

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Maritimes & Northeast Pipeline, L.L.C.

Docket Nos. CP06-335-002 and
CP96-810-008

ORDER DENYING REHEARING

(Issued July 19, 2007)

1. On February 21, 2007, the Commission issued an order in this proceeding granting Maritimes & Northeast Pipeline, L.L.C. (Maritimes) certificate authorization under section 7 of the Natural Gas Act (NGA) to construct and operate its proposed Phase IV Project designed to increase its mainline design capacity to accommodate the importation of regasified liquefied natural gas (LNG) from Canada and amending Maritimes' Presidential Permit.¹ On March 23, 2007, Quoddy Bay LNG, L.L.C. (Quoddy Bay) filed a request for rehearing of the order. As discussed below, Quoddy Bay's request is denied.

Background

2. The Phase IV Project is designed to provide the additional capacity necessary to accommodate supplies of regasified LNG from the proposed Canaport LNG import terminal (Canaport Terminal) to be located in Saint John, New Brunswick, Canada. The regasified LNG from the Canaport Terminal will be transported approximately 90 miles on a pipeline from the tailgate of the terminal to a proposed interconnection with the Maritimes system at the U.S.-Canadian border by a Canadian pipeline (Brunswick Pipeline) that will be owned and operated by Emera Brunswick Pipeline Company Ltd, a subsidiary of Emera, Inc. The new LNG supply will be delivered to Northeastern U.S. gas markets.

¹ *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137 (2007) (February 21 Order).

3. The Phase IV Project consists of additional compression, metering, and pipeline looping facilities that would increase the mainline capacity of the Maritimes system from 415,480 dekatherms per day (Dth/d) to 833,317 Dth/d, an increase of approximately 418,000 Dth/d.² Maritimes has entered into a precedent agreement for firm transportation service with Repsol Energy North America Corporation (Repsol) with a Maximum Daily Transportation Quantity of 730,000 Dth/d. Maritimes will use a combination of turnback capacity, existing capacity on its mainline system, and capacity created by the Phase IV Project to provide the 730,000 Dth/d of firm service required by Repsol.³

4. In the February 21 Order, we noted that the New England market has no native sources of natural gas and is at the end of natural gas pipeline transmissions systems which bring gas from the Gulf of Mexico, the Western U.S. and Canada to New England. In addition, Maritimes is the only interstate pipeline that transports gas from Eastern Canada to New England. The order finds that the Phase IV Project is required by the public convenience and necessity because the proposal will benefit consumers by providing increased pipeline capacity to access needed new supplies of LNG. The February 21 Order also granted Maritimes' request to amend its Presidential Permit to allow Maritimes to construct the interconnection with the Brunswick Pipeline and import an additional 418,000 Dth/d of natural gas into the U.S. from Canada.

Request for Rehearing and Answers

5. Quoddy Bay is the only party filing for rehearing of the February 21 Order. Motions for leave to file answers and answers to Quoddy Bay's rehearing request were filed by Maritimes and Repsol. Quoddy Bay filed an answer to Maritimes' and Repsol's answers and Maritimes filed an answer to Quoddy Bay.

6. While our rules do not permit answers to request for rehearing or answers to answers,⁴ we may, for good cause shown, waive our rules.⁵ We find good cause to do so

² This increase of capacity is for the pipeline wholly-owned by Maritimes. On the facilities that are jointly owned with Portland Natural Gas Transmission System, the proposed additional capacity is 393,000 Dth/d.

³ As a result of a reverse open season held in the summer of 2005, Maritimes executed turnback precedent agreements with its existing mainline firm shippers to relinquish a total of 257,258 Dth/d of capacity.

⁴ 18 C.F.R. §§ 385.213(a)(2) and 385.713(d)(1) (2006).

⁵ See 18 C.F.R. § 385.101(e) (2006).

in this instance because we find the answers provide information that assists us in the decision-making process. Accordingly, we will accept the answers of Maritimes, Repsol, and Quoddy Bay.

