

107 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Sound Energy Solutions

Docket No. CP04-58-001

ORDER DENYING REQUESTS FOR REHEARING,
DENYING REQUEST FOR STAY,
AND CLARIFYING PRIOR ORDER

(Issued June 9, 2004)

1. On March 24, 2004, the Commission issued an order clarifying its exclusive jurisdiction under section 3 of the Natural Gas Act (NGA) over a liquefied natural gas (LNG) import terminal that Sound Energy Solutions (SES) proposes to build and operate in Long Beach, California.¹ Requests for rehearing and/or clarification of the March 2004 Order have been filed by the California Public Utilities Commission (CPUC); Californians for Renewable Energy, Inc. (CARE); the California Coastal Commission; the California Department of Fish and Game, Office of Spill Prevention and Response (OSPR); the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Regional Water Board); the South Coast Air Quality Management District (SCAQMD); the Long Beach Citizens for Utility Reform (Long Beach Citizens); and the City of Long Beach. In addition, CARE has submitted a request that we stay our consideration of the SES application and designate the CPUC as the lead state agency in conducting an environmental review.

2. As discussed below, we clarify our prior order and deny the requests for rehearing, the request for stay, and the request to designate the CPUC as lead State agency. We also reiterate our goal to work cooperatively with the CPUC and other State and local authorities to protect the safety of residents and minimize adverse environmental impacts. In addition, we intend to hold a technical conference to address safety issues, and we invite state and local authorities to participate in this process. This order serves the public interest by providing uniform federal oversight of siting, construction, operation, and safety of facilities to be used to import foreign LNG to meet the nation's critical energy needs.

¹ Sound Energy Solutions, 106 FERC ¶ 61,279 (2004).

I. BACKGROUND

3. On January 26, 2004, SES filed an application for NGA section 3 authority to site, construct, and operate a terminal to import foreign LNG at the Port of Long Beach, California.² The proposed terminal will consist of an LNG ship berth, two storage tanks, an LNG truck loading facility, an LNG vehicle fuel storage tank, and associated facilities. LNG imports will be vaporized then carried over a new 2.3-mile line for delivery to Southern California Gas Company (SoCalGas), interconnecting with SoCalGas' existing Line 765 at its Salt Works Station. In addition to the volumes to be delivered as gas, a small portion of the imported LNG will be sold as liquid fuel and be delivered either by truck to an LNG fueling station or directly into a mobile fueling vehicle. SES states that the project will provide a new supply of natural gas to markets within California, primarily the Los Angeles Basin and Southern California.

4. We issued our March 2004 Order in response to the CPUC's assertion that SES would need to obtain a certificate of public convenience and necessity from the CPUC for its proposed project. To clear away any ambiguity as to whom SES was to present its application, we explained that because importing LNG is a matter of foreign commerce, not intrastate commerce, importing LNG is subject to federal, not state, control. Thus, this Commission, not the CPUC, has exclusive jurisdiction over the proposed import project.³ The March 2004 Order, however, acknowledged the CPUC's role in ensuring

² SES supplemented its application on April 29, 2004.

³ Because the SES application did not seek authorization for the 2.3-mile line needed to take gas away from the proposed LNG terminal and deliver it to SoCalGas' Salt Works Station, the March 2004 Order stated that SES' application should be amended, or a separate application filed, for section 3 authorization for the 2.3-mile line. 106 FERC ¶ 61,270, at 62,014, n. 1 (2004). Subsequent to issuance of the March 2004 order, the City of Long Beach, California, filed a pleading on April 22, 2004, in which it states that it intends to construct, operate, and own the 2.3-mile line. The City of Long Beach would use the line to transport gas within Long Beach's city limits to its existing interconnection with SoCalGas.

NGA section 3 applies to a "person," which section 2(1) defines as an individual or corporation. However, the section 2(2) definition of corporation excludes municipalities, defining a municipality to be a "city, county, or other political subdivision or agency of a State." As described by the City of Long Beach, its construction, operation, and ownership of the 2.3-mile line would be exempt from the Commission's NGA section 3 jurisdiction, since as a municipality, the City of Long Beach is not a

(continued...)

safe and reliable utility services for California customers, guarding California customers against market power abuses, and minimizing adverse environmental impacts of in-state energy projects.

5. We reiterate that cooperation among federal, state, and local authorities is needed to assess the SES proposal adequately and to expedite access to LNG supplies to meet the nation's critical energy needs. Although this Commission has exclusive jurisdiction over the proposed project, certain permits, approvals, and licenses are the responsibility of other federal agencies and state and local authorities. Provided that state and local representatives act under delegated federal authority (*e.g.*, in implementing the provisions of the Coastal Zone Management Act (CZMA))⁴ and in a manner compatible with our policies and regulations, there will be no jurisdictional conflict.⁵ To the extent that state and local directives frustrate federal rights or requirements, federal provisions hold sway.⁶ Neither this order, nor our March 2004 Order, reaches the merits of the SES proposal.

A. Commission Jurisdiction Under NGA Section 3

6. This case turns on the question of the extent of Commission jurisdiction under NGA section 3. It may thus be helpful to first review Commission application of that section 3 jurisdiction to LNG marine terminals.

person for the purposes of section 3. Accordingly, the City of Long Beach has not submitted a section 3 application for the 2.3-mile line.

⁴ 16 U.S.C. §§ 1451, *et seq.* (2004).

⁵ *See, e.g.*, Georgia Public Service Commission, 107 FERC ¶ 61,024 (2004) and Islander East Pipeline Company, 102 FERC ¶ 61,054 (2003).

⁶ In issuing NGA authorizations, we routinely cite *Schneidewind v. ANR Pipeline Company*, 485 U.S. 293 (1988), and include the following proviso: "Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission."

7. NGA section 3 reads as follows:

Sec. 3(a) After six months from June 21, 1938, no 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 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 modification 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.

(b) With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas –

(1) the importation of such natural gas shall be treated as a "first sale" within the meaning of section 2(21) of the Natural Gas Policy Act of 1978; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) For purposes of subsection (a) of this section, the importation of the natural gas referred to in subsection (b) of this section, or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

8. The Commission shares administration of section 3 with the Assistant Secretary for Fossil Energy (FE) of the Department of Energy (DOE).⁷ In order to obtain section 3 import/export authorization, two separate applications must be submitted, one to DOE/FE for authorization to import and export gas,⁸ and a second to the Commission for authorization to site, construct, and operate new import and export facilities.⁹

9. Under section 3(b), if gas is to be imported “from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas,” or is liquefied (regardless of origin), then under section (c), the import “shall be deemed to be consistent with the public interest,” and an import application “shall be granted without modification or delay.” Accordingly, although all prospective importers and exporters must obtain DOE/FE approval, if gas is to be imported from a free trade partner or is in the form of LNG, the DOE/FE function in approving import volumes is merely ministerial, because section 3(c) deems such imports to be consistent with the public interest.¹⁰ Prospective importers and exporters must also obtain Commission approval to site, construct, and operate new import and export facilities. It is this latter application, submitted by SES to the Commission for its proposed LNG terminal, which is the subject of this proceeding.

10. The CPUC reads section 3 as requiring not just DOE/FE, but the Commission as well, to deem SES’ LNG proposal to be consistent with the public interest and to grant SES’ application without modification or delay. As interpreted by the CPUC, the Commission has no more discretion to undertake a meaningful review of SES’ application for new LNG facilities than does DOE/FE in issuing its perfunctory approval

⁷ The derivation of this dual administration is discussed in more detail below.

⁸ See 10 CFR Part 590 (2003), Administrative Procedures with Respect to the Import and Export of Natural Gas.

⁹ See 18 CFR Part 153 (2003), Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas.

¹⁰ The section 3(b) description of “natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas” includes all current imports, since all gas that is not LNG is imported from either Canada or Mexico, both nations “with which there is in effect a free trade agreement requiring national treatment for trade in natural gas.”

to import applications.¹¹ Thus, the CPUC finds no room under section 3 for the Commission to exert discretion in its review of SES' application, and finds no section 3 provision that grants the Commission jurisdiction to regulate new LNG facilities or services.

11. The Commission and the CPUC disagree on: (1) how to distinguish foreign from interstate from intrastate commerce, and the jurisdictional implications thereof; (2) the scope of section 3 and section 7 jurisdiction over LNG import terminals; and (3) whether the Commission may impose terms and conditions in connection with LNG imports. We outline each of these issues below.

B. Foreign Commerce, Interstate Commerce, and Intrastate Commerce

12. The CPUC argues that the Commission's NGA jurisdiction over interstate commerce does not apply in this case. We do not dispute this – provided none of the imported LNG departs the state, either physically or indirectly through deliveries or by displacement. Further, we acknowledge that SES' anticipated operations – offloading LNG, the transfer of LNG into tanks for storage, LNG vaporization, and the delivery of regasified volumes into an existing intrastate pipeline – will all occur within California. We disagree, however, with the CPUC's assertion that because the proposed facilities will be in California serving California markets, SES will be a California public utility subject to regulation by the CPUC. SES' proposed facilities, and its receipt, storage, regasification, and delivery of natural gas, are subject to our NGA section 3 foreign commerce jurisdiction. Federal authority over foreign commerce holds priority over state authority over intrastate commerce.

13. The CPUC cites Border Pipe Line Company v. FPC (Border),¹² a case that demarcated foreign from interstate commerce, as being “[t]he only court case that is anything like the present case.” Border owned and operated a 38-mile line that received gas exclusively from wells in Texas and carried that gas to Mexico. Initially, Border obtained NGA section 3 export authorization. Several years later, Border sought to expand its operations. The Commission then issued an order declaring Border a “natural-gas company” under NGA section 2(6), and directed it to submit an application for

¹¹ In fact, under the CPUC's interpretation, for imports of LNG and free-trade gas, whereas DOE/FE plays the role of federal foreign commerce record keeper, the Commission plays no role at all.

¹² 171 F.2d 149 (D.C. Cir. 1948).

section 7 certificate authorization.¹³ The D.C. Circuit Court concluded that because all the facilities were in Texas transporting Texas gas, there was no interstate commerce, and therefore no Commission jurisdiction under section 7. The CPUC interprets Border as holding that the Commission cannot regulate SES' proposed facilities and operations because they will be within California.

14. The Border decision turned on the NGA section 2(7) definition of interstate commerce as “commerce between any point in a state and any point outside thereof . . . but only insofar as such commerce takes place within the United States.” The Commission had read this to mean that a company such as Border was engaged in both foreign and interstate commerce, reasoning that “[t]he concluding portion of section 2(7), ‘only insofar as such commerce takes place within the United States,’ simply means that the regulation contemplated is not applicable to properties or operations beyond the boundaries of the United States.”¹⁴ The court disagreed, observing that Congress had “first declared the necessity for federal regulation of transportation and sale ‘in interstate and foreign commerce’” and then provided for separate NGA sections for foreign commerce and interstate commerce.¹⁵ The Border decision clarified that a company operating in foreign and intrastate commerce, but not interstate commerce, was not a “natural-gas company” under NGA section 2(6), and thus was not required to obtain a section 7 certificate of public convenience and necessity.

15. The distinction drawn in Border between foreign and interstate commerce is well settled, and we have no intention of revisiting it. Border clarifies that our jurisdiction over interstate commerce may not include facilities within a state carrying in-state gas to an international border. The decision, however, left intact our foreign commerce jurisdiction, under which Border had to obtain section 3 approval and a Presidential Permit for its exports to Mexico and its facilities at the border.

¹³ Border, 6 FPC 411 (1947).

¹⁴ Reynosa Pipe Line Company, 5 FPC 130 (1946).

¹⁵ 171 F.2d at 150-51. The Commission subsequently dismissed Border's section 7 application “for want of jurisdiction.” Border, 8 FPC 773 (1949).

C. Presidential Permit

16. The only imports and exports contemplated in enacting the NGA in 1938 were for gas at a border through a pipe; commercial LNG transportation did not begin until two decades later. Prior to LNG transportation, all natural gas imports and exports were at the international border with Mexico or Canada.

