

Comments from Parties in Opposition to Calais LNG's request

- December 6, 2010 letter from Conservation Law Foundation with attachments
- November 24, 2010 and December 6, 2010 letters from Save Passamaquoddy Bay-US and Nulankeyutomonen Nkihtahkomikumon (SPB-US / NN)
- November 24, 2010; December 3, 2010; and December 6, 2010 from Roosevelt Campobello International Park Commission

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CONSERVATION LAW FOUNDATION

December 6, 2010

Susan Lessard, Chair
c/o Terry Dawson
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330-0017

Re: Calais LNG and Calais Pipeline

Dear Chair Lessard:

The failure of the Calais LNG Project Company, LLC (CLNG) to maintain title, right or interest (TRI) in a substantial portion of the property proposed for development of an industrial LNG facility requires that the Board return the application to CLNG. And the recent acquisition by North East Energy Development, LLC of the interests of GS Power Holdings in CLNG does nothing to change that requirement.

Simply put, CLF and the Sierra Club are in full agreement with the unequivocal statement in your letter of November 19, 2010, that "title, right or interest (TRI) is a threshold criterion for processing of an application. Specifically, in accordance with Chapter 2, section 11(D) of the Department's rules: 'An applicant must maintain sufficient title, right or interest throughout the entire application processing record.'" Failure to maintain title, right or interest in the property proposed for development or use in an application during the processing period compels the withdrawal of that application.

Such a conclusion is entirely consistent with the logic underlying your previous decision concerning whether the lack of financial capacity compels withdrawal of an application. As you stated in an August 12, 2010 letter to Mr. Van Slyke, the Site Law's "financial capacity standard (38 M.R.S.A. § 484(1)) is not a threshold requirement that must be met for the processing of an application. Therefore, lack of financial capacity at this point does not legally compel withdrawal of the application." (August 12, 2010 letter attached) The inverse is now true - as a "threshold criterion" for continued processing of CLNG's applications, the failure to maintain title, right or interest legally compels withdrawal.

The circumstances of this permit proceeding also compel return of CLNG's applications for the following reasons:

First, CLNG's failure to disclose its lack of TRI to the Board and the parties to this proceeding at the meeting of counsel on September 15 is inexcusable, particularly given the previous focus on that issue before the Board. While you specifically directed CLNG to notify the Board if it

suspended efforts to secure financing in your September 16, 2010 letter to Mr. Van Slyke, it should not have required a similar directive if CLNG had suspended efforts to maintain TRI. This is particularly the case given the focus on the issue of TRI not only in this proceeding but also in the Downeast LNG proceeding in 2007, a proceeding in which the principals of CLNG actively participated.

Second, it is important to recall that the current extension of time with regard to the processing of CLNG's applications is due to CLNG's loss of the financial backing of its managing member, GS Power Holdings, and its purported inability to conduct the additional work necessary to respond to outstanding requests for information by the Department and other reviewing agencies. But after 4 ½ months of delay, we are now informed that the interests of GS Power Holdings have been acquired by North East Energy Development, LLC (NEED), which just happens to be the only other "member" of CLNG. See December 2, 2010 letter from Harold Emery (attached).

To understand what a cynical shell game this is, recall that CLNG's entire showing of financial capacity rested on the presence of GS Power Holdings as the managing member of CLNG. See Section 3 of CLNG Site Law application (attached). The only other member of CLNG is NEED, whose managers according to documents filed with the Maine Secretary of State are Arthur Gelber, Harold Ian Emery and Carl Meyers, 3 of the 4 people on the Calais LNG website described as the team but none of whom have ever been represented as having the financial capacity necessary for an energy project estimated to cost between \$900M and \$1B.¹ The decision by GS Power Holdings to withdraw left the project without the resources to complete its application never mind construct such a project. Nothing about that financial scenario has changed by virtue of NEED's new role, apparently as both managing member and limited member of CLNG.

Not only does this new "development" not change the financial capacity picture but the outcome isn't even close to the specific representation by CLNG's attorney that served as the basis for the decision to allow a fourth extension in time for processing CLNG's applications. In a letter dated September 13, 2010, Mr. Van Slyke represented that CLNG had limited its negotiations to two entities - one with "access to a very significant natural gas supply...currently applying a vertically integrated business approach (gas supply, liquefaction capacity, shipping capacity and receiving terminal capacity) to the worldwide LNG market. The other entity [with] considerable expertise in the global commodity markets and a keen interest in energy sources that promote clean energy . . ." See September 13, 2010 letter from David Van Slyke (attached). With absolutely no information as to how NEED will be able to provide the financial capacity that GS Power Holdings allegedly provided, the only thing definitive is that NEED does not even remotely resemble the companies the Board and parties were led to believe would be replacing GS Power Holdings. It doesn't take a financial wizard to realize that GS Power Holdings hasn't been replaced - it just couldn't find an independent third party to buy its interest and so NEED had no alternative but to "acquire" those interests.

Third, it is difficult to understand why CLNG needs any time to meet the threshold criterion of TRI. As set forth in its Site Law application, the option agreement with Mr. and Mrs. Carothers,

¹ Indeed, in Mr. Gelber's pre-filed testimony he states that the final piece of the puzzle for the CLNG project team was to find a long term financial backer and they selected, "[a]fter contacting and presenting our plan to entities across the country, Goldman Sachs."

was initially negotiated and held by NEED in 2006 and had provisions for extensions through August 31, 2011. Other than a representation that negotiations with the Carothers have been ongoing since *prior* to the option's expiration in what CLNG describes as an effort to "more appropriately reflect the current economic climate," there is no indication whatsoever that efforts to obtain TRI will bear fruit. See November 23, 2010 letter from David Van Slyke (attached).