Quoddy Bay's Rehearing Request

7. Quoddy Bay argues that the Canaport LNG terminal should not be given open access to U.S. markets through U.S. pipeline facilities until the Canadian government timely ceases to attempt to block passage through Head Harbour Passage by LNG carriers serving U.S. LNG facilities, such as the proposed Quoddy Bay terminal in Maine.⁶ Quoddy Bay references a February 14, 2007 letter from Canadian Ambassador to the United States, Michael Wilson, to Chairman Kelliher regarding the proposed LNG projects of Quoddy Bay and Downeast LNG, Inc. (Downeast).⁷ The letter states that, based on the results of a study commissioned by Canada,⁸ the Government of Canada has

⁶ On December 15, 2006, Quoddy Bay filed an application in Docket No. CP07-38-000 seeking authorization under section 3 of the NGA for the siting, construction, and operation of an LNG receiving terminal in Washington County, Maine. Concurrently, Quoddy Bay Pipeline LLC filed an application in Docket Nos. CP07-35-000, CP07-36-000, and CP07-37-000 seeking, inter alia, authorization under section 7 of the NGA to construct, own, and operate a pipeline to connect the proposed terminal to the existing Maritimes system. The proposed transit route for LNG tankers to the proposed LNG terminal will straddle the U.S.-Canadian boundary and also pass through Canadian waters in Head Harbour Passage and Passamaquody Bay.

⁷ On December 22, 2006, Downeast filed an application in Docket No. CP07-52-000 seeking authorization under section 3 of the NGA for the siting construction, and operation of an LNG receiving terminal in Washington County, Maine. Concurrently, Downeast Pipeline, LLC filed an application in Docket Nos. CP07-53-000, CP07-54-000, and CP07-55-000 seeking, inter alia, authorization under section 7 of the NGA to construct, own, and operate a pipeline to connect the proposed terminal to the existing Maritimes system. The proposed transit route for LNG tankers to the proposed LNG terminal will straddle the U.S.-Canadian boundary and also pass through Canadian waters in Head Harbour Passage and Passamaquody Bay.

⁸ Quoddy Bay complains that this study has not been made publicly available. In a letter dated March 2, 2007, Chairman Kelliher responded to Ambassador Wilson's letter, explaining that the Commission acts primarily as a safety agency and therefore requesting a copy of the Canadian study so that it could be incorporated into the Commission's record and safety review of the proposed facilities. To date, the study has not been provided.

decided it will not permit LNG carriers seeking to serve terminals in the U.S. to pass through Head Harbour Passage because such tanker traffic would present unacceptable environmental and navigational risks to southwest New Brunswick and its inhabitants.

8. Quoddy Bay maintains that this letter from Ambassador Wilson is pertinent to the subject proceeding in that the threatened actions of the Canadian government will serve to provide a discriminatory advantage to a Canadian firm at the expense of one or more U.S. LNG companies. In addition, Quoddy Bay states that on February 26, 2007, the Province of New Brunswick, Canada filed a motion in the Quoddy Bay proceeding requesting the Commission to suspend proceedings in those dockets on the grounds that the Canadian government has exclusive jurisdiction over navigation in Head Harbour Passage and has announced its intent to deny LNG carriers permission to transit through Canadian waters.⁹ According to Quoddy Bay, the Canadian government's threat of stopping the LNG carriers from traversing the waters of Head Harbour Passage, if allowed to stand, could effectively eliminate competition for Canaport's LNG facility, since neither Quoddy Bay nor Downeast has other viable alternatives for LNG deliveries to their proposed LNG import facilities.

9. In order to facilitate the Canadian government's agreement to provide non-discriminatory access to Head Harbour Passage, Quoddy Bay requests that the Commission condition Maritimes' Phase IV certificate and Presidential Permit to impose a "reciprocity condition" that would allow construction of the Phase IV Project to proceed, but would permit no gas from Canada to flow through the new facilities until the Canadian government permits the passage of LNG carriers through Head Harbour Passage.¹⁰ Quoddy Bay asserts that the reciprocity condition it seeks here is similar to other reciprocity conditions the Commission has imposed in order to ensure fair treatment and competition. Specifically, Quoddy Bay states that the Commission has required that: (1) a reciprocity provision be included in the non-discriminatory open access transmission tariffs so that public utilities offering transmission access to others would be

⁹ In its rehearing request, Quoddy Bay takes the position that the Canadian government's planned actions would constitute a violation of international law. However, in its answer, Quoddy Bay states that its recitation of international law was meant to provide the Commission with an understanding of its position on this issue and it is not requesting that the Commission resolve matters of international law here.

