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FEDERAL ENERGY
REGULATORY COMMISSION

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August 12, 2005

Ms. Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subj: Docket No. CP04-36-⁰⁰¹~~000~~, In the Matter of Weaver's Cove Energy, LLC

Dear Ms. Salas: CP04-41-001 CP04-43-001
CP04-42-001

Enclosed please find ~~an Appearance of Agency Representatives and~~ the original, with 14 additional copies, of this Agency's Motion to Intervene and other related motions and requests.

Thank you for your attention to this matter.

Sincerely,

David B. Mercier
Agency Representative

Enclosures

ORIGINAL

IN THE
UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of)
Weaver's Cove Energy, LLC) Docket No. CP04-36-0000
) CP04-41-001
) CP04-42-001
) CP04-43-001

**MOTION TO INTERVENE,
MOTION TO REOPEN, AND
REQUEST FOR REHEARING
IN THE APPLICATION OF WEAVER'S COVE ENERGY, LLC**

Introduction

The Naval Undersea Warfare Center Division, Newport (hereinafter "NUWCDIVNPT" or "Navy"), Newport, Rhode Island, hereby moves pursuant to Federal Energy Regulatory Commission (hereinafter "Commission") Rule 214 to intervene in the application docketed above and filed by Weaver's Cove Energy, LLC (hereinafter "Weaver's Cove" or "Applicant") in connection with the proposed siting, construction, and operation of a liquefied natural gas (LNG) terminal in Fall River, Massachusetts. Should intervention be granted, the Navy also moves, pursuant to Commission Rule 716, to reopen the evidentiary record in this proceeding to accept the information provided herein. Thereafter, pursuant to Commission Rule 713, the Navy requests a rehearing of the Commission's July 15, 2005, decision in this proceeding. As detailed below, the moving safety and security zone to be enforced around LNG tankers as they transit the lower Narragansett Bay to the proposed terminal will significantly and adversely impact in-water testing, conducted by NUWCDIVNPT, which is essential to the Navy and the security of the Nation.

Correspondence and Communications

NUWCDIVNPT consents to service of process by electronic means using e-mail addressed to the individuals at addresses identified below. In accordance with 18 CFR § 385.203(b)(3), the names, titles, mail, and e-mail addresses of the individuals to whom correspondence and communications concerning this proceeding are to be made are:

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Background

NUWC DIVNPT is a U.S. Department of the Navy component of the Naval Sea Systems Command. NUWC DIVNPT, and its predecessors, have been located in coastal Rhode Island since the 1800s. NUWC DIVNPT performs functions associated with designing and building multi-million dollar submarines, torpedoes, and sonar systems to help ensure our nation is capable of protecting against emerging threats to our national security. NUWC DIVNPT's mission is to operate the Navy's full spectrum research, development, test and evaluation, engineering, and fleet support laboratory for submarines, autonomous underwater systems, heavy-weight and light-weight torpedo systems, and torpedo countermeasures associated with Undersea Warfare. Approximately 4,300 military, government civilian, and contractor workers are employed at NUWC DIVNPT. NUWC DIVNPT's annual revenue stream is in excess of \$1 billion, with direct local community impact of \$500 million. The NUWC DIVNPT public website can be found at: <http://www.npt.nuwc.navy.mil>.

Located on the western side of Aquidneck Island, NUWC DIVNPT borders on Narragansett Bay. One of NUWC DIVNPT's major assets is its Narragansett Bay Shallow Water Test Facility (NBSWTF). This facility is located just off the coast of Newport, Rhode Island, in the portion of the Bay generally referred to as the East Passage. The NBSWTF offers a variety of unique shallow water ranges contiguous to the laboratory which permit prototype underwater weapons systems to be exposed to real environments, thus providing low-cost test and evaluation of this hardware for the Navy. These prototype research and development systems evolve into the weapons used by current and future Naval warfighters. This facility is designed to support research and development work in advanced torpedoes and torpedo systems, torpedo

launchers, active and passive SONAR, and other similar weapon components and equipment. A portion of the NBSWTF includes a restricted area for NUWCDIVNPT within the lower Narragansett Bay when required for testing of weapons and weapon systems. Army Corps of Engineer regulations identifying this restricted area appear at 33 CFR § 334.80. Additionally, this restricted area is identified in Chapter 6 of the National Oceanic and Atmospheric Administration's Coast Pilot 2.

Statement of Facts

The Applicant proposes to construct an LNG terminal in Fall River, Massachusetts. As a necessary part of the proposal, between 50 and 70 LNG tankers per year would transit from the mouth of Narragansett Bay to the Fall River site utilizing the East Passage. This would result in 100 to 140 inbound and outbound transits through the NBSWTF per year. During their transits, these tankers would be surrounded by a moving safety and security zone. Per the Coast Guard regulations at 33 CFR § 165.121, the safety and security zone would extend 2 miles ahead, 1 mile astern, and 1,000 yards on either side of the tankers. In effect, the zone would encompass the entire lower Bay as the tanker transited. Absent Coast Guard authorization, entry into or movement within the safety and security zone, both on and below the surface, would be prohibited.

As detailed further in Exhibit 1, the Navy has a very active in-water test schedule for the NBSWTF. Currently, approximately 3 to 4 test runs occur in or near the East Passage on a weekly basis. The Navy projects that by 2006-2007, test runs will increase to 5 to 7 per week. All of the current and projected test runs occur within the area of the Bay that would be impacted by the proposed safety and security zone. Many of the test runs consist of one-of-a-kind autonomous vehicles dependant upon developmental wireless communication links. All of these test runs would be subject to the Coast Guard prohibition against entry into or movement within the safety and security zone.

