Congress of the United States
House of Representatives
Washington, D.C. 20515

October 18, 2004

The Honorable Norman Mineta
Secretary
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Mineta:

We are writing to request that you create and implement a strategy to ensure liquefied natural gas (LNG) import facilities are reviewed for construction and expansion based on a regional approach. We request that you conduct an analysis of how federal policies can be improved to promote a regional approach to permitting, provide recommendations for improvement, and then cooperatively implement those strategies. We are sending identical letters to the Federal Energy Regulatory Commission, the United States Coast Guard, and the Department of Energy.

Natural gas is an important source of energy for many homes and businesses. The Department of Energy's Energy Information Administration (EIA) projects that LNG will make up almost all of the expected increase in natural gas imports which EIA predicts will rise from 15 percent of U.S. natural gas consumption to 23 percent of U.S. natural gas consumption by 2025.[1]

Energy companies are proposing a multitude of new facilities to be used for importing LNG, including numerous facilities that have been proposed to serve New England.[2] Siting LNG facilities has become an increasingly timely and controversial issue as companies vie for approval of new facilities. The federal government's current policy is to evaluate and approve these new LNG import facilities as they are proposed. A more comprehensive and strategic approach is needed.

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[1] Energy Information Administration, *Annual Energy Outlook 2004 with Projections to 2025*, 39 (Jan. 2004).

[2] As of June 2004, EIA tracked at least 35 company announcements of LNG import terminals proposed to be built in North America. "A competition to build LNG receiving facilities is taking place among U.S. and foreign companies in many regions of North America." Energy Information Administration, *U.S. LNG Markets and Uses: June 2004 Update*, 7 (June 2004).

Several agencies share responsibility for federal approval of new LNG import terminals. The Department of Transportation has authority to issue regulations setting standards for the location of new LNG terminals.[3] The Federal Energy Regulatory Commission (FERC) grants federal approval for the siting, construction, and expansion of onshore LNG facilities under Section 3 of the Natural Gas Act of 1938 (NGA).[4] Under Section 7 of the NGA, FERC authorizes the construction and operation of interstate natural gas pipelines.[5] However, the Coast Guard and the Department of Transportation's Maritime Administration have primary responsibility for the siting and construction of offshore LNG facilities under the Maritime Transportation Security Act of 2002.[6] The Department of Energy has the ultimate authority to "disapprove" the siting, construction and operation of a facility.[7]

Other federal agencies also have a role in the siting process. The Environmental Protection Agency, the Fish and Wildlife Service, the Minerals Management Service, and the Army Corps of Engineers play roles in the permitting processes for LNG facilities.[8] States play a significant role in siting decisions. Proposed LNG projects are subject to some state and local regulations. In fact, offshore facilities have to be approved by each adjacent coastal state.[9]

The multiplicity of responsible agencies means that close coordination is critical. Unfortunately, this is not happening currently. It appears that despite their roles as the primary federal LNG permitting authorities, FERC and the Coast Guard each pursue their own permitting processes independently without adequate coordination. Moreover, the Department of Transportation does not appear to have complied with Congressional intent with respect to remote siting of new LNG terminals. It does not make sense that onshore and offshore permitting programs would each function in isolation rather than in collaboration. This could result in the siting of new facilities in a manner that is not in the country's best interest.

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[3] 49 U.S.C. § 60103.

[4] 15 U.S.C. § 717(b).

[5] 15 U.S.C. § 717(f).

[6] P.L. 107-295.

[7] Department of Energy Redelegation Orders No. 00-002.04 and Delegation Order No. 00-004.00.

[8] Energy Information Administration, *U.S. LNG Market and Uses: June 2004 Update*, 9 (June 2004).

[9] 33 U.S.C. § 1508(b)(1).

Using a regional approach makes sense particularly for New England, given the area's regional approach to electricity. Decisions of whether to build and where to locate LNG facilities should be made carefully and from a regional perspective rather than on an ad hoc basis. We believe an objective and comprehensive evaluation providing recommendations for how best to achieve a responsible policy on LNG would provide valuable information to federal agencies, Congress, and state policymakers. Thus, an analysis is needed in order to examine the process, recommend, and implement solutions. As the agencies with primary federal authority for approving the construction and operation of LNG import facilities, you have the authority and the duty to approach this issue in a responsible manner.