¹⁰ Quoddy Bay proposes that this condition would become moot in the event that the pending U.S. LNG projects of Quoddy Bay and Downeast are not approved by the Commission for reasons unrelated to passage of LNG carriers through Head Harbour Passage.

able to receive service from transmitting utilities that were not public utilities;¹¹ (2) a Canadian entity seeking market-based rate authority demonstrate that its transmission-owning affiliate offers non-discriminatory access to its transmission system that can be used by competitors to reach U.S. markets;¹² and (3) as a condition of using the California ISO's open access transmission tariff, all sellers of energy that own or control generators in California, including non-public utilities, must abide by the same must-offer obligation and the price mitigation plan set forth by the Commission.¹³ Quoddy Bay also asserts that the Commission has imposed similar conditions in natural gas cases.¹⁴

Answers to Rehearing Request

10. Maritimes and Repsol request that the Commission promptly reject Quoddy Bay's rehearing request. Maritimes maintains that regardless of the merits of Quoddy Bay's

¹¹ *Citing Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹² *Citing TransAlta Enterprises Corp.*, 75 FERC ¶ 61,268, at 61,875 (1996).

¹³ *Citing San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Service into Markets Operated by the California ISO and the California Power Exchange*, 95 FERC ¶ 61,115, at 61,356 (2001).

¹⁴ *Citing United Gas Pipe Line Co.*, 46 FPC 786 (1971) (applying a curtailment plan to non-jurisdictional customers); *Mississippi River Transmission Corp.*, 51 FERC ¶ 61,188, at 61,516 (1990) (placing a condition on a certificate that direct sales customers be charged no less than the maximum rate in a pipeline's tariff); and *Natural Gas Pipeline Company of America*, Opinion No. 256, 37 FERC ¶ 61,215 (1986) (requiring a pipeline to flow through the costs of Canadian gas to U.S. customers in the same manner in which domestic pipelines are required to flow through the costs of domestic gas to U.S. customers).

arguments regarding Canadian policy, an attack on the unrelated Phase IV Project is not the proper forum for such arguments. Maritimes explains that the Canaport Terminal in Saint John, New Brunswick is nowhere near the proposed Quoddy Bay terminal, nor does it require LNG supply tankers to traverse Head Harbour Passage. Maritimes also claims that in order to rule on the merits of the dispute regarding Head Harbour Passage, the Commission would first have to find that the Canadian government's action violates international law, a matter not within the jurisdiction of the Commission.

11. In addition, Maritimes asserts that Quoddy Bay's request is an improper attempt to shift its business risk onto the unrelated Phase IV Project and that it would be unfair to require Maritimes to proceed with the construction of project facilities requiring several hundred million dollars of capital investment but prohibit gas from flowing until the Canadian government has undertaken a particular course of action to address risks associated with an unrelated project. Maritimes disagrees with Quoddy Bay's claim that the Commission has imposed similar conditions in other cases. Maritimes explains that in each of the cited cases, the party on whom the Commission placed the condition had the ability to remove, or cause the removal of, the complained-of impediment to access or non-discriminatory treatment. In contrast, Maritimes maintains that Quoddy Bay's dispute is with the Canadian government – a sovereign entity over which Maritimes has no control. Maritimes also points out that granting Quoddy Bay's request could effectively delay and possibly deny the residents of the Northeastern U.S. the benefits the Commission recognized would flow from the Phase IV Project. Finally, Maritimes argues that the claims raised by Quoddy Bay are untimely because Quoddy Bay had actual knowledge by at least April 2006 that the Canadian government had serious concerns regarding the passage of LNG tankers through Head Harbour Passage.¹⁵

12. Repsol states it agrees with the arguments and legal support presented in Maritimes' answer. It reiterates that the relief requested by Quoddy Bay is unreasonable because it seeks to impose conditions on the certificate and Presidential Permit for the Phase IV Project that are unrelated to the Phase IV Project and not within the control of Maritimes or its shippers. It also states that granting the relief requested by Quoddy Bay could delay and potentially jeopardize the viability of the Phase IV Project and its much needed incremental supply of natural gas to Northeastern U.S. gas markets.

