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August 27, 2007

AUG 27 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 Mill River Pipeline, LLC from Objection of the
Massachusetts Office of Coastal Zone Management to the Consistency
Certification for the Mill River Pipeline Project

Dear Secretary Gutierrez:

Enclosed for filing on behalf of Mill River Pipeline, LLC ("Mill River"), 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. 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 submitted today to the Assistant General Counsel for Ocean Services, one in hard copy form and one in electronic format on compact discs (CDs). Specifically, Mill River has delivered eighteen (18) bankers boxes and ten (10) CDs containing the substantial consolidated record to the Assistant General Counsel. In order to facilitate the review of the appeal, Mill River is also providing the Assistant General Counsel a box of "Key Operative Documents" taken from the consolidated record.

Staff of the Federal Energy Regulatory Commission ("FERC"), the lead Federal permitting agency for the Mill River energy project, has confirmed that the consolidated record for this appeal consists of the certified index of record for the appeal to the U.S. Court of Appeals for the First Circuit of the FERC order approving the Mill River project. To create a hard copy of the FERC record, Mill River has had a third party vendor print the entire Mill River docket that is publicly available at FERC's e-library (<http://www.ferc.gov/docs-filing/elibrary.asp>). These documents have been compiled and bound by Mill River by FERC accession number.

August 27, 2007

Also enclosed are the documents identified on the index of the consolidated record submitted by the Massachusetts Office of Coastal Zone Management ("MCZM") to the FERC on August 3, 2007 in the Mill River docket. MCZM supplied Mill River with the majority of the documents identified in the index. Mill River sorted, compiled and bound these documents and included from its own records, to the extent practicable, certain of those documents identified in the MCZM index but not provided in hard copy form to Mill River by MCZM.

Consistent with the NOAA regulations, Mill River 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). Mill River is providing one CD that contains the publicly available documents from the Mill River docket on FERC's e-library. Mill River has also scanned the documents provided by MCZM as its consolidated record and included them on CDs, by year.

If you have any questions, please do not hesitate to contact the undersigned at (202) 639-7711.

Respectfully submitted,



Bruce F. Kiely
Attorney for
Mill River Pipeline, LLC

cc: The Honorable Samuel Bodman, Secretary of Energy w/o enclosures
Mr. Joel La Bissonniere, Assistant General Counsel for Ocean Services w/ enclosures
Mr. Bruce Carlisle, MCZM w/o enclosures
Ms. Kimberly D. Bose, Secretary, FERC w/o enclosures
Ms. Karen Kirk Adams, US Army Corps of Engineers w/o enclosures
Mr. Ted Gehrig, Mill River Pipeline, LLC w/o enclosures

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE

AUG 27 2007

Mill River Pipeline, LLC)
Appellant,)
)
vs.)
)
Massachusetts Office of)
Coastal Zone Management)
Respondent.)

Case No. _____

APPEAL OF MILL RIVER PIPELINE, LLC
UNDER THE COASTAL ZONE MANAGEMENT ACT

On July 6, 2007, the Massachusetts Office of Coastal Zone Management (“MCZM”) objected to Mill River Pipeline, LLC’s (“Mill River”) certification of its project’s consistency with the Massachusetts coastal zone management program (“CMP”). 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”) and 15 C.F.R. §§ 930.120-131, Mill River hereby requests that the Secretary of Commerce (“Secretary”) find, as a threshold matter pursuant to 15 C.F.R. § 930.129(b), that the project may be approved by the federal permitting agencies because the MCZM’s objection was not in compliance with federal regulations. In the alternative, Mill River requests that the Secretary find, pursuant to 16 U.S.C. § 1456(c)(3)(A), that the project may be approved by the federal permitting agencies because the proposed Mill River pipeline project is consistent with the objectives of the Act or otherwise necessary in the interest of national security.

The bases for this appeal are as follows:

1. The MCZM's objection should be overridden as a threshold matter because the objection on the ground of insufficient information did not comply with Section 307 of the Act and the regulations promulgated under the Act. 15 C.F.R. § 930.129(b).

2. The MCZM's objection should be overridden because the Mill River project—an energy project entitled to have been given priority consideration by the MCZM—is consistent with the objectives of the Act. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.121.

