

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 25, 2007

To: The Commission
(Meeting of June 7, 2007)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 412 (Simitian) - State Energy Resources Conservation and
Development Commission: liquefied natural gas terminals.
As amended: April 16, 2007**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would enact the Liquefied Natural Gas Terminal Evaluation Act and would require the California Energy Commission (CEC) to make a statewide Liquefied Natural Gas (LNG) needs assessment study to determine if, and how many, LNG import terminals are needed in the state, and to use such a study in processing applications for LNG import terminals located in the state. It would also require the CEC to deny a "certificate" to build and operate an LNG terminal located in the state if the proposed facility did not meet certain criteria, specified in the bill. Finally, it would require that the Governor, pursuant to his or her powers under the Deepwater Port Act to exercise veto power over proposed offshore LNG import terminals if the criteria specified in the bill are not met.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The mandates imposed by this bill would contradict federal law that gives the Federal Energy Regulatory Commission (FERC) the exclusive authority to approve and authorize LNG import terminals. The state does not and cannot process "applications" to the CEC for LNG import terminals, and thus it could not utilize the LNG needs assessment study or the criteria established by the legislation for the purpose of approving or denying a permit for the construction of an LNG terminal.

The Governor has certain powers under the Deepwater Port Act to determine whether an LNG terminal located offshore and beyond state waters should be built. However, the bill is "applicable to every LNG terminal to be constructed or operating in the state." The rights the Governor has under the Deepwater Port Act are not applicable to LNG terminals "in the state".

Also, the process created by this bill would not account for the consumer and ratepayer benefits of ensuring a reliable and diversified supply of natural gas.

SUMMARY OF SUGGESTED AMENDMENTS:

None. SB 412 cannot reasonably and usefully be amended in order to comply with federal law.

DIVISION ANALYSIS (ENERGY Division):

- This bill would create the Liquefied Natural Gas Terminal Act. Specifically, this bill would:
 - Require the CEC to complete an LNG needs assessment study by November 2008. The purpose of the study is to look at the state's future supply and demand for natural gas and to then determine whether California's future gas needs can be met without constructing LNG facilities.
 - Requires the CEC to consult with the relevant federal, state and local agencies and evaluate every proposed LNG project.
 - Grants the CEC the authority to approve LNG projects if numerous conditions and required findings are met and satisfied. This approval is contingent on the CEC and other agencies finding that:
 - Construction of the LNG facility is necessary to meet the state's future natural gas needs.
 - The underlying supply of LNG is reliable and sustainable.
 - The California Air Resources Board (CARB) finds that the proposed LNG project would be carbon neutral.
 - The State Water Resources Control Board (SWRCB) finds that the LNG project would not decrease water quality.
 - The California Coastal Commission finds that the LNG project would not harm the coastal zone – including view sheds.
 - The California Coastal Commission finds that the LNG project would be in compliance with the Marine Mammal Protection Act.
 - The LNG applicant would mitigate any long-term coastal impacts.
 - The LNG applicant would meet all decommissioning requirements.
 - The LNG applicant would reserve 20% of its natural gas capacity for open source supplies of natural gas.
 - The LNG applicant completed an MOU with the Department of Defense (DOD) to minimize the project's impacts on DOD's operations.