17. Where gas is physically passed across a border into another country, Executive Order No. 10485 applies¹⁶ in addition to section 3. This Executive Order requires the Commission to obtain favorable recommendations from the Secretaries of State and Defense in order to issue a “Presidential Permit” for the construction, operation, maintenance, and connection of facilities at the border to import or export gas. We normally grant section 3 approval and issue a Presidential Permit simultaneously in separate dockets in a single order.¹⁷ Prior to addressing applications for LNG import facilities, we had no call to segregate the exercise of our separate section 3 and Executive Order No. 10485 authority.

18. In 1967, in response to a request for a Presidential Permit to export gas from Alaska to Japan, the Commission determined that Executive Order No. 10485 only applied to gas facilities at a border bounding two nations, but did not apply to the border between the U.S. and international waters.¹⁸ As a result, applicants for LNG marine terminals are not required to obtain Presidential Permits.

¹⁶ Executive Order No. 10485, 18 Fed. Reg. 5397 (September 3, 1953), as amended by Executive Order No. 12038, 43 Fed. Reg. 4957 (February 7, 1978). Issuing a Presidential Permit is analogous to issuing authorization for LNG terminal facilities; for both we consider the site, construction, operation, and maintenance of the import/export facilities, and both apply regardless of whether the prospective energy transfer is for foreign, interstate, or intrastate markets.

¹⁷ See, e.g., AES Ocean Express, LLC, 106 FERC ¶ 61,090 (2004).

¹⁸ Phillips Petroleum Company, 37 FPC 777 (1967). The Commission based its decision on an opinion by the Office of the Legal Counsel of the Department of Justice.

**D. LNG Import Terminals: NGA Section 3;
NGA Section 7; or the State?**

19. The issue of the Commission's authority to consider proposed LNG marine terminals' siting and facilities exclusively under NGA section 3 – i.e., independent of the review conducted in issuing a Presidential Permit or section 7 certificate authorization – came into focus in the Distrigas Corporation v. FPC (Distrigas) case.¹⁹ In 1972, in discussing Distrigas' request for section 3 authorization to import LNG to new terminals in Everett, Massachusetts, and Staten Island, New York, the Commission described Distrigas as the first case of a U.S. company proposing to import large quantities of foreign LNG for an extended period of time and predicted that “the Commission is establishing policy for a new arm of the natural gas industry which promises to become increasingly important in the future.”²⁰

20. With respect to Distrigas' proposed terminals, the Commission chose to limit its section 3 regulation to approval of LNG imports, and not to exercise authority under section 3 to also impose terms and conditions on Distrigas' proposed terminals and sales.²¹ However, since Distrigas' LNG imports were to be introduced into both interstate and intrastate commerce via a commingled stream, the Commission found section 7 applied too. The Commission set the starting point of its section 7 jurisdiction at the tailgate of the regasification plant. Further, the Commission deliberately declined to regulate LNG terminal facilities and services under section 3 by ending section 3 regulation at the point LNG exited the docked ship. This is similar to the federal regulatory scheme urged by the CPUC for SES: foreign commerce regulation ending as LNG leaves the ship, but for SES, no section 7 regulation because the LNG brought into the state never leaves the state; in other words, all SES facilities and services subject to the exclusive jurisdiction of the state.

¹⁹ 495 F.2d 1057 (D.C. Cir. 1974), cert. denied, 419 U.S. 834 (1974).

²⁰ Distrigas, Opinion No. 613, 47 FPC 752 (1972), reh'g denied, 47 FPC 1465 (1972).

²¹ The decision to refrain from imposing terms and conditions on Distrigas was not without controversy. Chairman Nassikas and Commissioner Moody dissented, with the latter commenting that “[t]he majority's refusal to implement the mandate of Section 3 results in a regulatory gap large enough to drive a new industry through.” Id.

21. In 1973, the Commission reconsidered, and found that section 7 should be applied to the construction and operation of the Distrigas terminal, storage, and regasification facilities.²² Distrigas objected. In its 1974 Distrigas decision, the D.C. Circuit Court stated that if the Commission's assertion of section 7 jurisdiction over Distrigas' terminals' facilities and operation was necessary to protect customers against exploitation, it "would not hesitate" to overrule Border (in which the court had deemed export facilities to be subject to section 3, but not to section 7) and subject Distrigas' importation to section 7.²³

22. However, the court found no compelling need to include LNG import terminals within section 7's jurisdiction in light of its determination that the Commission's section 3 authority was adequate to protect customers. The court explained that under section 3, while the Commission may either approve or disapprove an import, "the Commission may also and quite properly adopt a position somewhere between these two poles, granting import authority but subjecting it to 'terms and conditions' that it finds 'necessary or appropriate' to the public interest."²⁴ "In short," the court found "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 certification requirements both as to facilities and . . . as to sales within and without the state of importation."²⁵ Given the court's determination that the Commission could comprehensively regulate

²² In the 1973 Distrigas proceeding, the Commission adopted "the 'interstate commerce' theory as its jurisdictional policy with respect to LNG imports. Any importer of LNG is required to obtain Section 7 authorization to construct and operate LNG terminal, storage, regasification, and related facilities. Section 7 authorization is also required to make any sales for resale or transportation of LNG, either within or outside the state of importation." Distrigas, 49 FPC 1400, 1402 (1973). The Commission subsequently noted Distrigas' proposal to sell additional volumes out of state, to construct additional facilities, and the need to examine environmental and safety issues as reasons to invoke section 7. Distrigas, 49 FPC 1142 (1973) and Distrigas, 49 FPC 1145 (1973).

²³ 495 F.2d at 1063.

²⁴ Id. at 1064.

²⁵ Id.

Distrigas' imports and import facilities under section 3, and that the Commission had not provided a basis for compulsory regulation under section 7, the court remanded the case to supplement the record.

23. In 1977, the Commission elected to assert section 7 jurisdiction over Distrigas' docking facilities, cryogenic lines, storage tanks, vaporization facilities, and truck loading terminal facilities.²⁶ The Commission adopted this approach based on the commingling theory, finding that because some fraction of the imports would cross out of the state of import, all facilities and services associated with importing LNG should be subject to its interstate jurisdiction. While the court had implied this approach could be justified, the court had appeared to favor imposing interstate-like regulation under section 3 over LNG terminals' foreign commerce functions, pointing out that the Commission's "plenary and elastic" section 3 authority provided "flexibility far greater than would be the case were we to hold that imports are interstate commerce."²⁷

24. Despite the court's suggestion that the Commission could safely rely on section 3, the Commission elected to rest its jurisdiction on section 7, stating that "[a]t some point between the time an LNG ship touches U.S. coastal waters and the time when LNG is released from the flange of such ship in a stationary position, foreign commerce ends."²⁸ This change in the Commission's regulatory reliance – applying section 7 to LNG terminal facilities and services – was consistent with the Commission's treatment of other LNG import terminal proposals. The 1972 authorization of the terminals located at Cove Point, Maryland, and Elba Island, Georgia,²⁹ and 1977 authorization of the Lake Charles,

²⁶ By 1977, the Distrigas proceeding involved only the terminal at Everett, Massachusetts. Although initially Distrigas sought authorization for an additional terminal in Staten Island, New York, by 1977 responsibility for the Staten Island facility had passed to Energy Terminal Services Corporation. Energy Terminal Services Corporation withdrew its application for authorization of the Staten Island terminal in 1985.

²⁷ 495 F.2d at 1064.

²⁸ Distrigas, 58 FPC 2589 (1977).

²⁹ Columbia LNG Corporation, Opinion No. 622, 47 FPC 1624 (1972), order on reh'g, Opinion No. 622-A, 48 FPC 723 (1972).

Louisiana, terminal³⁰ followed this same jurisdictional template – section 3 for LNG imports, section 7 for LNG import terminal facilities. These projects, like *Distrigas*, were intended to deliver LNG imports into interstate commerce.³¹

25. The demand for imported LNG did not develop as anticipated, and of the four import terminals built in the 1970s, only the LNG facility at Everett, Massachusetts, continued in operation. Service was suspended at the remaining three terminals for approximately two decades. However, all three have recently resumed receipt of LNG imports and are in the process of expanding. This renewed interest in LNG caused the Commission to revisit and revise the basis for its jurisdiction. Since the 2002 decision authorizing the expansion of the LNG terminal at Elba Island, Georgia, the Commission has returned to the court's suggested jurisdictional demarcation in *Distrigas*, and relied exclusively on section 3 for LNG terminal facilities and operations, reserving its section 7 jurisdiction until the point at which regassified volumes reach the interstate grid.³² The Commission's decision to rely on section 3, not section 7, for LNG terminals

³⁰ *Trunkline LNG Company*, 58 FPC 726 (1977).

³¹ The first U.S. LNG marine terminal, the Kenai Peninsula LNG plant in Alaska, went into service in 1969. It is, and for the foreseeable future is likely to remain, the only facility that exports domestic LNG. As originally contemplated, Alaskan gas supplies were to be transported to the Kenai plant, liquefied, then shipped to Oregon and Japan. Based on this anticipated Alaska-to-Oregon interstate transportation, the terminal and the intrastate lines feeding it with gas from Alaskan production fields were deemed subject to section 7's jurisdiction over interstate commerce. In practice, shipments from the Alaskan LNG plant have gone (with the exception of a couple shiploads) solely to Japan, *i.e.*, into foreign and not interstate commerce. See *Phillips Petroleum Company*, 37 FPC 777 (1967) and *Marathon Oil Company*, Opinion No. 735, 53 FPC 2164 (1975), order denying reh'g, Opinion No. 735-A, 54 FPC 660 (1975).

³² See, *e.g.*, the preliminary determination in *Southern LNG, Inc.*, 101 FERC ¶ 61,187, at 61,738 (2002). Citing *Distrigas*, we explain that although LNG imports and import facilities had been authorized pursuant to sections 3 and 7, and although *Southern LNG* sought to expand terminal facilities and operations under section 7, there is no need to consider this, as “[o]ur assessment of the proposal under the public interest standard of section 3 replicates the criteria we would apply under the substantially equivalent public convenience and necessity standard of section 7, including review under the National Environmental Policy Act. Given that our section 3 import authority permits us to apply terms and conditions governing rates, practices, accounting, facilities, and financing as

(continued...)

better distinguishes foreign from interstate commerce and enables the Commission to employ the greater regulatory flexibility available under section 3 to respond and adapt to changes in the nature of the LNG industry.³³

E. Current Scope of NGA Section 3 Authority

26. Originally, NGA section 3(a), as reproduced above, stood alone as section 3 in its entirety. Sections 3(b) and (c), which deem certain imports to be “consistent with the public interest” and direct that import applications be granted “without modification or delay,” were added by the Energy Policy Act (EPA) of 1992.³⁴ The CPUC contends that this 1992 amendment “stripped the FERC of the very conditioning authority and flexibility which Distrigas relied upon to give FERC the ability to impose conditions upon LNG facilities.”³⁵ We disagree. While the EPA rendered the DOE/FE import approvals for LNG and free-trade gas perfunctory,³⁶ the Commission’s authority to impose terms and conditions on the siting, facilities, and operations of importers was left intact.

necessary and appropriate to ensure that the proposed expansion meets the public interest, authorization pursuant to section 7 is unnecessary.”

³³ See, e.g., Hackberry LNG Terminal, L.L.C., 101 FERC ¶ 61,294 (2002) (electing not to impose section 7 rate regulation and open access requirements on terminal services).

³⁴ Pub. L. No. 102-486, 106 Stat. 2776 (1992).

³⁵ The CPUC’s Request for Rehearing, at 14 (April 23, 2004).

³⁶ This assumes the application complies with the criteria specified in 10 CFR §§ 590.201 and 590.202 (2003).

