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FEDERAL ENERGY
REGULATORY COMMISSION

March 25, 2010

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St. NE, Room 1A
Washington, DC 20426

Kim W. Kratz, PhD, Director
Oregon State Habitat Office
National Marine Fisheries Service
1201 NE Lloyd Blvd, Suite 1100
Portland, OR 97232

Re: Bradwood Landing
FERC Docket Nos. CP06-365-000, CP06-366-000, CP06-376-000 and CP06-377-000
NMFS Docket No. 2007/01605

Dear Secretary Bose and Director Kratz:

On March 10, 2010, the National Marine Fishery Service (NMFS) filed with FERC its Draft Description of Proposed Action for Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Bradwood Landing LNG Import Terminal and Pipeline Project, Columbia River, Clatsop County, Oregon (FERC Docket Nos. CP06-365-000, CP06-366-000, CP06-376-000, and CP06-377-000) (NMFS No.: 2007/01605) (Draft Description). The State of Oregon submits the following comments on the Draft Description:

The NMFS states in its Draft Description that the Coast Guard, and not FERC, is responsible for regulation of LNG vessels and their operations. (Draft Description at 42.) NMFS then goes on to describe the requirements for screening ballast and engine cooling water established in the FERC order. (Draft Description at 45 and 46.) NMFS discusses both equipping vessels with screens as specified in the FERC order and using the external screen panels proposed by the applicant as an alternative.


The NMFS fails to acknowledge, however, that the Coast Guard has specifically advised FERC and NMFS that it has exclusive jurisdiction over the screening issue and that, at present, it would not allow the use of the screening required by the FERC order or proposed by the

Kimberly D. Bose, Secretary
Kim W. Kratz, PhD, Director
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Page Two

applicant. See attached letter from J.G. Lance, US Coast Guard to Kimberly D. Bose, FERC, dated May 1, 2009.

If the Biological Opinion is to be useful, consistent with NMFS's assessment of the relative roles of the FERC and the Coast Guard, and comply with the Endangered Species Act, NMFS's Biological Opinion must consider the impact on the Columbia River fisheries of unscreened ballast and cooling water withdrawals on LNG tankers. The Draft Description should be revised accordingly.

The State of Oregon also notes that the project description does not clearly identify the final pipeline route. The Bradwood Landing EIS and FERC's order approving the project generally identify the route of the pipeline, but appear to also leave room for alterations to the route due to facts on the ground. The project description should identify the final pipeline route with sufficient detail to identify the locations that pipeline construction and maintenance will impact specific waterbodies.

Sincerely,


Michael Carrier
Natural Resources Policy Director

MC:jb
Attachment: 20090501 Letter from Lantz to Bose

CP06-365

U.S. Department of
Homeland Security

United States
Coast Guard



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FEDERAL ENERGY
REGULATORY COMMISSION

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MAY 1 2009

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., NE, Room 1A
Washington, DC 20426

Dear Secretary Bose:

This letter is sent to advise you of a serious concern we have regarding conditions in your agency's Commission Order related to LNG vessels which are intended for use in connection with the LNG import terminal proposed for operation on the Columbia River at Bradwood in Clatsop County, Oregon (Bradwood Landing). Specifically, we are concerned about the conditions regarding the design requirements and use of various fish screening devices for water intake systems on LNG vessels. The devices broadly fit into two general categories – those that would require some design, construction or equipment modification to the LNG vessel, and those that would lay alongside or near the vessel, rather than on the vessel itself. The systems that cause the greatest concern to the Coast Guard are those systems that require design and construction changes or equipment to be installed onto the LNG vessels, such as fish screens attached directly to the vessel or the installation of equipment and piping in the vessel to accommodate shore-side supplied screened water hook-ups.

As indicated in the Environmental Impact Statement for Bradwood Landing and as outlined in the 2004 Interagency Agreement signed by our agencies, the Coast Guard has a significant role and interest in the regulation of vessels, including safety, security, environmental protection, and design. The Coast Guard has a long history of developing design and engineering standards for U.S. vessels and for working with the international community through the International Maritime Organization to develop universal design and operational standards for U.S. and foreign vessels engaged in international trade.

