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No. 134, Original

In the

Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

Before the Special Master
the Hon. Ralph I. Lancaster, Jr.

**MOTION TO QUASH, IN PART,
SUBPOENAS SERVED BY THE STATE OF DELAWARE,
OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER**

Stuart A. Raphael
Jill M. Dennis
Sona Rewari
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102
(703) 714-7463
(703) 714-7410 (fax)

Counsel for BP America Inc.,
BP Corporation North America Inc.,
BP Company North America Inc.,
BP America Production Company,
BP Energy Company, and
Crown Landing LLC

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MISCELLANEOUS

The State of Delaware served identical document subpoenas on BP America Inc. and five affiliated companies (collectively "BP").[1] BP filed timely responses and objections to various portions of the subpoenas pursuant to Fed. R. Civ. P. 45(c)(2)(B). (Ex. B.) Delaware subsequently narrowed the scope of its requests, and BP has produced several thousand pages of documents in response. BP and Delaware continue to disagree, however, about whether BP must produce certain communications exchanged with New Jersey, including documents that BP contends are privileged under the common interest doctrine. (Exs. C, D.) Delaware contends that these communications are necessary to show that BP is the "real party in interest" with respect to New Jersey's claims under the Compact of 1905.

Because New Jersey is the real party in interest as a matter of law, the subpoenas should be quashed to disallow discovery on that issue. In the alternative, should these communications be deemed relevant, the Court should quash the subpoenas insofar as they seek attorney-client communications and attorney work product that BP exchanged with New Jersey in furtherance of their common legal interest in confirming that the Compact of 1905 gives New Jersey, not Delaware, riparian jurisdiction over projects on the New Jersey side of the Delaware River.

STATEMENT OF FACTS

A. BP's Crown Landing Project.

In September 2004, Crown Landing LLC, an affiliate of BP America Inc., submitted to the Federal Energy Regulatory Commission ("FERC") an application pursuant to § 3 of the Natural Gas Act to construct and operate a liquefied natural gas ("LNG") import terminal and re-gasification facility in Logan Township, New Jersey (the "Project"). Once constructed, the

[1] Delaware issued subpoenas to BP America Inc., BP Corporation North America Inc., BP Company North America Inc., BP America Production Company, BP Energy Company, and Crown Landing LLC.

Project will be able to deliver a baseload rate of 1.2 billion cubic feet per day of natural gas to the interstate pipeline system and will provide a new and reliable source of natural gas for the Mid-Atlantic region. With slight modification, discussed below, the Project remains the same as described in the Declaration of Lauren B. Segal that New Jersey filed with its opening papers in this Court in July 2005. (N.J. App. 133a-143a.)

Although the LNG facility will be located entirely within the State of New Jersey, the Project depends on a pier for tankers to unload their cargo. The 50-foot wide pier will extend from the New Jersey shoreline approximately 2,000 feet into the Delaware River, crossing the low-water mark that constitutes the boundary line between New Jersey and Delaware. The pier will consist of a single berth designed to accommodate LNG tankers ranging in size from 138,000 to 200,000 cubic meters in capacity. The berth will be oriented perpendicular to, but will not extend into, the shipping channel. A schematic drawing is attached as Exhibit F.

Construction of the pier will require dredging of approximately 1.24 million cubic yards of sediment to provide the berth with adequate water depths for vessels to reach the navigable channel of the Delaware River. As set forth in Ms. Segal's July 2005 declaration, Crown Landing originally estimated that the berth would require 800,000 cubic yards of sediment to be dredged. (N.J. App. 135a.) In December 2005, Crown Landing amended its FERC application to reflect the increased figure. The increase was attributable to errors identified in the original calculations and to a minor revision in the design of the berth to improve the margin of safety and security. (Ex. A at 2).

In April 2006, the FERC staff issued an extensive Final Environmental Impact Statement ("FEIS") for the Project. Excerpts are attached as Exhibit A. The FEIS concluded that "approval of the proposed project[] with appropriate mitigating measures as recommended,

would have limited adverse environmental impacts." (Ex. A at 1; *id.* at ES-11.) FERC staff determined that the December 2005 modification to the dredge volumes represented only a "minor modification" to the proposed design. (*Id.* at 2). The full Commission is expected to approve the Project in the near future.

B. Delaware's Refusal to Issue Permits for the Pier.

Without the unloading pier, the Project cannot be constructed. The Delaware Department of Natural Resources and Environmental Control ("DNREC") contends that the pier requires certain Delaware permits. As pointed out in Ms. Segal's declaration, "DNREC advised Crown Landing in 2004 that construction of the pier facilities appurtenant to the New Jersey shoreline would require permits from the State of Delaware pursuant to the Delaware Coastal Zone Act ["DCZA"], Del. Code Ann. tit. 7, § 7004 (2005), and the Delaware Subaqueous Lands Act ["DSLA"], Del. Code Ann. tit. 7, § 7205 (2005)." (N.J. App. 137a.)

In September 2004, Crown Landing applied to DNREC for a DSLA permit to gather sediment samples from the riverbed where the proposed pier would be constructed. (N.J. App. 138a.) The New Jersey Department of Environmental Protection requires the sediment samples in connection with its own review of the Project. (*Id.*) In October 2004, DNREC advised Crown Landing that it could not determine whether to issue a DSLA permit for the sediment sampling until it first determined "whether construction of an LNG storage facility is an activity permissible in Delaware's coastal zone" under the DCZA. (*Id.*) DNREC requested that Crown Landing withdraw the application, and it did so. (*Id.*)

On December 7, 2004, Crown Landing submitted its request to Delaware for a status decision that the unloading pier was permitted by the DCZA. (N.J. App. 138a.) BP/Crown Landing was represented in its dealings with DNREC by David S. Swayze and Michael W. Teichman of the law firm of Parkowski, Guerke & Swayze, P.A., in Wilmington, Delaware.

(Ex. E, Swayze Dec. ¶ 1.) Because Delaware's claimed jurisdiction over the pier was doubtful, Crown Landing's application to DNREC "specifically reserved, among other legal arguments, Crown Landing's contention that Delaware did not have jurisdiction over the proposed pier by virtue of the Compact of 1905." (*Id.* ¶ 2.) On February 3, 2005, the Secretary of DNREC, John A. Hughes, issued his determination that the unloading pier was "absolutely prohibited" by the DCZA. (N.J. App. 139a-140a.)

C. BP and New Jersey Agree to Share Confidential Information to Advance Their Common Legal Position that the Compact of 1905 Grants New Jersey Exclusive State Riparian Jurisdiction over Projects on the New Jersey Side of the River.

On February 10, 2005, shortly after Secretary Hughes' action, Swayze spoke with William E. Andersen, a Deputy Attorney General for New Jersey, about the "common legal interest shared by BP/Crown Landing and New Jersey in confirming that New Jersey, not Delaware, had jurisdiction over the proposed pier." (Ex. E, Swayze Dec. ¶ 3.) With BP's consent, Swayze offered to provide New Jersey with attorney work product concerning New Jersey's exclusive jurisdiction under the 1905 Compact. (*Id.*) Andersen invited him to do so. (*Id.*) Swayze "believed at that time (and continue[s] to) that New Jersey and BP/Crown Landing share a common legal interest in establishing New Jersey's exclusive riparian jurisdiction under the Compact." (*Id.*) Swayze was aware of the common interest doctrine at the outset of these discussions and believed that "our communications were privileged and reasonably unlikely to be subject to compulsory discovery." (*Id.*) Items 1-9 on BP's privilege log reflect written communications between BP/Crown Landing and New Jersey between February 10, 2005 and March 24, 2005. (Ex. D, Raphael Dec. Ex. A at 1.) In those communications, BP provided attorney work product to New Jersey and engaged in legal strategy discussions about asserting New Jersey's exclusive jurisdiction under the Compact. (*Id.*)

In late March and early April 2005, New Jersey also engaged in confidential communications with Stuart A. Raphael, of the law firm of Hunton & Williams LLP, prior to his being engaged by BP/Crown Landing. Those discussions concerned the possibility of retaining Raphael and his firm to represent New Jersey in an original action against Delaware to vindicate New Jersey's exclusive State riparian jurisdiction under the Compact of 1905. (Ex. D, Raphael Dec. ¶ 3.) Raphael performed a similar role for the Commonwealth of Virginia in *Virginia v. Maryland,* 540 U.S. 56 (2003). As part of these discussions, Raphael provided legal advice and attorney work product to New Jersey with respect to the Compact of 1905 and possible actions against Delaware. (Ex. D ¶ 3.) New Jersey ultimately decided not to retain Raphael, and BP/Crown Landing thereafter engaged him to provide legal counsel and representation in connection with its dispute with Delaware. (*Id.* ¶ 4.)

Counsel for New Jersey subsequently advised BP that New Jersey would like to have access to Raphael's work product concerning the Compact of 1905, and invited assistance in connection with New Jersey's pursuit of its legal claims against Delaware. (*Id.* ¶ 4; *e.g.,* Privilege Log Item 16.) As the privilege log reflects, Raphael engaged in numerous confidential communications with counsel and other personnel in the New Jersey Office of the Attorney General and the Office of the Governor. These communications were in furtherance of the common legal interest shared by BP and New Jersey in vindicating New Jersey's exclusive State riparian jurisdiction under the Compact of 1905. (*Id.* ¶ 6.) Raphael shared attorney work product and advice with New Jersey "relating to arguments, strategy, and primary and secondary legal sources and authorities that advance [their] common legal interest." (*Id.*) He also gave selected attorneys for New Jersey access to an electronic "Client Workroom" created to organize

his firm's work product and documents relating to the Compact of 1905 and the dispute with Delaware. (*Id.* ¶ 7.)

Like Swayze, Raphael was also aware of the common interest doctrine at the outset of this legal cooperation with New Jersey. He "reasonably anticipated at all times that [his] communications with New Jersey concerning this litigation and the Compact of 1905 . . . would remain confidential pursuant to the common interest doctrine and would not be subject to compulsory disclosure in discovery." (*Id.* ¶ 8.)

As set forth in New Jersey's submission to the Special Master, filed today, New Jersey and its counsel had the same understanding that the exchange of otherwise privileged communications with BP would remain privileged because they related to their common legal interest in confirming New Jersey's riparian jurisdiction under the 1905 Compact.

D. Delaware's Document Subpoenas and BP's Response and Objections.

In March 2006, Delaware served identical and extraordinarily broad subpoenas on various BP companies. BP served its responses and objections on March 21, 2006. (Ex. B.)

Through a series of amicable telephone conferences, counsel for BP and Delaware were able to narrow substantially the scope of the documents requested by Delaware. BP has since produced all of Crown Landing's FERC filings relating to the pier, berth, dredging and other activities below the low-water mark in the Delaware River. BP has also agreed to produce its permit filings with New Jersey agencies (while reserving its objection that these materials are irrelevant). BP objected to producing correspondence between BP and New Jersey before the Court rules on New Jersey's pending motion to limit such discovery. BP also objected to the discovery of those communications as irrelevant and unduly burdensome. (Ex. B at 1-2.)

