



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Deputy Secretary

December 20, 2007

Christopher H. Diez
Vice President
AES Sparrows Point LNG, LLC
Mid-Atlantic Express, LLC
140 Professional Parkway, Suite A
Lockport, New York 14094

RE: Federal Consistency Review and Determination
Proposed AES Sparrows Point LNG Facility

Dear Mr. Diez:

I am writing with regard to the State of Maryland's Federal Consistency review, pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA), of the AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC (collectively "AES") certification to the Federal Energy Regulatory Commission (FERC) that the federally regulated activities associated with the proposed AES Sparrows Point LNG Facility ("Project") are consistent with the Maryland Coastal Zone Management Program (CZMP). By letter dated July 9, 2007, the State of Maryland denied Federal Consistency for the U.S. Army Corps of Engineers' (Corps) permit. As explained in that letter and discussed below, the State believes that the Federal Consistency timeclock for the FERC license commenced on June 29, 2007, when the Maryland Department of the Environment (MDE) received the AES consistency certification. However, because it understood that AES believed that the timeclock had begun in January, 2007, MDE also denied federal consistency for the FERC license in its July 9, 2007 letter. The purpose of this letter, then, is to reiterate the State's Federal Consistency denial of the FERC license in accordance with what MDE believes to be the appropriate time schedule.

This letter has three parts: (1) a discussion of the review period applicable to Maryland's consistency determination; (2) the State's denial of consistency pursuant to 15 CFR § 930.63(b); and (3) the State's denial of consistency under 15 CFR § 930.63(c) on the grounds that AES has not provided sufficient information necessary for the State to make a federal consistency determination.

The Review Period Applicable to Maryland's Consistency Determinations

As you are aware, the Project requires two separate federal actions that are subject to § 307 of the CZMA: (1) the Corps authorization pursuant to Section 10 of the River and Harbors Act and Section 404 of the Clean Water Act, and (2) the FERC license. With regard to each federal license and permit, § 307 of the CZMA requires the applicant to "certify" in the application for federal authorization that "the proposed activities comply with, and will be conducted in a manner consistent with, the State's Coastal Zone Management Program." *See also* 15 CFR Part 930, § 930.57(a). Section 930.57(b) of the federal consistency regulations specifies that the applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program." Once the appropriate certification is made, the State has six months in which to render its consistency determination.

With respect to the Corps' permit, MDE received the AES consistency certification and supporting data and information on January 9, 2007, in the form of AES's application for Maryland's Coastal Facilities Review Act (CFRA) permit. Pursuant to the federal consistency regulations, MDE was required to render its consistency determination within six months from that date. With respect to the FERC license, however, MDE notified AES that it had not included the required consistency certification, pursuant to 15 CFR Part 930, § 930.57(b), in its application for the FERC license and that, therefore, the six-month review period had not yet begun. *See* May 9, 2007, letter from Elder Ghigiarelli to Kent J. Morton. In a letter to FERC dated June 29, 2007, AES noted its disagreement with MDE and asserted that it believed the review period began in January, when it submitted its CFRA application. In the same letter, however, AES included the certification that MDE believes had been missing. Accordingly, MDE's position is that the Federal Consistency timeclock with regard to the FERC license began on June 29, 2007.

Denial of Consistency Pursuant to 15 CFR § 930.63(b)

Because Maryland's CZMP is a networked program, consistency with the CZMP is established by obtaining the State permits and authorizations required under the networked State Program. For the Project, the applicable networked laws include the following:

- Tidal Wetlands Act, Md. Code Ann., Envir. § 16-501 *et seq.* and COMAR 26.24;
- Nontidal Wetlands Protection Act, Md. Code Ann., Envir. § 5-901 *et seq.* and COMAR 26.23;
- Waterway Construction Act, Md. Code Ann., Envir. § 5-501 *et seq.* and COMAR 26.17.04;
- Air Quality Control Act, Md. Code Ann., Envir. § 2-101 *et seq.* and COMAR 26.11;

- Water Appropriation Act, Md. Code Ann., Envir. § 5-501 *et seq.* and COMAR 26.17.06;
- Water Pollution Control Act, Md. Code Ann., Envir. § 9-301, *et seq.* and COMAR 26.08.02; and
- Chesapeake and Atlantic Coastal Bays Critical Area Protection Program, Md. Code Ann., Nat. Res., § 8-1801 *et seq.* and COMAR 27.01.

Inasmuch as Maryland's CZMP is a networked program, these laws and regulations constitute the enforceable policies of Maryland's CZMP that are applicable to the Project. These statutes and regulations implement a number of policies, including ensuring that projects avoid and minimize impacts to wetlands and other regulated resources, maintain water quality standards, and otherwise preserve the State's coastal resources for public use and enjoyment. Because the inclusion of these statutes and regulations in Maryland's CZMP has been approved by the National Oceanic and Atmospheric Administration, the policies they embody are cognizable for consistency review purposes. Because AES has not obtained the requisite permits under these laws, the Sparrows Point project is, at least at this point, inconsistent with the enforceable policies of Maryland's CZMP.

