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June 2, 2008

Ernest W. Hilton, Chair
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: Quoddy Bay LNG, LLC and Quoddy Bay Pipeline, LLC
LNG Terminal and Pipeline
L-23600-26-A-N, L-23600-TG-B-N, A-975-71-A-N, and W-9010-50-A-N

Dear Mr. Hilton:

As you know, I represent the group Robbinston Residents in Support of Downeast LNG (Robbinston Residents), which was an intervenor in the Downeast LNG proceeding before the Board last year. Given their interest in the development of LNG terminals downeast, Robbinston Residents has been following the Quoddy Bay LNG, LLC and Quoddy Bay Pipeline, LLC (collectively, Quoddy Bay) proceedings with interest. Robbinston Residents is very concerned that the continued postponements and the drawn out "pending" nature of Quoddy Bay's Board proceedings will have serious adverse consequences for other LNG developers, for the citizens of Washington County, and for the State of Maine.

For the reasons I will explain more fully below, Robbinston Residents requests that the Board deny, without prejudice, the pending applications filed by Quoddy Bay for approval to construct an LNG terminal and import facility in Perry and pipeline project in Perry, Pembroke, Princeton, Charlotte, Cooper, and Alexander, Washington County, Maine.

I. Procedural Background

On June 11, 2007, Quoddy Bay filed DEP applications for its proposed LNG import terminal and pipeline. By letter dated July 5, 2007, DEP staff found the application complete for processing.

{W1063190.1}

On August 2, 2007 the Board voted to assume jurisdiction over Quoddy Bay's applications. In its First Procedural Order, dated September 20, 2007 (which granted intervenor status to seven parties), the Board scheduled a pre-hearing conference for October 16, 2007.

On October 9, 2007 one week before the scheduled pre-hearing conference Quoddy Bay wrote to the Presiding Officer to request a more deliberative approach to the processing of its DEP applications. Quoddy Bay acknowledged that its applications were not thorough, complete, and ready for processing. *See* letter from Gordon Grimes to Ernest Hilton, Oct. 9, 2007, page 1. Quoddy Bay suggested that the pre-hearing conference should be moved to January 2008 to give it time to prepare a complete application.

By letter dated October 16, 2007, the Presiding Officer granted Quoddy Bay's request to postpone the pre-hearing conference, on the condition that Quoddy Bay keep all parties apprised of the status of Quoddy Bay's state and federal applications, and make available redline versions of any changes to those applications. The Presiding Officer re-scheduled the October 16, 2007 pre-hearing conference until January 23, 2008, more than three months later.

On November 1, 2007 DEP staff sent an additional information request (AIR) to Quoddy Bay, and requested a response by no later than December 14, 2007.

On December 14, 2007, Quoddy Bay again asked for an extension of the processing of its DEP applications, based on Quoddy Bay's assessment of the current status of its project, principally discussions with current suppliers of liquefied natural gas that had the potential to alter the design of Quoddy Bay's project. Quoddy Bay estimated that it could be prepared for a pre-hearing conference in April 2008. Quoddy Bay also stated that it needed additional time before it could file its responses to DEP staff's November 1, 2007 AIR.

By letter dated December 20, 2007, the Presiding Officer granted Quoddy Bay's second postponement request, until April 2008 (another three months), on the condition that Quoddy Bay provide updates on the status of Quoddy Bay's state and federal applications as of January 31, 2008, March 14, 2008, and every six weeks thereafter.

By letter dated January 31, 2008, Quoddy Bay stated that discussions with LNG suppliers remain ongoing and thus the status of the applications has not changed in this regard.

By letter dated March 14, 2008, Quoddy Bay requested a third postponement, this time until June 2008 (two additional months). Quoddy Bay stated that it will need additional time to refine its project before moving it forward with the Board, again primarily because of discussions with LNG suppliers. Quoddy Bay stated that Maritimes and Northeast Pipeline (M&NE) had proposed a new tariff relating to gas quality that has added a new dynamic to the world LNG market.¹ Notwithstanding the possibility that the ongoing discussions with LNG suppliers can yield

¹ By email dated April 29, 2008, Robert Godfrey of Save Passamaquoddy Bay pointed out that M&NE had not, in fact, proposed such a tariff. By email dated April 30, 2008, Quoddy Bay replied that it had acknowledged in its April 3, 2008 letter that the statements in its March 14, 2008 letter concerning the M&NE tariff were erroneous.

changes to the project's design, Quoddy Bay stated that it was confident that the project and its applications as they stand today are complete and are in compliance with current statutes. Quoddy Bay again stated that the current status of the pending applications has not changed at this time, but Quoddy Bay asked for postponement of the pre-hearing conference past April 2008 because of LNG market shifts over the last six months. Quoddy Bay suggested that the pre-hearing conference should be held in June 2008.

The Presiding Officer did not respond to Quoddy Bay's March 14, 2008 letter.

By letter dated April 3, 2008, Quoddy Bay stated that changes that may be made to the M&NE tariff to address gas quality and interchangeability issues . . . cause Quoddy Bay to delay in finalizing some aspects of its facility design.

