

# BAKER BOTTS LLP

THE WARNER  
1299 PENNSYLVANIA AVE., NW  
WASHINGTON, D.C.  
20004-2400

TEL +1 202.639.7700  
FAX +1 202.639.7890  
www.bakerbotts.com

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January 8, 2008

BY MESSENGER

Randolph Q. McManus  
TEL +1 (202) 639-7725  
FAX +1 (202) 585-1044  
randy.mcmanus@bakerbotts.com

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 Pending Appeal of AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C.

Dear Secretary Gutierrez:

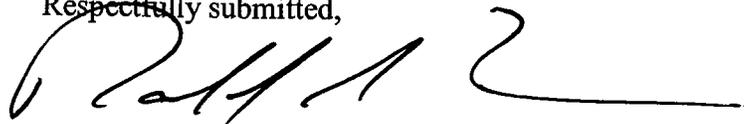
Enclosed for filing on behalf of AES Sparrows Point LNG, LLC ("AES Sparrows Point") and Mid-Atlantic Express, L.L.C. ("Mid-Atlantic Express") (collectively "AES"), in accordance with 15 C.F.R. § 930.125, is the above referenced Notice of Pending Appeal under the Coastal Zone Management Act ("CZMA"). 16 U.S.C. §§ 1451-1456. The Maryland Department of the Environment ("MDE") objected to AES's consistency certification for the federal permitted activities at issue—those activities requiring Federal Energy Regulatory Commission authorization and United States Army Corps of Engineers permits—on July 9, 2007, and AES filed a notice of appeal of those objections on August 8, 2007. However, because MDE issued a second objection letter on December 20, 2007 to *reiterate* its initial objection, AES is filing the enclosed notice of its pending appeal as a protective appeal of the second objection letter.

AES respectfully requests waiver of the \$500.00 application fee that is to accompany a notice of appeal. 15 C.F.R. § 930.125(c). MDE previously objected to the federally permitted activities at issue in the second objection letter, and AES has already appealed that objection in a timely manner and paid the \$500.00 application fee. Because of its prior appeal and submission at that time of the consolidated record, AES also here requests waiver of the requirement that the appellant's notice of appeal be accompanied by two copies of the consolidated record.

January 8, 2008

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. McManus', with a long horizontal flourish extending to the right.

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

cc: Mr. Joel La Bissonniere, Assistant General Counsel for Ocean Services  
Mr. 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. Judah Prero, Maryland Assistant Attorney General, MDE  
Mr. Kent Morton, 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. )**

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**NOTICE OF PENDING 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”) filed, on August 8, 2007, a Notice of Appeal with the Secretary of Commerce (“Secretary”) asking that the Secretary override the Maryland Department of the Environment’s (“MDE”) July 9, 2007 objections to AES’s certification of its project’s consistency (“Consistency Certification”) with the State of Maryland’s Coastal Zone Management Program (“MCZMP”).

The objections to AES’s Consistency Certification were set forth in a July 9, 2007 letter from MDE to Mr. Christopher H. Diez, Vice President, AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. (“First Objection Letter”). A copy of the First Objection Letter was provided by MDE to the National Oceanic and Atmospheric Administration (“NOAA”), the United States Army Corps of Engineers (“ACOE”), and the Federal Energy

Regulatory Commission (“FERC”), and is attached hereto as Exhibit 1. While MDE maintained in the First Objection Letter that its statutory six-month review period for the activities related to the FERC permits for the project did not commence until June 29, 2007, MDE nevertheless specifically objected on July 9, 2007 to the activities associated with both the ACOE permits and the FERC permits. See First Objection Letter at 2. Inasmuch as the NOAA regulations allow a State’s consistency determination, including an objection, to be issued anytime within the six-month timeframe, see, e.g., 15 C.F.R. § 930.62(a) (“At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification”), and MDE did so here on July 9, 2007, both objections were ripe for appeal at that time. Accordingly, MDE’s “belief” that the six-month clock did not expire until December 2007 is irrelevant and does not affect the right of AES to appeal the objection when it was first issued. AES’s appeal of the objections as to both the ACOE permits and the FERC permits on August 8, 2007 was timely and proper.

