

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)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE
LAW JUDGE'S RULING AND SCOPING MEMO**

This ruling and scoping memo sets forth the scope, process, and schedule for this proceeding, following a prehearing conference before Commissioner Geoffrey Brown and Administrative Law Judge (ALJ) Malcolm held on August 23, 2004, in Long Beach.

1. Background

The Commission opened this proceeding on April 22, 2004 to consider a liquefied natural gas (LNG) facility proposed by Sound Energy Solutions (SES) at the Port of Long Beach. The order initiating this proceeding, Investigation (I.) 04-04-024, asserts the Commission's jurisdiction over SES as a public utility, under authorities including Pub. Util. Code §§ 216, 221, 222, 227 and 228, based on SES's proposal for the project and assuming the project is as proposed before the Federal Energy Regulatory Commission (FERC). I.04-04-024 finds that SES must receive a Certificate of Public Convenience and Necessity (CPCN) from this Commission prior to operating its proposed LNG facility.

The project has been the subject of a dispute between the Commission and the FERC with regard to the jurisdiction of each agency. On January 26, 2004,

SES filed an application at FERC under section 3 of the Natural Gas Act for authority to construct the project. The Commission filed a Notice of Intervention and Protest to SES' application, arguing that California has jurisdiction over the siting of such projects, and that the Natural Gas Act provides no authority for FERC jurisdiction over the siting of SES' proposed LNG facilities.

On March 24, 2004, the FERC issued a declaratory order which asserted exclusive jurisdiction in advance of its decision on the merits of the SES proposal. On April 23, 2004, the Commission filed a request for rehearing, which the FERC denied on June 9, 2004. On August 5, 2004, the Commission filed a Petition for Review with the U.S. Court of Appeals for the D.C. Circuit, seeking review of the FERC's March 24th and June 9th Orders. That appeal is currently pending.

On May 27, 2004, SES filed an application for rehearing of I.04-04-024 and sought a stay of the investigation until the jurisdictional disputes between the FERC and the Commission are decided by the federal court. The Commission denied SES' request for stay of the OII on July 8, 2004. The Commission has not yet issued a decision on SES' application for rehearing.

On August 5, 2004, the FERC issued a clarification of its June 9th Order, again asserting exclusive jurisdiction, while indicating that SES must comply with certain requirements of the California Coastal Commission.

The Commission held a prehearing conference in this proceeding on August 23, 2004 in Long Beach.

2. Conduct of Proceeding

SES has stated in a letter to the proceeding's Assigned Commissioner and ALJs and reiterated at the prehearing conference that it will not participate in this proceeding until and unless the federal court finds that the Commission has jurisdiction over the project. The Commission has already considered and

rejected SES' motion for a stay of the proceeding (see Decision (D.) 04-07-040). Consistent with the ALJ's statement at the prehearing conference, the Commission intends to move forward with this proceeding in compliance with the Commission's order. The Commission does not wish to be in a position of delaying review of the project.

The Commission is within its authority to investigate matters that are germane to utility regulation even when the Commission would otherwise not have jurisdiction over the entities engaged in transactions with California public utilities. *See PG&E Corporation v. Public Utilities Commission* (2004) 118 Cal App. 4th 1174, 1202. The Commission may also issue subpoenas to non-jurisdictional entities pursuant to Pub. Util. Code § 311. Therefore, because the Commission may investigate such non-jurisdictional matters, there can be no question as to the Commission's right to investigate issues in the present case, where it appears that SES is a public utility subject to the Commission's jurisdiction.

At the prehearing conference, SES stated this Commission's order for it to participate in this proceeding would put it in the awkward position of having to "disobey the orders of one or the other of the agencies." SES did not explain or provide any cite to a FERC order, which prohibits SES from participating in the Commission's proceeding. In fact, relevant FERC's orders do not require that SES not participate in any Commission proceeding or that such participation would somehow prejudice or harm SES.

The Commission expects SES to respond to any reasonable discovery request and to comply with all orders, rulings and directives of the Commission, the Assigned Commissioner and the ALJs, to whom the Commission has delegated authority to manage and preside over this proceeding. To the extent

that SES fails to participate in the proceeding, however, SES risks foregoing its opportunity to influence the decision in this case.

3. Proceeding Issues

The order opening this proceeding, I.04-04-024, described the scope of issues briefly as those related to the safety of the proposed project, environmental impacts occurring as a result of project construction and operation, and the effects of the facility on California energy markets. At the prehearing conference, parties addressed these issues somewhat more specifically.

a. Safety

The Commission has already expressed concerns about the safety of the proposed project, which involves the transport and processing of hazardous and potentially volatile gasses. The project is located in a highly-populated urban center and within a complex port facility. It is near earthquake fault lines in an area that is subject to liquefaction in the event of a major earthquake.