With regard to the biological concerns expressed by the Oregon Department of Fish and Wildlife (ODFW) and the National Marine Fisheries Service (NMFS), we recognize that ship based water intake systems and other intake systems may have potential biological impacts. We appreciate that resource agencies wish to reduce any potential impacts that water intake systems on LNG carriers calling on this facility may have, but clearly their concerns must be balanced with the safety and security of the vessels and must be accomplished in such way that doesn't improperly place restrictions on vessels that are fully in compliance with international design standards. The Coast Guard does not question FERC's authority to condition the LNG facility's siting, construction, or design so as to mitigate potential impacts. However, neither the Commission

nor those other agencies has authority to exercise regulatory control (as a condition of the facility siting or operating permit or otherwise) over the LNG vessels calling at LNG facilities, including vessel operations, manning, equipment, design, or reporting. This includes imposing water intake design and screening requirements for vessels as part of the conditions in FERC's orders for proposed LNG facilities. Rather, regulation of such vessels is generally, and in many cases exclusively, reserved to the Coast Guard as a matter of law.

We would like to remind the Commission of some general limitations on agency control and responsibility related to this matter. Endangered Species Act (ESA) consultation requirements apply to actions over which an agency has discretionary involvement or control.¹ The ESA does not broaden an agency's authorities.² Accordingly, the effects analysis and any conditions imposed by the Commission should be addressed to activities by the Bradwood Landing facility which are subject to the Commission's jurisdiction.³

We agree with the remarks of dissenting FERC chairman Wellinhoff's statements that; 1) the evidence does not support a finding that the planned screening system will effectively mitigate the project's impact on sensitive aquatic resources to a less than significant level, 2) the application of fish screens on LNG carriers is a novel concept, 3) the use of fish screen technology on irrigation canals, industrial and municipal water supply pipes, and hydropower projects is not necessarily transferable to LNG carriers, and 4) the conceptual proposal for external screening for unmodified LNG carriers is particularly incomplete and uncertain.⁴ We also would note the Columbia River currently experiences approximately two thousand (2000) deep draft ships every year or four thousand (4000) river transits, as well as a plethora of tow boats and other commercial and recreational vessels that are not subject to the same stringent fish screening standards.

As previously noted, the Coast Guard also has concerns with other water intake systems, such as LNG vessels being retrofitted to use a water delivery system to receive screened water from the facility, the on-site permeable curtain system, and an electric fish barrier. Any system that requires a vessel to install new equipment or operate in a manner different from its approved design standard should be vetted by the Coast Guard to ensure the requirements are safe for the

¹ 16 U.S.C. § 1536(a)(2) (consultation required for "agency action"); 50 C.F.R. § 402.03 (consultation limited to actions subject to discretionary federal involvement or control); *Defenders of Wildlife v. Norton*, 257 F.Supp.2d 53, 67 (D.D.C. 2003) (discussing limitation on consultation where agency lacks control over third party action).

² *Se Platte River Whooping Crane Critical Habitat Maint. Trust v. FERC*, 962 F.2d 27, 34 (D.C. Cir. 1992) ("As the Commission explained, the statute directs agencies to "utilize their authorities" to carry out the ESA's objectives; it does not expand the powers conferred on an agency by its enabling act."); *American Forest & Paper Ass'n v. EPA*, 137 F.3d 291, 298-99 (5th Circuit. 1998); *Defenders of Wildlife v. Gutierrez*, 2007 WL 1004242 (D.D.C. Apr. 5, 2007).

