

Decision 05-11-010 November 18, 2005

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 04-04-024
(Filed April 22, 2004)

ORDER CLOSING PROCEEDING

The Commission opened this proceeding for the purpose of considering several safety and economic issues arising from the proposal of Sound Energy Solutions (SES) to construct and operate a liquefied natural gas (LNG) terminal at the Port of Long Beach. The Commission conducted a prehearing conference in this proceeding and scheduled hearings, which have not been held.

The Commission and SES have been involved in federal litigation concerning the authority of this Commission to regulate SES' proposed LNG project. The Federal Energy Regulatory Commission (FERC) issued orders claiming to preempt the Commission's jurisdiction over SES' proposed LNG terminal, which resulted in the Commission appealing the FERC's orders ultimately to the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit).

Since the initiation of this proceeding, Congress passed the Energy Policy Act of 2005, Public Law 109-58. Among other things, the Act provides that the FERC has jurisdiction to authorize LNG projects, such as the one SES proposes at the Port of Long Beach. In so doing, Congress substantially amended Sections 1(b) and 3 of the Natural Gas Act, 15 U.S.C. §§ 717(b) and 717(b), which

were the sections upon which the Commission's appeal had been based. The passage of the Energy Policy Act of 2005 caused this Commission to support the recent filing by the FERC at the Ninth Circuit of a motion to dismiss the Commission's petition for review as moot.¹ The Commission subsequently suspended its procedural schedule in this proceeding by way of a ruling of the assigned administrative law judges.

Recent federal legislation and the subsequent filings before the federal court support the FERC's review of SES' plans to construct and operate an LNG plant at the Port of Long Beach, but also recognize the Commission's right to participate in the FERC hearing. There no longer is a basis for the Commission's own hearing to proceed on these matters.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Kim Malcolm and Peter V. Allen are the assigned Administrative Law Judges in this proceeding.

Finding of Fact

Federal legislation has mooted the Commission's appeal, as recognized by the FERC's and the Commission's recent pleadings filed in the Ninth Circuit.

¹ The FERC filed its *Consent Motion To Dismiss Petition For Review As Moot* in Ninth Circuit Case Nos. 04-73650 and 04-75240, on September 9, 2005. The Commission filed its response on September 29, 2005, which agreed with the FERC that the legal issues were moot.

Conclusions of Law

1. The Energy Policy Act of 2005 supports the FERC's review of siting and safety issues involving SES' plans to construct and operate an LNG plant at the Port of Long Beach and the Commission's right to participate in the FERC's hearing, instead of the Commission reviewing these issues in its own proceeding.
2. The Commission should close this proceeding.

IT IS ORDERED that Investigation 04-04-024 is closed.

This order is effective today.

Dated November 18, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners