Testimony of
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Good afternoon:

My name is J. Mark Robinson and I'm director of the Office of Energy Projects (OEP) at the Federal Energy Regulatory Commission. I am here as a staff witness and do not speak on behalf of any Commissioner. Our office is responsible for non-federal hydroelectric licensing, administration, and safety; certification of interstate natural gas pipelines and storage facilities; and, more significantly for today's session, authorization and oversight over the construction, operation, and safety of Liquefied Natural Gas (LNG) terminals. Also, we share security responsibilities with the US Coast Guard which has primary responsibility under the Maritime Security Transport Act of 2002.

I want to thank you for this opportunity to speak today and to specifically address the status of LNG terminals, the siting of new terminals, and how we ensure the safety and security of all LNG facilities. I will first address the significance of LNG to our Nation's current and future energy security. Next, I will discuss the comprehensive, inclusive review process through which the Commission, with the assistance of federal, state and local authorities and the general public, reviews applications for LNG facilities, and ensures the safe

construction and operation of approved projects. Finally, I will describe some modifications to existing law that I believe are crucial to the Commission's ability to authorize necessary LNG facilities in a timely and efficient manner.

The Importance of LNG

Natural gas continues to be the economic and environmental fuel of choice in the U.S. This growing trend has created a demand that cannot be met solely by domestic or Canadian production. About 96 percent of the world's proven natural gas reserves are outside of North America. At the same time, the U.S. is consuming about 25 percent of the world's annual natural gas production. With projected decreases in conventional onshore and offshore natural gas production and the projected decline in natural gas imports from Canada through to 2025, growth in U.S. natural gas supplies will depend on non-conventional domestic production, natural gas from Alaska, and imports of LNG. In order for the U.S. to meet its increasing demand for natural gas, LNG must become an increasingly important part of the U.S. energy mix. The National Petroleum Council's September 2003 report estimates that LNG could increase from less than 2 percent now to as much as 12 percent of the U.S. gas supply by 2025. Some estimates are even higher.

In the Energy Information Administration's (EIA) Annual Energy Outlook 2005 report, total demand for natural gas is projected to increase at an average annual rate of 1.5 percent from 2003 to 2025. EIA estimates that LNG could

account for as much as 21 percent of the total U.S. natural gas supply in 2025. This equates to a daily regasification deliverability of about 17.5 Bcf/d.

Currently, there are 16 facilities under FERC jurisdiction in the continental U.S. Twelve of the facilities are land-based, peak-shaving plants that liquefy and store LNG during the summer (low demand) months for sendout during winter (high demand) months. The remainder are baseload LNG import terminals. Recently, there has been a resurgence of interest in expanding existing terminals and in developing new import projects to meet the growing demand for natural gas in the United States.

The current capacity of the four existing LNG facilities (Everett, Massachusetts; Cove Point, Maryland; Elba Island, Georgia; and Lake Charles, Louisiana) totals 3.72 Bcf/d of deliverability. Further, the Commission has approved additional expansions to the Elba Island and Lake Charles LNG facilities totaling 1.34 Bcf/d in deliverability. The Commission has approved three LNG facilities (Cameron, Freeport, and Sabine) located along the Gulf Coast. There are an additional eight applications for LNG facilities filed at the Commission. We are aware of other proposals, some of which are currently in the Pre-Filing Process

It is clear that additional LNG facilities are needed to help meet U.S. energy demand. As a regulatory agency, the Commission has no authority to develop LNG proposals, but rather can only review those projects that are developed by others. We do our best to conduct the review of LNG applications filed with us in an efficient and inclusive manner, such that projects that the

Commission approves are truly those that meet the public interest test. However, as I will discuss below, the current complex legal framework surrounding the consideration of LNG proposals does not encourage, or indeed permit, the rapid, sensible review that I believe our energy needs require.

Siting

FERC's current LNG site review process works to ensure the safety of the public and environmental resources. The siting and oversight of LNG facilities is governed by a comprehensive scheme of federal regulation that guarantees that the FERC and other federal agencies will work with state and local regulators, as well as the general public, to ensure that all public interest considerations are carefully studied and weighed before a facility is permitted, and that public safety and the environment are given high priority. We are proud of our track record of working with states and with all interested stakeholders on these projects, and are committed to continuing to be responsive and responsible regulators. The comprehensive nature of the FERC's LNG program addresses all siting and operational issues with the full participation of the federal and state agencies, and attempt to ensure the timely development of necessary energy infrastructure.