BP initially objected to the burden of producing a privilege log of its "common interest" communications with New Jersey until the Court decides New Jersey's motion to limit

discovery. A ruling that such materials are not relevant would moot the privilege question. (*Id.* at 2; Ex. C at 3.) BP and Delaware subsequently agreed that, to allow Delaware to evaluate the common interest claim, BP would provide a log of its privileged, "common interest" communications with New Jersey for the period prior to the Special Master's appointment on January 23, 2006. (Ex. C at 3.) A copy of the log is attached at Exhibit D.

E. Potential Litigation by Crown Landing Against Delaware.

The DSLA and DCZA permits that have been withheld by Delaware are discussed above. In addition, federal law requires two State certifications for the Project that Delaware claims it has the authority to issue, but which BP/Crown Landing believes are within New Jersey's jurisdiction based on the Compact of 1905.

First, the federal Coastal Zone Management Act of 1972 ("FCZMA") requires that any applicant for a federal license or permit seeking to conduct an activity in a State's coastal zone provide to the federal permitting agency a certificate that the proposed activity complies with "the enforceable policies of the state's approved [coastal zone management] program and that such activity will be conducted in a manner consistent with the program." 16 U.S.C. § 1456(c)(3)(A). The FCZMA has a savings provision that preserves any rights and jurisdiction under any pre-existing interstate compact. *See* 16 U.S.C. § 1456(e) ("Nothing in this chapter shall be construed – (1) to displace, supersede, limit, or modify any interstate compact . . . .").

Second, section 401 of the Clean Water Act requires, as a condition of federal permits needed when the construction or operation of a facility may result in a discharge into navigable waters of the United States, that the applicant provide a certification from the State in which the discharge originates that any such discharge will comply with the applicable provisions of the Act and with State water quality standards. 33 U.S.C. § 1341(a)(1). The Clean Water Act likewise has a savings provision stating that it does not alter the States' pre-existing jurisdiction

over State waters, including boundary waters. 33 U.S.C. § 1370 ("Except as expressly provided in this chapter, nothing in this chapter shall . . . be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.").

The FEIS issued last month by FERC acknowledges the current jurisdictional dispute between New Jersey and Delaware with respect to the 1905 Compact. (Ex. A at, e.g., ES-5, 1-8 to 1-9, 4-101.) In light of that dispute, FERC staff assumed in preparing the FEIS that both States had jurisdiction over the pier. (*Id.* at 1-8.) Until such time as the Supreme Court decides the jurisdictional question, the FEIS recommended that Crown Landing file documentation of concurrence from Delaware (as well as from New Jersey) that, under the FCZMA, the project is consistent with the State's approved coastal zone management plan. (*Id.* at 4-101.) The FEIS states, however, that "[w]e recognize that the Supreme Court decision could affect our recommendations regarding Coastal Zone Management Act determinations." (*Id.* at ES-6.) The FEIS also lists a § 401 water quality certification from Delaware (as well as New Jersey) as one of the federally required State certifications needed for the Project pending resolution of the jurisdictional dispute between Delaware and New Jersey. (*Id.* at 1-10 & n."a".)

BP/Crown Landing is presently considering filing an action against Delaware to establish that it is not required to obtain either DSLA or DCZA permits for the Project. In addition, it anticipates litigation with Delaware over Delaware's claimed authority to require a § 401 water quality certification and concurrence under the FCZMA. Accordingly, BP/Crown Landing stated in its response and objections to Delaware's subpoenas as follows:

> BP . . . states that communications took place between BP and New Jersey concerning New Jersey's objections to Delaware's asserted authority over the Project and New Jersey's plans to vindicate the rights of the State of New Jersey under the Compact

> of 1905. These communications are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule, and BP objects to producing them. BP shares a common legal interest with New Jersey in the outcome of this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation.

(Ex. B at 6.)

F. Misstatements By Delaware Concerning the Relationship Between BP and New Jersey.

Delaware has misrepresented the relationship between BP and New Jersey. Delaware asserts that BP is secretly funding and controlling New Jersey's lawsuit against Delaware in this Court. Delaware claims that it "can already point to newly discovered evidence suggesting that New Jersey would not have sought to invoke the Court's original jurisdiction but for the insistence of BP and its offers of support in the litigation," and that the lawsuit was based on "BP's promises of economic and other assistance" to New Jersey. (Del. Opp. to N.J. Motion to Strike Issues of Fact at 10, 14 (May 5, 2006).) These charges are false.

For its "newly discovered evidence," Delaware wrenches out of context two statements from BP's written response to Delaware's Rule 45 subpoenas. First, noting that BP stated in its response that no BP "*affiliate*" had proposed or promised any payment whatsoever to New Jersey, Delaware concludes that the use of the word "affiliate" was meant to hide the fact "that the company *itself*" might be providing such payments. (*Id.* at 11 (emphasis in original).) BP conveyed precisely the opposite meaning: no corporate shell game was afoot and no payment of any kind has been made or promised by *any* BP entity to New Jersey in exchange for bringing this litigation.

Second, Delaware points to BP's statement that it had "no *formal* agreement with New Jersey." (*Id.* at 11 (*quoting* BP Resp. to R. 45 Subpoenas at 13).) From this it concludes menacingly that the word "formal" implies an "an *informal* agreement with the State regarding the conduct of this litigation." (*Id.*). But Delaware fails to quote the very next sentence of BP's response, thereby presenting the first sentence out of context. BP was answering Delaware's inquiry about *any* agreements between BP and New Jersey concerning this litigation, and BP disclosed fully its *informal* (i.e., unwritten), common interest agreement to share otherwise privileged communications in support of establishing New Jersey's exclusive jurisdiction under the 1905 Compact. (*See* Ex. B at 13.)

The unwarranted accusation by Delaware that BP has promised economic rewards to New Jersey in exchange for bringing suit, coupled with a Delaware newspaper's prompt publication of that false charge,[2] is quite troubling. Delaware did not inquire whether the statements in BP's Rule 45 response could possibly be interpreted in the unreasonable manner Delaware claimed in its brief filed on May 5. That omission, coupled with the prompt press coverage, creates the appearance that Delaware's accusations were intended to score political and public relations points, rather than to illuminate the matters in controversy.

ARGUMENT

I. DELAWARE'S REQUEST FOR COMMUNICATIONS PASSING BETWEEN NEW JERSEY AND BP SHOULD BE REJECTED AS IRRELEVANT.

In calling for the appointment of a Special Master to oversee discovery, Delaware twice told the Court that it needed discovery concerning the "status and scope" of the Crown Landing

[2] *See* Jeff Montgomery, *BP using N.J. in Suit, Del. Says, The News Journal*, May 11, 2006, at B1, available, at http://www.delawareonline.com/apps/pbcs.dll/article?AID=/ 20060511/NEWS/ 605110350/1006 (last visited May 11, 2006).

pier, specifically its size and anticipated dredging. (Del. Ans. & Mot. for Appt. of Spec. Master at 9; Del. Reply in Supp. of Mot. for Appt. of Spec. Master at 12.) Even though Delaware already was a party to the FERC proceedings and had access to this information, BP agreed to provide it to Delaware. To date, BP has produced over 6,600 pages of documents.

As noted above, Delaware and BP have substantially narrowed the scope of Delaware's document subpoena. The only remaining category of documents in dispute are communications passing between BP and New Jersey concerning the Project, the Compact of 1905 or this litigation.

Delaware claims that these communications are relevant for two reasons: first, to show that BP is the real party in interest; and second, to determine "whether an alternative site for BP's LNG facility exists that would not necessitate encroachment on Delaware's soil." (Del. Opp. to N.J. Mot. to Strike Issues of Fact at 10.) Neither claim has merit.

New Jersey is seeking to enforce its own rights under its own compact with Delaware. Therefore, New Jersey is the real party in interest as a matter of law. *See Kansas v. Colorado*, 533 U.S. 1, 8 (2001) (holding that Kansas was "unquestionably" the real party in interest in original action to enforce interstate water compact with Colorado).[3] Because New Jersey's own sovereign interests are implicated by Delaware's violation of the 1905 Compact, New Jersey cannot be said to be "merely litigating as a volunteer the personal claims of its citizens."

[3] *See also Texas v. New Mexico*, 482 U.S. 124, 132 n. 7 (1987) (holding that original action for enforcement of interstate water compact "was of such general public interest that the sovereign State was a proper plaintiff"); *Maryland v. Louisiana*, 451 U.S. 725, 737 (1981) (recognizing that a State "may act as the representative of its citizens in original actions where the injury alleged affects the general population of a state in a substantial way"); *Kansas v. Colorado*, 206 U.S. 46, 99 (1907) (exercising original jurisdiction over dispute between Kansas and Colorado regarding diversion of water from Arkansas River because the controversy rises "above a mere question of private right and involves the matter of state interest").

Pennsylvania v. New Jersey, 426 U.S. 660, 665 (1976). The fact that BP would clearly benefit as well from a decision exempting it from Delaware's riparian jurisdiction does not make BP, rather than New Jersey, the real party in interest in this litigation. *Colorado v. New Mexico*, 459 U.S. 176, 182 n.9 (1982) (rejecting claim that Colorado's suit for equitable apportionment of water from Vermejo River was improperly brought solely for the benefit of a private company because "Colorado surely has a sovereign interest in the beneficial effects of a diversion on the general prosperity of the State"). Indeed, the Supreme Court implicitly recognized this when it agreed to exercise original jurisdiction over this interstate compact dispute in the face of Delaware's identical objection that BP was the real party in interest. *See Wyoming v. Oklahoma*, 502 U.S. 437, 450 (1992) (noting that Court considers jurisdictional objections when deciding whether to grant leave to file an original action); Mem. Dec. No. 2 at 2-3, *Virginia v. Maryland*, No. 129, Orig. (U.S. Dec. 28, 2000) (concluding that Court implicitly rejected subject matter jurisdiction objections when it granted Virginia leave to file suit against Maryland), *review denied*, 531 U.S. 1140 (2001).

Because Delaware's "real party in interest" claim is without legal merit, it does not warrant discovery. *See Professional Real Estate Investors v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 65-66 (1993) (finding that discovery into plaintiff's economic motivations in filing suit was properly denied because the "objective reasonableness of the litigation" made the motives "irrelevant"); *Lapides v. Bd. of Regents*, 535 U.S. 613, 621 (2002) ("Motives are difficult to evaluate, while jurisdictional rules should be clear."); *South Dakota v. North Carolina*, 192 U.S.

