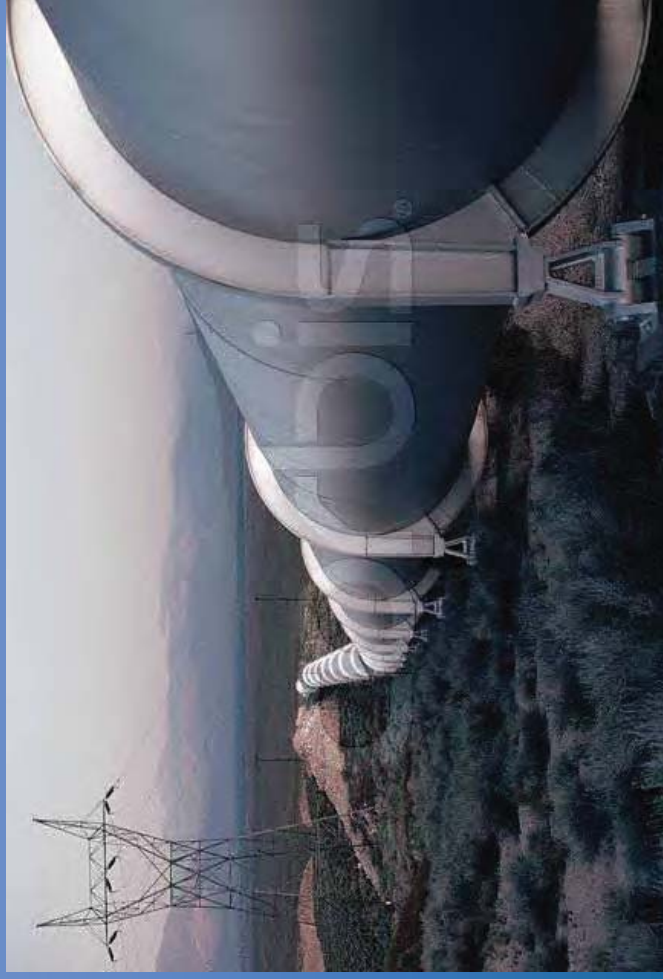


# KEY EPACT05 NATURAL GAS PROVISIONS

## from an Electric Industry Vantage

The Energy Policy Act of 2005:  
A Restructured World for Electric Utilities  
EXNET/Bruder, Gentile & Marcoux, L.L.P.  
September 28, 2005



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## Projected increase in gas-fired generation:

- Subject to some downturns due to higher gas prices, gas share of electricity generation, incl. generation in end-use combined heat & power sectors, is forecast to increase from 16% (2003) to 24% (2025). EIA Annual Energy Outlook 2005



## Gas price transparency (EPAAct05 §316):

- Parallel to new FPA §220 electricity price transparency rules, new NGA §23 gas transparency rules direct FERC to facilitate gas market price transparency for physical sale/transport in interstate commerce
- Implementation, §316. W/o deadline, FERC may prescribe regs for timely dissemination of gas availability/prices for wholesale sales & transports in interstate commerce
- Data obtained from any market participant
- Data provided to FERC, State Commissions, wholesale gas buyers/sellers, & public

## Gas price transparency (EPA Act 05 §316):

continued

- Similar to new FPA §220, FERC may establish “electronic information system” if price transparency of existing price publishers & trade processing services providers is inadequate
- Access to interstate pipeline transportation is not conditioned on price transparency reporting requirements.
- Nor shall producers, processors, or users/entities with de minimis market presence have to comply w/ such requirements

## Gas price transparency (EPAAct05 §316): continued

- Other implementation, §316.  
By Feb 6, 2006, FERC to reach agreement w/ Commodity Futures Trading Commission on coordinating data requests to minimize duplication & treating data proprietary trading data appropriately



## Market manipulation (EPA Act 05 §§315, 318):

- Teeth. Parallel to new FPA §222 electric market manipulation prohibition, new NGA §4A states it is unlawful for any entity to use/employ “manipulative or deceptive device or contrivance” in connection w/ gas purchases/sales, or FERC-jurisdictional transportation services, if FERC rules/regs are contravened
- Term as used in Securities Exchange Act. Supreme Court says, for securities purchases/sales, devices, contrivances or practices intended to mislead investors by artificially affecting market activity are unlawful. *Santa Fe Industries v. Green*, 430 U.S. 462, 471-77 (1977)