The goal of the FERC's LNG Program is to ensure that projects which are found to be in the public interest are constructed and operate in a safe and secure fashion. As an integral part of this process, FERC staff coordinates closely with other agencies and solicits comments and recommendations at numerous points in the review process from federal, state, and local authorities, and members of the

public, in order to obtain the broadest possible range of information and views. This coordination often includes preparing joint environmental documents with the states as we are doing for the Sound Energy Solutions' Long Beach LNG Project in Long Beach, California.

The process of the selection of a suitable site for an LNG import terminal begins with the project sponsor. It involves the consideration of environmental, engineering, economic, markets, safety, and regulatory factors. The basic criteria for any proposed LNG terminal must include:

- deepwater access to accommodate LNG ship traffic;

  - The applicant must demonstrate coordination with the local pilot's association, port authority, and the US Coast Guard letter of recommendation process to demonstrate navigation suitability of the channel and tanker.

- proximity to natural gas pipeline systems;

  - site selection near major intrastate or interstate pipelines reduces the length of interconnecting pipeline and has a bearing on site suitability and economics.

- safe engineering and design of the proposed facility;

  - compliance of the plant design with the DOT federal safety standards is essential. FERC's regulations specify filing requirements.

- sufficient land to comply with the exclusion zone requirements.

- The U.S. Department of Transportation's (DOT) has comprehensive regulations, which in conjunction with National Fire Protection Association 59A LNG Standards, set requirements for exclusion (or safety) zones that must be met by a proposed terminal site. In accordance with Sections 193.2057 and 193.2059, thermal radiation and vapor dispersion exclusion zones are calculated by FERC engineers based on spill scenarios and heat flux levels. These zones minimize the possibility that damaging effects of an LNG pool fire or a flammable vapor mixture extend beyond an LNG plant property boundary.

Alternative sites considered by the applicant as part of the site selection process must also be identified, and the applicant must provide the environmental characteristics of each site, as well as the reasons for rejecting it. Once the applicant decides on a preferred site and files its application, the information is analyzed by the FERC staff and relevant agencies. As a result of the review process, the site may be rejected, reconfigured, moved or expanded. The entirety of the site selection and review process is disclosed to the stakeholders through an environmental review, which typically begins with the pre-filing process and offers multiple opportunities for public input.

The Pre-Filing Process

Prior to a company's filing an LNG-related application, company representatives commonly meet with the OEP staff to explain the proposal and

solicit advice. These meetings provide prospective applicants the opportunity for FERC staff to provide guidance on resolving potential environmental, safety, and design issues, explain the level of design detail and safety analysis required for a complete application, and offer suggestions regarding the application and review process. These meetings also provide FERC staff with opportunity to strongly encourage the applicants to use the formal Pre-Filing Process. The Pre-Filing Process allows the FERC staff to begin the environmental review process 7 to 9 months prior to the filing of an application. This approach stresses the early identification and resolution of issues with the local community, increased federal and state government and public involvement, and the development of consensus.

During this Pre-Filing Process, the FERC staff will engage in interagency consultation, public scoping, identification of alternatives (including, alternate locations) and the collection of site-specific data. With the assistance of the FERC staff, state and other federal agencies, and other stakeholders, the applicant will develop preliminary versions of the required environmental resources reports. The resource reports consider the impact of the project on geological resources; soils and sediments; water resources; vegetation; wildlife and aquatic resources; threatened, endangered and other special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; and cumulative impacts. These draft documents are filed with the FERC and made available for public review. These reports provide the baseline information necessary to begin preparation of the draft EIS.

For new LNG facilities (and major expansions of existing sites) the EIS will also include a thorough study of potential impacts to public safety. The FERC also develops a separate *Cryogenic Design Review*, for each facility, which includes detailed technical information, as well as conclusions and recommendations regarding a proposed project, to assure the safe design of the proposed facilities and system reliability. Our report, the *Cryogenic Design and Inspection Manual*, summarizes the design, process and equipment proposed at the LNG facility and includes the staff's conclusions and recommendations concerning the proposed project that ultimately appear as conditions in any FERC order approving the project.

