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January 3, 2006

Margalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Docket No. PF06-11-000

Dear Ms. Salas,

This is in response to a recent letter you received from a Robert Godfrey by an "e-filing" on December 22, 2005 seeking to "intervene" regarding Quoddy Bay LLC's pre-filing process application to construct LNG import facilities at Split Rock on the Pleasant Point Passamaquoddy Reservation in Maine.

In his letter, Mr. Godfrey asks that FERC reject the pre-filing request, alleging that with regard to the approval given by the Bureau of Indian Affairs ("BIA") to Quoddy Bay's Ground Lease covering part of its proposed site for its LNG facility, FERC should not consider that Quoddy Bay has sufficient access to the site for the pre-filing process to proceed. Mr. Godfrey's allegation is based on there being a lawsuit pending against the BIA and the Department of the Interior disputing the lease approval given by the BIA.

This request should be rejected. The pre-filing process requires that Quoddy Bay inform the Commission of the "availability of the proposed site." 18 CFR § 157.21 (d)(2). It has done this. Quoddy Bay has a Ground Lease from the designated representative (the Pleasant Point Reservation) of the owner of the property (the Passamaquoddy Tribe), and such lease has been approved by the Secretary of the Interior acting through the BIA as required for this Indian Reservation land. See 25 USC § 1724(g)(3). There does not appear to be any requirement in the pre-filing regulations that no legal action be pending

challenging the interest of the applicant in the proposed site prior to the initiation of the process.¹

While Mr. Godfrey is correct that a suit was filed in the fall of 2005 by an unincorporated group calling itself NULANKEYUTMONEN NKIHTAQMIKON, and six private individuals, no action has occurred in that suit to lend any credibility to the accusations made in the complaint and repeated by Mr. Godfrey in his letter. Neither Quoddy Bay nor the Pleasant Point Reservation (the Tenant and Landlord respectively under the lease for the Split Rock Site), have either been named or joined in this suit. The suit is a collateral attack on a final and binding decision of the BIA. It can not be an appeal of the decision to approve the Ground Lease, since Quoddy Bay views that the time for filing an appeal expired prior to the suit being filed. No action was taken by the plaintiffs in this suit to follow the proper procedure for appeals within the BIA, notwithstanding their knowledge of the approval of the lease in early July. The time for any such appeal expired in early August 2005 and this suit, filed months later, appears to be an attempt to circumvent the proper procedure for questioning a BIA approval. 25 CFR § 2.6 (b) ("Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal [30days] has expired and no notice of appeal has been filed.")

The suit appears to be barred by a failure to exhaust administrative remedies. Additionally, we think that the suit is premature since the nature of its challenge to the lease approval appears to be the BIA's failure to undertake independent investigations into the very issues which will be explored in the FERC pre-filing and license application processes. The BIA approval deferred consideration on environmental and other matters, since it knew that the FERC would be the "lead" agency in any application for permission to construct an LNG import and storage facility. The BIA approval expressly noted that an Environmental Impact Statement would be prepared as part of the FERC process and "The BIA will be a Cooperating Agency for the EIS development through FERC." See attached Categorical Exclusion. The final approval of the lease was made expressly "contingent upon FERC permit approval, acceptability of the EIS analysis and insignificant impact on the leased property." Thus the alleged failures of the BIA were in fact merely a proper deferral of federal decision making consistent with designation of FERC as the lead agency.²

We note that FERC does not usually reject applications because matters are pending in other arenas that may impact the proposed project. For example, in *Weaver's Cove*,³ the FERC declined to delay a certificate even though a request for a change in U.S. Department Of Transportation ("USDOT") rules relating to LNG waterway safety, was pending at the USDOT.

¹ If that were a criteria for the pre-filing process to proceed, any "not in my backyard" interest group could file spurious suits and defeat or delay any applicant for an LNG project.

² See *Coordinated Processing of NGA Section 3 and Section 7 Proceedings*, Order Delegating Authority, 113 FERC ¶ 61,170 (2005). See also *Utah v. U.S. Dept. of the Interior*, 210 F.3rd 1193(10th Cir. 2000).


³ *Weaver's Cove Energy, LLC*, 112 FERC ¶ 61,070 at PP 37 & 38 (2005).

Finally it is not clear if Mr. Godfrey is seeking to "intervene" as a private individual, as some undesignated representative of an organization named either "Save Passamaquoddy Bay 3-Nation Alliance" or simply "Save Passamaquoddy Bay," or on behalf of something called "Old Sow Publishing." It is important to the integrity of the Commission's process that Mr. Godfrey clearly identify and disclose the exact name(s) and form(s) of organization he is allegedly representing and that he provides evidence that he is authorized in this regard to act for it or them.

