



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

OFFICE OF THE GENERAL COUNSEL

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

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

Dear Mr. Kiely and Ms. Iancu:

By this letter we consolidate the above-referenced appeals for all purposes of appeal administration and decision. Consolidation is based on the following considerations.

The Coastal Zone Management Act (CZMA) consistency regulations grant the Secretary broad authority to implement procedures to ensure efficiency and fairness to all parties to a consistency appeal. 15 C.F.R. § 930.127(e)(1). In this case, consolidation will increase administrative efficiency since the facts and issues underlying both appeals are overlapping. Further, consolidation will ensure that the Secretary's decision is based on a comprehensive view of the liquefied natural gas (LNG) facility that is the subject of both the Weaver's Cove Energy, LLC (Weaver's Cove) and Mill River Pipeline, LLC (Mill River) appeals.

Weaver's Cove and Mill River seek to construct and operate, respectively, an LNG terminal and lateral pipelines to support the terminal in Fall River, Massachusetts. The terminal and pipeline are both components of a single project, and both components are necessary for the project to serve its intended purpose (*i.e.*, to distribute LNG to the New England market). A single Secretarial decision on both components would provide a logical, comprehensive analysis with respect to the national interest and coastal resource effects of the Project.¹

¹ We note that the Federal Energy Regulatory Commission, in its analysis of the project under the Natural Gas Act, considered the pipeline and terminal components together. *See, e.g.*, 07/15/05 FERC Order Granting Authority under Section 3 of



Such a comprehensive approach is contemplated by NOAA's regulations. For example, in assessing coastal effects of a project, the Secretary must consider both the "direct effects which result from the activity and occur at the same time and place as the activity and indirect (cumulative and secondary) effects." 15 C.F.R. § 930.11(g). Indirect effects are "effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions." *Id.* Consequently, even in the absence of consolidation, the Secretary would need to take into account – as "indirect effects" – the coastal effects associated with the terminal proposed by Weaver's Cove when considering the pipeline proposed by Mill River, and vice versa. Consolidation of the Weaver's Cove and Mill River appeals eliminates the potential redundancy that would result from considering the same set of coastal effects twice – as part of two separate appeals – and provides a more comprehensive and logical basis upon which to ground a single decision.

Finally, we note that consolidation is not opposed by the parties. In the initial Scheduling Order, issued September 5, 2007, the parties were invited to address the issue of whether the two appeals should be consolidated. In response, neither party raised an objection to consolidation.

For these reasons, the appeals and their associated decision records are hereby consolidated. The Secretary will issue a single decision covering all aspects of these appeals.

Given the consolidation of these appeals, Massachusetts' motion to file a single brief is hereby **granted** pursuant to 15 C.F.R. § 930.127(e)(1). Massachusetts' single brief is accepted in response to the Appellants' initial briefs.

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

Sincerely,



Jane C. Luxton
General Counsel

the Natural Gas Act and Issuing Certificate, Att. 4 to App. to Initial Brief on Appeal of Mill River Pipeline, LLC. The Environmental Impact Statement also takes a comprehensive view of the project. *See* Final Environmental Impact Statement (May 2005), Att. 3 to App. to Initial Brief on Appeal of Weaver's Cove Energy, LLC.