




Date: July 29, 2005
To: Federal Legislation and Environmental Affairs Committee Members
From:  Gerald R. Miller, City Manager
Subject: **Energy Bill Conference Report Passes Both the House and Senate**

The Energy Bill Conference Committee has completed its work on the Energy Bill and has submitted a Conference Report to the House and Senate. The House voted yesterday 275 to 156 to agree to the Conference Report; the Senate voted today 74-26 to pass it as well.

The Conference Committee has made several significant changes to the Energy Bill over the past few weeks. It is a combination of language from the House Bill, Senate Bill, and new language added in Committee.

The Committee has inserted additional language regarding state and local government authority and safety concerns, although they did not include the provision that the City of Long Beach had proposed. While the language that is currently included provides more description of the rights of state and local governments, the City continues to be concerned that the bill does not effectively prohibit FERC from pre-empting state and local administration of state laws such as CEQA.

Below are some of the key points of the Energy Bill as it relates to state and local authority related to the siting and permitting of LNG facilities:

1. The Bill does not grant FERC the power of eminent domain, but still states that FERC will have the "exclusive authority" to make decisions on LNG siting decisions. Specifically, the Bill states that "the Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal."
2. The Bill adds a new section that says that a state now has 30 days after an application is filed with FERC to furnish an advisory report on state and local safety considerations. It also allows a state to do the same within 30 days of passage of the Energy Bill for sites that have already filed an application.
3. The Bill has a new section that says that the LNG terminal operator must develop an Emergency Response Plan with the Coast Guard, state and local officials, which must be approved by FERC prior to final approval.
4. The applicant must also include a Cost Sharing Plan, in which the applicant details which direct costs they will agree to provide to any state or local agency with responsibility for security and safety. This is not a requirement for the applicant to share costs; rather it is a requirement that

the applicant tell FERC what portion of the security costs they will pay for directly.

5. The Bill uses the House Language for setting a schedule for federal and state authorizations under federal law, with one notable exception. The Committee has removed the provision that allows FERC to presume approval if there has been an unreasonable delay. Instead, the language now states that the applicant can take the issue to court if an approval agency has missed a deadline set by FERC.
6. The Bill uses the Senate language that requires the Energy Secretary to convene at least three community forums on LNG, to be held in areas where liquefied natural gas facilities are under consideration. These forums will be designed to provide an opportunity for public education and dialog on the role of LNG, the federal and state siting process, the potential risks and rewards of LNG, Federal safety requirements, prevention and response strategies for potential hazards, and other issues as appropriate.

The City remains concerned about the language in the Energy Bill, despite the additional provisions added by the Conference Committee. While these provide some additional direction on how state and local government shall be consulted and included in the process, it does not guarantee that all state and local concerns will be addressed appropriately. The Bill remains silent as to how this would affect state and local administration of state and local law, and now specifically codifies that FERC shall have "exclusive authority" in the siting of LNG facilities.

However, the Bill does not grant the power of eminent domain and allows the Port of Long Beach to continue to exercise its right as a landlord to grant or not to grant a lease on the property. The new provisions related to the Emergency Response Plan ensure that state and local governments will be consulted when developing this plan, and that the applicant must describe what safety and security costs they are willing to share.

The Bill will now be sent to the President for his signature, who has stated that he is in support. If you have any questions, please contact Tom Modica, Manager of Government Affairs, at 8-5091.

cc: Mayor and Members of the City Council
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