Fourth, the suggestion that the requirement that the "applicant must maintain title, right or interest throughout the entire application processing period" is not technically applicable here because the applications are not presently being processed and are on hold is nothing more than an artful dodge. In granting the initial request to postpone the hearings in this matter, you wrote that "the Board expects Calais LNG to take the necessary steps now and on an ongoing basis at both the state and federal level to ensure that the Board's *processing time is extended* for a period of time at least equal to the amount of time the public hearing process is postponed." See July 14, 2010 letter from Susan Lessard (attached). When CLNG sought relief from its self-imposed deadline of August 11, 2010, it requested that the BEP "grant an additional extension of time with regard to the processing of its applications." See September 13, 2010 Van Slyke letter. While various parties may have casually characterized these extensions as a "hold" or "postponement", the idea that somehow granting these extensions of time somehow allowed CLNG a technical exemption from the requirement to maintain title, right or interest is belied by the requests from the applicant itself, never mind common sense.

Finally, the unaddressed and significant changes and/or outstanding information requests associated with this project logically necessitate that these applications should go back to the beginning. Much of the baseline data prepared for the application can still be used but significant revisions to the prefiled testimony will be necessary to account for changes in financial capacity and the new information requested by agencies as well as changed market conditions, project need, navigation issues and water quality issues associated with Passamaquoddy Bay and the St. Croix River.

As Chair, you have given this applicant more than a fair opportunity to get its house in order. The applicant has responded by asking for more while at the same time deliberately hiding facts that bear directly on the Board's continued jurisdiction to process this application. The law and fairness to all the other parties to this proceeding now compel that CLNG's applications be returned and re-filed if and when the applicant can meet the relevant threshold criteria and the outstanding requests from agencies.

Very truly yours,



Sean Mahoney
Vice President and Director
Conservation Law Foundation
Maine Advocacy Center

cc: Service List

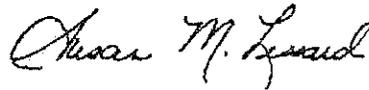
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**Conservation Law Foundation Attachments
(December 6, 2010)**

January 1, 2011 at least equal to the number of days of the hearing postponement and that the time period for a decision on a Water Quality Certification under § 401 of the Clean Water Act will be extended to that same time frame.

I will call a conference of counsel in the near future to discuss re-scheduling the public hearing on the Calais LNG applications, the parties' requests for the applicant's payment of their lost deposits, and other issues created by the postponement.

Sincerely,



Susan M. Lessard, Chair
Board of Environmental Protection

cc: Service List



JOHN ELIAS GALDACCIO

SECRETARY

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

August 12, 2010

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SUSAN M. LESSARD

CHAIR

CYNTHIA S. BERTOCCHI

EXECUTIVE ASSISTANT

TERRY A. HANSON

ADMIN. ASSISTANT

David Van Slyke, Esq.
Preti Flaherty
One City Center
Portland, Maine 04101

Re: Calais LNG Project Company, LLC and Calais Pipeline Company, LLC

Dear Mr. Van Slyke:

I am in receipt of your letter of August 9, 2010 regarding Calais, LNG's efforts to obtain new financing for the company's proposal to construct a liquefied natural gas import terminal and pipeline project in Washington County. In your letter you request an extension from your previously stated deadline of August 11, 2010 until September 11, 2010 to secure new financing for the project.

I have received letters dated August 10, 2010 from intervenors Save Passamaquoddy Bay / Nulankeyutomonen Nkihtahkomikumon, Conservation Law Foundation, and Roosevelt Campobello International Park Commission in opposition to the requested extension arguing that further postponement is prejudicial to the other parties. They argue that Calais, LNG should withdraw its applications.

In considering your request, I note that the financial capacity standard in the Site Location of Development Law (38 M.R.S.A. § 484(1)) is not a threshold requirement that must be met for processing of an application. Rather, it is a licensing criterion for which evidence is supplied during the licensing process and in fact a permit may be granted with a condition that a final demonstration of financial capacity be made prior to construction. Therefore, lack of financial capacity at this point does not legally compel withdrawal of the application.

I am sensitive to the difficulties a further delay in this proceeding creates for the other parties. Because the application has been put on hold, at some point the information in the applications may become outdated and withdrawal may be appropriate. However, given the nature and complexity of the proposed project and the fact that the burden of proof is on the applicant for compliance, the current request to keep the application on hold for a limited time period is granted. The conference of counsel scheduled for September 8, 2010 will remain scheduled in recognition of the fact that the financing issue may be resolved prior to that date. If that is not the case, notification will be made to all parties of a date change.

Sincerely,

Susan M. Lessard, Chair

cc: Service List



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David B. Van Slyke
dvanslyke@preti.com

September 13, 2010

BY ELECTRONIC & U.S. MAIL

Susan Lessard, Chair
c/o Terry Hanson
Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Calais LNG Project Company, LLC and Calais Pipeline Company, LLC

Dear Chair Lessard:

This letter is a status report made on behalf of Calais LNG Project Company, LLC and Calais Pipeline Company, LLC ("Calais LNG").

As you know, in mid-August Calais LNG requested that the Board of Environmental Protection ("BEP") grant an additional extension of time with regard to the processing of its applications. In particular, Calais LNG noted that its lead financial partner and managing member, GS Power Holdings LLC, needed an additional thirty days to negotiate with new potential financial partners for the project.

There have been serious discussions during those intervening thirty days and, as one might imagine concerning an energy project anticipated to cost between \$900M and \$1B, such discussions are time consuming and complex. Calais LNG has now limited its discussions to two entities. While each entity must remain confidential at this time, one of those entities has access to a very significant natural gas supply and is currently applying a vertically integrated business approach (gas supply, liquefaction capacity, shipping capacity and receiving terminal capacity) to the worldwide LNG market. The other entity has considerable expertise in the global commodity markets and a keen interest in energy sources that promote clean energy and sustainable alternative energy sources as well as natural gas. The Calais LNG project, being located in New England, would add a significant component to either enterprise.

Due to the complex nature of these negotiations, it is not now possible to predict precisely when the discussions might be concluded such that a new financial partner can be identified to the Board and the parties. Given that uncertainty, therefore, Calais LNG respectfully requests that the BEP provide it with an additional 30 days to complete those efforts.

