

Massachusetts (collectively referred to as “the Massachusetts Permitting Regulations,” described herein at ¶¶ 69 & 73), as they have been applied to the energy infrastructure development activities proposed by Weaver’s Cove and Mill River through the review of thirteen (13) applications that were filed by Weaver’s Cove and Mill River for state permits (“Massachusetts Permits,” described herein at ¶ 73), are of no legal effect because they are preempted by the NGA and therefore violate the Supremacy Clause of the U.S. Constitution. Furthermore, the application of the Massachusetts Permitting Regulations to the Massachusetts Permits for Weaver’s Cove’s and Mill River’s proposed activities has unconstitutionally burdened interstate and international commerce in violation of the Commerce Clause of the U.S. Constitution, and therefore must be given no legal effect. Plaintiffs ask this Court to enjoin Defendants (and their present and future agents, successors, and delegees) from any further application via the Massachusetts Permits of the Massachusetts Permitting Regulations to Weaver’s Cove’s and Mill River’s proposed activities as approved by the Federal Energy Regulatory Commission (the “FERC”).

PARTIES

1. Plaintiff Weaver’s Cove is a limited liability company duly formed under the statutes of the State of Delaware, with a place of business at One New Street in Fall River, Massachusetts.

2. Plaintiff Mill River is a limited liability company duly formed under the statutes of the State of Delaware, with a place of business at One New Street in Fall River, Massachusetts.

3. Defendant Deval Patrick is the Governor of the Commonwealth of Massachusetts; the Executive Office of the Governor is located in the State House, Room 360, Boston, Massachusetts.

4. Defendant Martha Coakley is the Attorney General of the Commonwealth of Massachusetts; her office is located in the McCormack Building, One Ashburton Place, Boston, Massachusetts.

5. Defendant Ian Bowles is the Secretary for the Executive Office of Energy & Environmental Affairs (“MassEOEEA”); his office is located at 100 Cambridge Street, Boston, Massachusetts.

6. Defendant Laurie Burt is the Commissioner for the Massachusetts Department of Environmental Protection (“MassDEP”); her office is located at One Winter Street, Boston, Massachusetts.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because Plaintiffs’ claims arise under the laws of the United States.

8. This Court is empowered to provide declaratory relief in this action pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure.

9. This Court is empowered to provide injunctive relief in this action pursuant to, *inter alia*, 28 U.S.C. § 2202.

10. Venue is proper in this forum pursuant to 28 U.S.C. § 1391(b), because all Defendants reside in this district and the events giving rise to Plaintiffs’ claims occurred in this district.

FACTS AND STATUTORY BACKGROUND

Liquefied Natural Gas

11. Liquefied natural gas (“LNG”) is natural gas that is cooled to a liquid state at a temperature of minus 260 degrees Fahrenheit. By cooling natural gas to a liquid, its volume shrinks in a ratio of 600:1, such that it can economically and efficiently be loaded on LNG tankers and transported from foreign sources to markets. The LNG is then warmed and returned to a gaseous state at the import terminal and injected into natural gas pipelines or is transferred in liquid form to other LNG storage facilities by special LNG-carrying trucks.

12. Recognizing the need for uniform regulation of the interstate and international gas industry, Congress enacted the NGA as the federal government’s comprehensive regulatory framework governing the interstate and international activities of natural gas companies: Section 3 (15 U.S.C. § 717b) regulates the importation of natural gas from foreign nations (including importation at LNG-terminal imports), and Section 7 (15 U.S.C. § 717f) regulates interstate natural gas pipelines.

13. The NGA confers upon the FERC comprehensive authority over, *inter alia*, the siting, construction, and operation of natural gas company facilities, including LNG facilities and interstate gas pipelines, to be used in interstate and international commerce.

Federal Regulation of LNG Imports: Section 3 of the Natural Gas Act

14. Under Section 3 of the NGA, the FERC regulates the importation of LNG through on-shore terminals. Section 3 provides that “no person shall . . . import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so.” 15 U.S.C. § 717b(a).

15. LNG is “natural gas” within the meaning of Section 3 of the NGA.

16. The grant of authority in Section 3 of the NGA to regulate imports and exports of natural gas includes the authority to regulate the facilities related to such imports or exports.

17. In 2005, Congress enacted the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (“EPAct 2005”).

18. EPAct 2005 amended Section 3 of the NGA to further clarify the FERC’s paramount authority to regulate the siting, construction and operation of new LNG import terminals, primarily in response to efforts by the state of California to exercise a “veto” over the siting of an LNG terminal.

19. As amended by EPAct 2005, Section 3 of the NGA provides that the FERC has the “*exclusive authority* to approve or deny an application for the siting, construction, expansion, or operation of an LNG [import] terminal” 15 U.S.C. § 717b(e)(1) (emphasis added).

20. EPAct 2005’s amendment to Section 3 of the NGA was intended to prevent interference with LNG-terminal development (or, in the words of one congressman, “break the bureaucratic logjam”) that would otherwise exist when state and local laws are applied to delay or obstruct the construction and operation of LNG facilities.

