IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 04-73650 & 04-75240

CALIFORNIANS FOR RENEWABLE ENERGY, INC

&

CALIFORNIA PUBLIC UTILITIES COMMISSION

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION

Respondent.

On Petition for Review of Orders of the Federal Energy Regulatory Commission
FERC Docket Nos. CP04-58-000 and CP04-58-001

MOTION OF INDICATED MEMBERS OF CONGRESS TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONER CALIFORNIA PUBLIC UTILITIES COMMISSION AND BRIEF OF *AMICI CURIAE* INDICATED MEMBERS OF CONGRESS IN SUPPORT OF PETITIONER CALIFORNIA PUBLIC UTILITIES COMMISSION

January 5, 2005

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Pursuant to Federal Rule of Appellate Procedure 29, Senators Edward Kennedy and Jack Reed and Representatives Barney Frank, Edward Markey, William Delahunt, Stephen Lynch, Michael Capuano, James McGovern, Michael Michaud, Patrick Kennedy, James Langevin, Lois Capps, Sam Farr, Timothy Bishop, Hilda Solis, Anna Eshoo, Steve Israel, and Rosa Delauro (collectively "Indicated Members of Congress") move for leave to file the brief submitted herewith, as *amici curiae* in support of Petitioner, California Public Utilities Commission ("CPUC").

Each of the Indicated Members of Congress are elected officials, who represent their constituents' interests in the United States [Senate or] House of Representatives. As Members of Congress, we also have a direct and substantial interest in preserving the fairness of the legislative processes which are utilized by Congress and the legislative powers vested in Congress. *See* U.S. Const., Art. I, § 1.

In the present case, the CPUC has challenged the Federal Energy Regulatory Commission's ("FERC") orders asserting exclusive jurisdiction under section 3 of the Natural Gas Act, 15 U.S.C. § 717b, over the siting of proposed Liquefied Natural Gas ("LNG") facilities at the Port of Long Beach, California. The congressionally-delegated authority to the FERC

over import or export applications under section 3 of the Natural Gas Act, 15 U.S.C. § 717b, is limited, especially with regard to imports of LNG.

In the FERC orders at issue, the FERC has ignored these limits on its jurisdiction under the Natural Gas Act, and greatly exceeded the scope of its delegated authority. The FERC has attempted to usurp the legislative powers of the Congress by deciding as policy matters issues involving the siting of SES's LNG facilities, based upon the FERC's views as to what the law should be, instead of relying upon what the actual language explicitly provides in the Natural Gas Act. If federal agencies can ignore the substantive limits Congress has chosen to place upon the agencies' authority, it would greatly undermine the legislative powers, which Article I, section 1 of the United States Constitution vests in Congress.

The FERC has also made findings in its orders which are contrary to the policies and provisions of the Natural Gas Pipeline Safety Act, as amended by the Pipeline Safety Act of 1979. More specifically, the FERC has emphasized uniformity of regulation of LNG facilities over safety concerns raised by the CPUC, which had focused on the uniqueness of the local conditions and the need to consider more remote siting for LNG facilities than at the Port of Long Beach. Because the CPUC has raised the very issues which Congress intended should be considered in LNG siting

standards (see 49 U.S.C. § 60103(a)) and because we share the safety concerns raised by the CPUC, the Indicated Members of Congress have an interest in this matter.

The Indicated Members of Congress also have a substantial interest in preserving and protecting the fairness of the legislative processes, which are utilized by Congress when it votes on and passes new laws. In an apparent attempt to assist the FERC in the present litigation, on November 19, 2004, language concerning the FERC's purported authority over the siting of LNG facilities was inserted at the last minute in H.R. Report No. 108-792 accompanying H.R. 4818, the Consolidated Appropriations Act of 2005. This language had nothing to do with the funding for the Federal Government, which was the subject of the Act it accompanied, and the inserted language alleges what Congress supposedly intended in 1938 when the Natural Gas Act was enacted. The Indicated Members of Congress therefore have an interest in informing this Court why the language in H.R. Report No. 108-792 should not be given any weight.