Quoddy Bay therefore requests that Mr. Godfrey's purported intervention/request for rejection be treated as any other comment is normally handled in FERC's pre-filing process and simply be incorporated into the record and dealt with as part of the pre-filing and EIS processes. In other pre-filing cases, the FERC has dealt with protests and purported interventions as comments to the pre-filing process.⁴ Quoddy Bay intends to include Mr. Godfrey and the organizations he may represent in its Public Participation Plan (18 CFR §157.21 (d)(11)) and notes that FERC has added Mr. Godfrey to its service list for this pre-filing process.

In sum, Mr. Godfrey's request is unfounded, unsupported, and premature at best. Indeed the concept of the pre-filing process is to involve individuals such as Mr. Godfrey, and the organizations he may represent, in discussions regarding the proposed application. If there is an alleged defect on the Ground Lease which might prevent the filing of an application, it can be brought out as part of the pre-filing sessions. However, Quoddy Bay does not believe any such defect exists. We request that the Commission proceed with the pre-filing process.

Respectfully submitted,


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⁴ See *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,115 at P 20 (2005) and *Greenbrier Pipeline Co., LLC*, 104 FERC ¶ 61,145 at PP 48 and 54 (2003).

Categorical Exclusion Checklist

CONFIDENTIAL

Passamaquoddy
Pleasant Point Reservation
Project: Quoddy Bay LNG Lease

Date: 6/1/2005

Nature of Action: Federal approval is being provided to lease trust property on the Passamaquoddy Pleasant Point Reservation to Quoddy Bay, LLC for site investigation purposes. The Split Rock Site will be leased by Quoddy Bay, LLC to investigate the site for a potential Liquefied Natural Gas (LNG) terminal. The Bureau of Indian Affairs (BIA) lease approval is solely for the site investigation required for the Federal Energy Regulatory Commission (FERC) permitting process in the development of an Environmental Impact Statement (EIS). The project involves a shipping port and LNG pipeline construction, for which the complete environmental analysis and EIS development would be conducted through the FERC permitting process. Continuing the lease beyond the investigation period is contingent upon FERC permit approval, acceptability of the EIS analysis and insignificant impact on the leased property. The BIA will be a Cooperating Agency for the EIS development through FERC. BIA lease approval for the site investigation also requires that an archeologist with the authority to halt work be present to monitor any and all subsurface investigations. Prior to any ground-disturbing investigations, a phase I archaeological site study will be conducted. Work beyond initial site investigation will be contingent on the results of the phase I study. This investigation falls within the definitions of a Categorical Exclusion in 516 DM 10.5 M(1).

Evaluation of exceptions to actions within Categorical Exclusion:

1. This action would have significant adverse effects on public health or safety. No X Yes _____

2. This action would have an adverse effect on unique geographical features such as wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory, or prime or unique farmlands. No X Yes _____

3. The action will have highly controversial environmental effects. No X Yes _____

4. The action will have uncertain environmental effects or involve unique or unknown environmental effects. No X Yes _____

5. This action will establish a precedent for future actions.

NO X YES

6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects.

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7. This action will affect properties listed or eligible for listing in the National Register of Historic Places.

No X Yes

8. This action will affect a species listed or proposed to be listed as endangered or threatened.

No X Yes

9. This action threatens to violate Federal, state, local, or tribal law or requirements imposed for protection of the environment.

No X Yes

A "yes" to any of the above exceptions will require that an Environmental Assessment (EA) be prepared.

NEPA Action --- CE X EA

Approval of the lease of the Split Rock Site for site investigation will have no adverse environmental impacts on public health or safety, wetland, wild or scenic rivers, refuges, floodplains, rivers placed on the nationwide river inventory, or prime or unique farmlands. The proposed project will not have any highly controversial or uncertain effects on the environment or pose any unique or unknown environmental risks to the immediate and surrounding environment. This action will not establish a precedent.

Preparer's Name and Title: Kurt G. Chandler, Regional Environmental Scientist

Regional Archeologist concurrence with item 7 David Gaerden

Concur: Franklin Keel
Franklin Keel, Regional Director

Date: JUN 01 2005

Concur: Kurt G. Chandler
Kurt G. Chandler
Regional Environmental Scientist
James T. Keel

Date: 6-1-05