

# LNG Siting in the Coastal Zone under the 2005 Energy Policy Act



## *State Perspectives*

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FERC → LNG ← CZMA

## *Introduction*



Siting decisions for LNG facilities are complex and involve multiple local, state, and federal agencies.

Siting decisions are often controversial for a variety of reasons.

# FERC → LNG ← CZMA

## CURRENT PRACTICES

States have used energy facility siting processes and “federal consistency” review authority under the national Coastal Zone Management Act to

- coordinate reviews,
- resolve complex issues,
- provide for public comment, and
- ensure applicable standards are met before approval.

# FERC → LNG ← CZMA

## CURRENT PRACTICES

- *State coastal energy facility siting processes are required under the CZMA and are approved by NOAA.*
- *States have authority under the CZMA to review all federal actions, licenses, and permits affecting the coastal zone for “consistency” with enforceable policies approved by NOAA as part of the state’s Coastal Management Program.*

FERC → LNG ← CZMA

However:

The 2005 Energy Policy Act Title III, Subtitle B, Sec 311 contains language that relates to review and approval of LNG facilities in the coastal zone.

NOAA's draft interpretation means a significant departure from current practices. States are deeply concerned.

States suggest alternative interpretations that would retain current practices.

FERC → LNG ← CZMA

## ***What does the Act say?***

The 2005 Energy Policy Act (Sec 311(e)(1)) provides the Commission (FERC) with  
*“exclusive authority to approve or deny an application for the siting, construction, expansion or operation of an LNG terminal.”*

# FERC → LNG ← CZMA *the Act*

However:

The previous section (Sec 311(d)) says:

*"Except as specifically provided in this Act, nothing in this Act affects the rights of States under*

- (1) the Coastal Zone Management Act of 1972;*
- (2) the Clean Air Act;*
- (3) the Federal Water Pollution Control Act"*

FERC → LNG ← CZMA  
*the Act*

In addition

(Sec 311(e)(1)) also says:

*"Except as specifically provided in this Act, nothing in this Act is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals."*

# FERC → LNG ← CZMA *the Act*

*"LNG terminal" includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel..."* NOT pipelines.

# Policy Problem

Is state authority under the CZMA “pre-empted” ? What about the explicit exceptions?

**FERC**  
PL 109-58

**CZMA**  
16 U.S.C. 1451

**CAA**  
42 U.S.C. 7401



**Sec. 10**  
33 USC 403  
USACOE Removal/fill

EPA, USCG,  
other federal  
authorities

**WPCA**  
33 U.S.C. 1251

**Sec. 7**  
16 U.S.C. 1531  
ESA Consultation

# CZMA is Unique

- The CZMA is about governance.
- It is a unique state-federal partnership based on national standards implemented by states, rather than federal agencies.
- It emphasizes process (coordination, etc).
- It seeks to balance development with protection of coastal resources.
- States' rights bill.

## State CZMA

# CZMA is Not Simple

### State CZMA programs

- vary widely, are complex, and integrate federal, state, and local regulations (i.e. “enforceable policies”).
- have coordination responsibilities for project review and approvals.
- have a planning process for energy facilities in the coastal zone.

States have “federal consistency” review and approval authority (15 CFR 930) over federal actions or permits, often with complex public review requirements.

EPA air, water issues

Air quality

USACOE Removal/fill

Wetlands

Submerged Lands Proprietary interests

Pipelines

Water Quality

Water Withdrawals

Fish and Wildlife Habitat

ESA Consultation

Local government planning, zoning, development regulations

Transportation

# TO REITERATE

(Sec 311(d)) says:

*"Except as specifically provided in this Act, nothing in this Act affects the rights of States under*

*(1) the Coastal Zone Management Act of 1972;*

*(2) the Clean Air Act;*

*(3) the Federal Water Pollution Control Act"*

# CZMA “Rights”

Under the CZMA, states:

- Adopt and administer plans & regulations to manage coastal development, protect and restore the quality of coastal waters, protect coastal natural resources;
- Apply state “enforceable policies” to review of federal permits, licenses, and activities affecting coastal zone under CZMA authority;
- Apply water quality standards under delegated authority under CWA.
- Provide for public participation in coastal programs and actions.

# *The BJIQ Question*

Did Congress really intend to reduce state CZM and 401 authorities or alter current practices under CZMA?

*"...nothing in this Act is intended to affect the rights of states under the CZMA."*

# ANSWER #1:

## “Yes, reduce state role”

- Accept the apparent “pre-emption” of CZMA:
  - create new FERC process parallel to and coordinated with existing CZMA process;
  - limit state CZM review to policies of general applicability (i.e. related to the “effects” of an LNG terminal, not terminal itself);
  - defer CZMA, 401 approvals for necessary permits to post-FERC siting decision.



# Possible Consequences

- Disconnected CZM and FERC reviews, increased uncertainty for applicants, delayed approvals, and public confusion and opposition;
- Projects approved by FERC would likely be subject to future state consistency review of necessary federal permits and other state approvals (e.g. lease or easements).

*(This is the policy direction currently being taken by NOAA...see Oct '06 letter to New Jersey).*

## ANSWER #2:

“NO. Maintain state CZM role.”

- Accept CZMA “savings clause.”

Support state CZMA, CWA, CAA authority and processes to:

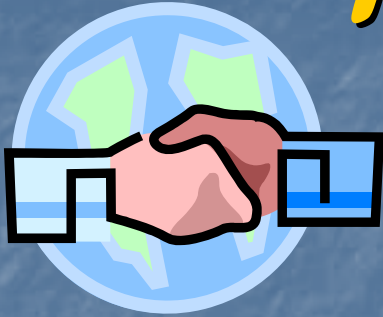
- review and assess all project components;
- coordinate state and federal review of all necessary requirements;
- resolve all issues prior to final application decision by FERC.



# Possible Consequences

- Coordinated review by all agencies through existing (familiar) “consistency” review process;
- Resolution of issues prior to FERC decision via project modification, integrating all components (e.g. pipeline), conditions, etc;
- Increased certainty for applicant re project success after FERC approval;
- Better public acceptance of projects.

# *Resolving the Issue*



States support common sense

- Encourage NOAA OCRM to champion federal program integrity including state CZM authority;
- Respect state sovereignty and authority;
- Use CZM/401 process to integrate and resolve all project components prior to FERC approval of the application;
- Work at region-scale to plan LNG facilities siting.