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August 8, 2007

BY MESSENGER

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The Honorable Carlos Gutierrez  
Secretary of Commerce  
Herbert C. Hoover Building  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Notice of Appeal of AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. from Objections of the Maryland Department of the Environment to the Consistency Certification for the AES Sparrows Point LNG, LLC and Mid-Atlantic Express Projects

Dear Secretary Gutierrez:

Enclosed for filing on behalf of AES Sparrows Point LNG, LLC ("AES Sparrows Point") and Mid-Atlantic Express, L.L.C. ("Mid-Atlantic Express") (collectively "AES"), in accordance with 15 C.F.R. § 930.125, is the above referenced Notice of Appeal under the Coastal Zone Management Act ("CZMA"). 16 U.S.C. §§ 1451-1456. Per the request of the Office of General Counsel for Ocean Services, a check in the amount of \$500.00 in payment of the application fee specified in 15 C.F.R. § 930.125(c) has been delivered to the National Oceanic and Atmospheric Administration ("NOAA") Assistant General Counsel for Ocean Services in Silver Spring, Maryland.

Two copies of the consolidated record required by 15 C.F.R. § 930.127(i)(2) have also been delivered today to the Assistant General Counsel for Ocean Services. Staff of the Federal Energy Regulatory Commission ("FERC"), the lead Federal permitting agency for the AES energy projects, has confirmed that the consolidated record for this appeal consists of the enclosed documents from the Maryland Department of the Environment ("MDE") submitted to the FERC on August 2, 2007 (including the documents listed on the attached index). Specifically, MDE provided to FERC for the consolidated record the correspondence in the record from MDE and AES and the MDE record of decision (*i.e.*, denial of consistency) and a list of exhibits which it incorporated by reference into the consolidated record, including AES's FERC applications and Maryland Coastal Facilities Review Act ("CFRA") application. Accordingly, these copies of applications are enclosed along with the record documents from MDE as the consolidated record for this appeal.

Consistent with the NOAA regulations, AES is providing one copy of the consolidated record in electronic format compatible with the Department of Commerce website, to the extent practicable. 15 C.F.R. § 930.127(i)(2). However, because FERC regulations prohibit certain information from being released to the public without the appropriate nondisclosure agreements, AES is providing the consolidated record on ten (10) compact discs (CDs). Those CDs marked "Public" are suitable for posting on the Department of Commerce website. Materials contained on the CDs marked "Non-Internet Public" (or "NIP") should not be posted on a website. 18 C.F.R. § 388.112. The materials contained on the CDs marked "Privileged" and "Critical Energy Infrastructure Information" (or "CEII") should not be posted on the website or released to the public (or any party that has not signed the required nondisclosure agreement) pursuant to 18 C.F.R. §§ 388.112 and 388.113.

Specifically, the following CDs are enclosed and are suitable for posting on the Department of Commerce website:

- Public: MDE Submission for the Consolidated Record (Aug. 2, 2007)
- Public: Volumes I and II of the AES Sparrows Point FERC application
- Public: Volume I of the Mid-Atlantic Express FERC application
- Public: Public version of the Maryland CFRA application

The following CDs are enclosed and contain material that should not be posted:

- Privileged: Volume III of the AES Sparrows Point FERC application
- NIP: Volume IV of the AES Sparrows Point FERC application
- NIP: Volume II of the Mid-Atlantic Express FERC application
- CEII: Volume V of the AES Sparrows Point FERC application
- CEII: Volume II of the Mid-Atlantic Express FERC application
- A CD containing the entire CFRA application which contains some NIP and CEII information.

If you have any questions, please do not hesitate to contact the undersigned at (202) 639-7725.