## Market manipulation (EPAAct05 §§315, 318):

continued

- Analogy is: unlawful to mislead gas ratepayers by artificially affecting market activity for purchase or sale of gas or FERC-jurisdictional gas transportation services.  
No private right of action is created
- Sharp teeth. New NGA §20(d) states, in FERC enforcement action for injunction, enforcing U.S. District Court can prohibit individuals violating NGA §4A prohibitions on gas market manipulation from acting as interstate pipeline officers or directors, or engaging in energy trader gas purchases/sales or FERC-jurisdictional gas transmission services

## Market manipulation (EPAct05 §1288):

continued

- Similar FPA authority to take away jobs applies, not to FPA §222 electric market manipulation, but to violations of FPA §221 prohibition on reporting false electricity wholesale prices/transmission capacity availability

NOTE: On the day after the EXNET/BG&M conference, Sam E. Fowler, Democratic Chief Counsel, U.S. Senate Committee on Energy and Natural Resources, publicly stated that the above provision was not intended by Congress to apply to FPA Section 221. Instead, he said that the provision was intended to apply to FPA Section 222 on electric market manipulation, which would parallel the EPAct05 changes for the Natural Gas Act. He raised the hope, but not the guarantee, that Congress would issue subsequent technical correction legislation to change the EPAct05 Section 1288 reference from Section 221 to Section 222.

## Market manipulation (EPAAct05 §§314, 315):

continued

- More sharp teeth. NGA/NGPA criminal fines for statute violation up from \$5,000 to \$1,000,000 limit; imprisonment limit up from 2 to 5 years; criminal fines for violating rule, regulation, restriction, condition, order up from \$500 to \$50,000 limit each day offense occurs
- New NGA §22 civil penalty up to \$1,000,000 limit per day per violation, after notice and opportunity for public hearing, for violating NGA or rule, regulation, restriction, condition, order under NGA
- Enforcement Staff need access to technical expertise

## Market manipulation (EPAAct05 §§314, 315):

continued

- No NGA civil penalty for market price transparency violation more than 3 years before person provided notice -- except where seller contracted to transport/sell gas subject to FERC jurisdiction & engaged in fraudulent market manipulation materially affecting contract
- Civil penalties for NGPA violation or rule, order under NGPA increased: max. FERC-assessed penalties increase from \$5,000 to \$1,000,000 & (gas supply emergency purchase/allocation) max. President-assessed penalties increase from \$25,000 to \$1,000,000

## Market-based storage rates (EPAct05 §312):

- New, NGA natural gas company, storage project market-based rates are authorized where unable to show lack of market power. Possibly lowering prices for electric industry customers
- Market power: withhold services to increase price by significant amount for significant time; undue discrimination in price, or terms and conditions. 1996 RM95-6 Policy Statement
- New NGA § 4(f): FERC option to authorize storage/storage-related services under NGA/NGPA
- Such market-based rates now can be in public interest, but only if:

## Market-based storage rates (EPA Act 05 §312):

continued

- Necessary to encourage storage capacity construction in geographic area needing storage
- Reasonable terms & conditions protect customers/consumers (mitigation)
- FERC shall review periodically (j & r, non-discriminatory, non-preferential)



## For Congress: Storage study (EPAAct05 § 1801)

- Energy Secretary Study on Inventory of Petroleum & Natural Gas Storage. By Aug 8, 2006, nationwide & by major geographic regions
- Address historic normal inventory ranges, historic & projected storage capacity trends, estimated operational inventory levels (below which outages, delivery slowdown, rationing, service interruptions, shortage indicators appear), explanations for below normal inventories, ability to meet demand w/o shortages or price spikes w/ below normal inventories
- Findings/ recommendations to prevent supply shortages