II. REQUESTS FOR STAY, REHEARING, AND CLARIFICATION

A. CPUC's Request for Rehearing³⁷

27. The CPUC sees the SES proposal as jurisdictionally bifurcated – part in foreign commerce, part in intrastate commerce – with foreign commerce ending as an LNG tanker is moored, and intrastate commerce beginning as LNG is offloaded. Drawing the divide between federal/foreign and state/intrastate in this manner, the CPUC claims intrastate jurisdiction over everything after offloading, namely, siting, facilities, construction, operation, and service.

28. The CPUC insists that the Commission's jurisdiction over interstate facilities and sales does not apply in this case. We omit argument on this issue, because we agree. This leaves the CPUC's claim that following the EPAct, federal section 3 jurisdiction over LNG and free-trade gas is reduced to DOE/FE's registering and rubberstamping all import applications. Based on the CPUC's interpretation, since 1992, there is no real regulatory role for the Commission under section 3 with respect to imports. Only after imported gas is delivered into an interstate pipeline does Commission jurisdiction attach, and then only under section 7.³⁸

³⁷ On February 23, 2004, the CPUC submitted a protest to the SES application, to which SES submitted an answer. On March 23, 2004, the CPUC submitted a motion titled "Answer in Opposition to SES' Answer to the CPUC's Protest." In our order issued March 24, 2004, we did not have the opportunity to respond to the March 23, 2004 submission of the CPUC. We do so now in the context of this order. Although section 385.213(a)(2) of our Rules of Practice and Procedure does not permit answers to answers, we may waive this rule for good cause shown, and do so in this instance to help clarify the issues under consideration. Accordingly, we consider the CPUC's March 23, 2004 answer to SES' answer in conjunction with the CPUC's April 23, 2004 request for rehearing. On May 12, 2004, SES, in turn, filed an answer to the CPUC's request for rehearing SES. Section 385.213(a)(2) also prohibits answers to rehearing requests; we again use our discretion to waive this rule to clarify the issues under consideration.

³⁸ Basically, the CPUC repeats the argument presented in *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001). For the same reasons set forth in that order, our response remains the same.

B. The CPUC's Interpretation of Section 3 as Amended by the EAct

29. The CPUC believes that the Commission and SES misread section 3 to imbue the Commission with substantive authority beyond that specified in the statute. The CPUC argues that regardless of how section 3 jurisdiction once was and now is allocated between DOE and the Commission, section 3 itself remains the sole source of substantive rights regarding imports and exports.

30. The CPUC stresses that the word "facilities" is not mentioned in section 3 and does not appear in the DOE Organization Act transferring the Commission's section 3 responsibilities to DOE.³⁹ The CPUC maintains that DOE, in delegating section 3 responsibilities back to the Commission, could not give back what it never had. Thus, while Delegation Orders refer to Commission responsibilities under "sections 4, 5, and 7 under the Natural Gas Act over the gas authorized for import" and its "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 gas,"⁴⁰ the CPUC argues that such references can only indicate facilities and services in interstate commerce, not facilities and services in foreign commerce. As to SES, the CPUC contends that because the proposed facilities and services are intrastate not interstate, there is no Commission jurisdiction.

31. The CPUC believes the outcome in Distrigas, in which the court suggested that the Commission employ all or part of the panoply of regulations applicable to interstate commerce to ensure foreign commerce is consistent with the public interest, is no longer valid. The CPUC believes that Congress altered the Commission's section 3 authority so that after the EAct, section 3(a) "still has vitality" only if the import at issue is not LNG and is not gas from a country with which there is a free trade agreement. In other words, the "terms and conditions" of section 3(a) come into play only when section 3(b) and (c) do not apply.

³⁹ DOE Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (1977), codified, as amended, primarily at 42 U.S.C. §§ 7101-7375. See also 10 CFR §§ 590.201 through 590.209 (2003).

⁴⁰ 49 Fed. Reg. 6684, at 6690 (Feb. 22, 1984).

32. Given that “section 3(c) deems the LNG imports are in the public interest,” the CPUC argues that this “divests the FERC of any right to modify the application.”⁴¹ The CPUC dismisses the contention that the 1992 amendment affected only DOE’s authority and not the Commission’s. The CPUC concludes that there is no need to refer to legislative history or prior practices, since “the plain meaning of section 3,” as amended, is that the Commission “must automatically approve an application to import LNG.” Thus, the CPUC concludes that DOE and the Commission no longer have any regulatory discretion under section 3 over new LNG import requests or import facilities.

33. Our March 2004 Order stated that “[h]ad Congress intended the Energy Policy Act of 1992 to eliminate siting authority that the Commission had exercised without question for the previous 18 years, we believe it would have done so expressly.”⁴² The CPUC disputes this, stating that any reliance on subsequent implicit Congressional ratification is misplaced, because in the EAct “Congress explicitly changed the FERC’s authority pursuant to section 3” by adding sections (b) and (c), which “eliminated the FERC’s discretionary authority over imports of LNG.”⁴³ Further, the CPUC believes that “there is no evidence in the legislative history of the EAct . . . of Congressional awareness of an acquiescence to the FERC’s practice under Distrigas” over facilities under section 3.⁴⁴

34. The CPUC contends that cases cited by the Commission and SES which intermingle the Commission’s section 3 foreign commerce authority with its sections 4, 5, and 7 interstate commerce authority are unreliable guides to the facts in this case, since in this case only foreign, and not interstate, commerce is at issue.

C. Commission Response

35. We disagree with the CPUC that section 3 is plain on its face. Further, the CPUC’s forced interpretation of NGA section 3 is at odds with the way in which the statute has traditionally been understood and applied. The CPUC contends the statutory language leaves no room for anything other than rote rubberstamping of LNG import

⁴¹ The CPUC’s Request for Rehearing, at 16 (April 23, 2004).

⁴² 106 FERC ¶ 61,279, at 62,017 (2004), citing, Lorillard v. Pons, 434 U.S. 575, 580-81 (1978).

⁴³ The CPUC’s Request for Rehearing, at 26 (April 23, 2004).

⁴⁴ Id.

requests, and excludes facilities to effect imports, since “the LNG facilities themselves are not imported.”⁴⁵ However, the fact that section 3 does not contain the word “facilities” has been no barrier to including facilities as part of import/export authorizations.⁴⁶ The intent to import or export gas and the physical capability to convey the gas are two halves of a whole transaction. Siting, construction, and operation are means to the import end. Hence, section 3 has traditionally required authorization of both a plan on paper to move gas and a proposal to put facilities in place to make that happen.

36. In 1977, DOE was established, and all section 3 duties were transferred there. The Secretary of Energy assigned section 3 functions to the Administrator of DOE’s Economic Regulatory Administration (ERA). In 1978, DOE delegated back to the Commission section 3 authority over siting and facilities, retaining the authority to approve, disapprove, and condition import and export requests.⁴⁷

37. In ceding back to the Commission part of the responsibility for section 3, DOE stated ERA was to retain “authority over imports and exports of natural gas to the extent that they broadly concern energy policies on an international, national, and interregional scale,” whereas “[t]hose functions involving the continuing supervision of each of the

⁴⁵ *Id.*, at 56. Presumably, the CPUC would preclude the Commission from asserting jurisdiction over LNG terminals unless a terminal was an integral part of an interstate transportation system, and thereby subject to NGA sections 4, 5, and 7.

⁴⁶ Similarly, the fact that section 3 refers only to “the Commission,” and nowhere to DOE, has not precluded section 3 jurisdiction, once the domain of the FPC, from being transferred in toto to DOE, then delegated back in part to the FPC’s successor FERC – all without any change to the words “the Commission.” A literal reading of the statute – without reference to the DOE Organization Act or DOE’s delegation orders – will not convey the changing identity of “the Commission.” Similarly, reference to documentation external to the NGA is required to understand how “facilities” fall under the scope of section 3.

⁴⁷ DOE Delegation Order Nos. 0204-25 and 0204-26 43 Fed. Reg. 47769 (October 17, 1978); superseded by Delegation Order Nos. 0204-54 and 0204-55 44 Fed. Reg. 56735 (October 2, 1979); superseded by Delegation Order Nos. 0204-111 and 0204-112, 49 Fed. Reg. 6684 (February 22, 1984). ERA’s authority has been assumed by DOE/FE. See DOE Delegation Order No. 0204-127, 54 Fed. Reg. 11436 (March 20, 1989).

interstate natural gas pipeline companies would rest within the FERC's jurisdiction."⁴⁸ Thus, ERA was to apply a policy perspective to import/export requests to contemplate, for example, an import's potential impact on the U.S. balance of payments. ERA was to impose terms and conditions as needed to ensure its import/export authorizations would not be inconsistent with the public interest.

38. The 1978 DOE delegation to the Commission covered "all functions under Section 3 of the Natural Gas Act to approve or disapprove the construction and operation of particular facilities and the site at which they would be located, and with respect to imports of natural gas, the place of entry" and "[a]ll functions under Sections 4, 5, and 7." Commission consideration of an import/export request was expected to follow final action by ERA, with the Commission to then impose terms and conditions necessary to ensure its authorization would not be inconsistent with the public interest, and also include in its authorization the adoption of "such terms and conditions as shall have been previously attached" by ERA.

39. In its delegation, DOE could not have been clearer that it intended to establish a two-part division of labor. DOE presented the following scenario, evocative of SES's proposal, as an example of how delegation was to operate: "Assume Applicant A proposed to import liquefied natural gas (LNG) at port X and to construct docking, storage and regasification facilities. A also proposed to resell the regasified product to B for resale in the interstate market." DOE directs Applicant A to file section 3 applications with ERA and the Commission for the import, construction of facilities, and resale of gas. Person B is directed to file a section 7 application with the Commission for the interstate sale for resale. ERA would consider policy issues, and upon issuance of a favorable determination by ERA, "FERC's formal proceedings would begin and would

⁴⁸ Delegation Order Nos. 0204-25 and 0204-26, 43 Fed. Reg. 47769, 47770 (October 17, 1978). In this delegation of authority, DOE made an exception for the Pac Indonesia LNG Company proceeding, since at the time of delegation, EPA was involved in rehearing of its decision in that case to approve an LNG import site near Oxnard, California. Pertinently, DOE directed ERA not to share jurisdiction with the Commission as part of the "two-part regulatory process" that the delegation established, but to retain authority over Pac Indonesia "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." 49 Fed. Reg. 6684 (February 22, 1984).

include, among other things, consideration of any pipeline facilities to be constructed by A or B, the transportation rates, and the justness and reasonableness of prices proposed to be charged.”⁴⁹

40. In 1982, the D.C. Circuit Court discussed this shared section 3 authority, noting that “[t]he language of this delegation evidences an anticipation that the ERA might impose conditions which would overlap with areas – such as the pricing structure of natural gas – over which FERC normally would have jurisdiction.” However, “[t]he risk of such a regulatory overlap is lessened in part by the Secretary’s delegation to FERC (rather than to the ERA) the power, recognized under section 3 since Distrigas, to approve or disapprove the site, construction and operation of particular facilities, as well as the place of entry for imports.”⁵⁰ The court added that DOE’s delegation order “expressly confirms that FERC is to perform ‘all functions under Sections 4, 5, and 7 of the Natural Gas Act,’ (which include the normal licensing and ratemaking jurisdiction over natural gas in interstate commerce), even though arising in connection with a section 3 application.”⁵¹

41. Subsequent delegations of authority retain this basic section 3 division: DOE assesses applications for import/export requests based on policy grounds, and the Commission reviews applications for the siting, construction, and operation of new

⁴⁹ Id. at 47771. There is no mention of a need for a state-issued certificate. While dual applications to DOE and the Commission are still required, given the speed of DOE’s post-1992 pro forma approvals (measured in weeks) versus the Commission comparatively lengthy review (measured in months, attributable to the time required to complete an environmental analysis), import/export applicants are no longer expected to obtain DOE approval prior to seeking Commission authorization. See 18 CFR § 153.6 (2003).