In light of the above information, and in order to minimize the expense and inconvenience of an in-person conference of the parties in Augusta on Wednesday,

Preti Flaherty Beliveau & Pachios LLP Attorneys at Law

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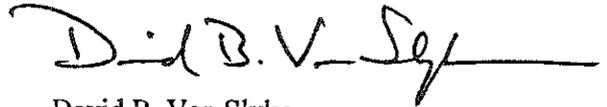
Susan Lessard, Chair

September 13, 2010

Page 2

September 15, 2010, Calais LNG respectfully requests that you postpone that conference until the week of October 11, 2010. In the meantime, we will provide the Board and the parties with a further status report on September 30, 2010, or sooner in the event that negotiations come to completion prior to that date.

Very truly yours,

A handwritten signature in black ink that reads "David B. Van Slyke". The signature is written in a cursive style with a long horizontal line extending to the right.

David B. Van Slyke

cc: Beth Nagusky, Acting Commissioner - DEP
Service List

David B. Van Slyke
dvanslyke@preti.com
Direct Dial: 207.791.3221

November 23, 2010

By Electronic and U.S. Mail

Susan M. Lessard, Chair
Maine Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Calais LNG

Dear Chair Lessard:

This letter is in response to your letter to me of November 19, 2010 concerning a November 17, 2010 letter from Steven Carothers and Gail Roberts (hereinafter collectively "Carothers") regarding the viability of a certain option agreement regarding property owned by Carothers that makes up a significant portion of the property upon which Calais LNG is proposing to build its pier and LNG receiving terminal. Carothers states in the November 17th letter that Calais LNG failed to exercise the option or to make the August 31, 2010 payment required under the option agreement and that, as a result, the option terminated and Calais LNG no longer has title, right or interest in the property.

As you know, for purposes of the BEP proceedings to evaluate Calais LNG's permit application, the project and this proceeding have been suspended for the past three plus months while Calais LNG's managing member (GS Power Holdings LLC) has been in the process of transitioning the project to a new financial partner. As part of the process of transitioning the project to new financial backers, the parties involved initiated discussions with Carothers to re-negotiate the option agreement to more appropriately reflect the current economic climate. Those negotiations have been ongoing since prior to the expiration of the option agreement.

Calais LNG does not intend to withdraw its applications at this time. The project is in the final throes of transitioning majority ownership of the project from GS Power Holdings LLC to a new managing member for Calais LNG. Once that occurs -- and project funding is in place -- title, right and interest to the Carothers property will be secured and various modifications to the project applications will be submitted to the DEP, BEP and the parties to this proceeding (including information on financial capacity as well as on title, right and interest). Further, the additional information that was required to be provided to the various cooperating agencies (e.g., DMR, IF&W and SHPO) will be completed and submitted.

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PRETI FLAHERTY

Susan M. Lessard, Chair
November 23, 2010
Page 2

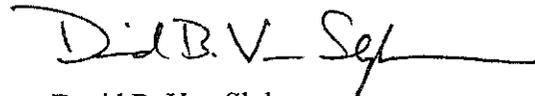
The applications should remain pending for the following reasons:

- The project has been in suspended animation since mid-August and the fact that title, right or interest has not been maintained during that entire timeframe has not impacted any party, the Department or the Board.
- The project has been actively attempting to re-secure title, right and interest during this timeframe.
- Before the project can go forward, the applicant will have to provide supplemental information on the topics of title, right and interest as well as on the financial capacity. It is the applicant's burden of proof on those issues (as well as many others) and the project, appropriately, would be summarily dismissed if the proceedings were re-started and there was not an adequate demonstration of title, right or interest.
- Calais LNG has expended over \$20M on this project to date, and the DEP and BEP have also expended significant resources reviewing this effort. Further, all of the intervenors (both for and against the project) have spent time, effort and money to be involved with the current project. Withdrawal or dismissal of the applications at this point would waste the significant efforts made to get the proceeding to this point, efforts that would need to be duplicated once Calais LNG re-files the applications.

We respectfully request, therefore, that the Board extend the continuance in this matter until January 15, 2011.

Last, Calais LNG appreciates the Chair's recognition of the significant efforts being made to bring this important project through the BEP process.

Very truly yours,



David B. Van Slyke

cc: Service List

David B. Van Slyke
dvan Slyke@preti.com
Direct Dial: 207.791.3221

December 2, 2010

By Electronic and U.S. Mail

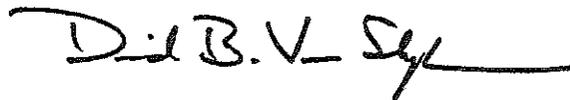
Susan M. Lessard, Chair
Maine Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Calais LNG

Dear Chair Lessard:

I have enclosed a letter to you from Harold Ian Emery, dated December 2, 2010, regarding the Calais LNG project.

Very truly yours,



David B. Van Slyke

Enclosure

cc: Service List
Harold Ian Emery
Arthur Gelber



A Clean, Secure Energy Future for Maine & the Maritimes

December 2, 2010

Susan M. Lessard, Chair
Maine Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Calais LNG

Dear Chair Lessard:

I am pleased to inform you that on November 24, 2010, North East Energy Development, LLC ("NEED") purchased all of the interests of GS Power Holdings LLC in both Calais LNG Project Company, LLC and Calais Pipeline Company, LLC (collectively, "Calais LNG"). NEED is a Maine LLC, and its principals are myself and Arthur Gelber.

We recognize that the Board has put the processing of the applications for this project on hold for several months. The new management of Calais LNG is vigorously pursuing efforts to get the project back on track, and is undertaking the following efforts in that regard:

- Renewing prior discussions with Steven Carothers and Gail Roberts (hereinafter collectively "Carothers") to promptly re-secure title, right or interest ("TRI") to the property owned by Carothers upon which Calais LNG is proposing to build the bulk of its marine terminal and LNG receiving facility; and
- Re-initiating efforts to provide the additional information previously requested by various state agencies (e.g., DMR, IF&W and SHPO) that was the cause of the initial postponement of the BEP hearings.

Calais LNG anticipates that it will be able to re-secure TRI and provide updated portions of its applications to address TRI and any other issues by January 15, 2011. Further, responses to the additional information requests will be completed and submitted to DEP by Calais LNG by February 15, 2011.