For these reasons, the Indicated Members of Congress have a unique and significant interest in submitting the accompanying *amici curiae* brief to provide our position and information to assist this Court. The interest of the

Indicated Members of Congress is not adequately represented by any of the parties in this litigation.

Accordingly, the Indicated Members of Congress respectfully request leave to file the *amici curiae* brief submitted herewith.

January 5, 2005

By: _____

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INTEREST OF AMICI CURIAE

Senators Edward Kennedy and Jack Reed and Representatives Barney Frank, Edward Markey, William Delahunt, Stephen Lynch, Michael Capuano, James McGovern, Michael Michaud, Patrick Kennedy, James Langevin, Lois Capps, Sam Farr, and Steve Israel ("Indicated Members of Congress") are elected officials, who represent their constituents' interests in the United States Senate or House of Representatives. The Indicated Members of Congress support Petitioner California Public Utilities Commission ("CPUC") in the present case and respectfully request that this Court reverse the Federal Energy Regulatory Commission's ("FERC")[1] orders challenged by the CPUC, because the FERC has exceeded the limited authority Congress delegated to the FERC under section 3 of the Natural Gas Act, 15 U.S.C. § 717b. In addition, the FERC has justified its actions with findings that are contrary to what Congress decided in the Natural Gas Pipeline Safety Act, as amended in 1979, with regard to Liquefied Natural Gas ("LNG") siting and safety standards(*see* 49 U.S.C. § 60103(a)) and the continued role of States on safety matters involving intrastate pipeline facilities. *See* 49 U.S.C. §§ 60104(c), 60105, 60117(h)(3).

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[1] References to the "FERC" in this brief include its predecessor, the Federal Power Commission.

The interest of the Indicated Members of Congress in the present litigation also stems from a recent attempt to bypass the legislative processes of Congress, when language concerning LNG siting authority was inserted into H.R. Report No. 108-792 accompanying H.R. 4818, the Consolidated Appropriations Act of 2005. This language had nothing to do with the funding for the Federal Government, which was the subject of the Act it accompanied. Instead, it alleges what a different Congress intended 66 years earlier when it enacted the Natural Gas Act. Moreover, both H.R. Report No. 108-792 and the Legislative Text were made available to non-conferees on the morning of November 20, 2004 on the Rules Committee Website. Members of Congress had less than half a day to review more than 2000 pages of documents. The Indicated Members of Congress did not have a chance to read this language concerning LNG siting in H.R. Report No. 108-792 on November 20, 2004, were not aware of this language at the time we voted on the Consolidated Appropriations Act of 2005 and disagree with its statements supporting the FERC.

INTRODUCTION

If there were an accidental release of LNG or a terrorist attack caused the release of LNG, it could potentially be disastrous for the people and businesses in close proximity to LNG facilities. Consequently, state governments, which have historically protected the health and safety of their citizens, should have a say in

the siting of a proposed LNG project and should not be preempted by the FERC.

At a minimum, there needs to be very careful analysis by the FERC, Congress and state and local governments on the siting of proposed LNG facilities. Unfortunately, the FERC has refused to set LNG proceedings for hearings, which has shortchanged its analysis and prevented meaningful participation by other parties. Similarly, the last minute attempt by certain conferees to slip language about LNG siting into H.R. Report No. 108-792, subverts the legislative process. To deprive or severely limit the participation of interested parties, particularly the ones most affected by a proposed site, is contrary to the public interest.

