



Matthew D. Manahan

One Monument Square
Portland, ME 04101

207-791-1189 voice
207-791-1350 fax
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: ME NH

June 9, 2010

Via Email and U.S. Mail

Susan M. Lessard, Chair
Attn: Terry A. Hanson
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: Calais LNG Project Company LLC

Dear Chair Lessard:

Pursuant to the Second Procedural Order, enclosed is a Motion to Strike of Downeast LNG, Inc. and Downeast Pipeline LLC.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Manahan", with a long horizontal line extending to the right.

Matthew D. Manahan

cc: Service List (via email)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CALAIS LNG PROJECT COMPANY LLC)
LNG Receiving, Storage and Vaporization Terminal, Calais, Maine)
Send-Out Pipeline, Calais, Baileyville, Baring, and Princeton, Maine)
)
Air Emissions Application #A-1029-71-A-N,)
Site Location of Development Application #L-24843-26-A-N,)
Natural Resources Protection Act Applications #L-24843-TG-B-N,)
#L-24843-IW-C-N, #L-24843-L6-D-N, #L-24843-4P-E-N)
Waste Discharge Application #W-9056-5O-A-N)

**MOTION TO STRIKE
OF DOWNEAST LNG, INC. AND DOWNEAST PIPELINE LLC**

Pursuant to the Second Procedural Order, dated April 30, 2010, Interveners Downeast LNG, Inc. and Downeast Pipeline LLC (collectively “Downeast LNG”) move to strike certain direct testimony of the Conservation Law Foundation (“CLF”) and Save Passamaquoddy Bay (“SPB”), for the reasons discussed below.

I. The Second Procedural Order

The Second Procedural Order addressed the relevant review criteria and issues to be addressed at the Board’s hearing in this proceeding. In the course of identifying the relevant review criteria, the Second Procedural Order specifically identified issues beyond the scope of the hearing. Among the issues excluded by the Second Procedural Order are safety and catastrophic events and potential impacts outside the State of Maine. Second Procedural Order at 6.¹

¹ The Second Procedural Order states that the Board’s review “includes all areas *in the State* within the scope of laws under which applications have been filed, including the coastal wetland within Maine’s coastal waters, out to the 3-mile mark.” Second Procedural Order at 6 (emphasis added).

II. Testimony Beyond the Scope of the Board's Review

A. Issues Relating to Impacts in Canada

As noted above, the Order excludes from the Board's review impacts to any areas outside the jurisdiction of the State of Maine. Second Procedural Order at 6.

The following CLF witnesses have submitted pre-filed testimony regarding potential impacts in Canada: Clifford Goudey, Margot Sackett, Sarah Strickland, Arthur MacKay. The following SPB witnesses have submitted pre-filed testimony regarding potential impacts in Canada: Hugh Akagi, Vera Francis, Maria Recchia, Vaughn McIntyre.

Thus, the testimony of these witnesses must be stricken.²

B. Safety

The Second Procedural Order states that the Board does not have jurisdiction over issues regarding the safety of LNG facilities and ships. Second Procedural Order at 6. These issues fall within the exclusive purview of the Federal Energy Regulatory Commission ("FERC") under Section 311(d) of the Energy Policy Act of 2005 ("EP Act").³ 15 U.S.C. § 717b(3A).

The following CLF witnesses have submitted pre-filed testimony regarding safety: Lars Lund, Clifford Goudey, Sarah Strickland, Arthur MacKay, Alan Brooks. The following SPB witness has submitted pre-filed testimony regarding safety: Vera Francis.

Thus, the testimony of these witnesses must be stricken.

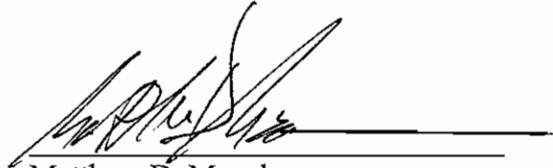
² For the same reason, Downeast LNG objects to the suggestion in the June 3, 2010 letter from the Roosevelt Campobello International Park Commission that the Board's site visit should include locations on Campobello Island; Campobello Island is located in Canada.

³ The Board may not consider the safety of LNG facilities and tankers even to the extent that they may affect review criteria under the Site Law or NRPA. Section 311(d) includes the natural and physical aspects of the proposed location of an LNG facility within FERC's review of state and local safety considerations. Consequently, to the extent that the review criteria of the Site Law or NRPA relate to "state and local safety considerations," as defined by Section 311(d) of the EPAct, FERC has exclusive jurisdiction over those considerations.

III. Conclusion

The CLF and SPB testimony identified above should be stricken because it violates the Second Procedural Order.

Dated: June 9, 2010

A handwritten signature in black ink, appearing to read 'Matthew D. Manahan', is written over a horizontal line.

Matthew D. Manahan
Pierce Atwood LLP
One Monument Square
Portland, ME 04101
Tel. 207.791.1189

Attorneys for Downeast LNG, Inc. and
Downeast Pipeline LLC