CONSERVATION LAW FOUNDATION

December 6, 2010

Susan Lessard, Chair
c/o Terry Dawson
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330-0017

Re: Calais LNG and Calais Pipeline

Dear Chair Lessard:

The failure of the Calais LNG Project Company, LLC (CLNG) to maintain title, right or interest (TRI) in a substantial portion of the property proposed for development of an industrial LNG facility requires that the Board return the application to CLNG. And the recent acquisition by North East Energy Development, LLC of the interests of GS Power Holdings in CLNG does nothing to change that requirement.

Simply put, CLF and the Sierra Club are in full agreement with the unequivocal statement in your letter of November 19, 2010, that "title, right or interest (TRI) is a threshold criterion for processing of an application. Specifically, in accordance with Chapter 2, section 11(D) of the Department's rules: 'An applicant must maintain sufficient title, right or interest throughout the entire application processing record.'" Failure to maintain title, right or interest in the property proposed for development or use in an application during the processing period compels the withdrawal of that application.

Such a conclusion is entirely consistent with the logic underlying your previous decision concerning whether the lack of financial capacity compels withdrawal of an application. As you stated in an August 12, 2010 letter to Mr. Van Slyke, the Site Law's "financial capacity standard (38 M.R.S.A. § 484(1)) is not a threshold requirement that must be met for the processing of an application. Therefore, lack of financial capacity at this point does not legally compel withdrawal of the application." (August 12, 2010 letter attached) The inverse is now true - as a "threshold criterion" for continued processing of CLNG's applications, the failure to maintain title, right or interest legally compels withdrawal.

The circumstances of this permit proceeding also compel return of CLNG's applications for the following reasons:

First, CLNG's failure to disclose its lack of TRI to the Board and the parties to this proceeding at the meeting of counsel on September 15 is inexcusable, particularly given the previous focus on that issue before the Board. While you specifically directed CLNG to notify the Board if it

suspended efforts to secure financing in your September 16, 2010 letter to Mr. Van Slyke, it should not have required a similar directive if CLNG had suspended efforts to maintain TRI. This is particularly the case given the focus on the issue of TRI not only in this proceeding but also in the Downeast LNG proceeding in 2007, a proceeding in which the principals of CLNG actively participated.

Second, it is important to recall that the current extension of time with regard to the processing of CLNG's applications is due to CLNG's loss of the financial backing of its managing member, GS Power Holdings, and its purported inability to conduct the additional work necessary to respond to outstanding requests for information by the Department and other reviewing agencies. But after 4 ½ months of delay, we are now informed that the interests of GS Power Holdings have been acquired by North East Energy Development, LLC (NEED), which just happens to be the only other "member" of CLNG. *See* December 2, 2010 letter from Harold Emery (attached).

To understand what a cynical shell game this is, recall that CLNG's entire showing of financial capacity rested on the presence of GS Power Holdings as the managing member of CLNG. *See* Section 3 of CLNG Site Law application (attached). The only other member of CLNG is NEED, whose managers according to documents filed with the Maine Secretary of State are Arthur Gelber, Harold Ian Emery and Carl Meyers, 3 of the 4 people on the Calais LNG website described as the team but none of whom have ever been represented as having the financial capacity necessary for an energy project estimated to cost between $900M and $1B.[1] The decision by GS Power Holdings to withdraw left the project without the resources to complete its application never mind construct such a project. Nothing about that financial scenario has changed by virtue of NEED's new role, apparently as both managing member and limited member of CLNG.

Not only does this new "development" not change the financial capacity picture but the outcome isn't even close to the specific representation by CLNG's attorney that served as the basis for the decision to allow a fourth extension in time for processing CLNG's applications. In a letter dated September 13, 2010, Mr. Van Slyke represented that CLNG had limited its negotiations to two entities - one with "access to a very significant natural gas supply…currently applying a vertically integrated business approach (gas supply, liquefaction capacity, shipping capacity and receiving terminal capacity) to the worldwide LNG market. The other entity [with] considerable expertise in the global commodity markets and a keen interest in energy sources that promote clean energy . . ." *See* September 13, 2010 letter from David Van Slyke (attached). With absolutely no information as to how NEED will be able to provide the financial capacity that GS Power Holdings allegedly provided, the only thing definitive is that NEED does not even remotely resemble the companies the Board and parties were led to believe would be replacing GS Power Holdings. It doesn't take a financial wizard to realize that GS Power Holdings hasn't been replaced – it just couldn't find an independent third party to buy its interest and so NEED had no alternative but to "acquire" those interests.

Third, it is difficult to understand why CLNG needs any time to meet the threshold criterion of TRI. As set forth in its Site Law application, the option agreement with Mr. and Mrs. Carothers,

[1] Indeed, in Mr. Gelber's pre-filed testimony he states that the final piece of the puzzle for the CLNG project team was to find a long term financial backer and they selected, "[a]fter contacting and presenting our plan to entities across the country,Goldman Sachs."

was initially negotiated and held by NEED in 2006 and had provisions for extensions through August 31, 2011. Other than a representation that negotiations with the Carothers have been on-going since *prior* to the option's expiration in what CLNG describes as an effort to "more appropriately reflect the current economic climate," there is no indication whatsoever that efforts to obtain TRI will bear fruit. *See* November 23, 2010 letter from David Van Slyke (attached).

Fourth, the suggestion that the requirement that the "applicant must maintain title, right or interest throughout the entire application processing period" is not technically applicable here because the applications are not presently being processed and are on hold is nothing more than an artful dodge. In granting the initial request to postpone the hearings in this matter, you wrote that "the Board expects Calais LNG to take the necessary steps now and on an ongoing basis at both the state and federal level to ensure that the Board's *processing time is extended* for a period of time at least equal to the amount of time the public hearing process is postponed." *See* July 14, 2010 letter from Susan Lessard (attached). When CLNG sought relief from its self-imposed deadline of August 11, 2010, it requested that the BEP "grant an additional extension of time with regard to the processing of its applications." *See* September 13, 2010 Van Slyke letter. While various parties may have casually characterized these extensions as a "hold" or "postponement", the idea that somehow granting these extensions of time somehow allowed CLNG a technical exemption from the requirement to maintain title, right or interest is belied by the requests from the applicant itself, never mind common sense.

Finally, the unaddressed and significant changes and/or outstanding information requests associated with this project logically necessitate that these applications should go back to the beginning. Much of the baseline data prepared for the application can still be used but significant revisions to the prefiled testimony will be necessary to account for changes in financial capacity and the new information requested by agencies as well as changed market conditions, project need, navigation issues and water quality issues associated with Passamaquoddy Bay and the St. Croix River.

As Chair, you have given this applicant more than a fair opportunity to get its house in order. The applicant has responded by asking for more while at the same time deliberately hiding facts that bear directly on the Board's continued jurisdiction to process this application. The law and fairness to all the other parties to this proceeding now compel that CLNG's applications be returned and re-filed if and when the applicant can meet the relevant threshold criteria and the outstanding requests from agencies.

Very truly yours,

Sean Mahoney
Vice President and Director
Conservation Law Foundation
Maine Advocacy Center

cc: Service List