3. The MCZM's objection should be overridden because the Mill River project 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. Mill River proposes to construct and operate an two pipeline laterals, with a total length of a little more than six miles, in Fall River, Massachusetts to transport regasified liquefied natural gas (“LNG”) from an LNG terminal proposed to be developed by its affiliate, Weaver’s Cove Energy, LLC (“Weaver’s Cove”),¹ to the interstate pipeline grid. Mill River’s application for a certificate of public convenience and necessity authorizing the construction of those interstate natural gas pipeline facilities, along with the concurrent application of Weaver’s Cove to construct and operate the LNG terminal, were approved by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on July 15, 2005. Weaver’s Cove Energy, LLC, 112 F.E.R.C. ¶ 61,070 (2005), order on reh’g, 114 F.E.R.C. ¶ 61,058 (2006). The FERC found that the Mill River facilities and Weaver’s Cove’s proposed LNG terminal (together, the “Weaver’s Cove Project”) “will promote the public interest by increasing the availability of natural gas supplies in the New England market.” Id. at P 5.

¹ Because MCZM issued a separate consistency objection for the Weaver’s Cove terminal, Weaver’s Cove is filing a separate appeal with the Secretary.

2. The FERC, in Condition No. 23 of its approval order, required Weaver's Cove to provide documentation of concurrence from the MCZM that the project is consistent with Massachusetts' CMP. While the FERC order was not conditioned on Mill River obtaining documentation of concurrence, Mill River nevertheless is filing this notice of appeal out of an abundance of caution.

3. On March 18, 2004, Mill River filed with the United States Army Corps of Engineers ("USACE"), applications for dredge and fill permits under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344, for authorization to install portions of the Northern and Western Laterals in wetland areas that constitute waters of the United States, including the Taunton River crossing of the Western Lateral that will be dredged and backfilled by Weaver's Cove.

4. The activities related to the USACE permits require a consistency determination from the MCZM. Because, inter alia, MCZM has not issued a consistency determination, the USACE has not issued its permits.

5. In order to obtain the consistency determinations required in connection with the USACE authorizations, on January 8, 2007, Mill River submitted to the MCZM a certification of the project's consistency with the CMP ("Consistency Certification") and all required information, including federal permit applications and a copy of the final "Secretarial Certificate" from the Massachusetts Executive Office of Environmental Affairs indicating no further review is required under the Massachusetts Environmental Policy Act ("MEPA").²

² Prior to filing its consistency certification, Mill River responded to informal requests from MCZM for studies and information related to the Mill River project. Mill River has worked cooperatively and attended numerous meetings with the MCZM in connection with the project since MCZM first attended a meeting held on June 28, 2003 as part of FERC's pre-filing process—a process which Mill River voluntarily entered.

6. On January 10, 2007, Mill River received a letter from the acting director of the MCZM stating that Mill River had submitted the required documents for initiating a consistency review, and that the State's review had commenced as of January 9, 2007.

7. Between January 8, 2007 and July 6, 2007, Mill River responded to all of the MCZM's written requests for additional information.

8. On June 4, 2007, the Massachusetts Department of the Environment ("MADEP") abruptly and unilaterally stayed the processing of all remaining MADEP environmental permits, a few weeks after it had advised Mill River that all remaining permits would be issued by the end of June.

9. On July 6, 2007, the MCZM objected to Mill River's Consistency Certification, alleging that Mill River failed to provide applicable state licenses and permits "necessary to CZM's federal consistency review."

10. For the reasons set forth below, Mill River hereby files this appeal of the MCZM's objection with the Secretary under Section 307 of the Act.

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

The Secretary should override the MCZM's objection to Mill River's Consistency Certification as a threshold matter, on the grounds that the MCZM did not comply with Section 307 of the Act, 16 U.S.C. § 1456, and the regulations contained in subpart D of 33 C.F.R. Part 930. 15 C.F.R. § 930.129(b). The federal regulations promulgated under the CZMA provide that if the State's objection does not comply with Section 307 and the regulations, the Secretary shall override the objection. Id. In this case, the MCZM's objection on the ground of insufficient information was not a valid objection under the Act and regulations.