The Commission's Consumer Protection and Safety Division and community groups stated a need to consider the safety risks of the project. Among the issues the parties stated they are prepared to address are those related to seismicity, the structural integrity of the facility in the event of earthquake or other accident, the risks of pool fires, other hazardous materials at the port, and vessels breaching the docks. One party stated an interest in addressing the safety risks associated with the processing of ethane, butane and propane at the site. The Commission may consider these and any related safety issues.

b. Environmental Quality and Impacts

The Port of Long Beach is preparing an environmental impact report (EIR) on the proposed project, acting as lead agency under the California Environmental Quality Act (CEQA). The Commission is a responsible agency under CEQA, and intends to participate in the EIR process. This proceeding may consider all relevant environmental issues, including those addressed in the EIR and those relating to environmental justice. The Commission has jurisdiction to consider these matters separately from the EIR process in its role to protect the interests of the state and its residents and businesses. (Pub. Util. Code § 1002, D.01-10-029, D.03-10-018 and D.04-07-027.)

c. Effects on California Energy Markets

As proposed, the SES project could import up to almost 10% of California's natural gas supplies. The effects on the state's energy markets could be pronounced during periods of high demand or interruptions of supplies from other sources. To the extent the state relies on gas from the SES plant, supply interruptions could compromise system reliability. In addition, SES could be a vital source of gas supplies during an emergency. One party raised concerns about the effects of the LNG supplies on energy spot markets if SES does not commit its resource to long-term contracts. Another party stated a concern that SES may not have disclosed the intended market for its LNG and that the Commission should consider the relationship between SES and ConocoPhillip's oil refineries.

California law requires the Commission to assess the impacts of its decisions on competitive markets. In addition, the Commission may use related analysis to inform other policies, which might include the need for additional storage facilities in California, the reliability of natural gas

supply for new power plants, or the need for long-term contracts from other resource basins.

The proposed project, as we understand it, would interconnect with the existing utility infrastructure; specifically, with the intrastate transportation and distribution systems of Southern California Gas Company. The Commission may consider whether the project, as proposed, would be safely and effectively interconnected to the existing system and whether the proposed project would provide reliable supplies of natural gas to California. Standards for interconnection and product quality are under consideration generally in Rulemaking (R.) 04-01-025, the Commission's natural gas supply rulemaking. The related issues for this proceeding would emphasize the project's specific characteristics.

Because these issues may not be determinative of the Commission's decision on whether or not to issue a CPCN and in order that the Commission's consideration of them not delay this proceeding, the Commission will defer consideration of these issues to a later phase of the proceeding, assuming the project is approved by jurisdictional authorities and the project proponent proceeds with construction.

d. Project Need and Alternatives

The project as proposed requires a CPCN, which often involves an assessment of the need for the project. Congress has already determined in the Energy Policy Act of 1992 that imports of LNG are deemed to be in the public interest. The Commission need not determine whether LNG should be imported, although it may need to assess how the project may generally affect the state's need for additional gas supplies. This matter is being considered from a broader perspective in R.04-01-025.

At the prehearing conference, several parties suggested an interest in exploring the potential for renewable resources to help meet the state’s energy needs. One raised the issue of the City of Long Beach’s general plan and whether the project complemented that plan. Unions suggested they may present testimony with regard to the impacts of the project on labor and how the unions may promote safe and efficient operations at the facility. The Commission may consider all of these and any related issues, including a review of alternatives presented in the Port of Long Beach’s EIR.

4. Public Participation Hearings

The Commission intends to conduct public participation hearings in this proceeding in recognition of the potential impacts of the project on local neighborhoods and citizens. Public participation hearings provide an opportunity for individuals who are not parties to the proceeding to put their views on the project on the record of the proceeding. The Commission may consider public sentiments and concerns as guidance in the development of a more formal record.

The Commission will conduct public participation hearings as follows:

<p>March 10, 2005 3:00 pm – 5:00 pm 7:00 pm – 9:00 pm</p>	<p>Long Beach Public Library - Auditorium 101 Pacific Avenue Long Beach, CA 90822</p>
<p>March 11, 2005 3:30 pm – 5:30 pm</p>	<p>Wilmington Senior Citizens Center 1371 Eubank Avenue, Main Auditorium Room Wilmington, CA 90744</p>

The Commission welcomes any and all individuals who wish to speak at these hearings and will undertake outreach in local neighborhoods to assure affected individuals, businesses and groups are informed of the PPHs.

