to the Secretary of Energy in DOE Act Section 301, the Secretary's subsequent determination, rooted in *Distrigas*, that Section 3 covers both the commodity and the facilities necessary for its import, and the Secretary's delegation of NGA Section 3 authority over import facilities to FERC. The DOE Act and the Secretary's Delegation Orders are not subject to collateral attack in this proceeding. *See High Country Resources*, 255 F.3d at 748.¹²

In the orders under review, FERC explained that the intent to import gas and the physical capability of doing so are "two halves of a whole transaction"; the siting, construction, and operation of import facilities are the "means" by which the import takes place. ER at 235. This metaphor is particularly apt because LNG cannot exist independent of specially designed and integrated on-shore facilities,

¹² The CPUC also did not directly challenge the Secretary's Delegation Orders in its Request for Rehearing of the Declaratory Order in this proceeding. Accordingly, this court lacks jurisdiction to consider the validity of the Secretary's Delegation Orders in this appeal. *See High Country Resources*, 255 F.3d 745-46.

including a pier to off-load the LNG from cryogenic tankers, cryogenic equipment to receive and temporarily store it in its liquid state, and vaporization equipment needed to return the LNG to its natural gaseous state for delivery through pipelines into intrastate or interstate commerce.¹³ All of these on-shore facilities are instrumentalities of foreign commerce. The Court in *Distrigas* implicitly recognized this fact when it invoked its earlier holding in *Border Pipe Line Co. v. FPC*, 171 F. 2d 149 (D.C. Cir. 1948), that Section 3 applies only to foreign commerce, and that FERC's powers over interstate commerce do not apply, and then ruled that Section 3 extends to LNG import facilities. As FERC noted, the Secretary of Energy also recognized these principles in delegating to FERC the Secretary's Section 3 jurisdiction over LNG facilities following the abolition of the FPC in the DOE Act. ER at 235. This bifurcated federal regulatory scheme implementing NGA Section 3 has been in effect for almost 30 years. That bifurcation was not revised by the Secretary after enactment of Section 201 of EPCA in 1992. Rather, it has been renewed and continued in the Secretary's latest Delegation Order issued in 2002.¹⁴

The CPUC acknowledges that the importation of LNG involves foreign commerce, and does not challenge the exclusive authority of the federal

¹³ Natural gas does not occur in a liquid state in nature; it must be converted to liquid form by super-cooling, called liquefaction. Liquefaction reduces the volume of natural gas approximately 600 times, making it economical to transport from producing to importing countries in cryogenic tankers.

¹⁴ See, DOE Delegation Order No. 00-004.00, 67 Fed. Reg. 8946 (Feb. 27, 2002).

government to approve the import of the commodity or to establish the price and other terms and conditions under which it will take place. CPUC Br. at 46.

Nevertheless, the CPUC claims that it can regulate the LNG import terminal facilities proposed by SES without infringing upon the federal government's exclusive regulation of foreign commerce and without disturbing the long-standing federal regulation of LNG import facilities under NGA Section 3. Specifically, the CPUC contends that it is free to regulate the proposed import facilities because they will be located entirely within the State of California and because all of the LNG supplies imported through the facilities will be delivered or sold within the state. These contentions are mistaken because LNG import facilities are instrumentalities of foreign commerce.

1. LNG Import Facilities Are Indispensable To The LNG Import And Are Instrumentalities Of Foreign Commerce Subject To FERC's Exclusive Jurisdiction Under NGA Section 3.

As explained above, LNG cannot be imported without a site and the specific facilities needed to receive, store, vaporize, and deliver the gas from foreign commerce to interstate or intrastate pipelines. These indispensable import facilities are "used constantly and exclusively" in foreign commerce, and are thus as much instrumentalities of foreign commerce as the shipping containers involved in *Japan Lines Ltd. v. County of Los Angeles*, 441 U.S. 434, 446, n. 9 (1979).¹⁵ Under NGA

¹⁵ Congress has recognized that onshore LNG facilities may be in interstate or foreign commerce. The Pipeline Safety Act, 49 U.S.C. § 60101(14) provides:

Section 3, therefore, the federal government regulates the requisite import facilities, as well as the importation of the commodity. As also explained above, DOE authorizes the import of the commodity, and FERC authorizes and regulates the facilities that make the import possible and that prepare it for entry into interstate or intrastate commerce. Such facilities remain subject to appropriate state health and safety requirements (*see infra* pp. 25-27), but are not subject to authorization or economic regulation by the CPUC.

In this case, FERC correctly determined that SES' proposed facilities were subject to its delegated NGA Section 3 jurisdiction over LNG import facilities. It is required to exercise this authority to regulate all "facilities essential to the proposed importation." ER at 081, n.1. As applied to SES' application under Section 3, such facilities include the 2.3-mile pipeline required to link the terminal with downstream distribution facilities of Southern California Gas Company ("SoCal Gas"). As FERC explained, this two-mile pipeline's "only purpose will be to deliver gas imported in foreign commerce to the state-regulated facilities of SoCal Gas." ER at 081, n.1. Since all of SES' proposed facilities are "essential to the proposed importation" and are "used constantly and exclusively" in foreign

"'liquefied natural gas pipeline facility' (A) means a gas pipeline facility used for transporting or storing liquefied natural gas or for liquefied natural gas conversion, in interstate or foreign commerce
...."

For purposes of the Natural Gas Pipeline Safety Act offshore facilities are not included in this definition.

commerce, FERC's NGA Section 3 jurisdiction applies until the foreign commerce ends at the point of delivery into the SoCal Gas natural gas distribution system.

The regulation of foreign commerce involved in the importation of LNG into the United States is pre-eminently a matter of national concern. The Commerce Clause (U.S. Const., art. I, § 8, cl. 3) of the Constitution grants Congress broad power to "regulate Commerce with Foreign nations." Accordingly, "[i]n international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power." *Japan Lines*, 441 U.S. 434, 448 (1979) (quoting *Board of Trustees v. United States*, 289 U.S. 48, 59 (1933)). Because of the special need for federal uniformity in the regulation of foreign commerce, state regulation affecting foreign commerce raises distinct concerns. Paramount among these concerns is the risk that multiple layers of state regulatory burdens will conflict with the need for the federal government to "speak with one voice when regulating commercial relations with foreign governments." *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976).

Under *Japan Lines* and *Michelin*, the impact of such burdens must be tested pragmatically.¹⁶ Speaking in the context of a California tax on imported shipping containers, the Supreme Court in *Japan Lines* held that "a court must...inquire,

¹⁶ Compare *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285-86 with *Dep't. of Revenue v. Ass'n of Washington Stevedoring Cos.*, 435 U.S. 734, 751-56 (1978).

first, whether the tax, notwithstanding apportionment, creates a substantial risk of international multiple taxation, and; second, whether the tax prevents the Federal Government from ‘speaking with one voice when regulating commercial relations with foreign governments.’ If a state tax contravenes either of these precepts, it is unconstitutional under the Commerce Clause,” *Japan Lines*, 441 U.S. at 451.

Because this case involves state regulation, rather than state taxation of foreign commerce, the burden that must be examined under the first alternative is not the risk of multiple international taxation, but the risk that state regulation will obstruct national policy toward LNG imports. In applying this test, it must also be noted that LNG facilities are not themselves in import transit. Rather, they are instrumentalities of foreign commerce that provide the pathway through which gas in import transit enters intrastate or interstate commerce. The CPUC is asserting authority to block that pathway.

The Commerce Clause commits to the exclusive authority of the federal government the regulation of those aspects of foreign commerce that “necessitate a uniform national rule.” *Japan Lines*, 441 U.S. at 449. It is evident that Congress, through the NGA, the DOE Act, and the Secretary of Energy’s Delegation Orders issued pursuant to the DOE Act, has asserted uniform and coordinated federal jurisdiction over the entire transaction in foreign commerce — the import of the commodity and the facilities, without which, the import cannot take place. The CPUC’s assertion of authority is inconsistent with this federal regulatory scheme,

would substantially impair or even prohibit the importation of LNG supplies into the country, and would impermissibly intrude upon the federal government's exclusive regulation of foreign commerce.

The CPUC asserts the authority to independently evaluate the merits of the SES import project and to determine whether a certificate of public convenience and necessity should be issued. In short, it claims a power to open or close the door of foreign commerce.¹⁷ This claim conflicts with the Constitution's definitive assignment of authority over foreign commerce to the federal government. The CPUC's exercise of such authority would at least add another layer of regulation — including power to disapprove or condition - to the siting, construction and operation of the facilities — conditions that could duplicate, or, worse, conflict with conditions attached by DOE and FERC. Indeed, it is virtually certain that conflicts would occur because the CPUC's decision would be based upon state law and standards designed to protect local interests, rather than the national interest in the importation of LNG. The fundamental reason for the primacy of federal authority over foreign commerce is to assure that imports and exports are regulated from a national perspective, not the interests of each state. The CPUC's proposal

¹⁷ On April 27, 2004, the CPUC issued I.04-04-024 "Order Instituting Investigation Into The Proposal of Sound Energy Solutions To Construct and Operate A Liquefied Natural Gas Terminal At The Port of Long Beach." On March 22, 2005, the CPUC Administrative Law Judges assigned to the investigation issued a revised procedural order scheduling hearings to begin on July 25, 2005. The CPUC procedural order is attached as an Appendix to this brief.

for duplicative and potentially conflicting regulation of LNG imports — including the right to veto the import or impose conditions that could defeat it — imposes an impermissible burden on foreign commerce. If the CPUC can exercise such authority, then the same is true of regulatory commissions in any other state. Each could simply say no. Assuming conditioned approval, conditions attached to such approval could delay the construction and operation of import facilities and interfere with the free flow of imported LNG into the U.S.

State vetoes or conditioned approvals will discourage investment in import facilities by effectively erecting a state-imposed barrier to international trade in LNG. The effect of such a barrier on the United States' effort to facilitate international trade in energy could be disastrous. Nations with available supplies of liquefiable gas will turn from U.S. markets to serve the growing demand in other countries without such barriers.

This concern is real. The CPUC claim of authority to decide whether to issue a certificate of public convenience and necessity, necessarily includes a claim of authority to deny the certificate and thus prohibit the siting, construction and operation of LNG import facilities in California. Thus, the power the CPUC would arrogate to itself would allow the CPUC to effectively veto the import of LNG into the United States, even though, as the CPUC recognizes, Congress has deemed LNG imports to be presumptively in the public interest. CPUC Br. at 21.

Moreover, the CPUC's position would allow any of the coastal states and border

states likewise to impose conditions or reject import facilities siting requests based solely upon considerations of state or local interests. Such state regulation would defeat the policy in Section 201 of EPA Act to encourage LNG imports, undermine federal regulation of LNG imports under the Secretary's Delegation Orders, and impair federal uniformity in an area where such uniformity is essential.

The authority the CPUC claims would go well beyond deciding whether to certificate the LNG import facilities under state law. The CPUC claims that it can exercise continuing economic oversight over SES if it receives a certificate. Such oversight would extend to allocating gas supplies during periods of shortage, issuing orders to mitigate SES' potential exercise of market power, and approving, disapproving or conditioning mergers. Specifically, the CPUC claims it needs such authority to assure natural gas supplies for California core customers and electric generation plants in emergency situations, to prevent abuses of market power by SES and to prevent mergers that might substantially lessen competition in gas markets. FERC correctly rejected these claims, which, in any event, are "premature and speculative" ER at 091. Even the CPUC appears to agree that these issues are not ripe for review in this proceeding. CPUC Br. at 52.

