

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Weaver's Cove Energy, LLC

Docket Nos. CP04-36-003

Mill River Pipeline, LLC

CP04-41-003

CP04-42-003

CP04-43-000

ORDER DENYING REHEARING

(Issued July 19, 2006)

1. On July 15, 2005, the Commission issued an order (the July 15 Order) authorizing Weaver's Cove Energy, LLC (Weaver's Cove) under section 3 of the Natural Gas Act (NGA) to site, construct and operate a liquefied natural gas (LNG) terminal in Fall River, Massachusetts.¹ In an order issued January 23, 2006 (the January 23 Order)² the Commission addressed requests for rehearing and/or clarification by: Weaver's Cove; the City of Fall River, Massachusetts, jointly with the Attorney General of the Commonwealth of Massachusetts, the Attorney General of the State of Rhode Island, and the Massachusetts Energy Facilities Siting Board (jointly Fall River); the Conservation Law Foundation; Shell Oil Products US (Shell); KeySpan Delivery Companies (KeySpan); and Michael L. Miozza.³ The Commission denied motions by Fall River, the

¹ 112 FERC ¶ 61,070 (2005).

² 114 FERC ¶ 61,058 (2006).

³ Fall River and Mr. Miozza have sought judicial review of our orders. *See City of Fall River, Massachusetts v. FERC*, 1st Cir. No. 06-1203 *et al.*

conservation Law Foundation, Mr. Miozza, and Save the Bay to reopen the record in this proceeding in an order issued April 17, 2006 (April 17 Order).⁴

2. On May 1, May 4, and May 12, 2006, respectively, Fall River, Mr. Miozza, and the Conservation Law Foundation filed timely requests for rehearing of the Commission's April 17 denial of their requests to reopen the record. Fall River and the Conservation Law Foundation contend that the Commission erred in not conducting supplemental environmental review under the National Environmental Policy Act of 1969 (NEPA) and in not reassessing the proposed project under NGA section 3. For the reasons set forth below, we are denying the rehearing requests.

Background

3. As described in detail in the April 17 Order, the grounds for the motions to reopen this proceeding primarily arose from a February 2006 proposal by Weaver's Cove to the U.S. Coast Guard to employ smaller LNG vessels than originally planned for making deliveries to the proposed LNG terminal in the City of Fall River. The smaller vessels, Weaver's Cove related to the Coast Guard, were necessary to enable passage of the vessels through the existing Brightman Street Bridge located a short distance downstream of the terminal site. Fall River and the Conservation Law Foundation contended that the proposal to the Coast Guard fundamentally altered the overall project proposal approved by the Commission and required the Commission to reopen the proceeding to conduct further NEPA environmental analysis and further NGA section 3 public interest review.

4. The Commission rejected this argument, explaining that the particular issues involving vessel navigation through the Brightman Street Bridge and other pertinent waterways were properly before the Coast Guard, and required no further analysis by the Commission at this time.

The Rehearing Requests

The Smaller Ship Proposal to the Coast Guard

5. On rehearing, Fall River and the Conservation Law Foundation renew their earlier NEPA and section 3 arguments. They assert that the proposal to use smaller ships is essentially a new project that has not been the subject of NEPA analysis or public interest review. The Commission, they contend, cannot shift its permitting responsibilities to the Coast Guard even though that agency has primary responsibility for navigational safety. Fall River maintains that the costs and benefits from the assertedly new proposal are

⁴ 115 FERC ¶ 61,058 (2006).

markedly different from those already addressed by the Commission and require a fresh hard look.

Commission Response

6. In this proceeding, the Commission under NGA section 3 has approved a specific project proposed by Weaver's Cove for an LNG terminal and related facilities in Fall River. In cooperation with other state and federal government agencies, the Commission, as the lead agency, conducted environmental review pursuant to NEPA, prepared an environmental impact statement, and concluded that the project, as proposed, would be environmentally acceptable, if constructed and operated in accordance with mitigation provisions attached as conditions of the Commission's authorization. This review included analysis of issues relating to the safety and security of LNG vessels traveling to Fall River through waterways under the Coast Guard's jurisdiction and supervision. The Commission also found that the proposed project would be in the public interest because it would increase the availability of natural gas supplies in New England.

7. At issue here is whether there is now a new or materially altered proposal before the Commission that calls into question the premises upon which our approval was based so that additional analysis and review by the Commission are required. Contrary to assertions by Fall River and the Conservation Law Foundation, however, there is no new or significantly changed project before the Commission for it to assess either under NEPA or under section 3 of the NGA. Weaver's Cove has proposed to the Coast Guard a change in its method of navigating the waterways by which vessels will deliver the LNG to the approved terminal in Fall River. As we stated in the April 17 Order, because the Coast Guard is the government agency with the appropriate jurisdiction to review navigational issues, the Coast Guard, not the Commission, is the appropriate agency to review this matter.

