



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF THE  
REGIONAL ADMINISTRATOR

August 14, 2003

Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E., Room 1A  
Washington, D.C. 20426

Secretary Ellen Roy Herzfelder  
Executive Office of Environmental Affairs  
Attn: MEPA Office  
251 Causeway Street, Suite 900  
Boston, Massachusetts 02114

**RE: NEPA/MEPA Scoping Comments for Weaver's Cove Energy, LLC, Liquefied Natural Gas (LNG) Import Terminal, Fall River, Massachusetts, FERC Docket No. CP01-5-003, EOE A File No. 13061**

Dear Secretary Salas and Secretary Herzfelder:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), Section 404 of the Clean Water Act, and Section 309 of the Clean Air Act, we submit the following comments as part of the NEPA scoping process for the proposed Weaver's Cove Energy, LLC, LNG Import Terminal, Fall River, Massachusetts. We ask that our comments be considered by both of your respective agencies as you work to establish a scope of analysis for the proposed project under NEPA and its counterpart for the Commonwealth of Massachusetts, the Massachusetts Environmental Policy Act (MEPA). It is our understanding that a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) will be prepared following the issuance of scopes from EOE A and FERC for this project. We support that objective and offer our comments with the hope that the issues in this letter will be addressed in the EIS/EIR.

Our comments are based on information provided in the applicant's June 30, 2003 Expanded Environmental Notification Form (ENF), the Federal Energy Regulatory Commission's (FERC) July 11, 2003 "Notice of Intent" (NOI) to prepare an EIS for the project, and information obtained during the joint MEPA/FERC public scoping meeting on July 29, 2003 in Swansea, Massachusetts. According to this information, the project entails the construction of one LNG storage tank with a capacity of 200,000 cubic meters and associated vaporization equipment, a pier and loading facilities to receive LNG tankers, truck loading facilities and two 24-inch diameter pipelines to interconnect with the existing Algonquin Gas Transmission Company

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pipeline network. The proposed project also includes a sizeable amount of maintenance and improvement dredging within the limits of the existing federal channel and turning basin of the Taunton River. Current estimates indicate a total of 2.1 million cubic yards of material will be removed from the river and disposed in an upland location at the proposed LNG terminal site along the river. During the scoping meeting we became aware of a proposal for a second LNG facility by Somerset LNG LLC for the southern region of the Brayton Point Power Plant Site in Somerset, Massachusetts. The Somerset site is currently included in the ENF as an alternative site during the analysis of the Weaver's Cove facility.

Why are we seeing so many proposals all at once? The New England region continues to increase its use of natural gas for electricity generation and space heating. While this development has been positive for the region's air quality, continued investment in the natural gas supply and storage infrastructure will be necessary to maintain these environmental benefits and not adversely impact the economy or the reliability of the electric system. In recent months, the US Department of Energy has expressed concerns about a potential natural gas supply shortage during the winter heating season and has been advocating a number of measures to head off such a situation until potential supply imbalances can be addressed. Increased importation of LNG is one means to increase supply and moderate price volatility. Barring any other major environmental problems with siting, additional LNG facilities, sited close to existing pipeline infrastructure, can enable the region to maintain the air quality improvements of the last several years without adversely impacting further economic development.

Efforts to develop an EIS/EIR should recognize these air quality gains along with the significant amount of public and private effort expended to help restore and maintain the health of the Lower Taunton River, Mount Hope Bay and the greater Narragansett Bay ecosystem. These efforts include increased fisheries management, projects to improve sewage treatment and abate pollution from combined sewer overflows, scientific research, and ongoing work by the EPA, the Massachusetts Department of Environmental Protection (DEP) and Rhode Island Department of Environmental Management (DEM) to develop Clean Water Act permits for facilities such as the Brayton Point Station power plant that meet the requirements of the Clean Water Act. Efforts to restore fish stocks (winter flounder) include strict recreational and commercial fishing limits in Massachusetts and Rhode Island for Mount Hope Bay. In addition, over 15 million dollars (in federal and state matching funds) has been spent since 1984 through the Narragansett Bay Estuary Program to enhance knowledge about the bay estuary and implement activities to protect and restore the estuary and its resources. The Narragansett Bay estuary is a federally designated estuary of national significance under the Clean Water Act's National Estuary Program. In addition, these waters are classified as either SA or SB by both Massachusetts and Rhode Island, and provide nursery and spawning habitat for important fish species such as winter flounder. As a cooperating agency we are willing to help make information related to these efforts available to the FERC staff as they prepare the EIS/EIR.