286, 311 (1904) (stating that court may not enter into parties' motives when deciding its jurisdiction).[4]

Delaware's second argument is breathtaking. It apparently wants to show that moving the Crown Landing Project would moot the dispute.[5] But by calling for veto authority over the Project, Delaware implicitly acknowledges interfering with New Jersey's *exclusive* State riparian jurisdiction under the Compact. Indeed, even if BP were to yield to Delaware's opposition and move the Project elsewhere, that would hardly moot the Compact dispute because Delaware admits it will continue to require permits for riparian improvements on the New Jersey side of the River. *Cf. Friends of the Earth v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 190 (2000) ("A defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur."). Thus, the compact dispute would not be mooted here for the same reason it was not mooted when Maryland issued its permit for the disputed project in *Virginia v. Maryland.* *See* Mem. Dec. No. 3, *Virginia v. Maryland*, No. 129, Orig., at 6 (U.S. July 10, 2001) ("Maryland continues to require Virginians to apply for and comply with water

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[4] *See also Black & White Taxicab Transfer Co. v. Brown & White Taxicab Transfer Co.*, 276 U.S. 518, 524 (1928) (where a dispute between parties is real and substantial, "courts will not inquire into motives when deciding concerning their jurisdiction"); *Wheeler v. City & County of Denver*, 229 U.S. 342, 351 (1913) ("[T]he cases are numerous in which it has been decided that the motives of litigants in seeking federal jurisdiction are immaterial."); *Blair v. City of Chicago*, 201 U.S. 400, 434 (1906) ("Having a proper cause of action and the requisite diversity of citizenship confers jurisdiction upon the Federal courts, and in such cases the motive of the creditor in seeking Federal jurisdiction is immaterial.") (citing cases).

[5] The proposed site is located near the confluence of existing and proposed pipelines. (*See* Exhibit F.) FERC staff conducted an extensive alternatives analysis, concluding that the proposed site "offers the best balance of increased safety and reduced environmental impact," and that "there are no alternative LNG terminal sites at onshore locations that are reasonable and/or would be environmentally preferable to the proposed project." (Ex. A at ES-9.)

construction permits and to insist that the Authority comply with its Permit conditions or face civil or criminal penalty. It is precisely these 'official acts' from which Virginia seeks relief."). Accordingly, Delaware's purported reason for seeking discovery on this subject is also baseless.

Because neither of Delaware's proffered reasons for seeking discovery of communications between BP and New Jersey is legally valid, that discovery should be denied.

II. THE COMMON INTEREST DOCTRINE PROTECTS CONFIDENTIAL, PRIVILEGED COMMUNICATIONS PASSING BETWEEN BP AND NEW JERSEY IN CONNECTION WITH THEIR COMMON LEGAL INTEREST IN CONFIRMING NEW JERSEY'S EXCLUSIVE RIPARIAN JURISDICTION UNDER THE 1905 COMPACT.

If Delaware's requested discovery is denied based on lack of relevance, the rest of this motion is moot. Alternatively, in the event that Delaware's efforts are deemed likely to lead to the discovery of admissible evidence, the Court should rule that the common interest doctrine protects from disclosure otherwise privileged communications between BP and New Jersey in furtherance of their common legal interest in confirming New Jersey's exclusive State riparian jurisdiction under the Compact of 1905.

A. Federal Common Law Applies.

The Federal Rules of Evidence "may be taken as [a] guide[]" in cases considered under this Court's original jurisdiction. S. Ct. R. 17.2. Federal Rule of Evidence 501 states, in cases where federal law provides the rule of decision, that "the privilege of a witness, person, government, State or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." In other words, "federal common law" ordinarily applies to claims of privilege in federal question cases. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 726 (2004); *Swidler & Berlin v. United States*, 524 U.S. 399, 403 (1998). In *Jaffee v. Redmond*, 518 U.S. 1 (1996), the Court explained that Rule 501 "did not freeze the law governing the privileges of witnesses in federal

trials at a particular point in our history, but rather directed federal courts to 'continue the evolutionary development of testimonial privileges.'" *Id.* at 8-9 (*quoting Trammel v. United States*, 445 U.S. 40, 47 (1980)).

B. The Common Interest Doctrine Protects BP's Communications with New Jersey in Connection with Their Common Legal Interest in Confirming New Jersey's Exclusive State Riparian Jurisdiction Under the 1905 Compact.

The Restatement (Third) of Law Governing Lawyers provides a clear statement of the common interest rule in the context of both the attorney-client privilege and the work product doctrine. Section 76, addressing the attorney-client privilege in "common-interest arrangements," states:

> If two or more clients with a common interest in a litigated matter are represented by separate lawyers and they agree to exchange information concerning the matter, a communication of any such client that otherwise qualifies as privileged . . . that relates to the matter is privileged as against third persons. Any such client may invoke the privilege, unless it has been waived by the client who made the communication.

Restatement (Third) of Law Governing Lawyers § 76(1) (2000) [herinafter Restatement].

Similarly, section 91 of the Restatement, discussing the work product doctrine, makes clear that waiver by disclosing work product to a third party occurs only when "there is a significant likelihood that an adversary or potential adversary in anticipated litigation will obtain it." *Id.* § 91. Accordingly, "[w]ork-product, including opinion work product, may generally be disclosed to the client . . . or persons similarly aligned on a matter of common interest (compare § 76)." *Id.* cmt. b. Indeed, "the privacy requirement for work-product material is in some situations less exacting than the corresponding requirement for the attorney-client privilege." *Id*. As the D.C. Circuit explained:

> the work product privilege does not exist to protect a confidential relationship, but rather to promote the adversary system by safeguarding the fruits of an attorney's trial preparations from the

> discovery attempts of the opponent. The purpose of the work product doctrine is to protect information against opposing parties, rather than against all others outside a particular confidential relationship, in order to encourage effective trial preparation . . . . A disclosure made in the pursuit of such trial preparation, and not inconsistent with maintaining secrecy against opponents, should be allowed without waiver of the privilege.

United States v. AT&T Co., 642 F.2d 1285, 1299 (D.C. Cir.1980).

Although the Restatement provides the most concise statement of the common interest doctrine, nearly every federal court of appeals has endorsed the doctrine as well.[6] The purpose of the rule is to facilitate cooperation and information-sharing among parties with similar interests. "Protecting collaborative efforts by parties with common interests is said to encourage better case preparation and reduce time and expense. The litigation process is generally not deprived of evidence that would otherwise be available because the collaborative communications are unlikely to be made in the absence of the privilege." Christopher B. Mueller, Laird C. Kirkpatrick, *Evidence* § 5.15 at 377 (2d ed. 1999) (footnotes omitted); Edward J. Imwinkelried, *The New Wigmore: Evidentiary Privileges* § 6.8.1 at 687 (2002) (same).

The rule thus "permits persons who have a common interest to coordinate their positions without destroying the privileged status of their communications with their lawyers." Restatement § 76 cmt. b. "The communication must relate to the common interest, which may

[6] *Cavallaro v. United States*, 284 F.3d 236, 249-50 (1st Cir. 2002); *United States v. Schwimmer*, 892 F.2d 237, 243-44 (2d Cir. 1989), *cert. denied*, 493 U.S. 1071 (1990); *Haines v. Liggett Group Inc.*, 975 F.2d 81, 94 (3rd Cir. 1992); *In re Grand Jury Subpoenas, 89-3 & 89-4, John Doe 89-129*, 902 F.2d 244, 249 (4th Cir. 1990); *Hodges, Grant & Kaufmann v. United States*, 768 F.2d 719, 721 (5th Cir. 1985); *Reed v. Baxter*, 134 F.3d 351, 357 (6th Cir.), *cert. denied*, 525 U.S. 820 (1998); *United States v. McPartlin*, 595 F.2d 1321, 1336 (7th Cir.), *cert. denied*, 444 U.S. 833 (1979); *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir.), *cert. denied,* 521 U.S. 1105 (1997); *United States v. Zolin*, 809 F.2d 1411, 1417 (9th Cir. 1987), *aff'd in part and vacated in part on other grounds*, 491 U.S. 554 (1989); *United States v. AT&T Co.*, 642 F.2d 1285, 1297-1300 (D.C. Cir.1980); *In re Regents of the University of California*, 101 F.3d 1386, 1390 (Fed. Cir. 1996), *cert. denied,* 520 U.S. 1193 (1997).

be either legal, factual, or strategic in character." *Id.* cmt. e. However, "[t]he interests of the separately represented clients need not be entirely congruent." *Id.* cmt. e.

The rule is based on the presumption that a person does not intend to waive otherwise privileged communications simply by sharing them with another person who is aligned in a common legal cause against a mutual adversary. *In re Regents of the University of California*, 101 F.3d 1386, 1389 (Fed. Cir. 1996), *cert. denied,* 520 U.S. 1193 (1997). Accordingly, the law does not require an express or written agreement for the common interest privilege to attach. Restatement § 76 cmt. c ("formality is not required"). "Under the privilege, any member of a client set – a client, the client's agent for communication, the client's lawyer, and the lawyer's agent – can exchange communications with members of a similar client set." *Id.* cmt. d; Edna Selan Epstein, *The Attorney-Client Privilege and Work-Product Doctrine* 217 (4th ed. 2001) ("Once a common defense privilege exists, its reach is fairly extensive.")

The common interest doctrine clearly protects the communications at issue here between BP and New Jersey. BP and New Jersey unquestionably share a common legal interest in confirming New Jersey's exclusive State riparian jurisdiction under the Compact of 1905: New Jersey, to vindicate her riparian jurisdiction and rights under the 1905 Compact; and BP, to establish that Delaware lacks the authority to require permits for the Crown Landing Project. Indeed, Crown Landing is contemplating litigation against Delaware to establish that it lacks jurisdiction over the Project – litigation that could be rendered unnecessary or conclusively resolved in Crown Landing's favor should New Jersey prevail here. There clearly is a common interest "between parties one of whose interest in prospective litigation may turn on the success of the other party in separate litigation." *AT&T*, 642 F.2d at 1298.

BP's attorneys were fully aware of the common interest rule at the outset of their privileged communications with New Jersey about the 1905 Compact. They reasonably relied upon that doctrine in believing that the rule would protect those communications from disclosure. (Ex. D, Raphael Dec. ¶ 8; Ex. E, Swayze Dec. ¶ 3.) New Jersey's attorneys had the same expectation, as New Jersey's submission demonstrates.

Finally, even though the question here is governed by federal common law, the Court should take notice of what New Jersey and Delaware law say about this issue. *See Connecticut v. Massachusetts,* 282 U.S. 660, 670 (1931) ("For the decision of suits between States, federal, state and international law is considered and applied by this court as the exigencies of the particular case may require."). Indeed, New Jersey and Delaware both apply the common interest rule quite broadly.

In Delaware, the doctrine is expressly codified in the context of the attorney-client privilege. Del. R. Evid. 502(b)(3). The official comment to the Delaware rule states that it "applies even if no litigation is actually pending." *Id.* cmt. Delaware courts recognize that the common interest rule also protects attorney work product "when the disclosing party and its recipient share some common interest." *Saito v. McKesson HBOC, Inc.*, 2002 WL 31657622, *4 (Del. Ch. Nov. 13, 2002). The court in *Saito* reasoned that "[w]hen persons sharing a common interest share work product, the parties reasonably expect the disclosures to be confidential. Courts sanction such disclosures because they further the adversarial system by allowing the attorneys to collectively gather fruits in preparation for litigation without the risk of those fruits being plucked by the common adversary." *Id.*

New Jersey courts have also recognized a broad common interest rule. Expressly relying on federal case law, the court stated in *LaPorta v. Gloucester County Bd. of Chosen Freeholders,* 774 A.2d 545 (N.J. Super. 2001):

> The common interest exception [to the waiver principle] may be asserted with respect to communications among counsel for different parties if (1) the disclosure is made due to actual or anticipated litigation; (2) for the purposes of furthering a common interest; and (3) the disclosure is made in a manner not inconsistent with maintaining confidentiality against adverse parties. It is not necessary for actual litigation to have commenced at the time of the transmittal of information for the privilege to be applicable. Indeed, communications need not only be among counsel for the clients. Communications between counsel for a party and an individual representative of a party with a common interest are also protected.
>
> Importantly, it is not necessary for every party's interest to be identical for the common interest privilege to apply. Rather, the parties must simply have a "common purpose."

