



Save Passamaquoddy Bay

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

eFiled on 2014 June 5 [*Footnote 1 name spelling has been corrected after filing.*]

**Re: Downeast LNG, Docket Nos. CP07-52-000, CP07-53-000, and CP07-53-001
Exposé & Indictment of FERC Environmental (EIS) Process**

Dear Ms. Bose,

The Mystery

FERC has *never* rejected *any* LNG terminal application for environmental reasons.¹ Why?

Has *every* LNG terminal developer miraculously selected a site that has *no* significant environmental issues? Are *all* LNG terminal developers so prescient in their site selections that environment is *never* a significant problem?

How is it that FERC *always* approves LNG terminal environmental impacts?

The Exposé

The answer is illustrated in FERC's Downeast LNG final Environmental Impact Statement (EIS). **The document is rife with significant omissions, prevarications, and speculations.** The printed version of the Downeast LNG EIS also omits each of the 24 Appendices. Appendix S (Part 1 & Part 2) is particularly important, since it contains Comments from Intervenor and the Public on the Draft EIS, in which FERC dismissively brushes significant issues aside — and even prevaricates about demonstrable fact.

At best, significant information is underrepresented; at worst, pertinent information is corrupted, withheld, buried — **preparers have “gilded” the project.**

¹ In only one case has FERC denied a permit to an LNG terminal applicant, but denial was not for environmental reasons. FERC's Keyspan LNG EIS (Docket No. CP04-223) states that the project “would not constitute a major federal action significantly affecting the quality of the human environment” (FERC *approved* the applicant's environmental compliance requirements). The EIS goes on to state that Keyspan LNG “does not comply fully with the DOT's current safety standards” as the reason for denial.

The Evidence

The following list of evidence covers only a small portion of the EIS, but is representative of the problem endemic to the FERC environmental process exemplified in the Downeast LNG final EIS.

1. FERC's disregard for intervenor status.

When the applicant, politicians, or government bureaucrats file requests or comments to the docket, FERC provides timely responses. However, **when intervenors file requests or information deserving a response, FERC does not respond until release of the EIS — as much as 5 years later**, as is the case with Save Passamaquoddy Bay comments re the Draft EIS and other comments.²

Official intervenors to the proceedings deserve the same consideration as the applicant, elected officials, and government bureaucrats. By delaying response, **FERC disadvantages the public interest by limiting the time available for intervenors to read and respond to FERC's years-delayed treatment.**

2. Section 4 (Environmental Analysis) of the EIS...

- a. Falsely claims there are no terminal on-site **Native American cultural & religious assets** that would be impacted, damaged, or destroyed.³
- b. Wrongly claims that **Nulankeyutomonen Nkihtahkomikumon** consists of just three Passamaquoddy Tribal members.⁴
- c. Makes a misleading claim that LNG ships would not come within 1,500 feet of Campobello Island. In fact, **LNG ship Hazard Zone 1 would encompass land north of Wilson's Beach.**⁵
- d. Fails to mention that **a portion of Campobello Island would fall within LNG ship Hazard Zone 1;**⁶

² See EIS Appendix S, Comments on Draft EIS and Responses.

³ Page 4-239. Footnote 24, wrongly claims that there are no historic properties that would be adversely affected within the viewshed of the proposed LNG terminal. In fact, there is a significant large Native American cultural and religious prehistoric asset on the terminal property that would fall within the LNG ship Hazard Zones. It also wrongly claims that LNG traffic would not alter the character or use of historic properties overlapped by the Hazard Zones any more than other shipping traffic. Other shipping traffic does not have federally-defined Hazard Zones. **Is the EIS agreeing with the State of Maine prescriptive use law that would prevent restricting public presence at any time in the terminal's intertidal zone, including directly beneath the pier's trestle?**

⁴ Page 4-241. Second paragraph, last sentence.

⁵ Page 4-243, Section 4.10.2.1, second sentence. See accompanying file, **04_AppendixF_pg5FigF4.pdf**.

⁶ Page 4-350, Hazard Zones Associated with Proposed Route, fails to mention Hazard Zone 1 would extend over Campobello Island near Wilson's Beach. See accompanying file, **04_AppendixF_pg5FigF4.pdf**.