Respectfully submitted,



Randolph Q. McManus  
Attorney for  
AES Sparrows Point LNG, LLC  
and Mid-Atlantic Express, L.L.C.



cc: Joel La Bissonniere, Assistant General Counsel for Ocean Services  
Elder A. Ghigiarelli, Jr., Deputy Administrator, MDE  
Ms. Kimberly D. Bose, Secretary, FERC  
Mr. Joseph P. DaVia, US Army Corps of Engineers - Baltimore District  
Mr. Christopher Diez, AES

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF COMMERCE**

**AES Sparrows Point LNG, LLC )  
Mid-Atlantic Express, L.L.C. )  
Appellants, )  
vs. )  
Maryland Department )  
of the Environment )  
Respondent. )**

**Case No. \_\_\_\_\_**

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**APPEAL OF AES SPARROWS POINT LNG, LLC  
AND MID-ATLANTIC EXPRESS, L.L.C.  
UNDER THE COASTAL ZONE MANAGEMENT ACT**

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Pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A) (the “Act” or “CZMA”), AES Sparrows Point LNG, LLC (“AES Sparrows Point”) and Mid-Atlantic Express, L.L.C. (“Mid-Atlantic Express”) (collectively, “AES”) hereby request that the Secretary of Commerce (“Secretary”) override the Maryland Department of the Environment’s (“MDE”) objections to AES’s certification of its project’s consistency (“Consistency Certification”) with the State of Maryland’s Coastal Zone Management Program (“MCZMP”). AES requests the Secretary override the objections, both as stated and as reserved. As a threshold matter, the MDE’s objections are invalid under 15 C.F.R. § 930.129(b). The MDE’s objections also should be overridden on a substantive basis under 15 C.F.R. §§ 930.121 and 930.122. The grounds for this appeal are as follows:

1. The MDE’s objections were not in compliance with the Act and the regulations promulgated thereunder. The MDE: (i) failed to identify specific enforceable policies under the

MCZMP with which the project is inconsistent; (ii) failed timely to request, in writing, additional information now claimed to be required for its review; (iii) failed to provide AES with timely notice of the delay in its review; and (iv) invoked, as a possible basis for objection, a local zoning ordinance that is not an “enforceable policy” of the MCZMP. 15 C.F.R. § 930.129(b).

2. The project for which AES provided the Consistency Certification is consistent with the objectives of the Act. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.121.

3. The project for which AES provided the Consistency Certification is necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.122.

## I. BACKGROUND

1. AES proposes to site, construct, and operate a liquefied natural gas (“LNG”) import, storage, and regasification terminal (“LNG Terminal”) on a portion of the Sparrows Point Industrial Complex situated on the Sparrows Point Peninsula east of the Port of Baltimore in Maryland. The LNG Terminal will permit the importation of up to 1.5 billion cubic feet per day (“Bcfd”) of natural gas (expandable to 2.25 Bcfd) that can be sourced from world production areas, and its delivery to three interstate pipeline systems that serve Maryland and the Mid-Atlantic Region, via an interconnected 88-mile, 30-inch diameter pipeline (“Pipeline”). AES may also provide additional interconnections to the Pipeline with the facilities of local distribution companies and/or other entities. Together, the LNG Terminal and the Pipeline comprise the Sparrows Point Project.

2. In February 2006, AES began participating in meetings to review the Sparrows Point Project with the Maryland Joint Evaluation Committee, which is a group comprised of representatives from Maryland and federal agencies with jurisdiction regarding air, water,

wetland, land use, and other environmental issues. Representatives of the MDE participated in the Joint Evaluation Committee meetings.

3. On March 24, 2006, AES filed with the Federal Energy Regulatory Commission (“FERC” or “Commission”) a request to initiate the Commission’s pre-filing environmental review process under 18 C.F.R. § 157.21 for the proposed Sparrows Point Project. On April 3, 2006, the Commission Staff issued a notice in docket number PF06-22-000 commencing the pre-filing review process for the Sparrows Point Project.

4. On January 8, 2007, upon completion of the pre-filing process, AES Sparrows Point filed its formal application for authority to construct and operate the LNG Terminal under Section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. § 717b. The FERC assigned the application docket number CP07-62-000.