We used the information in the NOI and the ENF to develop this letter and a list of issues that should be thoroughly explored in the EIS/EIR. Our primary interests are for an EIS/EIR that

fully evaluates and compares project alternatives and comprehensively evaluates the direct, indirect, and cumulative impacts of the construction and operation of the LNG facility and associated pipeline along its entire route. We are particularly interested in a comprehensive assessment of potential impacts to aquatic resources in the Taunton River and Mount Hope Bay. We also recognize the high level of concern about safety, security and environmental justice issues expressed by numerous commentors during the July 29, 2003 scoping session. We encourage FERC and the MEPA unit to require a comprehensive analysis of these issues in the EIS/EIR.

### **Alternatives**

CEQ's regulations implementing NEPA at Section 1502.14 explain that a reasonable range of alternatives should be presented and compared in the EIS to allow for a "clear basis for choice among options by the decision maker and the public." Moreover, CEQ's "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" explain that:

"Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."

In this case, the EIS/EIR should fully evaluate a range of alternative sites for development of a LNG facility and supporting infrastructure and should describe site development options that can avoid or minimize impacts. The five alternative terminal locations and three potential gas line interconnection routes presented in the ENF appear to provide a solid foundation for such an analysis. Moreover, based on current information it appears that the Weaver's Cove and Somerset LNG proposals (both site locations are described in the Weaver's Cove ENF) are "similar actions" as defined in the NEPA Regulations at 40 CFR 1508.25 (a)(3) "which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." At this point, both projects appear to serve the same market. As such, we encourage FERC to develop one EIS that fully considers the impacts of both projects.

### **Impact Assessment**

The EIS should carefully document resources that will be impacted as a result of the proposed dredging and disposal operations (both terrestrial and aquatic) and sediment chemistry data should be provided and analyzed for all sediment that would be dredged to create a channel to accommodate LNG vessels. In general, the EIS should provide a competent accounting of aquatic life and bottom habitats likely to be impacted over the full length of the proposed dredging (including areas outside the dredging that may be affected by dredging operations), an analysis of the differing dredging methods available and an explanation of the proposed dredging

method. In addition, the analysis should estimate the construction schedule and an assessment of sensitive resources in the project area (for example, is the waterway used by certain fish species that would be affected by dredging and disposal activities during certain times of the year?). The potential for impacts to the Taunton River from this large scale dewatering activity for over two million cubic yards of dredged material on the site should also be fully described in the EIS/EIR.

Site development impacts described in the ENF that should be fully detailed in the EIS/EIR include impacts to salt marsh and rocky intertidal areas and coastal beach habitat. In addition, an analysis of impacts to wetlands, resources of the Taunton River, and the Mount Hope Bay estuary and to upland areas of ecological significance (such as the Freetown State Forest) associated with the pipeline interconnection alternatives for both the Weaver's Cove and Somerset facilities should be included in the FERC/MEPA scope.

### **Time of Year (TOY) Restrictions**

Development of an LNG terminal at any of the locations described in the ENF would include work to deepen the Taunton River channel and the creation of a turning basin in areas of the Taunton River and Mount Hope Bay. In the case of the preferred alternative, the project includes dredging of approximately 2,000,000 cubic yards of sediment. Because of the magnitude of the proposal, dredging and disposal operations will need to be carefully planned and scheduled to avoid and minimize impacts to sensitive fish (such as winter flounder), shellfish, and habitat at critical periods for spawning and migration. In addition to marine and estuarine species that utilize the lower Taunton as spawning and juvenile habitat, anadromous fish migrate past the proposed project location en route to or from spawning areas upstream. These species include alewife, blueback herring, rainbow smelt, American shad, and white perch. The EIS/EIR should include a comprehensive discussion of TOY restrictions that will be established to meet these objectives. We suggest that FERC coordinate with EPA, the National Marine Fisheries Service and the Commonwealth of Massachusetts Division of Marine Fisheries on the development of TOY restrictions that minimize the impacts of the dredging and construction work. Please contact Phil Colarusso of EPA New England's Office of Ecosystem Protection at 617-918-1506 for assistance on this issue. In addition to input from EPA, we encourage FERC to obtain input from the Corps of Engineers to help develop a realistic dredging schedule that respects identified TOY restrictions and does not by design require extensions of time to complete the work within the established restriction period.