The re-constituted Calais LNG management team is excited about this project and will do whatever it can to move this process along as expeditiously as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold Ian Emery".

Harold Ian Emery

cc: Art Gelber
Service List

3. FINANCIAL CAPACITY

This section provides information regarding Financial Capacity, including the estimated costs of development of Calais LNG's Terminal Site and Send-out Pipeline, a Project Schedule, and Goldman Sachs' 2008 annual report.

3.1 ESTIMATED COSTS

Table 3-1 provides the estimated total cost of the Terminal Site and Send-out Pipeline and itemizes major expenses, including environmentally-related items and design considerations.

3.2 ESTIMATED PROJECT SCHEDULE

Table 3-2 provides the estimated project schedule for the construction and satisfying pollution abatement measures of both the Terminal Site and Send-out Pipeline.

3.3 FINANCING

Calais LNG Project Company, LLC, is a Delaware limited liability company whose members are GS Power Holdings LLC, a Delaware limited liability company, and North East Energy Development, LLC, a Maine limited liability company. Calais LNG Project Company, LLC is affiliated with Calais Pipeline Company, LLC, which is a Delaware limited liability company whose members are GS Power Holdings LLC, a Delaware limited liability company, and North East Energy Development, LLC, a Maine limited liability company. See Attachment 3-A (Application for Authority to Do Business – Calais LNG Project Company, LLC) and Attachment 3-B (Application for Authority to Do Business – Calais Pipeline Company, LLC). Attachments 3-C and 3-D contain Certificates of Good Standing for Calais LNG Project Company, LLC and Calais Pipeline Company, LLC.

GS Power Holdings LLC, the managing member of Calais LNG Project Company, LLC and Calais Pipeline Company, LLC, is a wholly-owned direct subsidiary of Goldman Sachs Group, Inc. ("Goldman Sachs"). See Attachment 3-E, Goldman Sachs Group, Inc. fiscal year 2008 SEC Form 10-K filing Exhibit 21.1 (November 28, 2008). The Goldman Sachs Group, Inc. is a leading global financial services firm providing investment banking, securities and investment management services to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. Founded in 1869, the firm is headquartered in New York and maintains offices in London, Frankfurt, Tokyo, Hong Kong and other major financial centers around the world. Attachment 3-F is Goldman's 2008 Annual Report. As of the calendar third quarter of 2009 (September 30, 2009), Goldman Sachs' total assets were valued at \$882.2 billion. Attachment 3-G is Goldman Sachs' Environmental Report, which describes the Company's commitment to environmental stewardship activities and environmental investments.

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JESSICA A. OSKI
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RONALD A. SHEMS*
KAREN L. TYLER

November 24, 2010

Via e-mail and first-class mail

Susan M. Lessard, Chair
c/o Terry Hanson
Board of Environmental Protection
#17 State House Station
Augusta, Maine, 04333-0017

Re: Calais LNG and Calais Pipeline

Dear Chair Lessard:

We are responding to Calais LNG's November 23, 2010 request that the Board maintain jurisdiction over a matter where Calais LNG itself admits that it lacks financial capacity, and only now also belatedly concedes that it has lacked TRI since September 1, 2010. (SPB and NN have argued that CLNG has lacked TRI from this matter's inception.)

CLNG's letter raises significant issues and warrants serious response on the issues including the Board's jurisdiction, prejudice to the parties, and CLNG's continued last-minute requests to delay this matter based not on fact or evidence, but on the most cursory and generic claims. Further, CLG's request was filed at the start of the Thanksgiving holiday and with insufficient time to allow responses to be prepared and circulated in time for the December 2, 2010 Board meeting.

Based on conversation with Board staff, any hearing on contested issues would be heard by the Board on December 16. The schedule we propose below anticipates that CLNG's latest request would be heard on the 16th.

SPB-US and NN suggest the following schedule:

Replies to letter: December 14, 2010

Hearing: December 16, 2010

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I am authorized to state that CLF joins in this letter.

Thank you very much for your consideration and best wishes to all for the Thanksgiving holiday.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald A. Shems".

Ronald A. Shems
Rebecca E. Boucher
For the firm
SHEMS DUNKIEL RAUBVOGEL & SAUNDERS PLLC

Attorneys for Intervenors SPB-US and NN

cc: Service List (via e-mail)

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JESSICA A. OSKI
ANDREW N. RAUBVOGEL
MARK A. SAUNDERS
RONALD A. SHEMS*
KAREN L. TYLER

December 6, 2010

Susan Lessard, Chair
c/o Terry Dawson
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330-0017

Re: Calais LNG Project Co., LLC and Calais LNG Pipeline Co., LLC

Dear Chair Lessard,

SPB and NN formally oppose CLNG's response to the Board's Show Cause Order. CLNG's failure to show cause requires the Board to deny CLNG's November 23, 2010 request for a fifth continuance and dismiss or return CLNG's application. SPB and NN also oppose CLNG's request for further extension of time to respond to its loss of financial capacity.

This request is far different from the previous four. In those, the applicant's title, right or interest (TRI) in the land for the terminal site, and hence, standing before the Board and the Board's jurisdiction, was not – at least to the Board's and parties' knowledge – in question.¹ Now, the applicant concedes that it no longer has TRI in the land for the terminal *and has not had it for nearly three months*. Furthermore, despite the Chair's Order that CLNG "show cause as to why the applications should remain pending," CLNG failed to respond with any evidentiary or legal support for its position. Indeed, CLNG concedes the present lack of TRI, and offers no proof of how or when that may change. Therefore, SPB and NN ask the Board to deny the relief CLNG requests and, instead, to dismiss or return CLNG's application for lack of TRI and administrative standing.

¹ We now know, of course, that CLNG did not have TRI in the land for the terminal location at the time of its fourth request. CLNG has known since at least August 31, 2010 that it no longer has TRI in the project site. Yet CLNG withheld this development from the Board and parties when it requested a fourth continuance in its September 13 letter. It also chose to omit this development from the Board and the parties at the September 15 in-person conference of counsel, after which it was granted the fourth continuance.

