Testimony of
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Office of Energy Projects
Federal Energy Regulatory Commission
Before the
Committee on Environment and Public Works
United States Senate
May 25, 2005

Mr. Chairman and Members of the Committee:

My name is J. Mark Robinson and I am the director of the Office of Energy Projects (OEP) at the Federal Energy Regulatory Commission. I am here as a staff witness speaking with the approval of the Chairman of the Commission. Our office is responsible for the licensing, administration, and safety of approximately 1,600 non-federal hydropower projects; the certification of between 500 and 2,000 miles of interstate natural gas pipelines annually; the certification of natural gas storage facilities; and the authorization, safety and security of liquefied natural gas (LNG) terminals.

I would like to thank you for the opportunity to speak today on the permitting of energy projects. I will focus on natural gas-related facilities. The permitting of natural gas facilities is governed by a comprehensive scheme of federal regulations that guarantees that the FERC and other federal agencies will work with state and local agencies, 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 well with other agencies, the 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 permitting program addresses all siting and operational issues with the full participation of the federal and state agencies while attempting to ensure the timely development of necessary energy infrastructure. Timeliness, however, is a virtue that, with some regularity, goes by the wayside as a result of a widely distributed decision making process. The remainder of my testimony will describe the efforts the Commission has made to efficiently process applications, the issues that still detract from our ability to move, in a timely fashion, on energy projects that are in the public interest, and a rational approach to the siting of energy infrastructure that would improve all agencies' ability to reach a decision jointly on needed projects.

I. The Commission's Process

The Commission is charged, under the Natural Gas Act and the regulations that codify the act, with jurisdiction over the construction of facilities used to transport natural gas in interstate commerce and the construction of facilities used for the export or import of natural gas which includes LNG terminals. The fundamental concept that governs our efforts is the early identification of project related issues with all parties that would be affected by the development. We believe that a proactive approach to issue identification and collaboration among

all parties provides the best hope of determining whether a project is in the public interest in a timely fashion.

The goal of the FERC's natural gas permitting process is to determine if a project is in the public interest. As an integral part of this process, FERC staff coordinates closely with other agencies and solicits comments and recommendations at several points in the review process from federal, state, and local authorities, and members of the public. We do this in order to obtain the broadest possible range of information and views and to accommodate, to the greatest extent possible, state and local concerns.

Prior to a company filing a natural gas-related facility application, company representatives commonly meet with the Commission's 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 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 that may be filed at the Commission and helps direct companies in their application preparation. I should also note that we encourage project sponsors to also make early contact with all other relevant agencies, including state agencies, about their proposals.

During these early meetings, the Commission staff strongly encourages potential applicants to engage in the Commission's Pre-Filing process. This process involves getting the agencies and the applicants to begin the National Environmental Policy Act (NEPA) review with FERC well before the filing of an application. The Pre-Filing process provides for early identification of issues, increased federal, state and public involvement, and the opportunity to begin developing consensus and working on issue resolution. This process also calls on all agencies to work together concurrently under a schedule set in consultation with those agencies. FERC signed an interagency agreement with 10 federal agencies in May 2002 that was based on the principals of the Pre-Filing process that has fostered a more efficient review of energy projects. However, even though we work extremely well with agencies most of the time, there is no force of law in effect with respect to timing of other agencies review and issuances of permits.

Once an application has been filed, the Commission prepares either an environmental assessment (EA) or 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 these documents is to inform the public and the permitting agencies, and to solicit comments about the potential environmental impacts of the proposed project and its alternatives. A thorough analysis of any substantive environmental issue raised

by a proposed project is undertaken during the preparation of the environmental document.

Federal and state agencies and the public play crucial roles in the Commission's authorization process. The Commission works with all stakeholders during the Pre-Filing process, to identify issues and establish partnerships for developing solutions. As part of our NEPA analysis we 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. We also look at alternative locations for the proposed facility. This analysis includes consultation with state as well as federal agencies under the Clean Air Act (CAA), the Clean Water Act (CWA), the National Historic Preservation Act (NHPA); the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Endangered Species Act (ESA). Applicants are also required to consult with and obtain from the state, a determination that the project is consistent with the state's Coastal Zone Management Plan. Attached to my testimony are tables showing the federal, state, and local authorizations that are required for siting LNG facilities in Texas (31 permits required), Louisiana (29 permits required) and Massachusetts (43 permits required). Further, 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. These meetings are held near the site of the proposed facility for the convenience of the stakeholders and to build a more complete record. Stakeholders are also given the opportunity to intervene and file comments in the proceeding.

