

Prior Rulings by Chair Lessard

- July 14, 2010
- August 12, 2010
- September 16, 2010



STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

SUSAN M. LESSARD

CHAIR

CYNTHIA S. BERTOCCI

EXECUTIVE ANALYST

TERRY A. HANSON

ADMIN. ASSISTANT

343

JOHN ELIAS BALDACCI

GOVERNOR

July 14, 2010

David Van Slyke, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

Re: Calais LNG Project Company, LLC and Calais Pipeline Company, LLC

Dear Mr. Van Slyke:

I am in receipt of your letter of July 13, 2010 requesting postponement of the public hearing on Calais LNG's pending applications for a liquefied natural gas import terminal and pipeline project in Washington County that is scheduled for July 19-23, 2010. It is my understanding that Calais LNG seeks postponement because certain information relevant to the applications has not yet been provided to the Department. I have also considered the comments from the intervenors both in support of and in opposition to a postponement.

As an initial matter, I am surprised that this problem has only now been brought to my attention. The Board, its staff, and the parties have worked diligently over the past four months to prepare for a public hearing on this application in the ambitious timeframe requested by Calais LNG, and to learn at this late date that the applicant is not ready to proceed because it has not yet submitted certain relevant information is disappointing. Calais LNG bears the burden of demonstrating that its proposed project meets the licensing criteria.

Postponement at this point in the proceeding comes at a considerable cost in time and resources to the Board and the other parties. However, since information needed for the Board to make a fully informed decision on the application is apparently lacking, I have reluctantly concluded that the hearing should be postponed.

It is imperative that the Board's ability to review the application under all applicable laws not be compromised by this postponement of the hearing. Therefore, as represented in the July 14, 2010 letter from you on behalf of Calais LNG, 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. This will include a procedural withdrawal and re-filing of the request for a Water Quality Certification and the signing of an agreement to stay the request for a Consistency Determination pursuant to the Coastal Zone Management Act to allow adequate time frames for state decision-making. Specifically, the Board's understanding is that Calais LNG will sign an agreement to stay the time period for the State's Consistency Review of this project under §307 of the Coastal Zone Management Act for a period of time beyond

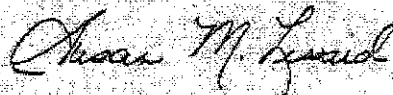


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January 1, 2011 at least equal to the number of days of the hearing postponement and that the time period for a decision on a Water Quality Certification under § 401 of the Clean Water Act will be extended to that same time frame.

I will call a conference of counsel in the near future to discuss re-scheduling the public hearing on the Calais LNG applications, the parties' requests for the applicant's payment of their lost deposits, and other issues created by the postponement.

Sincerely,



Susan M. Lessard, Chair
Board of Environmental Protection

cc: Service List



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345
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August 12, 2010

David Van Slyke, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

Re: Calais LNG Project Company, LLC and Calais Pipeline Company, LLC

Dear Mr. Van Slyke:

I am in receipt of your letter of August 9, 2010 regarding Calais, LNG's efforts to obtain new financing for the company's proposal to construct a liquefied natural gas import terminal and pipeline project in Washington County. In your letter you request an extension from your previously stated deadline of August 11, 2010 until September 11, 2010 to secure new financing for the project.

I have received letters dated August 10, 2010 from intervenors Save Passamaquoddy Bay / Nulankeyutomonen Nkihtahkomikumon, Conservation Law Foundation, and Roosevelt Campobello International Park Commission in opposition to the requested extension arguing that further postponement is prejudicial to the other parties. They argue that Calais, LNG should withdraw its applications.

In considering your request, I note that the financial capacity standard in the Site Location of Development Law (38 M.R.S.A. § 484(1)) is not a threshold requirement that must be met for processing of an application. Rather, it is a licensing criterion for which evidence is supplied during the licensing process and in fact a permit may be granted with a condition that a final demonstration of financial capacity be made prior to construction. Therefore, lack of financial capacity at this point does not legally compel withdrawal of the application.

I am sensitive to the difficulties a further delay in this proceeding creates for the other parties. Because the application has been put on hold, at some point the information in the applications may become outdated and withdrawal may be appropriate. However, given the nature and complexity of the proposed project and the fact that the burden of proof is on the applicant for compliance, the current request to keep the application on hold for a limited time period is granted. The conference of counsel scheduled for September 8, 2010 will remain scheduled in recognition of the fact that the financing issue may be resolved prior to that date. If that is not the case, notification will be made to all parties of a date change.