The FERC's current views in its orders challenged herein and the language about FERC LNG siting jurisdiction in H.R. Report No. 108-792 are inconsistent with the language in the provisions in the Natural Gas Act. The FERC's reasons for preempting the CPUC and state agencies with safety jurisdiction across the nation are also contrary to provisions in the Natural Gas Pipeline Safety Act. The FERC's decision to proceed in this case and other cases across the nation without a hearing, where other expert witnesses, besides the project sponsor's witnesses, may also be heard, needlessly endangers people and businesses in the proximity of the proposed site for the LNG facilities. This is particularly true in a case, such as the present one, where the proposed LNG project would be in a densely populated area. The FERC's orders should be reversed.

ARGUMENT

I. Subsequent Legislative History that was Inserted by a Few Members of Congress into a Conference Report Where It Was Not Germane to the Underlying Legislation and More Than Six Decades after the Enactment of the Natural Gas Act Should Not Be Entitled to Any Weight

In *Doe v. Chao,* 540 U.S. 614, 626 (2004), the United States Supreme Court expressed skepticism about subsequent legislative history being of "any reliable interpretive help" in contrast to the language of a statute and the legislative history prior to its enactment.

In *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307 (9th Cir. 1992), this Court similarly recognized how little weight should be given to subsequent legislative history, which is years after a law had passed:

> This legislative history does not persuade us, because it is not part of the law, was written long after the law was passed, and seems inconsistent with the law passed when it was written. This is 1977 "history" about a 1972 law. Instead of giving us a window into the thinking of the legislators who wrote the bill, it gives us the advice of someone on the House Conference Committee staff *five years after section 1369 was promulgated* about how we should construe a law passed by an earlier Congress under a different president in a different political era. Subsequent legislative history in the form of committee reports of subsequent congresses are generally considered an "extremely hazardous basis for inferring the meaning of a congressional enactment."

Id. at 1311-12 (citation omitted).

Presumably the language inserted into H.R. Report No. 108-792 about LNG siting was done to attempt to support the FERC in the present case before this Court. Not only was it irrelevant to the legislation on which Congress was voting, it was buried in more than 2000 pages of materials, which most Members of Congress had only a few hours to read. Far exceeding the facts in *Longview Fibre Co.,* which involved legislative history five years after the law had passed, this subsequent legislative history is 66 years after the law had passed. Suffice it to say, not one Member of Congress, who voted for the Natural Gas Act of 1938, is presently a Member of Congress, and there have been many Congresses and presidents between the enactment of the Natural Gas Act of 1938 and the enactment of the Consolidated Appropriations Act of 2005, which was accompanied by H.R. Report No. 108-792.

Nevertheless, in H.R. Report No. 108-792, under the heading " Federal Energy Regulatory Commission Salary and Expenses," after stating the budget authority for the FERC, there are statements about the conferees agreeing with the FERC's March 24, 2004 declaratory order asserting exclusive jurisdiction over LNG siting, which is the declaratory order challenged by the CPUC in the present litigation. *See Sound Energy Solutions*, 106 FERC ¶ 61,279 (March 24, 2004). There is no reference in this language to a section of the Consolidated Appropriations Act of 2005, because this language has nothing to do with the Act

on which Congress was voting. Instead, this language refers to "Section 3 of the Natural Gas Act of 1938."

Without any reference to the language in section 3 of the Natural Gas Act, 15 U.S.C. § 717b, the legislative history of that Act, or the 1992 amendments to it, this subsequent legislative history consists of conclusory statements that:

> The Natural Gas Act clearly preempts States on matters of approving and siting natural gas infrastructure associated with interstate and foreign commerce … Because LNG terminals affect both interstate and foreign commerce, LNG facility development requires a process that also looks at the national public interest, and not just the interest of one State.

H.R. REP. NO. 108-792, *reprinted in* 150 CONG. REC. H10560 (November 19, 2004).

This subsequent legislative history does not accurately refer to even the FERC's March 24, 2004 declaratory order, let alone the Natural Gas Act. Although it states that LNG terminals affect interstate commerce and are associated with interstate commerce, that is not what the FERC orders state. To the contrary, the FERC stated in its March 24, 2004 declaratory order, "[t]he Commission, the CPUC, and SES are in accord that the SES proposal will not involve interstate commerce." *Sound Energy Solutions*, 106 FERC ¶ 61,279 at P 12.