Id. at 549 (citations omitted); *see also Sklodowsky v. Am. Developers of New Jersey LLC*, 2005 WL 3488456 *5 (N.J. Super. Dec. 9, 2005) ("Where parties and their counsel have a common purpose with respect to the subject matter of communications between them, the common interest doctrine precludes discovery into those communications as an extension of the attorney-client and work product privileges.").

C. Delaware's Arguments Against Applying the Common Interest Rule are Without Merit.

During BP's efforts to resolve this dispute without the need for Court intervention, Delaware claimed that the common interest rule did not apply for two reasons: first, because BP is not a named party in this original action; and second, because the legal interests of BP and

New Jersey are allegedly not "identical."[7] Neither argument has merit.

1. The Common Interest Rule Does Not Require Persons Asserting It to be Parties in the Same Litigation.

The common interest doctrine is not limited to situations in which the persons asserting it are both parties in the same pending litigation. The Restatement makes clear that the doctrine applies when two or more clients in a "litigated or nonlitigated matter" share a common interest. Restatement § 76(1). Indeed, the name given to this concept is more typically the "common interest" rule – rather than the "joint defense" rule – precisely because "it includes, as do the decisions, both claiming as well as defending parties and nonlitigating as well as litigating persons." *Id.* cmt. b, Reporters Note. The Fourth Circuit has similarly explained:

> [T]he joint defense privilege is 'more properly identified as the 'common interest rule'' . . . . Whether an action is ongoing or contemplated, whether the jointly interested persons are defendants or plaintiffs, and whether the litigation or potential litigation is civil or criminal, the rationale for the joint defense rule remains unchanged: persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims. The district court's ruling, apparently based on the notion that the joint defense privilege is limited to codefendants, was in error.

In re Grand Jury Subpoenas, 89-3 & 89-4, John Doe 89-129, 902 F.2d 244, 249 (4th Cir. 1990) (citation omitted); *see also United States v. Schwimmer*, 892 F.2d 237, 244 (2d Cir. 1989) ("unnecessary that there be actual litigation in progress"), *cert. denied*, 493 U.S. 1071 (1990); *Regents of the University of California,* 101 F.3d 1386 at 1390-91 (same).

[7] Delaware also informed BP's counsel for the first time on May 10, 2006, while negotiating CMO 6, that Delaware might contest whether the underlying communications identified in BP's privilege log were properly identified as privileged. Despite BP's request, Delaware has not identified any specific questions or objections relating to any particular entries on the log.

2. Although BP and New Jersey Share an "Identical" Legal Interest in Vindicating New Jersey's Exclusive Riparian Jurisdiction Under the 1905 Compact, the Common Interest Need Not Be "Identical" for the Doctrine to Apply.

Delaware's second argument – that the common interest rule is inapplicable because New Jersey and BP do not have "identical" legal interests – is also without merit. Even if the law required the common legal interest to be "identical" for the rule to apply – which it does not – this case would easily meet that standard. Confirming that the Compact of 1905 grants New Jersey, not Delaware, jurisdiction over the proposed pier serves BP/Crown Landing's clear legal interest because it will overcome Delaware's state-law prohibitions on the pier. Likewise, it is in New Jersey's legal interest to vindicate its position that the Compact of 1905 grants it exclusive State riparian jurisdiction over projects on the New Jersey side of the Delaware River, including (but not limited to) the pier for the Crown Landing Project. These legal interests could not be more closely aligned. Ironically, Delaware took the position in its May 5th filing that the identical nature of New Jersey's and BP's legal interests supported Delaware's claim that BP/Crown Landing was supposedly the "real party in interest." (Del. Opp. to N.J. Mot. to Strike Issues of Fact at 12-13.) Delaware cannot square that position with its claim now that the legal interests are somehow not "identical."

In any event, the law does not require the shared legal interest to be "identical" for the common interest protection to attach. As the Restatement explains, the parties' interests need not be "congruent" for the rule to apply. Restatement § 91 cmt. e. "The fact that clients with common interests also have interests that *conflict, perhaps sharply*, does not mean that communications on matters of common interest are nonprivileged." *Id.* Reporters Note cmt. e (emphasis added). *See also* Mueller, *supra*, § 5.15 at 379-80 ("Generally there will be

conflicting interests as well as common interests, and the privilege is not denied merely because the clients' interests are not identical.").

In its May 5, 2006 submission, Delaware cited five cases to suggest that the common interest rule requires an "identical legal interest." (Del. Opp. to N.J. Mot. to Strike Issues of Fact at 13 n.10.) Delaware did not mention the Restatement or acknowledge that the rule it advocates – originating in the 1974 decision in *Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1172 (D.S.C. 1974) – represents the minority viewpoint. "Although the early cases insisted that the parties' interest be identical, the modern view is that it suffices if they possess 'similar legal interests.'" Imwinkelried, *supra,* § 6.8.1 at 688-89 (citation omitted). "Most courts have held that the common interest privilege can apply even if the clients are in conflict on some or most points, so long as the communication itself deals with a matter on which the parties have agreed to work toward a mutually beneficial goal." 2 Stephen A. Saltzburg, et al., *Federal Rules of Evidence Manual* § 501.02[5][e] at 501-34 (8th ed. 2002).

Moreover, the *Duplan* line of cases cited by Delaware does not support its claim that New Jersey and BP's legal interests are not properly aligned. The court in *Duplan* held that the common interest rule *protected* attorney-client communications exchanged between a patent owner and all but one of its licensees, noting that the work product doctrine might nonetheless protect work product exchanged with that one licensee as well. *Id.* at 1175. Nothing in *Duplan* suggests that New Jersey and BP's legal interests would not be considered "identical." The court in *Corning Inc. v. SRU Biosystems, LLC,* 223 F.R.D. 189 (D. Del. 2004), held that the common interest rule did not apply to communications by one corporation to persuade another to invest in it because the communications were for commercial, not legal, purposes. *Id.* at 190. Even

assuming the law recognized a distinction between legal and commercial interests,[8] New Jersey and BP's shared interests in the Compact question are clearly legal. The fact that BP also has an independent commercial interest in constructing the Project does not vitiate the identity of its legal interest with New Jersey on the Compact issue. As *Duplan* said, "the fact that there may be an overlap of a commercial and a legal interest for a third party does not negate the effect of the legal interest in establishing a community of interest." 397 F. Supp. at 1172. In short, even under the minority approach used in *Duplan* and its progeny, BP and New Jersey's legal interests are completely aligned.[9]

In any case, subsequent courts have criticized *Duplan*'s and *Corning's* "identical legal interest" statement as mere dictum that does not correctly describe the common interest doctrine. *See Eugenia vi Venture Holdings, Ltd. v. Chabra*, No. 05 Civ. 5277 DAB DFE, 2006 WL 1096825 *2 (S.D.N.Y. Apr. 25, 2006) (calling *Duplan's* statement "dubious dictum"); *Am. Legacy Found. v. Lorillard Tobacco Co.*, C.A. No. 19406, 2004 Del. Ch. Lexis 157 (Nov. 3, 2004) (noting that decisions since *Duplan* and *Corning* used broader formulation). Other courts that mentioned the "identical legal interest" language nonetheless applied the test flexibly. Some

[8] *But see* Restatement § 76 cmt. e (stating that common interest "may be either legal, factual, or strategic in character"); Epstein, *supra,* at 203-06 ("There are two lines of cases. One insists that the common interest must be legal in nature for the privilege to apply to any information shared among the parties . . . . The broader standard countenances sharing of legal advice even if the interest is primarily commercial or financial in nature").

[9] The other three cases cited by Delaware, all of which invoke the "identical legal interest" dictum, are inapplicable. One involved commercial, rather than legal, interests. *Bank of America, N.A. v. Terra Nova Ins. Co.*, 211 F. Supp. 2d 493, 497-98 (S.D.N.Y. 2002) (holding that "structuring and effectuating a credit agreement that was appropriately supported by reinsurance policies" was a "commercial venture"). In the others, the courts found that no common interest agreement had been reached at the relevant time. *Denney v. Jenkens & Gilchrist*, 362 F. Supp. 2d 407, 416 (S.D.N.Y. 2004) (stating that one party "categorically denies any such understanding"); *Katz v. AT&T Corp.*, 191 F.R.D. 433, 438 (E.D. Pa. 2000) ("the parties had not reached an agreement, final or otherwise, as to the licensing issues").

have said that "[w]hat is important is not whether the parties theoretically share similar interests but rather whether they demonstrate actual cooperation toward a common legal goal." *E.g., North River Ins. Co. v. Columbia Cas. Co.*, No. 90 Civ. 2518 (MJL), 1995 WL 5792 *4 (S.D.N.Y. Jan. 5, 1995); *Dexia Credit Local v. Rogan*, 231 F.R.D. 287, 293 (N.D. Ill. 2005) (stating the "identity of interest may be established by showing that the sharing of documents was for the purpose of cooperating in pursuit of a common legal goal"). Still other courts have said that the "identical legal interest" standard is satisfied if the parties' interests are "substantially identical." *Regents of the University of California*, 101 F.3d at 1390. Needless to say, these other tests would be easily satisfied here as well.

As noted above, however, most courts, like the Restatement, reject the requirement that the common legal interest be "identical." *See, e.g.,* Salzburg, *supra*, § 501.02[5][e] at 501-34; Imwinkelried, *supra,* § 6.8.1 at 688-89; *AT&T*, 642 F.2d at 1299 ("So long as transferor and transferee anticipate litigation against a common adversary on the same issue or issues, they have strong common interests in sharing the fruit of the trial preparation efforts."); *United States v. McPartlin,* 595 F.2d 1321, 1336 (7th Cir. 1979) (rejecting argument that "co-defendants' defenses must be in all respects compatible if the joint-defense privilege is to be applicable," and stating that the "cases do not establish such a limitation and there is no reason to impose it"); *Eisenberg v. Gagnon*, 766 F.2d 770, 787-88 (3rd Cir. 1985) ("Communications to an attorney to establish a common defense strategy are privileged even though the attorney represents another client with some adverse interests."); *Travelers Cas. & Sur. Co. v. Excess Ins. Co.*, 197 F.R.D. 601, 607 (S.D. Ohio 2000) ("The rule applies when the parties have a 'common litigation opponent,' or when information is exchanged between 'friendly litigants' with similar interests.") (citations omitted); *In re Mortgage & Realty Trust*, 212 B.R. 649, 653 (C.D. Cal.

1997) ("The common interest privilege does not require a complete unity of interests among the participants. The privilege applies where the interests of the parties are not identical, and it applies even where the parties' interests are adverse in substantial respects."); *In re Megan-Racine Assoc., Inc.*, 189 B.R. 562, 572 (N.D.N.Y. 1995) ("courts have not required a total identity of interest among the participants"); *LaPorta*, 774 A.2d at 549 ("it is not necessary for every party's interest to be identical for the common interest privilege to apply").