21. The FERC regulations for the LNG import terminal authorization process are set forth in 18 C.F.R. Part 153, and these regulations contain a prescriptive and comprehensive environmental and technical review process for the siting, construction, and or operation of LNG terminals — a process that takes years to prepare for and to complete.

22. This FERC process includes compliance with the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 3421 *et seq.*

23. Under the NGA, as amended, the term “LNG terminal” includes “all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport,

gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel,” with certain exceptions not relevant to this case. 15 U.S.C. § 717a(11).

Federal Regulation of Interstate Natural Gas Markets: Section 7 of the Natural Gas Act

24. Under Section 7 of the NGA, 15 U.S.C. § 717f, the FERC has jurisdiction to regulate “the transportation or sale of natural gas . . . [and] the construction or extension of any facilities therefore”

25. The FERC’s comprehensive regulations governing the processing of applications to construct and operate interstate natural gas pipelines are found in 18 C.F.R. Part 157, and the regulations contain an extensive framework of regulations governing technical and environmental review of the siting, construction, and operation of proposed natural gas pipelines.

26. The FERC’s review also includes compliance with the requirements of NEPA.

Weaver’s Cove Files Its Application for the Siting, Construction and Operation of an LNG Terminal

27. In 2003, Weaver’s Cove filed an application with the FERC under Section 3 of the NGA for authority to develop, construct, and operate an LNG terminal, including dredging of the existing federal navigation channel and turning basin in Mount Hope Bay and the Taunton River to allow LNG vessels to transit the existing federal navigation channel to the LNG terminal.

28. Once operational, the terminal will import LNG from foreign sources, receive LNG from LNG vessels, store LNG, regasify LNG, and distribute LNG and regasified LNG in interstate commerce.

29. The proposed terminal is to be located on the site of a former petroleum products marine terminal on the Taunton River in Fall River, Massachusetts.

30. Weaver's Cove owns the property that is the proposed site for the LNG terminal and associated facilities.

31. The property is currently zoned for industrial purposes and is within an area designated by the Massachusetts Office of Coastal Zone Management as a Massachusetts Designated Port Area (pursuant to 301 C.M.R. 25.00 these areas are reserved primarily for marine industrial development), and meets or exceeds applicable federal standards for the siting, construction and operation of an LNG project.

***Mill River Files Its Application for the Siting, Construction
and Operation of Related Pipeline Facilities***

32. In 2003, Mill River filed an application with the FERC under Section 7 of the NGA for authority to construct, own, and operate two short interstate natural gas pipelines extending from the Weaver's Cove LNG Terminal to interconnections with the existing Algonquin Gas Transmission Company interstate natural gas pipeline system for the delivery of natural gas into the interstate pipeline grid.

Weaver's Cove and Mill River Engage in the FERC's Environmental Review Process

33. Both Weaver's Cove's and Mill River's applications with the FERC were subject to compliance with the FERC's comprehensive regulations implementing NEPA, which are found at 18 C.F.R. Part 380.

34. Prior to filing its formal application with the FERC, Weaver's Cove and Mill River undertook extensive site-specific research, and the preparation of analyses and expert environmental reports as to the site, the construction of the receiving terminal and the dredging

of the federal navigation channel necessary for the LNG vessels to transit to the terminal. The pre-filing research, analysis, and reporting were the subject of an extensive FERC pre-filing process involving various federal and state permitting agencies, including MassDEP. Weaver's Cove and Mill River submitted final versions of these materials as part of the formal application to the FERC.

35. Over an eight-month period beginning in 2003, Weaver's Cove and Mill River participated in the FERC's pre-filing process. The purpose of the pre-filing process is to involve interested stakeholders early in the project planning and to identify and resolve issues before an application is filed with the FERC.

36. Beginning in 2003, MassEOEEA and MassDEP, the permitting agencies now administered by Defendants Bowles and Burt, respectively, participated in the FERC's environmental review of Weaver's Cove's and Mill River's proposed energy infrastructure projects, coordinating the state's review under the Massachusetts Environmental Policy Act, G.L. e. 30, §§ 62-62H ("MEPA") with the FERC's NEPA review.

37. In order to educate the public and to seek input on issues of public concern, Weaver's Cove and Mill River sponsored numerous public meetings and opportunities for interested parties to make written and oral public comments, both as required by the FERC regulations and on its own initiative.

38. On July 11, 2003, the FERC issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues, and Notice of Joint Public-Scoping Meeting*.

39. On July 29, 2003, the FERC and MassEOEEA held a joint public NEPA/MEPA "scoping" meeting to elicit written and oral comments from interested parties.

40. On August 28, 2003, the MassEOEEA Secretary established a “Special Review Procedure” that included coordinated NEPA/MEPA review, to which Weaver’s Cove agreed.

41. On December 19, 2003, Weaver’s Cove and Mill River filed their formal NGA applications with the FERC.

42. On December 30, 2003, the FERC issued a public notice of the Weaver’s Cove and Mill River projects, and invited interested parties to intervene and comment on the projects.