Nonetheless, FERC correctly determined that the existing federal regulatory scheme can effectively respond in a supply emergency situation, and can also

monitor, prevent, and redress any anticompetitive actions, if they were to occur.

ER at 091.¹⁸

The CPUC's claim of regulatory authority over LNG import facilities is particularly inopportune in the present state of worldwide energy demand. It comes at a time when the need to maintain a uniform and coordinated national policy on the importation of LNG is critical. There is a general consensus that the United States has for several years been walking a tight rope with regard to natural gas supply and that the nation will have to rely increasingly upon LNG imports to meet the growing domestic demand for natural gas.¹⁹ The United States is already competing with other countries for access to LNG supplies throughout the world. Because of its size, but above all because of its stable regulatory environment, the

¹⁸ The Commission noted that it had ample authority under the NGA to enforce any conditions attached to an order modifying the SES proposal. The Commission also noted that the Secretary of Energy, under Section 302 of the Natural Gas Policy Act, 15 U.S.C. § 3362 (2000), and Sections 101(a) and (c) of the Defense Production Act, 50 U.S.C. App. §§ 2071(a) and (c)(2000), has the authority to direct gas flows in times of shortage. Finally, the Commission stated that any transfer of NGA Section 3 authority is subject to its approval, and that any merger or acquisition that might give rise to excessive market power would be subject to federal antitrust constraints. ER at 091.

¹⁹ See "Balancing Natural Gas Policy – Fueling the Demands of a Growing Economy," September 2003, issued by the National Petroleum Council, a federal advisory commission to the Secretary of Energy. The report concludes that because declining in domestic natural gas production and imports from Canada, the U.S. will have to rely upon increased LNG imports in order to meet growing demand. The report is available at www.npc.org. 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 total U.S. natural gas supply by 2025. Annual Energy Outlook 2005, EIA at 69 (Feb. 2005). The CPUC also does not challenge the need for LNG imports. CPUC Br. at 2.

U.S. market is very attractive to LNG suppliers. The risk of locally motivated state siting decisions inconsistent with or even duplicative of FERC's determinations, the delays attendant on duplicative state proceedings, and the potential for state veto of imports would place the U.S. at a significant competitive disadvantage in attracting and obtaining these needed supplies. The current, longstanding federal regulatory scheme governing imported LNG supplies and the facilities required to effectuate such imports provides a centralized, uniform and coordinated system designed to carry out the national policy in favor of LNG imports. The CPUC's claimed jurisdiction would disrupt that system and impede the measured federal process for authorizing LNG imports into the United States. LNG imports that are expected to reduce price volatility in wholesale and retail markets and that are expected to be a hedge against supply disruptions in gas markets could be barred - all to the detriment of U.S. consumers. The U.S. must speak with "one voice" with respect to the siting, construction, and operation of LNG import facilities, not with a chorus of many different and dissonant state voices.

2. The Location of the Import Facilities Within California Does Not Provide The CPUC The Authority To Regulate Them.

The fact that these import facilities will be located entirely within California does not mean that they are in intrastate commerce rather than foreign commerce. Location alone cannot support the CPUC's sweeping assertions of economic regulatory authority over import facilities. On-shore import facilities are, obviously, almost always located entirely within the state of importation. The

relevant factor is not where the facilities will be located, but rather the function that the facilities will perform. As the Commission determined, the only function of the proposed SES facilities will be to effectuate importation of LNG supplies in foreign commerce. Accordingly, the proposed facilities are subject to the Commission's exclusive foreign commerce jurisdiction under NGA Section 3. The CPUC has no jurisdiction over FERC-regulated facilities simply because they are located within the state of California.²⁰

3. The Presence of Interstate Commerce Is Not A Prerequisite For The Exercise Of The Commission's NGA Section 3 Authority.

Under SES's current proposal, the imported LNG supplies will be delivered or consumed within the state of California, and will not enter interstate commerce. That fact, however, does not in any way reduce the Commission's NGA Section 3 authority over SES's proposed import facilities. The Commission's authority under NGA Section 3 is separate and distinct from its authority over the transportation and sale of natural gas in interstate commerce, and it may be exercised independently. *Distrigas*, 495 F.2d at 1062-64; *Border Pipe Line Co.*, 171 F.2d at 150. *Distrigas* and *Border* make clear that the Commission's jurisdiction under NGA Section 3 rests on the foreign commerce clause, not on the provisions of the NGA relating to interstate commerce.²¹ This proposition is

²⁰ *Public Utils. Comm'n v. FERC*, 900 F.2d 269, 273-74 (D.C. Cir. 1990).

²¹ The CPUC argues that the Commission's jurisdiction over "facilities" is limited by NGA Section 1(b), 15 U.S.C. § 717(b) (2000), to facilities used for the transport or sale of natural gas in interstate commerce. CPUC Br. at 36. NGA Section 1(b)

confirmed by Section 3's provision that no "person," rather than no "natural gas company," may import natural gas without authorization thereunder. The distinction is significant. Section 2(1) of the NGA defines "person" to mean an "individual or a corporation." 15 U.S.C. § 717a(1) (2000). In contrast, Section 2(6) defines the term "natural gas company" to mean a "person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." 15 U.S.C. § 717a(6) (2000). If Congress had intended the Commission's NGA Section 3 authority over the LNG import facilities to be dependent on the downstream transportation or sale of imported supplies in interstate commerce, it would have used the jurisdictionally limited term "natural gas company" instead of the broader term "person."²²

establishes the Commission's jurisdiction over facilities used in interstate commerce, but, contrary to the assertion of the CPUC, it does not "trump" exercise of the Commission's jurisdiction over foreign commerce in NGA Section 3. As the CPUC recognizes, Congress in NGA Section 1(a) stated "Federal regulation in matters relating to transportation of natural gas and the sale thereof in interstate *and foreign commerce* is necessary in the public interest." 15 U.S.C. § 717(a) (2000) (emphasis added). Congress included NGA Section 3 in the NGA to establish the means by which the regulation of foreign commerce would take place. The court in *Distrigas* determined that the NGA Section 3 foreign commerce authority included the regulation of import facilities, and the DOE Secretary's Delegation Orders assigned that authority to FERC.

²² The CPUC's argument that no federal jurisdiction exists because all LNG imported through the SES LNG facility will remain intrastate, also overlooks the reality of today's natural gas markets. In fact, the United States is a single, national gas market. Any large impact on natural gas supply, such as the approval or rejection of an LNG terminal importing up to one billion cubic feet per day ("bcfd") of natural gas, will materially impact supply and demand on a national level. The ability to inject one or two bcfd of natural gas into a market area has a ripple effect across the country, displacing demand from other areas and altering

B. The Energy Policy Act of 1992 Did Not Divest FERC Of Authority To Regulate LNG Import Facilities.

The CPUC denies that FERC ever had any authority to regulate LNG import facilities under the NGA, but argues, in the alternative, that, even if FERC had such authority, it was repealed by Congress in the EAct of 1992.²³ CPUC Br. at 22. FERC correctly determined that the CPUC's interpretation of the EAct is erroneous. As FERC explained, "the 1992 amendment impacted the federal review of the economic impact of imports, which was principally the concern of DOE, but did not alter the Commission's role in assessing technical, safety, and environmental issues relating to the siting, construction, and operation of import facilities." ER at 244. The EAct was designed to facilitate the imports of LNG and other natural gas from Canada and Mexico by making such imports presumptively in the public interest. The effect of the 1992 amendments was to render DOE's role in reviewing import proposals essentially ministerial, but had no impact on FERC's role in reviewing the LNG import facilities involved. This proposition is confirmed by the Secretary of Energy's actions after EAct was enacted. Such orders continued the pre-EAct delegation to FERC of authority to

pricing. If each state had authority to develop its own set of siting, construction and operational regulations for LNG terminals, such regulatory variation would influence where LNG terminals were sited, where and ultimately whether, LNG supplies enter the country, and the flow and pricing of other supplies across the country.

²³ Section 201 of the EAct, 106 Stat. 2866.

authorize import facilities under Section 3.²⁴ The Secretary's authoritative construction of the statute is entitled to deference. *Chevron*, 467 U.S. at 842-44; *American Rivers*, 201 F.3d at 1194.

Moreover, the CPUC's reading of EAct is irrational. It is patent from the language of Section 201 of EAct that its purpose was to facilitate and expedite the importation of LNG. Therefore, it is unreasonable to assume Congress intended in that very provision, and *sub silentio*, to divest the Secretary of Energy of Section 3's well established, pre-existing authority to regulate the facilities necessary to effectuate such importation, to revoke his Delegation Orders granting such authority to FERC, and to leave the regulation of facilities indispensable to LNG importation to each coastal or border state. Nor is it a reasonable interpretation of the EAct that the Commission's exercise of delegated authority over LNG import facilities conflicts with the EAct's directive that an application to import LNG shall be granted without "modification or delay." The Commission's review of import facilities does not "modify or delay" the authorization of the import. Under the Secretary of Energy's Delegation Orders, DOE authorizes the LNG importation

²⁴ See Delegation Order No. 00-004.00, 67 Fed. Reg. 8946, (Feb. 27, 2002). Following the passage of EAct, FERC also reviewed, updated and clarified its regulations governing the siting, construction, and operation of import facilities under NGA Section 3. ER at 084, n.8. See Part 153 of FERC's Regulation under NGA Section 3, 18 C.F.R. Part 153 (2004), "Applications for Authorization to Construct, Operate, or Modify Facilities Used For The Export or Import of Natural Gas."

often within weeks of the filing of the application.²⁵ If the LNG supplies are to be imported at a new LNG import terminal, the importation is authorized, but only conditionally. It remains subject to FERC's review of the application for place of import, and the siting, construction, and operation of the proposed LNG terminal.²⁶ Since a typical new LNG terminal can take up to 3 or 4 years to construct, the importation is not modified or delayed.

C. FERC's Exercise Of Its NGA Section 3 Authority Over LNG Import Facilities Does Not Infringe Upon The State's Interest In Public Health And Safety.

The CPUC contends that FERC's exercise of its NGA Section 3 authority over SES's LNG import facilities in California infringes upon the state's interest in protecting the health and safety of state residents. CPUC Br. at 45. Contrary to the assertion of the CPUC, FERC's NGA Section 3 jurisdiction does not encroach upon the state's legitimate interest in these matters. FERC's orders recognize and accommodate the state's interest in public health and safety and harmonize that interest with the national interest in LNG imports.

As FERC explained, the exercise of its NGA Section 3 authority over SES's import facilities will not "unsurp the state's right to protect the safety of its own

²⁵ LNG imports can be approved under a blanket-type authorization for sale in the short-term and spot market during a two-year period, or under a long-term authorization. *See Tractabel LNG North America Serv. Corp.*, 2 FE ¶ 70,751 (2002); *BG LNG Servs., L.L.C.*, 2 FE ¶ 70,915 (2003).

