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NATURAL RESOURCES AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

**HEARING ON
SITING OF LIQUEFIED NATURAL GAS IMPORT FACILITIES**

JUNE 22ND, 2004

**TESTIMONY OF
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PRESIDENT
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

**ON BEHALF OF THE
CENTER FOR LNG**

Mr. Chairman and Members of the Subcommittee,

Thank you for the opportunity to testify today on the regulatory framework for siting new liquefied natural gas (LNG) terminals in the United States. My name is Donald Santa, and I am President of the Interstate Natural Gas Association of America (INGAA). INGAA represents the interstate and interprovincial natural gas pipeline industry in North America. INGAA's members transport over 90 percent of the natural gas consumed in the U.S., through a 180,000 mile pipeline network. In addition, the association's members include the owners of all of the existing LNG terminals in the continental U.S., as well as several of the developers of proposed new LNG terminals.

I am also here on behalf of the Center for LNG, a consortium of over 60 companies and trade associations, including LNG asset owners and operators, gas transporters, suppliers and service companies and natural gas end users. The Center is dedicated to public education and advocacy for liquefied natural gas.

Over the past year, LNG has captured the attention of the energy industry and energy policy makers. Still, the reality is that LNG is not a new product in the U.S. energy market. LNG has been utilized in various applications in this country since the Second World War. Many of our pipelines and distribution companies, for example, use LNG as a method for storing natural gas. In the 1970s, as a result of supply shortages in the U.S. interstate market, the nation developed and constructed a number of LNG importation terminals in order to supplement domestic supply with natural gas from other parts of the world. LNG's role in the domestic natural gas market was short-lived, however, once wellhead decontrol and the removal of other artificial market barriers ended the supply shortage. Imported LNG quickly became too expensive to compete against much more affordable natural gas supplies from the U.S. and Canada. Three of the four terminals that were built in the 1970s were, to a large extent, mothballed until several years ago.

Why are we again focused on LNG? It now is widely recognized that North America is experiencing a fundamental shift in the supply and demand equation for natural gas. For many years, this country had a significant excess of natural gas deliverability (what was commonly referred to as the “natural gas bubble”). This kept prices low and contributed to a shift to greater use of natural gas for electric power generation, home heating and industrial processes. Demand growth gradually eliminated this excess deliverability. Supplies now are tight and prices are considerably higher -- on a sustained basis -- than in previous years.

Therefore, we now must develop new natural gas supply options from multiple sources to keep pace with the still growing demand for this clean-burning fuel. INGAA agrees with the assessment that we are not running out of natural gas; rather, we are running out of places where we are permitted to explore for and produce it. Abundant natural gas resources do still exist in North America and worldwide, and can supply the market with natural gas at reasonable prices, provided that public policies do not unreasonably limit resource and infrastructure development.

While it is the focus of today’s hearing, LNG should not be mistaken for a “silver bullet” that alone will solve the Nation’s natural gas supply problem. Our current natural gas supply challenges will not be solved only by expanding production in the Rocky Mountain region or the Outer Continental Shelf, or only by building an Alaska natural gas pipeline, or only by importing more LNG. In order to meet anticipated demand, we must avail ourselves of all of these options, and more.

An important corollary to this supply message is the critical role that pipeline and storage infrastructure play in ensuring that natural gas supply can satisfy market demand. As part of a comprehensive energy policy, removing barriers to pipeline and storage infrastructure development must go hand-in-hand with efforts to enhance gas supply.

The Existing LNG Regulatory Framework

The Federal Energy Regulatory Commission (FERC) and the U.S. Coast Guard, respectively, have the authority for the approval and siting of on-shore and off-shore LNG import terminals. Both agencies have done an excellent job in streamlining the approval process for these facilities. The Coast Guard has demonstrated its willingness, in two cases to date,¹ to consider off-shore terminal siting proposals expeditiously. For purposes of this testimony, however, I will focus principally on FERC’s authority over on-shore terminals.

