MEMORANDUM OF UNDERSTANDING
Between
UNITED STATES ARMY CORPS OF ENGINEERS
And
THE FEDERAL ENERGY REGULATORY COMMISSION
SUPPLEMENTING THE INTERAGENCY AGREEMENT ON EARLY COORDINATION OF REQUIRED ENVIRONMENTAL AND HISTORIC PRESERVATION REVIEWS CONDUCTED IN CONJUNCTION WITH THE ISSUANCE OF AUTHORIZATIONS TO CONSTRUCT AND OPERATE INTERSTATE NATURAL GAS PIPELINES CERTIFICATED BY THE FEDERAL ENERGY REGULATORY COMMISSION

The United States Army Corps of Engineers (Corps) and the Federal Energy Regulatory Commission (FERC), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

1. In May 2002, the Corps and the FERC, along with other federal agencies, implemented the "Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission" (Interagency Agreement), to improve the coordination of environmental reviews under the National Environmental Policy Act of 1969, as amended, (NEPA) for proposed interstate natural gas facilities.

2. The objective of this MOU is to supplement the Interagency Agreement to provide for further streamlining by early involvement and cooperation between the Corps and the FERC to identify project purpose, need, and alternatives that can be used by both the Corps and the FERC in carrying our their respective legal responsibilities to satisfy the requirements of the Natural Gas Act (NGA), NEPA, section 404 of the Clean Water Act (CWA, 33 U.S.C. 1344, 33 CFR Parts 320-331 and 40 CFR 230) and section 10 of the Rivers and Harbors Act of 1899 (RHA, 33 U.S.C. 403).

3. The FERC is responsible for authorizing the construction and operation of interstate natural gas pipelines. FERC issues certificates of public convenience and necessity for such pipelines under section 7 of the NGA of 1938, as amended, and authorizes the construction and siting of facilities for the import or export of natural gas (including liquefied natural gas) under NGA section 3. It also authorizes the construction and operation of natural gas pipelines pursuant to the Natural Gas Policy Act. The FERC conducts environmental, safety, and security reviews of LNG plants and related pipeline facilities, and as the Lead Federal agency prepares the overall NEPA documentation, as described in the Interagency Agreement.

4. The Corps is responsible for the administration of laws for the protection and preservation of waters of the United States, including wetlands, pursuant to section 10 of the RHA and section 404 of the CWA. All work and or structures in or affecting the course, condition, location, or capacity of navigable waters of the United States, and artificial islands, installations, or other devices on the Outer Continental Shelf, require Corps authorization under the RHA. The Corps authorizes, under the CWA, the discharge of dredged or fill material into the waters of the United States, including wetlands. Interstate pipelines and LNG projects normally require one or more permits from the Corps under these statutes.

5. As the lead agency under NEPA responsible for the preparation of the analysis and decisions for the approval of new interstate natural gas and LNG facilities, the FERC is responsible for determining the purpose and need of the project for purposes of the FERC NEPA document and of the FERC authorization process. Although the Corps must exercise its independent judgment while carrying out its regulatory responsibilities, the Corps will give deference, to the maximum extent allowed by law, to the project purpose, project need, and project alternatives that FERC determines to be appropriate for the project. The FERC shall coordinate early with the Corps to ensure that the purpose and need, and the suite of alternatives and evaluation criteria, presented in the NEPA document are usable by the Corps in carrying out the Corps' legal responsibilities under binding statutes and regulations (e.g., conducting the Corps' public interest review, determining the "least environmentally damaging practicable alternative" under the CWA Section 404(b)(1) Guidelines, and fulfilling other applicable legal requirements). If the Corps cannot concur or conditionally concur with the FERC determinations (e.g., the FERC formulation of project purpose, need, and alternatives), the matter shall be resolved pursuant to the dispute resolution process identified in paragraph 8 of this MOU. The FERC and the Corps will work together and will implement their respective legal authorities to ensure that the proposal, with or without modifications, and the selected alternative will mitigate to the maximum extent practicable, any adverse effects on aquatic resources.

6. To further support this MOU, the signatory agencies shall develop additional guidance to ensure that the Corps' permit documentation is prepared concurrently with the NEPA process to the maximum extent practicable. To further support the NEPA process, when FERC provides preliminary draft FERC NEPA documents, the Corps shall review and provide written comments on the relevant portions of those documents, as appropriate in accordance with the timelines established by FERC under the Interagency Agreement. Preliminary draft FERC NEPA documents include advance copies of the purpose, need, and alternatives sections of the FERC NEPA documents, as well as advance copies of the draft and final NEPA documents. Corps reviews of FERC NEPA documents will be completed and coordinated with the FERC as stated in the FERC EIS schedule for that project which shall be no more than 30 days from receipt of the document.

7. As stated in the Interagency Agreement, the FERC and the Corps agree to

communicate early in the review process, coordinate schedules, share data, identify concerns, coordinate requests for additional information, and cooperate in the development of alternate routes and mitigation measures for interstate natural gas and LNG projects. The FERC will notify the appropriate Corps District and Division offices as early as possible of the pending start of the NEPA review of any major pipeline or LNG facility proposal. The FERC and the Corps will consult early in the process to reach agreement on the scope of the purpose, need, and alternatives analysis that will satisfy the Corps' requirements under Section 10 of the RHA and Section 404 of the CWA, including the 404(b)(1) Guidelines. FERC and the Corps agree that the goal of the process is that the Corps would use the FERC record to the maximum extent practicable and as allowed by law, so that the Corps can satisfy the legal requirements of the RHA and CWA as efficiently and expeditiously as possible.

8. Disputes shall be resolved at the lowest level possible. If a dispute cannot be resolved at the working level, including at the Division offices, either party may elevate the dispute to the level of the Assistant Secretary of the Army (Civil Works) and the Director, Office of Energy Projects of FERC, for resolution. If the dispute cannot be resolved within 45 days after elevating the dispute to the Assistant Secretary of the Army and the Director, Office of Energy Projects of FERC, the issue shall be resolved in accordance with the procedures detailed in the Interagency Agreement.

9. This MOU is subject to the requirements of the Interagency Agreement. This MOU supplements, but does not amend or modify the requirements of the Interagency Agreement.

10. Both signatory agencies shall make every effort to ensure continuity of staff representation on a project, as well as participation in meetings and decisions at the appropriate level within their respective agencies.

11. Participation in this MOU does not imply endorsement of a pipeline plan, shore-side facility, or project. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the signatory agencies. The Corps' participation in this process is not equivalent to serving as a cooperating agency, which is a separate process established through a separate formal written agreement with the FERC.

12. This MOU is not a fiscal or funds obligation instrument. Nothing in this MOU will be construed to affect the authorities of the signatory agencies to act as provided by statute or regulation, or to bind the signatory agencies beyond their respective authorities. In addition, nothing in this MOU will be construed to require the signatory agencies to obligate or expend funds in excess of available appropriations.

13. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

John Paul Woodley, Jr.
John Paul Woodley, Jr.
Assistant Secretary
of the Army (Civil Works)

June 30, 2005
Date

Pat Wood, III
Chairman
Federal Energy Regulatory Commission

6/30/05
Date