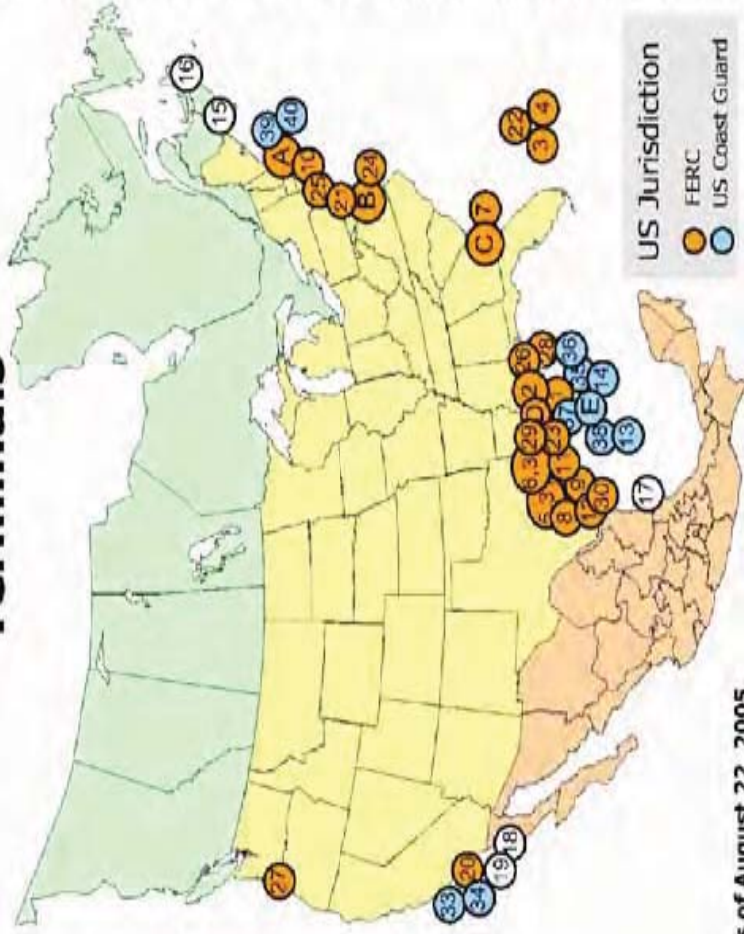
## For Congress: Supply/demand report (EPAct05 § 1818)

- Energy Secretary Natural Gas Supply Shortage Report.  
By Feb 6, 2006, on gas supply/demand
- Purposes include facilitating Clean Air Act national ambient air quality standards, reducing emissions associated w/ electric power generation
- Include analysis of 2004-15, U.S. gas supply/demand affected by Federal policies, encouraging or requiring gas for air quality, CO<sub>2</sub> emission reduction, energy security, use of other or alternative energy sources

from OEP, FERC website, frequently updated :

**FERC**

## Existing and Proposed North American LNG Terminals



As of August 22, 2005

\* US pipeline approved; LNG terminal pending in Bahamas

*Office of Energy Projects*

**CONSTRUCTED**

- A. Everett, MA : 1.035 Bcfd (Tractebel - DOMAC)
- B. Cove Point, MD : 1.0 Bcfd (Dominion - Cove Point LNG)
- C. Elba Island, GA : 0.68 Bcfd (El Paso - Southern LNG)
- D. Lake Charles, LA : 1.0 Bcfd (Southern Union - Trunkline LNG)
- E. Gulf of Mexico: 0.5 Bcfd, (Gulf Gateway Energy Bridge - Exxcelerate Energy)

**APPROVED BY FERC**

- 1. Lake Charles, LA : 1.1 Bcfd (Southern Union - Trunkline LNG)
- 2. Hackberry, LA : 1.5 Bcfd (Semptra Energy)
- 3. Bahamas : 0.84 Bcfd, (AES Ocean Express)\*
- 4. Bahamas : 0.83 Bcfd, (Calypsa Tractebel)\*
- 5. Freeport, TX : 1.5 Bcfd, (Cheniere) / Freeport LNG Dev.)
- 6. Sabine, LA : 2.6 Bcfd (Cheniere LNG)
- 7. Elba Island, GA : 0.54 Bcfd (El Paso - Southern LNG)
- 8. Corpus Christi, TX : 2.6 Bcfd, (Cheniere LNG)
- 9. Corpus Christi, TX : 1.0 Bcfd (Vista Del Sol - ExxonMobil)
- 10. Fall River, MA : 0.8 Bcfd, (Weaver's Cove Energy/Hess LNG)
- 11. Sabine, TX : 1.0 Bcfd (Golden Pass - ExxonMobil)
- 12. Corpus Christi, TX : 1.0 Bcfd (Ingerside Energy - Occidental Energy Ventures)