FERC’s authority to approve and site on-shore LNG terminals is pursuant to section 3(a) of the Natural Gas Act (NGA).² While this statutory provision does not expressly refer to

¹ The Energy Bridge and Port Pelican projects.

² Section 3(a) states that: [N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after

the authorization and siting of facilities for importing natural gas, the courts have made clear that this function is an integral part of authorizing natural gas imports and, therefore, is within the scope of the authority conferred by section 3(a). This was addressed by the U.S. Court of Appeals for the D.C. Circuit in the 1974 Distrigas decision.³ The court said, in part:

...while imports of natural gas are a useful source of supply, their potentially detrimental effect of domestic commerce can be avoided and the interests of consumers protected only if...the Commission exercises with respect to them the same detailed regulatory authority that it exercises with respect to interstate commerce in natural gas. In short, we find it fully within the Commission's power, so long as that power is responsibly exercised, to impose on imports of natural gas *the equivalent of Section 7 certificate requirements both as to facilities and ... as to sales within and without the state of importation* (emphasis added). Indeed, we think that Section 3 supplies the Commission not only with the power necessary to prevent gaps in regulation, but also with the flexibility in exercising that power.

Section 7 of the NGA empowers FERC to issue certificates of public convenience and necessity authorizing the construction and operation of interstate natural gas pipelines and storage facilities.⁴ The U.S. Department of Energy and FERC have consistently applied the Distrigas case's construction of section 3 of the NGA in administering this part of the law.⁵

Mr. Chairman, without going into the extensive case law, let me state that, whenever FERC's authority under either section 3 or section 7 of the NGA has come into conflict with state law, courts have consistently held in favor of federal primacy in matters of interstate and foreign commerce. The Commerce Clause of the U.S. Constitution provides the foundation for these decisions.

While FERC has exclusive jurisdiction under the NGA over the threshold decision on whether an LNG facility or interstate pipeline can be constructed, other state and federal agencies still play a substantive role in permitting this natural gas infrastructure. There are a myriad of other state and federal permits that must be obtained before a project sponsor may begin constructing its facility. FERC's application process requires that a

opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate. 15 U.S.C. 717b(a).²

³ Distrigas Corp. v. FPC, 495 F.2d 1057, 1064 (D.C. Cir. 1974), cert. denied, 419 U.S. 834 (1974).

⁴ 15 USC 717f(c)

⁵ FERC's authority to regulate LNG terminals in section 3 of the NGA is independent of, and does not depend upon, the exercise of section 7 authority. In other words, it does not matter whether the imported supplies are ultimately sold or delivered into interstate commerce – FERC must still review and approve the siting, construction and operation of LNG import terminals under section 3.

project sponsor list all other permits that must be obtained. And FERC's orders authorizing these facilities routinely are conditioned upon the sponsor obtaining these other authorizations.

As part of discharging its responsibilities under the National Environmental Policy Act (NEPA), FERC makes all other federal, state and local permitting agencies "participating agencies" for purposes of the comprehensive NEPA process. Apart from the NEPA process and these independent sources of authority over pipeline permitting, state agencies can, and do, participate in FERC's proceedings as intervenors in order to represent the interests of their citizens.

The industry's experience in the context of interstate natural gas pipelines has been that FERC devotes significant resources to working cooperatively with these other agencies. Furthermore, the pipeline industry's experience has been that these other sources of authority over pipeline permitting, which often are federal authorities delegated to the states, provide state agencies with considerable leverage.

Industry Concerns

Safety and Security

While regulatory certainty and permit streamlining are important to constructing new LNG terminal capacity, the most significant immediate challenge facing the industry is public perception regarding safety and security. Fear of the unknown appears to be the greatest hurdle, followed closely by the various misconceptions about LNG. Such misconceptions are difficult to overcome. All of us – industry, regulators, the Executive Branch and the Congress – have a role to play in educating the public, so that we can make informed decisions about constructing needed energy infrastructure.