5. Mid-Atlantic Express, an affiliate of AES Sparrows Point, filed a concurrent application for a certificate of public convenience and necessity authorizing the construction of the Pipeline under Section 7 of the NGA, 15 U.S.C. § 717f. The FERC assigned the application docket number CP07-63-000.

6. The submission of the AES applications followed nine months of pre-filing communication, including data submissions, joint meetings, and cooperation regarding the project between and among the FERC, the MDE, other federal and state agencies and other stakeholders, and preparation of studies on various aspects of the Project.

7. On January 9, 2007, AES filed with the MDE a “State of Maryland (MDE)/Corps of Engineers Joint Application Form” for U.S. Army Corps of Engineers (“ACOE”) permits to improve the existing navigational channel to facilitate the transit of LNG vessels to the LNG Terminal, for authorization for the construction of berthing facilities for the LNG vessels, and in

connection with laying the pipeline in jurisdictional wetlands. Specifically, AES applied for dredge and fill permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and for authorization for the construction of the pier and berthing facilities under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403.<sup>1</sup>

8. That same day, AES submitted to the MDE documentation relevant to the completion of Maryland's consistency review, including, as part of the State's approved application form, the Consistency Certification ("I also certify that the proposed works are consistent with Maryland's Coastal Zone Management Plan"), copies of AES's federal permit applications, and copies of the comprehensive resource reports prepared for the FERC that analyze the environmental impacts of the project ("Resource Reports"). These documents, along with the information shared during the 11 months leading up to the submission of these materials, provided information sufficient for the evaluation of the impacts of the Sparrows Point Project on the Maryland coastal zone and amply demonstrated the Sparrows Point Project's consistency with the enforceable policies of the MCZMP.

9. On January 16, 2007, a copy of AES's Consistency Certification was filed in the consolidated Sparrows Point Project dockets at the FERC.

10. On May 9, 2007, four months after AES's submission of its Consistency Certification to the State, the MDE issued a letter notifying AES that MDE did not believe that AES had included the required consistency certification pursuant to 15 C.F.R. § 930.57(b) in its applications for the FERC authorizations, and, for this reason, the MDE did not believe "the consistency clock [had] started running on the FERC License." Letter to Kent J. Morton, Project Director, AES Corporation from Elder A Ghigiarelli, Jr., Federal Consistency Coordinator,

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<sup>1</sup> The Joint Application was filed as part of the Maryland Coastal Facilities Review Act ("CFRA") application, which is an "umbrella" process providing for coordinated agency review.

Maryland Department of the Environment (May 9, 2007). The MDE acknowledged that the consistency clock had commenced with respect to the required ACOE authorization.

11. On May 11, 2007, AES notified the MDE by e-mail that there was no basis for the MDE's claim that the consistency review period had not begun for the FERC authorizations.

12. By letter dated June 29, 2007, AES informed the FERC of the MDE's error in claiming that the consistency review had not begun and provided a copy of that letter to the MDE. As a courtesy to the MDE, AES's June 29 letter to the FERC also contained certification language taken verbatim from 15 C.F.R. § 930.57(b).

13. On July 9, 2007, the MDE objected to AES's Consistency Certification by a letter to Mr. Christopher H. Diez, Vice President, AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. ("Objection"). A copy of the Objection was provided to the National Oceanic and Atmospheric Administration ("NOAA"), ACOE, and FERC. While the MDE maintains that its statutory six-month review period for the activities related to the FERC permits did not commence until June 29, 2007, the MDE nevertheless specifically objected on July 9, 2007 to the activities associated with both the ACOE permits and the FERC permits, so both objections are ripe for appeal.

14. The MDE objected to the Consistency Certification on the ground that the proposed activities are not consistent with the MCZMP. By regulation, this objection assumes that sufficient information has been provided for the state agency to make a consistency determination. 15 C.F.R. § 930.63(b).

