

3. By letter dated March 10, 2004, The Honorable Edward M. Lambert, Jr., Mayor of Fall River, Massachusetts, requests that the Commission conduct a hearing to clarify the time frame for the Commission's review of the Weaver's Cove proposal. Mayor Lambert states that he was informed by Commission staff in October 2003, before the application was filed, that the Commission review process would entail at least one year. Mayor Lambert also states that, by requesting a PD on its application by March 2004, and a final order by September 2004, Weaver's Cove is seeking to expedite Commission review at the expense of a complete and unbiased review that looks at public safety, environmental, economic and all other potential aspects and impacts of this project on the City of Fall River.

4. In reply, Weaver's Cove states that it has not requested any action that would improperly curtail the Commission's environmental review of its project. Weaver's Cove points out that the Commission's environmental review of this project began under the Commission's National Environmental Policy Act (NEPA) pre-filing procedures well before the December 2003 filing of the application.

5. For the reasons discussed below, we are denying the requests for a preliminary determination and Mayor Lambert's request for a hearing.

Discussion

6. In an application for a certificate filed under section 7 of the NGA involving a major construction project, the Commission generally, upon request by the applicant, will issue a preliminary determination as to whether issuance of a certificate authorizing project construction would be in the public convenience and necessity, based solely on consideration of the non-environmental issues, prior to issuing a final order.¹ In the preliminary determination the Commission addresses such matters as whether there is a market for the proposed service, the initial rates to be charged by the pipeline, and tariff terms and conditions associated with the proposed project. This approach, in appropriate circumstances, promotes administrative efficiency and ensures timely consideration of section 7 certificate applications in furtherance of the Commission's regulatory obligations and competitive policy goals and objectives.²

7. The Weaver's Cove application, however, is filed under section 3 of the NGA for authority to site, construct, and operate facilities for the importation of natural gas into the United States. The standard for approving a project under section 3 is different from

¹See, e.g., Islander East Pipeline Company, L.L.C., 97 FERC ¶ 61,363 (2001).

²Id.

that under section 7, which requires a finding by the Commission that the proposal is “required by the public convenience and necessity.” Under section 3, the Commission will approve an application unless it finds that the proposal is “not consistent with the public interest.” Moreover, under section 3, the applicant has no power of eminent domain. In Cameron LNG, LLC (formerly doing business as Hackberry LNG Terminal, L.L.C.),³ the Commission recently modified its policy for regulating LNG import facilities, finding that it was not necessary to require LNG terminal facilities to offer open-access terminal service or to maintain a tariff and rate schedule for that service. Instead, the Commission granted Cameron authority to provide LNG terminal service at the rates, terms, and conditions mutually agreed to with a customer.

8. We do not believe that it is necessary to issue a preliminary determination in a section 3 proceeding to consider an application for the siting and construction of an LNG facility, and we will deny Weaver’s Cove’s request. The issues noted above that are normally addressed in a preliminary determination are not relevant to this type of proceeding, especially in view of the Commission’s holding in Cameron. The issues in this proceeding are almost exclusively related to the Commission’s environmental review under NEPA.⁴ As part of the review of the Weaver’s Cove proposal, the Commission will issue a draft environmental impact statement (DEIS) addressing the environmental concerns raised by intervenors and commentors. The DEIS will be sent to all intervenors, commentors, local governmental agencies, and other interested parties. All individuals will have an opportunity to file comments on the DEIS. The Commission will consider those comments and incorporate them into a final environmental impact statement (FEIS). When the environmental review is complete, the Commission will issue its order on the merits of the application.

9. We recognize that the proposed Mill River pipeline project does require approval from the Commission under NGA section 7. The two proposed lateral pipelines, however, would total only slightly over 6 miles from the Weaver’s Cove terminal facilities to their respective interconnections with Algonquin. Although these laterals are an integral part of the overall project, they are not the kind of major construction projects that would benefit from the preliminary determination process. All issues related to these laterals can be addressed when the Commission issues its order in the Weaver’s Cove proceeding.

³104 FERC ¶ 61,269 (2003).

⁴We note, nonetheless, that a preliminary determination addresses only non-environmental issues, and does not compromise the Commission’s NEPA review. All findings in a preliminary determination are specifically made contingent on a favorable environmental review.

10. Given our ruling above, we do not believe it is necessary to hold a hearing to address the timing of the Commission's environmental review of this project. We assure Mayor Lambert and the people of the City of Fall River that the Commission will not rush its review of the proposed Weaver's Cove project. We intend to conduct a thorough review of all potential impacts of the project before issuing a final order in these proceedings.

11. The Commission actually began its NEPA review of the project more than six months prior to the filing of the Weaver's Cove application in December 2003, when, in May 2003, the Commission granted a request by Weaver's Cove to initiate the Commission's NEPA pre-filing procedures to begin environmental review of its proposal prior to the actual filing of an application. The purpose of the pre-filing process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the Commission. The NEPA pre-filing process does not necessarily shorten the time period that is required for Commission staff to complete its environmental analysis; rather, the pre-filing process allows the Commission to process the application in less time after it is filed because the environmental record is completed closer to the filing date.⁵

12. On July 11, 2003, the Commission issued a notice announcing to the public that Commission staff was initiating environmental review of the project. The July 11 notice explained that Commission staff had already met in Fall River on May 2, 2003, with representatives of Weaver's Cove and key Federal and State agencies to discuss the project and the environmental review process. These agencies included the U.S. Army Corps of Engineers; the U.S. Coast Guard; the Massachusetts Department of Environmental Protection, Energy Facilities Siting Board, and Executive Office of Environmental Affairs; and the Rhode Island Coastal Resources Management Council and Department of Environmental Management. The notice invited other Federal, State, and local agencies with jurisdiction or special expertise with respect to environmental issues to cooperate in preparing the Commission's environmental impact statement. The notice was also sent to all nearby landowners, elected officials, environmental and public interest groups, and local libraries and newspapers. All interested parties were invited to submit written comments and to attend a scoping meeting on July 29, 2003.

13. Since initiation of the NEPA pre-filing process, Commission staff has been engaged in a deliberate and careful analysis of the environmental issues relating to the proposed project. Commission staff has also visited the proposed site. When issued, the DEIS will reflect a comprehensive review of all documents submitted by the applicant, and comments and recommendations from Federal, State, and local agencies,

⁵See Greenbrier Pipeline Company, LLC, 104 FERC ¶ 61,145 (2003).

environmental groups, and individuals, and will thoroughly address all environmental aspects of this project. The FEIS will then address all comments to the DEIS, and modify its recommendations where appropriate. The Commission is well aware of the potential safety and other environmental concerns associated with this project by the residents of Fall River, and we will not issue any approval of this project unless we are completely satisfied that those concerns have been addressed properly.

The Commission orders:

The requests by Weaver's Cove and Mill River for a preliminary determination in these proceedings are denied.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.