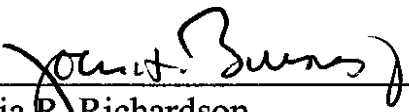
²⁶ *See EcoElectrica, L.P.*, 1 FE ¶ 71,105 (1995); *El Paso Merchant Energy, L.P.*, 2 FE ¶ 70,747 (2002); *Sonat Energy Servs., Co.*, 2 FE ¶ 70,431 (1999).

citizens and its environment from hazardous conditions....” ER at 248. The state’s interest in protecting the safety, security, and public health of its residents will be considered by state and local authorities pursuant to a state statute — the CEQA. A joint CEQA and NEPA review of SES’ proposed LNG import project is being undertaken by the state and FERC with the Port of Long Beach, where the proposed LNG facilities will be located. The Port of Long Beach is serving as the lead state agency for the CEQA review and FERC is serving as the lead federal agency for NEPA review. FERC noted that numerous other federal, state and local agencies and authorities, including the California Coastal Commission, California Energy Commission, California State Lands Commission, California Department of Fish and Game, Los Angeles Regional Water Quality Control Board, and South Coast Air Quality Management District, are involved in the examination of the health, safety, and security issues related to the proposed LNG facilities. FERC affirmed its intent to work cooperatively with state agencies on siting and safety issues, and invited the CPUC to actively participate in the review process. FERC has assured California that “[i]f the project is approved, we expect approval to be conditioned on compliance with mitigation measures and constraints developed as a result of our ongoing joint federal and state environmental and safety investigation and consultation.” ER at 249.

CONCLUSION

For the foregoing reasons, the orders of FERC under review should be affirmed.

Respectfully submitted,

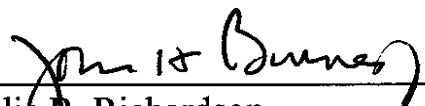


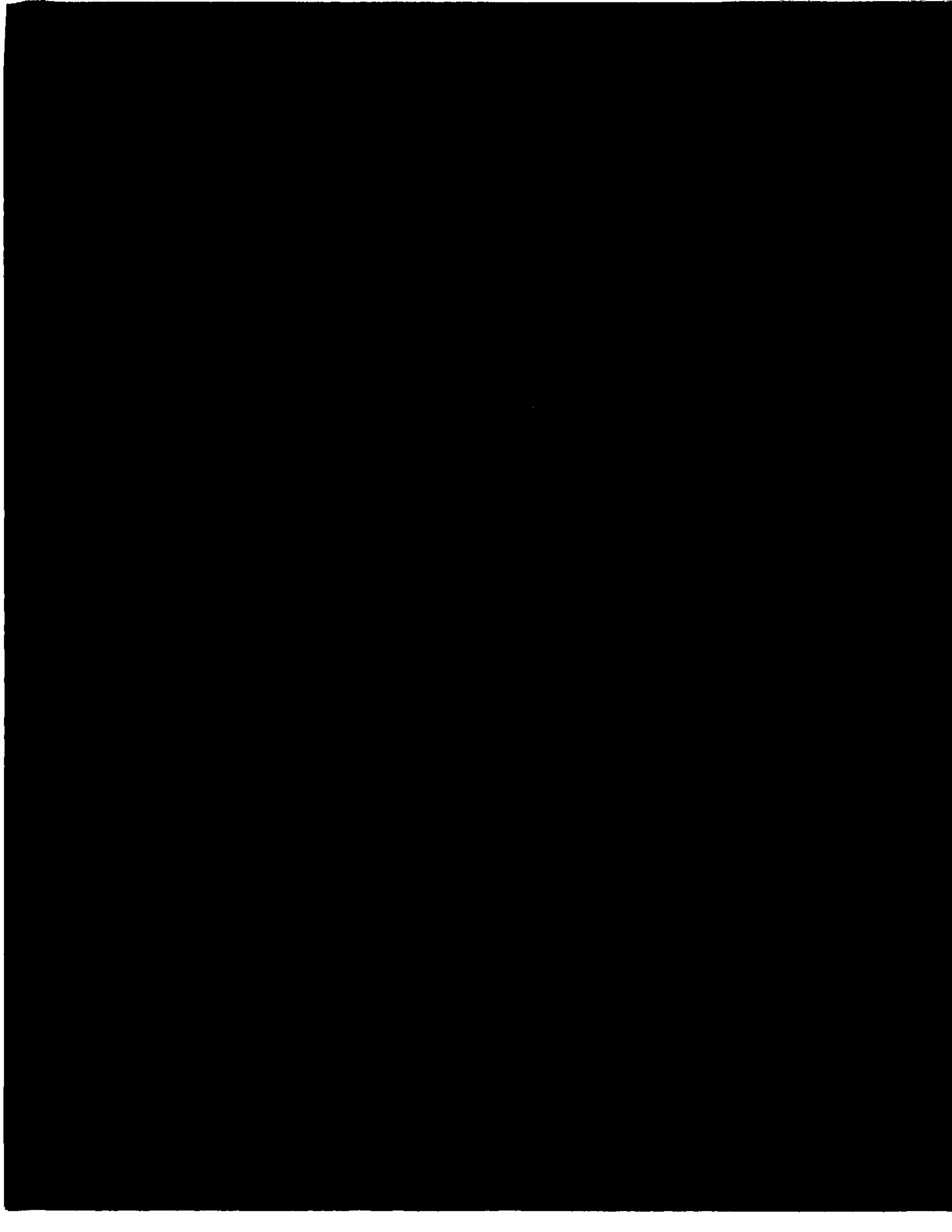
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March 29, 2005

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 6,578 words.

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APPENDIX

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Proposal of Sound Energy Solutions to Construct and Operate a Liquefied Natural Gas Terminal at the Port of Long Beach.

Investigation 04-04-024
(Filed April 22, 2004)

ADMINISTRATIVE LAW JUDGES' RULING REGARDING HEARINGS

This ruling advises the parties of the Commission's current plan to conduct hearings in this proceeding.

The Scoping Memo issued on September 13, 2004 in this proceeding originally scheduled evidentiary hearings for January 17, 2005 and scheduled public participation hearings on March 10 and 11. The Assigned Administrative Law Judges subsequently removed the hearings from the Commission's calendar after learning that the joint draft environmental impact report/environmental impact statement (DEIR/DEIS) would not be issued prior to March 2005.

This ruling sets forth a procedural schedule that is based on the assumption that the DEIR/DEIS will be issued around the first week of May, 2005. The schedule is subject to change if the DEIR/DEIS is issued significantly earlier or later. The Commission wants the parties and members of the public to have had an opportunity to understand and comment on the DEIR/DEIS prior to the Commission's hearings. Although the dates we set today are subject to change depending upon the date of issuance of the DEIR/DEIS, we issue this ruling in order to assist the parties in planning their participation in this proceeding.

Public Participation Hearings

The Commission intends to conduct public participation hearings in this proceeding in recognition of the potential impacts of the project on local neighborhoods and citizens. Public participation hearings provide an opportunity for individuals who are not parties to the proceeding to put their views on the project on the record of the proceeding. The Commission may consider public sentiments and concerns as guidance in the development of a more formal record.

The Commission will conduct public participation hearings as follows:

July 25, 2005 3:00 pm - 5:00 pm 7:00 pm - 9:00 pm	Long Beach Public Library - Auditorium 101 Pacific Avenue Long Beach, CA 90822
July 26, 2005 4:30 pm - 7:00 pm	Banning's Landing Community Center Gertrude #2 100 East Water Street Wilmington, CA 90744

The Commission welcomes any and all individuals who wish to speak at these hearings and will undertake outreach in local neighborhoods to assure affected individuals, businesses and groups are informed of the hearings.

Any party who wishes a language interpreter to be present at the hearings, requires accommodations for disability or has other inquiries about the conduct of the hearings should contact the Commission's Public Advisor at 1-866-849-8391.

Procedural Schedule

The procedural schedule in this proceeding at this time is as follows:

Service of concurrent opening testimony (except on those issues relating to market impacts, as described in Scoping Memo)	June 20, 2005
Service of concurrent reply testimony (except on those issues relating to market impacts, as described in Scoping Memo)	July 9, 2005
Concurrent rebuttal testimony	July 22, 2005
Evidentiary Hearings: Commission Courtroom 505 Van Ness Avenue San Francisco, CA 94102	August 4-12, 2005
Opening Briefs	September 15, 2005
Reply Briefs (submission of proceeding)	October 1, 2005
Proposed Decision on all issues except market impacts	December 2005
Review of market impacts	To be determined

Most of the evidentiary hearings will be conducted in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102. The Commission will consider requests for a portion of the evidentiary hearings to be conducted in Long Beach in recognition of the possible resource limitations of local groups and organizations. Any party who seeks hearings in Long Beach should request specific dates for those hearings in an electronic communication to the ALJs (pva@cpuc.ca.gov) and

(kim@cpuc.ca.gov), copied to all parties, after opening testimony is served, but no later than July 22, 2005. Such a request should specify which witness or witnesses the party would present or cross-examine at those hearings and, where relevant, provide estimates of cross-examination time.

Because of unanticipated delays in the issuance of the DEIR/DEIS, the Commission may not be able to resolve all outstanding issues in this proceeding within 18 months of the date of the scoping memo dated September 13, 2004 if it determines that it must conduct evidentiary hearings on issues relating to market impacts.

IT IS RULED that:

1. The revised schedule for this proceeding is set forth in this ruling. The assigned Administrative Law Judges (ALJs) may revise this schedule as necessary for the fair and efficient management of the proceeding.
2. Public participation hearings will be conducted in the Long Beach area on July 25 and 26, 2005, as described above.

Dated March 22, 2005, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

/s/ KIM MALCOLM

Kim Malcolm
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judges' Ruling Regarding Hearings on all parties of record in this proceeding or their attorneys of record.

Dated March 22, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

DEPARTMENT OF ENERGY

Office of the Secretary

New Policy Guidelines and Delegation Orders From Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas

AGENCY: Department of Energy.

ACTION: Issuance by the Secretary of Energy of new policy guidelines and delegation orders, superseding current delegation orders, to the Administrator of the Economic Regulatory Administration and to the Federal Energy Regulatory Commission relating to importation of natural gas.

SUMMARY: These new delegation orders and policy guidelines are the result of a review of the federal government's policies and procedures for regulating the importation of natural gas into the United States. The guidelines set forth a new policy direction for gas import arrangements and provide the basis for authorizing import arrangements through revised regulatory procedures. The policy emphasis is on import agreements structured to supply natural gas to American consumers at competitive prices and responsive to changes in the markets served. The revised regulatory procedures are designed to implement the policy guidelines.

Modifications are made to the regulatory responsibilities for gas imports shared by the Economic Regulatory Administration and the Federal Energy Regulatory Commission. These are set forth in new delegation orders from the Secretary of Energy to the ERA Administrator and the Commission.

Introduction

The United States presently imports approximately 5 percent of its natural gas. Although this percentage is small on a national basis, certain regions of the country are dependent on imported gas for over 50 percent of their needs. While the quantity of gas imported into the U.S. has dropped significantly during the recent period of surplus domestic gas deliverability, imported gas will likely be increasingly required over the longer term to supplement domestic gas production. Most industry projections suggest a growing demand for imported gas later in this decade.

Natural gas is currently imported from Canada, Mexico, and Algeria. In 1983, 78 percent of imported gas came from Canada, 14 percent from Algeria, and 8

percent from Mexico. Most import contracts are relatively long-term, with some involving significant capital investment for transportation systems and related facilities. These costs, along with higher prices charged by gas exporters, have generally resulted in imported gas being more expensive than domestic natural gas.