The Navy first learned of the status of the proposal, and the potential impact to its mission, in communication from the State of Rhode Island after the Commission's decision on July 15, 2005. NUWCDIVNPT was not included in the Applicant's scoping process for this proposal, nor was it invited to participate in any meetings or

associated discussions. NUWCDIVNPT did not directly receive copies of any application paperwork, the Draft Environmental Impact Statement (EIS), or the Final EIS. A review of the EIS and the Commission's July 15, 2005, decision on this proposal evidences no substantive mention of the Navy's presence or activities in Narragansett Bay, nor the potential impact of the proposal on the Navy.

The Navy, by virtue of NUWCDIVNPT's location and organizational mission, has an interest in the outcome of this matter. NUWCDIVNPT supports eight major programs that utilize the NBSWTF to meet developmental milestones. One of the Navy's major focuses is moving the sailor out of harm's way. This is being accomplished through the development of autonomous vehicles. NUWCDIVNPT is the lead activity in development, integration, and testing of both unmanned undersea and surface vehicles. The decision to allow LNG tankers to transit the East Passage with the restrictions proposed will significantly impact cost, schedule, program development risk, as well as fleet delivery of these critical Navy programs. This interest is sufficient to warrant the Navy's intervention herein. Absent the opportunity to intervene, the Navy's interest will be impaired.

Statement of Law

(1) Navy's Motion To Intervene Should Be Granted (Rule 214)

As demonstrated in the foregoing material, the Navy has a significant presence in the lower Narragansett Bay. That presence includes regular use of the waters in, and adjacent to, the East Passage. Authorization for a restricted area covering a large portion of these waters has been in existence since 1968 (see, 33 CFR § 334.80). The Applicant's proposal significantly impinges on the Navy's ability to conduct its mission and exercise its authority. As such, the Navy has a significant interest that may be affected by the outcome of this proceeding. In view of the significance of the Navy's presence in the local area, and the potential local and national impact of this proposal to the Navy's ability to continue its mission, the Navy's participation in the proceeding is in the national and public interests.

Under 18 CFR § 380.1, the Commission must comply with the regulations of the Council on Environmental Quality (CEQ) when those regulations are not inconsistent with the Commission's statutory requirements. The CEQ regulations,

specifically 40 CFR § 1501.7, address scoping. Subsection (a)(1) of that section requires the lead agency, in this case the Commission, to “[i]nvite the participation of affected Federal . . . agencies . . .” There is no evidence that such an invitation was ever made to the Navy. Per 40 CFR § 1506.6(b)(2), actions with effects of national concern shall include “. . . notice by mail to national organizations reasonably expected to be interested in the matter . . .” (Emphasis added.) The Navy has no record of having received any such notice. In combination, the Navy maintains that these administrative failures to provide proper notice to the Navy demonstrate the necessary showing of good cause for the granting of a motion to intervene at this time.

(2) Navy’s Motion To Reopen Should Be Granted (Rule 716)

The same showing of good cause that supports the Navy’s intervention also supports reopening the record in this proceeding for the purpose of taking additional evidence. As it currently stands, the record is absolutely silent even on the very existence of NUWCDIVNPT. Neither the EIS, nor the Commission’s decision, reflect the extent of the Navy’s activities in the lower Narragansett Bay. Those documents also fail to address the potentially significant adverse impact both to NUWCDIVNPT’s mission and to national security from the repeated implementation of the moving safety and security zone within the NBSWTF.

The decision-makers were not presented with all the relevant information. As addressed in 18 CFR § 385.716, these changes in conditions of fact currently reflected in the record warrant the Commission’s action to reopen the proceeding and receive additional information in this regard. The public interest, locally and nationally, would be served by such an action.

(3) Navy’s Request For Rehearing Should Be Granted (Rule 713)

The Commission’s final order granting Weaver’s Cove’s application is in error due to the incompleteness of the existing record as discussed above. At the time of its order, the Commission did not have all the facts. Under the circumstances, a rehearing is appropriate either subsequent to a reopening and the taking of additional information, or independently under 18 CFR § 385.713(c)(3) for matters described or provided elsewhere in this document that were not previously available to the Commission.

Relief Sought

For the reasons stated above, the Navy respectfully requests that its motion to intervene in the Weaver's Cove application to site, construct, and operate this LNG terminal be granted.

Upon successful intervention, the Navy further requests a reopening of the record in this proceeding for the purpose of taking additional evidence.

In conjunction with a reopening, the Navy requests a rehearing to allow the Commission to review and act upon the additional evidence.

Finally, the Navy requests such other relief from the Commission in support of this filing as may further the national and public interests and the purposes of this proceeding.

Request for Hearing

The Navy requests a hearing on the disposition of these motions and request.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon the persons designated by the Secretary of the Federal Energy Regulatory Commission to receive service in this proceeding by depositing copies thereof in the United States Mail, first class postage prepaid.

Dated at Newport, RI, this 12th day of August, 2005.


RICHARD C. DALE, II
Counsel


DAVID B. MERCIER
Associate Counsel

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Attachment: Exhibit 1

Exhibit 1

<u>Fiscal Year</u>	<u>Total Number of Runs</u>	<u>Total Runs in East Passage Only</u>
2003	206	196
2004	147	140
2005	199	189
2006	281	267
2007	381	362