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23 August 2019

VIA EMAIL

Coos County Planning Dept.
Attn: Jill Rolfe
250 N. Baxter Street
Coquille, OR 97423

Re: Order to Reopen Record.

Dear Ms. Rolfe:

In the course of working on this case, the hearings officer has determined that in the best interest of all parties to reopen the record on the limited issue of the scope and effect of U.S. Coast Guard Security Zone on other boat traffic and recreational uses. This is an area of genuine concern for the community, and for that reason it is important the County make an informed decision based on the best available information.

The applicant has stated that “[i]n addition to the limited number of vessels and the limited duration of their transit summarized above, the Coos Bay Pilots have testified that they anticipate that the effects of LNG carriers on fishing and other boats would closely track those of the other deep-draft ships that call on the Bay, including vessels that export wood chips and logs.” The hearings officer does not understand the reasoning behind this statement, since it is the hearings officer’s understanding that the LNG tankers will have a 500-yard security zone that does not apply to other shipping such as vessels that export wood chips, etc.

Furthermore, the parties seem to have a vastly different understanding of how the Coast Guard will implement and enforce the security zone. Perhaps understandably, the opponents assume the worst and seem to view it as an exclusion zone. They argue that vessels would have to vacate the area during the time the LNG tanker passes through the channel. On the other hand, the applicant seems to paint a more rosy picture and suggest that the interference is minimal. The applicant believes that the security zone will be in a much more flexible manner than the opponents do, at least in times where no eminent threat is anticipated. And while some language in the record supports the applicant’s interpretation, most of the statement that discuss are issue are rather vague.

For example, to quote Captain F. G. Myer, the author of the Coast Guard’s Water Suitability Report for the Jordan Cove Energy Project,

A moving safety/security zone shall be established around the LNG vessel extending 500-yards around the vessel but ending at the shoreline. No vessel may enter the safety/security zone without first obtaining permission from the Coast Guard Captain of the Port (COTP). The expectation is that the COTP's Representative will work with the Pilots and patrol assets to control traffic, and will allow vessels to transit the Safety/Security zone based on a case-by-case assessment conducted on scene. Escort resources will be used to contact and control vessel movements such that the LNG Carrier is protected. (Emphasis added).

The statement that the COTP will “work with the Pilots to control traffic” seems to be an indication that the Coast Guard will be attempting to coordinate the timing of ship passage to accommodate the various competing needs. The “case by case assessment” seems to indicate that the Coast Guard would find some means to gather intelligence on both friendly assets and threats, and to then create a system for “friend or foe” differentiation. However, the Coast Guard’s position needs to be clarified so that the County has a more precise understanding of how the Coast Guard is planning on implementing the security zone. The hearings officer believes that this issue deserves more thorough treatment so that the level of “interference” between LNG tankers and other boat traffic can be better quantified, qualified and evaluated.

The hearings officer needs to understand the nature and scope of the process of how LNG shipping will occur in the estuary. The following topics need to be addressed:

1. Size of the Security Zone. The hearings officer first needs to gain an understanding of the size and scope of the security zone. In this regard, Mr. Chuck Erickson of Power Hook and Tackle, LLC created a very helpful scaled map to show the size of the security zone in relation to the estuary. Exhibit 53. His scale model of the zone measures 1317 yards long by 1050 yards wide. As his map points point, the estuary is rarely, if ever, wider than 1000 yards in the vicinity where the LNG ships would use the estuary, and therefore, as a practical matter, the security zone covers the entire width of the estuary in most places. *See also* Exhibit 54 (State of Oregon DLCDC Staff Comments on FERC DEIS, at p. 204). But where exactly does that leave things? The opponents seem to conclude that vessels will need to avoid the entire estuary from the mouth of the bay to the LNG tanker docking stations during LNG tanker passage. If that is indeed the case, then it seems like such a scenario presents a much stronger case for the conclusion that the LNG tankers “substantially interfere” with other navigation. If, however, the US Coast Guard will simply make other vessels move as far away from the channel to the banks (as much as reasonably practical considering the boat’s draft), then a substantial inference seems less likely.
2. Number of Trips. The hearings officer is working of the assumption that the applicant is seeking approval for 100 tanker arrivals and 100 departures per year. The record reflects that the applicant has stated to FERC that there would be up to 120 trips per year, as that number is included in the DEIS. Exhibit 17, pp. 819 & 875 of 1120. The hearings officer recalls that the applicant previously stated that only 90 ships per year would use the facility. The hearings officer believes that the record is clear that the applicant has not asked to modify the CUP application to accommodate 120 port arrivals (*i.e.* 240 round “trips” in and out of the estuary), but this should be clarified, since the impacts to the community increase with greater numbers of vessels, and at some point there is a tipping point where the impacts become significant enough to constitute a substantial interference.