Under either the minority viewpoint of *Duplan* and its progeny, or the majority view embodied in the Restatement, BP and New Jersey's respective legal interests are properly aligned. They both seek to confirm New Jersey's exclusive State riparian jurisdiction under the 1905 Compact. Accordingly, BP is entitled to the protection of the common interest rule.

CONCLUSION

The Special Master should enter an order quashing those portions of the subpoenas that seek to compel BP to produce its communications with New Jersey (with the exception of BP's permit filings with New Jersey, which BP has agreed to produce). Because New Jersey is the real party in interest as a matter of law, the information sought is simply not relevant. In the alternative, should such communications be deemed relevant, the Special Master should quash (or enter a protective order with respect to) those portions of the subpoenas that seek otherwise privileged communications exchanged between BP and New Jersey in furtherance of their common legal interest in confirming New Jersey's exclusive State riparian jurisdiction under the Compact of 1905.

Respectfully submitted,

BP AMERICA INC.
BP CORPORATION NORTH AMERICA INC.
BP COMPANY NORTH AMERICA INC.
BP AMERICA PRODUCTION COMPANY
BP ENERGY COMPANY
CROWN LANDING LLC

By: _____
Counsel

Stuart A. Raphael
Jill M. Dennis
Sona Rewari
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102
(703) 714-7463
(703) 714-7410 (fax)

CERTIFICATE OF SERVICE

I certify that on May 17, 2006, the foregoing Motion to Quash, in Part, Subpoenas Served by the State of Delaware, or, in the Alternative, for a Protective Order, was served by electronic mail and U.S. Mail, to the offices of:

Counsel for the State of Delaware:

David C. Frederick
KELLOGG HUBER HANSEN TODD
EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036
dfrederick@khhte.com

[3 Copies]

Counsel for the State of New Jersey:

Rachel J. Horowitz
Deputy Attorney General
Richard J. Hughes Justice Complex
25 West Market Street, P.O. Box 112
Trenton, N.J. 08625
Rachel.Horowitzr@dol.lps.state.nj.us

[3 Copies]

Collins J. Seitz, Jr.
CONNOLLY BOVE LODGE HUTZ LLP
1007 North Orange Street, 9th Floor
P.O. Box 2207
Wilmington, DE 19889
cseitz@cblh.com

[2 Copies]

Barbara Conklin
Deputy Attorney General
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 112
Trenton, N.J. 08625

[2 Copies]

Counsel

EXHIBIT A

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
OFFICE OF ENERGY PROJECTS

U.S. ARMY CORPS OF ENGINEERS
PHILADELPHIA DISTRICT
PHILADELPHIA, PA 19107

In Reply Refer To:
OEP/DG2E/Gas Branch 1
Crown Landing LLC
Texas Eastern Transmission, L.P .
FERC Docket Nos.
CP04-411-000
CP04-416-000

(COE Application Nos.
CENAP-OP-R-200500145
CENAP-OP-R-200500146)

TO THE PARTY ADDRESSED:

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the U.S. Army Corps of Engineers (COE), U.S. Coast Guard, U.S. Environmental Protection Agency (EPA), and National Oceanic and Atmospheric Administration Fisheries has prepared a final Environmental Impact Statement (EIS) for a liquefied natural gas (LNG) import terminal (referred to as the Crown Landing LNG Project) proposed by Crown Landing LLC (Crown Landing), a BP Energy Company (BP) affiliate, and natural gas pipeline facilities (referred to as the Logan Lateral Project) proposed by Texas Eastern Transmission, L.P. (Texas Eastern) in the above-referenced dockets.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed projects with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The proposed LNG terminal would be located on the shoreline of the Delaware River in Logan Township, Gloucester County, New Jersey, and would consist of facilities capable of unloading LNG ships, storing up to 450,000 cubic meters (m^3) of LNG (9.2 billion cubic feet of natural gas equivalent), vaporizing the LNG, and sending out natural gas at a baseload rate of 1.2 billion cubic feet per day (Bcfd) and a maximum rate of 1.4 Bcfd (using spare equipment). Crown Landing proposes to interconnect the LNG facilities onsite with three pipelines. One interconnect would be with the new pipeline that Texas Eastern proposes to construct and operate (i.e., Logan Lateral) between its

existing Chester Junction facility in Brookhaven Borough, Pennsylvania and the proposed LNG terminal. The other two interconnects would be with existing pipelines that currently cross the LNG terminal site. One of these pipelines is owned and operated by Columbia Gas Transmission Company (Columbia Gas). The other pipeline is owned and operated by Transcontinental Gas Pipe Line Corporation (Transco). To date, neither Columbia Gas nor Transco have filed applications with the FERC to construct and operate the interconnects. The Crown Landing LNG Project would have a maximum delivery capacity of 0.5 Bcfd to the Columbia Gas pipeline system, 0.6 Bcfd to the Transco pipeline system, and 0.9 Bcfd to the Texas Eastern pipeline system.

The proposed preferred project construction site, referenced above, is approximately 175 acres in size (waterward of the low water line on the Delaware River). Within the site there are uplands, wetlands (federally regulated), and intertidal river shoreline (also federally regulated). Construction of the proposed LNG terminal would involve the dredging of shallow water riverbottom and the filling of a small area of intertidal river shoreline for the installation of berthing structures in the Delaware River. No permanent filling of federally regulated wetlands is proposed for construction of the terminal facilities. The proposed pipeline connection would involve the installation of about 11.00 miles of new underground pipeline from the storage and transfer facility in Gloucester County, New Jersey, crossing Birch Creek, Raccoon Creek, Delaware River, Chester Creek, and several smaller waterways on both sides of the Delaware River, to an existing pipeline junction facility in Pennsylvania.

The Birch Creek, Raccoon Creek, Delaware River, and Chester Creek crossings would all be accomplished by Horizontal Directional Drilling (HDD) method. All smaller waterway crossings would be accomplished by open-cut trenching. The rigging for the HDD crossing of the Delaware River would be set-up on the Pennsylvania bank of the river in Chester. The pipeline would be "pulled under" the river from the old Ferry Road roadbed on the New Jersey side.

The following modifications to the project have been proposed since the draft EIS was issued:

1) Texas Eastern now proposes a contingency plan to for constructing the Chester Creek crossing by open-cut method if the HDD method fails.

2) Crown Landing has submitted a minor modification to the proposed design of the LNG terminal berthing configuration in order to provide for an enhanced margin of safety in LNG carrier maneuvering. The modified proposed design is evaluated in the final EIS. In addition, Crown Landing has re-calculated the volume of material that would result from the dredging for the proposed LNG terminal berthing provisions in order to correct an error identified in the original calculations and to provide for a

customary 2 foot "over-dredge" volume. There is no change in the proposed dredging depth or dredged material disposal.

The draft EIS document indicated that 800,000 cubic yards of material would be dredged in the construction of the proposed LNG berthing terminal. Crown Landing now calculates that 1.24 million cubic yards of material would be dredged: 60,000 cubic yards are added to the original total from the safety modifications; 110,000 cubic yards are added by the over-dredge allowance; and 270,000 cubic yards are added from the error correction.

The final EIS addresses the potential environmental effects of the construction and operation of the following LNG and natural gas pipeline facilities:

- a ship unloading facility capable of receiving LNG ships with capacities up to 200,000 m^3;
- three 150,000 m^3 (net capacity) full-containment LNG storage tanks, comprised of 9 percent nickel steel inner tank, pre-stressed concrete outer tank, and a concrete roof;
- a closed-loop shell and tube heat exchanger vaporization system;
- various ancillary facilities, including administrative offices, warehouse/maintenance building, main control center, guardhouse, and a pier control room;
- three meter and regulation stations located on the proposed LNG terminal site; and
- approximately 11.00 miles of 30-inch-diameter natural gas pipeline (4.92 miles in Pennsylvania and 6.08 miles in New Jersey), a pig launcher and receiver facility at the beginning and end of the pipeline, a mainline valve, and a meter and regulation station at the end of the pipeline.

Crown Landing and Texas Eastern have applied concurrently to the COE for two Department of the Army Individual Permits pursuant to Section 404 of the Clean Water Act (33U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). The COE solicited public comment on the applications in their public notice which was included as part of the draft EIS notice for the projects published in February 2005. The COE is now soliciting public comment on the two modifications to the original proposal which are described above: 1) Texas Eastern proposed open-cut contingency for

the construction of the proposed Chester Creek pipeline crossing and; 2) the Crown Landing berthing terminal safety modification and related dredge volume calculation.

The COE is soliciting comments from the public; federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate any additional impacts resulting from the proposed minor design modifications. Any comments received will be considered by the COE to determine whether to issue, modify, condition, or deny permits for these proposals as modified. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed in the COE's original notice included with the draft EIS. Comments are used in determining the need for and the preparation of any necessary supplemental NEPA documentation. Comments are also used to determine the need for a public hearing on the proposed design modifications and to determine the overall public interest of the proposed activities. **Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:**

- Send **an original and two copies** of your letter on the design modifications to:

  Magalie R. Salas, Secretary
  Federal Energy Regulatory Commission
  888 First St. NE; Room 1A
  Washington, DC 20426;

- Label one copy of the comments for the attention of Gas 1, PJ-11.1;

- Reference Docket Nos. (Crown Landing) CP04-411-000 and (Texas Eastern) CP04-416-000;

- **Mail your comments so that they will be received in Washington, DC on or before June 6, 2006** (Copies will be provided to the COE).

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at:

Federal Energy Regulatory Commission
Public Reference Room
888 First Street, N.E., Room 2A
Washington, DC 20426
(202) 502-8371

issue Crown Landing and Texas Eastern authorizations for the proposed projects, it would be subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-**866-208-FERC** or on the FERC Internet website (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,
Secretary

Final Environmental Impact Statement

Crown Landing LNG and Logan Lateral Projects

Crown Landing LLC
Texas Eastern Transmission, LP
Docket Nos. CP04-411-000 and CP04-416-000
FERC/EIS – 0179

Federal Energy Regulatory Commission
Office of Energy Projects
Washington, DC 20426

Cooperating Agencies

US Army Corps of Engineers

April 2006

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EXECUTIVE SUMMARY

This final environmental impact statement (EIS) for the Crown Landing LNG and Logan Lateral Projects has been prepared by the staff of the Federal Energy Regulatory Commission (FERC or Commission) to fulfill the requirements of the National Environmental Policy Act (NEPA) and the Commission's implementing regulations under Title 18, Code of Federal Regulations, Part 380. The purpose of this document is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives; and to recommend mitigation measures that would avoid or reduce any significant adverse impact to the maximum extent possible.

The FERC is the federal agency responsible for authorizing applications to construct and operate onshore LNG import and interstate natural gas transmission facilities. The U.S. Coast Guard (Coast Guard) is the federal agency responsible for issuing a Letter of Recommendation (LOR) regarding the suitability of the waterway for LNG marine traffic. The Coast Guard exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways under Executive Order 10173; the Magnuson Act (50 United States Code (USC) section 191); the Ports and Waterways Safety Act of 1972, as amended (33 USC section 1221, et seq.); and the Maritime Transportation Security Act of 2002 (46 USC section 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval and compliance verification as provided in Title 33 Code of Federal Regulations (CFR) Part 105, and siting as it pertains to the management of marine traffic in and around the LNG facility.