The preparation of the draft EIS is a cooperative effort among FERC staff and other federal and state agencies. Typically, cooperating agencies would include the U.S. Coast Guard, the Army Corps of Engineers, the U.S. Fish and Wildlife Service, NOAA Fisheries, and the relevant state agencies responsible for the issuance of permits under the Clean Water Act, Clean Air Act, and Coastal Management Zone Act. However, many other federal and state agencies, non-governmental agencies, and the general public are contacted and consulted throughout the process. As an example, our work on the Long Beach project includes the Port of Long Beach, the California Energy Commission, and the South Coast Air Quality Management District among others.

Although FERC has jurisdiction over proposed LNG import projects, certain permits, approvals, and licenses are the responsibilities of other federal and

state agencies. There is nothing unusual about an energy project simultaneously being subject to various regulatory requirements promulgated by other federal and state authorities. To the extent we can, it is our practice to coordinate our regulatory requirements so that we accommodate those of other authorities. To this end, we hold focused meetings with all relevant federal and state agencies to identify concerns and develop mitigation.

Again, LNG import projects are also subject to the authorities of 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 Coastal Zone Management Act, Clean Water Act, and Clean Air Act. Our goal is to work cooperatively with state and local authorities to protect the safety of residents and to minimize adverse environmental impacts. Cooperation among federal, state, and local authorities is needed to assess the project proposals adequately and to expedite access to LNG supplies to meet the nation's critical energy needs. We encourage both federal and state agencies to become Cooperating Agencies in the preparation of the environmental documents.

As I mentioned, the Pre-Filing Process depends on and seeks out stakeholder involvement. Therefore, we must ensure that information needed for meaningful participation is readily available. We require the applicants to provide informational resources to stakeholders by way of newsletters, websites, and focused community meetings. Similarly, we will send a variety of notices to affected stakeholders advising them of how to participate in the FERC process and

the progress of the environmental review. This cycle continues through the life of the review process. A successful Pre-Filing Process results in a complete application with the full integration of the issues for all state and federal authorities.

Post-Filing Process

Once scoping is complete and the applicant's resource reports have been revised to reflect the identified issues, the applicant is ready to file its application with the FERC. When the filing is made, interested parties are given another opportunity to become involved in the FERC's proceeding.

After FERC staff reviews the information provided by the applicant, revising it as necessary to thoroughly consider all relevant issues and provide relevant recommendations, the draft EIS is normally issued within 4 months of the filing (if the pre-filing process was successfully completed). The draft EIS is issued for a 45-day review and comment period. We will also hold additional public meetings near the site, both to solicit comments on the draft EIS and to further address any remaining issues.

All comments on the draft EIS are reviewed. Changes to the document are made as needed, and a final EIS is produced. The final EIS will specifically address all of the comments received during the comment period. Our typical schedule provides for completing the final EIS approximately 4 months after the issuance of the draft.

Through this effort, the FERC staff is committed to producing an EIS that addresses all the issues and provides for mitigation to avoid or reduce impacts. We also strive to develop a record that enables the other federal and state agencies to avoid duplicative reviews. And, we try to provide for efficient decision making by facilitating the issuance of other state and federal permits concurrently with the FERC action rather than sequentially.

Finally, the complete record for the project is presented to the FERC Commissioners for a decision. One further opportunity for public participation is available after the FERC makes its decision—parties to the proceeding may seek rehearing. In total, our process provides at least seven formal opportunities for public input, and almost continuous opportunities for interaction with FERC staff.

Post-Authorization Monitoring

After a project receives FERC approval and meets all pre-construction conditions required by the order, the terminal owner is authorized by a separate document to construct.

During the construction period, which typically takes 3 years, the project sponsor is required to file monthly reports summarizing construction activity, the status of any outstanding project permits, an updated project schedule, planned activities for the next reporting period, and details of compliance with environmental conditions. Depending on the phase of construction, OEP staff inspects the project site as frequently as needed throughout the entire construction process. These inspections allow us to ensure that the approved facility design is

being followed. In all cases, FERC staff monitors the project at regular intervals between site visits with periodic photo-documentation of the construction. Staff inspections during construction use a checklist to verify compliance with the Commission Order; specific recommendations from the cryogenic design review; equipment fabrication, inspections and testing; instrumentation, hazard detection and hazard control systems; changes in design as the facility progresses from the preliminary to final design phase; environmental conditions and mitigation measures; and the facility's site-specific soil erosion and sedimentation control plan.

