Testimony of Jeff C. Wright
Director, Office of Energy Projects
Federal Energy Regulatory Commission
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United States Senate
Hearing on Market Developments and the Approval Process for Liquefied Natural Gas Exports from the U.S.

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Mr. Chairman and Members of the Committee:

My name is Jeff Wright and I am the Director of the Office of Energy Projects (OEP) at the Federal Energy Commission (FERC or Commission). I appear today as a Commission staff witness speaking with the approval of the Chairman of the Commission. The views I express are my own and not necessarily those of the Commission or of any individual Commissioner.

The Office of Energy Projects is responsible for the licensing, administration, and safety of non-federal hydropower projects; the certification of interstate natural gas pipelines and storage facilities; and the authorization and oversight over the construction and operation of on-shore and near-shore liquefied natural gas (LNG) terminals. Thank you for the opportunity to appear before you today to discuss the process which the Federal Energy Regulatory Commission uses to review applications for facilities for the export of LNG.

With the creation of the Department of Energy (DOE) in 1977, Congress directed all applications for authorization for the exportation or importation of natural gas to or from a foreign country to be submitted to the Secretary of Energy.

In accordance with the Natural Gas Act and 15 U.S.C. Part 717, no entity may import or export natural gas without first having secured an order from the DOE authorizing it to do so. The Secretary of Energy subsequently delegated to the Commission the authority to approve or deny applications for the construction and operation of those facilities used for the import or export of natural gas.[1] This delegation was most recently re-affirmed in 2006 by DOE Delegation Order No. 00-004.00A.

With respect to LNG, the Commission is an environmental and safety regulatory agency. The Commission does not authorize the import or the export of LNG as a commodity; that authority was retained by the DOE. Accordingly, applications for authority to import or export the commodity of natural gas must be submitted to the DOE, while applications for the construction and operation of the facilities necessary to perform such imports or exports must be submitted to the FERC.

The FERC requirements for filing an application for the authorization of LNG import or export facilities are located in Title 18, C.F.R., Part 153. Section 153.6 requires an applicant to state whether DOE authorization for the import or export of natural gas is required and whether DOE has granted the required authorizations. Section 3 of the Natural Gas Act (NGA) states that the importation of LNG is consistent with the public interest. Section 3 also provides that LNG exports to countries with which the United States has executed a free trade

[1] DOE Delegation Order No. 0201-112. *Federal Register*, 49 Fed. Reg. 6684 (1984).

agreement are in the public interest. In those situations where applicants are seeking to export (or import) LNG to non-free trade agreement countries, Section 3(a) of the NGA requires the DOE to make a determination on whether such exports (or imports) will not be consistent with the public interest. The Commission's review process is identical for either LNG import or export terminals. This process is comprised of three distinct phases: pre-filing review, application review, and post-authorization review. Each stage of the review process requires the submission of progressively more detailed information and involves an exhaustive review and consultation with key stakeholders and other federal agencies such as the U.S. Coast Guard and the U.S. Department of Transportation. How these phases build upon each other is described below.

Section 311 of the Energy Policy Act of 2005 requires prospective applicants seeking Commission authority to construct and operate an LNG terminal to participate in the Commission's Pre-Filing Process for a period of at least six months. This is the beginning of the Commission staff review and it involves not only an early analysis of the project proposal, but also provides a transparent forum for consultation and discussion among participants in the process (namely, the prospective applicant, FERC staff, affected landowners, other federal agencies, state and local entities, and the public). The Commission's Pre-Filing Process is designed to engage all stakeholders at the earliest point to identify and resolve potential issues related to the construction and operation of a facility before the filing of a formal application. During this process, project-

specific issues are raised through the environmental scoping process and/or other means, such as open-houses, public meetings, site visits, or filed comments. Information needs are identified and studies are conducted as necessary to fill data gaps. The end of the Pre-Filing Process occurs when the applicant files its formal application.

Once the formal application has been filed, any individual or organization has the option to intervene in the Commission proceeding. Intervenors become participants in a proceeding and have the right to request rehearing of Commission orders and seek relief of final agency actions in the U.S. Circuit Courts of Appeal. In addition to intervention, all interested entities have the opportunity to place their concerns regarding the project into the record and file any evidence they feel is important for the Commission to consider,

During the application review phase, the Commission staff reviews the formal application and, once sufficient information to address environmental and safety issues exists in the record, establishes a schedule for the production of the environmental review documents. The environmental document is then issued for pubic comment, and comments received on that document are addressed.

The final environmental document contains staff's conclusions regarding the feasibility, safety, and environmental impacts associated with the proposed facilities. The document also includes any recommended measures for ensuring safety and mitigating any environmental impacts identified through analysis of the

proposal and consideration of concerns raised during the pre-filing and application review.

After issuance of the final environmental document, the Commission considers the entire record of the proceeding. If the Commission ultimately finds that the environmental and safety impacts from the construction and operation of the LNG facility are acceptable and authorizes the proposal, the project-specific mitigation measures recommended in the environmental documents, and any others identified by the Commission as necessary, are included as conditions to the authorization.

Development of the information and the consultation required by these mitigative measures are the subject of the third phase of the Commission's process: post-authorization review. It is during the post-authorization review phase that detailed plans for the Commission-required mitigation are developed. Approval of these detailed plans, and the specified conditions of an order, must be received before the Commission's second authorization, the authorization to commence construction, will be issued. Authorization to commence construction will not be issued until the conditions requiring pre-construction approval have been satisfied, with input as appropriate from all named agencies and other parties.

During what is typically a multi-year construction period, mitigation measures are implemented and monitored. Frequently during this period, on-the-ground conditions are identified that require modifications of the mitigation plans that were developed prior to the start of construction. As part of its ongoing,

detailed post-authorization project review, staff inspects the construction in progress, as do third-party inspectors, ensuring that all required measures are implemented.

FERC staff's inspections during construction entail the review of quality assurance and quality control plans, non-conformance reports, and cool down and commissioning plans to ensure that the installed design is consistent with the safety and operability characteristics of the proposal approved by the Commission. Finally, at the end of construction, the project sponsor files a request for authorization to commence operation of the facility.

The information contained in this request must demonstrate how the project sponsor has complied with all of the Commission requirements and must be consistent with the results of the Commission's inspections. This final authorization from the Commission will not be granted unless all measures to ensure safe and secure operations, and the necessary environmental protections, are in place and serving their intended purpose.

Once a facility is placed in service, it is subject to continuing inspections by FERC staff for the entire life of the facility. This ensures that the facility continues to be operated and maintained in accordance with the Commission's original authorization.

This concludes my testimony. I will be happy to answer any questions you may have.