3. Tides. The record currently reflects the understanding that departures of fully loaded LNG tankers could only occur during high tide. Resource Report 8 at p. 29. Exhibit 50, Sub Exhibit 15, page 5 of 6. Conversely, arrivals of “empty” tankers may occur during low tide. *Id.* Some commentators have noted that Coos Bay experiences semi-diurnal tides, which is to say that there are two high and low tides each day. These commentators further note that there are height differences between the two high tides, and in fact, the differences may be several feet in height. These commentators question whether the LNG tankers can use *both* of the daily high tides, and suggest that the tankers may be limited to using only the higher of these two tides. The hearings officer would appreciate further clarification of that issue by the applicant, as well as a discussion of whether the seasonal or other variations in tide heights (such as moon phase) factor into this analysis as well. If both of the daily high tides are available for tanker passage, then it helps the hearings officer conclude that the impact is lessened, esp. given the next topic.
4. Night Operations. The hearings officer’s military experience causes him to recognize the many advantages of night operations, as most of the Army’s combat operations occur at night. The record reflects that LNG carrier transits will be prioritized during nighttime hours. Resource Report 8 at p. 29. Exhibit 50, Sub Exhibit 15, page 5 of 6. This greatly peaked the hearings officer’s interest, because the testimony pertaining to crabbing, fishing, kayaking, and surfing, etc., focused on *daytime* use of the estuary. For example, Larry and Sylvia Mangan argue that for a “working family,” crabbing must occur at a “reasonable hour,” which they describe as “daylight, not too early or late in the day.” Exhibit 36, at p.1. The record is devoid of information concerning the use of the estuary at night by night by fishermen and crabbers. The hearings officer suspects that commercial fisherman probably do operate through the bay during nighttime hours, but the record seems to be silent on that point. The hearings officer would appreciate more information on that topic, and would also like to know if the night applicant could accept a condition of approval requiring all or some portion of the LNG tanker trips to occur at night after the initial familiarization period. If the LNG operations can occur mostly or typically at night, it seems that the conflicts with crabbers and recreational uses are greatly reduced.
5. Transit Times through the Estuary. Transit time through the estuary by LNG tankers is estimated at 90 minutes. (Note: some of the time estimates in the record start at the Buoy “K,” which is located some distance in the open ocean). Exh. 17, p. 85 of 1120 (DEIS at p. 2-14). However, the record reflects that an additional 90 minutes is needed to turn the LNG tanker into the park at the terminal booth. Exh. 17, p. 85 of 1120 (DEIS at p. 2-14). Presumably, the Coast Guard Security zone would be in effect during that time as well. From this data, it appears that at a rate of 100 trips per year, the applicant will make roughly four (4) trips a week, and each trip will create a security zone that will be in effect for roughly three hours. This equals 12 hours a week, not six (6) hours as the applicant suggests. The hearing officer requests further clarification from the applicant on this topic so that we make sure we are being accurate in qualifying the impacts.
6. Case by Case Threat Assessment. The hearings officer needs to know more about how the Coast Guard’s “case-by-case” assessment would work. The hearings officer realizes that the U.S. Coast Guard is probably loath to discuss operational security matters in any great detail, particularly to the extent that such discussions likely delve into classified information at some point. However, the current record is too vague to draw reasonable conclusions, especially in light of the fact that LUBA was unwilling to draw inferences from the Coast Guard’s statements made to case. It does seem likely that the U.S. Coast Guard and/or Amergent Techs could provide additional information without compromising operational security or divulging classified information. The

hearing officer is simply looking for enough information so as to quantify and qualify the degree of impact the LNG tankers will cause to other boat traffic.

