

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the proposal of Sound Energy Solutions to construct and operate a liquefied natural gas terminal at the Port of Long Beach.

Investigation \_\_\_\_\_

**ORDER INSTITUTING INVESTIGATION INTO THE PROPOSAL OF SOUND ENERGY SOLUTIONS, INC. TO CONSTRUCT AND OPERATE A LIQUEFIED NATURAL GAS TERMINAL AT THE PORT OF LONG BEACH**

**I. Summary**

This order institutes an investigation into the proposal of Sound Energy Solutions, Inc. (SES) to construct a liquefied natural gas (LNG) facility in Long Beach, California. We open this investigation to promote public safety and California's environmental welfare, consistent with state and federal law. We herein order SES to file an application for a certificate of public convenience and necessity (CPC&N) if it intends to pursue construction of the project.

**II. Background**

California is actively seeking new and diverse energy resources, among them, natural gas supplies. This Commission recently opened a rulemaking (R.04-01-025) to pursue strategies for development of natural gas resources in California, finding:

Notwithstanding the projected increase in natural gas demand in California, recent developments seriously threaten California's supply of natural gas in the long-term ... there is uncertainty over whether California will have enough interstate pipeline capacity rights secured by firm transportation contracts

in the future to meet California's long-term needs....Although it was previously assumed that there were ample proven natural gas reserves in Canada, which would be adequate to meet demand forecasts in Canada and for export to meet a substantial portion of the demand forecast in the United States, this assumption has been thrown into doubt by the most updated analysis of Canadian production of natural gas.

Because recent reports from the Department of Energy and the National Energy Board suggest natural gas produced in North America will not meet demand in the future, the state will need to import more gas from other sources. LNG is among the promising options we have identified for importing natural gas supplies. LNG requires local facilities either onshore or offshore to regasify the LNG in order to transport the natural gas in pipelines. Several entities have considered various sites around the country for installation of LNG facilities and four are already in operation. Indeed, in California, several projects are under consideration for various sites along the coast. Of particular concern to us at this juncture is a proposal by SES to construct an LNG facility at the Port of Long Beach (Port).

SES' plans are detailed in its application before the United States Federal Energy Regulatory Commission (FERC) for authority to construct an onshore LNG facility in the Port of Long Beach, filed January 26, 2004. In addition, the Port has initiated an environmental review of the project as the lead agency, pursuant to the California Environmental Quality Act (CEQA). The FERC is also conducting the environmental review required by the National Environmental Policy Act (NEPA). SES has not yet initiated construction.

The Commission has filed pleadings regarding SES' LNG proposal at the FERC addressing jurisdictional and public policy issues. The Commission is a "responsible agency" under CEQA. Significantly, the Commission has the

exclusive statutory duty over safety and siting over natural gas facilities in California. (*San Diego Gas and Electric Co. v. Superior Court* (1996) 13 Cal.4<sup>th</sup> 893; 924-925). This investigation formalizes our statutory obligation to oversee this proposed project its impact on California customers, residents and businesses.

### **III. Description of Proposed Project**

The proposed project, as described by SES in its FERC filings, would be an LNG storage and gasification facility situated on 25 acres at Pier T East (Berth126) at the Port. LNG would be shipped to California aboard ocean-going LNG carriers from gas-producing regions abroad. The LNG would be stored in two 160,000 cubic meter tanks, and then either (1) regasified for sale to natural gas customers in California or (2) sold as a liquid for use in LNG-powered vehicles in California. The facility would include an offloading dock, two LNG storage tanks, regasification facilities, a natural gas liquids recovery unit, and a truck loading facility. SES estimates that the proposed facility would be operational by 2007 or 2008, at a cost of about \$400 million.

The project would provide an average of 600 MMcf/d of output into the SoCalGas intrastate pipeline system. It would not involve transportation or sales over the interstate natural gas pipeline system. SES intends to interconnect its facilities with SoCalGas' intrastate pipeline.

### **IV. Potential Impacts of the Project on Public Safety, the Environment and California Energy Markets**

The LNG project proposed by SES raises several significant public policy issues for Californians over which this Commission has regulatory authority and statutory obligations.

LNG projects by their nature present significant environmental and safety hazards. Although LNG technology has improved in recent years, if the LNG

facilities are sited near population centers, the LNG facilities continue to present significant risks to the public because of the potential for catastrophic events resulting from terrorist attack, human error or earthquake. The proposed project site lies on landfill in a liquefaction hazard zone in a region of high seismic activity. Twenty-seven active earthquake faults lie within 100 miles of the site and three are within five miles.<sup>1</sup> The site is within two miles of high-density residential and commercial neighborhoods, schools, major transportation corridors and tourist destinations, including the Queen Mary, numerous hotels, the Aquarium of the Pacific, and a marina.