15. Despite the provisions of 15 C.F.R. § 930.63(b), the MDE asserted as an alternative ground for its objection that AES has not provided sufficient information for the state to make a federal consistency determination.

16. The MDE also suggests its Objection is (or would be) supported by an amendment to a local zoning ordinance enacted by Baltimore County on February 5, 2007 that purports to prohibit LNG facilities that receive and unload the natural gas product in areas located within 1,000 feet of the shoreline (“Zoning Amendment”). It is not possible to site and operate a marine-dependent industry such as an LNG import terminal without constructing facilities in the coastal zone.

17. Pursuant to Section 307(c)(3)(A) of the Act, AES hereby appeals the MDE’s Objection to the Consistency Certification for both the ACOE permits and the FERC authorizations. In addition, AES hereby appeals the MDE’s “reserved” objection based on the Zoning Amendment. The MDE’s Objection should be reversed for the reasons set forth below:

**II. THE MDE CONSISTENCY OBJECTION WAS NOT IN COMPLIANCE WITH THE REGULATIONS OF THE COASTAL ZONE MANAGEMENT ACT**

The Secretary should override the Objection as a threshold matter on the grounds that the Objection (including the “reserved” objection) was not in compliance with Section 307(c)(3)(A) of the Act, 16 U.S.C. § 1456(c)(3)(A), and the regulations contained in subpart D of 15 C.F.R. Part 930 (“subpart D”). 15 C.F.R. § 930.129(b).

MDE’s Objection On The Ground Of Inconsistency Was Not In Compliance With CZMA Regulations

The regulations implementing the CZMA provide that: “If the State agency’s consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part [15 C.F.R. Part 930], the Secretary shall override the State’s objection.” 15 C.F.R. § 930.129(b) (emphasis added). The Secretary may make this determination as a threshold matter before reaching the merits. Id. Such action is fully

warranted here, where the Objection was not made in accordance with the federal regulations governing objections at subpart D.<sup>2</sup>

The MDE cites 15 C.F.R. § 930.63(b) (included in subpart D) as the basis for the Objection. This provision states, in relevant part:

State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program.

Id. (emphasis added). In its Objection, the MDE failed to identify how the Sparrows Point Project is inconsistent with any specific enforceable policies of the MCZMP. See generally Objection. The Objection is nothing more than a bald *ipse dixit*, which is not sufficient to support an objection under subpart D and should therefore be overridden.<sup>3</sup>

MDE's Objection On The Ground Of Insufficient Information Was  
Not In Compliance With CZMA Regulations

The MDE objected to the Consistency Certification, "in the alternative," on the ground that AES had not provided "sufficient information" for the MDE to make a consistency determination. Objection at 4. But the MDE may only object to AES's Consistency Certification on the basis of insufficient information if AES failed to supply information required pursuant to 15 C.F.R. § 930.58, or other information necessary for the State agency to determine consistency, following a written request for the information by the MDE. 15 C.F.R. § 930.63(c).

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<sup>2</sup> Because the objection is not made in accordance with the regulations implementing Section 307 of the CZMA, it follows that it is not in compliance with Section 307.

<sup>3</sup> Specificity is crucial in cases such as this one where the State's coastal zone management program has not been made available in one document.

The MDE did not make such a request for information related to the Consistency Certification.<sup>4</sup> Nor did the MDE's objection describe the "nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program."<sup>5</sup> Because the MDE's "alternative" objection did not comply with subpart D, the Secretary is also required to override the State's objection on this ground. 15 C.F.R. § 930.129(b).

#### The Baltimore County Zoning Ordinance Is Not a Proper Ground for Objection

In a footnote, the MDE suggests that Baltimore County's recently enacted Zoning Amendment, which purports to prohibit the siting of LNG terminals or associated facilities in Baltimore County's "Critical Area,"<sup>6</sup> would possibly constitute grounds for an objection, should ongoing judicial proceedings challenging the Zoning Amendment favor Baltimore County.