By letter dated April 29, 2008, Quoddy Bay stated that its discussions with LNG suppliers remained ongoing, and that it is not ready to schedule a June pre-hearing conference, and Quoddy Bay requested a fourth postponement. Quoddy Bay requested that a pre-hearing conference should be scheduled in late September 2008 (three more months). Quoddy Bay stated that it would withdraw and refile its request for water quality certification to reset the one-year deadline for DEP action on Quoddy Bay's certification request. Quoddy Bay acknowledged that its continued delays may prove inconvenient for some of the parties involved in this proceeding, but Quoddy Bay said the delays are needed for a patient effort to fully consider the LNG supply issues and their resulting impact on design.

In its April 29, 2008 letter Quoddy also noted that it had received a letter from FERC, dated April 25, 2008, stating that FERC was suspending its review of Quoddy Bay's FERC applications because of incomplete responses to FERC staff's data requests.

By letter dated April 30, 2008, the Presiding Officer again granted Quoddy Bay's request for a postponement, until September 2008. The Presiding Officer stated that withdrawal and refiling of Quoddy Bay's request for water quality certification should be completed by the end of June 2008.

In short, Quoddy Bay has requested four postponements of this process, totaling almost one year (from October 16, 2007 to late September 2008). By the time of a first pre-hearing conference in late September (if that actually happens), Quoddy Bay's applications will have been pending for more than 15 months.

II. Argument

Quoddy Bay's repeated requests for postponements are an abuse of the BEP hearing process that is unfair to the parties and the public, and could prejudice a fair review of Quoddy Bay's applications and other applications pending before the DEP. It is clear that Quoddy Bay has no idea what its proposal ultimately will look like, and that Quoddy Bay is simply stalling to bide time. This stalling requires the parties and the interested public, as well as the DEP staff and other state resource agencies, to devote resources to a project that may never proceed. The suspension of

FERC's review of Quoddy Bay's application is further demonstration of this problem.

The Board should deny Quoddy Bay's applications, without prejudice, for the following reasons:

Fairness. It is unfair to the parties and the interested public, and to the other state agencies, to have to spend resources to monitor this process to ensure they are not prejudiced. For example, as noted in item #2 below, it appears that the State inadvertently may waive water quality certification because of these continued delays, and no one would have caught that problem if Robbinston Residents had not been monitoring this process. State agencies including DEP, the Department of Marine Resources, and the Department of Inland Fisheries and Wildlife have limited resources, and the pendency of the Quoddy Bay applications detracts from directing those resources to reviewing other proposals. This means that other applicants suffer, because there are fewer agency resources available for those other projects.

Potential Prejudice. The Presiding Officer's April 30, 2008, letter stated that withdrawal and refile of Quoddy Bay's request for water quality certification should be completed by the end of June 2008. Quoddy Bay's applications were filed with the DEP on June 11, 2007. According to Clean Water Act Section 401, 33 U.S.C. § 1341(a), a state waives water quality certification if it does not act within one year after receipt of the certification request. Thus, although the DEP accepted Quoddy Bay's applications as complete for processing on July 5, 2007, Quoddy Bay's withdrawal and refile must be completed by June 10, 2008 not the end of June to avoid waiver. To avoid this problem and similar potential risks (such as CZMA waiver) associated with continuing delays, the Board should simply deny the Quoddy Bay applications without prejudice to Quoddy Bay's right to refile when its applications are ready.

Failure to Provide Required Information. Although an application may be accepted as complete for processing if information is provided for each of the items required by the application forms, the DEP may request additional information during the processing of the application, and [a] determination that an application is accepted as complete for processing . . . does not preclude the Department from . . . denying the application for failure to provide information necessary for the processing of that application. *See* DEP Reg. ch. 2, § 11(B). It is clear from the DEP staff's voluminous November 1, 2007 AIR that DEP staff believes Quoddy Bay has failed to provide information necessary for the processing of the Quoddy Bay applications. Although DEP staff gave Quoddy Bay six weeks to provide the requested information, Quoddy Bay still has not provided it over six months later. Quoddy Bay has failed even to indicate what, if any, work is being done to provide the requested information. Even considering Quoddy Bay's reasons for delay of the Board proceedings (uncertainty of facility design because of uncertainty of the LNG supplier), Quoddy Bay could have responded long ago to the vast majority of DEP staff's November 1, 2007 AIR. This failure alone means that the Quoddy Bay application should be denied, without prejudice.

Effect of New Laws. The longer the Quoddy Bay application is pending, the more likely it is that Quoddy Bay will be able to avoid changes to laws that may otherwise apply to require improvements to the project. According to 1 M.R.S.A. § 302, proceedings that are pending at the

time of changes to state laws are not affected by the changes, unless the new law expressly provides that it applies. This proceeding is pending for purposes of Section 302 because DEP staff has conducted a substantive review of the Quoddy Bay application (in preparing the Nov. 1, 2007 AIR, and possibly earlier than that). Although we are unaware of statutory changes that would affect the Quoddy Bay application (but for Section 302), it would be bad policy to allow Quoddy Bay to continue to delay their application, given the potential risk presented by Section 302.

III. Conclusion

For all of the foregoing reasons, Robbinston Residents respectfully requests that the Board deny the Quoddy Bay applications, without prejudice.

Sincerely,

Clifford H. Goodall

cc: Quoddy Bay Service List (attached)
Robbinston Residents in support of DownEast LNG