**APPROVED BY MARAD/COAST GUARD**

- 13. Port Pelican : 1.6 Bcfd, (Chevron Texaco)
- 14. Louisiana Offshore : 1.0 Bcfd (Gulf Landing - Shell)

**CANADIAN APPROVED TERMINALS**

- 15. St. John, NB : 1.0 Bcfd (Canaport - Irving Oil)
- 16. Point Tupper, NS : 1.0 Bcfd (Canaport - Irving Oil)

**MEXICAN APPROVED TERMINALS**

- 17. Altamira, Tamulipas : 0.7 Bcfd, (Shell/Tota/Mitsui)
- 18. Baja California, MX : 1.0 Bcfd, (Samptra)
- 19. Baja California - Offshore : 1.4 Bcfd, (Chevron Texaco)

**PROPOSED TO FERC**

- 20. Long Beach, CA : 0.7 Bcfd, (Mitsubishi/CinocoPhillips - Sound Energy Solutions)
- 21. Logan Township, NJ : 1.2 Bcfd (Crown Landing LNG - BP)
- 22. Bahamas : 0.5 Bcfd, (Seafarar - El Paso/FP, )
- 23. Port Arthur, TX : 1.5 Bcfd (Semptra)
- 24. Cove Point, MD : 0.8 Bcfd (Dominion)
- 25. LI Sound, NY : 1.0 Bcfd (Broadwater Energy - TransCanada/Shell)
- 26. Pascagoula, MS : 1.0 Bcfd (Gulf LNG Energy LLC)
- 27. Bradwood, OR : 1.0 Bcfd (Northern Star LNG - Northern Star Natural Gas LLC)
- 28. Pascagoula, MS : 1.3 Bcfd (Cassette Landing - ChevronTexaco)
- 29. Cameron, LA : 3.3 Bcfd (Creole Trail LNG - Cheniere LNG)
- 30. Port Lavaca, TX : 1.0 Bcfd (Calhoun LNG - Gulf Coast LNG Partners)
- 31. Freeport, TX : 2.5 Bcfd (Cheniere/Freeport LNG Dev. - Expansion)
- 32. Sabine, LA : 1.4 Bcfd (Cheniere LNG - Expansion)

**PROPOSED TO MARAD/COAST GUARD**

- 33. California Offshore: 1.5 Bcfd (Caballo Port - BHP Billiton)
- 34. So. California Offshore : 0.5 Bcfd, (Crystal Energy)
- 35. Louisiana Offshore : 1.0 Bcfd (Main Pass McMoran Exp.)
- 36. Gulf of Mexico: 1.0 Bcfd (Compass Port - CinocoPhillips)
- 37. Gulf of Mexico: 2.8 Bcfd (Pearl Crossing - ExxonMobil)
- 38. Gulf of Mexico: 1.5 Bcfd (Beacon Port Clean Energy Terminal - CinocoPhillips)
- 39. Offshore Boston, MA: 0.4 Bcfd (Magnum LNG - Tractebel)
- 40. Offshore Boston, MA: 0.8 Bcfd (Northeast Gateway - Exxcelerate Energy)

## Import/export (EPA Act 05 §311 (a)-(c)):

- LNG could be 21% of 2025 U.S. natural gas supply (EIA, FERC website)
- NGA §1(b) jurisdiction no longer “Three things and three only...” Panhandle v. PSC Indiana, 332 U.S. at 516 (1947). Now: gas import or export in foreign commerce & persons engaged therein
- What is jurisdictional NGA §2 “LNG terminal”? All onshore or State waters facilities to receive, unload, load, store, transport, gasify, liquefy, process imports/exports or gas transported in interstate commerce by waterborne vessel