As part of our NEPA responsibilities, we ensure that the appropriate studies requested by, for example, the State Historic Preservation Office are conducted and that properties protected by the NHPA are appropriately cared for. We also consult with the U.S. Fish and Wildlife Service, NOAA fisheries and the appropriate state agencies to avoid, or minimize, the effects of the project on the species that are listed in the ESA and the MSA. We also consult with all relevant state agencies that have a role to play in the authorization of the facility.

We are committed to an early collaborative approach to authorizing energy infrastructure and have designed processes to maximize our potential for efficiently handling projects. Several issues, however, keep us from achieving this objective as consistently as we would like.

II. Challenges to the Permitting Process

Underlying the difficulty in efficiently managing the permitting process is just the shear number of agencies that have a role in any energy facility siting. As shown on the attached tables the authorization of any project can best be described as distributed decision making. Even where an agency has the lead, until the last agency acts the first authorization does little good for the advancement of a

project. Money is not loaned, contracts are not signed and ground is not broken. That is why it is critical to recognize this distributed decision making process and modify it by placing timing parameters on all participants. Although memorandum of agreements can move agencies in this direction, only the potential loss of the agencies authority can guarantee that action will be taken in a timely fashion.

A related issue in timely permitting can be described as extended agency authority. This is where agencies will take the authority they have been granted covering an aspect of the project (e.g., water quality under section 401 of the Clean Water Act) and utilize that singular authority to duplicate the action of the siting agency to make an overall public interest determination. This unnecessary duplication of the public interest determination can results in regulatory uncertainty when an applicant does not know which forum will ultimately decide if a project should be constructed. This is not to say that the agencies with permitting authority need to agree with the Commission's decision, but rather that those agencies should focus on their aspect of the project and permit accordingly while leaving the overall siting determination to the agency given that exclusive authority.

Another issue of concern is the growing tendency for parochial, or local, interests trumping the greater public good. All siting is local and local concerns are of high significance, but if the standard for approving infrastructure requires that there be no local opposition for what in most instances are energy projects of

regional importance, then no energy infrastructure will be built. An example of this is the state of Connecticut's moratorium on energy projects crossing under Long Island Sound. This moratorium prohibited state agencies from issuing a decision on any applications relating to electric power line crossings, gas pipeline crossings or telecommunications crossings of Long Island Sound. This action stops the development of natural gas pipelines needed to ensure the reliability of the delivery system to New York. This problem is not limited to states, but also shows itself with landowners, towns, municipalities and non-governmental organizations. Admittedly, much of the infrastructure proposed today is going to serve the future and those that are comfortable with the status quo may not see any direct benefit for themselves. But if our parents and grandparents had taken that same attitude more then a half century ago, I doubt we would be traveling on the interstate road system we have today.

We need a national natural gas system that contains a balance of domestic production and imported LNG deliveries, transportation, and storage. This system will serve the greater public at a lower cost. There, of course, are legitimate local concerns, but to adhere to all of their requests to not be disturbed will result in a balkanization of a national network that needs to expand and grow on an integrated basis.

III. Rational Siting Process

In order to effectively and efficiently site natural gas infrastructure that is found to be in the public interest and to address the challenges discussed above, a

rational siting process should be adopted. This process would be equally applicable to the siting of any energy infrastructure and consists of three elements: the designation of an agency with exclusive authority to site the projects; a requirement that all agencies with authority over an aspect of the project work with the lead agency to develop one federal record from which all agency decisions would be made; and direct appeal of all agency actions at one time to the federal courts.

Designating one agency as having exclusive siting authority would not usurp the decisional authority of the other agencies involved. Rather it recognizes that one agency has been vested with the decisional authority to determine whether the proposal is in the public interest while others have been vested with authorities that go only to some aspect of the project like affects on water quality or endangered species. This would specifically address the issue of extended agency authority. The recently enacted Alaska Gas Pipeline Act of 2004 specifically addressed this issue by distinguishing between the lead agency and other agencies that are handling aspects of the project.

The development of one federal record for all agencies is at its core just a matter of good government. Currently, at times multiple federal and state agencies go to the effort of developing records covering the same issues under different time frames. Requiring all agencies to work together under the schedule of the lead agency would reduce waste, improve decision making, and reduce the potential for conflicting conclusions. The schedule set by the lead agency would

have to recognize any statutory timing requirements and should work for all, given that the lead agency has to consider all elements while the others would only be dealing with specific aspects of the project. Finally, to make this function the agencies need to know that, should they not meet the schedule, their permit would be conclusively presumed or waived as is now the case with a 401 permit granted by the state under the Clean Water Act.