5. Procedural Schedule

The procedural schedule in this proceeding at this time is as follows:

Service of opening testimony (except on those issues relating to market impacts)	December 1, 2004
Service of reply testimony (except on those issues relating to market impacts)	December 20, 2004
Evidentiary hearings	January 17-26, 2005
Opening Briefs	February 20, 2005
Reply Briefs (submission of proceeding)	March 8, 2005
Public Participation Hearings	March 10-11, 2005
Proposed Decision on all issues except market impacts	April 2005
Review of market impacts	To be determined

Most of the hearings will be conducted in San Francisco at Commission headquarters. The Commission will consider requests for a portion of the evidentiary hearings to be conducted in Long Beach in recognition of the possible resource limitations of local groups and organizations. Any party who seeks hearings in Long Beach should request specific dates for those hearings in an electronic communication to the ALJs (pva@cpuc.ca.gov) and (kim@cpuc.ca.gov), copied to all parties, after testimony is served, but no later than December 23, 2004. Such a request should specify which witness or

witnesses the party would present or cross-examine at those hearings and, where relevant, provide estimates of cross-examination time.

The Commission expects this proceeding to be completed within 18 months of the date of this scoping memo.

6. Procedure for Requesting Final Oral Argument

Parties have the right to make a final oral argument before a quorum of the Commission in this proceeding if a party so requests in a timely fashion. Any party who seeks final oral argument must file a motion in this proceeding no later than five days following issuance of the ALJs' proposed decision in this case.

7. Category of Proceeding

The Commission preliminarily determined that this is a ratesetting proceeding for which hearings may be required. No party has objected to this determination. This ruling confirms that the proceeding is ratesetting and that hearings are required.

8. Principal Hearing Officer

ALJ Peter V. Allen and ALJ Kim Malcolm are the principal hearing officers in this proceeding.

9. Service List

The service list for this proceeding is located at the Commission's Website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties must make their request by written motion to intervene, or orally on the record during the proceeding. Those not already participating, but who wish to do so as nonparties, may request that their names be added to the service list (in the "information only" or "state service" category) by sending an e-mail note to ALJ Malcolm (kim@cpuc.ca.gov).

The Commission will follow the electronic service protocols attached to this ruling.

10. Intervenor Compensation

Parties who wish to file notices of intent to claim compensation in this proceeding must do so no later than September 22, 2004, and following the guidance in Article 18.8 of the Commission's Rules of Practice and Procedure (Rules). For more information about the Commission's intervenor compensation program on other Commission rules and procedures, parties should contact the Public Advisor's Office at 1-866-8498391 or public.advisor.la@cpuc.ca.gov.

11. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that ex parte communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c).) An ex parte communication is defined as "any oral or written communication between a decisionmaker and a person with an interest in a matter before the Commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter." (Pub. Util. Code § 1701.1(c)(4)). Commission rules further define the terms "decision maker" and "interested person" and only off-the-record communications between these two entities are "ex parte communications."

In ratesetting proceedings such as this one, the law permits interested persons to engage in ex parte communications with decision makers if all interested parties are invited and given no less than three business days' notice, or in the case of an individual meeting granted to any party, if all other parties are also granted individual ex parte meetings of a substantially equal period of time. (Pub. Util. Code § 1701.3(c).) The law permits written ex parte

communications provided that those who provide such communication to a decision maker must provide a copy of the communication to each party on the same day. (Pub. Util. Code § 1701.3(c); Rule 7.) Parties must report ex parte communications as specified in Rule 7.1.

IT IS RULED that:

1. The scope of this proceeding is set forth in this ruling.
2. The schedule for this proceeding is set forth in this ruling. The assigned Administrative Law Judges (ALJ) may revise this schedule as necessary for the fair and efficient management of the proceeding.
3. ALJ Peter V. Allen and ALJ Kim Malcolm are the principal hearing officers in this proceeding.
4. This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), meaning that ex parte communications are prohibited unless certain statutory requirements are met. Such communications are also governed by Rule 7(c), of the Commission's Rules of Practice and Procedure (Rule) and must be reported, as provided in Rule 7.1.
5. Public participation hearings will be conducted in the Long Beach area on March 10-11, 2005, as described above.

Dated September 13, 2004, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

/s/ KIM MALCOLM
Kim Malcolm
Administrative Law Judge

ATTACHMENT

SERVICE LIST AND ELECTRONIC SERVICE PROTOCOLS

The service list for this proceeding is located at the Commission's website (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 ALJ Malcolm (kim@cpuc.ca.gov).

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. 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)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated September 13, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282
at least three working days in advance of the event.