Prior to the commencement of service by a LNG facility, the project sponsor must again seek written approval from the FERC. Only after complying with all pre-operating conditions listed in the FERC order would a company receive approval to begin operation.

FERC oversight continues after an LNG project goes into operation. Each LNG facility under FERC jurisdiction is required to file semi-annual reports to summarize plant operations, maintenance activity and abnormal events for the previous six months. In addition, our staff periodically conducts inspections (focusing on equipment, operation, safety, and security) of each facility throughout its operational life. About half of the total LNG facilities are inspected every year with special inspections occurring on an as-needed basis. Following the first inspection after the commencement of operations, the facility's inspection manual is updated to incorporate any authorized design changes or facility

modifications since the original manual was prepared. This process provides an "as-built" manual for use in future inspections.

The inspection manual provides a permanent record documenting the operating history of the facility and is continually revised to reflect any facility changes and operating problems. The revised document includes FERC staff's conclusions and recommendations from the current inspection and discusses specific operating problems and facility modifications. The company is required to address all recommendations and outstanding issues raised by the FERC.

Safety and Security

Safety and security of the terminal at the proposed site is essential. Every aspect of the staff's engineering and siting review and its coordination with the U.S. DOT and U.S. Coast Guard is geared toward assuring that a facility will operate safely and securely. In recognition of the importance of the LNG industry as part of the nation's energy infrastructure, and the FERC's increased focus on LNG safety and security, we formed a new branch within the Office of Energy Projects devoted to those issues. The LNG Engineering Branch is responsible for managing and enhancing the FERC's existing LNG inspection program and ensuring cooperation with other relevant agencies. This branch performs a number of significant functions including: reviewing the detailed cryogenic design review of proposed LNG terminals; conducting the staff's cryogenic technical conference; calculating the proposal's compliance with DOT's exclusions zones for the site; coordinating the review of marine safety and security issues with the

US Coast Guard; and conducting construction and operational inspections. We continually develop the considerable expertise that exists on our staff and to expand our efforts.

While FERC is the lead federal agency under NEPA to analyze the environmental, safety, security and cryogenic design of proposed facilities, two other federal agencies (the Coast Guard, and the Research and Special Programs Administration of DOT) share significantly in the oversight of the safety and security of LNG import terminals. The Coast Guard has authority over the safety and security of LNG vessels and the marine transfer area, as well as the entire LNG facility. The DOT has authority to promulgate and enforce safety regulations and standards for the onshore LNG facilities beginning at the valve immediately before the LNG storage tanks.

In February 2004, the FERC, Coast Guard, and DOT entered into an Interagency Agreement to assure that they will continue to work in a coordinated manner to address the full range of issues regarding safety and security at LNG import terminals, including the terminal facilities and tanker operations, and to maximize the exchange of information related to the safety and security aspects of the LNG facilities and related marine operations. The Interagency Agreement ensures a seamless safety and security review by the three federal agencies from the moment the tankers enter U.S. waters until the vaporized LNG enters the pipeline system.

Overall, the safety record of the industry is commendable. During the approximately 30 years of operating history of the four existing LNG terminals in the continental U.S., there has never been an LNG safety-related incident where LNG was spilled or otherwise mishandled, resulting in adverse effects to the public or the environment. Similarly, no shipping incidents have occurred during the 50 years of operation that resulted in a lost cargo. However, an operational accident occurred in 1979 at the Cove Point LNG facility in Lusby, Maryland, when a pump seal failed, resulting in gas vapors entering an electrical conduit and settling in a confined space. When a worker switched off a circuit breaker, the gas vapors ignited, resulting in heavy damage to the building and a worker fatality. Lessons learned from this accident resulted in changing the national fire codes, with the participation of the FERC, to ensure that the situation would not occur again. The FERC design review and inspection process contributes to the safety record.