On April 5, 2004, SES filed supplemental information with the FERC about SES' proposed LNG facilities at the Port of Long Beach. In this supplemental filing, SES has increased the size of the storage tanks for its Natural Gas Liquids (NGL) recovery unit, and SES now quantifies the capability of its on-site NGL storage. Specifically, we are informed that SES may have up to 2,300,000 gallons of ethane and 2,300,000 gallons of propane for on-site NGL storage for a minimum of three days at a time. Therefore, in addition to the risks posed by the LNG storage and regasification, there are risks associated with the significant amount of ethane and propane that will also be stored at this site.

In addition, the SES may potentially affect the operation of natural gas markets in California. If its proposed LNG facilities are authorized and constructed, SES would provide up to 10% of the state's daily natural gas requirements. Control over this supply by a single provider could permit an

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<sup>1</sup> Source: SES' Resource Report No. 6, pages 8-9.

exercise of market power and attendant pricing impacts, at least when supplies and demand are unequal.

The facts available to the Commission at this time suggest a compelling state interest in the project. This Commission may ultimately support the project or some modified version of it because it would provide some of the state's near-certain need for future natural gas supplies. But the Commission has a responsibility to assure that if the project is ultimately approved and constructed, it does not unduly compromise public safety, the environment or the effective and efficient operation of California energy markets.

#### **V. Commission Jurisdiction Over the Project**

SES filed an application before the FERC on January 26, 2004 seeking authority to import natural gas through its proposed LNG facility. As part of its application, it states that SES has “complied in all material respects with the applicable laws and regulations of the State of California.”<sup>2</sup> In its Notice of Intervention at FERC, this Commission objected to this statement and briefly explained its jurisdictional authority.

SES filed its application at FERC under Section 3 of the Natural Gas Act (15 USC Section 7171b), which refers only to authorizing “exportation” or “importation” of natural gas or LNG. Nothing in this section or other portions of the Natural Gas Act anticipate the FERC’s regulation of the siting, construction or operation of facilities that do not conduct interstate operations (*Border Pipe Line Co. v. FPC*, 171 F.2d 149, 151 (DC Cir. 1948)). Because SES does not propose to conduct interstate transport, it is not subject to FERC’s jurisdiction.

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<sup>2</sup> Exhibit C to Application in Docket No. CPO4-58-000.

Conversely, this Commission does have jurisdiction to regulate the siting, construction and operation of natural gas and pipeline facilities, including LNG and gas storage in California. In addition, for many years the Commission has been a certificated state agency under the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60105, and therefore enforces the Department of Transportation's federal pipeline safety standards, including LNG safety standards, with regard to intrastate facilities. SES proposes to use the proposed LNG facilitate to sell natural gas into California's natural gas markets. This activity would make SES a public utility pursuant to California Public Utilities Code Sections 216, 221, 222, 227, and 228. As a public utility, SES must apply for and receive a certificate of public convenience and necessity from this Commission prior to commencement of construction of its proposed facility, pursuant to Public Utilities Code Section 1001. This jurisdiction does not extend to pricing or the importation of LNG supplies, consistent with federal law (15 USC Section 717b(b) and (c)). This Commission does, however, retain jurisdiction over plant siting, facility safety, emergency gas supplies for residential customers and electric generation units, market power, and ownership transfers or merger. As a California public utility, SES must also respond to Commission orders and information requests. *See* California Public Utilities Code Sections 313, 314, 581, 582, 702, 761, 1701-02.

The Commission has informed SES of the Commission's interest in the matter and jurisdiction over the project in a letter dated October 30, 2003. The letter advised SES that it would have to apply for and receive a CPCN from the Commission in order to construct and operate its facility legally.

To date, SES has not applied for any authority from this Commission. Indeed, in a lengthy pleading filed at FERC on March 9, 2004, SES explicitly challenged this Commission's authority over the project (Answer of Sound

Energy Solutions in FERC Docket No. CP04-58-000.) On March 24, 2004, the FERC issued a “Declaratory Order Asserting Exclusive Jurisdiction,” in which the FERC contends that it has the exclusive jurisdiction over the siting of SES’s proposed LNG facilities. The Commission strongly disagrees with the FERC, and, therefore, the Commission has filed a request for rehearing raising numerous legal errors in the FERC’s order. Nowhere in the FERC’s order does it maintain that it has jurisdiction over the company, SES. Accordingly, there is no basis under the Federal statute, the Natural Gas Act, 15 U.S.C. §§ 717, *et seq.*, or the FERC’s order for SES to claim that the Commission does not have jurisdiction over the company and the specific conduct of the company, which is separate and apart from any claims SES may have as to the siting of its proposed facilities.

