



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

QUODDY BAY LNG,	)	Notice of Docketing and
Appellant,	)	Order Setting Briefing Schedule
	)	
v.	)	
	)	Docket No. IBIA 10-138
ACTING EASTERN REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	November 1, 2010

Quoddy Bay LNG (Appellant) seeks review of a July 29, 2010, decision of the Acting Eastern Regional Director (Regional Director), Bureau of Indian Affairs, denying a request for reconsideration by Appellant of the Regional Director's earlier April 23, 2010, decision. In his April 23 decision, the Regional Director notified Quoddy Bay of the cancellation of its lease of trust land on the Pleasant Point Reservation.

The Board received the administrative record in this matter on October 25, 2010, including a table of contents for the record. A copy of the table of contents is enclosed for the benefit of the parties. The administrative record in this case is available for inspection at the Board's office and also in the office of the Regional Director. The Board is not able to handle large-volume copying requests. Therefore, if a party desires to obtain copies of documents in the administrative record, and the volume of the documents sought exceeds 100 pages, the Board requests that the party make arrangements with the Regional Director to obtain the desired copies.

## Notice of Docketing

Pursuant to 43 C.F.R. § 4.336, on September 20, 2010, the appeal was assigned the above case name and docket number, which should be cited in all future correspondence or inquiries regarding the matter.

Regulations governing appeals to the Board are found in 43 C.F.R. Part 4. A copy of these regulations was mailed to non-Federal parties with the Board's September 24, 2010, pre-docketing notice.

## Order Setting Briefing Schedule

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). Parties who choose to serve and file by U.S. mail may use regular first-class mail; they do not need to use certified mail unless they wish to do so for their own record keeping purposes. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will **not** accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

In accordance with 43 C.F.R. § 4.311(e), Appellant's opening brief is due on or before December 13, 2010. The filing of an opening brief is not required under the Board's regulations, and Appellant may choose to rely upon the allegations of error, if any, contained in the notice of appeal or any other filings that already have been submitted to the Board. Appellant is advised, however, that it bears the burden of proving error in the decision being appealed, i.e., the Regional Director's decision denying reconsideration.<sup>1</sup>

If Appellant chooses not to file an opening brief, it should file a statement to that effect, with copies to other parties as described above.

Opposing parties or their counsel may file an answer(s) within 30 days from receipt of Appellant's opening brief or statement. If no opening brief or statement is filed, opposing parties may file a brief(s) within 30 days from the date Appellant's opening brief or statement was due. Appellant shall have 15 days from receipt of any answer brief(s) in which to file a reply brief.

If any party wishes to, it may include with the paper copy of its filing an electronic copy of that filing on a diskette or CD-ROM in either Corel WordPerfect® or Microsoft Word® format.

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<sup>1</sup> The Board has no record of receiving a timely appeal from Appellant in response to the Regional Director's April 23 decision for which reason the merits of that decision are not before the Board.

The Board's Internet website, containing a free, searchable database of its decisions, is located at [www.oha.doi.gov](http://www.oha.doi.gov). The Board's decisions are also available on the for-fee websites of WestLaw and Lexis-Nexis. There may be some delay in providing Board decisions to the operators of these sites, but they are relatively current.


### **Alternative Dispute Resolution**

The parties are advised that the Board strongly encourages the voluntary resolution of disputes brought before it. Such resolutions might take the form of traditional settlement discussions, or might involve the use of some form of alternative dispute resolution (ADR), such as mediation.

If the parties wish to discuss the possibility of settling this dispute or engaging in ADR, they should so inform the Board. Upon receiving such notification, the Board may stay further proceedings before it while the parties are exploring other possibilities.

If the parties would like to use mediation or another form of ADR, but have questions about the process, would like assistance in locating a neutral, or have other concerns, they may contact the Department's Office of Collaborative Action and Dispute Resolution (CADR) at 202-327-5383. CADR does not normally provide neutrals, but can answer questions about ADR processes and assist parties in locating a mutually acceptable neutral.

The parties are also advised that the Board reviews all appeals, usually on several occasions, to determine whether it believes that the parties might benefit from the use of ADR. If it believes that the parties might benefit from the use of ADR, the Board may order them to participate in an assessment conference to determine whether ADR is likely to be successful. The Board will not, however, order the parties to mediation or any other form of ADR over their objections.

  
Debora G. Luther  
Administrative Judge

Enclosure

Distribution: See attached list.

## TABLE OF CONTENTS

- (1) Copy of ground lease between Pleasant Point Passamaquoddy Reservation, as Landlord, and Quoddy Bay, LLC, as Tenant, approved June 1, 2005.
- (2) Letter dated April 23, 2010, with enclosure, from Franklin Keel, Director, Eastern Region, to Donald M. Smith, President, Quoddy Bay, LLC, and Gordon F. Grimes, Esq., canceling the ground lease dated June 1, 2005, between Pleasant Point Passamaquoddy Reservation, Landlord, and Quoddy Bay, LLC, Tenant.
- (3) Letter dated April 28, 2010, with enclosure, from Donald M. Smith, President, Quoddy Bay, LLC, to Scott Meneely, Acting Director, Eastern Region, requesting reconsideration of the April 23, 2010, Notice of Lease Cancellation or, if declined, considering the request as its Notice of Appeal.
- (4) Letter dated May 13, 2010, from Franklin Keel, Director, Eastern Region, to Donald M. Smith, President, Quoddy Bay, LLC, advising that the Region had no record of the receipt of the March 5, 2010.
- (5) Letter dated April 19, 2010, received May 21, 2010, from Donald M. Smith, President, Quoddy Bay, LLC, to Scott Meneely, Acting Director, Eastern Region, confirming the April 28, 2010, as its Notice of Appeal.
- (6) Copy of May 25, 2010, e-mail from Linda Novak, Executive Assistant to Don Smith, to Sarah Thomas transmitting letter dated May 19, 2010, to replace letter dated April 19, 2010, to Scott Meneely, Acting Director, Eastern Region, confirming the letter of April 28, 2010, as its Notice of Appeal.
- (7) Declaration of Randall Trickey, Realty Officer, Eastern Region, dated July 29, 2010, with exhibits, recounting search effort to verify filing of March 5, 2010, letter with the Eastern Regional Office.
- (8) Letter dated July 29, 2010, with enclosures from Dean White, Acting Director, Eastern Region, to Donald M. Smith, President, Quoddy Bay, LLC, and Gordon F. Grimes, Esq., denying Quoddy Bay's request for reconsideration of the Director's April 23, 2010, lease cancellation.

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