43. The FERC, as part of the process leading to its approval of the siting, construction and operation of the LNG terminal and pipelines, (i) undertook its review of the proposed LNG terminal, the dredging of the existing federal channel necessary to permit LNG vessels to transit to and from the terminal, and the two pipelines, and (ii) prepared a Draft Environmental Impact Statement (“DEIS”) that was issued in August 2004 assessing all pertinent impacts of the project as required by the FERC’s NEPA regulations. The DEIS also served as the Draft Environmental Impact Report (“DEIR”) under MEPA. The FERC held a public meeting to receive oral comments on the DEIS and offered interested parties the opportunity to file written comments.

44. In May 2005, after receipt of over 700 comment letters on the DEIS and further review and evaluation, the FERC Staff issued the Final Environmental Impact Statement (“FEIS”), a two volume, 600-page document that addresses all issues raised by over 700 commenting parties.

45. The FERC also afforded interested parties the opportunity to comment on the FEIS.

The FERC Approves the Weaver's Cove and Mill River Projects

46. On July 15, 2005, the FERC, acting pursuant to its exclusive authority under Sections 3 and 7 of the NGA, approved the Weaver's Cove and Mill River projects. *See* Exhibit A.

47. In approving the Weaver's Cove and Mill River projects, the FERC adopted the FEIS, which covered the terminal, siting, construction and operation of the terminal, dredging of the federal channel to enable the LNG vessels to reach the terminal, and the pipelines.

48. In its Order approving the Weaver's Cove and Mill River projects, the FERC stated:

112. We have reviewed the information and analysis contained in the FEIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the FEIS that, although the proposed LNG terminal would introduce a new risk to the public, the project would meet federal safety standards, could be operated safely, and would have limited adverse environmental impact. Further, we are ensuring the LNG facilities will be subject to Commission staff technical review and site inspections on at least an annual basis. The implementation of the Coast Guard's security plan that would control the LNG vessels operating through Narragansett Bay to and from the proposed terminal would further ensure the public's safety. These conclusions are based on the construction and operation of the project in accordance with Weaver's Cove's proposed mitigation and the environmental mitigation measures recommended [in] the FEIS. Accordingly, we are including as Appendix B the environmental mitigation measures recommended in the FEIS as conditions to the authorization issued to Weaver's Cove in this order.

113. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions in this order. *We encourage cooperation between Weaver's Cove, Mill River, and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.*

See Exhibit A at ¶¶ 112-13 (footnote omitted; emphasis added).

49. Consistent with Paragraph 113 of FERC's approval order, Weaver's Cove and

Mill River have cooperated with state and local authorities, both before and after the FERC approved the projects.

50. On January 23, 2006, the FERC issued its Order on Rehearing, in which the FERC reaffirmed its approval and reiterated its conclusions as to the preemptive scope of its orders with respect to state and local regulations of the Weaver's Cove and Mill River projects. See Exhibit B at ¶¶ 139-45.

51. Neither the Defendants nor any other party sought judicial review of the FERC's conclusion in its Orders as to the preemptive effect of its decision.

52. Because the Weaver's Cove LNG terminal proposal involves the siting, construction and operation of LNG facilities, the approval of the activities associated with such siting, construction and operation is within the exclusive authority of the FERC pursuant to Section 3 of the NGA.

53. Because Mill River's pipeline proposal involves the siting, construction, and operation of interstate pipelines, the approval of activities associated with such siting, construction and operation is within the FERC's exclusive authority under Section 7 of the NGA.

***Defendants Attempts to Regulate the Siting, Construction, and Operation
of Plaintiffs' Proposed LNG Terminal and Pipelines***

54. Defendant Deval Patrick as Governor of the Commonwealth of Massachusetts is the "supreme executive magistrate" of Massachusetts, and therefore has ultimate authority for the execution of the Massachusetts Permitting Regulations and the Massachusetts Permits at issue in this case. MASS. CONST. pt. 2, ch. II, § I, art. I.

55. Defendant Martha Coakley as Attorney General of the Commonwealth of Massachusetts, is charged with "supervisi[ng] and control[ling]" the Department of the Attorney

General, G.L. ch. 12, § 1, and therefore is charged with enforcing in the courts of law and equity the Massachusetts Permitting Regulations and the Massachusetts Permits at issue in this case.

56. Defendant Ian A. Bowles as Secretary is the highest-ranking official of MassEOEEA and in accordance with G.L. ch. 21A, §§ 1-4, is charged with supervising and controlling the operations of energy and environmental agencies of the Commonwealth of Massachusetts, including MassDEP, which is charged with administering the Massachusetts Permitting Regulations and the Massachusetts Permits at issue in this case.

57. Defendant Laurie Burt as Commissioner is the highest ranking official of MassDEP and in accordance with G.L. ch. 21A, §§ 7, is charged with administering the Massachusetts Permitting Regulations and Massachusetts Permits at issue in this case.

58. In the Spring of 2003 and in anticipation of the FERC's request that Weaver's Cove and Mill River cooperate with state and local agencies as to state and local permitting, Weaver's Cove and Mill River met with various Massachusetts permitting agencies (*e.g.*, MassEOEEA, MassDEP, the Massachusetts Office of Coastal Zone Management), as well as the Massachusetts Division of Marine Fisheries, a state agency that had no permitting responsibility for the Weaver's Cove or Mill River projects.