SES’ jurisdictional claims before the FERC are antithetical to state and federal law and the interests of California consumers, communities, businesses and economy. The legal disputes before the FERC in SES’ application may extend out to an indefinite future. In order to avoid delay of our review of this project, we will not wait for a final resolution of those jurisdictional questions concerning the facilities. We choose instead to conduct a review of relevant issues by opening this investigation and providing hearing procedures, including an opportunity for discovery by interested parties.

## **VI. Preliminary Scoping Memo**

### **A. Designation of Proceeding**

We herein designate this proceeding as ratesetting as defined in Rule 5(c) of the Commission’s Rules of Practice and Procedure because this investigation involves the operations of a single prospective public utility and is neither quasi-legislative nor quasi-judicial in nature. We anticipate that hearings will be required in order to resolve disputed issues of fact.

Any person who objects to the preliminary categorization of this investigation, the need for hearings, or the issues raised in this preliminary scoping memo shall raise such objection(s) in comments to be filed ten days after the issuance of this order and pursuant to Rule 6(c)(2) and 6.4.

### **B. Proceeding Issues**

The issues to be addressed in this proceeding are those jurisdictional, safety and economic issues described Sections IV and V of this order. The Assigned Commissioner and Administrative Law Judges (ALJs) are within their authority to conduct all relevant inquiries and to compel production of documents and responses to them.

### **C. Application by SES to Construct LNG Facilities at the Port**

This order finds that SES' proposed project would give SES the status of a public utility as that term is defined in state law, and that this Commission must approve its project before SES may commence its construction. Accordingly, we direct SES to file an application for a CPC&N, consistent with the California Public Utilities Code.

### **D. Parties and Service List**

This order is served on the parties to R.04-01-025. We make SES a respondent to this order. Within 20 days from the mailing date of this order, any person or representative of an entity interested in monitoring or participating in this proceeding should send a letter to the Commission's Process Office and to the Public Advisor's Office, both of which are located at 505 Van Ness Avenue, San Francisco, California 94102, requesting that the person or representative's name be placed on the service list. The Process Office will thereafter create a new service list and the new service list will be posted on the Commission's web

site, [www.cpuc.ca.gov](http://www.cpuc.ca.gov) soon thereafter. Parties' request for inclusion on the service list should include an e-mail address. Parties who do not contact the Commission for inclusion on the service list will not receive future documents in this proceeding.

Any party interested in participating in this investigation who is unfamiliar with the Commission's procedures should contact the Public Advisor's Office in Los Angeles at (213) 576-7056, or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY – toll free) or (415) 703-5282 (TTY).

#### **E. Proceeding Schedule**

The schedule in this proceeding will depend in part upon the date SES files its application at this Commission.

The Assigned Commissioner and ALJs are within their authority to set a schedule in this proceeding that would promote the effective and efficient conduct of this investigation.

#### **F. Ex Parte Communications**

This proceeding is subject to Rule 7(c) and Rule 7.1, which specify rules for engaging in ex parte communications and the reporting of such communications and attached to this order. Consistent with that rule as it applies to ratesetting proceedings, parties must notify other parties following communications with decision-makers, among other things.

#### **G. Electronic Service Protocols**

The Commission will permit and encourage electronic service in this proceeding to mitigate the expense of participation. Parties should use the electronic service protocols attached to this order for all pleadings if they have access to electronic mail.

**Findings of Fact**

1. SES has applied with FERC to construct and operate a LNG terminal at the Port of Long Beach which may present safety and environmental hazards, and which may affect the effective and efficient operation of California natural gas markets.

2. SES has challenged this Commission's authority to regulate any aspect of its proposed LNG facility.

3. The State of California has a compelling interest in the siting, construction and operation of the proposed SES LNG facility and SES' potential ability to exercise market power.

4. Waiting until all jurisdictional disputes are resolved before initiating a review of the LNG facility proposed by SES might create undue delay in the project's progress if it is ultimately to be built and operated.

**Conclusions of Law**

1. If SES were to construct and operate the LNG terminal it describes in its pending application before FERC, it would become a public utility subject to the jurisdiction of this Commission pursuant to Public Utilities Code Sections 216, 221, 222, 227 and 228.

2. As a public utility, SES requires the authority of this Commission to site, construct or operate the proposed LNG facility, pursuant to Section 1001 et seq.

3. As a public utility, SES must respond to Commission orders and information requests pursuant to California Public Utilities Code Sections 313, 314, 581, 582, 702, 761, 1701-02.

4. The Commission should open an investigation into the siting, construction and operation of the LNG facility proposed by SES, as well its potential exercise of market power.