Sincerely,

Susan M. Lessard, Chair

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346



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347

September 16, 2010

David Van Slyke, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

Re: Calais LNG Project Company, LLC and Calais Pipeline Company, LLC

Dear Mr. Van Slyke:

I am responding to your letter of September 13, 2010 regarding Calais LNG's efforts to obtain new financing for the company's proposal to construct a liquefied natural gas import terminal and pipeline project in Washington County. In your letter you state that GS Power Holdings LLC is in serious discussions with two entities and you request an additional 30 days to complete those efforts.

At a conference of counsel and representatives of the parties on September 15, 2010,¹ the parties were given an opportunity to comment in support of, or in opposition to, further postponement of the Calais LNG application proceeding and the impact of any such postponement on their clients or the process as a whole. Among the concerns expressed by some parties, and by me on behalf of the Board and Department staff, was the need for greater certainty regarding the schedule. Parties also enumerated a number of issues associated with further postponement of the proceeding including the continued availability of witnesses, the possible need to amend previously filed testimony, and the possibility that parties will need to retain additional or alternate witnesses to review and respond to new application materials. Parties expressed concern that they be given adequate time to review and respond to Calais LNG's additional submissions if and when processing of the applications resumes. Some parties stated their view that the applicant should withdraw the applications without prejudice and resubmit the applications when all outstanding items have been addressed. Supporters of the project stressed the importance of the project to the State and the complexity of negotiating financial backing for a project of this scale, and urged that the requested time extension be granted.

¹ Party representatives in attendance at the conference were: David Van Slyke for Calais LNG, Sean Mahoney for CLF, Ron Shems for SPB/NN, Harold Bailey for Roosevelt Campobello International Park Commission, John Napolitano for Maine Workers for a Healthier Environment, Anthony Buxton for Industrial Energy Consumer Group and Maine State Chamber of Commerce, Matthew Manahan for Downeast LNG; and representatives participating via conference call: Rebecca Boucher for SPB/NN, Becky Bartovics for Sierra Club, John Kelly for the National Park Service, Edmond Bearor for Professional Mariners and Citizens for Clean and Secure Energy, and David Fletcher for City of Calais.

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348

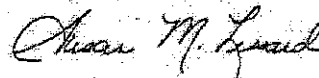
In response to questions regarding the status of financing negotiations and the status of outstanding information requests, you stated on behalf of Calais LNG that an additional thirty days, or until mid-October, is a "relatively" reasonable estimate of the time needed to secure new financial backers for the project. You further stated that Calais LNG would likely require an additional 6 weeks beyond that date, or until the end of November, to supply the technical information previously requested by the Department. Based on these representations, it is my understanding that processing of the applications could not resume until the end of November 2010 at the earliest.

I have carefully considered Calais LNG's request and the comments of the other parties. In light of the significance of this project in terms of scope, complexity, and cost, as well as the time spent and expenses incurred by the parties and the Department thus far in the processing of the pending applications, it is reasonable to allow the applicant the requested time to complete re-financing negotiations and provide the information required by the Department without withdrawal of the applications. Accordingly, the Board will place processing of the applications on hold until December 1, 2010, at which time the Board will re-evaluate the status of the applications. The December 1st date reflects Calais LNG's estimate of a realistic time frame for submission of the outstanding information. This date should also enable the other parties to plan their schedules this fall with greater certainty.

Notwithstanding that processing of the applications has been placed on hold until December 1, 2010, Calais LNG shall notify the Board as soon as it secures new financing for the project or if it suspends efforts to secure financing. Assuming Calais LNG secures financing and proceeds with the project, Calais LNG is asked to submit the requested technical information as soon as possible so that a schedule can be re-established for processing of the applications. Parties will be given ample opportunity to review any new submissions and amend their previously filed testimony before a hearing is held on the applications.

If there are any questions regarding this ruling, please contact Peggy Bensinger, Assistant Attorney General, at 626-8578 or Cynthia Bertocci, Board Executive Analyst, at 287-2542.

Sincerely,



Susan M. Lessard, Chair

cc: Service List