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<sup>4</sup> The MDE's vague reference in the Objection to additional information needed to process state or federal permits does not meet the requirement that the State inform the applicant in writing that additional information is needed for the determination of consistency. 15 C.F.R. § 930.63(c). The processing of state and federal permits is governed by different statutes and regulations and is separate from the consistency determination required under Section 307 of the CZMA.

<sup>5</sup> Id. The MDE's failure to explain its ground for objection is particularly relevant in light of the MDE's failure to adhere to the regulatory requirement to notify the applicant after three months of its review "of the status of the matter and the basis for further delay." 15 C.F.R. § 930.62(b). Indeed, the MDE has consistently failed to specify what further information is needed (in its view) for a consistency determination.

<sup>6</sup> The Chesapeake Bay Critical Area is defined as:

- (1) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetland maps, and all State and private wetlands designated under Title 16 of the Environment Article; and
- (2) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article.

MD. CODE ANN. NAT. RES. § 8-1807(a).

Objection at 3 n. 1. The possible objection is phrased in hypothetical terms, conditioned on future events.

Because the MDE has proffered the Zoning Amendment as a possible ground for objection, the Secretary should conclude here that the Zoning Amendment is not an “enforceable policy” of the MCZMP and therefore not a proper ground for an objection for the reasons set forth below. The Secretary’s determination on this issue at this time will resolve an issue that could otherwise remain in dispute pending future events. A decision on this issue will therefore conserve time and resources as all necessary parties and all required information is available in this proceeding.<sup>7</sup>

1. Even if Included As A Ground for the Current Objection, the Baltimore County Zoning Amendment, Is Not an “Enforceable Policy” of the MCZMP.

Even if the MDE had properly included the Zoning Amendment among its grounds for objection, such an objection would still be invalid because the Zoning Amendment is not an “enforceable policy” of the MCZMP and therefore not proper grounds for an objection. See 16 U.S.C. § 1456(c)(3)(A). Because it is not properly included in the MCZMP for purposes of the State’s consistency review, it is not a valid basis for an objection to AES’s Consistency Certification.

Baltimore County’s Zoning Amendment — if deemed an element of the MCZMP — would represent a substantial change in the uses that are subject to the MCZMP. As such, it would necessarily constitute an “amendment” of the MCZMP requiring separate NOAA

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<sup>7</sup> AES specifically reserves its rights to challenge any future objection of the MDE if predicated on the Zoning Amendment absent a definitive resolution of the issue here. AES reserves the right to claim, inter alia, that a future objection based on the Zoning Amendment is untimely and has been waived.

approval. See 15 C.F.R. § 923.80(d)(1). Furthermore, because the Zoning Amendment purports to ban LNG terminals in certain locations, it improperly seeks to curtail public involvement in the state- and county-level decision of whether or not to approve the location of an LNG terminal; consequently, enactment of the Zoning Amendment constitutes a “substantial change” in “public involvement,” again confirming that it must be evaluated as an “amendment” that must be approved by NOAA prior to its application in a consistency review. Id. at § 923.80(d)(5). The Zoning Amendment, however, was not submitted by the State of Maryland to, or approved by, NOAA as an amendment to the MCZMP and it therefore is not an enforceable policy of the MCZMP that can support the Objection.

2. The Baltimore County Zoning Amendment Could Never Be an Element of the MCZMP Because It Is Not Consistent with the CZMA or the MCZMP.

The Zoning Amendment could not constitute grounds for objection for yet another reason — the Zoning Amendment is not consistent with the goals and policies of either the CZMA or the MCZMP. Because the Zoning Amendment is contrary to both the CZMA and the MCZMP, and therefore could not be approved as an amendment to the MCZMP, it necessarily cannot form the basis of an objection to the Sparrows Point Project’s certification of consistency.