### **Dredged Material Disposal**

The EIS/EIR should provide an inventory of the physical and chemical characteristics of the dredged material and an assessment of disposal options. Current plans call for dewatering the dredged material on the Weaver's Cove site and reusing the material to create a landscape buffer between the project and surrounding properties. The scope should require the EIS/EIR to include an analysis of potential issues associated with disposal of the dredged material on the site including information on how dredged material drainback waters will be managed to prevent impacts to the Taunton River and its resources (a list of the authorizations required for the drainback waters should also be provided), noise and dust control measures, how ongoing

groundwater remediation on the Weaver's Cove project site will be affected by disposal activities, and the construction schedule for the dewatering/earthworks operations.

### **Cumulative Effects**

NEPA requires an assessment of the potential cumulative impacts associated with the projects under consideration (both the Weaver's Cove and Somerset LNG proposals). For the purposes of the EIS/EIR we believe the impacts of the facilities (both construction and operational impacts) on the aquatic environment should be analyzed relative to existing stressors such as local power plants, as well as other proposed projects that could impact the Taunton River, Mount Hope Bay and the Narragansett Bay ecosystem such as the Aquaria Regional Desalinization Project further upstream on the Taunton River. While most dredging projects are typically described as having only temporary impacts, the recovery time for benthic areas following disturbance can vary greatly depending on the nature of the disturbance, and the type, sensitivity and resilience of the affected habitats. Other factors such as the proximity of the disturbance to other areas of impact, and the availability and ecological capacity (for refuge and other purposes) of undisturbed areas adjacent to the project should be factored into any effort to determine cumulative effects.

### **Mitigation**

The following mitigation issues should be addressed in the EIS/EIR:

- the analysis should explain how environmental impacts will be avoided and minimized through project design, pipeline routing, and construction contingency plans prepared and agreed to in advance of project construction;
- the analysis should describe the measures proposed to help project communities handle increased security and safety concerns, as well as traffic and noise during and after construction;
- the affect of the project on ongoing groundwater remediation on the Weaver's Cove site should be fully described;
- information should be provided to describe how adverse impacts from dewatering activities on the site (erosion, pollution to nearby river, noise, air quality) will be avoided/minimized; and
- a spill prevention and response plan should be provided to address any problems encountered during the transfer of LNG from the transport vessel to the onshore facility.

### **Environmental Justice (EJ)**

EPA New England is committed to promoting the principles of environmental justice outlined in Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority and Low-Income Populations. According to the Executive Order, "Each Federal Agency shall analyze the environmental effects, including human health, economic and social effects, of

Federal actions, including effects on minority communities and low-income communities, when such analysis is required by NEPA. Mitigation measures outlined or analyzed in an environmental assessment, environmental impact statement, or record of decision, whenever feasible, should address significant and adverse environmental impacts of proposed Federal actions on minority communities and low-income communities.”

EPA defines environmental justice principles as fair treatment, meaningful involvement and public health protection. Fair treatment means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. Meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

EPA heard environmental justice concerns about the project expressed by members of the public and elected officials at the July 29, 2003 scoping meeting. As part of our strategy to implement the Executive Order, our office has prepared maps to identify potential environmental justice areas, using criteria and methods developed by EPA New England. Several of the communities in the vicinity of the proposed project have been identified as potential environmental justice areas of concern. Specifically, there are neighborhoods in Fall River, Massachusetts, with low-income and minority populations that need to be considered in the analysis of environmental justice issues. Moreover, our preliminary research indicates that the general area surrounding the project in Fall River is also home to several brownfields sites, Resource Conservation and Recovery Act Program sites, fuel storage facilities, and facilities that discharge regulated contaminants into the air and water in Fall River. The presence of these facilities was referenced by elected officials and the public during the most recent scoping session as reason why the LNG facility should be sited somewhere other than Fall River. For purposes of the environmental justice analysis in the EIS/EIR we suggest that each alternative be considered with respect to its potential impact to surrounding communities.