While AES has submitted applications for authorizations under each of these laws, it has not yet obtained the permits necessary for the State to concur with AES's consistency certification. Accordingly, the State objects to the AES certification that the proposed activities are consistent with the Maryland CZMP. Please note, however, that the State's objection will become a concurrence if all applicable networked State permits are issued.¹

Denial of Consistency Pursuant to 15 CFR § 930.63(c)

This is a complex project, involving impacts to a variety of different resources and raising a number of regulatory issues ranging from the protection of wetlands to community safety to the disposal of material dredged from Baltimore Harbor. Much of the information MDE needs to complete its review of the project is still being developed by AES and others. The reviews being carried out by both the Corps and FERC are themselves in their infancy. *See, e.g.,* the November 7, 2007, letter from FERC to the Department of Commerce, regarding the AES appeal of the State's Federal Consistency denial, on the status of its review (attached). To date, FERC has not yet released a schedule for the preparation of its Environmental Impact

¹ The Department notes that, on June 22, 2007, the United States District Court for the District of Maryland upheld an amendment to the Baltimore County Zoning Regulations adding LNG terminals to the list of prohibited uses in Chesapeake Bay Critical Areas. *AES Sparrows Point LNG, LLC et al. v. James T. Smith, et al.*, Memorandum Opinion, Civ. No. RDB-07-325, 2007 WL 1826889 (D.Md. June 22, 2007). The Court specifically held that the adoption of the amendment (commonly referred to as "Bill 9-07") into the County's Critical Area protection program was not preempted by the Natural Gas Act. The AES appeal of this decision is pending. Unless overturned on appeal, the U.S. District Court's decision would constitute an independent grounds for objection to AES's federal consistency certification(s) under 15 CFR § 930.63(b).

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Statement (EIS) for the project. It is important to note that the EIS will be the basis of the State's comprehensive evaluation required by CFRA.

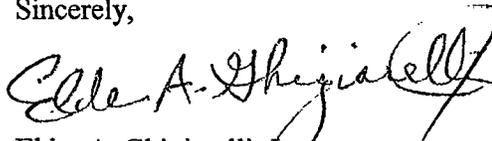
Based on its review of the AES application for a CFRA permit and the supporting Resource Documents, MDE requested additional information with regard to the impacts to wetlands and waterways resulting from the proposed dredging and dredged material disposal, and the proposed pipeline. MDE received the AES response to its request on May 31, 2007. Based on AES' response, MDE requested additional information on August 15, 2007. AES responded to this second request on August 30, 2007, and submitted supplemental information on December 4, 2007. This information is currently under review by MDE.

The Department simply cannot render a complete substantive consistency determination based on incomplete information; doing so would not serve the interests of the environment, the people of Maryland, and, in the long run, AES. Accordingly, MDE provides as an alternative basis for its objection that AES has not provided sufficient information necessary for the State to make a federal consistency determination. Please note, however, that MDE continues to review the project under CFRA.

Pursuant to 15 CFR Part 930, subpart H, and within 30 days from receipt of this letter, AES may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. A copy of the request and supporting information must be provided to MDE, the Corps, and FERC. The Secretary of Commerce may collect fees for administering and processing your request.

If you have any questions, please contact me at (410) 537-3763, or by e-mail eghigiarelli@mde.state.md.us.

Sincerely,



Elder A. Ghigiarelli, Jr.
Deputy Administrator
Federal Consistency Coordinator
Wetlands and Waterways Program

EAGJr:cma

cc: David Kennedy, NOAA
Joanne Wachholder, FERC
Joseph DaVia, Corps

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Kent J. Morton, AES

Shari T. Wilson, Secretary, MDE

Jay Sakai, Director, WMA, MDE

Judah Prero, AAG, MDE

Adam Snyder, AAG, MDE

CP07-62-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20428

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
AES Sparrows Point LNG, LLC
Docket No. CP07-62-000
Mid-Atlantic Express, LLC
Docket No. CP07-63-000

NOV 07 2007

Odin Smith, Attorney-Advisor
Office of the General Counsel for Ocean Services
National Oceanic and Atmospheric Administration (NOAA)
U.S. Department of Commerce
1305 East-West Highway, Suite 6111
Silver Spring, Maryland 20910

RE: Request for Comments on an Administrative Appeal to the Coastal Zone
Management Act for the AES Sparrows Point LNG Project.

Dear Mr. Smith:

On October 11, 2007, Joel La Bissonniere of your office requested comments of the Federal Energy Regulatory Commission (Commission) on an administrative appeal brought by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC (collectively, AES) pursuant to the Coastal Zone Management Act (CZMA). AES is appealing the State of Maryland's objection to AES' proposed liquefied natural gas terminal in Baltimore County, Maryland, and an associated 88-mile pipeline that would transport gas from the terminal to three interstate pipeline systems serving the Mid-Atlantic region.

The Commission is in the process of conducting an extensive analysis of the project as required by the Natural Gas Act (NGA), the National Environmental Policy Act (NEPA), and other statutes. This analysis will examine the need for the project, and include an exhaustive study of the project's environmental impacts, alternatives, and safety and security. The Commission is in the early stages of collecting information on the project and has not yet even issued a draft or final environmental impact statement. Therefore, at this time we are not in a position to comment on the issues raised by your letter.

007-62-000

Pursuant to section 15 of the NGA, the Commission acts as the lead agency for purposes of coordinating all applicable authorizations and for the purposes of complying with NEPA. The Commission is also required to set schedules for the issuance of all federal authorizations for natural gas infrastructure proposals, and to maintain a consolidated record of all decisions made with respect to any federal authorization. Such record shall be the record for appeals or reviews under the CZMA or judicial review under section 19(d) of the NGA.

It is my understanding that certain material from the consolidated record for this project was provided to your office by AES on August 8, 2007. However, please note that the record is still being developed, as decisions have not yet been made on all necessary federal authorizations.

Thank you for the opportunity to comment on this matter. If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



J. Mark Robinson
Director
Office of Energy Projects

cc: Public File, Docket Nos. CP07-62-000 and CP07-63-000