- The LNG applicant had contracted with the state to reimburse it for its expenses relative to ensuring compliance with the requirements of this Act, emergency response needs, other regulations, etc.
 - The California Environmental Protection Agency must certify that the LNG applicant would protect and mitigate the LNG project's impacts on low-income and minority communities.
- Requires the CEC to create and update a public matrix on its website comparing the progress of each LNG applicant toward fulfilling the requirements of this Act and obtaining an approved permit.
- The CPUC does not currently evaluate whether specific LNG terminals should be built on an overall needs basis or based on specific criteria. This bill's mandate primarily would affect CEC, although CEC would conduct project evaluation in consultation with other State agencies including CPUC. Were SB 412 to be passed, CPUC staff would participate in project evaluation.
- As part of that evaluation, the CPUC might need to consider the overall impact on utility infrastructure and costs of utility infrastructure upgrades of specific LNG terminals. Under current CPUC policy it is presumed that LNG developers will pay for the cost of utility infrastructure upgrades needed to deliver their supplies. However, utilities may make applications to the CPUC for "rolled-in ratemaking treatment", i.e. they may request that ratepayers pay for the cost of infrastructure upgrades.
- This bill would involve CPUC in a process that expressly contravenes the Federal Energy Policy Act 2005.
- While the bill is well-intentioned, it is therefore misguided. SB 412 would provide for greater public scrutiny and input into the project siting process, which is hard to consider negatively. Unfortunately, implementation of such processes by the state is preempted by federal law.
- In Section 311 of the Energy Policy Act of 2005 ("EPAAct 2005"), Congress amended section 1(b) and section 3 of the Natural Gas Act to provide exclusive jurisdiction to the FERC to regulate the siting of onshore LNG import terminals and approve applications for such terminals. Thus, California can no longer lawfully process applications for onshore LNG import terminals pursuant to Chapter 6 (commencing with Section 25500) of the Public Resources Code. Therefore, this bill that would require the CEC to utilize an LNG needs assessment study in evaluating each proposed LNG project could not actually apply to any proposed LNG projects, because no LNG import terminal is required to file a certificate with the CEC in order to operate lawfully. The EPAAct 2005 did leave room for state agencies with authority under the Coastal Zone Management Act of 1972, such as the California Coastal Commission, to additionally review siting of LNG terminals under its auspices, but such a review does not replace the main siting review conducted by the FERC.

- SB 412 also would require the Governor, when exercising his or her powers under the Federal Deepwater Ports Act to veto a proposed offshore LNG import terminal located in Federal waters off the California coast and outside state waters, to veto such proposals if the standards in the statewide LNG needs assessment study and the criteria specified in the bill are not met. As noted above, such standards could not be utilized in assessing whether LNG import terminals located on shore or within state waters should be constructed. For this reason, it would also be inconsistent with the purposes of a statewide needs assessment study to utilize such a study only for offshore LNG facilities and not for onshore facilities.
- The CEC already conducts numerous natural gas related assessments and indeed has already concluded that increased natural gas supplies are needed – either from domestic, land based natural gas supply sites or from LNG facilities. The needs determination study as required by SB 426 is duplicative and unnecessary and could cause significant delay in the procurement of LNG. Further, if further state law is imposed on facilities within state waters the unintended consequence could be that LNG developers seek additional sites located in federal waters, thus limiting the state’s jurisdiction over LNG facilities along the California coastline.

PROGRAM BACKGROUND:

- The CPUC submitted safety-related testimony in opposition to the Sound Energy Solutions LNG terminal, but has not otherwise expressed any preference for any specific LNG terminal or number of terminals.
- As part of its 2005 Energy Action Plan, the CPUC and CEC stated that California must promote natural gas infrastructure enhancements, such as additional pipeline and storage capacity, and diversify supply sources to include liquefied natural gas (LNG).
- The CPUC developed its policy on LNG responsibility for utility infrastructure upgrades in the context of a major gas supply and infrastructure rulemaking, R.04-01-025.

LEGISLATIVE HISTORY:

- SB 1081 of 1977 authorized the Commission to issue a permit for the construction and operation of an LNG terminal at a remote site to be determined by the California Coastal Commission. This legislation was subsequently repealed in 1987.
- SB 426 failed passage in the Assembly last year. SB 426 would have required the CEC to evaluate and rank each proposed LNG terminal. Under this bill’s requirements, the Governor would have been required to reject any application that was not ranked as the top two choices by the CEC.

FISCAL IMPACT:

Minor and absorbable.

STATUS:

SB 412 is pending on the Senate Appropriations Committee's suspense file.

