Testimony of
Pat Wood, III
Chairman, Federal Energy Regulatory Commission
Before the
Subcommittee on Energy Policy, Natural Resources,
And Regulatory Affairs
Committee on Government Reform
United States House of Representatives
June 22, 2004

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to speak today on the siting of Liquefied Natural Gas (LNG) import facilities, which can be a crucial component of the infrastructure necessary to meet America's energy needs. I will first discuss the Federal Energy Regulatory Commission's LNG Program, and then review the Commission's legal authority with respect to LNG facilities.

I. The Commission's LNG Program

The goal of the Commission's LNG Program is to assure the safe operation and system reliability of jurisdictional liquefied natural gas (LNG) facilities throughout the United States. As I will discuss in more detail, the Commission thoroughly examines all aspects of a proposed project, including environmental impact, safety, and security, to ensure that the Commission's decision satisfies the public interest. As part of this process, Commission staff solicits comments and recommendations at several 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 opinion.

Currently, there are 17 facilities under Commission jurisdiction. Twelve of the facilities are land-based peakshaving plants which liquefy and store LNG during the summer (low demand) months for sendout during winter (high demand) months. The remainder are baseload LNG import terminals, with the exception of the Phillips/Marathon terminal in Kenai, Alaska, which exports LNG to Japan. Recently, there has been a resurgence in developing new import projects to meet the growing demand for natural gas in the United States. I have attached to my testimony a map showing the locations of existing and proposed North American LNG terminals.

As I have noted, the Commission's process for reviewing LNG facility applications is designed to provide for a complete examination of all aspects of proposed projects and to provide for extensive input from federal and state agencies, the public, and other interested parties.

Prior to a company filing an LNG-related application, company representatives commonly meet with the Commission's Office of Energy Projects (OEP) staff to explain the proposal and solicit advice. These meetings provide prospective applicants the opportunity for Commission staff to offer suggestions related to the environmental, engineering and safety features of the proposal. At this stage, Commission staff reviews conceptual designs of planned LNG facilities, provides guidance on resolving potential environmental, safety, and design issues, and explains the level of design detail and safety analysis required for a complete application. In this manner, Commission staff learns

about future projects which may be filed at the Commission and helps direct companies in their application preparation.

The Commission strongly encourages potential applications to engage in the National Environmental Policy Act (NEPA) pre-filing process, in which the applicants begin environmental review well before the filing of an application. This provides for early identification of issues, increased federal and state government and public involvement, and the opportunity to begin developing consensus and working on the issue resolution.

Once an application has been filed, the Commission prepares an environmental impact statement (EIS) to fulfill the requirements of NEPA and the Commission's implementing regulations under Title 18, Code of Federal Regulations, Part 380. The purpose of the document is to inform the public and the permitting agencies about the potential adverse and/or beneficial environmental impacts of proposed projects and their alternatives.

A thorough analysis of any substantive environmental issue raised by a proposed project is undertaken during the preparation of the EIS. The NEPA documents for new LNG facilities (and major expansions of existing sites) include a thorough study of potential impacts to public safety. The Commission also develops a separate *Cryogenic Design Review,* which includes detailed technical information and a design review, as well as conclusions and recommendations regarding a proposed project, to assure the safe

design of the proposed facilities and system reliability to meet the country's natural gas requirements.

Federal and state agencies and the public play crucial roles in the Commission's LNG authorization process. The Commission works with all stakeholders during the NEPA pre-filing process, to identify issues and establish partnerships for developing solutions. In the course of the NEPA process, the Commission holds public scoping meetings, notifies the public when a draft environmental document is available for review and comment, and holds public meetings to receive comments regarding the draft document. Stakeholders are also given the opportunity to intervene and file comments in the LNG proceeding. In addition, state resource agencies may have the authority to issue approvals under statutes such as the Clean Water Act, the Clean Air Act, and the Coastal Zone Management Act. Attached to my testimony is a chart showing the federal, state, and local authorizations that were required for two recent LNG projects.

As discussed below, LNG projects are licensed under section 3 of the Natural Gas Act, and there is no eminent domain authority under that section; therefore, applicants will also have to comply with local requirements concerning property acquisition and related matters. To the extent that state and other federal agencies accept our invitations to work jointly during necessary reviews, the efficiency of the process is increased, and the possibility of sequential, and possibly conflicting, record development and authorizations, can be eliminated.

During construction, Commission staff visits the project site as frequently as needed throughout the entire construction process. These inspections allow us to identify any deviations from the approved facility design.