Pipelines were willing to pay the higher cost of imported gas, until recently, because the higher cost imports were combined with substantial volumes of less expensive, price-controlled domestic gas in pipeline systems. In fact, many long-term import contracts were negotiated by U.S. pipelines on the assumption that lower priced domestic gas would continue to be available to offset higher cost imports and that competing oil prices would continue to rise. The Natural Gas Policy Act of 1978, which established a new system of price controls on domestic gas, reinforced the economic rationale of long-term import arrangements for high-priced gas. These economic factors, along with the determination of U.S. pipeline companies to protect against recurrence of the gas shortages experienced in the 1970's, were the major impetus behind many import arrangements in effect today.

Few foresaw five years ago the gas deliverability surplus that exists in the United States today. The effects of the economic recession, falling world oil prices, conservation efforts, and the increasing ability of industry to switch between oil and gas have lowered the demand for natural gas. This decreased demand—combined with long-term contracts containing high take-or-pay requirements for expensive domestic and imported gas, and the pricing regulations of the NGPA—has had severe economic consequences for the American gas consumer.

The cause of the situation can be traced to government regulation. In particular, wellhead price controls imposed by the NGPA, with 28 categories of gas at different prices, have thwarted the effects of supply and demand that otherwise would force competitive pricing and supply arrangements. Legislative proposals to reform the NGPA are currently before the Congress, and the Administration has proposed—and supports—legislation that removes price controls on gas and allows market forces to operate.

In its efforts to deregulate natural gas, the Administration has considered the question of legislative or administrative action affecting imported gas and has held the position that U.S. governmental action requiring changes to existing gas

import contracts is inappropriate. While it is recognized that many import arrangements are similar to domestic supply contracts, with inflexible take-or-pay and pricing terms, important distinctions exist between international and domestic contracts that require a different approach to the problems associated with gas imports.

The foremost distinction is the matter of jurisdiction. Gas import arrangements are international commercial agreements, subject to the policies and laws of both the buyer's and the seller's governments. United States trade policy strongly supports contract sanctity as an important factor in international commercial transactions. Unilateral legislative or administrative action by the government to change agreements undermines this policy and the long-standing principles generally adhered to by this country in conducting trade.

Another distinction is the long-term need for, and reliance on, imported gas in the United States. While the U.S. is now experiencing a domestic gas deliverability surplus, the situation will likely change in the future. Governmental action that, in effect, unilaterally renegotiates gas import contracts to the short-term advantage of the U.S. could jeopardize gas import supplies when the demand for imported gas increases in the future.

The inappropriateness of unilateral governmental action to modify existing import arrangements does not argue against the need for changes. There is ample evidence that most imported gas is not competitive in the markets served, placing a heavy financial burden on U.S. gas consumers. Present import arrangements have all been subject to U.S. government regulatory review and authorization pursuant to provisions of the Natural Gas Act under policies of the former Federal Power Commission and, since 1977, the Department of Energy. The decisions on import applications issued by the FPC and the Administrator of the Economic Regulatory Administration (under authority delegated by the Secretary of Energy) have constituted governmental policy on natural gas imports.

In view of today's changed circumstances and the need to establish natural gas trade on a market-competitive basis, it is appropriate that the previous policies be assessed and policy changes be made, as needed. The policy guidelines set forth here are designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade.

The application of the policy to gas import regulatory proceedings is also set forth, as are changes in the regulatory responsibilities for imported gas shared by the Economic Regulatory Administration and Federal Energy Regulatory Commission. The Department of State, with its primary responsibility for foreign policy, will continue to be consulted on the foreign policy aspects of gas import regulatory decisions.

Gas Imports Policy Goal

The goal of these policy guidelines conforms with the goal of the President's 1983 National Energy Policy Plan " . . . to foster an adequate supply of energy at reasonable costs." The U.S. government has adopted two strategies to achieve this goal:

- To minimize federal control and involvement in energy markets, and
- To promote a balanced and mixed energy resource system.

The government's objective in the area of natural gas imports is that a supply of gas supplemental to domestic production be available to the American consumer at competitive prices, while avoiding undue dependence on unreliable sources of supply.

The market, not government, should determine the price and other contract terms of imported gas. U.S. buyers should have full freedom—along with the responsibility—for negotiating the terms of trade arrangements with foreign sellers. The federal government's primary responsibility in authorizing imports should be to evaluate the need for the gas and whether the import arrangement will provide the gas on a competitively prices basis for the duration of the contract while minimizing regulatory impediments to a freely operating market. In addition, the government must determine that the U.S. does not become unduly dependent on unreliable supplies.

The policy and regulatory guidelines herein will accomplish several important objective. First, they outline the basis upon which the federal government, to the extent that it regulates natural gas trade, concludes that future gas trade should be conducted. Suppliers of imported gas, and governmental authorities regulating the export of this gas, will have the benefit of knowing the policy and regulatory considerations that will be applied by this government in authorizing gas imports.

Second, the guidelines establish a regulatory framework for buyers and sellers to negotiate contracts based on traditional competitive and market considerations, with minimal regulatory

constraints and conditions. The government, while ensuring that the public interest is adequately protected, should not interfere with buyers' and sellers' negotiation of the commercial aspects of import arrangements. The thrust of this policy is to allow the commercial parties to structure more freely their trade arrangements, tailoring them to the markets served. Thus, with the presumption that commercial parties will develop competitive arrangements, parties opposing an import will bear the burden of demonstrating that the import arrangement is not consistent with the public interest.

Third, the regulatory procedures and process are being simplified and rendered more expeditious, permitting prompter government review of proposed import arrangements.

Background on U.S. Gas Imports

In 1938 the Congress passed the Natural Gas Act, which assigned the Federal Power Commission responsibility, under section 3, for authorizing imports and exports of natural gas. The FPC was required to grant import and export authorizations unless it determined that they would "not be consistent with the public interest." Prior to the 1950's, imports of gas were negligible, with section 3 proceedings primarily involving gas exports.

In the early 1950's, the FPC started to authorize gas imports from Canada and Mexico. Imports from Mexico began in 1952, reaching about 50 Bcf annually in the mid-sixties, and by 1982, nearly 100 Bcf annually. Imports from Canada in the early 1950's were small, amounting to approximately 3 Bcf per year. The demand for Canadian gas increased, however, with annual imports in the 1970's averaging approximately 900 Bcf. Canadian gas exports in 1983 amounted to 713 Bcf, representing 78 percent of all U.S. natural gas imports.

Until the mid-1970's, the price for Canadian gas was negotiated by U.S. buyers and Canadian sellers on a cost-of-service basis.⁽¹⁾ The prices negotiated differed depending on the point of importation and market factors. The Canadian government, however, maintained the requirement of government approval of gas export prices.

As the volume of gas exports increased in the mid-1970's, the Canadian government took a more active pricing role, with the National Energy Board requiring exported gas to be priced "in relation to energy alternatives in the United States."⁽²⁾ In 1973, after finding that gas exports were under-priced in relation to alternative

fuels in the U.S., the NEB persuaded exporters to increase prices, and in 1975, directed price escalations that increased the average border price from \$1.00 to \$1.60 (Cdn) per MMBtu. This development essentially ended the pricing of Canadian gas through buyer-seller negotiations.

In 1976, the NEB proposed a further increase in the average border price together with differentiated border prices set by the Canadian government that significantly raised the costs to U.S. customers. With the government of Canada now acting as a single seller of Canadian pipeline gas to the United States and about to unilaterally impose a system of differential border prices, the U.S. government objected. In a series of government-to-government consultations, the United States strongly opposed the price increases and the manner in which they were being determined without reliance upon buyer-seller negotiations. Rather than accept differential prices determined by the Canadian government, the U.S. proposed the concept of a uniform border price, which the Canadian government adopted in June 1976.

By April 1977, Canada had become a substantial net importer of crude oil, and the NEB determined that exported gas would be priced on the basis of the cost of displacing imported crude oil in Eastern Canada with Canadian gas. This concept—called "substitution value"—became the main criterion for the Canadian government's determination of the export price of gas. Because of the rapid escalation of the price of imported oil in the late 1970's, the NEB, using the substitution value concept, raised the border price six times between 1977 and 1981—from \$1.94 (Cdn) to \$4.94 (U.S.) per MMBtu.⁽³⁾ These increases were approved by U.S. regulatory agencies because of rising prices of alternate fuels in the U.S.

Also in 1977, the Department of Energy Organization Act was passed by Congress. This Act abolished the Federal Power Commission and transferred authority over gas imports to the Secretary of Energy. The Secretary delegated primary responsibility for authorizing imports to the Administrator of the Economic Regulatory Administration. In reviewing gas import applications under section 3 of the Natural Gas Act, the ERA Administrator followed the guidelines set forth by the Secretary that required consideration of "the price proposed to be charged at the point of importation."⁽⁴⁾ To this end, the Administrator assessed the reasonableness of the unit cost of an import on a case-by-case basis, using

the price of alternate fuels in the relevant geographic region as a basis for comparison.

When, in January 1980, the NEB announced an increase in the export price from \$3.45 to \$4.47 per MMTu, questions were raised by U.S. energy officials as to whether the Canadian substitution value approach resulted in reasonable prices to U.S. gas consumers. Discussions on this issue were held with Canadian energy officials in February 1980. On March 25, 1980, Canadian Energy Minister Lalonde proposed in a letter to U.S. Secretary of Energy Duncan a "Statement of Principles on Canadian Gas Export Pricing." This proposal suggested that Canadian gas exports be based on the average cost of crude oil imported into Eastern Canada, with certain transportation adjustments.

Secretary Duncan responded on March 26, 1980, that "To the extent the pricing mechanism * * * meets our regulatory requirements * * * [he] would support this mechanism for the pricing of Canadian natural gas." This exchange of letters constitutes what is now sometimes called the "Duncan-Lalonde agreement."

U.S. energy officials believed this understanding would result in greater price predictability and market stability. The Economic Regulatory Administration began using a national comparison test instead of comparing the import price with alternate fuels prices in a particular geographic region. The agency developed a composite alternate fuel oil price based on prices in major U.S. markets.⁽⁵⁾ This method of measuring alternate fuels prices was considered appropriate when assessing a uniform border price for Canadian gas. It also provided gas importers guidance for use in negotiations with Canadian suppliers.

Near the time of the Duncan-Lalonde letters, new volumes of Mexican gas began to be imported. Uniformity in border prices for Canadian and Mexican gas was viewed by the U.S. as a desirable policy objective, and the ERA thus established a maximum authorized border price for Mexican gas equal to the Canadian border price.⁽⁶⁾

During the late 1960's and early 1970's, several American firms introduced plans to import liquefied natural gas from Algeria and Indonesia in the face of projected declines in U.S. gas supplies. Although Boston Gas Company occasionally imported Algerian LNG during the late 1960's, the Distrigas Corporation of Boston became the first regular LNG importer in 1971, with an authorization to import annually 15.4 million MMBtu from Algeria, primarily

for winter peaking purposes in New England, New York, and New Jersey.

In early 1978 Columbia LNG Corporation, Consolidated System LNG Company and Southern Energy Company began to import approximately one Bcf per day of Algerian LNG for use in the mid-Atlantic and southeastern states. However, this project was suspended and effectively terminated in April 1980 when the parties failed to agree on price changes proposed by Sonatrach, the Algerian exporter. Several other proposed LNG import projects also were terminated, either after the ERA found that the pricing methods did not contain adequate consumer safeguards or because the projects encountered environmental opposition. On the other hand, the FPC authorized in 1977 an LNG import by the Trunkline LNG Company, which began in 1982 to import approximately 450,000 Mcf per day of Algerian LNG for base load use in the Midwest.