Indeed, CLNG failed to address the matter at all until the property owners themselves, who are not party to this proceeding, notified the Board that the option had expired. CLNG is well aware of two critical obligations here: to maintain TRI throughout this proceeding and to keep the Board informed of material developments during the continuance. In the face of these, CLNG elected to keep the Board and the parties in the dark about this critical development.

CLNG Failed to Show Cause.

CLNG's November 23 letter is an insufficient response to the Chair's Show Cause Order. The Chair's November 19, 2010 letter was clear. The Chair referenced the undisputed fact that CLNG failed to exercise or renew their Option to Purchase Agreement and therefore lost legal right to the property as of September 1, 2010. The Chair noted that TRI is a "threshold criterion" for processing an application, and directed CLNG's attention to the governing rule: "An applicant must maintain sufficient title, right or interest throughout the entire application processing period." Accordingly, the Chair ordered CLNG to notify the Board of its intent with regard to the pending applications and, if CLNG did not intend to withdraw them, to "show cause as to why the applications should remain pending."

The term "show cause" is a term of art with specific meaning. A show cause order requires the party to whom the order is directed to meet a prima facie burden on the issue that is the subject of the order. *Brennan v. Johnson*, 391 A.2d 337, 339 n.1 (Me.1978) citing *Boyd v. Louisville & Jefferson County Planning & Zoning Comm'n.*, 230 S.W.2d 444, 446-47 (Ky, 1949).

[T]he term [show cause] has a well understood legal meaning. It is an order requiring a party to appear and show cause why a certain thing should not be done or permitted. It requires the party to meet the prima facie case made by the applicant's verified complaint or affidavit. 60 C.J.S., Motions and Orders, §§ 20, 37(e); 37 Am.Jur., Motions, Rules and Orders, Sec. 38.

Boyd v. Louisville, 230 S.W.2d at 446-47.

Instead of satisfying the well-understood requirements of a show cause order, CLNG submitted a two-page letter *devoid of any evidence of TRI* in the form of an affidavit, other appropriate documents, or other actual proof. Instead, CLNG concedes that it does not have TRI over its proposed terminal site and, once again, says, "Trust us, we're working on it, and we need more time."

CLNG's December 2 letter added nothing more. It merely reported a change in project ownership.² CLNG is still trying to "re-secure" TRI. CLNG also failed to provide any indication whatsoever that it has obtained new financial backing or to provide outstanding technical information. Both were required by December 1. The December 2 letter provided zero indication that this project is at all closer to having financial backing. In fact, CLNG stepped backward by requesting a February 15 deadline to provide outstanding information requests relating to the merits.

² CLNG actually had two opportunities to show cause: The November 24 deadline set by the Chair and the originally set deadline of December 1. Both deadlines passed without a single submission of fact.

Of course, CLNG could not possibly provide any real evidence of TRI by the deadline set by the Chair. After flying under the radar for nearly three months, CLNG was exposed by the property owners and forced to concede that it no longer had TRI. CLNG has thus failed to meet its burden under the Chair's Order to show cause as to why its applications should remain pending.

Because CLNG Lacks TRI and Administrative Standing, the Board No Longer Has Jurisdiction.

CLNG now lacks TRI. Maintenance of sufficient TRI is both a requirement of Board rules and a predicate of administrative standing. Standing, in turn, is a jurisdictional requirement. We emphasize that this is not a dispute on the existence of TRI, or management of the Board's docket while other tribunals determine facts relevant to TRI – here CLNG concedes lack of TRI and was unable to demonstrate otherwise in the opportunity to show cause.

SPB and NN have previously argued that CLNG lacks TRI. But the circumstances now are quite different. We are now faced with the undisputed lack of TRI in the very land on which CLNG wishes to build its facility. SPB and NN's prior argument was that the scope of TRI encompassed the ability to ship LNG to the terminal and send gas away from it.³ The Board disagreed. This time, however, the question involves the land for the terminal itself. Without the land, the terminal cannot be built.

Board regulations require maintenance of sufficient TRI. Site Location regulations require an applicant to demonstrate, as a threshold matter, that it has, "sufficient title, right or interest in all of the property that is proposed for development or use." 96.096 CMR 372.9. The general regulations in Chapter 2 contain the same language. 96.096 CMR 2.11(D). Both allow TRI to be supported by an option to buy the property.⁴ 96.096 CMR 372.9.(b); 2.11(D)(3). The

³ Specifically, SPB and NN argued previously that CLNG lacked sufficient TRI absent the ability to ship LNG on tankers to the terminal (based on the position of the United States Coast Guard), and also without the ability to transport the re-gasified product from the terminal to the markets in New England (due to the lack of capacity in the interstate M&NE pipeline).

⁴ The Chapter 2 general regulations also provide that an applicant may also prove title, right or interest by providing a copy of FERC's notification of acceptance of CLNG's application for a FERC license. 06-096 CMR 2.11(D). The Site Location of Development Law Chapter 372 regulations, however, do not allow TRI to be shown by means of a FERC notification of acceptance. CLNG is applying for a number of permits, including a Site Law permit, and the Chapter 2 general regulations do not apply to the Site Law application. When another regulation is more specific, the Chapter 2 regulations do not apply: "These rules apply in the absence of procedural requirements imposed by statute or rule. Where other specific procedural requirements apply, those requirements control." 96.096 CMR 2.2(A).

We also note that the reference in Chapter 2 to acceptance of a FERC application likely derives from that agency's jurisdiction over hydro power, which provides for the right of eminent domain. 16

Chapter 2 regulations also provide that – as noted by the Chair and the Carothers – “An applicant must maintain sufficient title, right or interest throughout the entire application processing period.” 96.096 CMR 2.11(D).

These regulations accord with administrative standing. The pivotal Maine case on TRI and administrative standing is *Walsh v. City of Brewer*, 315 A.2d 200 (Me.1974). The plaintiff, Thomas Walsh, applied for various permits to develop and operate a mobile home park and spent considerable sums on plans, surveys, and engineering in the process. After the City Council changed the zoning ordinance to preclude the project, Walsh sued the City.