Weaver's Cove's and Mill River's Compliance with MEPA

59. After the meetings in the Spring of 2003, Weaver's Cove and Mill River officially commenced the Massachusetts permitting process with the submission in July, 2003 of an Expanded Environmental Notification Form ("EENF") to the MEPA Unit within MassEOEEA in order to obtain a scope for the filing of the first Environmental Impact Report ("EIR") under MEPA.

60. On August 25, 2004, public notice was given of the availability of the Draft EIR, which consisted of the Draft EIS prepared by the FERC. This was consistent with the coordinated review agreed upon by MassEOEEA in August 2003.

61. On October 1, 2004, the then-Secretary of MassEOEEA issued a certificate on the Draft EIR requiring submission of a Supplemental Draft EIR (“SDEIR”). In that certificate, the then-Secretary of MassEOEEA announced that she had decided to proceed with further MEPA review beyond the DEIR without coordinated review and without regard to the FERC’s schedule.

62. On November 10, 2004, MassEOEEA published notice of the availability of the SDEIR filed by Weaver’s Cove and Mill River.

63. On December 17, 2004, the then-Secretary of MassEOEEA issued a certificate on the SDEIR requiring submission of a Second Supplemental Draft EIR (“SSDEIR”).

64. On November 10, 2005, MassEOEEA published notice of the availability of the SSDEIR filed by Weaver’s Cove and Mill River .

65. On December 16, 2005, the then-Secretary of MassEOEEA issued a certificate on the SSDEIR directing the filing of a Final EIR (“FEIR”).

66. On March 8, 2006, MassEOEEA published notice of the availability of the FEIR filed by Weaver’s Cove and Mill River.

67. On April 14, 2006, the then-Secretary of MassEOEEA issued a certificate on the FEIR directing the filing of a Supplemental FEIR (“SFEIR”).

68. On June 21, 2006, MassEOEEA published notice of the availability of the SFEIR filed by Weaver’s Cove and Mill River. On July 28, 2006, the then-Secretary of MassEOEEA issued Weaver’s Cove and Mill River a certificate finding that the SFEIR adequately and properly complied with MEPA. The issuance of this final MEPA certificate allowed MassDEP

to take final Agency Action on the applications filed by Weaver's Cove and Mill River under the Massachusetts Permitting Regulations for the Massachusetts Permits at issue in this case.

***Plaintiffs' Efforts to Obtain Massachusetts Permits
Under Massachusetts Permitting Regulations***

69. The sections of the Massachusetts Permitting Regulations that are pertinent to the Massachusetts Permits at issue in this case are codified in Massachusetts' General Laws and administrative codes as follows: (i) for State Water Quality Certifications ("WQC") at G.L. c. 21 §§ 26-53, 314 C.M.R. 9.00 (rev. 1995), and 314 C.M.R. 4.00; (ii) for Waterways at G.L. c. 91, §§ 1-63, and 310 C.M.R. 9.00; (iii) for Air Plan Approval at G.L. c. 111, § 142A through § 142J, and 310 C.M.R. 7.00; and (iv) for Wetlands Protection at G.L. c. 131, § 40, and 310 C.M.R. 10.00.

70. Weaver's Cove and Mill River challenge the legality of the Massachusetts Permitting Regulations as applied by Defendants to Weaver's Cove and Mill River with respect to the applications for permits and approvals as set forth in detail below.

71. On May 21, 2004, Weaver's Cove, Mill River, and MassDEP executed a Memorandum of Agreement ("MOA") that obligated MassDEP to complete its permit actions within specific time periods set forth in the MOA's schedule for action. *See* Exhibit C.

72. In 2004, Weaver's Cove and Mill River submitted to MassDEP a total of thirteen (13) applications for Massachusetts Permits under the Massachusetts Permitting Regulations. Six of these applications were "Notice of Intent" applications ("NOIs") filed under the Massachusetts Wetlands Protection Act (G.L. c. 131, § 40) and related Wetlands Regulations (310 C.M.R. 10.00). In accordance with the statute and regulations, these six NOIs were submitted for initial review to the Town of Somerset Conservation Commission (one each by Weaver's Cove and Mill River), the City of Fall River Conservation Commission (one each by

Weaver's Cove and Mill River), the Town of Swansea Conservation Commission (one by Mill River), and the Town of Freetown Conservation Commission (one by Mill River). The other seven applications were submitted directly to MassDEP for other permits and approvals under the Massachusetts Permitting Regulations.

73. The following applications were submitted by Weaver's Cove and Mill River for permits and approvals under the Massachusetts Permitting Regulations set forth in ¶ 69 above:

(a) Weaver's Cove filed seven applications under Massachusetts Permitting Regulations regarding the activities related to its LNG project:

1. **Water Quality Certification ("WQC") for Dredging (WQC 05-0847)** – On April 26, 2004, a WQC application was filed with MassDEP for the dredging of the navigation channel, the turning basin and the trench crossing the Taunton River for the Mill River pipeline (pursuant to G.L. c. 21 §§ 26-53 and the regulations promulgated thereunder, including 314 C.M.R. 9.00 (rev. 1995), and 314 C.M.R. 4.00).
2. **Ch. 91 Waterways License for Weaver's Cove LNG Terminal** – On May 7, 2004, a License Application for the LNG terminal was filed with MassDEP (pursuant to G.L. c. 91, §§ 1-63 and the regulations promulgated thereunder, including 310 C.M.R. 9.00).
3. **Ch. 91 Waterways Permit for Weaver's Cove Dredging** – On May 7, 2004, a Permit Application for dredging was filed with MassDEP (pursuant to G.L. c. 91, §§ 1-63 and the regulations promulgated thereunder, including 310 C.M.R. 9.00).
4. **Air Quality Plans Approval for LNG Terminal** – On May 10, 2004, a non-major comprehensive air plan approval application was filed with MassDEP for the LNG terminal operations (pursuant to G.L. c. 111, § 142A through § 142J, and the regulations promulgated thereunder, including 310 C.M.R. 7.00).
5. **WQC for Weaver's Cove LNG Terminal (WQC 05-1073)** – On May 10, 2004, a WQC application was filed with MassDEP for shoreline work at LNG terminal site (pursuant to G.L. c. 21 §§ 26-53 and the regulations promulgated thereunder, including 314 C.M.R. 9.00 (rev. 1995), and 314 C.M.R. 4.00).
6. **Wetlands Notice of Intent for LNG Terminal Construction and Dredging (within Fall River)** – On June 28, 2004, the NOI was filed with the Fall River Conservation Commission (pursuant to G.L. c. 131, § 40 and the regulations promulgated thereunder, including 310 C.M.R. 10.00).

7. **Wetlands Notice of Intent for Dredging (within Somerset)** – On July 23, 2004, the NOI was filed with the Somerset Conservation Commission (pursuant to G.L. c. 131, § 40 and the regulations promulgated thereunder, including 310 C.M.R. 10.00).

(b) Mill River filed six applications under Massachusetts Permitting Regulations

regarding the activities related its pipeline project:

1. **WQC for Mill River Pipelines** – On May 5, 2004, a WQC application was filed with MassDEP for installation of the pipelines (pursuant to G.L. c. 21 §§ 26-53 and the regulations promulgated thereunder, including 314 C.M.R. 9.00 (rev. 1995), and 314 C.M.R. 4.00).
2. **Ch. 91 Waterways License Application for Mill River Pipeline** – On May 5, 2004, a License Application was filed with MassDEP for the Taunton River crossing of the Western Lateral pipeline (pursuant to G.L. c. 91, §§ 1-63 and the regulations promulgated thereunder, including 310 C.M.R. 9.00).
3. **Wetlands Notice of Intent for Pipeline Construction (Fall River)** – On June 29, 2004, the NOI was filed with the Fall River Conservation Commission (pursuant to G.L. c. 131, § 40 and the regulations promulgated thereunder, including 310 C.M.R. 10.00).
4. **Wetlands Notice of Intent for Pipeline Construction (Somerset)** – On July 23, 2004, the NOI was filed with the Somerset Conservation Commission (pursuant to G.L. c. 131, § 40 and the regulations promulgated thereunder, including 310 C.M.R. 10.00).
5. **Wetlands Notice of Intent for Pipeline Construction (Swansea)** – On December 23, 2005, the NOI was filed with the Swansea Conservation Commission (pursuant to G.L. c. 131, § 40 and the regulations promulgated thereunder, including 310 C.M.R. 10.00). An Order of Conditions approving the work was issued on March 6, 2006, and this approval was not appealed.
6. **Wetlands Notice of Intent for Pipeline Construction (Freetown)** – On May 27, 2004, the NOI was filed with the Freetown Conservation Commission (pursuant to G.L. c. 131, § 40 and the regulations promulgated thereunder, including 310 C.M.R. 10.00). An Order of Conditions approving the work was issued on July 28, 2004, and amended on October 17, 2005; this approval was not appealed.

74. After submission of these permit applications, and prior to the actions taken on

these applications, Weaver's Cove and Mill River met with officials of the Massachusetts'

permitting agencies responsible for processing and issuing permits , participated in numerous Massachusetts' state-agency-sponsored public hearings, responded to numerous Massachusetts agency requests for additional information, and responded to public comments of others.

75. Even after the FERC approved Weaver's Cove's and Mill River's proposals, Weaver's Cove and Mill River responded to the requests for information with thousands of pages of additional information, in a good-faith effort to cooperate and resolve the state proceedings for the Massachusetts Permits without resort to invocation of the preemptive authority of the NGA and of the FERC's orders administering the NGA.

76. On October 3, 2004, the Fall River Conservation Commission issued Orders of Conditions denying approval for the NOIs filed by Weaver's Cove and Mill River; Weaver's Cove and Mill River subsequently requested that MassDEP issue a Superseding Order of Conditions.

77. On January 10, 2005, the Somerset Conservation Commission issued Orders of Conditions denying approval for the NOIs filed by Weaver's Cove and Mill River; Weaver's Cove and Mill River subsequently requested that MassDEP issue a Superseding Order of Conditions.

78. Under the MEPA regulatory scheme, MassDEP could not take final "Agency Action" (*e.g.*, issuance of a permit) on a project that is subject to MEPA jurisdiction and the Massachusetts Permitting Regulations unless and until the Secretary had determined and issued a certificate stating that an EIR is not required, or in the case of Weaver's Cove and Mill River, the Secretary has determined that an EIR is required, and the Secretary had issued a certificate stating that the Final EIR adequately and properly complies with MEPA, and 60 days had elapsed following the publication of the notice of the availability of the Final EIR (301 CMR

11.12(4)).