Because we have identified potential environmental justice areas of concern in the vicinity of the project we strongly advise FERC to evaluate the proposed project in light of environmental justice principles outlined above, including fair treatment, meaningful involvement and public health protection. The analysis should address potential impacts from construction of the facility and associated infrastructure in Fall River, Freetown, Somerset and Swansea and how they will be addressed. This includes the potential health risks from wind blown dust, earthworks and dredge material dewatering on the site as well as increased noise, traffic and emissions during the construction period. In addition, operational impacts, such as the movement of 20-25 gas distribution trucks to and from the site each day should be considered in the analysis.

In addition to the general examples cited above, FERC should consult with the potentially impacted communities about their specific environmental justice concerns. EPA acknowledges FERC's efforts thus far to inform the public and consider their concerns in its decision-making. FERC should strive to involve residents in the four communities impacted by this project, as well as any potentially impacted communities that have yet to be identified, in its decision-making. Enhanced public involvement activities may be required to reach low-income and minority populations in these areas, particularly if they are non-English speaking. EPA is willing to work with FERC to help shape the evaluation so that environmental justice principles are fully considered. Please feel free to contact Kathy Castagna, of EPA's Office of Civil Rights and Urban Affairs, at 617-918-1429 to discuss how EPA can assist FERC in this analysis.

Also note that the Massachusetts Executive Office of Environmental Affairs (MA EOEA) has an Environmental Justice Policy which requires enhanced environmental review of new facilities in environmental justice neighborhoods through the Massachusetts Environmental Policy Act (MEPA). Kwabena Kyei-Aboagye, Environmental Justice Coordinator, MA EOEA, is the point of contact for environmental justice issues in Massachusetts and should be consulted for more information regarding that policy. He can be reached at 617-626-1165.

### **Safety and Security**

Safety and security issues were expressed as issues of great importance by the public in attendance at the recent scoping session. The scope for the EIS/EIR should reflect this concern and provide the foundation for substantive responses to the many questions and concerns raised by the public associated with siting and operation of an LNG facility.

### **Public Participation**

We encourage FERC to continue to encourage and support close interagency coordination across federal, state and local jurisdictions and to promote an open dialogue about the project throughout potentially affected or interested communities. To that end we acknowledge the efforts of the applicant, FERC and EOEA to obtain comments from relevant agencies and the public as part of FERC's NEPA Pre-Filing Process established by interagency agreement on August 20, 2002. FERC should consider expanding these efforts to accommodate input from interested Rhode Island parties through additional public meetings and by allowing cooperating federal and state agencies the opportunity to review a draft of the scope for the EIS/EIR.

### **Interagency Coordination**

The current joint NEPA/MEPA scoping process is a good example of the kind of increased state and federal cooperation and coordination envisioned by FERC when it established the NEPA pre-filing environmental review process. In addition to providing scoping comments and technical input regarding marine resources, dredging and disposal operations and environmental justice, we are also ready to review a draft of the scope for the EIS/EIR and subsequent documents to help identify points of general consensus and areas where additional discussions regarding the analysis appear necessary. We are willing to work with FERC and EOEA MEPA staff to help facilitate this effort if necessary.

Thank you for the opportunity to provide scoping comments. We are willing to participate as a cooperating agency to assist FERC and MEPA staff as they work on the development of the scope for the EIS/EIR (and other draft documents), and to attend interagency coordination meetings as appropriate and as our resources allow. It is our hope that the EIS/EIR will effectively address the issues we have identified in a comprehensive fashion. Should you have any questions or wish to discuss our concerns, please contact me at 617/918-1025.

Sincerely,



Timothy L. Timmermann  
Environmental Scientist  
Office of Environmental Review

cc:

James Hunt, Director, EOE MEPA Unit  
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