The final step in the rational siting process would be to require that all actions taken by all the permitting authorities be subject to one appeal process. Currently appeals can run in many different directions including the state courts, state administrative reviews, federal courts and federal administrative reviews. Some of the appeals processes involve more than one of the above in a sequential fashion. The net result of an appeals process that can run into multiple years is that a project once found to be in the public interest will die from a death of a thousand cuts administered one appeal at a time. It is not only enough to approve a project on a timely, unified basis, but there is a need to avoid fragmented, multi-layered administrative and judicial review that could unduly delay a final decision on the project. This could be accomplished by having all appeals of Federal and state agency decisions that administer Federal law reviewed immediately in a single U.S. Court of Appeals.

IV. Conclusion

The Commission's process is designed to ensure the safe, reliable construction and operation of natural gas facilities, based on extensive input from all affected parties and timely decisions from the relevant federal and state agencies. Nevertheless, the challenges that I outlined in my testimony are threatening to disrupt this process and the timely approval and construction of necessary natural gas infrastructure. At the present time, the number of LNG and other natural gas infrastructure projects filed at the Commission is at an all time high. To respond to this, the FERC's need to coordinate early and effectively with other federal and state agencies is paramount. While the FERC staff must coordinate early with other agencies, so to must those agencies cooperate with FERC – and do so, on the schedule which FERC establishes. This is also critically important. The adoption of the rational siting process would curb these disruptions and allow the natural gas infrastructure to grow as necessary. Natural gas is a crucial component of the nation's energy structure and the timely approval of the necessary infrastructure is vital to meet the demands of a diverse and continually growing economy.

Federal, State, and Local Permits and Approvals Required for the Construction of an LNG Terminal						
	Texas		**Louisiana**		**Massachusetts**	
	Agency	**Permit/Approval**	**Agency**	**Permit/Approval**	**Agency**	**Permit/Approval**
FEDERAL						
	Federal Energy Regulatory Commission	Authorization under Section 3 of the Natural Gas Act	Federal Energy Regulatory Commission	Authorization under Section 3 of the Natural Gas Act	Federal Energy Regulatory Commission	Authorization under Section 3 of the Natural Gas Act
	U.S. Army Corps of Engineers	Section 10, Rivers and Harbors Act Section 404, Clean Water Act Approval and coordination for disposal of dredge material in dredged material placement areas	U.S. Army Corps of Engineers	Section 10, Rivers and Harbors Act Section 404, Clean Water Act Approval and coordination for disposal of dredge material in dredged material placement areas	U.S. Army Corps of Engineers	Section 10, Rivers and Harbors Act Section 404, Clean Water Act Approval and coordination for disposal of dredge material in dredged material placement areas
	U.S. Department of Commerce (NOAA Fisheries)	Section 7, Endangered Species Act Magnuson-Stevens Fishery Conservation and Management Act Marine Mammal Protection Act	U.S. Department of Commerce (NOAA Fisheries)	Section 7, Endangered Species Act Magnuson-Stevens Fishery Conservation and Management Act Marine Mammal Protection Act	U.S. Department of Commerce (NOAA Fisheries)	Section 7, Endangered Species Act Magnuson-Stevens Fishery Conservation and Management Act Marine Mammal Protection Act
	U.S. Department of the Interior -U.S. Fish and Wildlife Service	Section 7, Endangered Species Act Migratory Bird Treaty Act	U.S. Department of the Interior -U.S. Fish and Wildlife Service	Section 7, Endangered Species Act Migratory Bird Treaty Act	U.S. Department of the Interior -U.S. Fish and Wildlife Service	Section 7, Endangered Species Act Migratory Bird Treaty Act

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	U.S. Environmental Protection Agency	Section 402, Clean Water Act, National Pollutant Discharge Elimination System Industrial Storm Water Permit Process Waste Water Discharge Permit Industrial Non-process Waste Water Permit Storm Water Construction Permit Section 404, Clean Water Act (veto power for wetland**{** XE "wetland" **}** permits issued by the U.S. Army Corps of Engineers)	U.S. Environmental Protection Agency	Section 402, Clean Water Act, National Pollutant Discharge Elimination System Industrial Storm Water Permit Process Waste Water Discharge Permit Industrial Non-process Waste Water Permit Storm Water Construction Permit Section 404, Clean Water Act (veto power for wetland**{** XE "wetland" **}** permits issued by the U.S. Army Corps of Engineers)	U.S. Environmental Protection Agency	Section 402, Clean Water Act, National Pollutant Discharge Elimination System Industrial Storm Water Permit Process Waste Water Discharge Permit Industrial Non-process Waste Water Permit Storm Water Construction Permit Section 404, Clean Water Act (veto power for wetland**{** XE "wetland" **}** permits issued by the U.S. Army Corps of Engineers)