79. Upon issuance by the Secretary of MassEOEEA, predecessor of Defendant Bowles, of the final certificate under MEPA on July 28, 2006, under Massachusetts's law, MassDEP was authorized to complete its reviews and issue decisions for the eleven applications for Massachusetts's permits and approvals that were pending and are at issue in this case.

80. In September 2006, because of the passage of time since the filing of its applications, Mill River submitted updated application materials to MassDEP for the WQC application and the c. 91 application for the pipelines.

81. In October 2006, because of the passage of time since the filing of its application, Weaver's Cove submitted updated application materials to MassDEP for the WQC application for the LNG terminal site development.

82. In November 2006, because of the passage of time since the filing of its applications, Weaver's Cove submitted updated application materials to MassDEP for the WQC application and the c. 91 application for the dredging work.

83. In November 2006, MassDEP issued public notice of a new opportunity for public comment and a public hearing on the WQC applications and the c. 91 application for dredging that had been filed by Weaver's Cove. The public hearings were held jointly on December 16, 2006, and the public comment periods closed on January 2, 2007.

84. On March 2, 2007, Weaver's Cove provided MassDEP with extensive and detailed responses to all of the relevant public comments that had been presented during the MassDEP's additional public comment periods and public hearings.

85. Between March 2007 and June 2007, MassDEP communicated its intentions to render decisions on the Massachusetts Permits, and Weaver's Cove and Mill River continued to

cooperate with MassDEP in the effort to obtain decisions on the pending permit applications, and responded to all inquiries from MassDEP regarding the applications under review.

86. Despite Weaver's Cove's and Mill River's good-faith efforts and cooperation, MassDEP notified Weaver's Cove and Mill River on June 4, 2007 that MassDEP had declared a unilateral "stay" of MassDEP's reviews for all of the remaining applications that were pending for the Massachusetts Permits at issue in this case. MassDEP's stated justification for the "stay" was that action remained pending on the decision of the United States Coast Guard ("Coast Guard") regarding the revised Letter of Intent filed by Weaver's Cove in February 2006 for the transit of LNG vessels to the LNG terminal.

87. Weaver's Cove and Mill River objected to MassDEP's unilateral "stay" and asked MassDEP to continue processing of the Weaver's Cove and Mill River permit applications, because no aspect of the Coast Guard's proceedings were legally or factually relevant to the requirements governing the permit applications that had been pending before MassDEP since 2004.

88. MassDEP denied the request and refused to act on the reviews for the remaining applications.

89. MassDEP's stay of the permit proceedings violated the MOA executed by Weaver's Cove, Mill River, and MassDEP, which obligated MassDEP to complete its permit actions within the time periods set forth in the MOA's specific schedules for action. MassDEP did not resume review of Plaintiffs' pending applications until December 2007.

90. On December 13, 2007, MassDEP issued WQC approval to Weaver's Cove for the limited portion of the dredging project that involves placement of backfill within the trench crossing the Taunton River for the Mill River pipeline. On December 14, 2007, MassDEP issued

written approval to Mill River for the c. 91 license for the Western Lateral river crossing. These approvals both were appealed to MassDEP by the Town of Somerset and the City of Fall River.

91. On December 14, 2007, MassDEP issued letters purporting to be “technical deficiency” letters for three other applications filed by Weaver’s Cove, asserting that Weaver’s Cove would be required to provide approval from the Coast Guard for LNG ship transits before MassDEP would complete its review of these applications. In January 2008, Weaver’s Cove responded to these “technical deficiency” letters by calling upon MassDEP to complete its reviews based upon the record before them, and on March 10, 2008, MassDEP issued denials of the three applications, for which Weaver’s Cove has filed administrative appeals with MassDEP.

92. On March 13, 2008, MassDEP issued a partial approval for the Air Plan Application. Based upon the issuance of the final MEPA certificate on July 28, 2006, this decision should have been issued by November 24, 2006. The approval included authorization for the LNG terminal operation, but included approval for unloading of LNG only from “smaller” LNG tankers. Weaver’s Cove has filed an administrative appeal with MassDEP to challenge the portion of that decision in which MassDEP indicated that Weaver’s Cove would be required to provide approval from the Coast Guard for LNG tanker transits before MassDEP would approve the unloading of LNG from “larger” vessels.

93. The two remaining matters pending before MassDEP as of March 2008 involved the requests for Superseding Orders of Conditions under the Wetlands Protection Act that were filed in October 2004 and January 2005 following denials issued by the Fall River Conservation Commission and the Somerset Conservation Commission. Under the MOA and MassDEP’s regulations, both of these requests should have been acted upon no later than October 2006, but MassDEP refused to act on them until issuing denials on April 16, 2008. Weaver’s Cove has

filed administrative appeals of those denials with MassDEP. On May 12, 2008, the Fall River Conservation Commission already filed a motion seeking to stay the appeal for the SOC denying work in Fall River. On May 14, 2008, the Somerset Conservation Commission filed a motion seeking to stay the appeal for the SOC denying work in Somerset.