Commission oversight continues after an LNG project goes into operation, with a focus on system reliability and integrity. 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 conduct 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, allowing a 2-year rotation schedule for all jurisdictional facilities. Following the first biennial 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 Commission staff's conclusions and recommendations from the current inspection and discusses specific operating problems and facility modifications over the previous 2-year period. The company is requested to

address all recommendations and outstanding issues in the next semi-annual report to the Commission.

Throughout the LNG siting process, the Commission works closely with other federal agencies that have jurisdiction concerning LNG facilities. In 1985, the Department of Transportation (DOT) and the Commission entered into a Memorandum of Understanding (MOU) which acknowledged DOT's authority to promulgate general federal safety standards for LNG facilities, and the Commission's authority to impose more stringent safety requirements, when warranted, as well as to impose requirements to ensure or enhance operational reliability of its jurisdictional LNG facilities.

In 2003, interest in constructing additional LNG import terminals led to heightened public concern regarding the safety of the terminals and the associated LNG vessel traffic. In February 2004, in an effort to address these and other related issues, the Commission, the U.S. Coast Guard, and DOT's Research and Special Programs Administration (RSPA) entered into an Interagency Agreement for the Safety and Security Review of Waterfront Import/Export Liquefied Natural Gas Facilities. The agreement states that 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."

In sum, the Commission's process is designed to ensure the safe, reliable construction and operation of LNG facilities, based on extensive input from all affected parties.

II. The Commission's Jurisdiction over LNG Facilities

Pursuant to section 3 of the Natural Gas Act, the Commission has exclusive jurisdiction to license onshore LNG import and export facilities. Section 3 provides, in part, that

> no person shall export any natural gas to a foreign or import any natural gas from 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 [an LNG] application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate . . ."

Section 3 does not expressly reference the authorization of the facilities necessary for importing or exporting LNG. However, the courts have held that the Commission's authority to impose terms and conditions on import and export authorizations includes the authority to approve and condition the facilities needed to conduct these activities. The leading case on this point is the decision of the U.S. Court of Appeals for the District of Columbia Circuit in Distrigas Corporation v. FPC, 495 F.2d 1057, cert. denied, 419 U.S. 834 (1974).

At one time, the Commission authorized all or part of LNG import and export facilities under NGA section 7, which governs the transportation of natural gas in interstate commerce. In recent years, however, the Commission has determined that issuing LNG authorizations solely under section 3 allows for more flexibility and avoids the need to deal with matters more germane to interstate natural gas pipelines.

When the Department of Energy (DOE) was established in 1977, all of the section 3 functions of the Federal Power Commission (the Commission's predecessor) were transferred to the new department. However, in 1978, DOE delegated back to the Commission various authorities, including "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." This is set forth in DOE Delegation Order No.02044-26, 43 FR 47769 (October 17, 1978). In 1982, the D.C Circuit noted that Secretary of Energy had delegated to the Commission "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." West Virginia Public Services Commission v. Department of Energy, 681 F.2d 847, 858 (D.C. Cir. 1982).

In 1992, Congress passed the Energy Policy Act of 1992. That legislation, among other things, amended NGA section 3, in order to ensure that all LNG imports were deemed to be in the public interest. In the Commission's view, this change was made to ensure that DOE, which has the authority to approve requests to import or export natural gas, would ministerially grant requests relating to LNG, as a commodity. It has been argued that by amending section 3, Congress also removed the Commission's discretion with respect to LNG facilities, such that the authority to regulate those facilities devolved to the states. I believe that, in light of the fact that nothing in the 1992 Act or its legislative history shows any intent by Congress to alter the Commission's jurisdiction over LNG facilities, the correct reading of the legislation is that it applies to DOE's permitting authority for the commodity, but not the Commission's facilities' siting authority.

In a recent order, the Commission confirmed the long-term understanding of federal agencies and the courts that the Commission has the exclusive authority to approve the siting of LNG facilities. See Sound Energy Solutions, 106 FERC ¶ 61,279, reh'g denied, 107 FERC ¶ 61,263 (2004). The Commission recognizes the important role that the states and other stakeholders have in the siting process, and we are committed to doing everything we can to work with them on LNG matters. At the end of the day, however, it is the Commission that must approve and condition onshore LNG facilities.

We will strive to do so in a manner that recognizes the needs and interests of all affected parties, and that fully comports with the public interest.

Thank you again for this opportunity to discuss the Commission's LNG program. The Commissioners and staff of the FERC are always available to assist the Committee in any manner.