In contrast to many other statutes and to the presumption in the above-mentioned language in H.R. Report No. 108-792, the Natural Gas Act of 1938 was not a statute where Congress occupied the field of the Commerce Clause by

exercising its fullest authority over the sales or transportation of natural gas or the facilities utilized by such sales or transportation based upon their "affecting" interstate commerce or foreign commerce. To the contrary, in section 1(b), 15 U.S.C. § 717(b), Congress only delegated regulatory authority to the FERC over sales or transportation of a "natural-gas company," which is defined in section 2(6) of the Natural Gas Act, 15 U.S.C. § 717a(6) as "a person *engaged in the transportation* of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." (emphasis added). The Natural Gas Act "had no purpose or effect to cut down state power . . . The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way." *Panhandle E. Pipeline Co. v. Pub. Serv. Comm'n of Indiana*, 332 U. S. 507, 517 (1947).

For these reasons, this Court should reject this attempt in H.R. Report No. 108-792 to supply subsequent legislative history to the Natural Gas Act.

II. The FERC's Rewriting of the Natural Gas Act Should Be Rejected

A. The FERC can not pick and choose between which statutory provisions it will follow

The FERC is a creature of statute and only has the authority conferred upon it by Congress. *See Cal. Independent System Operator Corp. v. FERC*, 372 F.3d 395, 398 (D.C. Cir. 2004). The plain meaning of the language and the design of the Natural Gas Act, 15 U.S.C.§§ 717-717z, govern the FERC's authority. The

FERC may not assume ambiguity to improve, in its view, upon Congress' design. *So.Cal. Edison v. FERC,* 195 F.3d 17, 26-27 (D.C. Cir. 1999).

As the FERC acknowledges in its rehearing order, in the 1970s, the FERC authorized LNG facilities to be sited and constructed pursuant to section 7 of the Natural Gas Act, 15 U.S.C. § 717f. *See Sound Energy Solutions,* 107 FERC ¶ 61,263 at PP 23-24 (2004). Then the FERC changed its mind and decided to "revise the basis for its jurisdiction. Since the 2002 decision authorizing the expansion of the LNG terminal at Elba Island, Georgia, the Commission has returned to the court's suggested jurisdictional demarcation in *Distrigas*, and relied [sic] on exclusively on section 3 for LNG terminal facilities and operations ..." *Id.* at P 25.

Why did FERC revise its basis for its jurisdiction? Because, according to the FERC, "it better distinguishes foreign from interstate commerce and enables the Commission to employ the greater regulatory flexibility available under section 3 to respond and adapt to changes in the nature of the LNG industry." *Id.* at P 25. The FERC gives as an example that it would not have to impose section 7 rate regulation and open access requirements on terminal services. *Id.* at P 25, n.33.

Simply because the FERC's policies may change, this does not provide a basis for the FERC to revise its own jurisdiction. If there are requirements in section 7 of the Natural Gas Act, 15 U.S.C. § 717f, with which the FERC

disagrees, those are still requirements in the law which the FERC is charged with implementing. They are not requirements, which the FERC is free to circumvent, by revising its own jurisdiction and deciding it has authority to regulate LNG facilities in a different section of the Natural Gas Act.

B. The FERC was not delegated broad authority over transportation or facilities in section 3 of the Natural Gas Act

Both the FERC orders challenged by the CPUC and the language inserted in H.R. Report No. 108-792 allege that the proposed LNG terminal for the Port of Long Beach, California falls clearly within the authority granted to the FERC under section 3 of the Natural Gas Act, 15 U.S.C. § 717b. Although the FERC has recently relied upon section 3 of the Natural Gas Act for authority to approve proposed LNG facilities, in contrast to the 1970s when the FERC relied upon section 7 of the Natural Gas Act, 15 U.S.C. § 717f, the FERC can point to no language in section 3 addressing facilities, as opposed to mere importation or exportation. In contrast, section 7 of the Natural Gas Act, 15 U.S.C. § 717f, explicitly addresses FERC authority over construction of facilities, the extension of facilities, or abandonment of facilities in the heading to this section and throughout all of the subparts. This distinction between section 3 and section 7 does not support the FERC having authority over the proposed intrastate LNG facilities based upon section 3.