SUPPORT/OPPOSITION:

SUPPORT: California Coastal Protection Network (sponsor)
Environmental Defense Center
Pacific Environment
Planning and Conservation League
Sierra Club California

OPPOSITION: None on file.

STAFF CONTACTS:

Delaney Hunter
Office of Governmental Affairs

dlh@cpuc.ca.gov
(916) 327-7788

Sean Gallagher
Energy Division

shg@cpuc.ca.gov
(415) 703-2059

Jonathan A. Bromson
Energy Division

jab@cpuc.ca.gov
(415) 703-2362

David R. Effross
Energy Division

dre@cpuc.ca.gov
(415) 703-1567

Date: May 25, 2007

BILL LANGUAGE:

BILL NUMBER: SB 412 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 16, 2007

INTRODUCED BY Senator Simitian

FEBRUARY 21, 2007

An act to add Chapter 6.5 (commencing with Section 25571) to Division 15 of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Simitian. State Energy Resources Conservation and Development Commission: liquefied natural gas terminals.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission and requires the commission to prepare a biennial integrated energy policy report. The act requires the commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide.

~~This bill would state the intent of the Legislature to enact legislation regarding the siting and construction of liquified natural gas facilities on or off the coast of California.~~

This bill would enact the Liquefied Natural Gas Terminal Evaluation Act and would require the commission to make a liquefied natural gas (LNG) needs assessment study that assesses demand and supply for natural gas and alternatives to natural gas to meet energy demands, and to determine the number of LNG terminals, if any, needed to meet the state's projected natural gas demand. The act would require the LNG needs assessment study to be completed no later than November 1, 2008, and incorporated into the commission's biennial integrated energy policy report. The commission would be required to hold public hearings to consider the results of the LNG needs assessment study and to provide an opportunity for public comment. All costs of the LNG needs assessment study for the implementation of these requirements, including costs for any temporary personnel or consultants, would be funded from fees charged to persons or entities applying for permits to build and operate a LNG terminal.

The bill would prohibit the commission from issuing a certificate to build and operate a LNG terminal unless the proposed facility meets certain criteria, findings, and determinations.

The commission would be required by February 1, 2008, to create a matrix on its Internet Web site and to require an applicant for a certificate to build and operate a LNG terminal to provide the commission with updated information at least once every month.

The bill would require the Governor to disapprove an applicant for a license pursuant to the Governor's authority under the federal Deepwater Port Act of 1974, to construct and operate a liquefied natural gas terminal unless the project meets this act's requirements. The bill would prohibit the Governor from allowing a permit to build or operate a LNG terminal or to connect to infrastructure located within the state unless the commission certifies that this act's requirements have been met.

The bill would provide that these requirements are applicable to every LNG terminal to be constructed or operating in California, irrespective of whether an application has been submitted for the construction or operation of the terminal to any federal, state, or local entity prior to January 1, 2008.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~
yes . State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the state to meet California's energy growth by optimizing energy conservation and resource efficiency and by reducing per capita demand to ensure a clean, safe, and reliable supply of energy for California.

(b) It is the policy of the state to be sensitive to the impact of the state's energy policy on global climate change and environmental impacts in host countries that export natural gas.

(c) It is the policy of the state to accelerate the use of renewable energy resources wherever feasible and to ensure a diverse and affordable portfolio of fuel sources to minimize the opportunity for supply interruptions.

(d) The state has a critical role in decisions regarding the siting and design of new onshore and offshore infrastructure for the importation of liquefied natural gas that results in impacts to public health, safety, and the environment.

(e) Laws and regulations enacted by the state to address consumer, community, public health, safety, and environmental impacts of new onshore and offshore imported liquefied natural gas infrastructure, where more protective, should not be preempted by weaker, less protective federal laws and regulations.

(f) Decisions regarding the importation of liquefied natural gas should be based on a comprehensive review of current and projected natural gas supply and demand in California, and alternative sources of supply.