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	U.S. Coast Guard	33 CFR**{** XE "Code of Federal Regulations (CFR)" **}** 127, Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas 33 CFR**{** XE "Code of Federal Regulations (CFR)" **}** 127, Letter of Intent	U.S. Coast Guard	33 CFR**{** XE "Code of Federal Regulations (CFR)" **}** 127, Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas 33 CFR**{** XE "Code of Federal Regulations (CFR)" **}** 127, Letter of Intent	U.S. Coast Guard	33 CFR**{** XE "Code of Federal Regulations (CFR)" **}** 127, Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas 33 CFR**{** XE "Code of Federal Regulations (CFR)" **}** 127, Letter of Intent
STATE						
	Railroad Commission of Texas**{** XE "Railroad Commission of Texas" **}**	Section 401, Clean Water Act, Water Quality Certification National Pollution Discharge Elimination System Hydrostatic Discharge Permit	Louisiana Department of Environmental Quality	Air permit Section 401 – Water Quality Certification Louisiana Pollution Discharge Elimination System – Construction and industrial (operation) storm water permits Hydrostatic Discharge Permit (construction) LPDES Permit to Discharge Water (operation)	Executive Office of Environmental Affairs (Office of Coastal Zone Management)	Federal Consistency Review with CZMP Program Policies

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	Texas Commission for Environmental Quality	Permit-by-Rule in lieu of Title V Permit Waste Water Permit Temporary Water Use Permit	Louisiana Department of Natural Resources	CZMA – Coastal Use permit (CZMP consistency determination)	Executive Office of Environmental Affairs (Environmental Policy Act Office)	Compliance with MEPA regulations
	Texas General Lands Office	Coastal Zone Management Consistency Determination	Louisiana Department of Wildlife and Fisheries	State-listed threatened and endangered species clearance	Energy Facilities Siting Board	Review and comment on FERC-regulated energy projects
	Texas Parks and Wildlife Department	State-listed threatened**{** XE "threatened" **}** and endangered**{** XE "endangered" **}** species clearance			Department of Environmental Protection	Water Quality Certification pursuant to Section 401 of the CWA Non-Major Comprehensive Plan Approval Water Supply Cross Connection Permit Asbestos Abatement Permit Chapter 91, Waterways License Wetlands Protection Act Permit Massachusetts Contingency Plan approval

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	Texas Historical Commission	Review and comment on undertakings potentially affecting cultural resources Section 106, National Historic Preservation Act	Louisiana Department of Culture, Recreation & Tourism, Office of Cultural Development, Division of Archaeology	NHPA, Section 106 – Review and comment on undertakings potentially affecting cultural resources	State Fire Marshall	Storage of Liquids and Inflammable Materials
	Texas Department of Transportation	Road crossing permits	Louisiana Department of Transportation	Road crossing permits	Department of Public Safety	Tank Approval for Storage Tanks over 10,000 Gallons Hazardous Substances Tank Approval
					Department of Fisheries, Wildlife, and Environmental Law Enforcement, Natural Heritage and Endangered Species Program	State-listed threatened and endangered species consultations
					Massachusetts Historical Commission	Review and comment on undertakings potentially affecting cultural resources
					Massachusetts Board of Underwater Archaeological Resources	Review and comment on undertakings potentially affecting underwater cultural resources
					Massachusetts Division of Marine Fisheries	Marine fisheries consultations

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					Highway Department	State Highway Access Permit
LOCAL						
	Brazoria County	Building Permits	Cameron Parish Police Jury	Building Permits and Floodplain development permit	Various towns	Order of Conditions for Wetlands and Riverfront Areas, issued through the local Conservation Commission
	Brazoria County Floodplain Administrator	Permit for Construction in Flood zone			Fall River City Council	Removal of curbing for installation of private driveway, Permit to Install LNG, Permit to Store LNG, Permit to Install Tank, Registration of Tank
	Velasco Drainage District	Levee Construction Plan Review and Approval			Fall River Water and Sewer	Permit to Connect from Sewer Commissioner, Department of Public Works, and City Engineer Department Water Hook Up Permit from administrator of public utilities
	Village of Quintana	Permit for Construction in Flood zone				