The FERC therefore turns to the conditioning authority under section 3(a) of the Natural Gas Act, 15 U.S.C. § 717b(a), as a source for its authority to regulate facilities as a condition to approving the application to import LNG. *See Sound Energy Solutions,* 106 FERC ¶ 61,279 at P 19. However, section 3(c) of the Natural Gas Act, 15 U.S.C. § 717b(c), explicitly states that the conditioning authority of section 3(a) is not available for applications to import LNG (through its cross- reference to section 3(b)), because such applications must be approved without modification or delay. Section 3(c) states:

> For purposes of subsection (a) of this section, the importation of the natural gas referred to in subsection (b) of this section. . . shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.
>
> 15 U.S.C. § 717b(c).

Section 3(b) of the Natural Gas Act, 15 U.S.C. § 717b(b), expressly includes a reference to "liquefied natural gas." Therefore, this language is clear that the FERC does not have discretionary conditioning authority over an application to import LNG, so section 3 cannot be the basis upon which the FERC can regulate LNG facilities.

The FERC maintains, however, that this automatic approval language in section 3(c) only applies to the Department of Energy ("DOE") but not to the FERC. *See Sound Energy Solutions,* 107 FERC ¶ 61,263 at P 52. However, that is

revising the actual language in section 3 in the FERC's effort to revise its own jurisdiction. Only Congress can revise the language in the law. There is simply no support for the FERC's position in the language in section 3(a), which refers to "Commission" without distinguishing between the FERC or the DOE. Nor is there support for the FERC's position in the language in section 3(c), which states for purposes of section 3(a) the application to import is deemed to be in the public interest and must be approved without modification or delay. *See* 15 U.S.C. § 717b(a)-(c).

The legislative history of the Energy Policy Act of 1992 ("EPAct"), Pub.L. 102-486, tit. II, § 201, 106 Stat. 286 (codified as amended 15 U.S.C. § 717b(a)-(c)), which provided subsections 3(b) and 3(c) as amendments to section 3 of the Natural Gas Act, confirms that these amendments required the Federal Government to automatically approve applications to import LNG, because they were deemed by Congress to be in the public interest. No exception to this language was given to the FERC. As Representative Sharp explained in a bipartisan statement of House Conferees, applications to import liquefied natural gas into the United States must be "automatically approved, and by this act are deemed to be consistent with the public interest. The application process will still serve the function of affording the Federal Government a record of the foreign

commerce taking place." 138 CONG. REC. H11404 (October 5, 1992) (Statement of Rep. Sharp.).

The FERC alleges that during the legislative history of the EPAct, Congress did not explicitly state that it was removing the FERC's jurisdiction over the siting of LNG facilities under section 3 of the Natural Gas Act. According to the FERC, if Congress has not expressly repudiated an administrative practice by a federal agency, Congress will have been deemed to have agreed to it. *See Sound Energy Solutions*, 106 FERC ¶ 61,279 at PP 18-19. Under this logic, there would be a tremendous burden on Congress to have to constantly learn the administrative practice of every federal agency and take the time to expressly repudiate each practice with which we disagree or else the federal agency's practice would govern what the law should be rather than the words in the statute itself.[2].