(g) Construction and operation of liquefied natural gas onshore and offshore infrastructure could commence after completion of a rigorous evaluation that analyzes the need for additional supplies of natural gas and the relative merits of pending and future proposals with respect to business, consumer, community, public health, safety, and environmental impacts.

SEC. 2. Chapter 6.5 (commencing with Section 25571) is added to Division 15 of the Public Resources Code , to read:

CHAPTER 6.5. LIQUIFIED NATURAL GAS TERMINAL EVALUATION ACT

25571. This chapter shall be known and may be cited as the Liquefied Natural Gas Terminal Evaluation Act.

25571.1. For purposes of this chapter, the following definitions apply:

(a) "Applicant" means a person who files a request for certification, pursuant to Chapter 6 (commencing with Section 25500) to build and operate on LNG terminal in this state.

(b) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account all of the following:

(1) Economic, environmental, social, technological, safety, and reliability factors.

(2) Gas supply and demand forecasts.

(3) Alternative sources of natural gas.

(c) "Liquefied natural gas" or "LNG" means natural gas cooled to minus 259 degrees Fahrenheit so that it forms a liquid at approximately atmospheric pressure.

(d) "Liquefied natural gas terminal," "terminal," or "LNG terminal," means facilities designed to receive liquefied natural gas from oceangoing vessels, including those facilities required for storage and regasification of the liquefied natural gas and those pipelines and facilities necessary for the transmission of the regasified natural gas to the point of interconnection with existing pipelines.

(e) "Person" means an individual, organization, partnership, or other business association or corporation, the federal government, the state government, any local government, and any agency or instrumentality of any of those entities.

25571.2. (a) The commission shall make a study of the need for liquefied natural gas terminals to meet the state's energy demands. This study shall be known as the LNG Needs Assessment Study and shall assess all of the following:

(1) The future demand for natural gas in the state.

(2) The future supply of natural gas in the state available from domestic production and imported into the state through interstate pipelines, supply available from domestic production within the state, and supply available from foreign production and imported into the state through international pipelines from Mexico and Canada, including any liquefied natural gas terminal proposed to be built outside the state that would be the source for natural gas imported into the state.

(3) All supplemental sources of natural gas and natural gas alternatives that can reasonably be expected to be available to meet the projected demand for natural gas, including, but not limited to, conservation and energy efficiency programs, steps to increase production and importation of natural gas from other states, Mexico, and Canada, steps to increase available supply from federally owned or federally regulated supplies, and steps to increase energy supplies available from renewable energy resources, including solar, wind, geothermal, and biomass.

(b) The LNG Needs Assessment Study shall determine the projected quantity of additional natural gas necessary for the state's expected future demand and whether it is economically feasible to meet the state's future natural gas needs without constructing one or more liquefied natural gas terminals.

(1) The LNG Needs Assessment Study shall be commenced by January 1, 2008, and shall be completed no later than November 1, 2008, and

shall be incorporated into the integrated energy policy report prepared pursuant to Section 25302.

(c) The commission shall hold at least two public hearings to consider the results of the LNG Needs Assessment Study and to provide an opportunity for public comment. At least one public hearing shall be held in any city or county that is the proposed site for which an application for a certificate has been filed with the commission to build and operate a liquefied natural gas terminal. If the terminal is not proposed to be located within a city or county, the hearings shall be in the city or county nearest the proposed location.

(d) All costs incurred by the commission for the implementation of this chapter, including costs for any temporary personnel or consultants, shall be funded by fees charged to persons or entities applying for a certificate to build and operate a liquefied natural gas terminal.

(e) The commission shall make public all information required for the LNG Needs Assessment Study using the commissions' Internet Web site, except as follows:

(1) If an applicant for a certificate that has been filed with the commission to build and operate a liquefied natural gas terminal claims that any data or information that the commission requires pursuant to this section is proprietary, the applicant shall submit to the commission a summary of that required data and information, along with an explanation as to the proprietary nature of the required data and information.