Further, most of you are probably familiar with the explosion that occurred at Sonatrach's Skikda, Algeria LNG liquefaction facility in January 2004. Findings of the accident investigation suggest that a cold hydrocarbon leak occurred and was introduced to the high-pressure steam boiler by the combustion air fan. An explosion occurred inside the boiler fire box which subsequently triggered a larger explosion of the hydrocarbon vapors in the immediate vicinity. The resulting fire damaged the adjacent liquefaction process and separation equipment.

After the accident, FERC and DOE engineers inspected the site to gain first-hand knowledge of the situation. There are major differences between the equipment involved in the accident in Algeria and that of LNG facilities in the U.S. High-pressure steam boilers that power refrigerant compressors are not used at any LNG import facility under FERC jurisdiction. However, as a result of the sequence of cascading events at Skikda, we began a technical review of the facility design at each existing and proposed jurisdictional plant to identify whether similar situations are possible and that these areas are adequately equipped with hazard detection and emergency shutdown devices. We are also reviewing the designs of new LNG plants to determine the potential failure modes that may be similar to the events at Skikda. Further, the safety section of each EIS includes a recommendation that a technical review be conducted by the applicant to identify the proximity of combustion/ventilation air intakes to potential hydrocarbon releases, and to ensure that adequate detection and shutdown are provided.

As part of our efforts to enhance the LNG program, the Commission contracted with ABS Consulting for the purpose of providing guidance on modeling methods to be used by FERC staff in the NEPA review of proposed LNG import facilities. The modeling methods we adopted for use as a result of the study were selected to provide a measure of conservatism, meaning they tend to overestimate the consequences from an LNG release. The "ABSG Report" was issued for public review in May 2004, and we made certain changes to the model based on the comments we received.

In December 2004, the DOE issued the Sandia Report which is a comprehensive study of potential spills from LNG tankers. I should reemphasize that no tanker spills have occurred on water like the ones modeled by Sandia. FERC engineering staff provided technical review of various drafts leading to the final report, and it now applies the results in conjunction with the consequence methodology from FERC's ABSG Report to site-specific hazard assessments. The results of the Sandia Report also serve to buttress the staff's hazard modeling used in FERC's LNG authorization process. While the Sandia experts used different methodologies, the hazard ranges in the report are consistent with FERC's conservative assumptions.

Essentially, FERC's model set a foundation upon which to build as we go forward. We will continue to study the science regarding LNG spills and further refine our work in the future. A site-specific assessment for each LNG import facility is included in our EISs. Our model ensures that we are using standardized methodologies as we perform site-specific analyses of each facility proposed before the Commission. Credible worst-case scenarios, based on the most recent information available, will be included in the NEPA documentation issued by the Commission. Though the spill analysis is a necessary part of our review, our overarching commitment is to ensure that the design and operation of each facility is such that the facility will operate safely. Refining our model is an example of how we are continuously evaluating our review and inspection programs to ensure that the highest levels of safety are maintained.

As part of the detailed cryogenic technical review conducted in connection with the environmental analysis, the staff performs a careful and detailed evaluation of numerous studies and reports that the applicants are required to complete. These include:

- engineering design and safety concepts and the projected operational reliability;
- seismic analyses;
- hazard detection systems;
- fire protection evaluation;
- threat and vulnerability assessments;
- LNG ship transit simulations and channel capacity studies;
- Operation and Maintenance manuals;
- Emergency Response and Evacuation Planning; and
- Security Manual, Transit Operations Manual, and the Emergency Response Manual.

A significant aspect of the FERC's security review is conducted in consultation with the US Coast Guard. Security Assessments of individual terminal proposals are being conducted by several Coast Guard field units through security workshops with Federal, state and local law enforcement and port stakeholders. FERC engineering staff provides technical assistance in the workshops on marine spill issues. The goal is for initial security measures and resource requirements to be identified by the Coast Guard for inclusion in the FEIS.

The Coast Guard and FERC have agreed that future LNG terminal applicants, at the time they begin their Pre-Filing Process, or file the application, whichever comes first, must also submit a *Letter of Intent* (navigational suitability review) under 33 CFR Part 127, and commence a security assessment of their proposal that includes the items required by 33 CFR Part 105 [which implemented the Maritime Transportation Security Act of 2002]. Where specific security concerns are raised, we have conducted a closed-door detailed technical workshop on the site-specific security issue with all relevant stakeholders and federal, state and local expert agencies to explore and resolve security concerns. Discussions may include facility security plans, and both plant and ship personnel restrictions, limitations and supervision.