The vertical line in the margin identifies text that has been modified in the final EIS and differs from the corresponding text in the draft EIS.

Crown Landing LLC (Crown Landing) proposes to construct and operate a liquefied natural gas (LNG) terminal in New Jersey and Delaware, and Texas Eastern Transmission, LP (Texas Eastern) proposes to construct and operate a new natural gas pipeline and ancillary facilities in New Jersey and Pennsylvania. Crown Landing's proposed facilities would transport a baseload rate of 1.2 billion cubic feet per day (Bcfd) and a maximum rate of 1.4 Bcfd (using spare equipment) of imported LNG to the United States market. Crown Landing proposes to interconnect the LNG facilities onsite with three pipelines. One interconnect would be with the new pipeline that Texas Eastern proposes to construct and operate (i.e., Logan Lateral) between its existing Chester Junction facility in Brookhaven Borough, Pennsylvania to the proposed LNG terminal. The other two interconnects would be with existing pipelines that currently cross the site, one pipeline owned and operated by Columbia Gas Transmission Company (Columbia Gas) and the other pipeline owned and operated by Transcontinental Gas Pipe Line Corporation (Transco).

The LNG terminal and pipeline facilities would include:

- a ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 200,000 cubic meters (m^3);
- three 150,000 m^3 (net capacity) full containment LNG storage tanks;

- a closed-loop shell and tube heat exchanger vaporization system, sized for a normal sendout of 1.2 Bcfd;

- various ancillary facilities, including administrative offices, warehouse/maintenance building, main control center, guardhouse, and a pier control room;

- three meter and regulation stations located on the proposed LNG terminal site; and

- approximately 11 miles of 30-inch-diameter natural gas pipeline, a pig launcher and receiver facility at the beginning and end of the pipeline, a mainline valve, and a meter and regulation station at the end of the pipeline.

PROJECT IMPACTS

The environmental issues associated with construction and operation of the Crown Landing LNG and Logan Lateral Projects are analyzed in this final EIS using information provided by Crown Landing and Texas Eastern and further developed from data requests; field investigations by the Commission staff; literature research; alternative analyses; comments from federal, state, and local agencies; and input from public organizations and individual citizens.

The LNG terminal would be developed on a privately owned 175-acre parcel. Of the 175-acre site, about 39 acres would be permanently developed for the LNG terminal facility and access road. The proposed LNG terminal would also require dredging of up to about 1.24 million cubic yards of sediment from the Delaware River. This dredging would disturb about 30.0 acres of the bed of the river. Construction of the Logan Lateral Project would temporarily affect another 177.3 acres of land. Of this land affected by construction of the pipeline facilities, about 54.1 acres would be retained as permanent right-of-way for the pipeline and 1.8 acres for the aboveground facilities.

Construction and operation of the project would have minimal impact on geologic resources in the project area, and the potential for geologic hazards or other natural events to significantly impact the project is low. The LNG storage tanks and other critical structures at the terminal site would be designed to address predicted ground shaking associated with a seismic event. The proposed LNG terminal site would be protected against storm surge associated with tropical storms of the magnitude that are likely to affect the project area.

Soils at the proposed LNG terminal site consist largely of dredged material that was placed onsite during past dredging of the Delaware River. Crown Landing identified some areas of soil contamination on the site that would require further evaluation. Construction of the LNG facilities would increase the potential for soil erosion on the site and sedimentation in adjacent waterbodies and wetlands. Soils along the pipeline route would also be subject to various impacts, including compaction and erosion. Crown Landing and Texas Eastern would minimize impacts on soils through their implementation of the erosion and sedimentation control measures contained in our *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), as well as site-specific Soil Erosion and Sedimentation Control (SESC) Plans.

The estimated 1.24 million cubic yards of sediment dredged to create the berth area for the ship unloading facility would be disposed in an existing upland confined disposal facility. Preliminary chemical analyses of the proposed dredged sediments determined that eight metal contaminants were identified at elevated concentrations. The concentrations of most metals in all samples were below the National Oceanic and Atmospheric Administration (NOAA) Threshold Effects Levels (TEL) indicating that the sediments would not be expected to pose a threat to the aquatic environment. Only the

concentrations of arsenic, cadmium, and nickel exceeded the TEL screening values. However, these three metals are all well below their respective NOAA Probable Effects Level (PEL) values, suggesting limited potential for adverse impacts. As a result, contaminants in the dredged sediments are not anticipated to adversely affect water quality in the Delaware River.

One sole-source aquifer, the Potomac-Rariton-Magothy aquifer, is located near the LNG terminal location but would not be affected by the proposed project. Further, we do not expect the physical effects of constructing the LNG facility on the proposed terminal site would have a significant impact on the groundwater flow regime.

There is one private water supply well located within the proposed pipeline right-of-way and six supply wells within 150 feet of the right-of-way. Texas Eastern would provide pre- and post-construction monitoring of well yield and water quality data at the landowner's request, and would return any wells to their preconstruction condition if damaged by construction activities. Construction of the proposed pipeline could temporarily affect groundwater along the pipeline route but these effects would be mitigated by Texas Eastern's plan to backfill the trench with native material and restore natural contours and drainage patterns in accordance with our Procedures. The proposed pipeline would cross three hazardous waste sites and would be located adjacent to three others. Contaminated soils associated with these or other undocumented hazardous waste sites could be encountered during construction of the proposed pipeline facilities. To reduce any potential impacts, we have recommended that Texas Eastern prepare a Plan for the Discovery and Management of Contaminated Soils and Groundwater. There is also a potential for a spill of hazardous material during construction that could impact groundwater. Texas Eastern and Crown Landing would minimize the potential impact of a spill on groundwater by implementing Spill Prevention, Containment, and Countermeasure (SPCC) Plans.

The proposed pipeline would cross the Delaware River and four other waterbodies using the horizontal directional drill construction technique. Other waterbodies would be crossed using the open-cut construction technique. Texas Eastern would minimize impacts on these waterbodies by implementing its SESC and SPCC Plans and by adhering to the protective measures in our Procedures.

Crown Landing designed the proposed LNG terminal facilities to avoid wetlands on the site. Thus no wetlands would be permanently filled or drained as a result of construction of the LNG terminal. However, construction of the Columbia Gas pipeline interconnect, stormwater outfall, and septic line would temporarily impact approximately 0.6 acre of wetlands, and construction of the LNG terminal site would impact approximately 5.3 acres of state-designated wetland transition area. Crown Landing is currently evaluating options for mitigating the impacts on transition areas. Construction of the Logan Lateral Project would temporarily disturb about 20.06 acres of wetlands, of which about 1.66 acres of forested wetlands would be permanently converted to other wetland types. Texas Eastern would minimize impacts on wetlands by implementing our Procedures and proposes to compensate for permanent wetland impacts that cannot be avoided by developing and implementing a wetland mitigation plan.

The proposed LNG terminal site is located on an undeveloped parcel consisting of agricultural land, emergent wetlands, and scattered areas of open, forest, and shrub lands. The LNG terminal would be primarily constructed within cropland; however, about 1.5 acres of shrub land and 1.7 acres of open land would be permanently converted to industrial uses. Following construction, portions of the site that are not developed with buildings, roads, gravel, or other hard surfaces would be restored and revegetated.

Construction of the proposed pipeline would disturb about 125.7 acres of vegetation consisting of 50.8 acres of agricultural lands, 35.0 acres of open lands, 23.4 acres of forests, and 16.5 acres of non-forested wetlands. Impacts on most of these vegetation communities would be temporary and short term.

About 8.5 acres of forest land on the permanent right-of-way would be permanently cleared and maintained in an herbaceous state. All disturbed areas would be restored and revegetated in accordance with our Plan and Procedures and Texas Eastern's SESC Plan.

Construction of the proposed facilities and associated vegetation clearing would affect wildlife by removing habitat and temporarily displacing wildlife from the construction work areas into surrounding areas. The removal of forest land would result in a long-term loss of habitat. Texas Eastern would minimize permanent impacts by constructing the pipeline within or adjacent to other existing rights-of-way where possible and by implementing its SESC Plan and our Plan and Procedures.

The proposed dredging activities associated with construction and future maintenance of the ship berth would have both direct and indirect impacts on aquatic resources. Potential adverse effects on aquatic resources include impairment of water quality, destruction of benthic habitat and communities, and direct and indirect impacts to fish and their prey species. However, sediment modeling indicates that impacts from suspended sediments would be temporary and localized. Use of a hydraulic dredge would reduce turbidity, sedimentation, and the release of deleterious compounds associated with dredging. However, hydraulic dredging could entrain or impinge fish larvae and eggs during certain times of the year. To minimize this impact, Crown Landing revised its dredging schedule to avoid anadromous fish migrations and spawning periods. Crown Landing is also consulting with applicable resource agencies to develop a mitigation plan for potential impacts on shallow water habitat as the result of dredging the deeper ship berth.

During operation of the LNG terminal, prop wash from LNG ships and tugs could temporarily increase suspended sediments and turbidity within the ship channel and ship berth. Ballast water intakes could also entrain and/or impinge fish larvae and eggs. To avoid or minimize impacts associated with ballast water intake, we recommend that Crown Landing coordinate with appropriate resource agencies to determine the need for additional conservation measures.

The NOAA Fisheries reported that the mixing zone within the Delaware River, of which the proposed LNG terminal occurs at the upriver edge, has been designated as Essential Fish Habitat (EFH) for nine federally managed fish species. NOAA Fisheries also expressed concern about impacts on prey for managed species likely occurring in the project area. The draft EIS included an EFH Assessment as necessary for compliance with the Magnuson-Stevens Fishery Conservation and Management Act. We have determined that the proposed project could affect open water, shallow water habitat, and benthic habitat, and anadromous fish and shellfish, two of the primary prey groups for the managed fish species. Dredging of the ship berth would result in permanent conversion of existing shallow water habitat to deeper water habitat within the dredging footprint. However, implementation of the conservation measures discussed in this EIS, including Crown Landing's continued coordination with the applicable resource agencies to develop appropriate mitigation for project impacts, would likely avoid or minimize adverse impacts on managed fish species and EFH.

The U.S. Fish and Wildlife (FWS) reported that two federally listed species under its jurisdiction, the bald eagle and bog turtle, could potentially occur near the proposed project. NOAA Fisheries identified three additional federally listed endangered or threatened sea turtle species (Kemp's ridley, green, and loggerhead sea turtles), a whale (North Atlantic right whale), and one fish (shortnose sturgeon) that could potentially occur in the general vicinity of the proposed project or along the proposed shipping route. We have determined that the Logan Lateral Project would have no effect on the bald eagle or the bog turtle, and that the Crown Landing LNG Project is not likely to adversely affect the three sea turtle species, bald eagle, or North Atlantic right whale. However, we believe that in-water construction activities associated with the project are likely to adversely affect the shortnose sturgeon. The draft EIS served as a Biological Assessment which is necessary for compliance with section 7 of the Endangered

Species Act. NOAA Fisheries' review of the project's potential impacts on the shortnose sturgeon and development of appropriate measures for avoidance of impacts on the North Atlantic right whale has been ongoing since the draft EIS was published and is not yet complete. The completion of consultation with NOAA Fisheries would be required prior to construction beginning on the proposed project.

