UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE

Weaver's Cove Energy, LLC	)	
	)	
Appellant,	)	
	)	
vs.	)	**Case No. _____**
	)	
Massachusetts Office of Coastal Zone Management	)	
	)	
Respondent.	)	

and

Mill River Pipeline, LLC	)	
	)	
Appellant,	)	
	)	
vs.	)	**Case No. _____**
	)	
Massachusetts Office of Coastal Zone Management	)	
	)	
Respondent.	)	

JOINT REPLY OF WEAVER'S COVE ENERGY, LLC AND MILL RIVER PIPELINE, LLC IN OPPOSITION TO RESPONDENT'S EXPEDITED MOTION TO FURTHER ENLARGE TIME

On October 24, 2007, Respondent Massachusetts Office of Coastal Zone Management ("MCZM") filed a motion requesting that the Secretary of Commerce ("Secretary") again extend the time period set for filing its briefs in the referenced proceedings ("Motion"). As the basis for the request for an extension of time, MCZM points to the Letter of Recommendation ("LOR") issued on October 24, 2007 by the U.S. Coast Guard finding portions

of the waterway not suitable for the proposed transit of liquefied natural gas ("LNG") vessels of the size and frequency proposed by Weaver's Cove Energy, LLC ("Weaver's Cove Energy"). Appellants Weaver's Cove and Mill River Pipeline, LLC ("Mill River") (together, "Weaver's Cove") hereby jointly notify the Secretary of their opposition to MCZM's request for additional time for the following reasons:

1. Respondent MCZM has already received an extension from the Secretary to file a Principal Brief in the above-referenced proceedings. Given the statutory deadline controlling the Secretary's decision, 16 U.S.C. § 1465(c), an additional extension would only serve to further reduce the amount of time available to the Secretary for a decision.

2. Respondent MCZM gives two reasons to support its request for an additional extension of time to submit its Principal Brief, neither of which is compelling. MCZM claims that additional time is needed because: (a) the "decision [of the U.S. Coast Guard] appears to be related directly to issues of safety and security, which is an area extensively briefed by the appellants." (Motion at ¶ 6), and (b) the "decision also has a direct bearing on proposed dredging activities." (Motion at ¶ 6).

3. Safety and Security. First, contrary to MCZM's claim, the LOR is not directly related to security because, by its terms, it did not address security. LOR Transmittal at 1 ("As I have determined that the above described segment of the proposed transit route is unsuitable from a navigation safety perspective, an exhaustive analysis of the other segments of the intended transit route described in my letter of May 9, 2007 and other factors relevant to waterway suitability for LNG traffic, such as maritime security, were *not* further analyzed in detail.") (emphasis added).

4. Second, contrary to MCZM's claim, Weaver's Cove did not brief issues of safety and maritime security. In this proceeding, the Secretary's review only considers whether the Weaver's Cove Project is "consistent with the objectives or purposes of the [CZMA]," 15 C.F.R. §§ 930.120 & 930.121, or "necessary in the interest of *national security*." *Id.* at §§ 930.120 & 930.122 (emphasis added). No aspect of the analysis of whether the Project is "consistent with the objectives or purposes of the [CZMA]" contemplates the consideration of maritime navigational safety issues. *See, e.g.*, 16 U.S.C. §§ 1451-1452 (Sections 302 and 303 of the CZMA do not mention public safety issues posed by the activity under review as purposes or interests of the CZMA); *Decision and Findings in the Consistency Appeal of the Korea Drilling Co., Ltd.*, at 10-11 (Jan. 19, 1989) (with respect to adverse coastal effects, the Secretary will only look at impacts on natural resources in the coastal zone resulting from the activity under review); *Decision and Findings in the Consistency Appeal of Islander East Pipeline Company, L.L.C*, at 10 (May 5, 2004) (same). Nor does an evaluation of whether the Project is "necessary in the interest of national security" consider the navigational safety and security issues posed by the Project. 15 C.F.R. §§ 930.120 & 930.122 (emphasis added). Therefore, the maritime safety and security issues that MCZM claims are implicated by the LOR are outside the scope of this proceeding.

5. Finally, the activities underlying the LOR cannot as a matter of law be a basis for the instant appeal since MCZM did not include U.S. Coast Guard LORs as activities subject to federal consistency review. *See* 301 Mass. Code Regs. 21.07 (listing activities subject to Massachusetts federal consistency review). *See also* Letter from Bruce K Carlisle,

Acting Director, Massachusetts Office of Coastal Zone Management, to Ted Gehrig, President and Chief Operating Officer, Weaver's Cove Energy, LLC (July 6, 2007).

6. Dredging. MCZM also misapprehends the purpose of the LOR when it argues that it has a "direct bearing on dredging." (Motion at ¶ 6). The LOR is solely related to the suitability of the waterway for LNG tanker traffic, 33 C.F.R. § 127.009, and does not regulate dredging activities. It is the United States Army Corps of Engineers who issues the appropriate authorizations for dredging activities, and Weaver's Cove's proposal before that agency remains unchanged. Moreover, by its express terms, the LOR does not affect the Federal Energy Regulatory Commission's ("FERC's") approval of the terminal and the pipelines, and that approval is in effect until at least 2010. LOR Transmittal at 2. *See also Fall River v. FERC*, Nos. 06-1203, *et al.* (1st Cir. Oct. 26, 2007) (affirming FERC approval order for Project). Lastly, the LOR is part of an ongoing process before the Coast Guard, *see* LOR Transmittal at 2, and it likewise does not affect the legal and factual issues before different federal agencies, such as the U.S. Army Corps of Engineers and the Department of Commerce, which arise under different statutes.

For the foregoing reasons, Weaver's Cove respectfully requests that the Secretary deny MCZM's request for an additional enlargement of time for filing its Principal Brief.

Respectfully submitted,

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Dated: October 29, 2007

CERTIFICATE OF SERVICE

Consistent with 15 C.F.R. § 930.127, copies of this Response have been sent to the following:

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