**IT IS ORDERED** that:

1. The Commission initiates this investigation into the siting, construction and operation of a liquefied natural gas facility proposed by Sound Energy Solutions (SES) at the Port of Long Beach, as set forth herein, to review of the project on behalf of California customers, businesses, and communities, consistent with state law.
2. SES is hereby made a respondent to this proceeding.
3. SES shall file an application for a certificate of public convenience and necessity (CPCN), consistent with Public Utilities Code Section 1001 et seq., and must receive a CPCN prior to commencing construction of its project.
4. SES shall respond to the information requests by the Commission and the Commission's staff.
5. Subject to the procedural schedule, which will be established at a prehearing conference, SES shall also respond to data requests by interested parties in this proceeding, and any discovery disputes shall be resolved pursuant to the Law and Motion procedure delineated in ALJ Resolution 164.
6. The Executive Director shall serve this order on SES and all parties to Rulemaking 04-01-025.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**ATTACHMENT A****SERVICE LIST AND ELECTRONIC SERVICE PROTOCOLS**

The service list for this proceeding is located at the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). Those who are not already parties, but who wish to participate in this proceeding as full parties may make a written motion to intervene or submit an appearance form at a hearing. Those who wish to be included as parties on the service list may alternatively send their requests in an e-mail note to the assigned administrative law judge.

To reduce the burden of service in this proceeding, the Commission will use electronic service, to the extent possible using the electronic service protocols provided in this ruling.

All individuals on the service list should provide electronic mail addresses. The Commission and other parties will assume a party consents to electronic service unless the party indicates otherwise.

**Notice of Availability**

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

**Filing of Documents**

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq., of the Commission's Rules of Practice and Procedure.

**Electronic Service Standards**

As an aid to review of documents served electronically, appearances should follow these procedures:

1. Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).
2. Attach the document file to an electronic note.
3. In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
4. Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word 6.0/95.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon).

Parties should exercise good judgment regarding electronic mail service, and moderate the burden of paper management for recipients. For example, if a particularly complex matrix or cost-effectiveness study with complex tables is an attachment within a document mailed electronically, and it can be reasonably foreseen that most parties will have difficulty printing the matrix or tables, the sender should also serve paper copies by U.S. mail, and indicate that in the electronic note.

**Obtaining Up-to-Date Electronic Mail Addresses**

The current service lists for active proceedings are available on the Commission's web page, [www.cpuc.ca.gov](http://www.cpuc.ca.gov). To obtain an up-to-date service list of electronic mail addresses:

- On the "Legal Documents" bar choose "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding (or click "edit," "find," type in R0010002, and click "find next").
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

**Pagination Discrepancies in Documents Served Electronically**

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

**(END OF ATTACHMENT A)**

## **ATTACHMENT B**

### **RULE 7**

#### **7. (Rule 7) Ex Parte Communications: Applicable Requirements**

(c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1:

(1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) If an ex parte communication meeting or call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days prior to the date when the meeting is to occur. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission.

(3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the communication on all other parties on the same day the communication is sent to a decisionmaker.

(4) Prohibitions on Ex Parte Communications:

(i) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Not Scheduled or When a Ratesetting Decision is Held.

In any ratesetting proceeding, the Commission may establish a period during which no oral or written communications on a substantive issue in the proceeding shall be permitted between an interested person and a Commissioner, a Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge. Such period shall begin not more than 14 days before the Commission meeting date on which the decision in the proceeding is scheduled for Commission action. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held.

(ii) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Scheduled:

In all ratesetting proceedings in which a hearing has been held, a proposed decision has been filed and served, and a Ratesetting Deliberative Meeting has been scheduled, there shall be a prohibition on communications as provided in this subsection.

The first day of the prohibition on communications will be the day of the Ratesetting Deliberative Meeting at which the proposed decision is scheduled to be discussed and will continue through the conclusion of the Business Meeting at which a vote on the proposed decision is scheduled. If a proposed decision is held at the Business Meeting, when the hold is announced, the Commission will also announce whether and when there will be a further prohibition on communications, consistent with the provisions of subparagraph (i).

## **RULE 7.1**

### **7.1. (Rule 7.1) Reporting Ex Parte Communications**

(a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. An original and seven copies of a "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

- (1) The date, time, and location of the communication, and whether it was oral, written, or a combination;
- (2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;
- (3) A description of the interested person's, but not the decisionmaker's, communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) These reporting requirements apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications with a Commissioner's personal advisor also shall be reported under the procedures specified in subsection (a) of this rule.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1(c)(4)(C)(i)-(iii), Public Utilities Code

**(END OF ATTACHMENT B)**