The FERC is wrong. As the United States Supreme Court stated in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers,* 531 U.S. 159, 170 n.5 (2001), "[a]bsent … overwhelming evidence of

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[2] It is noteworthy that the FERC contradicts itself by stating that in 1992, Congress was aware of and acquiesced to FERC's practice of authorizing LNG facilities under section 3 even though FERC states that it did not decide to utilize section 3 as authority for LNG facilities until it revised the basis for its jurisdiction in 2002. *See Sound Energy Solutions,* 107 FERC ¶ 61,263 at P 25.

acquiescence, we are loath to replace the plain text and original understanding of a statute."

For these reasons, the FERC's orders at issue are contrary to the law. The FERC must comply with the requirements under section 7, not under section 3, if it exercises jurisdiction over LNG facilities. This Court should reverse the FERC's orders, because the FERC does not have the authority to revise its own jurisdiction.

III. The FERC's alleged reasons for attempting to preempt the States' safety oversight are contrary to the Natural Gas Pipeline Safety Act

The Natural Gas Act has no explicit provisions concerning safety, let alone LNG siting standards. On the other hand, one of the main provisions of the Pipeline Safety Act of 1979, Pub.L. 96-129, § 152(a), 93 Stat. 999 (current version at 49 U.S.C. § 60103(a)), was an amendment to the Natural Gas Pipeline Safety Act requiring the Secretary of Transportation to establish minimum safety standards for determining the location of any new LNG facility. Congress prescribed six factors that must be considered in the standards, including: "(2) existing and projected population and demographic characteristics of the location; … (4) natural physical aspects of the location; … and (6) need to encourage remote siting." 49 U.S.C. § 60103(a)(2),(4),(6).

In the present case, the CPUC raised each of these considerations and stated that a hearing was necessary, and the FERC responded by asserting exclusive jurisdiction to preempt the CPUC. The FERC rejected conducting a hearing,

preferring instead a technical conference where only the project sponsors' experts can be heard. The FERC also downplayed the unique local conditions (i.e., population density and seismic issues) and need to look at alternative remote siting by stating there was a need for "uniformity in regulatory treatment" and announced that states erect unreasonable hurdles thus necessitating federal oversight by the FERC. *See Sound Energy Solutions,* 107 FERC ¶ 61,263 at PP 67-69.

The FERC's claim of a need for uniformity in regulatory treatment is contrary to the six different factors that Congress mandated be considered as "minimum" LNG siting standards. In addition, it reveals that FERC is not respecting Congress' intent that LNG facilities should not be sited in densely populated areas.

While the FERC states that LNG is needed in our future, there were natural gas shortages and Congress believed that LNG was needed when Congress enacted the Pipeline Safety Act of 1979. Congress still required that the LNG facilities be sited in safe locations, and emphasized remote siting away from population centers. As Representative Markey, one of the primary sponsors of these provisions in the Pipeline Safety Act of 1979, stated during the legislative debates:

> LNG is a very useful source of energy, but, as our hearing record clearly shows, it is also a very serious hazard . . . Widespread explosions and fires could easily be ignited, since the vapor is so combustible . . . Under the provisions of this legislation, the

> Department of Transportation will be required to establish standards regulating the siting and design of any new LNG facility . . . These standards would require remote siting to the maximum extent possible.

125 CONG. REC. H24901 (September 17, 1979)(Statement of Rep. Markey).

The FERC also proclaims that the States should no longer have any safety oversight for intrastate LNG facilities, because they may erect "unreasonable hurdles to LNG imports." *See Sound Energy Solutions,* 107 FERC ¶ 61,263 at P 69. If so, the courts can remedy the problem, *if and when* it is ripe, but there is no evidence to support the FERC's finding that the CPUC or States, in general, have or will erect such barriers to justify the FERC's exclusion of States' safety jurisdiction over LNG facilities.

Again, the FERC is overstepping its bounds and is now rewriting the Natural Gas Pipeline Safety Act. When Congress enacted the Pipeline Safety Act of 1979, Congress could have preempted the states from such safety oversight with regard to the LNG safety standards. However, Congress explicitly chose not to do so. Instead, Congress decided to "[l]eave in place the existing policy on preemption …(any State may adopt more stringent safety standards for intrastate pipeline transportation if those standards are compatible with the Federal standards issued under NGPSA)." S. REP.NO. 96-182, at 5 (1979), *reprinted in* 1979 U.S.C.C.A.N. 1971, 1975.

