MEMORANDUM OF UNDERSTANDING
BETWEEN THE
FEDERAL ENERGY REGULATORY COMMISSION
AND
UNITED STATES DEPARTMENT OF DEFENSE
TO ENSURE CONSULTATION AND COORDINATION
ON THE EFFECT OF LIQUEFIED NATURAL GAS TERMINALS
ON ACTIVE MILITARY INSTALLATIONS

I. Introduction

Under section 311 of the Energy Policy Act of 2005 (the Act) (Public Law 109-58), the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Defense (DoD), hereinafter referred to as "the Agencies", are to enter into a memorandum of understanding (MOU) to ensure coordination and consultation on the siting, construction, expansion, and operation of liquefied natural gas (LNG) terminals, as defined by the Act, that would affect an active military installation. The Act further directs the FERC to obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of LNG terminals affecting the training or activities of an active military installation.

The Purpose of this MOU is to ensure that the Agencies work in a coordinated manner to address issues regarding any LNG terminal's potential effect on activities undertaken by active military installations. The Agencies agree that the FERC will consult with the DoD to determine potential impacts to the test, training or operational activities of an active military installation resulting from the siting, construction, expansion, or operation of any LNG terminal and will evaluate environmental impacts under the National Environmental Policy Act (NEPA).

A military installation, as defined by the Act, does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense. Any potential effects on such facilities resulting from the siting, construction, expansion, or operation of any LNG terminal will be coordinated separately.

II. Roles of the Agencies

FERC. The FERC is responsible for authorizing the siting, expansion, construction, and operation of onshore LNG facilities and near shore LNG terminals in state waters under Section 3 of the Natural Gas Act (NGA) (15 U.S.C. § 717 et seq.). The FERC also authorizes the construction and operation of interstate natural gas pipelines that may be associated with the LNG terminals under section 7 of the NGA.

The FERC conducts environmental, safety, and security reviews of LNG plants and related pipeline facilities, and as the Lead Federal Agency prepares the overall NEPA documentation (18 CFR Part 380). In conjunction with the NEPA review, the FERC conducts a cryogenic design review of the proposed facilities. A summary of that review, with conclusions and

recommendations, is included in the NEPA document. The FERC can impose safety requirements to ensure or enhance operational reliability of the LNG terminals within its jurisdiction.

The FERC maintains a cooperative relationship with the U.S. Coast Guard (Coast Guard) regarding the suitability of waterways for LNG transit, in accordance with the February 2004 Interagency Agreement For The Safety And Security Review Of Waterfront Import/Export Liquefied Natural Gas Facilities. Environmental impacts related to the Coast Guard's actions are addressed in the FERC's EIS for each project.

DoD. The DoD provides for the nation's defense. In doing so, it maintains numerous installations, including ranges and operating areas, throughout the United States and abroad to support military operations, training and testing. Many of these installations are located along the coasts of the United States or on navigable waters, and the associated operations, training and testing occur there. The DoD generally acts through its Military Departments, which have statutory responsibility for equipping and training military personnel and acquiring, maintaining, and operating installations needed for those purposes. The Secretary of Defense, or designee, must concur before FERC can authorize any LNG terminal affecting activities at a military installation.

III. Responsibilities of the Agencies

A. Siting. The FERC is the lead agency responsible for the preparation of the analysis required under NEPA for the approval of new terminals. The scope of this review addresses all aspects of the project including: tanker transit and operation; marine facilities; terminal construction and operation; and environmental and cultural impacts. The DoD agrees to participate in the FERC's review process, to the extent necessary, so that the FERC is informed of DoD-related impacts prior to making a decision on the project.

1. Notification of Project Review. When the FERC issues a notice of its intent to begin the NEPA review process (NOI) for an LNG project, copies will be sent to the Director of Installations, Management and Requirements (IRM) in the office of the Deputy Under Secretary of Defense for Installations and Environment (ODUSD (I&E)) and the Military Departments identified in Attachment A. In addition, the FERC will send a letter requesting that DoD determine whether the proposed project could potentially have an impact on the test, training or operational activities of any active military installation. The letter will request that DoD file a response with the FERC within 30 days. Further, the letter will request that the Military Departments identify a contact for each active military installation that could potentially be affected.