The Supreme Judicial Court of Maine held that Walsh lacked standing to sue the City in court because he never had administrative standing to apply for the permits in the first place. Walsh did not have administrative standing because he did not have TRI in the property he sought to use for the mobile home park. *Id.* at 206-07.

In land-use proceedings, the Court held, standing to be a proper applicant requires an “independently existing relationship to regulated land in the nature of a title, right or interest in it which confers lawful power to use it, or control its use.” *Id.* at 207. That relationship to the land is an “indispensable and valid condition for ‘applicant’ eligibility.” *Id.*; see also *Southridge Corp. v. Board of Environmental Protection*, 655 A.2d 345, 348 (Me.1995) (“[A]n applicant for a license or permit to use property in certain ways must have ‘the kind of relationship to the . . . site’ that gives him a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license he seeks.”). Without sufficient TRI, an applicant lacks standing and simply has no place before the Board.

The Court went on to hold that, absent proper applicant standing, it lacked jurisdiction over the matter. “Unless . . . the plaintiff has a relationship to the land qualifying him as a proper ‘applicant’ under the regulatory ordinances . . . there is absent a necessary condition of . . . subject matter jurisdiction. . . . In short, here, precisely the deficiency constituting plaintiff’s lack of standing to sue concomitantly gives rise to a lack of subject-matter jurisdiction in the Court.” *Walsh v. Brewer*, 315 A.2d at 210; see also *McNicholas v. York Beach Village Corp.*, 394 A.2d 264, 267 (Me.1978) (lack of standing goes to very jurisdiction of court); and *Nichols v. City of Rockland*, 324 A.2d 295, 296 (Me.1974) (“[S]tanding is a threshold concept dealing with the necessity for the invocation of the Court’s power to decide true disputes. . . . Only one who has standing to bring suit may present a properly justiciable controversy to this Court for resolution.”).

The fact that CLNG may have once had standing does nothing to impact the fact that it lacks standing now, thus depriving the Board of continuing jurisdiction over CLNG’s

U.S.C. § 814. There is no comparable right of eminent domain to site an LNG import terminal. See generally 15 U.S.C. Chapter 15B. Hence, this method of demonstrating TRI is inapplicable here.

application. Where other land-use applicants let their option expire, they were determined to have no standing and their matters were dismissed. Simply put, CLNG has no standing to seek, and the Board has no jurisdiction to process an application governing land in which CLNG has no interest:

As we stated recently in *Ricci v. Superintendent, Bureau of Banking*, 485 A.2d 645, 647 (Me.1984), “[s]tanding of a party to maintain a legal action is a ‘threshold issue’ and our courts are only open to those who meet this basic requirement.”

* * *

To have standing to challenge a municipality’s land use regulations, a party must possess sufficient “title, right or interest” in the land to confer upon him lawful power to use it or to control its use. *Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me.1974). In the case at bar, the affidavits before this court demonstrate that plaintiffs . . . lack any legal interest in the property that they sought to develop. [Plaintiffs] do not own the site of their proposed motel, although they did for a time have an irrevocable option to purchase the parcel. That option expired on February 1, 1984, and the [plaintiff’s] complaint was not filed until February 17. On that latter date, and at all times since, the [plaintiffs] have had no interest in the land adequate to give them standing. Consequently, the action brought by the [plaintiffs] against the Town must be dismissed.

Tisei v. Town of Ogunquit, 491 A.2d 564, 567-68 (Me.1985).

In another case where an option had expired, the applicants’ subsequent renewal of the option did not prevent the matter from being dismissed. *Madore v. Maine Land Use Regulation Com’n*, 715 A.2d 157, 1998 ME 178. After LURC rejected their permit application and their option expired, the Madores proceeded to take LURC to court. The trial court dismissed the action for lack of standing because the Madores had not maintained TRI throughout the litigation.

Immediately after the [trial] court rendered its decision, the Madores wrote a letter to the court suggesting the high likelihood that a renewed agreement could be secured and requesting that the court accept it into the record when filed and reconsider its dismissal of the complaint. The Madores then obtained a renewal of the agreement and sent it to the court with another letter requesting the same relief. Treating these letters as motions for reconsideration, the court denied the motions in a more detailed written order of dismissal. This appeal followed.

* * *

Here, the Madores do not dispute the court’s findings that they did not hold the requisite interest in Lemoine’s property when they filed their complaint, did not renew that interest during the briefing period, and did not hold that interest on the day of the hearing in the Superior Court. At the hearing, the Madores

asserted that because they had lost before LURC and might also lose on appeal, they should not be required to expend the funds necessary to renew the agreement to purchase. This argument exposes the flaw in their efforts to proceed without the necessary interest. While it will always be preferable from a financial perspective to determine whether an expenditure is justified by obtaining a court ruling before incurring the expense, such an approach would, in effect, transform the courts into advisory bodies. Hence we have consistently held that a party may not seek judicial (or administrative) action concerning land use without having an interest in the property at issue. *See Halfway House, Inc.*, 670 A.2d at 1379; *Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me.1974). Absent that interest, the applicant does not present an actual controversy to be resolved by judicial action.

* * *

The court, however, was required to act on the facts before it, and not on an agreement that may or may not be renewed in the future. *See Campaign for Sensible Transp.*, 658 A.2d at 215. Indeed, if the agreement could so readily have been renewed, the Madores could have done so once the intervenor brought the significance of its lapse to their attention. The suggestion that a court should act on the merits of an otherwise nonjusticiable matter because the facts known to the court at the time of its action may change in the future is antithetical to the requirement that courts act only on real controversies before them.

Madore v. Maine Land Use Regulation Com'n, 715 A.2d 157, 1998 ME 178, ¶¶ 6, 9, 10.

In sum, CLNG lacks standing, pure and simple. Administrative standing is a threshold, legal requirement for CLNG to appear before the Board. Maintenance of sufficient TRI is a requirement of both administrative standing and Board rules. CLNG previously demonstrated sufficient TRI by an option on the property, but it has since lost that option. When the Board and parties finally were made aware of CLNG's lack of TRI, the Board Chair gave CLNG an opportunity to show cause as to the threshold requirement. CLNG failed. Therefore, CLNG no longer has standing to invoke the Board's jurisdiction, and its applications should be dismissed or returned.