¹⁵ Maritimes states that the Canadian government has expressed trepidation regarding the use of Head Harbour Passage by LNG tankers, including filing a letter as far back as April 2006, in Quoddy Bay's pre-filing docket in PF06-11-000.

Discussion

13. We will deny rehearing. We find that this proceeding is not the proper forum for addressing the issue of LNG carrier passage through Head Harbour Passage because this issue does not affect the viability of Maritimes' project and is therefore not relevant to this proceeding. Maritimes' project will deliver regasified LNG from the Canaport terminal to markets in the Northeast U.S. The Canaport import facilities are located in New Brunswick, and will not use LNG tankers traversing Head Harbour Passage.

14. Rather, the issue of LNG carrier passage through Head Harbour Passage potentially affects the viability of the pending Quoddy Bay and Downeast projects and is more appropriately addressed in those proceedings. Notably, in separate orders issued on June 1, 2007, the Commission denied the Province of New Brunswick's motions to suspend proceedings in both the Quoddy Bay proceeding (*Quoddy Bay Pipeline LLC*, 119 FERC ¶ 61,226 (2007)) and the Downeast proceeding (*Downeast LNG, Inc.*, 119 FERC ¶ 61,228 (2007)).¹⁶ Finding there is a vital need for additional imported LNG supplies to meet increased demands for natural gas from all consuming sectors, the Commission decided that it will continue its review of the proposed Quoddy Bay and Downeast LNG projects and prepare environmental impact statements so that the projects can proceed in a timely manner.¹⁷

15. Furthermore, conditioning Maritimes' certificate authorization as requested by Quoddy Bay would not be appropriate because it would impose a condition on Maritimes over which it has no control. Because Maritimes has no control over the position of the Canadian authorities on the issue of LNG tanker passage through Head Harbour Passage, it is unable to influence Canada's position. Additionally, Maritimes would be placed at risk for the recovery of its capital expenditures for the Phase IV Project (estimated at over \$300 million) until such time as the Canadian government permits the passage of LNG carriers through Head Harbour Passage in two projects that are unrelated to Maritimes' proposal. We find that placing the proposed reciprocity condition on Maritimes' certificate authorization in these circumstances would not be good public policy.

¹⁶ In those orders, the Commission recognized that issues related to whether the Canadian government can deny LNG tankers passage through Head Harbour Passage and Passamaquoddy Bay to reach the proposed LNG terminals involved issues of international law that are beyond its purview.

¹⁷ The Commission encouraged Canadian agencies with relevant responsibilities to assist the Commission staff and the United States Coast Guard as they continue their analyses.

16. We also find that the cases relied on by Quoddy Bay to support its request to impose a reciprocity condition are distinguishable from the circumstances here. In all the cited cases, the Commission imposed a condition on a utility (or affiliate thereof) that was seeking to avail itself of the Commission's open-access policies or rate treatment. The Commission imposed the condition to ensure non-discriminatory access to U.S. markets or otherwise ensure rate or service equality. Here, it is not alleged that Maritimes (or Canaport LNG) is denying use of its facilities for access to U.S. markets. Moreover, in the cited cases the Commission imposed reciprocity conditions on utilities that had the ability to adopt or implement the Commission's directives. In contrast, Maritimes cannot control or change Canada's position regarding the passage of LNG carriers through Head Harbour Passage.

17. Finally, we find that imposing a reciprocity condition on our certificate authorization in this proceeding would impose a substantial risk of delaying delivery of needed gas supplies to U.S. markets and could negatively impact the viability of this project. These results would harm Maritimes, its shippers, and potential customers and would be at odds with the Commission's goal of expediting necessary pipeline infrastructure to supply the future market needs of U.S. consumers.

18. For these reasons, we find that it would not be consistent with the public convenience and necessity to condition our certification authorization in this proceeding in the manner advocated by Quoddy Bay.¹⁸

The Commission orders:

The request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ Because we find this proceeding is not the proper forum for addressing issues related to LNG carrier transit through Head Harbour Passage, we find that the argument that Quoddy Bay is improperly attempting to raise this issue for the first time on rehearing is moot.