There are about 20 residences or residential structures located within 1 mile of the proposed entrance to the LNG terminal. There are another 147 residences along the pipeline route that would be within 50 feet of construction work areas. Impacts on residences near the LNG terminal could include increased visibility of aboveground structures associated with the facility, increased traffic, changes in air quality, and safety hazards. Residences near the pipeline could experience similar effects during construction. The LNG storage tanks would be the most prominent visual feature at the proposed terminal site. To minimize construction-related impacts on residences along the pipeline route, Texas Eastern would prepare site-specific residential mitigation plans.

Construction of the projects would result in a temporary increase in population, traffic, and the demand for temporary housing and public services. These effects would be temporary and limited to the period of construction. Construction and operation of the projects would have a beneficial impact on local tax revenues and economies.

We have determined that the potential impacts of the projects would not have a disproportionately high or adverse effect on environmental justice areas along the proposed pipeline route.

The Crown Landing LNG and Logan Lateral Projects are subject to a federal Coastal Zone Consistency Review because they would: 1) involve activities within the coastal zones of New Jersey, Delaware, and Pennsylvania; and 2) require several federal permits and approvals. Crown Landing has not yet completed the process for the federal consistency certification for the LNG terminal. Although Texas Eastern has completed the process for the portion of the pipeline in Pennsylvania, it has not yet completed the process for the portion of the pipeline in New Jersey. Both Crown Landing and Texas Eastern would need to demonstrate consistency with the applicable states' coastal zone management program and obtain concurrence of consistency from these agencies prior to the FERC approving the start of any construction.

In a letter dated February 3, 2005 from Delaware Department of Natural Resources and Environmental Control (DNREC) to Crown Landing, the DNREC issued a Coastal Zone Act Status Decision, which determined that the proposed LNG off-loading pier in the Delaware River is prohibited by the State's Coastal Zone Act. On February 15, 2005, Crown Landing filed an appeal of the February 3, 2005 ruling with the State Coastal Zone Industrial Control Board. The State Coastal Zone Industrial Control Board held a public hearing on March 30, 2005 to consider Crown Landing's appeal, and subsequently upheld the DNREC's ruling. Crown Landing had 20 days to appeal the State Coastal Zone Industrial Control Board's decision to the Delaware Superior Court but no appeal was made. In another development, the New Jersey Department of Environmental Protection (NJDEP) in a letter dated May 24, 2005 to Crown Landing stated that although a portion of the pier would be located in Delaware waters, construction of the entire pier and any associated dredging would be subject to New Jersey's exclusive review and permitting authority under the Compact of 1905. The State of New Jersey has advised the State of Delaware that Article VII of the Compact of 1905 prohibits Delaware from using its Delaware State Coastal Zone Act of 1971 (DSCZA) authority or any other state permitting authority to block the construction of projects appurtenant to the New Jersey shoreline where the state border with Delaware is the lower water mark of the Delaware River on the New Jersey side of the river. In July 2005, New Jersey asked the U.S. Supreme Court to hear the case and in November 2005 the U.S. Supreme Court agreed (New Jersey v. Delaware, 126 S. Ct. 713 (U.S. Nov. 28, 2005)). We recognize that the Supreme

Court decision could affect our recommendations regarding Coastal Zone Management Act determinations.

Crown Landing conducted an aboveground cultural resources survey, a terrestrial archaeological survey, and an underwater archaeological survey for the proposed LNG terminal. These surveys documented two aboveground resources and one terrestrial archaeological site that either are listed in or recommended eligible for the National Register of Historic Places (NRHP). None of these resources would be affected by the project. The New Jersey and Delaware State Historic Preservation Officers (SHPOs) concurred with the results and recommendations of the surveys, and we also concur.

Texas Eastern conducted an aboveground cultural resources survey and a terrestrial archaeological survey for the pipeline facilities. In Pennsylvania, the surveys documented two archaeological sites recommended potentially eligible for listing in the NRHP. Neither site would be affected by construction of the pipeline facilities. The Pennsylvania SHPO concurred with the results and recommendations of the surveys, and we also concur. No resources were documented by the field surveys in New Jersey, but fieldwork by Crown Landing for the LNG terminal identified an NRHP-eligible archaeological site adjacent to the pipeline facilities. This site would not be affected by the project. The New Jersey SHPO concurred with the results and recommendations of the surveys, and we also concur.

Construction and operation of the proposed LNG terminal and pipeline would result in air emissions. The fugitive dust and tailpipe emissions associated with construction activities would be temporary and intermittent, and would not result in a long-term impact on air quality. Dust emissions would be minimized by the application of water during the construction of the LNG terminal and pipeline. In addition, the construction emissions from the project may require offsetting in accordance with the general conformity regulations. The primary pollutants emitted during operation of the LNG terminal would be nitrogen oxides (NO_x) and carbon monoxide. The operational air emissions from the LNG terminal would be minimized by using ultra dry low NO_x burner systems on the water/glycol heaters and would meet the lowest achievable emission rate (LAER) requirement under the new source review (NSR) regulations. A final LAER determination would be required from the NJDEP during the preconstruction permitting process. Crown Landing would also be required to obtain emission offsets for the NO_x emissions generated by the LNG terminal from other sources within the air basin as part of the NSR permitting process; thereby minimizing any air quality impacts from these stationary sources. The project is also subject to the general conformity determination requirement.

Noise receptors in the immediate vicinity of construction activities would experience an increase in noise levels. In most areas the increase in noise would be localized, temporary, and limited primarily to daylight hours. Noise associated with construction activities would be the most noticeable with a potential noise impact of 89 decibels on the A-weighted scale (dBA) under peak conditions for short periods of time (when construction equipment is close to the residence). This noise would be limited to daylight hours. The operational noise from the LNG terminal stationary sources would be about 50.9 dBA day-night sound level (L_{dn}) at the nearest residence, which equates to a noise increase of 0.4 dBA. This noise impact is less than the FERC's 55 dBA L_{dn} and the NJDEP nighttime noise criterion of 50 dBA equivalent sound level. In addition, the noise increase from the sources at the LNG terminal would not be perceptible at nearby residences.

We evaluated the safety of both the proposed facilities and the related LNG vessel transit through the Delaware Bay and River. As part of our evaluation, we performed a cryogenic design and technical review of the proposed terminal design and safety systems. Several areas of concern were noted with respect to the proposed facility upgrade, and specific recommendations to be addressed prior to construction have been identified.

Thermal radiation and flammable vapor hazard distances were calculated for an accident or an attack on an LNG vessel. For 1.0, 2.5, 3.0, and 3.9-meter-diameter holes in an LNG cargo tank, we estimated distances to range from 2,267 to 5,691 feet for a thermal radiation level of 1,600 British thermal units per hour per foot squared, the level which is hazardous to unprotected persons located outdoors. However, the evaluation of safety is more than an exercise in calculating the consequences of worst case scenarios. Rather, it is a determination of the acceptability of risk which considers: the probability of events, the effect of mitigation, and the consequences of events. Based on the extensive operational experience of LNG shipping, the structural design of an LNG vessel, and the operational controls imposed by the Coast Guard and the local pilots, the likelihood of a cargo containment failure and subsequent LNG spill from a vessel casualty – collision, grounding, or allision – is highly unlikely. For similar reasons, an accident involving the onshore LNG import terminal is unlikely to affect the public. As a result, the risk to the public from accidental causes should be considered negligible.

As part of our marine safety analysis, we considered how vessel security requirements for LNG ships calling on the proposed LNG terminal might affect other ship and boat traffic in Delaware Bay and River. Based on the Coast Guard's longstanding experience in controlling the movements of dangerous cargo vessels in the Delaware Bay and River and LNG vessels in other ports, potential impacts can be evaluated for several general security requirements: 1) moving safety zone for inbound and outbound LNG vessels; 2) one-way vessel traffic during LNG vessel transit; 3) security zone around a moored LNG vessel; and 4) other measures as deemed appropriate. The moving safety zone, the moored vessel security zone at the terminal, and one-way traffic would affect other commercial, ferry, and recreational traffic using the bay and river. Based on a navigation simulation study conducted by Moffatt & Nichol, International on behalf of Crown Landing, the addition of 150 LNG ships per year would have minor effect on barge traffic associated with the Logan Generating Station operations. The impact on ferry traffic would generally be small because most of the ferry routes only cross the LNG ship route and conflicts could be managed by schedule coordination.

The extent of the impact on recreational boaters would depend on the number of boats in the project area during the two to three LNG vessel transits per week when LNG ships would call on the LNG terminal, and on several other variables such as the size of the Coast Guard-imposed safety and security zones and the width of the channel at the point where a boat encounters the LNG ship. Using certain assumptions, we estimate that a recreational craft attempting to travel in the opposite direction of an LNG ship at one of the narrower locations within the navigation channel might need to wait up to 16 minutes for the LNG ship to pass. To minimize potential impacts on other marine traffic, the Coast Guard is expected to use a program of announcements to give advance notice of each moving safety and moored vessel security zones schedule and could schedule the transit of LNG ships for times of day less likely to affect recreational boaters.

Unlike accidental causes, historical experience provides little guidance in estimating the probability of a terrorist attack on an LNG vessel or onshore storage facility. For an LNG import terminal proposal that would involve having a large volume of energy transported and stored near populated areas, the perceived threat of a terrorist attack is a primary concern of the local population and requires that resources be directed to mitigate possible attack paths. While the risks associated with the transportation of any hazardous cargo can never be entirely eliminated, they can be managed.

The Coast Guard, with input from a special subcommittee of the Sector Delaware Bay Area Maritime Security Committee (AMSC), recently completed a review of Crown Landing's Waterway Suitability Assessment (WSA), in accordance with guidance promulgated in Coast Guard Navigation and Vessel Inspection Circular (NVIC) 05-05. The AMSC LNG Review Subcommittee was composed of law enforcement, security, and public safety officials from the federal government, and states of Delaware, New Jersey, and Pennsylvania, as well as regional maritime industry professionals. Their review focused

on the security risks posed by LNG marine traffic, and the measures needed to responsibly manage these security risks. As a result of this review, the Coast Guard has preliminarily determined that the Delaware Bay and River, from Twin Capes to the proposed LNG terminal, may be suitable for accommodating the type and frequency of LNG vessels being proposed. This determination, however, was contingent upon the port security community having the appropriate resources to implement all the measures necessary to responsibly manage the safety and security risks of LNG marine traffic within the affected area. The safety measures to be imposed include moored vessel security and moving safety zones around the LNG carriers, a waterway traffic management plan, escorts by armed law enforcement vessels, and a variety of waterway and shoreline surveillance measures. Under normal security conditions, these measures should not affect vehicular traffic, nor restrict the public's access to shore side recreation sites or unreasonably impede recreational boating. An issue that has developed for several LNG terminal projects is a concern that local communities would have to bear some of the costs of ensuring the security/emergency management of the LNG facility and the LNG vessel while in transit and unloading at the dock. While the LOR would address the suitability of Delaware Bay and River for LNG ship transportation, it would not constitute a final authority to commence LNG operations. Issues related to the public impact of safety and security zones would be addressed later in the development of the Coast Guard's *LNG Vessel Transit Management Plan*. This plan would be developed in conjunction with state and local law enforcement and emergency response communities. In addition, the Coast Guard would establish a moving safety zone and moored vessel security zone under 33 CFR 165 for LNG vessels in transit and while docked. Only personnel or vessels authorized by the Captain of the Port are permitted within these zones.