The Zoning Amendment is completely at odds with the CZMA. That CZMA was enacted to “preserve, protect, develop and where possible, to restore or enhance, the resources of the Nation’s coastal zone for this and succeeding generations. . . .” 16 U.S.C. § 1452. The Act requires that state coastal management programs must provide for:

priority consideration being given to coastal-dependent uses and orderly process for siting major facilities related to . . . energy . . . and the location, to the maximum extent practicable, of new

commercial and industrial developments in or adjacent to areas where such development already exists. Id. § 1452(2)(D).

A coastal management program must also contain, among other things, proof of “adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of energy facilities which are of greater than local significance.” Id. § 1455(d)(8). Indeed, in the case of energy facilities, states must give “consideration to any applicable national or interstate energy plan or program.” Id. § 1455(d)(8).

As expected, the Zoning Amendment is likewise inconsistent with the MCZMP. The MCZMP “recognizes the national interest in activities and resources, and neither arbitrarily excludes nor unreasonably restricts them.” MCZMP at 327. The MCZMP provides that Maryland will take into consideration, among other things, the following federal policy information in considering the national interest in its decisions: (i) presidential policy statements relating to energy; (ii) future federal laws and regulations; and (iii) future statements from federal agencies regarding national interests. Id. at 328. Finally, the MCZMP specifically “encourage[s] the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development . . .” Id. at 28. The Zoning Amendment is irreconcilable with each of these provisions of the MCZMP.

### **III. THE SPARROWS POINT PROJECT IS CONSISTENT WITH THE OBJECTIVES OF THE COASTAL ZONE MANAGEMENT ACT**

Apart from overriding MDE’s Objection based on the threshold failures of MDE described in Section II, above, the Secretary may also override the Objection based on the fact

that the Sparrows Point Project is consistent with the objectives of the Act.<sup>8</sup> 16 U.S.C. § 1456(c)(3)(A). As a major energy project that is designed to bring much needed additional natural gas supplies to Maryland and the Mid-Atlantic Region and which is dependent on deliveries of LNG by ship, the Sparrows Point Project plainly furthers the objectives of the Act and the national interest.

Under the regulations promulgated by the NOAA, a project will be considered consistent with the objectives of the Act if it satisfies each of the following:

- (1) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner;
- (2) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively;
- (3) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the State's coastal zone management program.

15 C.F.R. § 930.121. The Sparrows Point Project readily satisfies each of these three standards:

The Sparrows Point Project Furthers the National Interest  
in a Significant and Substantial Manner.

The Sparrows Point Project promotes the national interest as articulated in Section 303 of the Act in a significant and substantial manner. Section 303 establishes that "priority

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<sup>8</sup> Although the MDE has argued, in the alternative, that AES has not provided sufficient information for the State's consistency determination, the Secretary's review is to consider whether there is sufficient information for the Secretary's decision. Decisions and Findings by the U.S. Secretary of Commerce in the Drilling Discharge Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc. from an Objection by the State of North Carolina, Sept. 2, 1994, at 7. In this case, the record before the MDE, the FERC, and the ACOE amply demonstrates that the Sparrows Point Project is in the national interest.

consideration [be] given to coastal-dependent uses and orderly processes for siting major facilities related to . . . energy.” 16 U.S.C. § 1452(2)(D). The Sparrows Point Project is a major energy facility that is, therefore, required to be given priority consideration under the Act. Further, because the Project requires deliveries of LNG by ship, it is also a coastal-dependent use that is required to be given priority consideration. Id. As described in documentation provided to the MDE, by siting the LNG Terminal as part of a coastally-dependent industrial complex and dredging the navigation channel with the resulting removal and recycling of contaminated sediments, the Sparrows Point Project furthers the national interest, as articulated in Section 303, by “preserv[ing], protect[ing], [and] develop[ing] . . . the resources of the Nation’s coastal zone.” 16 U.S.C. § 1452(1).<sup>9</sup> The preservation and protection of the resources of the Nation’s coastal zone are additionally promoted by improvements to water quality that will result from the Project. These water quality improvements were described in documentation produced by AES. In short, the resources of the Nation’s coastal zone will be developed in a manor consistent with the Act and the MCZMP because the coastal-dependent LNG Terminal will be located within an existing industrial port area.