By the fall 1982, Canadian gas imports were entering U.S. pipelines in volumes and at a price that began to be uncompetitive in most U.S. markets. Consumers served by Canadian gas, as well as high-cost domestic gas and Algerian LNG, experienced large increases in the price of delivered gas. These circumstances were especially acute in the north central and western coastal states.

Late in 1982, informal discussions between the U.S. and Canadian governments began on problems relating to gas trade. These were followed by reactivation of the U.S.-Canadian Energy Consultative Mechanism (ECM), a forum established in 1979 by the governments for periodic exchanges on bilateral energy issues. A meeting of the ECM was held in February 1983, at which natural gas trade was a key agenda item; and following working group meetings and informal diplomatic discussions, a second ECM session was held in late September. At this second meeting, the U.S. proposed discontinuance of the uniform border price and the establishment of a new trade framework designed to put gas trade on a market-sensitive basis.

During 1983, the Canadian government announced three actions that affected the pricing of gas exports. In April it announced a reduction in the uniform border price from \$4.94 to \$4.40 per MMBtu and, in July, a price-discount arrangement, termed the Volume Related Incentive Pricing (VRIP) program, whereby gas purchased above certain base volumes is discounted to \$3.40 per MMBtu.

A third action was taken on November 1, which involved changes to the VRIP program giving U.S. importers more flexibility in purchasing discounted gas.

Diplomatic efforts relating to imported gas from Algeria and Mexico were also undertaken in 1983. Officials from the departments of State and Energy held discussions with energy officials of the Algerian government, and although no governmental agreements or understandings encompass U.S.-Algerian gas trade, these discussions enabled both governments to review fully the current conditions and problems relating to their gas trade. Algerian officials received briefings on the U.S. gas market, the competitive position of Algerian gas, and U.S. policy direction with respect to domestic and imported gas. Similarly, U.S. energy officials met with Mexican officials in Mexico City in March 1983 to discuss U.S. gas market conditions. Mexico matched Canada's reduction of the border price from \$4.94 to \$4.40 per MMBtu on May 1, 1983.

During this period when the U.S. demand for imported gas dropped significantly, U.S. importers began efforts to renegotiate their contracts with foreign suppliers. These efforts resulted primarily in volume relief, providing substantial savings to U.S. gas consumers. Most recently, the importer of the largest volume of Algerian gas announced that effective December 12, 1983, it was suspending LNG purchases for an indefinite period. At this time, contract renegotiation activity between U.S. importers and foreign sellers continues, with some renegotiated contracts now before regulatory agencies for approval.

The Review of Gas Import Policy

During the past year an interagency review of U.S. gas import policy and regulations was undertaken involving the Department of Energy, Federal Energy Regulatory Commission, and Department of State, along with consultations with members of Congress and congressional staff. Public participation came primarily through two public conferences on imported gas sponsored by the Department of Energy.⁽⁷⁾

The first conference, held January 18, 1983, addressed problems of existing gas import arrangements. The majority of the conference participants—which included pipeline companies, distribution companies, end-users, state agencies, and consumer interests—asserted that a more flexible approach to pricing was needed, that prices

should be set by direct buyer-seller negotiations, and that governments should establish a simplified regulatory review process. Many indicated that load loss was a result of NCPA-allowed price rises, provisions of current contracts with high take-or-pay clauses and conservation effects from high gas costs—which could be reduced or reversed if buyers could negotiate more competitive prices and more reasonable take-or-pay provisions.

The second conference, held September 7-9, 1983, addressed specific issues relating to the implementation of policy changes recommended at the first conference. The majority of the nearly 90 presentations stated that the U.S. and Canadian governments should eliminate the uniform border price and develop a regulatory system that would allow for direct buyer-seller negotiations. General guidelines were favored over strict regulatory standards or criteria, with preference that the government maintain an oversight role to ensure that the interests of importers and their customers are protected.

The conclusions reached from the policy review process appear to be shared broadly by all interested parties to the gas trade issue. There is a common view that imported gas is generally not competitive in today's U.S. markets and that changes are required in governmental policy and regulations to bring about competitive gas trade. Buyers and sellers believe that government regulation prevents freely negotiated import arrangements and market-responsive adjustments to these arrangements. Virtually all parties believe that the governments, in regulating the terms and conditions of gas import trade, have previously sanctioned arrangements that are now uncompetitive in the marketplace.

Policy Guidelines

The U.S. policy goal for gas imports, as earlier stated, is to have a supply of natural gas supplemental to domestic production available on a competitive, market-responsive basis, while avoiding undue dependence on unreliable sources of supply. Government regulation of imports should facilitate trade arrangements consistent with this policy goal.

Section 3 of the Natural Gas Act requires the government to authorize an import of natural gas unless "the proposed importation will not be consistent with the public interest" (emphasis added).

Congress did not define "public interest," thus giving broad discretion to the government in establishing criteria that an importer must fail to meet for the

government to deny an authorization to import. The policy guidelines herein are intended to provide a clear definition of public interest.

The policy cornerstone of the public interest standard is competition. Competitive import arrangements are an essential element of the public interest, and natural gas imported under agreements that provide for the sale of gas in volumes and at prices responsive to market demands largely meets the public interest test. On the other hand, import arrangements with contract terms and conditions that restrict the competitiveness of the gas over time should be considered, presumptively, not in the public interest.

This policy approach presumes that buyers and sellers, if allowed to negotiate free of constraining governmental limits, will construct competitive import agreements that will be responsive to market forces over time. The specific commercial terms and conditions of a particular arrangement should be negotiated by the parties pursuant to the discrete requirements of the buyer's market and not directed by government regulators. The government's role in authorizing such agreements should be to evaluate whether the arrangement assures the competitiveness of the import throughout the contract period and to provide a review process whereby affected parties have sufficient opportunity to demonstrate that the import is not consistent with the public interest. Those market participants who stand to benefit or suffer as a result of the importation have the best available knowledge of their market and should provide the information upon which the competitiveness of the arrangement can be judged.

The price paid for imported gas by U.S. importers has often been considered the key test of an import's competitiveness. The price of gas, however, is only one factor in determining the market competitiveness of the import. Pricing considerations, standing alone, will not longer be the base for authorizing or denying an import application, or for modifying or revoking an authorization. The emphasis will be on the provisions of the import agreement that establish the basis price and that allow price adjustments during the life of the agreement.

While the competitiveness of an import arrangement is now the primary consideration for authorization, other considerations will continue to be relevant. The security of the foreign supply, in particular, remains a regulatory consideration in meeting the objective of avoiding undue dependence

on unreliable sources of supply. Need will continue as a consideration; however, it is recognized to be a function of competitiveness. Under competitive gas import trade arrangements, buyers will be presumed to have markets for gas actually purchased, unless otherwise demonstrated by participants in the regulatory process.

Thus, proposed import arrangements that are found competitive are presumed to have demonstrated the need for the import. National energy requirements will remain a factor in assessing long-term import arrangements, as the nation's energy security is a continuing policy consideration.

Finally, it is recognized that uniform regulatory strictures do not facilitate the establishment of competitive, market-responsive import arrangements and will not be applied. The terms and conditions of an arrangement that is competitive for one market may not be competitive in another. Thus, new import arrangements dependent on substantial capital financing that will provide new supplies to regions needing additional gas may require contract provisions, such as minimum volumes and prices, that may not be competitive in other regions. There also may be unique situations involving extensions or modifications of existing gas import arrangements, such as the prebuild portions of the Alaska Natural Gas Transportation System, that merit special consideration.

Regulatory Guidelines

Pursuant to section 3 of the Natural Gas Act and the Delegation Order from the Secretary of Energy to the ERA Administrator, an application to import gas must be approved unless it is determined that the import is not consistent with the public interest. This determination is based on a number of "considerations" addressed in an import authorization proceeding and stated in the Delegation Order. These considerations provide, in effect, the test that a proposed import arrangement must fail for an authorization to be denied. These policy guidelines provide notice of the manner in which the Administrator will exercise authority under section 3 of the Natural Gas Act to review natural gas import applications. The guidelines do not establish binding and inflexible rules; rather they set forth certain rebuttable presumptions and contemplate flexible application of the considerations outlined below to the facts of individual cases.

The following are the considerations now applicable to import arrangements

which, as of this date, have not received Section 3 approval by the Economic Regulatory Administration or the Federal Energy Regulatory Commission. They shall apply to applications currently pending that seek approval of amendments or extensions to existing import arrangements, as well as applications involving new imports. The application of these guidelines to authorizations previously granted with no pending application for amendment or extension is addressed in the discussion below on implementation. These considerations are contained in Delegation Order No. 0204-111 signed by the Secretary of Energy on February 15, 1984.

The competitiveness of the import

The terms and conditions of the gas purchase contract, taken together, must provide a supply of gas that the importer can market competitively over the term of the contract. The contract arrangement must be sufficiently flexible to permit pricing and volume adjustments, as required by market conditions and available competing fuels, including domestic natural gas. Contract flexibility is a function of certain provisions which may include, but are not limited to: the volume of gas under contract, base price, price review or adjustment mechanisms, take-or-pay obligations, make-up provisions, length of the contract, and other terms which may affect marketability of the gas. No prescribed set of provisions are being dictated as determinative of contract flexibility, allowing the importer to negotiate the import arrangement it considers necessary for the gas to remain marketable over the life of the contract. The importer will be required to demonstrate that the provisions in the proposed import arrangement, collectively, ensure that the gas will be competitive.

Contracts should also contain provisions to protect the parties in the event of changes in the circumstances in which the contract is expected to operate, and to permit contractual adjustments in such circumstances. Examples of such provisions include renegotiation clauses, arbitration clauses, "market-out" clauses, and similar arrangements. Again, no specific or predetermined provision to permit contract adjustments is favored, allowing the contracting parties discretion to determine the approach most suitable to their import arrangement.

Import agreements that are negotiated between buyer and seller should result in contracts that provide a competitive energy source for the duration of the

import. The competitiveness of an import arrangement will not be assessed by a narrow inquiry into individual contract terms but rather a consideration of the whole fabric of the arrangement. Those opposing an import have to show that the arrangement, as a whole, is not competitive or sufficiently flexible to respond to changing market conditions.

Need for the natural gas

The need for the imported gas will be addressed in terms of the marketability of the proposed import. Need for a gas supply is intrinsically related to its anticipated marketability. Thus, if the imported gas is competitive in the proposed market area and, through its contract terms, will remain competitive throughout the contract period, then the rebuttable presumption exists that the gas is needed in that market. To the extent that there is a specific objection on the grounds of need for the import, the focus should be on the overall energy requirements in the market that can be competitively met by domestic natural gas and other fuels.

National energy requirements will also be a factor, particularly in assessing long-term import arrangements, as the energy security of the nation remains a policy consideration.

Security of supply

The security of gas supply and its transportation to the U.S. border remain important components of the public interest, especially those under long-term arrangements. An import will be considered secure if it does not lead to undue dependence on unreliable sources of supply. Thus, imports involving relatively larger volumes and longer time periods must demonstrate relatively greater reliability of supply than smaller scale imports for a shorter time period in the application for authorization.

Security of a proposed import supply can be demonstrated by reference to the historical reliability of the supplier to provide a dependable source of gas to the United States and other countries. Reference can be made to any gas reserves committed to the import arrangement for the term of the contract.