Consequently, state agencies may still be certificated by the Secretary of Transportation if they adopt the federal minimum safety standards, and such certificated state agencies may have more stringent safety standards for intrastate LNG facilities. *See* 49 U.S.C. §§ 60104(c), 60105. Congress anticipated that in addition to the FERC, states would still have proceedings involving safety requirements related to LNG facilities, and Congress authorized the Secretary of Transportation to participate in such FERC or state proceedings. *See* 49 U.S.C. § 60117(h)(3).

The FERC apparently believes that state agencies adopting more stringent safety standards, in order to protect their citizens, is somehow unjustifiable, because it will not be a stable regulatory environment. Therefore, the FERC purports to preempt states from doing so. However, the FERC's position is nothing more than a collateral attack on Congress's determination to allow such stricter safety requirements for intrastate pipeline facilities, including intrastate LNG facilities. The FERC is not engaged in reasoned decision making by utilizing as the basis for its exercise of jurisdiction over intrastate LNG facilities its disagreement with provisions adopted by Congress on this very issue.

In effect, the FERC purports to exercise its authority under the Natural Gas Act to preempt state safety jurisdiction over intrastate LNG facilities, which is

authorized under the Natural Gas Pipeline Safety Act. This is contrary to the purpose of the Natural Gas Pipeline Safety Act, as amended by the Pipeline Safety Act of 1979, to promote safety in order to protect the public from the hazards of LNG facilities. It is contrary to the structure and policies of the Natural Gas Pipeline Safety Act, which provided a federal-state partnership in pipeline safety, including the safety of LNG facilities. Moreover, the FERC has also acted contrary to the purpose and design of the Natural Gas Act, which "was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way." *Panhandle E. Pipeline Co. v. Pub. Serv. Comm'n of Indiana*, 332 U. S. at 517.

The FERC's disregard for the two federal statutes in question is not reasonable. Instead of harmonizing the two statutes to respect Congress's determination to include the states' regulation of intrastate pipeline facilities, including LNG facilities, the FERC has acted contrary to both federal statutes.

IV. Conclusion

For the foregoing reasons, the Indicated Members of Congress urge this Court to reverse the FERC's orders challenged by the CPUC.

January 5, 2005

By:

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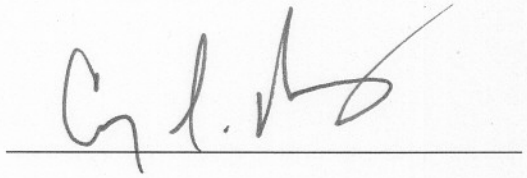
CERTIFICATION OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C) AND NINTH CIRCUIT RULE 32-1

I, Cory J. Briggs, certify that pursuant to Federal Rule of Appellate Procedure. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening brief is proportionately spaced, has a typeface of 14 points or more and contains 3296 words.

Dated: January 5, 2005



CERTIFICATE OF SERVICE

I, Bruno Freitas, declare:

I am a citizen of the United States, over 18 years of age, employed in Washington, D.C., and not a party to the subject cause. My business address is 2252 Rayburn H.O.B., Washington, DC 20515.

On January 10, 2005, I served the following documents:

MOTION OF INDICATED MEMBERS OF CONGRESS TO FILE *AMICI CURIAE* BRIEF

BRIEF OF *AMICI CURIAE* INDICATED MEMBERS OF CONGRESS IN SUPPORT OF PETITIONER CALIFORNIA PUBLIC UTILITIES COMMISSION

on the parties to this action, as listed in the attached Service List, by sending them two copies thereof in the United States Mail, enclosed in sealed envelopes with postage prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 10 , 2005, at Washington, D.C.

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