Fortunately, better information is on the way. In May, FERC released a report prepared by a contractor that addressed the consequences of potential LNG spill scenarios. While the Center for LNG believes that this report needs further refinement, it still is an important step in developing a public record that will support a balanced, fact-based consideration of the safety issues associated with LNG. Within the next several weeks, the Department of Energy's Sandia National Laboratory is scheduled to complete an LNG safety and security analysis that should supplement the FERC report by addressing probability of an LNG incident. Finally, Det Norske Veritas, a private risk analysis firm, soon will be completing its own study. We hope that these studies will put to rest many of the misconceptions that have characterized some of the recent public discussion of LNG safety and security issues.

Are there risks associated with LNG? Of course there are. Still, just as with any activity, this must be placed in perspective. LNG has a long and outstanding safety record. The robust worldwide trade in LNG that takes place every day is proof that LNG can be handled safely and securely. And here in the United States, FERC and the Coast Guard, working with the Department of Transportation's Office of Pipeline Safety, can mitigate

risk to an even greater extent through their safety/security regulations and enforcement. We need your help, and your leadership, in getting that message out to the public.

Approval and Siting Authority

Another set of challenges facing the industry concerns jurisdictional disputes over LNG siting authority and the potential for protracted proceedings before multiple permitting agencies. The focal point for the jurisdictional issue is the dispute between FERC and the California Public Utility Commission (CPUC) regarding the authority to site an LNG terminal in the State of California.

The jurisdictional issue has been fully adjudicated by FERC and is now ripe for judicial review. FERC has gotten it right on both the law and the policy. As already noted, the courts have interpreted the NGA to provide FERC with the authority to site an LNG import facility and to attach the necessary conditions to its determination. The facts of the California case do not include anything that we believe would cause a reviewing court to reach a conclusion at odds with the Distrigas decision. FERC also is on firm ground as a matter of policy. To an even greater extent than with interstate commerce, the regulation of foreign commerce clearly is a function for the federal government. The siting of facilities directly associated with foreign commerce is an obvious extension of such regulation. If this regulation were left to the states, LNG facilities almost certainly would be subject to inconsistent regulation and likely would not be constructed if they were subject to traditional public utility regulation or other burdens. The nation as a whole would suffer if the ability to enhance the capacity to import this critical source of supplemental natural gas supply were frustrated. FERC jurisdiction is important to ensuring that the larger, national public interest is served, rather than just local, parochial interests.

Some have asked whether the Congress should amend section 3 of the NGA to clarify jurisdictional boundaries. We believe that, in exercising exclusive jurisdiction over the siting of LNG import facilities, FERC is acting within the bounds of the authority already conferred by the Congress under section 3 of the NGA. Still, to the extent that such an amendment would “clear the air” and permit worthy LNG projects to proceed without what may be perceived to be a cloud over jurisdiction, such an amendment may be advisable.

Beyond this threshold jurisdictional question, we also want to draw the Subcommittee’s attention to the ability of federal, state and local regulators to erect impediments to the efficient, timely construction of natural gas infrastructure already authorized by FERC. While the NGA provides FERC with the exclusive authority for determining whether such projects should be constructed, other agencies increasingly are using the jurisdictional hook provided by other laws to second guess aspects of the decisions that FERC has made following the thorough review conducted under the NGA.

As noted earlier, other state and federal agencies have an integral role to play in permitting decisions related to interstate pipeline and LNG facility construction. Our point is that fairness and administrative efficiency would be served best if these other agencies coordinate the timing of their reviews with the FERC process. The already inclusive FERC NEPA process provides a vehicle for this to occur. In that way, all of the interested federal, state and local government agencies can come together under one concurrent and comprehensive review, so that all parties have equal standing and balanced decisions can be made.

In discussing regulatory impediments to LNG import facilities, we have referred frequently to the experience with interstate pipelines. We have done so for several reasons. First, the experience with interstate pipelines provides a window on what LNG facilities likely will experience as they attempt to reach the finish line of the regulatory gauntlet that must be run before ground can be broken. Second, adequate pipeline capacity is critical to bringing new natural gas supplies to consumers, whether it be LNG or North American supply. Third, specifically with respect to LNG, import facilities must be able to interconnect with the transmission pipeline network in order for the natural gas supply to reach customers. This point is demonstrated by Dominion Resources' recent announcement of plans to increase the capacity of its Cove Point LNG terminal from 1 billion cubic feet per day ("Bcf/day") to 1.8 Bcf/day, which is dependent upon FERC approval of two associated pipelines that will move the increased supply from the terminal and into the market.