Attention will be given to the advantage provided to the nation by a reliable supply of imported natural gas, which adds to the diversity of energy sources and provides an added measure of energy security during any period of energy shortage or emergency.

In addition to the above considerations, the Administrator will consider international trade policy,

foreign policy, and national security interests that may bear on an import authorization. In so considering these and other factors as may be appropriate, the Department of State will be consulted in accordance with section 102(10) of the DOE Organization Act.

Regulation of Gas Imports by ERA and FERC

Under the Department of Energy Organization Act, the Secretary of Energy was given responsibility for implementing the provisions of the Natural Gas Act relating to natural gas imports and exports. This authority, formerly vested in the Federal Power Commission, was given to the Secretary in recognition that a policy official accountable to the President should have jurisdiction over the regulation of gas imports to the extent that the regulatory decisions affect national and international energy policy, foreign policy, and national security interests.

The Department of Energy legislation also established the Federal Energy Regulatory Commission, in which was vested the authority to regulate certain aspects of domestic natural gas within the United States. This authority, exercised *inter alia* under the Natural Gas Act and Natural Gas Policy Act, includes the regulation of wellhead prices and transportation rates for gas produced in the United States and gas transported in interstate commerce to the American consumer. In view of the fact that imported gas reaches the consumer through the same transportation systems that deliver domestically produced gas, the Secretary delegated to the FERC certain regulatory responsibilities for imports that it exercises over domestic gas, including siting, construction of facilities, and ratemaking. This authority was delegated to the FERC with the recognition that the Secretary maintained the policy responsibilities for gas imports, and that the FERC should exercise its authority in a manner consistent with the gas import policy determinations established by the Secretary.

In delegating his responsibility to authorize imports to the Administrator of the Economic Regulatory Administration, the Secretary made an exception for imported gas transported through the Alaska Natural Gas Transportation System (ANGTS). Authority was delegated to the FERC to authorize the importation of Canadian gas using the "prebuild" portions of the system while these portions were being financed, constructed, and placed in

initial operation, along with the financing of the overall ANGTS project.

The division of regulatory responsibilities for imported natural gas brought about by the Department of Energy Organization Act, and the assignment of these responsibilities to the ERA Administrator and the FERC, presented inherent problems of coordination and regulatory consistency that did not exist when this responsibility was all exercised by the FPC. While the ERA and the FERC have carried out their respective responsibilities in an effective and conscientious manner, the lines of jurisdiction and authority between the two agencies have not been entirely clear. This lack of clarity is a concern that was expressed by a number of gas importers during the policy review process, with the observation that the ERA and the FERC sometimes both review the same issues.

While a two-part regulatory process is unavoidable under the enabling legislation, some efficiencies can be achieved through clarification of the ERA and FERC gas import responsibilities and through streamlining some aspects of the process. This is the objective in the issuance of new delegation orders to the ERA Administrator and the Commission. These revised orders seek to make a clearer distinction between the responsibility of the Administrator in exercising the Secretary's authority to approve natural gas imports and the FERC's responsibility to regulate the imported gas within the domestic natural gas system. These orders are also issued with the goal of achieving uniform application of these policy guidelines to all natural gas imports.

Under the new delegation orders, all gas imports—including gas transported through the ANGTS prebuild—will be authorized by the ERA Administrator. Delegation Order No. 0204-8, which gave this authority for ANGTS to the FERC, is being rescinded. The Administrator will exercise this authority consistent with the policy guidelines set forth in this notice and contained in new Delegation Order No. 0204-111.

The FERC, under the revised delegation orders, maintains its responsibilities for exercising sections 4, 5, and 7 authority under the Natural Gas Act over gas authorized for import by the Administrator. Gas authorized for importation is subject to the FERC's review of issues pertaining to siting, construction, and operation of pipeline facilities, and to the rates proposed to be charged for the interstate transportation and sale of the gas. The

FERC review, in effect, will address the regulatory matters relevant to the imported gas upon its entry into the United States and as it flows through domestic gas transportation systems. In its regulatory decisions on a gas supply authorized for importation, the Commission will adopt the terms and conditions attached by the ERA Administrator to the import authorization, thus acting consistently with the determinations made by the Administrator and the policy considerations reflected in the authorization.

The goal of this Administration is to have a deregulated natural gas market, whereby buyers and sellers operating entirely under market forces can provide gas to consumers at prices competitive with alternative fuels. Until this goal is fully reached, natural gas transported and sold within the United States will remain subject to certain regulatory considerations. Gas delivered to U.S. markets from foreign sources is subject to these considerations. Under these policy guidelines and delegated authorities, the ERA Administrator and the FERC can fulfill their respective regulatory responsibilities in a manner that improves the regulatory process while establishing competitive natural gas trade.

Implementation

The policy guidelines herein set forth are now effective, and the regulatory considerations presented above and contained in the new delegation orders will be applied to all gas import arrangements that have not received section 3 authorization by either the Economic Regulatory Administration or Federal Energy Regulatory Commission. Import applications, including requests for modification of existing authorizations and authorizations of new contracts currently pending before either agency, will be reviewed within this new policy and regulatory framework by the Economic Regulatory Administration. Pending applications that require expeditious approval and that do not fully comport with these guidelines may be granted conditional authorizations.

Pursuant to Section (j) of Delegation Order No. 0204-111, imports previously authorized by the ERA and FERC shall remain in full force and effect unless or until they are rescinded, amended or superseded through appropriate regulatory proceedings. The ERA will not on its own motion initiate such proceedings unless an agreement between the United States and the government of a gas exporting country so requires. The guidelines will apply to

pending cases including requests to modify existing authorizations. The ERA Administrator will issue a procedural order that specifies the dockets that are directly and immediately affected by these new guidelines.

U.S. companies that import natural gas under arrangements that are not fully consistent with these policies and the provisions of Delegation Order No. 0204-111 are encouraged to negotiate changes to such arrangements to bring them into conformity with these policies and provisions. The ERA will give prompt attention to import authorization amendments submitted by importers as a result of these negotiation efforts. To the extent that such amendments bring an import arrangement more into conformity with these guidelines, they will benefit from the presumption that they are in the public interest, and opposing parties will bear the burden to rebut the presumption.

These policy guidelines and regulatory changes are designed to avoid instability or uncertainty in existing natural gas trade and establish a smooth transition to competitive trade arrangements, with minimal regulatory requirements and governmental involvement. The policy guidelines should permit parties engaged in gas trade to craft arrangements competitive for the markets served. The import authorization process is designed to fulfill the governments's statutory responsibilities without regulating the specific terms and conditions of individual trade arrangements.

The delegation orders are effective February 22, 1984, the date of publication in the Federal Register.

Issued in Washington, D.C. on February 15, 1984.

Donald Paul Hodel,
Secretary of Energy.

Notes

1. Cost of service is defined as the sum total of proper operating and depreciation expenses, taxes, and a reasonable return on the net valuation of the property devoted to providing natural gas service. A two-part demand-commodity rate, with periodic price adjustments, is then designed to produce revenues equivalent to the cost of service.
2. National Energy Board Act.
3. On January 3, 1977, \$1.94 (Cdn) was equal to \$193 (U.S.).
4. DOE Delegation Order No. 0204-54 to the Economic Regulatory Administration (44 FR 56735, October 2, 1979). In recognition of the expertise of the Federal Energy Regulatory Commission in the areas of interstate transportation and resale of natural gas and construction and operation of facilities, the Secretary delegated to FERC authority over certain activities related to gas imports. (DOE Delegation Order No. 0204-55 to the Federal

Energy Regulatory Commission [44 FR 56735, October 2, 1979]).

5. DOE/ERA Opinion No. 14B, *Inter-City Minnesota Pipelines Ltd. Inc., et al.*, 1 ERA para 70506 (*Federal Energy Guidelines*, May 15, 1980).

6. DOE/ERA Opinion No. 16A, *Border Gas, Inc.*, 1 ERA para 70511 (*Federal Energy Guidelines*, May 15, 1980).

7. 47 FR 57756, December 28, 1982; 48 FR 34501, July 29, 1983.

[Delegation Order No. 0204-110]

Rescission of Delegation to the Federal Energy Regulatory Commission

Pursuant to the authority vested in me as Secretary of Energy, Department of Energy Delegation Order Nos. 0204-8 and 0204-14 are hereby rescinded.

All actions pursuant to Delegation Order Nos. 0204-8 and 0204-14 taken prior to and in effect on the date of this Order shall remain in full force and effect unless or until rescinded, amended or superseded.

This Order is effective February 22, 1984, the date of publication in the Federal Register.

Donald Paul Hodel,
Secretary of Energy.

[Delegation Order No. 0204-111]

To the Administrator of the Economic Regulatory Administration

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") by the Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821 [15 U.S.C. § 717]) ("NGA") and Sections 301(b), 402(f), and 642 of the Department of Energy Organization Act (Pub. L. No. 95-91, 91 Stat. 565 [42 U.S.C. § 7101 *et seq.*]), there is hereby delegated to the Administrator of the Economic Regulatory Administration ("Administrator") the authority under section 3 of the NGA to regulate the imports and exports of natural gas.

(a) The Administrator shall regulate imports (including place of entry) based on a consideration of such matters as the Administrator finds in the circumstances of a particular case to be appropriate, which may include, but are not limited to, the following matters:

1. Competitiveness of the import;
2. Need for the natural gas;
3. Security of supply.

(b) The Administrator shall regulate exports (including place of exit) based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a particular case to be appropriate.

(c) In exercising the authority delegated by this Order, the Administrator may attach such terms

and conditions as the Administrator shall determine to be appropriate.

(d) The authority delegated by this Order does not include the authority to approve the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except the Administrator is authorized to disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, on the basis of matters considered pursuant to paragraphs (a) and (b) of this Order.

(e)(1) With respect to ERA Docket No. 77-001-LNG, in addition to the functions enumerated in paragraphs (a), (b) and (c) above (and notwithstanding paragraph (d) above), the Administrator is authorized to perform all functions related to the regulation of the importation and distribution of natural gas through, and construction and operation of, facilities at Oxnard, California.

(2) This delegation does not amend or supersede 10 CFR § 1000.1(d) (42 FR 55534, October 17, 1977) or DOE Delegation Order No. 0204-1.

(f) The authority delegated to the Administrator may be further delegated (except to the Federal Energy Regulatory Commission) in whole or in part, as may be appropriate.

(g) Paragraph 6 of Delegation Order No. 0204-4, is amended to read as follows:

"6. The functions delegated to the Administrator of ERA by Delegation Order No. 0204-111."

(h) This Order supersedes Delegation Order No. 0204-54.

(i) In exercising the authority delegated by this Order, or redelegated pursuant thereto, the delegates shall be governed by the rules, regulations and procedures of the Department of Energy and the policies prescribed by the Secretary or the Secretary's delegate.

(j) All actions pursuant to any authority delegated prior to this Order, or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended, or superseded.

(k) Nothing in this delegation shall preclude the Secretary from exercising any of the authority so delegated whenever in the Secretary's judgment

the exercise of such authority is necessary or appropriate to administer the functions vested in the Secretary.

This Order is effective February 22, 1984, the date of publication in the Federal Register.

Donald Paul Hodel,
Secretary of Energy.