## Import/export (EPAAct05 §311 (a)-(c)):

continued

- What isn't? LNG terminal is neither a waterborne vessel delivering gas to/from facility, nor any pipeline or storage facility under NGA §7 jurisdiction (certificate)
- NGA §3 is amended to give FERC exclusive authority for LNG terminal siting, construction, expansion, & operation
- Except as specifically provided, EPAAct05 related to LNG terminals is not intended to affect States' rights or otherwise applicable Federal agency authority/responsibility

## Import/export (EPA05 §311 (a)-(c)):

continued

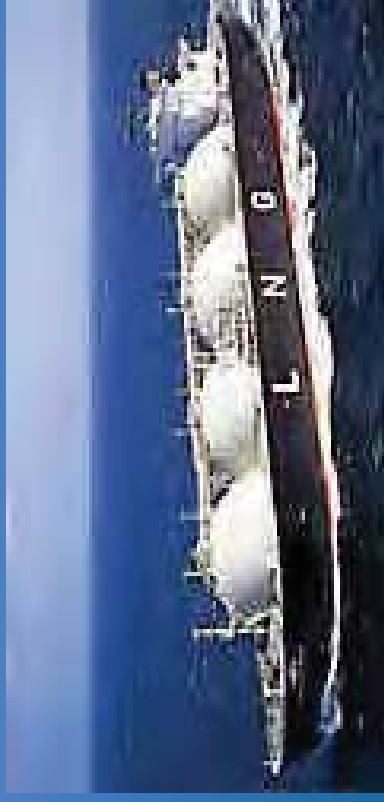
- Until 2015, FERC not to deny an application solely because LNG terminal only or partially used for gas applicant/affiliate supplies; nor to condition an order on LNG terminal offering service to others than applicant/affiliate; or on regulation of LNG terminal rates, charges, terms, or conditions of service, or requirement to file schedules or contracts for same [Hackberry, 101 FERC ¶61,294 (2002)]
- Order for LNG terminal offering open access service is not to discriminate against existing customers (subsidizing expansion capacity)

## State/Local safety (EPA Act 05 §311(d)):

- FERC consults w/ appropriate, Governor- designated, State agency on LNG terminal State/Local safety
- LNG terminal & associated jurisdictional pipeline facilities applicants now must comply w/ previously voluntary pre-filing & review process. Application cannot be filed for 180 days after OEP notice of such process
- Fast implementation, §311(d). New NGA §3A requires NEPA pre-filing process LNG terminal regs by Oct 7, 2005. NOPR Aug 26, 2005 (Sep 14 comments)

## State/Local safety (EPA Act 05 §311(d)): continued

- State agency may file advisory report on safety considerations w/FERC 30 days after application filed. FERC responds before issuing Order
- New: On written notice to FERC, State Commission may inspect safety of operational LNG terminal per Federal regulations/guidelines, & notify FERC of alleged safety violations



## State/Local safety (EPA Act 05 §§ 311(d), 317):

continued

- LNG terminal authorization orders require operator to develop Emergency Response Plan w/ U.S. Coast Guard & State/Local agencies for FERC approval prior to construction
- Implementation, §317. By Aug 8, 2006, Energy, Transportation, Homeland Security Secretaries, FERC, & Coastal States Governors must convene at least 3 forums where LNG facilities under consideration
- Subjects: LNG as supply, siting & permitting, risks & rewards, safety & environmental requirements, LNG hazard strategies

## LNG Legal Coordination (EPAAct05 §313):

- FERC lead agency for NGA §3 export/import & NGA §7 certificate authorization, NEPA compliance. Federal/State agencies cooperate w/ FERC deadlines



## LNG Legal Coordination (EPAAct05 §313):

continued

- FERC maintains consolidated record for all Federal authorizations. PL05-13, Sep. 26, 2005, FERC Policy Statement: applies policy to all pending matters case-by-case; regulations in near future implementing procedures
- Appeals of Federal Agency order/action (other than FERC) or of State Agency acting under Federal law (other than Coastal Zone Mgm't Act) to Federal Circuit where facility is proposed for construction, expansion, operation
- Appeals of alleged delay by such agencies under such laws to D.C. Circuit