⁵⁰ West Virginia Public Services Commission (West Virginia), 681 F.2d 847, 858 (D.C. Cir. 1982), citing Delegation Order No. 0204-26, 43 Fed. Reg. 47769 (Oct. 17, 1978).

⁵¹ Id.

import/export facilities.⁵² As clarified in Distrigas, pursuant to its section 3 authority, the Commission may impose any or all of its sections 4, 5, and 7 terms and conditions to ensure an import/export proposal is not inconsistent with the public interest.⁵³ And although the obligations the Commission may impose must be consistent with the initial

⁵² The most recent Delegation Order No. 00-004.00, 67 Fed. Reg. 8946 (February 27, 2002), describes the Commission's authority as follows:

A. Approve or disapprove the construction and operation of facilities, the site at which such facilities shall be located, and with particular 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.

⁵³ The CPUC implies that the Commission has taken this to mean that our “underlying authority in section 3 is far greater or even comparable to its authority under section 7.” The CPUC's Request for Rehearing, at 40 (April 23, 2004). While we do not reach the issue of the comparative breadth of authority under sections 3 and 7, section 3 may indeed provide greater flexibility to impose or withhold regulatory requirements that would be mandatory if applied under other NGA sections. Regarding the sections' comparability, the Fifth Circuit Court of Appeals has commented that “it may not be doubted, that the [section 3] authority of the commission to grant an export permit is certainly as broad as its authority under the [section 7] certificate section.” *Cia Mexicana de Gas, S.A. v. FPC*, 167 F.2d 804 (5th Cir. 1948).

approval issued by DOE, there remains “room for FERC effectively to veto the ERA’s conditional grant of an import or export authorization when inconsistent with other aspects of natural gas regulation.”⁵⁴

42. Contrary to the CPUC’s assertion, we do not believe DOE’s delegation back to the Commission attempted to convey authority that DOE did not have. Section 3, standing alone, has always been treated as including authority over siting and facilities.⁵⁵

43. The Commission’s exercise of section 3 stand-alone jurisdiction – *i.e.*, section 3 as segregated from our separate section 4, 5, and 7 and Presidential Permit authority – has not always been explicit. This is because we “commonly consolidated a party’s separate applications, reviewing them and deciding upon them jointly.” Since we “had jurisdiction over both” sections 3 and 7, considering the two sections’ authorizations in “combination clearly provided the Commission with complete authority to decide the full range of issues presented. As a result, neither the [Commission] nor reviewing courts had frequent opportunity to address section 3 directly.”⁵⁶

⁵⁴ West Virginia, 681 F.2d at 858.

⁵⁵ We similarly deny that the February 11, 2004 Interagency Agreement for The Safety and Security Review of Waterfront Import/Export Liquefied Natural Gas Facilities (Interagency Agreement) among the Commission, the U.S. Coast Guard, and the Department of Transportation’s Research and Special Programs Administration (RSPA) reflects any inappropriate expansion of any agency’s existing statutory rights. The Agreement is intended to expedite federal authorization and clarify regulation of LNG terminal proposals by defining the bounds of each agencies’ regulatory responsibilities. Thus, DOE’s Delegation Orders and the Interagency Agreement do not, as the CPUC suggests, expand existing rights and duties; they do delineate regulatory dividing lines more explicitly to focus each agency’s efforts on cooperation in its own area of expertise.

⁵⁶ West Virginia, 681 F.2d at 856 (citations omitted).

44. A demonstration of the scope of section 3 in operation apart from other NGA provisions is provided by Pac Indonesia.⁵⁷ In Pac Indonesia, DOE, acting under section 3, considered an application to bring foreign LNG into a new terminal near Oxnard, California, for consumption within California. Pac Indonesia, like SES, sought section 3 import authorization.⁵⁸ Unlike SES, Pac Indonesia also sought section 7 certificate authorization to build and operate its proposed LNG terminal.

45. In what it identified as “the first LNG import case pursuant to section 3 of the Natural Gas Act to be decided by the Department of Energy,” ERA reviewed Pac Indonesia’s request and found that because all the imported LNG would be used within California, there was no interstate commerce component to the proposal, and as a result, section 7 did not apply.⁵⁹ This is consistent with the posture we adopt here for the SES proposal. Citing Distrigas, ERA determined that section 3 jurisdiction included authorization over both the proposed LNG terminal and a proposed 12.2-mile, 42-inch diameter pipe from the terminal to a SoCalGas line. ERA also determined that its section 3 jurisdiction included authority to impose “‘Section 7 type’ requirements as

⁵⁷ Pac Indonesia’s application was filed with the Commission in 1973, prior to the formation of DOE. This case came under DOE’s jurisdiction following issuance of an initial decision by a Commission administrative law judge, and DOE relied in part on findings in the initial decision. 1 ERA ¶ 70,101 (December 30, 1977). As noted above, when DOE delegated section 3 authority over import facilities to the Commission, DOE retained authority with respect to the import facilities associated with Pac Indonesia’s proposal.

⁵⁸ A similar proposal by Freeport LNG Development, L.P. to import foreign LNG into a single state is pending before the Commission in Docket No. CP03-75-000. We are considering the proposal – including the siting, facilities, and operation – under section 3, as we are with the SES proposal. In Docket No. CP03-75-000, in contrast to this case, there has been no challenge to our exclusive federal jurisdiction or to the scope of our section 3 jurisdiction.

⁵⁹ 1 ERA ¶ 70,101 (December 1, 1977). Pac Indonesia’s proposal was subsequently modified to include importing LNG from Alaska. The proposal to commingle foreign with state-to-state gas changed the jurisdictional posture from section 3 foreign commerce to section 7 interstate commerce. The modified project proposal was never undertaken. See Pacific Alaska LNG Company, 25 FERC ¶ 61,005 (1983).

conditions to its approval under Section 3.”⁶⁰ This too is consistent with the posture we adopt for the SES proposal. Pursuant to section 3, ERA conducted a thorough review of siting, facilities, rates, safety, and environmental issues, and imposed terms and conditions consistent with the public interest.

46. The Commission case that best illustrates our section 3 authority in isolation from our interstate regulation is EcoElectrica, L.P. (EcoElectrica), in which the applicant sought to build an LNG import terminal in the Commonwealth of Puerto Rico.⁶¹ Given Puerto Rico’s status as a U.S. possession, the proposal was deemed subject to our section 3 foreign commerce jurisdiction, but not to our NGA interstate jurisdiction. We did as DOE did in Pac Indonesia and reviewed the siting, facilities, construction, operation, and environmental impacts, and imposed terms and conditions consistent with the public interest under the umbrella of our plenary and elastic section 3 authority. In accordance with the current division of regulatory functions, EcoElectrica obtained independent section 3 import approval from DOE/FE.⁶²

47. We typically consider new section 3 import facilities in tandem with section 7 facilities that will attach to the import/export facilities. In such cases, we seek a point to serve as a logical divide between the facilities deemed to be section 3 import facilities and the downstream section 7 interstate facilities.⁶³ This point will generally be at an interconnect with an existing pipeline or at a gas meter near the border.

48. Where, as with SES, new import facilities are intended to attach to a pipeline that is not subject to section 7, we rely on our section 3 discretion to weigh the public interest in exercising our section 3 authority to regulate these lines. For example, in Yukon Pacific Corporation, we considered a proposed LNG terminal at Valdez, Alaska, intended to export gas drawn from Alaskan production fields 800 miles away at Prudhoe Bay.⁶⁴

⁶⁰ Id.

⁶¹ 75 FERC ¶ 61,157 (1996).

⁶² DOE/FE Order No. 1042 (April 19, 1995).

⁶³ See, e.g., Tennessee Gas Pipeline Company, 101 FERC ¶ 61,360 (2002) (1,000 feet of section 3 pipe extending from the border to a measurement facility at an interconnection with a section 7 lateral line).

⁶⁴ 39 FERC ¶ 61,216 (1987).

We confined our section 3 regulation to the proposed terminal, declining to exercise discretionary section 3 authority over the 800 miles of upstream pipe on the grounds that for exports, unlike imports, “there are no economic consequences to U.S. ratepayers,” because the project costs will be borne by “the project sponsors, its lenders and investors, and its foreign purchasers of the gas. Thus, with respect to economic issues, there is no regulatory gap.”⁶⁵ With respect to environmental issues associated with the upstream pipeline, these were studied and addressed as part of the environmental impact statement for the LNG project.

49. The outcome in Inter-City Minnesota Pipelines, Ltd. (Inter-City) was different.⁶⁶ In Inter-City we were faced with an unusual pipeline system that carried gas from Canada to Minnesota, back to Canada, then back to Minnesota, making deliveries in both Canada and Minnesota. Although the meandering pipeline thrice crossed the international border, it never crossed into another state; thus, we found Inter-City was engaged in foreign and intrastate commerce, but not interstate commerce. Finding a need to assert jurisdiction to preclude a regulatory gap, we imposed under section 3 the equivalent of our interstate regulatory requirements.⁶⁷

50. The foregoing cases demonstrate the longstanding administrative practice of DOE and the Commission in implementing section 3 to consider and authorize both imports and the facilities to be used for importation. In 1992, if Congress had intended to amend section 3 to modify discretionary authority over facilities associated with importing LNG, as it did with respect to requests to import gas, Congress presumably would have altered the first sentence of section 3 to remove the requirement that a person cannot import gas “without first having secured an order of the Commission authorizing it to do so.” We reiterate our belief that if Congress intended the EPAct to preclude the Commission from

⁶⁵ Id. at 61,759.

⁶⁶ 29 FERC ¶ 61,105 (1984).

⁶⁷ We directed that “to the extent previous Inter-City orders (including the authorizations, requirements and conditions thereunder) were issued by the FPC or the FERC pursuant to Sections 4, 5, 6, 7, 8, 9, 10, 12 and 13 of the NGA, and to the extent that a regulatory gap might otherwise exist, we shall interpret those orders as having also been issued pursuant to Section 3 of the NGA by analogy to those other provisions of the NGA.” Id. at 61,206 (citation omitted).

exercising section 3 authority over new import facilities' siting, construction, and operation, Congress would have done so expressly, as it did in expressly curtailing DOE's discretion and in expressly treating gas imports as first sales.⁶⁸

51. The CPUC presses its interpretation of section 3 by questioning whether DOE "delegated section 3 authority to the FERC for siting LNG facilities, as opposed to section 7 authority to do so." Our view is that when DOE delegated partial section 3 jurisdiction to the Commission, and in its delegation order provided for the Commission to carry out "all functions under sections 4, 5, and 7," this was intended to highlight the Commission's capability to make use of its interstate regulatory functions "in connection with"⁶⁹ its section 3 authority to thereby "impose, under Section 3, the equivalent of Section 7 requirements,"⁷⁰ i.e., to exercise jurisdiction "under section 3 of the NGA by analogy to section 7, but not pursuant to section 7."⁷¹ This would seem self evident, since at the time DOE delegated a portion of section 3 jurisdiction to the Commission, the Commission already had jurisdiction to act under sections 4, 5, and 7.⁷²

⁶⁸ See, e.g., *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.... So too, where ... Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." (citations omitted)). See also, *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 846 (1986) ("It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" (citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274-75 (1974))).

⁶⁹ *West Virginia*, 681 F.2d at 858.

⁷⁰ *Distrigas*, 495 F.2d at 1065.

⁷¹ *Yukon Pacific Corporation (Yukon Pacific)*, 39 FERC ¶ 61,216, at 61,759 (1987).

⁷² DOE's Delegation Order No. 0204-112 delegated to the Commission "the authority to perform the following functions with respect to the imports and exports of natural gas: (a) Approval or disapproval of the construction and operation of particular facilities." In discussing this delegation, we have observed that "[i]nasmuch as paragraph (b) delegates to the Commission '[a]ll functions under Sections 4, 5 and 7 of the NGA,' it
(continued...)

52. While the CPUC maintains that the 1992 amendments effectively exempted imported gas from section 3,⁷³ we believe the most reasonable interpretation of the added section 3(a) and (b) provisions is that they altered DOE's part in the two-part import/export application process, but did not alter this Commission's role or responsibility. In other words, 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 role in assessing technical, safety, and environmental issues relating to the siting, construction, and operation of import facilities.