Economic Impacts

What happens if the United States is unable to construct the natural gas infrastructure that we need? Quite simply, delays in pipeline and LNG terminal construction will reduce the amount of natural gas available to consumers and thereby increase the price that they must pay. This likely will cause further job losses in industrial sectors that depend on affordable supplies of natural gas, such as chemical and fertilizer manufacturing. Because an increasing amount of electricity is generated by natural gas, electricity prices will be higher for virtually all consumers.

The INGAA Foundation, Inc. now is completing an economic analysis that quantifies some of the consumer costs associated with delays in constructing new pipeline and LNG import capacity. The preliminary results are startling. The study estimates that a two-year delay in building natural gas infrastructure (both pipelines and LNG terminals) would cost U.S. natural gas consumers in excess of \$200 billion by 2020. Mr. Chairman, your own home state of California, alone, would experience increased natural gas costs of almost \$30 billion over that period. And, of course, should the end result be that certain facilities are never constructed, the economic effect would be even more severe. This INGAA Foundation study is scheduled to be published in mid-July. We will provide the Subcommittee with a copy for the record.

The bottom line is that natural gas infrastructure delays and cancellations have consequences. Every consumer will pay higher prices for natural gas, electricity and the

goods produced using natural gas if we do not act to ensure that adequate LNG and pipeline capacity are constructed in time to keep supplies affordable.

Legislative Proposals

Several important provisions in H.R. 6, the pending comprehensive energy legislation, would remove impediments to building LNG and pipeline infrastructure. These provisions include the following:

- The bill would codify FERC's Hackberry decision to remove the open access requirement on new and expanded LNG terminals.
- The bill would amend section 7 of the Natural Gas Act to authorize an appeal to the U.S. Court of Appeals for the D.C. Circuit if an action by a federal or state agency unreasonably delays or conditions the construction of a pipeline project authorized by FERC.
- The bill also would specify that the extensive record developed by FERC in its certificate proceeding must be used by other agencies in any administrative appeals concerning a project that has been reviewed by FERC.

These provisions represent areas where changes in the statutory framework for U.S. energy policy can make a real contribution to ensuring that there is adequate LNG import and pipeline infrastructure to serve the energy needs of the nation's consumers and its economy. We continue to urge the Congress to pass this legislation.

We also wish to comment on H.R. 4413, a bill recently introduced by Representative Lee Terry that would establish clear authority for LNG terminal approval, siting, and regulation. The bill would clarify exclusive FERC authority for on-shore terminal siting decisions, and require other federal and state agencies involved in permitting to work within the FERC process and make final decisions within one year of the original application. The Terry bill would also codify the FERC's Hackberry decision by prohibiting a requirement that new LNG terminals, or expansions of existing terminals, be open-access. Both the Center for LNG and INGAA strongly support this legislation, and believe that it should be the model for future discussions in Congress on removing impediments to new LNG import capacity.

Conclusion

In conclusion, let me emphasize the importance of public policies that foster a positive environment for natural gas infrastructure construction and investment. These large and capital-intensive projects will be constructed only if there is a rational process for reviewing and siting these facilities. Delays and detours are costly, both to project sponsors and ultimately to consumers, and in some cases the cumulative effect can be fatal to a project. We believe that the FERC provides an appropriate and inclusive forum for authorizing on-shore LNG import terminals and that FERC has done an admirable job in discharging its responsibilities. If anything, FERC's authority in these matters should

be enhanced by Congress, to send a clear message as to the national importance of building natural gas infrastructure on a timely, responsible basis.

I thank you for the opportunity to testify today, and would be happy to answer any questions you might have.