



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

VIA FAX [(202) 639-7890 AND (617) 727-9665] AND U.S. MAIL

February 22, 2008

Mr. Bruce F. Kiely, Esq.
Baker Botts LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Ms. Carol Iancu, Esq.
Assistant Attorney General
Office the Attorney General
One Ashburton Place
Boston, MA 02108

RE: Consistency Appeals of Weaver's Cove Energy, LLC and Mill River
Pipeline, LLC

Dear Mr. Kiely and Ms. Iancu:

This letter addresses several pending matters associated with the above captioned consistency appeals.

Massachusetts' Motion to Supplement the Record

On January 4, 2008, the Commonwealth of Massachusetts filed a motion seeking to further supplement the decision record with additional documentation. Collectively, these documents address: a) the Letter of Recommendation (LOR) previously issued by the United States Coast Guard regarding the suitability of a portion of the Taunton River for certain vessel tanker traffic; and b) the views of the Massachusetts Department of Environmental Protection, as they pertain to state permits necessary to the Project. Weaver's Cove and Mill River Pipeline (Appellants) oppose this motion, asserting the documents are irrelevant to the Secretary's review.

Under the Coastal Zone Management Act (CZMA), the consolidated record prepared by the lead Federal permitting agency is the initial record used by the Secretary for consistency appeals. 16 U.S.C. § 1466. The Secretary may accept supplemental information into the decision record that clarifies information contained in the consolidated record. 15 C.F.R. § 930.130(a)(2)(ii)(B). The Secretary enjoys wide latitude in determining the content of the appeal decision record. 15 C.F.R. § 930.127(e)(1).



In this instance, inclusion of the additional documents offered by Massachusetts is appropriate because they clarify information contained in the consolidated record. Additionally, the documents are useful in clarifying the LOR, which by separate Order has been incorporated into the decision record for this appeal. The remaining documents clarify and update information contained in the consolidated record regarding the State's views on several outstanding state authorizations related to the Project.

Accordingly, Massachusetts' Motion is **granted**. The documents are hereby accepted as part of the decision record. The parties will be afforded an opportunity to submit briefs concerning the significance of these additional documents, pursuant to the briefing schedule set forth below.

Additional Record Documents

Separately, the Secretary has received comments from four federal agencies (Departments of Energy, Transportation, and Defense and the U.S. Army Corps of Engineers), two U.S. Congressmen, and a nongovernmental organization, expressing views on the appeals. Copies of these documents may be found on the Secretary's consistency appeal website, located at: <http://www.ogc.doc.gov/czma.htm>. I find these documents clarify the information contained within the consolidated record and hereby accept them as part of the decision record to both appeals. The parties will be afforded an opportunity to submit briefs concerning the significance of these additional documents, pursuant to the briefing schedule set forth below.

City of Fall River Amicus Request

On February 8, 2008, the City of Fall River filed a motion for leave to file an *amicus curiae* brief in support of Massachusetts' objection. Appellants have objected to this motion, arguing Fall River's motion is untimely and asserts arguments beyond those asserted by Massachusetts. In the alternative, Appellants request leave to file additional briefs that reply to the arguments advanced by Fall River.

Fall River's motion is **granted** and its brief is hereby incorporated into the decision record. As the host city for the proposed project, Fall River has a significant interest in the appeal. Its brief plainly addresses the core issues before the Secretary – whether the Project is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. Moreover, the information contained within its brief clarifies information contained in the consolidated record filed by Appellants. Permitting the City to submit an *amicus curiae* brief is consistent with past agency practice, granting interested municipalities leave to file such briefs. See *Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Millennium Pipeline Company, L.P. from an Objection by the State of New York* (Dec. 12, 2003) (citing *amicus* brief filed by New York City); *Decision and Findings in the Consistency Appeal of Amoco Production Company from an Objection by the Division of Governmental Coordination of the State of Alaska* (July 20, 1990) (permitting North Slope Borough to submit briefs).

The parties will be afforded an opportunity to file briefs addressing the significance of the arguments contained within Fall River's brief, pursuant to the briefing schedule set forth below.

Extension of Decision Record

Under the CZMA, the Secretary must close the decision record for an appeal within 160 days after the notice of appeal is published in the Federal Register. 16 U.S.C. § 1465(b)(1). However, the CZMA authorizes the Secretary to stay closing the decision record for up to 60 days when the Secretary determines it necessary to receive, on an expedited basis, any supplemental information specifically requested by the Secretary to complete a consistency review or any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency. *See* 16 U.S.C. § 1465(b)(3)(A).

The current deadline for closing the decision record is March 4, 2008. After reviewing the decision record developed to date, including the need for additional briefing necessitated by inclusion of the documents and briefs set forth above, the Secretary has decided to solicit supplemental and clarifying information. In order to allow receipt of the relevant information, the Secretary hereby stays closure of the decision record until May 3, 2008.

Supplemental Briefing Schedule

In light of the rulings set forth in this Order, the parties shall adhere to the following schedule:

March 14, 2008 The parties shall submit:

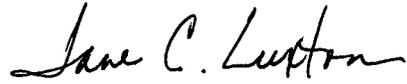
- All additional documents the parties propose to include within the decision record to this appeal, together with arguments: a) supporting their inclusion in the decision record; and b) explaining their significance to the issues pending before the Secretary.
- Briefs advancing all arguments relating to any documents and information admitted to date. Briefs may address, but are not necessarily limited to the Coast Guard LOR, the City of Fall River *amicus curie* brief, and all other documents admitted by way of this Order.

March 21, 2008 The parties shall submit:

- Supplemental briefs, to the extent necessary, which respond to those arguments raised in briefs due March 14, 2008.

Questions should be directed to Brett Grosko, NOAA Office of General Counsel for Ocean Services, at Brett.Grosko@noaa.gov.

Sincerely,

A handwritten signature in black ink that reads "Jane C. Luxton". The signature is written in a cursive style with a large, stylized initial "J".

Jane C. Luxton
General Counsel