53. In 1992, Congress intended: (1) for gas imports from Canada (with which there was a free trade agreement in effect at the time) to be treated more like domestic gas production; (2) to provide an incentive for Mexico to enter into a then pending, now ratified, free trade agreement by offering to also treat Mexican gas imports more like domestic production; and (3) to encourage imports by treating foreign gas more like domestic production.⁷⁴ To accomplish the latter: section 3(b)(1) was added to give first sale status to imports so that, like first sales of domestic gas, imports are not subject to our jurisdiction over sales of gas for resale in interstate commerce;⁷⁵ section 3(b)(2) was

is clear that paragraph (a) is intended to encompass authority to approve or disapprove the operation of particular facilities under section 3 of the Act; otherwise, paragraph (a) would serve no useful purpose and would be totally redundant to paragraph (b).” Yukon Pacific, 39 FERC ¶ 61,216, at 61,759, n. 25 (1987).

⁷³ This same argument was presented in *EcoElectrica*, where we replied that “we do not view the Energy Policy Act of 1992 as precluding us from exercising our ‘plenary and elastic’ authority under section 3 to impose section 7 certificate-like conditions under appropriate circumstances.” 75 FERC ¶ 61,157, at 61,517 (1996).

⁷⁴ House Report No. 102-474(I), 1992 USCCAN 1953, at 2000.

⁷⁵ First sales are outside Commission jurisdiction pursuant to the Natural Gas Policy Act (NGPA). See section 601(a)(1)(C) of the NGPA (effective January 1, 1993, as amended by the Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60). The need to amend section 3 to ensure equal treatment of gas as a commodity came about as a result of the Commission's decision in *Salmon Resources Ltd.*, 50 FERC ¶ 61,101, reh'g denied, 51 FERC ¶ 61,148 (1990), which found that marketers selling imported gas for resale in interstate commerce were required to obtain a certificate of public convenience and necessity, unlike marketers who made first sales of domestic gas that were exempt from the sales certificate requirements as a result of the Wellhead Decontrol Act.

added to preclude treating imports differently from domestic gas, for example, by imposing special new tests, rate adjustments, or standards for imported gas; and section 3(c) was added to remove any barrier imposed by DOE's processing of import request applications.

54. The Commission, however, has continued to process section 3 applications under the same criteria after 1992 as before, retaining our traditional role in overseeing new import and export facilities' construction and operation.⁷⁶ We apply essentially the same criteria to facilities to be used for interstate transactions as for import/export transactions, assessing facilities to be used for domestic gas under sections 4, 5, and 7, and assessing facilities to be used for foreign gas under section 3, imposing the equivalent of our section 4, 5, and 7 requirements as appropriate.

D. The CPUC's Concerns Regarding Preemption

55. The CPUC insists that SES is a California public utility and thereby subject to state law. The CPUC declares that to ensure public safety, protect the environment, and prevent market power abuses, SES must submit to state authority and obtain a CPUC certificate of public convenience and necessity to construct and operate its proposed terminal. The CPUC argues that the NGA was not intended to handicap or dilute state power, but only to regulate aspects of the industry beyond the reach of the states.⁷⁷

56. The CPUC observes that in Distrigas, the rationale for Commission regulation of an LNG facility was a need to fill a regulatory gap to protect gas customers. The CPUC maintains there is no gap because the CPUC has asserted state jurisdiction over SES and its regulatory authority is adequate to protect gas customers.

57. The CPUC states its concerns are confined to siting, safety, environmental issues,

⁷⁶ We found no cause to curtail our review of import/export applications when revising our section 3 regulations five years after the 1992 amendment. None of the comments submitted in the 1997 rulemaking proceeding questioned the Commission's legal authority to act under section 3 to condition new import/export facilities and services. See Applications for Authorization to Construct, Operate or Modify Facilities Used for the Export or Import of Natural Gas, Order No. 595, 62 Fed. Reg. 30435 (June 4, 1997), FERC Statutes and Regulations Preambles January 1991-June 1996 ¶ 31,054 (1997), 79 FERC ¶ 61,245 (1997).

⁷⁷ Citing Panhandle Eastern Pipe Line Company, 332 U.S. 507, 517 (1947).

allocating gas to residential customers and electric power plants in an emergency, and the potential exercise of market power – all matters the CPUC declares are within the police power of a state. The CPUC observes that the Natural Gas Pipeline Safety Act (NGPSA)⁷⁸ and the Ports and Waterways Safety Act,⁷⁹ which set federal minimum safety standards, have savings clauses that permit state and local authorities to impose additional safety standards. The CPUC identifies other federal environmental laws that set federal minimum environmental protection standards, but allow state and local authorities to adopt more stringent standards, and require that any federal approval be contingent on compliance with state laws.⁸⁰

58. In our March 2004 Order, we declared that if “California's assertion of State authority proves inconsistent or incompatible with our Federal mandate,” then “State authority must give way.”⁸¹ The CPUC challenges this, emphasizing that there has yet to be judicial affirmation for the proposition that the NGA “preempts the State’s regulation of natural gas facilities located wholly within the State when there are no interstate pipelines, interstate sales for resale or interstate transportation involved in the matter.”⁸² The CPUC repeats its contention that not only has there been no judicial affirmation for federal preemption under NGA section 3, but in the only court decision on point, Energy Terminal Services Corp. v. New York State Department of Environmental Conservation (Energy Terminal Services),⁸³ the U.S. District Court for the Eastern District of New York found that New York was not preempted from determining the siting of a Staten

⁷⁸ 49 U.S.C. §§ 60101, et seq. (2004).

⁷⁹ 33 U.S.C. § 1221, et seq. (2004).

⁸⁰ The CPUC cites the Clean Air Act, 42 U.S.C. §§ 7661(4), 7416, 7661e, and 7506(c) (1) (2004); the Clean Water Act, 33 U.S.C. §§ 1342, 1370, and 1341 (2004); the Coastal Zone Management Act, 16 U.S.C. § 1456(c) (2004); the Endangered Species Act, 16 U.S.C. §§ 1535(c) and 1535(f) (2004); the Oil Spill Prevention and Response Act, 33 U.S.C. §§ 2718(a) and 2719 (2004); and the Toxic Substances Control Act, 15 U.S.C. §§ 2684 and 2684(e) (2004).

⁸¹ 106 FERC ¶ 61,279, at 62,017 (2004).

⁸² The CPUC’s Answer in Opposition to SES’s Answer to the CPUC’s Protest, at 2 (March 23, 2004).

⁸³ 11 Environmental Law Reporter 20871 (1981).

Island LNG facility.

59. The CPUC dismisses court decisions cited by SES in support of federal preemption as irrelevant, in that they involve interstate facilities and services, whereas here, once LNG is offloaded, only intrastate facilities and services are involved. The CPUC believes the SES proposal is most like import projects that are not linked to interstate transportation, and are thus subject to section 3 alone.

60. The CPUC contends that because the Commission's environmental review as conducted in this proceeding, and the Commission's approach to this proceeding as a paper hearing, do not provide for discovery and cross-examination, the Commission's process produces a less thorough evaluation of safety issues. Noting that the Commission and the Port of Long Beach are currently conducting an environmental review with the aim of fulfilling the federal National Environmental Policy Act (NEPA) and state California Environmental Quality Act (CEQA) requirements, the CPUC asks if the Commission is planning to preempt the CEQA review.

61. The CPUC observes that NGA section 1(c) allows for state regulation of certain pipelines engaged in interstate commerce and argues for analogous state regulation of LNG terminals engaged in foreign commerce. Whereas SES contends that uniform federal treatment for LNG imports is preferable, lest an inconsistent patchwork of state requirements distort the nationwide gas import market, the CPUC believes that variations in state regulatory schemes will have only an incidental impact on foreign commerce.

62. The CPUC again raises the prospect that SES might obtain and exploit market power, and again asserts state regulation is best means to prevent this. The CPUC renews its objection to federal preemption of its authority to direct emergency allocations of natural gas within California.

E. Commission Response

63. The NGA opens with this statement: "Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." This case concerns our section 3 jurisdiction over the transportation of natural gas and the sale thereof in foreign commerce.

64. There is nothing remarkable about an energy project simultaneously being subject to various regulatory requirements promulgated by different federal, state, and local authorities. To the extent we can, it is our practice to conform our regulatory requirements to accommodate those of state and local authorities. This is, in part, why we specify in our regulations that LNG applicants must provide information regarding

state and local approvals for a proposed LNG project.⁸⁴ That said, if confronted with an irreconcilable conflict, federal law will preempt state and local law.⁸⁵

65. This federal capacity to preempt state and local law will not cause the Commission to “usurp the state’s right to protect the safety of its own citizens and its environment from hazardous conditions as a result of the location of intrastate facilities on the state’s own land.”⁸⁶ We affirm our intent to work cooperatively with state resource agencies in reviewing the environmental aspects of the proposal, including siting and safety issues.⁸⁷

⁸⁴ For example, section 153.7(b) of our regulations requires an applicant for NGA section 3 approval to submit a detailed summary of “state, foreign, or other Federal government licenses or permits” for the proposed facilities and “the status of any state, foreign, or other Federal regulatory proceedings which are related to the proposal.” In addition, section 153.8(a)(7) of our regulations requires compliance with our Part 380 environmental review regulations. Under sections 380.3(b)(3) and (4), applicants are to consult with “the appropriate Federal, regional, State, and local agencies during the planning stages” and submit requests “for all Federal and State approvals as early as possible in the planning process;” under section 380.12(c)(2)(i)(A), applicants are to update the Commission on “the latest status of Federal, state, and local permits/approvals; and under section 380.12(o)(13), applicants must provide a list of “all permits or approvals from local, state, Federal, or Native American groups or Indian agencies required prior to and during construction . . . and any known obstacles to approval.”

⁸⁵ United States Constitution, Article VI, Clause 2: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

⁸⁶ The CPUC’s Request for Rehearing, at 38 (April 23, 2004).

⁸⁷ The NEPA Pre-Filing Process was initiated in July 2003 in Docket No. PF03-6-000, with Commission staff and Port of Long Beach staff coordinating efforts to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the project. The purpose of the pre-filing review is to encourage the early involvement of interested stakeholders, facilitate interagency cooperation, and identify and resolve issues before an application is submitted to the Commission. On September 4, 2003, staff from both agencies participated in public workshops in Long Beach that were sponsored by SES to inform agencies and the public about LNG and the proposed project. On

(continued...)

Although the Commission and the Port of Long Beach will each reach their conclusions independently, we hope to complete an environmental review that will satisfy both NEPA and CEQA requirements.

66. If 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. It is not our intent, in answer to the CPUC's concern, to preempt the CEQA review; rather, we intend to make every effort to conform our federal NEPA inquiry and recommendations to the results of the state CEQA study. We remind the CPUC that a Commission grant of section 3 authority – as opposed to section 7 certificate authorization – does not confer upon the project sponsor any power to acquire necessary land rights by means of eminent domain. We extend, again, our invitation to state and local authorities to participate in the assessment of the SES proposal, and to contribute their expertise and recommendations on how to achieve our common aim to protect residents' health and safety and minimize adverse environmental impacts.

67. With respect to safety issues, the CPUC advocates holding “a hearing, where experts can be questioned,” and suggests the CPUC and the Commission do so jointly. We have stated our intent to hold technical conferences as warranted to address safety issues and we invite the CPUC to participate. Experts can be heard and questioned in the context of these conferences.