Recommended Legislative Changes

Notwithstanding the inclusive, thorough nature of the Commission's LNG review process, timely consideration of LNG projects can be made impossible as a result of the complex, inter-related body of law governing the participation of federal and state agencies in the process. For example, state agencies generally have the authority to condition or veto LNG projects under the Clean Water Act, and can also preclude a project by making an inconsistency finding under the Coastal Zone Management Act. Federal agencies may exercise authority under a number of statutes including the Endangered Species Act, and may have their own responsibilities under law including the Clean Water Act. Thus, Commission

consideration of the merits of an LNG project is only one of many steps toward obtaining final approval of a proposal. Even if the Commission finds a project to be in the public interest, other agencies may disagree.

In addition to this substantive problem, the procedures by which state and federal agencies exercise their interlocking authorities can be so disparate that, regardless of the merits of a proposed project, conflicting regulatory schedules and attendant delays can operate to seriously hamper or even kill a project. I discuss below a three-pronged approach that I believe would go a long way toward rationalizing the LNG review process. The legislation underlying the FERC's regulations should be amended to allow the following:

Clear Jurisdiction

The Commission has interpreted section 3 of the Natural Gas Act as conferring exclusive jurisdiction on the Commission with respect to the siting, construction, operation, and safety of LNG facilities onshore and in state water (as distinguished from those offshore facilities that are within the Coast Guard's jurisdiction), while recognizing the states' authority to implement other federal laws (such as the Clean Water Act and the Coastal Zone Management Act) that may relate to the approval of LNG projects. There are no legislative, judicial, or administrative statements to the contrary, although the U.S. Court Appeals for the Ninth Circuit is currently considering a challenge by the California Public Utility Commission to the exclusivity of the Commission's authority. It would be extremely helpful if Congress were to confirm the exclusive nature of the

Commission's jurisdiction, in order to forestall further debate and judicial review. This would not mean that other Federal and state agencies with permitting responsibilities (e.g., states acting under CZMA, or Clean Water Act--Section 401) would lose authority, but rather would be a recognition of the Commission's paramount role in this area of foreign commerce, and would assist in clarifying that other agencies with roles in the LNG siting process should not seek to expand the nature of their authorities.

One Federal Record

Where many agencies have roles to play, the perception by those agencies that each needs to conduct its own review process under its own schedule and, where necessary, subject to its independent environmental review, can lead to inordinate delay. To avoid this problem, Congress could make clear that the Commission is the lead agency for all environmental reviews required or permitted by federal law regarding FERC-jurisdictional LNG projects, and that federal and state agencies must, in performing their reviews, cooperate with the Commission by following a schedule established by the Commission as lead agency. Failure of an agency to take any required action within the established time frame would result in the assumed waiver of that agency's authority. This measure would add predictability to the LNG review process, allowing applicants and other stakeholders more certainty as to when they could expect decisions to be rendered. It would also prevent agencies from using delay as a tool for obtaining substantive concessions with respect to a project.

Unified Judicial Review

Under current procedure, Commission decisions on LNG projects may be appealed only to the U.S. Courts of Appeals. However, related decisions by other agencies may be subject to patchwork of review, including reviews within state and federal agencies, review by state courts (as in appeals of Clean Water Act certifications), and by federal courts. This unevenness can not only cause delay, but also raises the possibility of different tribunals reaching conflicting results regarding one project. To avoid these problems, Congress could provide that all appeals regarding agency decisions with respect to an LNG project can be appealed, in one consolidated proceeding, to the U.S. Courts of Appeals, following final action by the Commission.

Conclusion

LNG is a crucial and growing part of the nation's energy mix. The FERC's current LNG review process is designed to ensure the safe, reliable construction and operation of LNG facilities, based on extensive input from all affected parties. I believe that the comprehensive and inclusive federal regulation of these facilities, coupled with the FERC's commitment to the public interest and to cooperation with state and local authorities, helps to ensure that the needs of all affected parties are given due consideration. With the legislative changes that I have proposed, the Commission and other interested entities will be able to review and act on LNG proposals in an effective, rational way, so that the United States will be able to build the energy infrastructure that it needs.