In performing your cooperative analysis, we request that you coordinate input relevant to your jurisdictional roles in LNG permitting as well as contributions from other relevant agencies. The following federal agencies should be included: the Energy Information Administration to evaluate current and projected demand for natural gas and LNG; the Department of Energy's National Laboratories to address demand reductions that can be achieved through increases in energy efficiency; and the Department of Homeland Security to address homeland security issues. As states play a major role in the siting of LNG terminals, we request that you incorporate into your analysis comments and recommendations from states that have operating LNG terminals as well as states that would be affected by terminals currently proposed.

A regional approach to LNG permitting involves three key components.

Actual Need for LNG

First, current and projected national and regional demand for natural gas and specifically, imported LNG, should be analyzed to determine where LNG facilities are needed.

New facilities should only be built if they meet a defined regional need. Increased national demand for natural gas is often cited as the reason new LNG import facilities are necessary. However, if a new LNG facility is in fact needed, it should be located in such a way that it best addresses the specific needs of a particular region. Other North American import facilities should be included in evaluating need. For example, new import facilities in Canada are expected to provide supply to the Northeastern United States.

Increased demand should not be accepted as a forgone conclusion. Recent increases in gasoline and natural gas prices underscore the importance of reducing our national dependence on fossil fuels and particularly foreign fossil fuel imports. Analysis of projected demand for natural gas and LNG should include the decrease in demand that would result from increased investments in energy efficiency and renewable energy.

According to the American Council for an Energy-Efficient Economy (ACEEE), increasing energy efficiency could decrease total national consumption of natural gas by 1.1% in just 12 months and 5.5% within 5 years.[10]

EIA has stated, "[i]n the United States, an important factor in the future growth of LNG imports is natural gas market prices."[11] ACEEE's analysis found that an investment of $30 billion over five years in natural gas and electric efficiency measures and in new renewable electric power generation would reduce wholesale natural gas prices by 22% and would result in net benefits of $104 billion.[12] That same analysis found that increasing renewable energy and energy efficiency in one region could bring natural gas prices down by over 5% in that region.

Safety

Second, a regional approach should ensure that LNG facilities are sited and operated in a manner that provides the utmost protection to public safety and has the least impact on nearby communities, including fishing and shipping communities.

Concerns have been raised about the safety of siting LNG facilities both on and offshore. Particular concerns have been raised regarding onshore facilities and the need to site facilities away from densely populated areas. In response to questions from Congress, the Coast Guard has said that even siting a facility in a remote location may in itself make the facility a more attractive target for terrorists. Particularly in light of the terrorist attacks of the *USS Cole* and September 11, 2001, the potential impacts on public safety from LNG transportation and other operations should not be underestimated. FERC and the Coast Guard should evaluate the adequacy of current safety standards for onshore and offshore LNG terminals and transportation, including LNG transport vessels.

Environmental Impacts

Third, a regional approach can and should promote siting LNG facilities in a manner that is protective of the environment.

The National Environmental Policy Act (NEPA) applies to the permitting of LNG facilities. NEPA requires considering the environmental impact of a proposed action as well as

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[10] American Council for an Energy-Efficient Economy, *Natural Gas Price Effects of Energy Efficiency and Renewable Energy Practices and Policies* (Dec. 2003).

[11] Energy Information Administration, *supra* note 1 at 42.

[12] ACEEE, *supra* note 10.

reviewing alternatives to the proposal. The federal government should not just consider the locations targeted by companies seeking to build new facilities. Demand for the facility should first be established and, if a new LNG facility is needed in a particular region, under NEPA, alternative locations in that region should be considered. Our national policies should encourage siting LNG import terminals in areas that will have the least impact on the environment.

A strategic, regional approach to LNG siting should incorporate collaboration between permitting agencies and other stakeholders, ensuring that we meet our national demand for natural gas in a way that makes sense and best meets the needs of American communities.

Your analysis should be performed expeditiously in order to prevent any undue delay on the construction of new LNG facilities. Please submit to Congress your findings, recommendations, and plans for implementation.

Thank you for your attention to this matter.

Sincerely,

John F. Tierney
Member of Congress

Edward J. Markey
Member of Congress

Barney Frank
Member of Congress

Richard E. Neal
Member of Congress

John W. Olver
Member of Congress

Martin T. Meehan
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Patrick J. Kennedy
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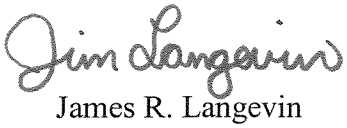

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