- e. Fails to mention that **Head Harbour Light and parking lot, Head Harbour, Head Harbour wharf, and Head Harbour Island would fall within Hazard Zone 2.**⁷
 - f. Ignores the **St. Andrews Blockhouse National Historic Site that is just 2 miles distant from the proposed pier.** The Historic Site would fall **within the transiting- and offloading-LNG ship Hazard Zone, and would be impacted by Downeast LNG’s air emissions.**⁸ Bare mention is made of the Saint Andrews Blockhouse National Historic Site on page 4-351, paragraph 4, last line, referring to it as “Saint Andrew’s Blockhouse” [sic];
 - g. Since Fundy Traffic is no longer in operation, the EIS states that the Coast Guard recommends Downeast LNG “consult with Transport Canada to determine if this change will compromise the safety of deep draft vessel traffic entering the Passamaquoddy Bay port area....” This EIS section fails to mention that **Canada prohibits LNG traffic into Passamaquoddy Bay;** thus, as the Government of Canada has repeatedly indicated to FERC, **Transport Canada will not cooperate regarding safety of LNG transits into Passamaquoddy Bay. Safety would be compromised if LNG transits were attempted;**⁹
 - h. Ignores **the financial burden to communities from increased infrastructure to support the temporary worker population that would remain after workers left;** new infrastructure would need to be maintained without the benefit of the temporary population. Instead, the EIS **speculates** there would be a net benefit and insignificant negative impacts.¹⁰
9. Sections 4 & 5 (Environmental Analysis; Conclusions & Recommendations) of the EIS...
- a. Ignore the **visual impact of a proposed ~4,000-foot-long Trestle & Pier that would traverse diagonally across a state-designated scenic view;**¹¹

⁷ Page 4-351. See accompanying file, **04_AppendixF_pg5FigF4.pdf**.

⁸ Section 4.10, Cultural Resources, makes no mention of the Saint Andrews Blockhouse National Historic Site. Section 4.10.1.2, Consultation with Other Federal Agencies, mentions Saint Croix Island International Historic Site with respect to Parks Canada, but makes no mention of the Blockhouse. One single mention is made of the Blockhouse in Section 4, albeit improperly named and without indication that it is a National Historic Site, in section 4.12.7.5, Hazard Zones Associated with the Proposed Route, page 4-351, last line of the next-to-last paragraph. No mention of the Blockhouse is made in Section 5.

⁹ Carrier Routes, Page 4-350, top paragraph.

¹⁰ Section 4.13.9, Socioeconomics and Environmental Justice, Page 4-381, last sentence in the section.

¹¹ Section 4.13.8, Cultural Resources, and Section 4.13.9, make no mention of the impacts from the proposed trestle and pier.

- b. Ignore mentioning (Section 4) or minimize (Section 5) the **visual impact of a proposed 30-foot-tall Vapor Barrier** immediately abutting a **state-designated scenic view** (see Figure 1);



Figure 1. Car is parked at State of Maine-designated Scenic Turnout adjacent to proposed 30-foot-tall sheet metal vapor barrier. Another turnout is directly across the highway from the vapor fence. (For complete image, see accompanying file, **vapor_fence.jpg**. Downeast LNG provided no photosimulation of the proposed vapor barrier to the FERC public docket; thus, the illustration was created by Save Passamaquoddy Bay.)

3. Section 5 (Conclusions & Recommendations) of the EIS...

- a. Falsely claims, “There are no public lands or other designated federal, state, or local recreation areas located on or within 0.25 mile of the LNG terminal site,” and, “No federal parks in the [LNG ship] transit route.”¹² In fact, **three (3) State of Maine highway scenic turnouts exist within that distance** of the proposed terminal; and, both **Roosevelt Campobello International Park (a federal US & Canadian park)** and **St. Andrews Blockhouse National Historic Site** would fall within the LNG ship Hazard Zone, as indicated in Appendix F.¹³

- b. Omits **multiple Tribally-owned lands that would fall within the LNG ship Hazard Zone.**¹⁴

3. Section 5 & Appendix B (Conclusions & Recommendations; Coast Guard LOR and WSR)...

- a. Hypocritically **pretends Canada does not have the same rights as does the United States**; that Canada has no authority to prohibit LNG ship traffic in the subject waters — even though **Congress provides that very authority to the**

¹² Section 5.1.6, Land Use, Recreation, and Visual Resources, Section 5.1.6.1, Land Use and Recreation, Page 5-14, first paragraph and next-to-last paragraph.