(2) On or before 30 days after receiving a claim that data or information is propriety pursuant to paragraph (1), the commission shall determine whether the data and information is proprietary. If the commission determines that the data and information is proprietary, the summary description of that data and information shall be provided on the commissions' Internet Web site. If the commission determines that the data and information is not proprietary, and the applicant refuses to provide the full data and information, the commission shall stop all review of the project and notify any other agency authorized to review the project to stop that review.

(3) An applicant may appeal the decision of the commission on the proprietary nature of the data and information subject to this subdivision to the Superior Court in Sacramento County within 30 days after a decision by the commission determining that the information requested is not proprietary in nature. The court shall review the commissions' decision on a de novo basis.

25571.3. (a) The commission, in consultation with the Public Utilities Commission, the California Coastal Commission, the State Air Resources Board, the State Water Resources Control Board, and the Department of Fish and Game shall evaluate each proposed LNG project for which a certificate has been filed with the commission to build and operate a liquefied natural gas terminal to determine whether the project meets all of the requirements specified in subdivision (b). The commission shall request the Office of Homeland Security, the Federal Energy Regulatory Commission, the Department of Defense and its component armed services, and the United States Coast Guard, to also evaluate each proposed LNG project to determine whether the project meets the requirements specified in subdivision (b).

(b) The commission shall not issue a certificate to build and operate a liquefied natural gas terminal in the state unless the commission determines the proposed facility meets all of the

following requirements:

(1) The facility is necessary to meet the future energy needs of California.

(2) The supply of natural gas identified for use by the project is reliable and sustainable.

(3) The State Air Resources Board determines that the project is carbon neutral.

(4) The State Water Resources Control Board finds that the project will not result in decreases in water quality.

(5) The California Coastal Commission finds that the project will not negatively impact the coastal zone, including view sheds.

(6) The project requires a coast keeper to be appointed either separately or by identifying an existing local entity or agency to monitor compliance with environmental laws and regulations.

(7) The coast keeper is funded by the project applicant at a level set by the Department of Finance.

(8) The California Coastal Commission certifies that the project is in compliance with the Marine Mammal Protection Act (Chapter 31 (commencing with Section 1361) of Title 16 of the United States Code).

(9) The project meets design criteria to mitigate long-term coastal impact should the project stop operating for any reason.

(10) The project meets postclosure requirements, including the financial assurances established by the commission.

(11) The project reserves 20 percent of capacity for open source supply of natural gas.

(12) Natural gas supply contracts for the project are transparent and available for review by the public.

(13) If the commission determines that any of the requirements specified in paragraphs (1) to (12), inclusive, are not feasible, the project applicant demonstrate that it is using the best available technology at the time the application is filed.

(14) The applicant files with the commission a memorandum of understanding with the Department of Defense indicating that the applicant has consulted with the Department of Defense and has reached agreement with the Department of Defense on means to mitigate impacts on Department of Defense operations with regard to impacts upon national security, including potential impacts on the land, sea, and airspace identified by the Department of Defense, any of its component armed services, or the United States Coast Guard, for conducting operations, training, or for the development and testing of weapons, sensors, and tactics.

(15) The applicant enters into a contract with the state to provide cost reimbursement for monitoring, compliance, safety, environmental training, and emergency response requirements.

(16) The Secretary for Environmental Protection certifies that the project contains reasonable mitigation measures to offset impacts to low-income and minority communities that would be affected by the project.

(17) The commission determines, based on the record, that among the available technologies for producing natural gas through a liquefied natural gas process, a particular technology chosen for a particular site will have the minimum adverse public health, safety, and environmental impacts among the technologies available at the time an application is received by the commission.