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<sup>9</sup> The recycling or innovative re-use of dredged sediments is also consistent with and supportive of the State of Maryland’s Dredged Material Management Program, which was renewed by the Dredged Material Management Act of 2001 (“DMMA”). Among other things, the DMMA defined a hierarchy of preferences for the disposition of dredged materials from the tidal waters of Maryland’s portion of Chesapeake Bay that placed innovative re-use (recycling) at the top of the list. The Maryland General Assembly subsequently enacted the Dredged Material Disposal Alternatives Act of 2004 that established a program within the Department of Business and Economic Development to assist in creating beneficial use technologies for dredged material. Goals of the program include fostering beneficial reuse of dredged material, fostering markets for end-use products using dredged materials as a resource, and facilitating the reuse of at least 500,000 cubic yards of dredged material annually

The National Interest Furthered By the Sparrows Point Project  
Outweighs Any Putative Adverse Coastal Effects.

As noted, the impact of the Sparrows Point Project on Maryland's coastal zone is generally positive and beneficial. If, however, any adverse coastal effects are not wholly mitigated, they would be far outweighed by the substantial national benefits of the Project. As part of its application to the FERC, which was provided in its entirety to the MDE, AES submitted thirteen environmental Resource Reports that analyze all aspects of the proposed LNG Terminal facilities, including coastal impacts. These reports document in detail the steps AES has taken and proposes to take to insure that any coastal impacts will be minimal. They also demonstrate that the Sparrows Point Project will provide certain environmental benefits in the coastal zone. In sum, to the extent that there might be any limited negative environmental effects associated with the Sparrows Point Project, there are demonstrated, offsetting environmental benefits and, in all events, the Project's furtherance of the national interest strongly predominates.

There Is No Reasonable Alternative.

There is no reasonable alternative available to the Sparrows Point Project proposed by AES. For an alternative to be "available," the proponent of the proposed project must be able to implement the alternative and the alternative must achieve the primary purpose of the project.<sup>10</sup> Here, as stated in its Resource Report 10 submitted to the FERC and provided to the MDE, the primary purpose of the Sparrows Point Project is to:

[I]ntroduce a new incremental supply of natural gas into the Mid-Atlantic Region, which includes the Baltimore and Maryland area markets and certain parts of the (northern) portion of the South-Atlantic Region . . . to help serve the growing demand for energy

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<sup>10</sup> Decisions and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Islander East Pipeline Company, L.L.C. from an Objection by the State of Connecticut, May 5, 2004, at 40.

in those markets in a safe, reliable and economic manner. . . . The Project will provide U.S. gas customers with access to natural gas production centers throughout the world without the need to construct new long-haul pipelines or expand the existing long-haul interstate pipeline systems that currently serve the Mid-Atlantic Region.

As fully discussed in Resource Report 10, there exists no alternative to the Sparrows Point Project that meets this primary purpose.

#### **IV. The Sparrows Point Project Is In The Interest Of National Security**

The Sparrows Point Project is also necessary in the interest of national security. Diversification of the nation's energy infrastructure is an important component of national security, as noted by President Bush, among others:

Extending hope and opportunity depends on a stable supply of energy that keeps America's economy running and America's environment clean. . . . It is in our vital interest to diversify America's energy supply.

President George W. Bush, State of the Union Address (January 23, 2007). The Sparrows Point Project offers this much needed diversification of gas supply in a region with high and growing demand. The nation's energy policy makers have found such projects to be important for national security purposes.