Administrative Appeals of MassDEP Permit Decisions

94. A total of fourteen permit decisions have been issued on the original thirteen applications filed for Massachusetts Permits by the Plaintiffs.

95. Of the fourteen permit decisions issued to Weaver's Cove and Mill River, two are final and twelve have been subject to administrative appeals before the MassDEP.

96. To date, nine of the twelve appeals have been transferred to the Massachusetts Division of Administrative Law Appeals ("DALA"), the body to which MassDEP has delegated procedural administration of most appeals.

97. The other three recent appeals have not been transferred to DALA, and it has not been determined yet whether they will be retained for procedural administration at MassDEP, or transferred to DALA.

98. Since November 16, 2007, the processing of four appeals of MassDEP's decisions that were filed in February 2007 has been the subject of indefinite stay orders issued by DALA.

99. DALA's stay orders were issued at the behest of MassDEP and the City of Fall River and the Town of Somerset, the latter two of which have both publicly declared their objective of trying to block the FERC-approved LNG project, and despite the objections of Weaver's Cove and Mill River.

100. Under the Massachusetts Permitting Regulations, none of the permit applications approved by MassDEP is final until the administrative appeal process instigated by project

opponents is complete and a final decision of the Commissioner of MassDEP is issued. Thus, by virtue of the MassDEP-supported issuance of indefinite stays by DALA, Weaver's Cove and Mill River are being further denied timely action in the processing of their permit applications under the Massachusetts Permitting Regulations.

101. The absence of final permit authorization delays and obstructs the siting, construction, and operation of both the LNG terminal and interstate pipelines.

Consequences of MassDEP's Delays

102. Weaver's Cove and Mill River have fully cooperated with state and local authorities in the MassDEP permitting process.

103. MassDEP's repeated delays and unilateral stays of the permit application reviews and appeals, including DALA's refusal to act on appeals of permits that have been approved, and MassDEP's denial of certain permits based upon the baseless claim that the Coast Guard's action on the LOI is a prerequisite for MassDEP's action, all have served to and continue to "prohibit" and "unreasonably delay the construction or operation of the [Weaver's Cove and Mill River] facilities approved by the Commission," and to further prohibit and unreasonably delay dredging operations essential to the construction and operation of the LNG and pipeline projects in direct contravention of the FERC Orders.

104. MassDEP's application of the Massachusetts Permitting Regulations to the Weaver's Cove and Mill River projects in the manner described above is in conflict with the NGA, the FERC's regulations promulgated under the NGA and NEPA, and the FERC's findings and determinations in the FEIS and orders approving the projects and has the result of frustrating the implementation of the LNG project.

105. MassDEP's application of the Massachusetts Permitting Regulations to the Weaver's Cove and Mill River projects in the manner described above also results in duplicative proceedings that are time-consuming and expensive for Weaver's Cove and Mill River.

106. MassDEP's denial of the requested permits and subsequent failure to complete administrative appeals of those permits (through DALA's indefinite stay of appeal processes) impose immediate, continuing and substantial harm to Weaver's Cove and Mill River and serve to obstruct the construction and operation of the project indefinitely.

COUNT I
(Preemption — Declaratory Judgment)

107. Weaver's Cove and Mill River re-allege and incorporate by reference the preceding paragraphs.

108. Pursuant to the Supremacy Clause of the U.S. Constitution, federal law preempts inconsistent laws made by a state on the same topic as the federal law.

109. Congress has *explicitly* preempted state efforts to control the siting, construction and operation of LNG terminals: "The Commission shall have *the exclusive authority* to approve or deny an application for the siting, construction and operation of an LNG terminal." 15 U.S.C. § 717b(e)(1) (emphasis added).

110. Furthermore, the federal government has occupied so pervasively the "field" of the regulation of LNG siting, construction and operation that Congress's intent to preempt state laws on the subject is clearly implied.

111. Similarly, Congress has granted the FERC exclusive authority to regulate the construction and operation of natural gas pipelines, thereby preempting all state laws regulating

that field, including but not limited to all state laws that conflict with the FERC's orders. 15 U.S.C. § 717f(c).

112. The Massachusetts Permitting Regulations, as administered by Defendants (and their agents, successors, and delegees), conflict with the applicable requirements of federal law as administered by the FERC.

113. Defendants' application or threatened application of the Massachusetts Permitting Regulations to Weaver's Cove and Mill River in the manner described herein, including the delay, obstruction, and prevention of the Massachusetts permitting process (including administrative appeals), contravenes and/or would contravene federal law by regulating the siting, construction and operation of the LNG terminal and the two interstate pipelines, which already are subject to pervasive and comprehensive regulations under the NGA, NEPA, the FERC's regulations promulgated thereunder, the FEIS and the FERC's orders.

114. Defendants' application of the Massachusetts Permitting Regulations to the Weaver's Cove and Mill River projects via the Massachusetts Permits, in the manner described herein, duplicates or conflicts with the FERC's comprehensive review and approval of these projects.