25571.4. (a) On or before February 1, 2008, the commission shall create a matrix on its Internet Web site that meets all of the

following requirements:

(1) The matrix shall be in a format that allows the public to contrast and compare the progress of each applicant for a certificate to build and operate a liquefied natural gas terminal in attaining each of the criteria required pursuant to this chapter.

(2) The matrix shall be updated monthly.

(3) The commission shall post a new application for a certificate to build and operate an LNG terminal in the state to the matrix within 30 days after the date the commission receives an application.

(b) (1) Each applicant for a certificate to build and operate an LNG terminal in the state shall provide the commission updated information at least once every month regarding each of the required criteria.

(2) If an applicant does not provide the information specified in paragraph (1), all agencies involved in the required review of the project may discontinue the review until that information is provided.

25571.5. This chapter does not limit any existing authority of state government pursuant to Division 13 (commencing with Section 21000) as that division read on January 1, 2008.

25571.6. (a) In furtherance of, and in conformance with, the Deepwater Port Act of 1974 (33 U.S.C. Sec. 1501 et seq.), as amended, the Governor pursuant to Section 1508 of Title 33 of the United States Code shall disapprove an application for a license to build and operate a liquefied natural gas terminal unless the project meets the requirements specified in subdivision (b) of Section 25571.3.

(b) The Governor may not allow a permit to construct or operate an LNG terminal or to connect to infrastructure located within the state unless the commission certifies that the project meets the requirements specified in subdivision (b) of 25571.3.

25571.7. (a) The requirements of this chapter are applicable to every LNG terminal to be constructed or operating in the state, irrespective of whether an application has been submitted for the construction or operation of the terminal to any federal, state, or local entity prior to January 1, 2008.

(b) Nothing in this chapter shall be construed as an absolute prohibition on the construction of a LNG terminal on or off the California coast. It is the intent of the state to facilitate a comprehensive and efficient review of applications for liquefied natural gas terminals and their related infrastructure in the state.

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) It is the policy of the state to meet California's energy growth by optimizing energy conservation and resource efficiency and by reducing per capita demand to ensure a clean, safe, and reliable supply of energy for California.~~

~~(b) It is the policy of the state to be sensitive to the impact of the state's energy policy on global climate change and environmental impacts in host countries that export natural gas.~~

~~(c) It is the policy of the state to accelerate the use of renewable energy resources wherever feasible and to ensure a diverse and affordable portfolio of fuel sources to minimize the opportunity for supply interruptions.~~

~~(d) The state has a role in decisions regarding the siting and design of new onshore and offshore infrastructure for the importation~~

~~of liquefied natural gas that results in impacts to public health, safety, and the environment.~~

~~—(e) Laws and regulations enacted by the state to address consumer, community, public health, safety, and environmental impacts of new onshore and offshore imported liquefied natural gas infrastructure, where more protective, should not be preempted by weaker, less protective federal laws and regulations.~~

~~—(f) Decisions regarding the importation of liquefied natural gas should be based on a comprehensive review of current and projected natural gas supply and demand in California, and alternative sources of supply.~~

~~—(g) Construction and operation of liquefied natural gas onshore and offshore infrastructure may commence after completion of a rigorous evaluation that analyzes the need for liquefied natural gas and the relative merits of pending and future proposals with respect to business, consumer, community, public health, safety, and environmental impacts.~~

~~—(h) Based upon the Tenth Amendment to the United States Constitution, federal law neither abrogates a state's property rights within its tide and submerged lands nor provides the power of eminent domain to the Federal Energy Regulatory Commission with respect to the siting liquefied natural gas facilities.~~

~~—(i) Nothing in this bill should be construed as an absolute prohibition on the construction of LNG facilities on or off the California coast. It is the intent of the State of California to facilitate a comprehensive and efficient review of applications for liquefied natural gas terminals and their related infrastructure in the state.~~

~~—SEC. 2.—It is the intent of the Legislature to enact legislation regarding the siting and construction of LNG facilities on or off the state's coast.~~