



Liquefied Natural Gas (LNG) Siting and the Federal Energy Regulatory Commission

Position Paper by Citizens Campaign for the Environment

INTRODUCTION

Under current practices, both Federal Energy Regulatory Commission (FERC) and State authorities monitor the siting of new Liquefied Natural Gas (LNG) facilities. FERC recently attempted to usurp local authority by asserting its authority as the sole designator and approver of LNG facilities built and operated in the United States. In a November 2004 Congressional Appropriations bill, Senator Pete Domenici (R-NM) inserted three paragraphs of language granting FERC authority over State powers to site LNG facilities. There was no debate and several officials, including Sen. Lincoln Chafee (R-RI) and Rep. Barney Frank, (D-Mass); later expressed they were not aware of the change when they supported the bill. This debate continues with a new bill, which is expected to be introduced early in the 2005 session that would cement FERC control over LNG terminals. **Granting unprecedented authority to FERC to cite LNG facilities--independent of state, county, and local entities that directly represent the American public-- violates FERC's mission, state's rights, and the public's trust.**

STATES RIGHTS

Armed with a mission to regulate and oversee "energy industries in the economic and environmental interest of the American public," FERC's claim of sole jurisdiction over the siting of the LNG facilities both onshore and offshore is unfounded. At a minimum, the interest of the American public must include the state and local governments that directly represent the public that would be impacted by FERC's attempts to gain unilateral decision making authority.

The concept behind the balance of power between the federal government and State governments is known as federalism. The United States Congress has long held a precedent of siding with States on such issues and the United States Constitution was largely written with federalism in mind. States are not subservient to the federal government but rather sovereign entities entitled to make their own decisions, especially on local issues affecting their populous. ***CCE believes it would be unwise to allow FERC to implement a broad and general environmental policy among States that have very different environmental concerns and commitments.***

While State's must comply with the Federal law, the courts have held, time and time again, the right for State's to impose more stringent laws and regulations. The U.S. 9th Circuit Court of Appeals upheld authority for local control in *Exxon Mobil v. EPA*. In this case the court upheld the EPA's decision to support the county government raising the national minimum oxygenation levels in fuel allowed from a national standard of 2.7% to the county level of 3.5%. The county raised the limit because they were in an EPA designated non-attainment carbon monoxide area.

Exxon Mobil v. EPA illustrates the importance of local involvement in local environmental issues. Guidelines, limitations, and siting of projects all impact local quality of life concerns.

Granting sole jurisdiction over the siting of LNG facilities to one federal agency almost ensures that local issues and concerns will be given little weight in final decision-making process. Each state must be able to examine individual projects to decide if the project is right for the local community. Projects appropriate for Texas may be undesirable or unworkable in New York. Broad national policies that ignore local citizen sentiment are undemocratic, unpopular, and are destined to fail.

The California Public Utilities Commission (CPUC) is currently locked in litigation with FERC over the question of siting authority, which is being heard by the U.S. Ninth Circuit Court of Appeals. The implications of the outcome are being watched closely in many other States. The Attorney General of Rhode Island has written a letter urging the language be removed from the appropriations bill before the President signs it. Furthermore, FERC asserts it has authority because LNG terminals will receive shipments from abroad. However, Harvey Morris, the principal counsel for CPUC, disagrees and argues that the authority lies with the state because the matter could impact the health and safety of Californians. He also states, "The PUC is in the best position to investigate hazards... and can best address community concerns. We don't think FERC would have much expertise or concern. The State knows the local conditions." (Morris)

FERC's request for eminent domain should also be denied. Although this does not apply to offshore LNG proposals, such as the Broadwater LNG proposal for Long Island Sound, it will apply to most other new projects around the country. By granting this authority to a Federal agency, a dangerous precedent is set. Such action implies siting of energy facilities supersedes almost any other concerns, whether they be environmental or safety. Whole communities, sustainable economies, and sensitive environments could be endangered because of preferential treatment of the oil and gas industry. The federal government for energy use could commandeer county, state, and national parks if the Agency/Industry support the project, regardless of local or state government positions. Although the U.S. government must give fair market value for the land confiscated, there is more at stake than just money. Citizens across the United States have repeatedly supported measures to protect their environment and preserve their resources.

CLOSE RELATIONS

According to documents obtained through the Freedom of Information Act, between June 2001 and May 2004, FERC's current four commissioners met with gas and oil industry officials and lobbyists 83 times. Since these meetings began FERC officials have repeatedly supported LNG imports in speeches and presentations. The agency is also announcing its "new regulatory approach" that "remove [d] economic and regulatory barriers to the development of onshore LNG import terminals." During the same period FERC administrators have met with opposition forces only a handful of times, indicating a potential diminished responsiveness towards local concerns.

CONCLUSION

Citizens Campaign for the Environment believes that granting FERC exclusive jurisdiction over the siting of Liquid Natural Gas facilities throughout the United States is inconsistent with FERC's mission, violates state's rights, and would be a grave mistake in our national energy policy. Excluding local and state authorities will only hinder the process of addressing our nations power needs. CCE supports the federal, state, and local authorities working together with industry and the public to meet our nation's energy needs.