Geographic diversity of energy infrastructure helps to mitigate the effects of natural disasters on the Nation's energy supply, thereby furthering the interests of national security. Former Secretary of the Interior Gale Norton noted, in the aftermath of Hurricanes Katrina and Rita, the importance of diversified energy supply for our national security:

Hurricanes Katrina and Rita clearly demonstrated we have no margin to mitigate the impacts of natural disasters on our energy supply. The wake-up call being sounded for the past decade has reached the point where it must be heard. The President recognized, in his National Energy Policy, that we need to increase our energy supply and invest in our energy infrastructure . . . Therefore, we must not lose sight of this fact:

Diversification of our Nation's energy supply is a key goal for this Administration and must remain a top priority for our Nation's economic and national security. Achieving the goal of secure, affordable and environmentally sound energy will require diligent, concerted efforts on many fronts on both the supply and demand sides of the energy equation.

Testimony of Gale A. Norton, Secretary of the United States Department of the Interior, before the Senate Committee on Energy and Natural Resources (Oct. 27, 2005) (emphasis added). By siting the LNG Terminal and Pipeline in the Mid-Atlantic Region — a high-demand area that is far away from the concentration of energy facilities in the Gulf of Mexico or other areas of energy production and supply — the Sparrows Point Project provides geographic diversity that serves the interest of national security.

#### V. REQUEST FOR SECRETARIAL ACTION

AES respectfully asks the Secretary to find and conclude that:

One. The MDE failed in four respects to comply with Section 307 and subpart D of the NOAA regulations and, therefore, pursuant to 15 C.F.R. § 930.129(b), all of MDE's objections must be overridden.

Two. The Sparrows Point Project is consistent with the objectives and purposes of the Act and, as such, all of MDE's objections must be overridden.

Three. The Sparrows Point Project is necessary in the interest of national security and, as such, all of MDE's objections must be overridden.

#### VI. REQUEST FOR LIMITING DEVELOPMENT OF DECISION RECORD

AES respectfully requests that the development of the decision record be limited to sixty days. The NOAA regulations provide that the Secretary is to close the decision record not later than 160 days after the date that the Secretary's Notice of Appeal is published in the

Federal Register.<sup>11</sup> 15 C.F.R. § 930.130(a)(1). The Secretary therefore has discretion to limit the development of the decision record to a shorter amount of time. Given (i) the length of time AES has been working with all relevant state and federal agencies both before and after the initiation of the FERC pre-filing process, (ii) the importance of providing a new source of natural gas supply to Maryland and the Mid-Atlantic Region to meet growing demand, and (iii) the uncertainty that is created by the MDE's Objection for federal agencies processing applications for the Sparrows Point Project, AES maintains that good cause exists to shorten the amount of time provided to develop the decision record.

## VII. CONSOLIDATED RECORD

Pursuant to 15 C.F.R. § 930.127(i)(2), this Notice of Appeal is accompanied by two copies of the consolidated record maintained by the FERC, as the lead permitting agency, for the Sparrows Point Project. One copy of the consolidated record is being provided in electronic format compatible (to the extent practicable) with the website maintained by the Secretary. Id.

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<sup>11</sup> AES also notes in passing that the NOAA regulations provide for an exception to the typical 30-day comment period for appeals involving energy projects. 15 C.F.R. § 930.128(b). In other words, the Secretary is not required to provide a 30-day period for the public and interested Federal agencies to comment on this appeal.

**VIII. RESERVATION OF RIGHTS**

AES reserves all rights to raise and address such other procedural or substantive issues that may be necessary or appropriate in support of its appeal.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Randy McManus', written over a horizontal line.

Randy McManus

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Dated: August 8, 2007

## CERTIFICATE OF SERVICE

Consistent with 15 C.F.R. § 930.125 and the MDE's objection letter, copies of this notice of appeal have been sent to the following:

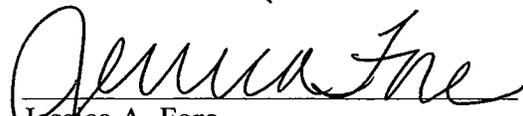
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