The following provision in Board TRI rules does not change this analysis or conclusion: "The Department may return an application, after it has already been accepted as complete for processing, if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest." 96.096 CMR 2.11(D). The case law shows that Board discretion is limited by the doctrines of administrative standing and jurisdiction. Here, all parties concede that CLNG has no TRI in the site land itself. The Board, then, does not have the discretion to maintain jurisdiction over this matter.

CLNG Cannot Overcome a Lack of TRI and Standing.

Instead of evidentiary or legal support, CLNG states that the project has been "in suspended animation since mid-August and the fact that title, right or interest has not been maintained during that entire timeframe has not impacted any party, the Department or the Board." This is an audacious statement. CLNG *chose not to inform* the Board, Department, and parties about the loss of TRI. CLNG *chose not to inform* the Board, Department, and parties that it no longer had standing and was in violation of Board rules. Continuance or not, CLNG was obliged to keep the BEP informed of such material and jurisdictional facts. CLNG's lack of disclosure was not only wholly self-serving but also showed stunning disregard for this Board's authority and the parties' rights. CLNG singlehandedly manufactured the scenario which, it now claims, "impacted" no one. Had CLNG been forthcoming, SPB and NN would have immediately requested that CLNG's applications be dismissed or returned at that time for lack of TRI, standing, and jurisdiction.

CLNG also reasons that its applications should remain pending because it is still trying to secure financing so that it could, in turn, attempt to re-secure title, right or interest, that it will have the burden of proof of TRI at trial, and that withdrawal or dismissal now would waste resources. These arguments are wrong and irrelevant because CLNG failed to show cause and provide support of TRI and administrative standing, so the Board has reached the end of its jurisdiction. Further, SPB and NN members are prejudiced each day that these applications are in "suspended animation" – both directly, by incurring legal fees in responding to each new request for a continuance, and indirectly, by putting personal and business matters on hold – all for a project without sufficient basis, or TRI. As a practical matter, we are well past the time when keeping this matter on hold saves resources.

Finally, even if CLNG claims that it may re-secure TRI in the near future, SPB and NN request the Board to return or dismiss this application. By December 1, CLNG was to report on its new financial backing and submit the outstanding technical information to the Board, a deadline the Chair set specifically in order to accommodate both of those developments. CLNG has done neither. Instead, it asks for yet another extension. SPB and NN spent the first half of 2010, due to CLNG's repeated and urgent requests for an expedited docket, scrambling to develop its case and prepare for hearing. SPB and NN have now spent the second half of 2010 attending to CLNG's repeated requests for extensions, and CLNG's consistent failures to meet those deadlines. Furthermore, CLNG has shown disrespect to the Board, the parties, and this process by asking for additional relief and consideration in September while simultaneously withholding material and unfavorable information from everyone involved. There must be an end to this process.

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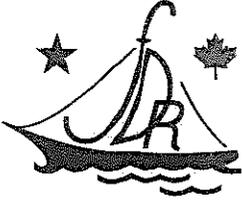
Because this issue goes to the heart of the Board's jurisdiction, SPB and NN request that this issue be considered by the whole Board and that CLNG's applications be dismissed or returned.

Sincerely,

A handwritten signature in black ink, appearing to read 'RS', written over a horizontal line.

Ronald A. Shems
Rebecca E. Boucher

Attorneys for NN and SPB-US



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ROOSEVELT CAMPOBELLO INTERNATIONAL PARK COMMISSION

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TEL. (506) 752-2922 FAX (506) 752-6000

November 24, 2010

By Electronic and U.S. Mail

Susan M. Lessard, Presiding Officer
c/o Terry Hanson
Maine Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Dear Presiding Officer Lessard:

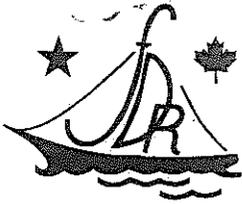
This letter is in response to receipt of Calais LNG's November 23, 2010 letter to you. Calais LNG's letter was in reply to the presiding officer's letter of November 19, 2010, in which you stated, "If Calais LNG does not intend to withdraw its applications, it should show cause as to why the applications should remain pending."

Roosevelt Campobello does not support Calais LNG's request that its applications remain pending. Roosevelt Campobello will prepare a more detailed letter in the near future. Roosevelt Campobello agrees with SPB U.S. and NN that additional time is needed to prepare a reply to Calais LNG's letter, and supports SPB's and NN's proposed schedule.

Sincerely,

Harold L. Bailey
for Ronald E. Beckwith
Superintendent/Executive Secretary
Roosevelt Campobello International Park Commission

cc: Cynthia S. Bertocci
Peggy Bensinger
Becky Blais
service list



ROOSEVELT CAMPOBELLO INTERNATIONAL PARK COMMISSION ³³⁷

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December 3, 2010

Susan Lessard, Chair
c/o Terry Dawson
Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Via postal and e-mail

Re: Calais LNG Project Company, LLC and Calais Pipeline Company, LLC

Dear Chair Lessard:

This letter is in response to David Van Slyke's November 23, 2010 letter on behalf of Calais LNG. Mr. Van Slyke's letter was a reply to November 19, 2010 letter requesting information regarding the status of the Calais LNG application.

Please consider the following in your deliberations relating to Calais LNG's fifth request for a delay in the proceedings relating to its applications before the Board of Environmental Protection (Board).