[Delegation Order No. 0204-112]

Federal Energy Regulatory Commission

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") by sections 301(b), 402 (e) and (f), and 642 of the Department of Energy Organization Act (Pub. L. No. 95-91, 91 Stat. 565 [42 U.S.C. § 7101 *et seq.*]) the Natural Gas Act (Act of June 21, 1938, ch. 556, 52 Stat. 821 [15 U.S.C. § 717]) ("NGA"), and Executive Order No. 10485, as amended by Executive Order No. 12038, there is hereby delegated to the Federal Energy Regulatory Commission ("FERC") the authority to perform the following functions with respect to the regulation of imports and exports of natural gas:

(a) Approval or disapproval of the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except when the Administrator of the Economic Regulatory Administration ("Administrator") exercises the disapproval authority delegated pursuant to paragraph (d) of Delegation Order No. 0204-111.

(b) All functions under sections 4, 5, and 7 of the NGA.

(c) Issue orders, authorizations, and certificates which the FERC determines to be necessary or appropriate to implement the determinations made by the Administrator under Delegation Order No. 0204-111 and by the FERC under this Order. The FERC shall not issue any order, authorization, or certificate unless such order, authorization, or certificate adopts such terms and conditions as are attached by the Administrator pursuant to the authority delegated to the Administrator by Delegation Order No. 0204-111.

The delegate(s) may take such action as may be necessary and appropriate to carry out the functions delegated by this Order.

This Order supersedes Delegation Order No. 0204-55.

The authority delegated to the FERC may be further delegated within the FERC, in whole or in part, as may be appropriate.

In exercising the authority delegated by this Order, or redelegated pursuant thereto, the delegates shall be governed by the rules, regulations, and procedures of the FERC and shall be guided by the policies prescribed by the Secretary or the Secretary's delegate.

All actions pursuant to any authority delegated prior to this Order, or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended, or superseded.

Nothing in this Order shall preclude the Secretary from exercising any of his authority so delegated whenever in the Secretary's judgment the exercise of such authority is necessary or appropriate to administer the functions vested in the Secretary.

This Order is effective February 22, 1984, the date of publication in the Federal Register.

Donald Paul Hodel,
Secretary of Energy.

[FR Doc. 84-4748 Filed 2-22-84; 8:45 am]
BILLING CODE 6450-01-04

Economic Regulatory Administration

Natural Gas Imports; Procedural Order Applying New DOE Policy Guidelines Relating to Importation of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of a procedural order.

SUMMARY: The Secretary of Energy has issued new policy guidelines and delegation orders to the Administrator of the Economic Regulatory Administration and to the Federal Energy Regulatory Commission relating to the importation of natural gas. The Administrator has issued a procedural order initiating action to begin implementation of those new guidelines. The procedural order is attached as an appendix to this notice and is being published concurrently with the policy guidelines and delegation orders.

FOR FURTHER INFORMATION CONTACT: Constance L. Buckley (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independent Avenue, S.W., Washington, D.C. 20585, (202) 252-9482

Michael T. Skinker (Office of General Counsel, Natural Gas and Mineral

Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6667

Issued in Washington, D.C., February 16, 1984.

Rayburn Hanzlik,
Administrator, Economic Regulatory Administration.

United States of America Department of Energy—Economic Regulatory Administration

Company name	ERA Docket Nos.
Borders Gas, Inc.	79-31-NG.
Boundary Gas, Inc.	81-04-NG.
Distrigas Corporation..	77-011-LNG, 82-13-LNG.
Gas Service, Inc.; Manchester Gas Company.	81-22-LNG.
Great Lakes Gas Transmission Company.	80-02-NG, 81-01-NG, 83-07-NG.
Inter-City Minnesota Pipelines, Ltd.	80-01-NG, 82-15-NG.
Michigan Wisconsin Pipe Line Company.	80-04-NG, 81-18-NG, 81-34-NG.
Midwestern Gas Transmission Company.	80-06-NG, 81-18-NG, 81-32-NG.
Midwestern Gas Transmission Company; Great Lakes Gas Transmission Company.	83-08-NG.
Montana Power Company.	80-03-NG, 81-21-NG.
Natural Gas Pipeline Company of America.	82-01-NG.
Natural Gas Pipeline Company of America; Michigan Wisconsin Pipe Line Company; Tennessee Gas Pipeline Company; Texas Eastern Gas Pipeline Company.	79-15-NG.
Northern Natural Gas Company.	79-24-NG, 82-09-NG, 82-11-NG.
Northwest Pipeline Corporation.	80-05-NG, 81-31-NG, 83-08-NG.
Pacific Gas Transmission Company.	80-07-NG, 81-08-NG, 82-16-NG.
St. Lawrence Gas Company, Inc.	80-09-NG, 81-13-NG.
Tennessee Gas Pipeline Company.	81-24-NG, 82-10-NG, 82-18-NG.
Texas Eastern Gas Pipeline Company.	82-05-NG, 82-07-NG.

Company name	ERA Docket Nos.
Texas Gas Transmission Corporation.	82-08-NG.
Transcontinental Gas Pipe Line Corp.	80-14-NG, 81-29-NG, 81-30-NG.
Transcontinental Gas Pipe Line Corp.; Tennessee Gas Pipeline Company.	79-08-NG.
Transcontinental Gas Pipe Line Corp.; Algonquin Gas Transmission Company; Texas Eastern Gas Pipeline Company.	81-02-NG.
Vermont Gas Systems, Inc.	80-10-NG, 83-09-NG.

Order Directing Applicants With Pending Gas Import Applications To Supplement Those Applications, Directing Importers With Existing Authorizations, To Report on Conformance of Arrangements With Guidelines, Providing Guidance on Alaska Natural Gas Transportation System Filings, and Terminating Suspended Proceedings February 16, 1984.

I. Introduction

On February 15, 1984, the Secretary of Energy issued new policy guidelines and delegation orders to the Administrator of the Economic Regulatory Administration (ERA) and to the Federal Energy Regulatory Commission (FERC) relating to the authorization of imports of natural gas into the United States. The guidelines set forth a new policy designed to encourage greater participation of buyers and sellers of imported natural gas in establishing price and contract terms, and to ensure that import arrangements result in gas being imported on a competitive and market-responsive basis.

This order initiates action to implement the new policy guidelines. It requires applicant that have pending import applications and authorization amendments before the ERA to supplement their applications. The order also requests all importers with existing authorizations to assess their current import arrangements from the standpoint of conformity with the new policy and regulatory considerations, and to report to the ERA the results of this assessment. This report should include information on modifications the importer believes would be required for the arrangement to comply fully with the policy guidelines. The order further terminates earlier proceedings involving flowing gas imports from Canada that were suspended on December 16, 1980.

Dated: February 19, 2002.

John Tressler,

Leader, Regulatory Information Management,
Office of the Chief Information Officer.

**Office of Elementary and Secondary
Education**

Type of Review: Reinstatement.

Title: FY 2002 Migrant Education
Program Consortium Incentive Grants.

Frequency: Annually.

Affected Public: State, Local, or Tribal
Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour
Burden:*

Responses: 100. Burden Hours: 500.

Abstract: The Migrant Education
Program (MEP) Consortium Incentive
Grant Program provides grants to state
educational agencies that participate in
consortium arrangements with another
State or other appropriate entity that
reduces the administrative costs
associated with operating the MEP and
to improve the delivery of services to
migratory children whose education is
interrupted.

This information collection is being
submitted under the Streamlined
Clearance Process for Discretionary
Grant Information Collections (1890-
0001). Therefore, the 30-day public
comment period notice will be the only
public comment notice published for
this information collection.

Requests for copies of the proposed
information collection request may be
accessed from <http://edicsweb.ed.gov>, or
should be addressed to Vivian Reese,
Department of Education, 400 Maryland
Avenue, SW., Room 4050, Regional
Office Building 3, Washington, DC
20202-4651 or to the e-mail address
vivian.reese@ed.gov. Requests may also
be electronically mailed to the internet
address OCIO_RIMG@ed.gov or faxed to
202-708-9346. Please specify the
complete title of the information
collection when making your request.

Comments regarding burden and/or
the collection activity requirements
should be directed to Kathy Axt at (540)
776-7742 or via her internet address
Kathy.Axt@ed.gov. Individuals who use
a telecommunications device for the
deaf (TDD) may call the Federal
Information Relay Service (FIRS) at 1-
800-877-8339.

[FR Doc. 02-4350 Filed 2-26-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

**Notice of Department of Energy
Delegation Order**

February 19, 2002.

The attached Department of Energy
Delegation of Authority Order No. 00-
004.00 lists delegations from the
Secretary of Energy to the Federal
Energy Regulatory Commission. These
new delegations make no substantive
changes to the authority of the
Commission but arrange the delegations
in a more logical format.

Magalie R. Salas,
Secretary.

Department of Energy

[Delegation Order No. 00-004.00]

*To the Federal Energy Regulatory
Commission*

1. Delegation

Under the authority vested in me as
Secretary of Energy ("Secretary") and
pursuant to sections 642 and 402(e) of
the Department of Energy Organization
Act (Public Law 95-91, 42 U.S.C. 7252)
(the "DOE Act"), I delegate to the
Federal Energy Regulatory Commission
("Commission") authority to take the
following actions:

1.1 On a nonexclusive basis to the
Chairman,

A. Administer and manage the
Commission's personnel (including
members of the Senior Executive
Service) as is not otherwise granted the
Chairman by statute. This authority
delegated to the Chairman for
administration and management of the
Commission's personnel shall include,
but not be limited to:

1. selection and appointment of
personnel;
2. performance appraisals and
performance appraisal systems;
3. compensation, promotions, awards,
and bonuses;
4. reorganizations, transfers of
functions, reductions in force, and the
standards governing such reductions;
5. removals and disciplinary actions;
and
6. training, travel, and transportation.

B. Enter into, modify, administer,
terminate, close-out, and take such other
action as may be necessary and
appropriate with respect to any
procurement contract, interagency
agreement, financial assistance
agreement, financial incentive
agreement, sales contract, or other
similar action binding the Department

of Energy to the obligation and
expenditure of public funds or the sale
of products and services that are related
to the mission of the Commission. Such
action shall include the rendering of
approvals, determinations, and
decisions, except those required by law
or regulation to be made by other
authority.

C. Serve as the Head of the Procuring
Activity (HPA) for the Federal Energy
Regulatory Commission.

D. Appoint Contracting Officers for
the Commission.

E. Acquire, manage, and dispose of
personal property held by the
Commission for official use by its
employees or contractors.

F. Approve acquisitions of automatic
data processing and
telecommunications equipment and
services.

1.2 Carry out Part I of the Federal
Power Act (Public Law 280, 66th Cong.,
2d Sess., as amended), to the extent that
such authority is not transferred to, and
vested in, the Commission by section
402(a)(1)(A) of the DOE Act, *provided*
that this paragraph delegates (A) section
4 of the Federal Power Act to the extent
the Commission determines the exercise
of such authority is necessary for it to
exercise any function transferred to, and
vested in, the Commission by this
delegation, and (B) section 24 of the
Federal Power Act (relating to the
granting of entry, location, or other
disposition of lands of the United States
reserved or classified as power sites).