68. LNG import projects require long-term commitments among various parties at every stage from extraction of gas from the ground, transportation by tanker, liquefaction, storage, withdrawal, delivery, to consumption. The capital investment in a new LNG project for facilities to liquefy, transport, and regasify is significant, and is, for the most

September 22, 2003, the Commission and the Port of Long Beach issued a public notice of their intent to prepare a joint environmental document on the SES proposal and announced a joint NEPA/CEQA public scoping meeting to be held in Long Beach on October 9, 2003. Between July and December 2003, staff from both agencies participated in discussions with numerous other agencies holding permitting or regulatory responsibilities in the project to identify issues and concerns. These other agencies include the: U.S. Coast Guard; U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; National Marine Fisheries Service; U.S. Department of Transportation; California Coastal Commission; California Energy Commission; California State Lands Commission; California Department of Fish and Game; Los Angeles Regional Water Board; SCAQMD; and the CPUC.

part, irretrievable. Such investments are encouraged by predictability and uniformity in regulatory treatment. By exercising our jurisdiction under section 3, we can assure prospective applicants that they will encounter a stable regulatory environment.

69. In addition, federal oversight can serve as a check on states' erecting unreasonable hurdles to LNG imports. Such state actions could skew rational development of the nation's LNG import capacity, since as a matter of geography and the existing infrastructure, there are a finite number of potential sites where LNG imports can be offloaded, stored, regassified, and gain access to underserved markets. Additionally, federal oversight establishes standards for siting, construction, operation, safety, financial viability, and consumer protection.

70. In response to the CPUC's claim that the outcome of Energy Terminal Services case argues against federal interference in state siting decisions, we repeat our March 2004 observation that when that decision was reached in 1981, the federal regulatory scheme did not as fully occupy the field as it does today. Thus, the court's comment that "the FERC has never issued guidelines pursuant to the [NGA] for the regulation of LNG facilities" no longer holds.⁸⁸

71. Moreover, we affirm our March 2004 statement that the outcome in Energy Terminal Services has been effectively reversed by National Fuel Gas Supply v. Public Service Commission of the State of New York (National Fuel).⁸⁹ Like Energy Terminal Services, National Fuel involved a state effort to compel a company subject to the Commission's NGA jurisdiction to submit to certain state-imposed constraints. In National Fuel, New York law required a company proposing to build gas facilities to obtain from the state Public Service Commission (PSC) a "certificate of environmental compatibility and public need." Here, the CPUC claims that California law similarly requires SES to obtain a state certificate of public convenience and necessity. Like New York in Energy Terminal Services, the CPUC argues that a federal law should not preempt a state law that requires a site-specific environmental review. The court in National Fuel, noting that the Commission had taken siting criteria into account in conducting its NEPA review, found that "[t]he matters sought to be regulated by the PSC

⁸⁸ See, e.g., sections 153.8 and 380.12 of the Commission's regulations, specifying the resource report requirements for LNG terminal applications.

⁸⁹ 894 F.2d 571 (2d Cir. 1990), cert. denied, Public Service Commission v. National Fuel Gas Supply Corp., 497 U.S. 1004 (1990).

were thus directly considered by the FERC.”⁹⁰ Concluding that the state law was incompatible with the Commission’s regulatory practice, the court observed that “Federal law need not be statutory to preempt state law. Regulations promulgated by an agency pursuant to its delegated authority may preempt similar state regulations.”⁹¹

72. In our March 2004 Order we commented that it is in the “country’s best interests that each state not have to develop and maintain the regulatory resources necessary for effective regulation of LNG imports and facilities.” We did not intend this statement, as the CPUC takes it, to “dictate to the states how best to use their own resources.”⁹² Our intent was to highlight the unnecessary and wasteful redundancy, as well as potential inconsistencies, that would be likely to arise were LNG terminal facilities subject to different rules in different states as well as federal requirements.

73. The CPUC claims that the Commission cannot assert that there is a regulatory gap to fill, because the CPUC intends to subject the proposed project to state regulation.⁹³ While as noted above, we are concerned with the prospect of states imposing inconsistent, even illegitimate, requirements on LNG terminals, we do not believe that our jurisdiction relies on uncovering a regulatory gap in need of filling. Congress has reserved to federal jurisdiction the authority to regulate gas imports and exports, including the facilities SES will require to effect its proposed importation.⁹⁴ Therefore,

⁹⁰ Id. at 579.

⁹¹ Id. at 576 (citations omitted). The court explained that “[b]ecause FERC has authority to consider environmental issues, states may not engage in concurrent site-specific environmental review. Allowing all the sites and all the specifics to be regulated by agencies with only local constituencies would delay or prevent construction that has won approval after federal consideration of environmental factors and interstate need, with the increased costs or lack of gas to be borne by utility consumers in other states.” Id. at 578. See also, Algonquin LNG v. Ramizi J. Loqa, 79 F. Supp. 2d 49 (2000).

⁹² The CPUC’s request for Rehearing, at 55 (April 23, 2004).

⁹³ On the other hand, the CPUC seeks to assure SES that under state jurisdiction, the CPUC would forego its “pervasive regulation of local distribution companies” and instead treat SES to “light-handed regulation,” “with no regulation of rates or imports.” The CPUC’s Answer to SES’ Answer, at 4 (March 23, 2004).

⁹⁴ Over the course of the Distrigas proceeding, several alternative grounds for our assertion of section 3 or section 7 jurisdiction over an LNG import terminal were
(continued...)

the states are preempted from acting in these areas. Our statutory jurisdiction, where invoked, is mandatory, and may not be abdicated as urged by the CPUC.

74. The CPUC asserts that it has certification from DOT to enforce federal minimum safety standards,⁹⁵ and adds that it may adopt additional or more stringent safety requirements “for intrastate pipeline facilities, such as SES’s proposed LNG facilities.”⁹⁶ As defined by the NGPSA, “an intrastate gas pipeline facility” is “a gas pipeline facility and transportation of gas within a state not subject to the jurisdiction of the Commission under the Natural Gas Act.”⁹⁷ Although the SES proposal is not subject to our NGA section 7 interstate jurisdiction, it is subject to our NGA section 3 jurisdiction. Consequently, the SES project is “subject to the jurisdiction of the Commission” under the NGA, and as such, cannot qualify as an NGA-exempt facility subject to the CPUC’s safety oversight. The proposed LNG terminal will be compelled to comply with DOT safety requirements, but DOT and this Commission (and not the CPUC) will share this oversight and enforcement responsibility.

presented. The Court found that “section 3 supplies the Commission not only with the power necessary to prevent gaps in regulation, but also with flexibility in exercising that power.” 495 F.2d at 1064. While this finding remains valid, Congress has expressly provided in section 3 for federal jurisdiction over the construction and operation of import and export facilities. Thus, there is no regulatory gap.

⁹⁵ The NGPSA provides that DOT may delegate a state authority to oversee safety standards and practices for NGA-exempt intrastate gas pipeline facilities. See 49 U.S.C. § 60105, state pipeline safety program certifications. See generally, ANR Pipeline Company v. Iowa State Commerce Commission, 828 F.2d 465 (8th Cir. 1987), describing the limits of state authority to monitor NGPSA compliance and adopt state safety standards.

⁹⁶ The CPUC’s Answer to SES’s Answer, at 31-32 (March 23, 2004).

⁹⁷ 49 U.S.C. § 60101(a)(9)(A) (2004).

75. The CPUC points out the Pipeline Safety Act of 1979, amending the NGPSA, included “location standards” for siting LNG facilities.⁹⁸ The CPUC claims that because Congress did not include equivalent standards in the NGA, “the statute specifically addressing the subject matter is the one that applies,”⁹⁹ *i.e.*, the LNG location standards set forth in the NGPSA. While NGA section 3 does not set forth specific criteria for siting LNG facilities like those that appear in the NGPSA, this has no regulatory significance. DOT independently applies the location standards in the NGPSA to LNG facilities that are not regulated by the Commission, which cover the vast majority of the more than 100 LNG facilities now operating within the U.S.¹⁰⁰ For an LNG project subject to our NGA jurisdiction, such as the SES proposal, our consideration of the request for authorization is conducted pursuant to our regulations and the criteria of the NGA, not under the NGPSA. Nevertheless, as discussed below, the Commission, with RSPA’s participation as a cooperating agency, confirms compliance with the NGPSA’s location standards when reviewing applications for LNG terminals.

76. As noted above, the February 2004 Interagency Agreement among the Commission, the U.S. Coast Guard, and RSPA clarified federal responsibilities for LNG marine terminals.¹⁰¹ The Commission is “responsible for authorizing the siting and construction of onshore LNG facilities” under NGA section 3 and “conducts environmental, safety, and security reviews of LNG plants and related pipeline facilities” in its role as “the lead agency responsible for the preparation and analysis and decisions required under NEPA for the approval of new facilities.” RSPA’s regulations provide siting and safety requirements,¹⁰² which the Commission, as lead agency in the NEPA

⁹⁸ The six stated criteria are the: (1) kind and use of the facility; (2) existing and projected population and demographic characteristics of the location; (3) existing and proposed land use near the location; (4) natural physical aspects of the location; (5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; and (6) need to encourage remote siting.” See 49 U.S.C. § 60103(a) (2004).

⁹⁹ The CPUC’s Answer to SES’s Answer, at 24-25 (March 23, 2004).

¹⁰⁰ Most of the LNG facilities now operating are dedicated to meeting the intrastate storage needs of local utilities, and are thus not subject to NGA jurisdiction.

¹⁰¹ See note 55.

¹⁰² 49 CFR §§ 193.2051-67 (2003).

review process, ensures will be satisfied by any proposed project. The Commission also has “the authority to impose more stringent safety requirements than DOT’s standards when warranted by special circumstances.”¹⁰³ Thus, in assessing the SES proposal, we are required to take into account siting, security, and safety criteria, and our environmental review will assess each of the “location standards” specified in the NGPSA for LNG plants.

77. The CPUC faults the Commission’s “refusal to thoroughly explore” siting issues and repeats its request for a joint CPUC-Commission hearing to study LNG terminal siting, as was done some 30 years ago. NGA section 17 authorizes the Commission to hold joint hearings with a state commission where appropriate, and the Commission did so in the 1970s when LNG imports to California were first contemplated. However, undertaking such a joint effort is optional under section 17, not mandatory, and as we noted in our March 2004 order, the circumstances we faced when LNG imports were in their infancy are not replicated here. Moreover, the CPUC’s suggestion to hold joint hearings would seem to be at odds with its contention that the Commission has no jurisdiction over the siting of SES’ proposed terminal. We believe the most appropriate forum to address safety issues, including siting options, is the ongoing NEPA/CEQA review. We expect to have access to opinions, studies, and other information sufficient to reach findings on these matters. The CPUC’s participation will ensure that its perspective becomes part of the record and the basis for an informed decision making.

78. While the CPUC suggests that a trial-type hearing before an administrative law judge is necessary to adequately air the issues, no material issues of fact have arisen to warrant the Commission’s ordering such a hearing.¹⁰⁴ We routinely decide complex and controversial cases on the basis of the record in a paper hearing and expect to be able to do so here. Thus far, we have no indication that proceeding in this manner will produce a less well reasoned result.

79. The CPUC suggests that absent a trial-type hearing, the January 19, 2004 accident at the LNG export facility in Skikda, Algeria, will not receive adequate consideration. In light of the severity of the accident at Skikda, Commission staff traveled to the site to

¹⁰³ See Memorandum of Understanding Between DOT and FERC Regarding LNG Transportation Facilities, 50 Fed. Reg. 20275, at 20275-76 (May 15, 1985).

¹⁰⁴ See *Citizens for Allegan County v. FPC*, 414 F.2d 1125 (D.C. Cir. 1969). When, as here, a paper hearing provides a sufficient basis for resolving the material issues of fact in a proceeding, a trial-type evidentiary hearing is not necessary.

assess the causes and implications of the accident, and our assessment of the SES proposal will incorporate lessons learned from Skikda. In particular, the accident in Algeria has prompted additional attention to SES' plans for on site storage of gas liquids. No approval will be issued until we are satisfied that the design, construction, and operation of the proposed LNG terminal will conform to all reasonable safety standards.