115. Because Weaver's Cove and Mill River have incurred and continue to incur substantial time-delays and costs necessary to proceed and to comply both with the FERC's process and regulations applicable to the siting, construction and operation of an LNG terminal and interstate pipelines, and the duplicative and conflicting application of the Massachusetts Permitting Regulations in the manner described herein, Weaver's Cove and Mill River are entitled to a declaratory judgment that removes the obstruction, conflict, duplication, and delay imposed by MassDEP's application of the Massachusetts Permitting Regulations to Weaver's

Cove and Mill River in the manner described herein, to frustrate and block their respective projects.

116. Thus, Weaver's Cove and Mill River request a declaratory judgment that Defendants' assertion, application, and threatened application of the Massachusetts Permitting Regulations in the manner described herein is preempted by the NGA, NEPA, the FERC's regulations promulgated thereunder, and the FERC's administration thereof in the FEIS and its orders, and, as such, violates the Supremacy Clause of the U.S. Constitution.

COUNT II
(Preemption — Injunction)

117. Weaver's Cove and Mill River re-allege and incorporate by reference the preceding paragraphs.

118. To prevent Defendants from taking action contrary to federal law (*i.e.* imposing Massachusetts' Permitting Regulations on Weaver's Cove and Mill River in the manner described herein when each already is fully regulated by the NGA and the FERC's regulations promulgated pursuant to the NGA and the actions of the FERC, made predominant by the Supremacy Clause of the U.S. Constitution), Weaver's Cove and Mill River request the Court to enjoin enforcement of the Massachusetts Permitting Regulations in connection with the Massachusetts Permits at issue in this case by Defendants (including their present and future agents, delegees, and successors) with respect to the siting, construction and operation of Weaver's Cove's LNG terminal and Mill River's interstate pipelines.

119. Defendants' ongoing acts in violation of the U.S. Constitution have inflicted and continue to inflict irreparable harm on Weaver's Cove and Mill River, for which Weaver's Cove and Mill River have no adequate remedy at law.

120. Therefore, Weaver's Cove and Mill River respectfully request that this Court enjoin Defendants from enforcing the Massachusetts Permitting Regulations against them as to their respective projects in connection with the Massachusetts Permits at issue in this case.

COUNT III
(Dormant Commerce Clause — Declaratory Judgment)

121. Weaver's Cove and Mill River reallege and incorporate by reference the preceding paragraphs.

122. Defendants' assertion, application, and threatened application of the Massachusetts Permitting Regulations to the respective Weaver's Cove and Mill River projects in connection with the Massachusetts Permits at issue in this case would prohibit and thus substantially (i) interfere with the importation of natural gas in foreign commerce and the transportation of natural gas in interstate commerce; (ii) adversely impact the supply of natural gas; and (iii) increase the cost and expense thereof.

123. Therefore, Defendants' assertion, application, and threatened application of the Massachusetts Permitting Regulations to the respective projects of Weaver's Cove and Mill River in connection with the Massachusetts Permits at issue in this case unlawfully burdens interstate commerce in violation of the Commerce Clause of the United States Constitution.

124. Thus, Weaver's Cove and Mill River request a declaratory judgment that Defendants' assertion, application, and threatened application to their respective projects of the Massachusetts Permitting Regulations in connection with the Massachusetts Permits at issue in this case violates the Commerce Clause of the U.S. Constitution.

COUNT IV
(Dormant Commerce Clause — Injunction)

125. Weaver's Cove and Mill River reallege and incorporate by reference the preceding paragraphs.

126. Defendants' assertion, application, and threatened application of the Massachusetts Permitting Regulations to the respective projects of Weaver's Cove and Mill River in connection with the Massachusetts Permits at issue in this case, which have the effect of interfering with the flow of LNG and natural gas in interstate commerce, violates Federal law — *i.e.*, the Commerce Clause of the U.S. Constitution.

127. Defendants' ongoing acts in violation of the U.S. Constitution have inflicted and continue to inflict irreparable harm on Plaintiffs, for which Plaintiffs have no adequate remedy at law.

128. Therefore, Weaver's Cove and Mill River respectfully request that this Court enjoin Defendants from enforcing the Massachusetts Permitting Regulations against them as to their respective projects in connection with the Massachusetts Permits at issue in this case.

PRAYER FOR RELIEF

Wherefore Weaver's Cove and Mill River pray the following relief:

(A) An order and judgment declaring unenforceable and void the Massachusetts Permitting Regulations as applied to the respective projects of Weaver's Cove and Mill River in connection with the Massachusetts Permits at issue in this case;

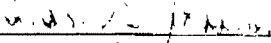
(B) An order and judgment enjoining enforcement of Massachusetts Permitting Regulations to the respective projects of Weaver's Cove and Mill River in connection with the Massachusetts Permits at issue in this case;

- (C) Costs and attorneys' fees pursuant to any applicable statute or authority; and
- (D) Any other relief that this Court deems to be just and appropriate.

Respectfully submitted,

Weaver's Cove Energy, LLC
Mill River Pipeline, LLC

By Their Counsel:



Susan A. Jackson
BBO #248910
Cheryl A. Blaine
BBO #564077
Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110

Of Counsel:

Bruce F. Kiely
Adam J. White
Jeffrey M. Bauer
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
Washington, DC 20004-2400

Dated: May 19, 2008