1.3 Carry out such functions as are
necessary to implement and enforce the
Secretary's policy requiring holders of
Presidential permits authorizing the
construction, operation, maintenance, or
connection of facilities for the
transmission of electric energy between
the United States and foreign countries
to provide non-discriminatory open
access transmission services. In
exercising this authority the
Commission is specifically authorized
to utilize the authority of the Secretary
under Executive Order No. 10485, dated
September 3, 1953, as amended by
Executive Order No. 12038, dated
February 3, 1978, and section 202(e) of
the Federal Power Act (FPA) (16 U.S.C.
824a(3)) and such other sections of the
FPA vested in the Secretary as may be
relevant, to regulate access to, and the
rates, terms, and conditions for,
transmission services over permitted
international electric transmission
facilities to the extent the Commission
finds it necessary and appropriate to the
public interest. This authority is
delegated to the Commission for the sole
purpose of authorizing the Commission
to take actions necessary to implement

and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service. Nothing in this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary.

1.4 Implement section 202(a) of the Federal Power Act (relating to dividing the country into regional districts).

1.5 Implement section 203 of the Federal Power Act (relating to the disposition, merger or consolidation of facilities and the acquisition of securities);

1.6 Implement section 204 of the Federal Power Act (relating to the issuance of securities and the assumption of liabilities);

1.7 Implement section 206(b) of the Federal Power Act (relating to the investigation and determination of the cost of production or transmission of electric energy), as the Commission determines appropriate to perform its functions;

1.8 Implement section 207 of the Federal Power Act (relating to adequate and sufficient interstate service);

1.9 Implement section 209 of the Federal Power Act (relating to use of boards composed of State representatives and cooperation with State commissions);

1.10 Implement section 304 of the Federal Power Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;

1.11 Implement section 305 of the Federal Power Act (relating to officers or directors benefitting from the sale of issued securities and to interlocking directorates);

1.12 Implement section 311 of the Federal Power Act (relating to investigations regarding the generation, transmission, distribution, and sale of electric energy), as the Commission determines appropriate to perform its functions;

1.13 Implement sections 1(b) and 1(c) of the Natural Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)) (relating to certain exemptions from the provisions of the Natural Gas Act);

1.14 Implement section 3 of the Natural Gas Act with respect to the decision on cases assigned to the Commission by rule;

1.15 Implement section 5(b) of the Natural Gas Act (relating to the investigation and determination of the cost of production or transportation of natural gas), as the Commission

determines appropriate to perform its functions;

1.16 Implement section 10 of the Natural Gas Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;

1.17 Implement section 12 of the Natural Gas Act (relating to officers or directors benefitting from the sale of issued securities);

1.18 Implement section 19 of the Natural Gas Act (relating to rehearings on orders);

1.19 Implement the Interstate Commerce Act (49 U.S.C. 1, *et seq.*) and other statutes which formerly vested authority in the Interstate Commerce Commission or the chairman and members thereof, as such statutes relate to the transportation of oil by pipeline, to the extent that such statutes are not transferred to, and invested in, the Commission by section 402(b) of the DOE Act, *provided*, that this paragraph does not include any of the authority under section 11 of the Clayton Act (15 U.S.C. 21);

1.20 Issue orders, and take such other action as may be necessary and appropriate, to direct the Energy Information Administration to gather energy information pursuant to the Federal Energy Administration Act of 1974 or the Energy Supply and Environmental Coordination Act of 1974 to the extent necessary or appropriate to the exercise of regulatory functions of the Commission;

1.21 In reference to regulating the imports and exports of natural gas under the National Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)), Executive Order No. 10485, as amended by Executive Order No. 12038, and section 301(b), 402(e) and (f) under the Department of Energy Organization Act (Public Law 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*),

A. Approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry of imports or exit for exports, except when the Assistant Secretary for Fossil Energy exercises the disapproval authority pursuant to the Delegation of Authority to the Assistant Secretary for Fossil Energy.

B. Carry out all functions under sections 4, 5, and 7 of the Natural Gas Act.

C. Issue orders, authorizations, and certificates which the Commission determines to be necessary or appropriate to implement the determinations made by the Assistant

Secretary for Fossil Energy under the Delegation of Authority to the Assistant Secretary and by the Commission under this subparagraph. The Commission shall not issue any order, authorization, or certificate unless such order, authorization, or certificate adopts such terms and conditions as are attached by the Assistant Secretary for Fossil Energy pursuant to the Delegation of Authority to the Assistant Secretary of Fossil Energy.

2. Rescission

Delegation Orders 0204-1, 0204-1 (Amendment 1), 0204-105, 0204-110, 0204-112, 0204-136, 0204-166, 0204-170 are hereby rescinded.

3. Limitations

3.1 In exercising the authority delegated in paragraphs 1.1B through 1.1F in this Order, or redelegated pursuant thereto, the delegate(s) shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).

3.2 Nothing in this Order precludes the Secretary from exercising any of the authority delegated by this Order.

3.3 Except as provided in paragraph 1.14, this Order does not include the authority to carry out the functions delegated herein to the extent such functions are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas or electricity, under section 402(f) of the DOE Act; *provided* that the Secretary may from time to time delegate to the Commission such other authority under section 3 of the Natural Gas Act as may be determined appropriate.

3.4 The Commission shall consult with the Administrator of the Energy Information Administration ("EIA") with respect to the exercise of functions under paragraphs 1.7, 1.10, 1.12, 1.15, 1.16, and 1.20, as EIA considers appropriate.

3.5 Any amendments to this Order shall be in consultation with the Department of Energy General Counsel.

4. Authority To Redelegate

4.1 Except as expressly prohibited by law, regulation, or this Order, the Commission may delegate, this authority further, in whole or in part.

4.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management and Operations Support, which manages the Secretarial Delegations of Authority system.

5. Duration and Effective Date

5.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified, and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.

5.2 This Order is effective December 6, 2001.

Spencer Abraham,

Secretary of Energy.

[FR Doc. 02-4564 Filed 2-26-02; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mint Farm Generation Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for integrating power from the Mint Farm Generation Project, proposed by Mint Farm Generation LLC (MFG), a wholly owned subsidiary of Mirant Corporation, into the Federal Columbia River Transmission System.

ADDRESSES: Copies of the MFG ROD, Business Plan, and Business Plan EIS and ROD may be obtained by calling BPA's toll-free document request line: 1-800-622-4520.

FOR FURTHER INFORMATION CONTACT: Phil Smith, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon, 97208-3621; telephone number 503-230-3294; fax number 503-230-5699; e-mail pwsmith@bpa.gov.

SUPPLEMENTARY INFORMATION: This decision is based on input from public processes and information in the BPA Business Plan Environmental Impact Statement (DOE/EIS-0183, June 1995) and the Business Plan ROD (August 15, 1995). The MFG project is a 319-megawatt gas-fired, combined-cycle, combustion-turbine power generation project, which is located within an industrial park south of the City of Longview, in Cowlitz County, Washington.

Issued in Portland, Oregon, on February 15, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02-4616 Filed 2-26-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2142]

FPL Energy Maine Hydro LLC; Notice of Authorization for Continued Project Operation

February 20, 2002.

On December 28, 1999, FPL Energy Maine Hydro LLC, licensee for the Indian Pond Project No. 2142, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2142 is located on the Kennebec River in Somerset and Piscataquis Counties, Maine.

The license for Project No. 2142 was issued for a period ending December 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2142 is issued to FPL Energy Maine Hydro LLC for a period effective January 1, 2002, through December 31, 2002, or until the issuance of a new license for the project or other disposition under

the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that FPL Energy Maine Hydro LLC is authorized to continue operation of the Indian Pond Project No. 2142 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 02-4571 Filed 2-26-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-320-050]

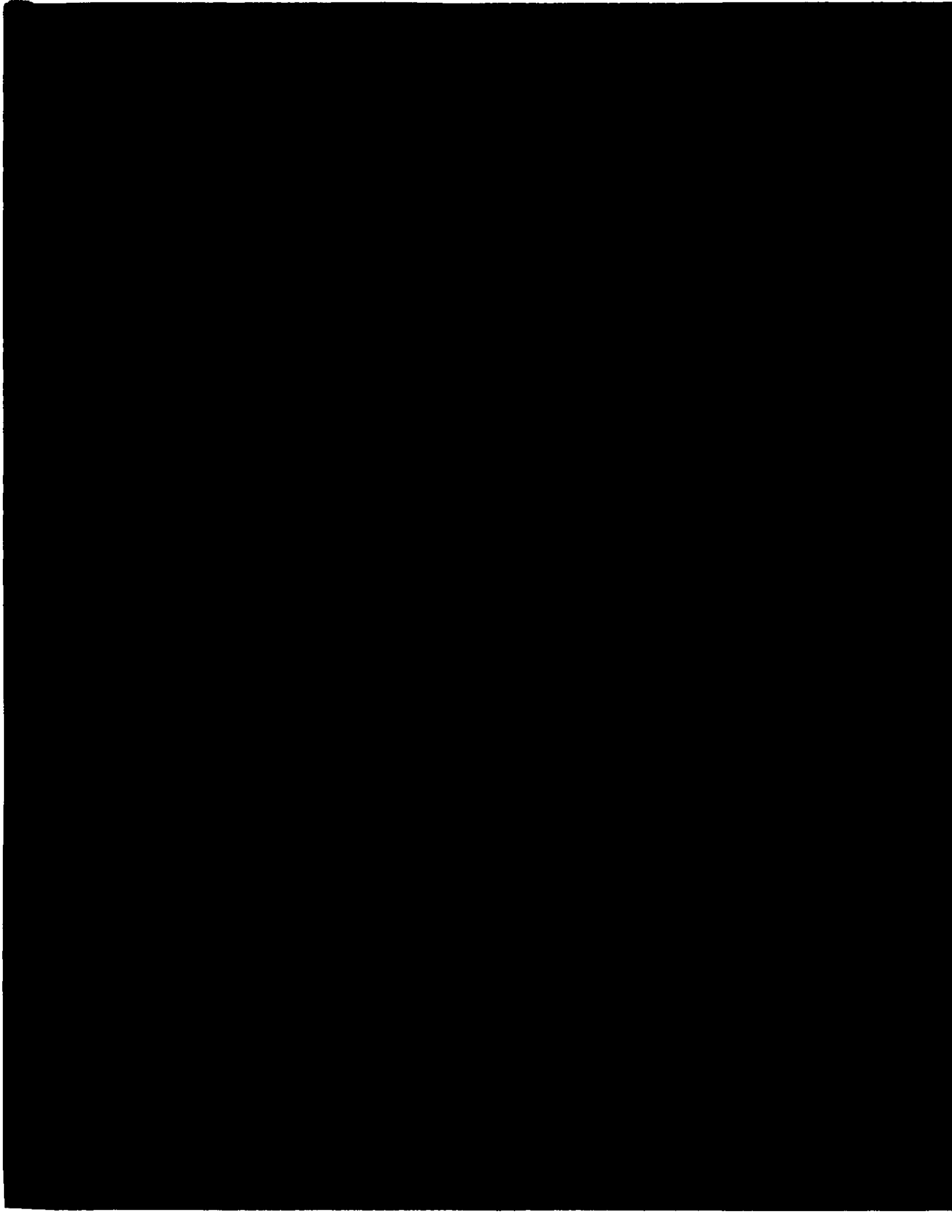
Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

February 21, 2002.

Take notice that on February 13, 2002, Gulf South Pipeline Company, LP (Gulf South) filed a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. As shown on the contract, Gulf South requests an effective date of April 1, 2002.

Special Negotiated Rate Between
Gulf South Pipeline Company, LP and
Okaloosa Gas District

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at




CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing,
JOINT BRIEF OF INTERVENORS 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.

By:


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