¹³ See accompanying files, **05_AppendixF_pg6FigF5.pdf** and **02_AppendixF_pg3FigF2.pdf**.

¹⁴ Section 5.1.6.1, Land Use and Recreation, page 5-14, next-to-last paragraph. See accompanying files, **02_AppendixF_pg3FigF2.pdf** and **03_AppendixF_pg4FigF3.pdf**.

US Coast Guard, and the EIS states that the US Coast Guard has that authority.¹⁵ The EIS also admits that, since the US is not a party to UNCLOS, the US has no standing to challenge Canada's determination to prohibit LNG transits into and through Passamaquoddy Bay.¹⁶ The US has no valid or enforceable objection to Canada's prohibition of LNG transits.

2. Appendix S (Comments on Draft EIS and Responses) of the EIS...

- a. **Falsely claims that Robbinston Elementary School does not fall within the LNG ship Hazard Zones. Robbinston Elementary School property falls within Hazard Zones 2 and 3.¹⁷**

The Indictment

EIS preparers prevaricate about demonstrable fact, and omit numerous significant environmental impacts from the body of the main document, skewing the presentation given to the Commissioners, prejudicing the permitting outcome. With such lopsided treatment, it would be surprising for FERC to *ever* find environmental fault enough to deny any LNG terminal application.

- ***The FERC EIS process is a corruption of its intended purpose.***

The Solution

Considering FERC's energy industry-abetting history, and status as an independent federal agency, it is unlikely that the Commission will take corrective action. **Congress must correct the process via legislation.**

Suggested Improvements

1. Assign an environmental ombudsman to the Commission, with the provision allowing intervenors to discuss application particulars with the ombudsman;
2. Provide funding, via additional permitting fee and financial penalties (see below), to Non-Government Organization intervention in applicant permitting;

¹⁵ Page 5-21, last sentence, continued on page 5-22. The US Coast Guard would prevent ships from transiting into the US, and from transiting to the proposed terminal, since that transit would include crossing back and forth multiple times between Canadian and US waters. Separately, the US Coast Guard made a judgment of the Canadian waterway as to its suitability for LNG transits, but FERC claims Canada does not have that same authority over its own waters.

¹⁶ Appendix B, Coast Guard LOR and WSR, page 47 (PDF page 56), 3.3 International and Sovereignty Considerations, four lines from bottom of the page through first two lines of the following page, "...the United States is not party to the Convention in that the U.S. Senate has not yet provided the necessary approval. One important consequence of the U.S.'s current non-party status is that the United States is not subject to, nor can the U.S. make use of, the compulsory dispute settlement provisions of UNCLOS, since this is clearly a right/obligation that arises from being a party and is not a right/obligation that arises from customary international law."

¹⁷ See accompanying file, **02_AppendixF_pg3FigF2.pdf**.

3. Respond to official intervenors' comments on an ongoing and timely basis — ***not simply five (5) years later with release of the EIS, as is FERC standard operating procedure;***¹⁸
4. Establish financial penalties for preparer prevarication, obfuscation, and dismissal of valid environmental issues, with those penalties applied to the intervenor fund;
5. Prohibit the employment “revolving door” between FERC and industry:
 - a. Prohibit FERC personnel from working for regulated industry for at least two years after leaving FERC employment; and
 - b. Prohibit regulated industry personnel from working for FERC for at least two years after leaving industry.

FERC’s environmental permitting process is significantly broken and requires repair by Congressional action. **Environmental Justice and the Public Interest demand it.**

Very truly,

Robert Godfrey
Researcher & Webmaster

CC: News Media
Office of the Inspector General
Sen. Angus King
Sen. Susan Collins
Rep. Mike Michaud
Rep. Chellie Pingree
Service List

¹⁸ FERC has regularly responded in a timely manner to the applicant and non-intervenor politicians and bureaucrats. Public interest and Environmental Justice demand that intervenors receive the same consideration.