The MCZM may only object to Mill River's Consistency Certification on the basis of insufficient information if Mill River failed to "supply the information required pursuant to Section 930.58 of Title 15, or other information necessary for the State agency to determine consistency," following a written request for the information by the MCZM. 15 C.F.R. § 930.63(c) (emphasis added). Mill River, however, supplied the MCZM with all of the information required pursuant to Section 930.58 and all other necessary information. The MCZM conceded as much by issuing its letter indicating that the State's review had commenced as of January 9, 2007. Furthermore, the information already received by the MCZM demonstrates that the project is in fact consistent with Massachusetts' CMP. Therefore, the Secretary should override this MCZM objection as a threshold matter.

III. ALTERNATIVELY, THE MILL RIVER PROJECT IS CONSISTENT WITH THE OBJECTIVES OF THE COASTAL ZONE MANAGEMENT ACT

Regardless of the Secretary's determination on the threshold matter, the Secretary may override the objection if he finds that the Mill River pipeline is consistent with the objectives of the Act. 16 U.S.C. § 1456(c)(3)(A). The National Oceanic and Atmospheric Administration ("NOAA") regulations for appeals from a State's objection to a consistency certification provide that a project will be considered consistent with 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 (2006). The Mill River project readily satisfies each of these three standards.

The Mill River Project Furthers the National Interest in a Significant and Substantial Manner.

The Mill River project promotes the national interest as articulated in Sections 302 and 303 of the Act, in a significant and substantial manner. Section 302 of the Act provides that “[t]here is a national interest in the effective management, beneficial use, protection and development of the Coastal Zone.” 16 U.S.C. § 1451(a). In this case, a segment of the pipeline, along with the LNG terminal, is proposed to be developed in a Massachusetts “Designated Port Area,” an area within the coastal zone, established under Massachusetts law as being specifically designated for the preservation and enhancement of marine industrial development.³ Section 303 of the CZMA establishes that “priority 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 Mill River project, in conjunction with the Weaver’s Cove LNG terminal, is a FERC-approved, major energy facility located and designed to bring much needed incremental gas supply to New England which is entitled to priority consideration under the Act. Further, because the approved project requires deliveries of LNG by ship, it is also a coastal-dependent use that is likewise required to be given priority consideration by the Secretary. Id.

The National Interest Furthered By the Weaver’s Cove Project Outweighs Any Putative Adverse Coastal Effects.

³ Mass. Regs. Code tit. 301, § 25.

The well-articulated national benefits of the Weaver's Cove Project in terms of diversified energy supply, reliability, and affordable energy, outweigh the project's limited impacts to Massachusetts' coastal zone. In particular, the FERC extensively reviewed and investigated the environmental impacts of the project and found that "the proposed action can be constructed and operated in an environmentally acceptable manner." 112 F.E.R.C. ¶ 61,070 at P 105. The FERC concluded in its Final Environmental Impact Statement ("FEIS"), issued pursuant to the National Environmental Policy Act, that the Weaver's Cove Project would have "limited adverse environmental impact" on the coastal zone, in part, because the majority of the pipeline lateral routes would either overlap or be adjacent to existing pipeline or other linear rights-of-way. Weaver's Cove Energy LNG Project, FEIS, Docket Nos. CP04-36-000 and CP04-41-000, at p. ES-14 - E-15 (May 2005).

Further, Massachusetts has deemed this section of the Taunton River in Fall River, Massachusetts to be a Designated Port Area, and therefore determined that its environment is specifically favored for marine industrial development. Massachusetts, operating through the MCZM, decided to select specific coastal zones, including the proposed project site in Fall River, as Designated Port Areas because "it makes both good environmental and good economic sense to steer future maritime commerce into harbor areas that have already been altered extensively -- at great public expense -- to meet the special operational requirements of such commerce." Executive Office of Environmental Affairs, The 1994 Designated Port Area (DPA) Regulations (Dec. 15, 1994) (codified at Mass. Regs. Code tit. 301, § 25.). Therefore, the environmental effects of further industrial development in the Fall River port are not only limited, but consistent with the State's CMP.

There Is No Reasonable Alternative.