80. The CPUC complains that "FERC has already determined not to look at [the] evacuation issue during the approval process."¹⁰⁵ This is a cart-before-the-horse distortion of the sequence and substance of our application review process. Evacuation planning will be examined in the course of our NEPA review, along with the other safety issues related to the project. We will approve the proposed project only if we find that it can be built and operated without unacceptable adverse environmental impacts. Any approval will be conditioned on SES' compliance with an itemized set of criteria, which will provide for our review and approval of an emergency response plan that will include evacuation.

81. We reiterate our March 2004 finding that it is premature and speculative to debate anticompetitive actions that SES might or might not undertake in the future. With respect to the scope of our statutory authority to prevent and redress market power abuses, we note that while we may impose obligations on SES that are less rigorous than would be the case for a natural-gas company engaged in interstate transactions, the flexibility of our authority under section 3 also allows us, if need be, to require SES' compliance with the full breadth of our section 4, 5, and 7 regulations. Therefore, if the SES project is approved and placed in service, and SES later alters its practices or corporate structure in a way that raises anticompetitive concerns, the Commission may then revisit and revise SES's section 3 obligations.

82. The CPUC insists that if there is a natural gas shortage it "may need to exercise jurisdiction over SES to prevent people from freezing or to prevent blackouts."¹⁰⁶ We do not see how a putative shortage can serve as a legal basis for the CPUC to claim jurisdiction over the proposed SES project. We remind the CPUC that the last time blackouts were experienced in California, the Secretary of Energy invoked emergency authority to direct gas flows.¹⁰⁷ Short of such an emergency, we expect to retain our

¹⁰⁵ The CPUC's Request for Rehearing, at 74 (April 23, 2004).

¹⁰⁶ The CPUC's Request for Rehearing, at 105 (April 23, 2004).

¹⁰⁷ See Section 302 of the NGPA and Sections 101(a) and (c) of the Defense Production Act, 50 U.S.C. § 2071(a) and (c) (2004).

authority over SES' imports. If SES were to hoard supplies in an emergency, we could direct SES to make its supplies available to the intrastate market, after which the CPUC could direct gas flows on the basis of its curtailment priorities. The foregoing aside, we find that speculative emergency scenarios, like speculative anticompetitive scenarios, are not material to our assertion of exclusive jurisdiction over the SES proposal.

F. Additional Requests for Rehearing and/or Clarification

83. Requests for rehearing and/or clarification of the March 2004 Order were filed by the California Coastal Commission, Los Angeles Regional Water Board, SCAQMD, OSPR, Long Beach Citizens, and the City of Long Beach.

84. The California Coastal Commission states it has been delegated authority to administer the CZMA, including authority to review any amendments to the Long Beach Port Master Plan and any Harbor Development Permit issued by the Port of Long Beach. The Los Angeles Regional Water Board states it must issue certain federal Clean Water Act approvals for SES's project. SCAQMD states it must issue SES a permit under its authority to administer the federal Clean Air Act in California. The agencies seek assurance that March 2004 Order is not intended to strip them of these regulatory responsibilities.

85. OSPR states it has exclusive jurisdiction over oil spill response and prevention in state waters. Although it has declared that LNG does not qualify as "oil" under its enabling statute, the Oil Spill Prevention and Response Act, OSPR nevertheless asks for clarification that the Commission's jurisdiction stops at the waters' edge and that the Commission does not intend to limit OSPR's jurisdiction over LNG ships.

86. The City of Long Beach declares its intent to build a 2.3-mile pipeline segment to take vaporized LNG away from SES's LNG Terminal, and requests the Commission clarify that the March 2004 Order does not indicate Commission intent to assert jurisdiction over this 2.3-segment.

87. Long Beach Citizens contend that SES's proposed natural gas liquids recovery system, storage facilities, LNG trailer truck loading facility, LNG vehicle fuel storage tank, and any future ethane/propane facilities are neither inextricably related to, nor necessary for, LNG importation or the operation of the proposed terminal. Long Beach Citizens ask that the Commission disclaim jurisdiction over these facilities to clear the way for state regulation. Acknowledging that these proposed facilities can be used to

process LNG imports, Long Beach Citizens insist that rather than bring in LNG supplies that require processing before distribution, SES should only import LNG that conforms with existing gas tariffs' standards.

G. SES' Answer to Requests for Rehearing and/or Clarification

88. In response to the concerns of the state resource agencies, SES answers that Resource Report 1 of its application contains a list and schedule of the state and local agencies that hold permitting or review authority over its proposal. SES believes the listed agencies' authority is unaffected by the March 2004 order.

89. SES verifies that it expects the City of Long Beach to build and operate the 2.3-mile takeaway line, and thus sees no need to amend its application to include a request for authorization for this line. SES asks the Commission to clarify that if Long Beach or another municipally constructs, operates, and owns the 2.3-mile line, the Commission will not assert jurisdiction over the line.

H. Commission Response to Requests for Rehearing and/or Clarification

90. We clarify that the outcome in this proceeding will not impact state agencies that have been delegated authority to act pursuant to federal law, including state agencies that have been delegated duties with respect to the CZMA, Clean Water Act, and Clean Air Act, and we anticipate relying on these state agencies' efforts to confirm compliance with federal statutory requirements.

91. In response to OSPR, we clarify that we do not intend to seek jurisdiction over ships bringing LNG to the proposed terminal. We expect OSPR, the U.S. Coast Guard, and the Port of Long Beach, among others, to share responsibility for the oversight of tanker traffic.

92. We confirm that if a municipality constructs, operates, and owns the 2.3-mile line to interconnect the proposed terminal with SoCalGas' existing pipeline, the short line will be exempt from our section 3 jurisdiction. Since the City of Long Beach is a municipality, it is not a "person" subject to section 3; consequently, it need not obtain section 3 authorization in order to build and operate the 2.3-mile interconnect.¹⁰⁸

¹⁰⁸ See note 3. In the event that the City of Long Beach does not assume responsibility for this short segment of pipe, the segment would lose its NGA exemption. In which case, as we observed in the March 2003 order, either SES would have to amend

(continued...)

93. We deny Long Beach Citizens' request that we disclaim jurisdiction over a portion of the proposed terminal facilities. The facilities in question are not extraneous, but essential, to the receipt, storage, and delivery of LNG. It would be unrealistic, from both a practical and financial perspective, to expect every shipload of LNG to match local tariff standards without further treatment. Imported LNG is routinely subject to additional treatment to recover liquids, remove impurities, or modify heat content in order to render it marketable. The proposed facilities for loading LNG onto a vehicle for transport or into a vehicle for fuel are delivery facilities, and as such are properly included in SES' application.

I. CARE's Request for Clarification or Rehearing

94. CARE filed a request for clarification or, in the alternative, rehearing of the Commission's March 2004 order. CARE contends the order did not clarify whether: (1) SES must comply with all federal, state, and local laws; (2) the Commission has sole authority to certify SES' compliance with such laws; and, (3) SES must comply with such laws as a condition for Commission authorization of the proposed project. If the Commission intends to exempt SES from compliance with such laws, CARE asks the Commission to provide a statutory basis for any exemption.

J. Commission Response to CARE's Request for Rehearing

95. The substantive issues raised by CARE are addressed in the preceding section of this order responding to the CPUC's rehearing request. We clarify that our regulations and guidelines contemplate that an applicant will interact with state and local agencies before submitting an application for a project, and SES has done so by means of our pre-filing process, and its application reflects the resolution of certain state and local concerns. However, if we do authorize SES' proposed project, then to the extent state and local requirements undermine the force and effect of that authorization, such requirements may be preempted.¹⁰⁹

its application to request authorization for this 2.3-mile outlet line, or if not SES, the person proposing to build and operate the short pipe would have to submit a separate section 3 application to do so.

¹⁰⁹ The NGA "preempts state and local law to the extent the enforcement of such laws or regulations would conflict with the Commission's exercise of its jurisdiction under the federal statute." Iroquois Gas Transmission System, L.P., 59 FERC ¶ 61,094, at 61,360 (1992). The statutory basis for such preemption, as explained above, is ultimately the Supremacy Clause of the Constitution, Article VI, clause 2.

96. Nevertheless, that a state or local authority requires something more or different than the Commission does not make it unreasonable for an applicant to comply with both the Commission's and another agency's requirements. It is true that additional state and local procedures or requirements can impose more costs on an applicant or cause some delays in constructing a pipeline. However, not all additional costs or delays are unreasonable in light of the Commission's goal to include state and local authorities to the extent possible in the planning and construction of gas projects. A rule of reason must govern both the states' and local authorities' exercise of their power and an applicant's bona fide attempts to comply with state and local requirements.

97. CARE requests that the Commission provide CARE with compensation or other assistance to facilitate its participation in this proceeding.¹¹⁰ CARE bases its request for administrative aid on section 319 of the Federal Power Act (FPA), which was enacted by Congress as part of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹¹¹ In section 212 of PURPA, later codified as FPA section 319, Congress created within the Commission an Office of Public Participation (OPP). Section 319 requires the Director of OPP to "coordinate assistance to the public with respect to authorities exercised by the Commission."

98. Congress authorized funding for OPP through fiscal year 1981, but has not authorized funding thereafter. Consequently, we deny CARE's request for lack of financial support. Further, even if OPP funding still existed, because the nature of CARE's contribution to this proceeding, if any, cannot be determined at this time, we would deny CARE's request as premature.¹¹² Finally, even if OPP funding still existed and CARE's request were not premature, we would deny the request on its merits because the public interest already is represented by Commission staff, state agencies, and private

¹¹⁰ CARE references 16 U.S.C. § 825q (2004).

¹¹¹ Public Law No. 95-617 (1978).

¹¹² See Central Power and Light Company, 8 FERC ¶ 61,065, at 61,220 (1979), order denying reh'g and modifying order, 9 FERC ¶ 61,011 (1979), reh'g denied, 10 FERC ¶ 61,131 (1980), declining a similar request under section 319 for attorney's fees, expert witness' fees, and other costs of intervening and participating before the Commission, explaining that "under the terms of that section, any such compensation must be made post-hearing and after a determination as to the nature of the intervenor's contribution to the proceeding."

parties as active participants in this proceeding.¹¹³

K. CARE's Request for Stay

99. On March 23, 2004, CARE filed a request for stay.¹¹⁴ SES filed a motion in opposition.

100. CARE asserts that SES is a public utility and as such must obtain authorization from the CPUC for its proposed project. CARE contends our assertion of exclusive federal jurisdiction over the SES proposal, and consequent clarification that SES does not require a certificate of public convenience and necessity from the CPUC, constitutes an illegal abuse of discretion and violates the due process and equal protection rights of CARE and other interested parties.

101. CARE states that the City of Long Beach has signed a letter of intent that would grant SES exclusive rights to the proposed project site. CARE characterizes this as an "illegal precommitment," contending that Long Beach and SES cannot enter into such an agreement in advance of an environmental review conducted in accordance with NEPA and CEQA.

102. CARE maintains that the SES application is incomplete without an assessment of the project's impacts on the minority and low-income populations of Long Beach.¹¹⁵ CARE declares that social and interrelated economic impacts of the proposed project should be considered. CARE adds that our assertion of jurisdiction amounts to

preferential treatment for SES and "perpetrates discrimination against all Californians

¹¹³ See *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation*, 97 FERC ¶ 61,275, at 62,236 (2001) and 99 FERC ¶ 61,160, at 61,259 (2002) (denying a similar CARE request for compensation on similar grounds).

¹¹⁴ CARE supplemented its request for stay on April 1, 2004.

¹¹⁵ CARE references Title IV of the Civil Rights Act and Executive Order 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (February 11, 1994).

based on national origin as the Applicant . . . is [a] Japanese based corporation.”¹¹⁶

103. CARE maintains that SES has failed to submit environmental information and reports, as required under sections 380.3 and 380.12 of our regulations, and asks that the application be held in abeyance until SES complies with these requirements. In our March 2004 order, we commented that although SES had discussed the need to construct a 2.3-mile outlet pipe in its application, neither SES nor any other entity had submitted an application for authorization for this specific pipeline segment. CARE alleges this omission renders the SES application incomplete and raises questions regarding the ownership, location, and recipient of revenue to be derived from the 2.3-mile segment.