2. Determination of Effect on a Military Installation. If the DoD indicates that the project would not have an effect on any Installation, the process is concluded. If DoD indicates that the potential exists for any given project to have an effect on an Installation, the FERC will coordinate with the Director of IRM and the Military

Department contacts, as well as any specific installations, as necessary, to address and resolve the concerns. When the FERC completes its EA or draft EIS, the document will be sent to the Director of IRM and the Military Department contacts. Additionally, the FERC will send a letter documenting the consultation process, summarizing any comments received from the DoD, and stating the FERC's conclusion about whether the project would affect the test, training or operational activities of an active military installation.

Within 45 days of receiving the letter from the FERC, the DoD, via the Director of IRM, will provide written comments indicating whether it concurs with the determination made by the FERC and identifying any outstanding concerns.

If the FERC determines that the LNG project will not affect the test, training or operational activities of an active military installation and the DoD concurs, the process is concluded. If it is determined that the proposed LNG terminal will affect the test, training or operational activities of an active military installation, the FERC and the DoD will continue to work to avoid or mitigate those effects, and the FERC will not authorize the LNG terminal before getting concurrence from the DoD.

B. Informal Communication. The Agencies agree to communicate informally, especially during the pre-filing process, to ensure that issues are discussed as soon as possible and shared among all agencies.

C. Dispute Resolution. If either the FERC or the DoD identifies a dispute with the procedures of the MOU, it will notify the other agency and make every attempt to resolve the issue.

IV. General Provisions

A. This MOU does not obligate or commit funds and does not serve as the basis for the transfer of funds. All provisions in this MOU are subject to the availability of funds. Each agency will commit to accomplish all provisions in this MOU to the best of its ability.

B. This MOU is intended only to improve the cooperation among the Agencies, to ensure complete assessment of all potential impacts on active military installations, and to facilitate obtaining the necessary concurrence from the DoD prior to the FERC's authorization of a new or expanded LNG terminal when it is determined that there would be impacts. It is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any person or party against the United States, its agencies, its officers, or any other person. This MOU is not intended to direct or bind any person outside the Agencies.

C. This MOU neither expands nor is it in derogation of those powers and authorities vested in the Agencies by applicable law.

D. This MOU does not affect any guidelines related to information quality issued by the Agencies in connection with section 515 of the Treasury and General Government Appropriations Act for FY 2001 (P.L. 106-554). Information disseminated pursuant to this MOU will be subject to the information quality guidelines of the agency that disseminates the information.

E. This MOU is solely for the purpose of establishing internal procedures for the Agencies to consider and deal with the various environmental, security, and safety responsibilities in the context of applications submitted pursuant to section 3 of the NGA, and nothing in this MOU shall be construed to create a cause of action.

V. Principal Contacts

The Agencies designate agency contacts identified in Attachment B. Each agency may change its agency contacts upon notice to the other agency.

VI. Effective Date and Duration:

This MOU is effective upon the date of the last signatory. It shall continue to be in effect until terminated by either agency.

Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission

8/24/07
Date

John J. Young, Jr.
Acting Under Secretary of Defense
(Acquisition, Technology and Logistics)

11/21/07
Date

Attachment A: DoD Military Department Contacts

The following are the principal initial contacts for each military department:

U.S. Army Corps of Engineers
ATTN: CECW-OR
441 G Street NW
Washington, DC 20314-1000

Air Force Civil Engineer (A7C)
1235 South Clark Street
Suite 1000
Arlington, VA 22202-4367

Office of the Assistant Secretary of the Navy
(Installations and Environment)
1000 Navy Pentagon
Room 4D684
Washington, DC 20350-1000

Assistant Chief of Staff for Installation Management
NC1/Presidential Towers
2511 Jefferson Davis Highway
Arlington, VA 22202

Attachment B: Agency Contacts

The following are the principal initial contacts for each agency:

Federal Energy Regulatory Commission

J. Mark Robinson, Director
Office of Energy Projects
Federal Energy Regulatory Commission
888 1st Street, NE
Washington, DC 20426
Mark.robinson@ferc.gov
202-502-8700 (voice)
202-219-0205 (fax)

Department of Defense

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