On December 20, 2007, MDE issued to AES *another* objection letter (“Second Objection Letter”), purportedly to “reiterate the State’s Federal Consistency denial of the FERC license in accordance with what MDE believes to be the appropriate time schedule.” See Second Objection Letter at 1 (attached as Exhibit 2) (emphasis added). The Second Objection Letter acknowledges that “MDE also denied federal consistency for the FERC license in its July 9, 2007 letter.” *Id.*

Because MDE already objected to the consistency of the activities related to the FERC authorizations on July 9, 2007, and because AES has already appealed that objection, the Second Objection Letter, as a matter of law, is redundant and of no legal effect. Indeed, the Second Objection Letter asserts the very same (contradictory) bases for MDE’s objections: inconsistency with the MCZMP and “incomplete information” on which to base a determination

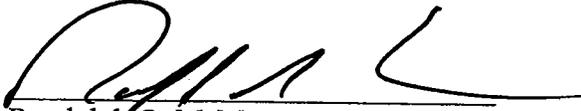
of consistency.<sup>1</sup> For this reason too, MDE's Second Objection Letter should be ignored by the Secretary as a nullity. Absent confirmation from the Secretary, however, that no further appeal is necessary,<sup>2</sup> to avoid uncertainty, AES hereby respectfully requests that the Secretary treat this notification of its pending appeal as a timely lodged, protective appeal of the Second Objection Letter pursuant to 15 C.F.R. § 930.125. The bases for the appeal are the same as those set forth in the Notice of Appeal on August 8, 2007. And, since the reasons for overriding MDE's objection to the consistency of the activities related to the FERC authorizations are already fully set forth in AES's Initial Brief filed on September 7, 2007 and its Reply Brief filed on October 29, 2007, and since MDE has likewise submitted its position in its brief dated September 7, 2007, unless the Secretary affirmatively deems otherwise, no further briefing is required or warranted.

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<sup>1</sup> Second Objection Letter at 3, 5. Interestingly, MDE continues to claim incomplete information notwithstanding its acknowledgement that AES has provided additional data and responses requested by MDE. MDE's new assertions regarding the status of the FERC proceeding and the "Corp's review" are neither factually accurate nor relevant to MDE's independent obligations with respect to its own consistency review.

<sup>2</sup> In that regard, AES would note that in its Second Objection Letter, MDE references the procedures for appealing an objection.

Respectfully submitted:



Randolph Q. McManus

G. Mark Cook

Jessica A. Fore

Emil J. Barth

BAKER BOTTS L.L.P.

The Warner

1299 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2400

(202) 639-7725

Attorneys for

**AES Sparrows Point LNG, LLC**

**Mid-Atlantic Express, L.L.C.**

Dated: January 8, 2008

## CERTIFICATE OF SERVICE

Consistent with 15 C.F.R. § 930.125 and the MDE's Second Objection Letter, copies of this Notice of Pending Appeal have been sent to the following:

Mr. Joel La Bissonniere (by messenger)  
Assistant General Counsel for Ocean Services  
1305 East West Highway  
Room 6111 SSMC4  
Silver Spring, MD 20910

Ms. Kimberly D. Bose (by first class mail)  
Federal Energy Regulatory Commission  
888 1st Street N.E.  
Washington, D.C. 20426

Mr. Joseph P. DaVia (by first class mail)  
US Army Corps of Engineers - Baltimore District  
Attn: CENAB-OP-RMN  
P.O. Box 1715  
Baltimore, Maryland 21203-1715

Mr. Elder Ghigiarelli, Jr. (by first class mail)  
Federal Consistency Coordinator  
Wetlands and Waterways Program  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

Mr. Judah Prero (by first class mail & e-mail)  
Assistant Attorney General  
1800 Washington Boulevard  
Baltimore, MD 21230

Respectfully submitted:



Jessica A. Fore  
BAKER BOTTS L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400  
(202) 639-7727  
Attorney for  
**AES Sparrows Point LNG, LLC**  
**Mid-Atlantic Express, L.L.C.**

Dated: January 8, 2008

## Exhibit 1

**MARYLAND DEPARTMENT OF THE ENVIRONMENT**  
**MDE** 1800 Washington Boulevard • Baltimore MD 21230  
410-537-3000 • 1-800-633-6101

Martin O'Malley  
Governor

Anthony G. Brown  
Lieutenant Governor

Shari T. Wilson  
Secretary

Robert M. Summers, Ph.D.  
Deputy Secretary

July 9, 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 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). 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 from prior correspondence (attached), the Project requires two separate federal actions that are subject to § 307 of the CZMA: (1) the U.S. Army Corps of Engineers (Corps) authorization pursuant to Section 10 of the River and Harbors Act and Section 404 of the Clean Water Act, and (2) the Federal Energy Regulatory Commission (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

Christopher H. Dicz

July 9, 2007

Page 2 of 4

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 is 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.