³ See generally *Natural Resources Defense Council, Inc. v. United States Env'tl. Protection Agency*, 859 F.2d 156, 170 (D.C. Cir. 1988) (EPA prohibited from imposing permit conditions unrelated to the discharge of a pollutant); *Natural Resources Defense Council, Inc. v. United States Env't. Protection Agency*, 822 F.2d 104, 130 (D.C. Cir. 1987); *United States v. Mango*, 199 F.3d 85, 93 n.7 (2nd Cir. 1999) (Corps permits may not set conditions on "entire activity involving the discharge;" conditions must be related to the discharge); c.f. *Kokajko v. U.S.F.E.R.C.*, 873 F.2d 419 (1st Cir. 1989) ("Commission has been consistent in its refusal to exercise regulatory power over non-project land and facilities").

⁴ See page 94 of the Bradwood FERC Final Order

vessel and will be in compliance with the international standards. Furthermore, we believe the use of any of these untested and internationally unrecognized water intake systems may have negative consequences for vessel safety and security as well as adverse economic impacts. These include:

Reduction in cargo offload capacity: If the facility water delivery system or vessel fish screening system results in reduced ballast intake, the ship will need to compensate by slowing the offload rate thereby remaining in port for longer periods of time. This will potentially result in more cumulative effects on the environment;

Potential for power loss: Ship electrical power relies on water for generator cooling. If this is reduced or interrupted by any of these methods, a blackout would occur and remove critical systems such as cargo monitoring, fire fighting and lifesaving thereby placing the vessel and port community at greater risk of danger. Accordingly, any requirements that may affect critical vessel systems must be carefully evaluated and ultimately approved by authorities familiar with LNG vessel designs; namely recognized classification societies and vessel flag states;

Screen Sizes: The size of intake systems varies from ship to ship. Accordingly, only specific ships that are pre-designed and purpose built for accepting the proposed screening systems would be capable of calling at the facility. This excludes a large number of vessels from free market trade with the U.S.;

Emergency Disconnect: Vessels must be capable of departing the pier quickly in the event of an emergency. Pipelines connected directly to a vessel from a shore supplied water system would delay vessel departures and endanger the ship, her crew, and the port community. Therefore, at a minimum, any such system would need to be appropriately vetted and approved for such capability;

Emergency Offload: In the event that an emergency offload of LNG is needed from an LNG vessel, the LNG facility should be capable of receiving LNG without restrictions imposed on their water intake systems;

Firefighting: The vessel must have a sufficient water supply at all times for cooling as well as firefighting. The firefighting system is designed to deliver a water spray curtain based on a known intake rate from the sea and any potential obstruction restricting the water intake system could diminish the vessels overall ability to fight a fire thereby jeopardizing the vessel, and crew.

By agreeing with the recommendations of the ODFW and the NMFS, to require fish screens on water intake systems or for any new equipment requirements, your actions will create conflicts with international conventions. We believe this sends the wrong international message and establishes a precedent which could create hardships for U.S. flagged engaging in commercial trade in foreign waters. We believe such requirements may be more appropriately developed through official rulemaking and international agreements before being imposed as mandatory measures through a FERC order. For this and the reasons stated above, we strenuously object to the imposition of any requirements related to the design of vessel water intake systems that are

16475

not based on sound science, prescribed by recognized classification society standards or U.S. and International rules, and have not been approved by a vessel's flag state.

We request that you remove and/or refrain from imposing any requirements related to vessel water intake systems on any LNG vessel until such time that there are U.S. and International regulations in place that address intake requirements on all vessels. Should FERC, the resource agencies and the applicant choose to study and develop voluntary alternative means to reduce or mitigate the potential impacts, we stand ready to assist in ensuring that any proposed measures would not create unsafe conditions for the vessel or impose inappropriate requirements on US or foreign flag vessels.

Please do not hesitate to contact us if you would like to discuss further. My point of contact for this matter is Commander Patrick W. Clark, Chief, Vessel and Facility Operating Standards Division. He may be reached at the number and email address listed above.

Sincerely,



J. G. LANTZ
U.S. Coast Guard
Director, Commercial Regulations and Standards
By direction

Copy: Commanding Officer, Sector Portland
Commander, Thirteenth Coast Guard District (p)
Commander, Pacific Area (p)
Commandant (CG-0941)
Commandant (CG-0942)
Commandant (CG-521)