8. Fall River and the Conservation Law Foundation nonetheless suggest that the Commission has improperly abdicated its responsibilities to the Coast Guard by not ordering additional review. This is simply not the case. Our April 17 Order specifically stated that should the Coast Guard's review ultimately result in changes to the proposal approved by the Commission we would at that time assess what additional review by the Commission would be appropriate. To clarify that statement so that there will be no misunderstanding our intent, should the Coast Guard approve a navigation plan different from the navigation plan considered by the Commission when we approved the Weaver's Cove project, we will examine that navigation plan and determine whether further Commission action is necessary and/or what that action should be.

9. No LNG vessels may transit the waterways leading to Fall River without Coast Guard approval. The Coast Guard has not yet approved any plan for such transit. Unless or until the Coast Guard approves a plan for such transit that differs from the proposal approved by the Commission, there is no reason for the Commission to conduct additional review. To do so would serve no purpose, as the Coast Guard could approve the original plan, the smaller ship proposal now before the Coast Guard, some other plan that would satisfy Coast Guard responsibilities, or possibly no plan at all. As reflected in our April 17 Order, the Commission stands ready to assist the Coast Guard in this process.

Dredging and Alternatives

10. The Conservation Law Foundation also renews earlier arguments that the Commission should have reopened the record to admit new evidence that so-called “binding” time-of-year dredging limitations by the U.S. Department of Interior (DOI) will allegedly result in significant delays in completion of the project beyond the 2010 target date. The Conservation Law Foundation argues that alternatives previously considered and rejected by the Commission should be reassessed because they may now represent opportunities for service to begin earlier than the Weaver’s Cove project, and thus be preferable to the Weaver’s Cove project.

Commission Response

11. The Conservation Law Foundation appears to believe that the 2010 target date for the commencement of service at the proposed facilities is crucial to the Commission’s authorization of the project. This is not so. The New England Governors’ Conference projected that the New England region would have adequate gas infrastructure for its winter peak-day demands until 2010, but that to continue to meet its increasing needs after that time would require substantial demand reduction or infrastructure development.⁵ We approved this infrastructure project as a means for introducing substantial new gas volumes to this growing market. Projects of this nature require substantial lead time for construction and securing additional permits and approvals. We cannot predict with certainty how long the process will actually take from Commission approval to commencement of operations; however, we remain confident that the Weaver’s Cove project will contribute significantly to addressing New England’s infrastructure requirements.

⁵ July 15 Order, at P 6.

12. As to the Conservation Law Foundation's argument that DOI will impose dredging restrictions that will delay the project, we note that in the July 15, 2005 and January 23 Orders we specifically recognized that the U.S. Army Corps of Engineers (COE) is the agency responsible for issuing dredging permits and can impose additional time-of-year restrictions beyond those recommended in the FEIS.⁶ We also implicitly recognized that these restrictions could lengthen the construction process and extend the in-service date for the project. As the Commission was aware of this possibility at the time we approved the project, this does not affect our decision.

13. The Conservation Law Foundation's assertion that other projects could be operational prior to the Weaver's Cove project likewise does not affect our authorization of that project. In the January 23 Order we explained that there are other potential projects, such as offshore LNG facilities, onshore LNG terminals in Canada or Maine, and/or increased pipeline infrastructure to transport natural gas from remote locations, that along with the Weaver's Cove project can play an important role in meeting New England's natural gas needs.⁷ However, we found that these projects could not serve as alternatives to the exclusion of the Weaver's Cove project for various reasons, chief among them that they could not provide needed gas storage or LNG truck deliveries to peak shaving storage facilities and industrial customers located throughout New England. Even if it were true that these other projects could begin operations prior to Weaver's Cove,⁸ they would still not be able to satisfy the objectives of the Weaver's Cove project.⁹

⁶ We note that COE, not DOI, is the agency with responsibility for dredging permits. DOI's so-called "binding" restrictions are instead recommendations submitted to COE in its comments to COE as part of that agency's permitting process.

⁷ See January 23 Order, at P 59 *et seq.*

⁸ This is by no means as certain as the Conservation Law Foundation apparently believes, however, as none of these "alternative" projects has received any necessary government approval. The status of these potential projects is unchanged since Commission approval of the Weaver's Cove project.

⁹ We also explained in the April 17 Order that even should the volumes Weaver's Cove can deliver to customers fall short of its original estimate as a result of using smaller volume vessels for delivery to the terminal, the terminal facilities would still provide a significant volume of natural gas to the New England market. Thus, we continue to believe that the Weaver's Cove project will be in the public interest, so long as it is constructed and operated in accordance with the conditions set forth in our July 15 Order.

The Commission orders:

The requests by Fall River, the Conservation Law Foundation, and Mr. Miozza for rehearing of the April 17, 2006 Order in this proceeding are denied.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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KELLY, Commissioner, *concurring*:

I agree that it is appropriate to deny rehearing of our April 17, 2006 order in this proceeding. However, for the reasons set forth in my dissents from the July 15, 2005 order¹, and the January 24, 2006 Order on Rehearing², I continue to believe that, under the facts and circumstances of this case, it would not be in the public interest to authorize the Weaver's Cove LNG facility under NGA section 3.

Suede G. Kelly

¹ 112 FERC ¶ 61,070.

² 114 FERC ¶ 61,058.