- Roosevelt Campobello agrees with Calais LNG (letter of November 23, 2010) that the Board's proceeding has been suspended for the past three months plus, and notes that this suspension has been at the request of Calais LNG.
- From discussions at the Chair's September 15, 2010 conference of counsel, it was Roosevelt Campobello's understanding that Calais LNG's September 13, 2010 request for delay until December 1, 2010 was necessary due to lack of replacement financial backing in order to, in part, secure funding to complete necessary Department-required studies. Roosevelt Campobello does not recall Calais LNG mentioning funding being necessary to continue maintenance of title, right or interest in property.
- Roosevelt Campobello has no reason to dispute Steven Carothers' and Gail Roberts' (the Carothers) statement that their property makes up a significant portion of the property upon which Calais LNG is proposing to build, and that the property is necessary for construction of Calais LNG's proposed facility.
- Roosevelt Campobello recalls, during several meetings held by the chair, that questions relating to title, right or interest have come up and that Calais LNG must certainly have been aware of the importance of title, right or interest to both the intervenors and the Board.
- Calais LNG may have been actively attempting to secure title, right or interest in the Carothers' property; however, it appears that Calais LNG did not, and as of November 23, 2010, does not have title, right or interest to that property.

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- Calais LNG must certainly have known, at least since August 31, 2010, that it lacked the threshold criterion of title, right or interest for its applications. The Board should have been advised of this.
- Calais LNG made no mention of its lack of title, right or interest at the September 15, 2010 conference of counsel and representatives; nor did it deny, in its November 23, 2010 letter to you, that the Carothers' property is necessary for its pier and receiving terminal.
- Roosevelt Campobello questions whether Calais LNG's claim that the project's applications being on hold since mid-August and the fact that title, right or interest not being maintained throughout that entire time frame have not impacted any party, the Department, or the Board. Not maintaining title, right or interest appears to go against Department rules. If so, and if lack of title, right or interest had been known by the Board, Calais LNG's applications might have been returned or denied, subsequently freeing up for other purposes the time and expense all parties have incurred while keeping up with the proceedings, attending meetings, and responding as necessary since August 31 - the date on which Calais LNG no longer held title, right or interest to the Carothers' property.
- Roosevelt Campobello believes that the fact that the proceeding has been on hold should not affect the threshold criterion of title, right or interest. Although on hold, Calais' applications are still before the Board and the Department's threshold criteria should still apply.

Roosevelt Campobello does not support Calais LNG's November 23, 2010 request that the Board continue to place Calais LNG's applications on hold beyond the Board's previous deadline of December 1, 2010. Nor does Roosevelt Campobello support the Carothers November 17 request that the Board, "... continue to postpone or suspend the processing of Calais LNG's permitting application."

Roosevelt Campobello believes that Calais LNG has been given sufficient time to secure financial backing, and believes that because Calais LNG lacks the title, right or interest necessary for its project, Calais LNG should either withdraw its applications before the Board, or the Board should deny those applications on the basis that Calais LNG does not hold the necessary title, right, or interest.

On behalf of the Roosevelt Campobello International Park Commission, I thank you for your consideration of the above.

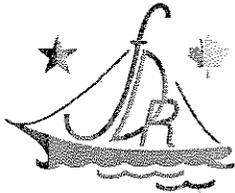
Sincerely,



for
Ronald E. Beckwith, Jr.
Superintendent
Executive Secretary

cc: Cynthia Bertocci
Peggy Bensinger
Dawn Hallowell

e-mail: Service List



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December 6, 2010

Susan M. Lessard, Chair
Maine Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Calais LNG and Mr. Ian Emery's letter of December 2, 2010

Dear Chair Lessard:

Please consider the following in your and the Board's deliberations relating to Calais LNG.

In a November 24, 2010 e-mail, Ms. Terry Dawson advised all parties that any party wishing to comment on a letter dated November 23, 2010 from David Van Slyke on behalf of Calais LNG must do so by Monday, December 6, 2010 by 4:00 p.m. Mr. Van Slyke's letter was in response to the Chair's letter of November 19th regarding the status of the Calais LNG application.

Roosevelt Campobello commented on Calais LNG's November 23 letter on November 24, briefly, and in more detail on December 3. Roosevelt Campobello did not support the extension requested by Calais LNG and suggested either Calais LNG withdraw its applications or that the Board deny those applications.

Now, Roosevelt Campobello is in receipt of Mr. Ian Emery's letter of December 2, 2010 in which he states that North East Energy Development, LLC has purchased all of the interest of GS Power Holdings in relation to the Calais LNG proposal. In addition, Mr. Emery states Calais LNG is renewing discussions with the Carothers to secure title, right and interest to land necessary for the Calais LNG project, and reinitiating efforts to provide additional information previously requested by State agencies that was the cause of the initial postponement of the BEP's hearing.

In addition, Mr. Emery states, "Calais LNG anticipates that it will be able to re-secure TRI and provide updated portions of its applications to address TRI and any other issues by January 15, 2011. Further responses to the additional information requests will be completed and submitted to DEP by Calais LNG by February 15, 2011."

Although Calais LNG anticipates it will do the above, that does not necessarily mean all it anticipates will come to pass. In addition, the Chair stated in her letter of September 16 to Mr. Van Slyke (page two, paragraph 1), that Calais LNG has stated it would likely require an additional six weeks after securing financial backing to supply the technical information previously required by the Department.

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Susan M. Lessard

December 6, 2010

Roosevelt Campobello notes that Calais LNG's initial request for supplying technical information was six weeks. Now that Calais LNG has settled its financial difficulties, and if its request to be allowed until February 15, 2011 to finish preparing its technical information for the Department is granted, it would appear that Calais LNG would receive an additional four weeks - for a total of ten from the date they announced their financial situation settled - to prepare the information. No justification has been provided for the apparent additional time request. As several parties have noted earlier and throughout these deliberations, all these delays do impose time and personnel burdens on every participant, most of whom are either governmental (involving taxpayer dollars) or not-for-profits (involving very limited donation resources).

Roosevelt Campobello sees nothing in Mr. Emery's December 2 letter that changes the fact that Calais LNG did not inform the Board it lacked title, right and interest on August 31 (and, as of December 2, still lacks TRI). Nor does Roosevelt Campobello support a need for further delay as it appears Calais LNG is requesting. Roosevelt Campobello stands by its letter posted December 3, 2010.

Sincerely,



For
Ronald E. Beckwith, Jr.
Superintendent
Executive Secretary

cc: Peggy Bensinger
Cynthia Bertocci
Dawn Hallowell

e-mail: Service List