Given AES's position that the review period began as early as January 9, 2007, and, therefore, expires as early as today, July 9, 2007, MDE is rendering a consistency determination on both the Corps permit and the FERC license in this letter. However, because MDE continues to believe that the six-month review period did not begin for the FERC license until June 29, 2007, when AES made the appropriate certification, MDE will continue to review AES's certification of the FERC license and will render a determination prior to the close of the review period on or about December 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 laws. For the AES Sparrows Point LNG Facility ("Project"), the applicable networked laws include the following:

- Tidal Wetlands Act, Md. Code Ann., Envir. § 16-501 *et seq.*,
- Nontidal Wetlands Protection Act, Md. Code Ann., Envir. § 5-901 *et seq.*,
- Waterway Construction Act, Md. Code Ann., Envir. § 5-501 *et seq.*,
- Air Quality Control Act, Md. Code Ann., Envir. § 2-101 *et seq.*,
- Water Appropriation Act, Md. Code Ann., Envir. § 5-501 *et seq.*,
- Water Pollution Control Act, Md. Code Ann., Envir. § 9-301. *et seq.*,

Christopher H. Diez

July 9, 2007

Page 3 of 4

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.<sup>1</sup>

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

As you know, 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.*, July 3, 2007, letter from Vance Hobbs, Chief, Maryland Section Northern, U.S. Army Corps of Engineers, to Christopher Diez, AES (requesting additional information on 38 separate items). In fact, the FERC has not yet released even a schedule for the preparation of its Environmental Impact Statement.

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. As I stated in my letter to you dated July 5, 2007 (attached), MDE's review of this response is ongoing, and based on our review to date, additional information/clarification is still required, particularly with regard to the proposed recycling facility/disposal of the dredged material. MDE received AES's response to that letter on July 6, 2007, and is currently preparing a comprehensive response to the AES May 31, 2007, submittal, which will soon be provided to AES.

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 asked AES to stay the federal consistency review period to give MDE the time to receive and consider the information necessary to carry out a comprehensive review of the project and its consistency with Maryland's networked CZMP. AES's refusal to agree to a stay leaves MDE with no choice but to object to

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<sup>1</sup> The Department notes that, on June 22, 2007, the United States District Court for the District of Maryland upheld a recent 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. 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).

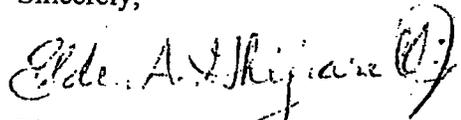
Christopher H. Diez  
July 9, 2007  
Page 4 of 4

the AES certification. 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 and on the assumption that the 6-month review period for the FERC license did not begin to run until June 29, 2007, and, if appropriate, will provide notice of the insufficiency of the information AES has provided at a later date. See 15 CFR § 930.60(a)(1).

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 [eghiarelli@mde.state.md.us](mailto:eghiarelli@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  
Kent J. Morton, AES  
Shari T. Wilson, Secretary, MDE  
Judah Prero, AAG, MDE  
Adam Snyder, AAG, MDE

## Exhibit 2



## MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley  
Governor

Shari T. Wilson  
Secretary

Anthony G. Brown  
Lieutenant Governor

Robert M. Summers, Ph.D.  
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.<sup>1</sup>

#### 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

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<sup>1</sup> 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).

Christopher H. Diez  
December 20, 2007  
Page 4 of 5

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.

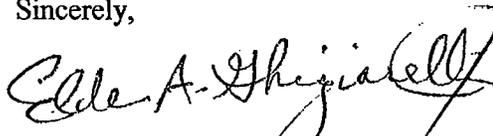
Based on its review of the AES application for a CFRA permit and the supporting Resource Documents, MDE requested additional information with regard to the impacts to wetlands and waterways resulting from the proposed dredging and dredged material disposal, and the proposed pipeline. MDE received the 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](mailto: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

Christopher H. Diez  
December 20, 2007  
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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