There is no reasonable alternative available to the Mill River project. Nor did the MCZM suggest an alternative in its objection, as permitted by regulation. 15 C.F.R. § 930.63(b). The Secretary has determined that 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.⁴ Here, the primary purpose of the project is to supply a new competitive source of imported LNG to the New England market area by providing an import terminal and facilities for the storage of LNG, easy access to existing natural gas pipelines (only 6 miles total of new pipeline is required), and a competitive source for trucking of LNG throughout the region.

When preparing the FEIS for the project, FERC, in cooperation with the USACE and other federal and state agencies, “evaluated a number of alternatives to the Weaver’s Cove Project to determine if any are reasonable and environmentally preferable to the proposed action.” FEIS at 3-1. The FERC considered alternative natural gas infrastructure proposals, conservation and other sources of energy, system alternatives, and pipeline routing alternatives. Since there was no reasonable alternative to the siting of the terminal in the Designated Port Area, it follows that there is no alternative to connecting the terminal to established pipeline facilities. There is also no reasonable alternative route to the proposed Mill River pipeline lateral routes.⁵ FEIS at 5-18. Based on the extensive record analysis, the FEIS found no alternative that

⁴ Decisions and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Island East Pipeline Company, L.L.C. from an Objection by the State of Connecticut, May 5, 2004, at 40, *set aside on other grounds in Connecticut v. United States Dep’t of Commerce*, No. 3:04cv1271, (___D.Conn___), 2007 WL 2349894 (D. Conn Aug. 15, 2007); *see also* Decisions and Findings in the Consistency Appeal of the Virginia Electric and Power Company from an Objection by the North Carolina Department of the Environment, May 19, 1994, at 38.

⁵ As noted in the FEIS, Mill River agreed to adopt pipeline route variations recommended by FERC Staff. FEIS at 5-18.

is clearly preferable to the proposed action, and that each alternative presented its own unique set of impacts. 112 F.E.R.C. ¶ 61,070 at P 105.

IV. THE WEAVER'S COVE PROJECT IS IN THE INTEREST OF NATIONAL SECURITY

The Weaver's Cove 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).

Former Secretary of the Interior Gale Norton likewise 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).

The location of the proposed Weaver's Cove Project in the rapidly growing New England market area offers the much needed diversification of gas supply in a diverse and high-demand location. The nation's energy policy makers have found such projects to be important for national security purposes, especially in light of Hurricanes Katrina and Rita and the damage they caused to energy infrastructure concentrated in one region. Construction of the Weaver's Cove Project will further the Nation's energy security.

The importance of natural gas imports to the country's energy security was recently underscored in the National Petroleum Council's report summarizing the results of the study it conducted at the request of Secretary of Energy Samuel W. Bodman on the ability of global oil and natural gas supply to keep pace with growing world demand. The report concludes:

U.S. and global energy security depend upon reliable, sufficient energy supplies freely traded among nations. This dependence will rise with the growth required in international oil and natural gas trade, and may be increasingly influenced by political goals and tensions. These trends are prompting renewed concerns about U.S. energy security . . . It is a hard truth that energy independence is not necessary for energy security. Rather than pursuing energy independence, the United States should enhance its energy security by moderating demand, expanding and diversifying domestic energy supplies, and strengthening global energy trade and investment. Indeed, even if the United States could become physically self-sufficient in energy, it could not disengage from global energy activity, trade, and finance. There can be no U.S. energy security without global energy security.

National Petroleum Council, Facing the Hard Truths about Energy (July 18, 2007). By contributing to the diversification of energy supply, the Weaver's Cove Project would enhance the nation's energy security.

V. REQUEST FOR SECRETARIAL ACTION

Mill River respectfully asks the Secretary to find and conclude that:

One. The MCZM erred as a matter of law when it concluded that Mill River had failed to submit necessary information, and therefore, pursuant to 15 C.F.R. § 930.129(b), the project may be approved by the federal permitting agencies.

Two. The Mill River project—an energy project entitled to priority consideration by MCZM—is consistent with the objectives and purposes of the Act, and as such, the project may be approved by the federal permitting agencies.

Three. The Mill River project is necessary in the interest of national security, and as such, the project may be approved by the federal permitting agencies.

VI. RESERVATION OF RIGHTS

Mill River 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:



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Dated: August 27, 2007

CERTIFICATE OF SERVICE

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

Mr. Joel La Bissonniere
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Dated: August 27, 2007