L. SES’ Answer to CARE’s Request for Stay

104. SES insists that its application is complete and that there is no cause for the Commission to stay its review of the proposal. In response to CARE’s allegation that SES and the Port of Long Beach have entered into an “illegal pre-commitment” regarding the siting of the proposed project, SES answers that the parties have signed a letter of intent to negotiate a lease in the future. SES explains that there is nothing improper in this, emphasizing that in advance of its obtaining the required authorizations, SES and the Port of Long Beach have not and do not intend to execute a lease or sign a binding contract that would establish property rights. In response to CARE’s concern about the impact the proposed project could have on minority and low-income populations in Long Beach, SES points to its assessment of the socioeconomic aspects of its proposal, contained in Section 5.2 of Resource Report 5 of Volume 1 of its Environmental Report, submitted in conjunction with its application. SES believes that the information already submitted is sufficient to address CARE’s concern.

M. Commission Response to CARE’s Request for Stay

105. We reiterate our March 2004 conclusion that if we approve the SES proposal, SES can proceed without obtaining additional certificate authorization from the CPUC.¹¹⁷ In other words, SES’ application to this Commission is not infirm or incomplete because SES has not also applied to the CPUC for a state certificate of public convenience and necessity. This result is not, as CARE implies, a matter within our discretion. Where our

¹¹⁶ CARE’s Request for Stay, at 2 (March 23, 2004).

¹¹⁷ Conversely, if we deny SES’ proposal, SES cannot then look to the CPUC for an alternative source of authorization for its proposed project.

federal jurisdiction applies, as it does here, we do not have the discretion to abdicate our authority or waive compliance with the statutory mandates. With respect to due process and equal protection, in the context of our evaluation of the SES application, CARE and other interested persons have a forum and opportunity to present concerns on all aspects of the proposed project. We invite comments, we will respond to issues raised, and we are open to requests to revisit the decisions that we make.

106. The outcome of our pending consideration of the SES proposal and associated NEPA review will not be dictated by the terms of any agreement between SES and the Port of Long Beach. Accordingly, we find no prejudice or impropriety in SES and the Port of Long Beach negotiating over the potential lease of a site for a future LNG terminal. Indeed, at this stage of the proposed project, we would consider it imprudent if the parties had not held detailed discussions on just these matters. Since section 3 approval confers no right of eminent domain to acquire a necessary right-of-way (as would be the case with authority pursuant to NGA section 7(h)), even if we grant all that SES asks without modification or delay, SES cannot commence construction until it has secured the property rights necessary to site and operate its project.

107. CARE misinterprets the Commission's obligation to consider proposed projects' impacts on the human health and environment of minority and/or low-income populations. Neither Title IV of the Civil Rights Act nor Executive Order 12898, apply to our evaluation of a proposed project. Therefore, although we have considered such impacts as part of our assessment of the socioeconomic aspects of proposed projects in the context of our NEPA review, we are not compelled to do so.

108. We have previously stated, and here affirm, our support for national policies directed at the elimination of discriminatory treatment of persons based upon race, creed, color, religion, sex, or national origin.¹¹⁸ However, we also previously stated, and the Supreme Court has affirmed, that Congress has not charged the Commission with processing claims under the Civil Rights Act.¹¹⁹ Accordingly, we find CARE's

¹¹⁸ See, e.g., The National Association for the Advancement of Colored People (NAACP), 56 FPC 299 (1976).

¹¹⁹ NAACP v. FPC, 425 U.S. 662, 669-70 (1976). The Court found that the Commission's statutory mandate to act in the "public interest" does not constitute "a broad license to promote the general public welfare," and is thus "not a directive to the Commission to seek to eradicate discrimination, but, rather, is a charge to promote the orderly production of plentiful supplies of electric energy and natural gas at just and reasonable rates."

(continued...)

contention that we ensure compliance with the Civil Rights Act to be beyond the scope of our jurisdiction.¹²⁰

109. Executive Order 12898 applies only to the federal agencies specified in section 1-102 of that order, and this Commission is not among the agencies so specified. Further, independent agencies, such as this Commission, though requested to, are not compelled to comply with the provisions of the Executive Order. Finally, section 6-609 of the Executive Order states that the order “is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person . . . [and] shall not be construed to create any right to judicial review involving compliance or noncompliance.”¹²¹ Accordingly, with respect to proceedings before this Commission, Executive Order 12898 is not binding and does not create any legally enforceable rights.¹²²

110. CARE expresses a concern that we may be inclined to favor the interests of a foreign entity over California residents. In evaluating the SES application, we will not balance the interests of SES or its corporate parent against the well being of California residents. Prior to passage of the EPAAct, the broad question of who benefits from a proposed import was indirectly addressed in weighing the security and quantity of foreign gas, its price, the impact of imported gas on the development of domestic supplies, fuel alternatives, and national and regional needs.¹²³ Thus, prior to 1992, to determine whether SES’ proposal would be consistent with the public interest, the

¹²⁰ CARE previously has presented similar civil rights’ concerns, and we have similarly found them to be beyond our legal authority to address. See *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*, 104 FERC ¶ 61,186 (2003) and *Californians for Renewable Energy, Inc. v. British Columbia Hydro and Power Authority*, 98 FERC ¶ 61,085 (2002).

¹²¹ Executive Order 12898, 59 Fed. Reg. 7629, 7632-33 (February 11, 1994).

¹²² See, e.g., *City of Tacoma, Washington*, 86 FERC ¶ 61,311, at 62,073 (1999).

¹²³ See DOE policy guidelines to aid in identifying the “public interest” in imports, focusing on competition, need, and supply security. 49 Fed. Reg. 6684 (February 22, 1984).

capability of SES to reliably obtain and deliver reasonably priced LNG would be measured against the LNG demand in the California market. However, since 1992, all LNG imports are assumed to be consistent with the public interest; thus, there is now no discretion to elevate the interests of LNG suppliers over those of LNG customers.¹²⁴

111. Following passage of the EPAct, our assessment of an application for an LNG import project is limited to looking at the proposed project's site, facilities, and operation. We have no incentive to approve or reject LNG project proposals. Instead, our mandate is to assess the merits of all proposals thoroughly and objectively. In the case of the SES proposal, this assessment will include consideration of project alternatives, impacts the project may have on California residents, adverse environmental effects, safety, and security. We assure CARE that with respect to SES' application, our deliberations and conclusions will not be influenced by the identity of the project sponsor.

112. CARE claims that SES has failed to fulfill the provisions of sections 380.3 and 380.12 of our regulations, but does not specify which provisions are yet unmet. In general, sections 380.3 and 380.12 seek to ensure that an applicant promptly notifies relevant federal, state, Native American, and local authorities of a planned project, describes the environmental impacts of the planned project, and explains how the applicant expects to comply with applicable regulations, codes, permits, and approvals. SES states it is in full compliance with sections 380.3 and 380.12 of our regulations, having submitted applications for all required federal, state, and local approvals as early as possible in its planning process. SES affirms that it has completed and submitted extensive documentation concerning the siting, safety, and security of its proposed terminal, the construction and operation of its proposed facilities, tanker traffic, marine facilities, environmental and cultural impacts, and project alternatives. We find SES has submitted documentation sufficient to demonstrate its compliance with sections 380.3 and 380.12 of our regulations.

N. CARE's Request to Designate the CPUC as Lead State Agency

113. In July 2003, during the pre-filing portion of this proceeding in Docket No. PF03-6-000, Commission staff and the Port of Long Beach initiated efforts to coordinate preparation of a joint EIS/EIR. The Commission serves as the lead federal agency and the Port of Long Beach serves as the lead state agency. On May 12, 2004, CARE submitted a motion asking that the Commission remove the Port of Long Beach as lead

¹²⁴ In passing, we note that the activities of the California energy market over these past several years appear to point to a need to add to the state's existing gas supply.

state agency and substitute the CPUC.

114. CARE repeats its concern that the Port of Long Beach has entered into an illegal precommitment with SES. As discussed above, we find no impropriety in the parties' negotiations concerning terms of a prospective land lease.

115. CARE objects to the City of Long Beach building and operating 2.3 miles of pipe to link the proposed SES terminal to a SoCalGas line, contending that this too constitutes an illegal precommitment. CARE considers it a conflict of interest to have the Port of Long Beach, governed by the City of Long Beach, assessing a proposal from which Long Beach stands to benefit financially. CARE implies that the entry of the City of Long Beach, as prospective pipeline owner and operator, conflicts with the effort to assess environmental impacts at the earliest feasible stage of the planning process.

O. Commission Response to CARE's Request Regarding the CPUC

116. The selection of a lead agency for the purposes of CEQA compliance is a matter of California law, and this Commission has no input into that decision. Thus, we have no authority to oust the Port of Long Beach in favor of the CPUC, as CARE requests. Accordingly, we dismiss CARE's request that we intrude on a matter of state jurisdiction.

117. The fact that the Port of Long Beach, and not the CPUC, is acting as the lead state agency will not, as the CPUC describes it, "divest the State of California of its constitutional right to protect the safety of its citizens and environment."¹²⁵ The potential impact of the proposal on the safety of the residents and environment of California will be examined in detail, and the CPUC, other state resources agencies, local and municipal representatives, federal agencies, and other interested persons will have opportunities to present opinions and evidence. In the event we find safety issues cannot be resolved satisfactorily, we will not approve the proposal.

118. We find nothing in the record to indicate that the City or Port of Long Beach has made any irrevocable commitment to the project as proposed. Further, we find no indication that either the City or Port of Long Beach will be unable to assess objectively the best interests – economic, environmental, developmental – of Long Beach. Finally, we note that although we are acting in concert with the Port of Long Beach to develop an EIS/EIR expected to satisfy the requirements of both NEPA and CEQA, ultimately each agency must reach its own conclusions. Thus, while the Port of Long Beach will

¹²⁵ The CPUC's Request for Rehearing, at 35 (April 23, 2004).

coordinate with other responsible and trustee California agencies to produce a document to satisfy CEQA, we are obliged to independently verify and evaluate the information, alternatives, and conclusions in the final EIS/EIR.

119. From the outset, it has been clear that there will need to be an interconnection between the proposed terminal and the existing grid,¹²⁶ and from the outset, SES identified a 2.3-mile link to SoCalGas as the means to do so. Thus, the fact that the party planning to take responsibility for the 2.3-mile line was not specified earlier has not handicapped the environmental review, since the need for and proposed route of the 2.3-mile line were included in SES' initial application.

120. When we issued our March 2004 order, there was no indication in the record that the City of Long Beach would build, operate, and own the 2.3-mile outlet line. As discussed above, if the City of Long Beach, a municipality, assumes responsibility for this line, this line will be exempt from our section 3 jurisdiction. However, if an entity subject to our NGA jurisdiction assumes responsibility for this line, then that entity would need to submit an application to the Commission for authorization for the line.

The Commission orders:

(A) Requests for rehearing are denied for the reasons described in the body of this order.

(B) CARE's request for stay is denied for the reasons described in the body of this order.

(C) CARE's request that the Commission replace the Port of Long Beach with the CPUC as lead state agency for the purpose of conducting the environmental review is denied for the reasons described in the body of this order.

(D) Requests for clarification are granted and denied, as described in the body of this order.

¹²⁶ In terms of take away capacity, the volume of LNG imports to be used for vehicle fuel or shipped by truck will be dwarfed by the volumes that will be regasified and sent out by pipeline.

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(E) Motions to intervene out-of-time filed by Occidental Energy Marketing, Inc., Southern California Gas Company, South Coast Air Quality Management District, International LNG Alliance, the California Coastal Commission, the California Regional Water Quality Control Board, the California Department Fish and Game, and the American Gas Association are granted.

By the Commission.

(S E A L)

Linda Mitry
Acting Secretary