

Regulatory Commission, not this Board. Section 3(e) of the Natural Gas Act is clear that only FERC has the jurisdiction to review project need.

Likewise, Mr. Girdis's testimony regarding the speculative, hypothetical process for expanding the Maritimes & Northeast Pipeline violates the Board's standing ruling that considerations regarding any potential expansion of the M&NE pipeline will not be considered in these proceedings. This is the same issue that CLF has repeatedly (and unsuccessfully) attempted to raise, and that the Department, Chair, and Board have consecutively ruled to be outside the Department's jurisdiction in reviewing the applications in question.

As the parties representing industrial consumers, commercial consumers and commercial generators, Business Intervenors are concerned that Mr. Girdis's testimony and Downeast LNG's strategy are not only inappropriate for the reasons noted above, but are also harmful to Maine's businesses, residents and Maine's environment. Downeast LNG's strategy risks leaving Maine without any LNG project – eliminating construction jobs; operations jobs; economic development; stable and low cost natural gas; environmental benefits from increased adoption of gas instead of more polluting fuels; and improvements to Maine's business competitiveness.

Specifically, Mr. Girdis's attempt to have the Board consider Downeast LNG as an alternative to the Calais LNG project is both shortsighted and inappropriate.

Because the Business Intervenors believe that LNG receipt and storage is essential to the future of Maine's economy, Business Intervenors strongly desire that both projects, or at least one of them, will be permitted. Unfortunately, Mr. Girdis's testimony could result in neither project being built because, in reality, Downeast LNG may never become an alternative to Calais LNG.

First, Downeast LNG withdrew its application before the Board, has not refiled, and may never refile. This gives the Board direct knowledge of the uncertainty of the Downeast LNG project. Second, if the application is refiled, the outcome of the Board's consideration is by no means certain. Third, it is public knowledge that challenges have emerged for Downeast LNG in the FERC regulatory process. Due to the unique conditions of its site, Downeast LNG has encountered a highly localized problem with vapor dispersion which results in fog conditions on U.S. Route 1, which apparently will require substantial modeling, meaning FERC approval may not be forthcoming.

Business Intervenors make these observations not to denigrate Downeast LNG, but, rather, to strongly dispute Downeast LNG's proposed "comparison shopping" of competing LNG projects in a regulatory process never intended for this purpose.

Downeast LNG's project cannot be considered by this Board as an alternative to the applications before it. Business Intervenors hope that both projects will be permitted and Maine's environment, people and businesses can benefit from the competition, but this is not the proceeding to evaluate Downeast LNG's possible future proposal.

Finally, Mr. Girdis's testimony reveals that Downeast LNG may have intervened in this case fundamentally as a business competitor to the applicants. In this light, his testimony is even more inappropriate. It is for these reasons that the Maine Public Utilities Commission has a longstanding rule limiting intervention by those whose interests are purely those of business competitors.¹

Prefiled Direct Testimony of Susan Reid

Business Intervenors respectfully request that the Board strike certain portions of testimony by CLF witness Susan Reid, Esq. as legal argument inappropriate for prefiled direct testimony. Attorney Reid is an experienced and skilled advocate in legal proceedings for CLF, as her testimony states.² That, however, disqualifies her as a witness for her own client. It is axiomatic that an attorney may not be a witness in a proceeding in which she represents a client.³ The fundamental point is the separation of advocacy from testimony.

Moreover, Attorney Reid offers non-factual testimony that consists primarily of opinions and legal argument, along with assertions of CLF's position on natural gas – none of which is proper admissible evidence, and none of which is relevant to the Board's statutory criteria. Attorney Reid has no expertise with gas markets and electricity markets, and in her own

¹ Section 720 of the Commission's rules restricts intervenor status to those "directly and substantially affected by the proceeding." The Law Court has upheld this rule as "reasonable and in fact a necessary requirement if the Commission is to hear and determine the cases before it promptly and effectively." *Central Maine Power Co., v. Maine Public Utilities Commission*, 382 A.2d 302, 312 (Me. 1978). In that case, the Court upheld the Commission's ruling that the intervenor (in that case, the Maine Oil Dealer's Association, representing a competitor for space heating) was not a member of a class the legislature intended to protect in its utility regulatory scheme and thus lacked standing. In this case, Business Intervenors do not here question Downeast LNG's standing, but rather question the usefulness and lawfulness of Downeast LNG using an environmental proceeding for competitive purposes.

² See, e.g., Prefiled Direct Testimony of Susan Reid, Esq. at pg. 1 ("I have played a significant role with respect to CLF's advocacy regarding a number of LNG projects.")

³ Maine Bar Rules 3.4(g)(1).

testimony admits to being an advocate for her organization's goals. Attorney Reid's testimony should be stricken in its entirety.

Prefiled Direct Testimony of Gary Napp

Business Intervenors respectfully request that the Board strike certain portions of testimony by Downeast LNG witness Gary Napp. Mr. Napp offers testimony that, in preparing its applications to the Department, Downeast LNG was asked by the National Park Service and U.S. Fish & Wildlife Service to model the St. Croix Island International Historic Site ("St. Croix Island IHS") as a Class I area in its analysis of visibility and air deposition. See Napp Testimony, pg. 6. This testimony is irrelevant and beyond the scope of this hearing.

As a preliminary matter, Mr. Napp's testimony regarding what NPS and USF&W told him constitutes hearsay that does not fall into any exception from the rules of evidence and is inadmissible pursuant to Chapter 30(10) of the Department's rules.

Moreover, in point of fact, St. Croix Island IHS is not a Class I area. While there is a process to designate new Class I areas, this proceeding is not the proper forum. Business Intervenors object to Downeast LNG's attempt to foist inapplicable standards upon applicants. If the Board improperly allows this testimony and attempts to mandate such consideration of St. Croix Island, it risks creating regulatory chaos as every Title V permit or amendment in Maine may have to be remodeled in a similar manner. Despite Mr. Napp's assertions, a visibility air analysis is not required for a minor source permit under Chapter 115 of the Department's regulations. All applicants for permits from the Department or the Board deserve fair, even-handed treatment. Neither the law nor principles of regulatory fairness allow any intervenor or party to require an applicant to demonstrate compliance with inapplicable laws. This portion of Mr. Napp's testimony, including pages 2-8 and Exhibits Downeast LNG-3-B and 3-C, is thus irrelevant and beyond the scope of this hearing, and should be stricken from his testimony.

Prefiled Direct Testimony of Terrence DeWan

Business Intervenors respectfully request that the Board strike certain portions of testimony by Downeast LNG witness Terrence DeWan. Mr. DeWan offers the speculative and irrelevant testimony that it is possible that the National Park Service might acquire a piece of private property, and that if it did, it is further possible that the National Park Service might incorporate that private property into St. Croix Island IHS – and then, in a final extension of

speculation, suggests that the Board should consider the speculative visual impacts on the view from this now-private property in the event that this chain of possibilities becomes real.

As stated above, Business Intervenors operate on the fundamental principle that all applicants for permits from the Department or the Board deserve fair, even-handed treatment. Applicants should not be required to address irrelevant and speculative contingencies that are not based on factual evidence. Opponents to projects should not be allowed arbitrarily extend statutory or regulatory criteria to non-applicable resources. There is no evidence in the record of any transaction or even negotiations between the National Park Service and the owners of the private property in question. Business Intervenors therefore request that the Board strike Mr. DeWan's testimony regarding analysis of the visual impacts to the private property described at pages 3-7 and 12, and Exhibit DLNG-2-B.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony W. Buxton", written over a horizontal line.

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