The record reflects that Captain Frank Whipple (USCG, ret.) of Amergent Techs reiterated that that the U.S. Coast Guard has ‘the power to allow vessels to transmit through the security zone when no threat is presented. These are all determined on a case by case basis * * * based on the safety of the vessel approaching the security zone and maintaining the security zone and maintaining the security of the LNG carriers.’ LUBA Rec. 3764. Again, that statement seems to tell any reasonable person familiar with military security operations that a threat assessment is going to be accomplished on the scene and that individual vessels will be evaluated based on criteria developed by the COTP.

LUBA stated that the Coast Guard makes no suggestion that it’s case-by-case evaluation would rely on a distinction between ‘known’ and ‘unknown’ vessels, and allow the former passage through the security zone without delay, although that may well be the case.’ But what else could it reasonably mean? If the goal is to allow friendly vessels to pass and to prevent hostile vessels from harming LNG tankers, then obviously the COTP is going to need to develop a system for distinguishing between those types of vessels, and step one is that analysis is figuring out who uses the bay on a regular basis so one can identify and include these known travelers as a “non-threat” friendly asset.

Again, to the hearing officer and other persons with experience conducting military security operations, it is likely that any “case-by-case” threat evaluation would involve, at least in part, distinguishing between “known” and “unknown” vehicles and personnel. That is a universal concept in military security operations. Often this is done via personal recognition. In the Gulf War, coalition vehicles were marked with chevrons to assist aircraft in identification. Along those same lines, electronic Identification, friend or foe (IFF) technology using transponders is also used by the military to help identify friendly assets. In some cases, a series of identifying cards or badges will be used, often in conjunction with other security measures such as passcodes, passwords, etc. Other criteria would undoubtedly factor into the threat assessment analysis, such as the size, type and carrying capacity of the approaching vessel, the speed and direction of the approaching vessel, etc., but vessel and/or personnel identification would be a primary one. Nonetheless, given LUBA’s unwillingness to draw any inferences from the prior record as to how that case-by-case threat assessment evaluation would be accomplished, the hearing officer is unable to draw any firm conclusions based on the existing record.

7. Many commentators suggest that the U.S. Coast Guard security zone will exclude surfers and kayakers. This seems to be an unreasonable inference based on the record, but clarification is needed. For example, the hearing officer knows that the bomb that terrorists used on the USS Cole was a shaped charge containing hundreds of pounds of high explosive. A kayak could not be used as a delivery vehicle for such a payload intended to harm large ships, but it is unclear whether small vessels such as kayakers could be used for boarding purposes. It seems likely that the Coast Guard would accommodate kayakers in some manner, such as allowing them to hug the bank while the LNG tankers pass, but again, the record could be much more clear on this topic.
8. As for surfers, the law seems to be relatively clear that navigation takes priority over recreation, so long as recreation is not eliminated or substantially interfered with. *Weise v. Smith*, 3 Or 445, 449-50 (1869), the Oregon Supreme Court opined that “navigable” waterways are “public

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highways” which every person has “an undoubted right to use * * * for all legitimate purposes of trade and transportation.” *Id.* at 450. It does not seem that surfers pose a security threat to LNG tankers, and therefore the Coast Guard is likely only going to exclude surfers from their traditional surfing locations to the extent necessary to prevent injury to the surfers themselves. Nonetheless, more discussion of this topic is needed, including better quantification of the number of surfers who use these waters.

The record is reopened for a period of two weeks beginning on Monday, August 26, 2019 and ending on Monday, September 9, 2019. No new issues will be considered, other than issues that naturally flow from the topic of the U.S. Coast Guard Security Zone. The parties will be afforded a two-week rebuttal period, beginning on Tuesday, Sept. 10 and ending on Tuesday, September 24, 2019.

Please disseminate this Order to the parties. Thank you in advance for your courtesies.

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