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News

Feds assert control over LNG terminal siting

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By **BEN RAINES**
Staff Reporter

A two-fisted regulatory punch may have important ramifications for Alabama and all other coastal states when it comes to building liquefied natural gas terminals.

The Federal Energy Regulatory Commission has issued official orders stating unequivocally that the federal government, not the states, has final say over where new LNG terminals can be built.

Also, a new bill in the U.S. House seeks to remove decision-making power regarding LNG terminals from the states.

Together, the regulatory moves may limit the impact of the intense local opposition that has thwarted a number of LNG proposals in the last two years on the Atlantic, Pacific and Gulf coasts.

Only terminals proposed in heavily industrialized ports in Texas and Louisiana have received FERC permits since federal officials announced that LNG imports should become an important part of the nation's energy supply.

Some in Congress have said the permits issued by FERC over the last year may need to be reconsidered, because they were granted based on flawed federal safety studies that have since been discounted.

The new House bill reads "no State or local government may require a permit, license, concurrence, approval, certificate or other form of authorization with respect to the siting, construction,

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expansion or operation of a liquefied natural gas import terminal."

The bill was introduced by Rep. Lee Terry, R-Okla., who sits on the House Energy and Commerce Committee. Terry was quoted in *Gas Daily*, an oil industry trade publication, as saying that "parochial opposition and industry concerns about FERC regulation have delayed or derailed many" LNG projects.

Terry said his bill would speed federal review of LNG terminal proposals and better reassure LNG companies about the permit process. He told *Oil Daily*, another industry publication, that he is "trying to ride the line between giving more power to FERC without making them dictatorial and having them move without others' input."

Terry's bill does not contain any apparent mechanism that state officials could use to stop construction of an LNG terminal once FERC granted a permit.

FERC posted its new orders concerning "the State and Federal jurisdictional conflict" on the agency Web site. The controversy, according to a prepared statement from FERC, is "ripe for court litigation."

FERC's efforts to clarify its position stem from a simmering dispute between the agency and the California Public Utilities Commission.

California has challenged FERC's authority to site LNG terminals in the state, arguing that under California law, state permission is required to build such a facility.

"Regulatory authority for the siting and construction of liquefied natural gas import terminals rests exclusively with the federal government," reads an order issued by FERC in March that rebutted California's jurisdictional claims.

The order indicates that FERC will exert its siting authority even over the objections of states where terminals would be built.

"Provided that state and local representatives act under delegated federal authority ... and in a manner compatible with our policies and regulations, there will be no jurisdictional conflict. To the extent that state and local directives frustrate federal rights or requirements, federal provisions hold sway," reads a follow-up order issued by FERC on June 9. The order also says that states cannot "prohibit or unreasonably delay the construction of facilities approved by this Commission."

In January, Alabama Gov. Bob Riley employed a little-known provision of state law to block ExxonMobil Corp.'s proposed LNG terminal on Mobile Bay. He refused to allow ExxonMobil to use the "submerged lands" beneath Mobile Bay that are owned by the state until an independent safety study was conducted. The state claims that the company would need Alabama's permission to build a dock for LNG tankers on the underwater land.

ExxonMobil has yet to submit a permit application to FERC for the proposed terminal. If the company applies, FERC conceivably could consider Riley's action as an attempt to "prohibit or unreasonably delay" the project, based on its new orders.

Asked a general question about LNG permits in Alabama last week, a FERC official said the agency never received a permit application for a terminal in Alabama. The official did not wish to speculate on how the agency would view such an application.

When ExxonMobil announced its LNG project for Mobile Bay last



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summer, FERC, during public meetings, emphasized the importance of community involvement in the permitting process. But FERC's recent orders have led some to question the significance of the role that the public plays in the permitting process. For a terminal under consideration in the Long Beach, Calif., port, both the state and local community groups have been vocal in expressing concerns.

"It makes me wonder why FERC has stakeholder representation as part of the process at all. They came here and told us the public had a say," said Casi Callaway, director of the Mobile Bay Watch environmental group. "I think this is something that every legislator from city council person to federal senator should outright oppose, because if the public doesn't have a say in their own community, what is the purpose of having legislators?"

Asked for comment about the California developments and the House bill, U.S. Rep. Jo Bonner, R-Mobile, responded Friday that LNG safety is an important consideration, and people need the opportunity to comment and "get their questions answered regarding the safety issues."

He said in a statement that the current FERC process "guarantees this opportunity through numerous required public hearings and public comment periods."

"That said, some issues of national interest must be, and are, established as uniform national policies," Bonner said. "I think it is appropriate and responsible that siting of energy facilities remain in this category."

A spokesman for Sen. Shelby, R-Tuscaloosa, said Thursday that the senator "continues to believe that community involvement is an essential part of the siting process for any LNG facility. Communities need to be assured that their citizens and their interests are protected."

Shelby previously expressed concern in letters to several federal agencies that federal officials were misusing science in an effort to site LNG terminals in places such as Mobile Bay.

In addition to the ExxonMobil proposal for a terminal just south of Mobile, Cheniere Energy has proposed a terminal just across the Mobile River from downtown Mobile. Officials with those companies say the proposals are on the back burner, but both companies still hold their land options and could apply for FERC permits at any time.

ConocoPhillips also announced its intention to build an offshore LNG terminal 11 miles south of Dauphin Island.

LNG terminals offload super-cooled, liquefied natural gas shipped from abroad. The gas is warmed, converted back to the familiar vaporous form used at power plants and in home appliances and injected into the nation's natural gas pipeline grid.

Terminals in Trinidad and in Skikda, Algeria, have experienced accidents in the last few months. The Algerian accident killed 27 people and destroyed equipment worth hundreds of millions of dollars.

LNG scientists say the proposals for terminals in populated areas, such as Mobile, pose a number of safety issues related to transporting tremendous quantities of highly flammable natural gas aboard ships.

Of particular concern to scientists is the possibility that terrorists could turn one of the tankers into an enormous fireball. In Boston, terror worries have prompted state officials to suspend all LNG shipments to a terminal in Boston Harbor late next month during the Democratic National Convention.

Shelby's December 2003 letter to federal agencies stemmed from Register reports quoting the author of a government safety study, who said his research was being misused by FERC and the U.S. Department of Energy.

"Recent comments from authors of at least one risk assessment currently in use indicate that this assessment is being used improperly by several government entities. I am troubled by this allegation and believe that the improper use of scientific papers and documents does not provide the government or the community with a proper evaluation of the possible risks resulting from an LNG event," Shelby concluded in the letter.

In response to concerns about the misused study, FERC commissioned another study, released a month ago. The author of that study, conducted by Houston-based ABS Consulting, has acknowledged that his work contains several key flaws.

FERC has already used the ABS study in federal permitting documents for a terminal in Texas.

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