Section 311 of the Energy Policy Act of 2005 stipulates that the FERC must require the LNG operator to develop an Emergency Response Plan that includes a Cost-Sharing Plan before any final approval to begin construction. The Cost-Sharing Plan shall include a description of any direct cost reimbursements to any state and local agencies with responsibility for security and safety at the LNG terminal and near vessels that serve the facility.

ALTERNATIVES CONSIDERED

The EIS addresses alternatives to the proposed actions before both the FERC and the Coast Guard. The proposed action before the FERC is to consider issuing to Crown Landing a section 3 authorization for the LNG import facilities and to Texas Eastern a section 7 Certificate of Public Convenience and Necessity for a new natural gas pipeline. The proposed action before the Coast Guard is the issuance of a Coast Guard LOR finding the waterway suitable for LNG marine traffic, with certain conditions. Section 3 of the EIS clearly describes the criteria for alternative selection.

We evaluated the alternatives of no action or postponed action, system alternatives, alternative LNG terminal sites, pier alternatives, and pipeline route alternatives. While the no action or postponed action alternative would eliminate the environmental impacts identified in this EIS, the project objectives of providing a new source of natural gas to the Mid-Atlantic market would not be met. This in turn could lead to higher natural gas prices, conservation and/or efficiency measures, use of alternative sources of energy, or alternative proposals to develop natural gas delivery and storage infrastructure. Conservation, increased efficiency and the development of other sources of energy are anticipated to play a part in meeting the future energy needs of the country but are not expected to significantly reduce the long-term requirement for additional natural gas supply.

For the Coast Guard's proposed action, the no action alternative would be issuance of Coast Guard LOR finding the waterway not suitable for LNG marine traffic. Similar to the no action alternative to the FERC proposed action, the no action alternative for the Coast Guard would avoid any project related environmental effects; however, it would also prevent LNG vessels from delivering LNG to an import terminal and the project objectives would not be met. Reasonable alternatives to the Coast Guard

action of issuing an LOR include: 1) Issuance of a Coast Guard LOR finding the waterway suitable for LNG marine traffic without any conditions, and 2) Postponing the issuance of a Coast Guard LOR pending further analysis and study. Our analysis included an evaluation of existing LNG facilities and pipelines as alternative systems that could be used to meet the objectives of the Crown Landing LNG Project. We considered most of these facilities to be either too far from the project area to effectively serve the Mid-Atlantic market, or would require expansions or modifications that would likely result in as much if not more environmental impacts than the proposed project. We also examined the potential for recently approved, proposed, or planned projects to meet the objectives of the proposed projects. Similar to the existing terminal facilities, we considered the majority of the recently approved, proposed, or planned projects too far away to effectively serve the Mid-Atlantic market. Additionally, most of these projects would require substantial expansion or modification, which could result in significant environmental impacts. We examined the six proposed or planned projects that are closest to the Mid-Atlantic area and are substantially developed enough to conduct an analysis but determined that none of these projects would provide the storage and sendout capacity proposed by Crown Landing. We also concluded that although a combination of these projects could provide a sendout and storage capacity at least equal to the proposed project, it seems likely that much of the capacity of these projects would likely be used to satisfy the growing demand for natural gas in the New England and New York area and would be unavailable for the Mid-Atlantic region.

An alternative to the Coast Guard action of issuing a LOR which finds the waterway suitable for LNG vessel traffic with certain conditions is to issue an LOR without any conditions. This would avoid the environmental effects related to any moving safety and moored vessel security zones, or other related LNG safety and security activities, which the Coast Guard would determine is necessary prior to the commencement of LNG vessels transiting the waterway. If the Coast Guard postpones issuance of an LOR pending further analysis or study, the effect is expected to be similar to the FERC postponing its action. That is, although it is speculative to predict the resulting effects, postponing issuance of an LOR may lead to Crown Landing deciding to delay its entire project.

We considered alternative locations for an LNG import terminal in the Mid-Atlantic region. Although there are some safety and environmental advantages to locating an LNG terminal offshore, there are environmental, economic, and technical factors that make an offshore LNG terminal impractical as an alternative to the facilities proposed for the Crown Landing LNG Project. Similarly, there are no alternative LNG terminal sites at onshore locations that are reasonable and/or would be environmentally preferable to the proposed project. Difficulties associated with identifying suitable locations in the Mid-Atlantic region include finding property available for industrial development in an area accessible to LNG ships where there would be fewer environmental impacts.

We considered three alternative pier and berth configurations to the proposed pier design recognizing that a pier further from shore would reduce the amount of dredging required and minimize shallow water habitat impacts but would also increase potential ship hazards. We concluded that the proposed pier configuration, which was developed after consultations with several agencies, offers the best balance of increased safety and reduced environmental impact.

Our alternatives analysis included the evaluation of major pipeline route alternatives and minor pipeline route variations. We could not find any major pipeline route alternative that would reduce environmental impacts to such an extent that it would be environmentally preferable to the proposed route. However, we approved two minor route variations that were adopted by Texas Eastern to avoid an area of contaminated soil and a municipal park in the City of Chester. We also recommended another minor route variation to reduce impacts on wetlands.

PUBLIC INVOLVEMENT AND AREAS OF CONCERN

On April 19, 2004, the FERC issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Crown Landing LNG/Logan Lateral Projects, Request for Comments on Environmental Issues, and Notice of Joint Public Scoping Meeting* (NOI). The NOI announced that FERC staff was initiating its NEPA pre-filing review of the Crown Landing LNG and Logan Lateral Projects under Docket Nos. PF04-2-000 and PF04-5-000, respectively.[1] The NOI was sent to 632 interested parties, including federal, state, and local officials; agency representatives; conservation organizations; Native American tribes; local libraries and newspapers; residents within a 0.5 mile of the proposed LNG terminal; and property owners along the proposed pipeline route. On September 29, 2004, the FERC issued a *Notice of Applications*, which announced the filing of applications by Crown Landing and Texas Eastern and a final opportunity to submit comments. The FERC's comment period closed on October 20, 2004. In total, 22 comment letters were received by the FERC in response to these notices.

On May 5 and 6, 2004, FERC staff conducted public scoping meetings in Chester Township, Pennsylvania and Swedesboro, New Jersey, respectively, to provide opportunities for the general public to learn more about the proposed project and to participate in our analysis by commenting on issues to be included in the EIS. In response to agency requests, FERC staff also conducted a scoping meeting on June 9, 2004 in Claymont, Delaware, which is located across the Delaware River and downstream of the proposed LNG terminal site. Seven people commented at the meeting in Pennsylvania, 20 commented in New Jersey, and 11 in Delaware. Transcripts of these comments are part of the public record for the Crown Landing LNG and Logan Lateral Projects.

On January 11, 2005, FERC staff conducted an inspection of the proposed terminal site that was open to the public. The next day, FERC staff conducted a cryogenic design and technical conference with Crown Landing personnel in Swedesboro, New Jersey to discuss design and engineering aspects of the Crown Landing LNG Project. The meeting was limited to existing parties to the proceeding (i.e., anyone who specifically requested to intervene as a party). Attendees included agency representatives (U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration and Coast Guard), industry representatives, and other interested parties.

In addition to the public notice and scoping process discussed above, the FERC conducted numerous interagency meetings with representatives of federal and state resource agencies to identify issues that should be addressed in this EIS. These agencies included the U.S. Army Corps of Engineers, Coast Guard, FWS, U.S. Environmental Protection Agency (EPA), NOAA Fisheries, NJDEP, Pennsylvania Department of Environmental Protection, and DNREC.

During the agency and public involvement period we received comments regarding alternatives to the proposed project; the impact of dredging on the Delaware River and its aquatic resources; the impingement and entrainment of ichthyoplankton as the result of water withdrawals; the impact of LNG terminal and pipeline construction on wetlands and wetland transition areas; the economic impacts on Logan Township and surrounding communities; the impact of LNG ships on other commercial and recreational vessels using the Delaware River; environmental justice associated with constructing the pipeline in minority and low-income communities; the effect of the proposed facilities on surrounding property values and insurance rates; the impacts on public safety; and other environmental- and safety-related comments.

[1] The purpose of the pre-filing process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the Commission.

The FERC prepared a draft EIS for the Crown Landing LNG and Logan Lateral Projects and issued a Notice of Availability (NOA) of the draft EIS on February 18, 2005. In accordance with Council on Environmental Quality's (CEQ's) regulations implementing NEPA, the NOA established a public comment period ending on April 18, 2005, described procedures for filing comments on the draft EIS, and announced the time, date, and location of public comment meetings. The NOA also indicated that additional project information could be obtained from the Commission's Office of External Affairs and on the FERC's Internet website. A formal notice was also published in the Federal Register on February 25, 2005, indicating that the draft EIS was available and had been mailed to individuals and organizations on the mailing list prepared for the project.

The FERC mailed approximately 1,255 copies of the draft EIS to interested parties, including federal, state, and local officials and agencies; special interest groups; parties to the proceedings; areas libraries and newspapers; and individuals and affected landowners who requested a copy of the draft EIS. The FERC also conducted public comment meetings in Swedesboro, New Jersey on March 29, Chester, Pennsylvania on March 30, and Claymont, Delaware on March 31, 2005. A total of 37 people provided comments at these three meetings. In addition, the FERC received 48 comment letters in response to the draft EIS. The FERC has responded to these comments in the final EIS.

This final EIS was mailed to the agencies, individuals, and organizations on the mailing list provided in Appendix A and submitted to the EPA for formal issuance of a NOA. In accordance with CEQ's regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the EPA publishes a NOA of the final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. Should the FERC issue authorization for Crown Landing LNG and Logan Lateral Projects for the proposed action, it would be subject to a 30-day rehearing period. Therefore, the FERC could issue its decision concurrently with the EPA's NOA.

MAJOR CONCLUSIONS

As part of our review, we developed measures we believe would appropriately and reasonably avoid, minimize, or mitigate for environmental impacts resulting from the construction and operation of the proposed project. We are recommending that these mitigation measures be attached as conditions to any authorization issued by the Commission. We conclude that if the project is found to be in the public interest and is constructed and operated in accordance with Crown Landing and Texas Eastern's proposed mitigation and our recommended mitigation measures, the proposed facilities would have limited adverse impacts.

The primary reasons for our decision are:

- the project would make use of a previously disturbed site adjacent to an existing industrial site;
- in-water, silt-disturbing activities would occur outside of major anadromous fish migration periods;
- Crown Landing and Texas Eastern would implement the FERC staff's Plan and Procedures to mitigate impacts on soils, wetlands, and waterbodies;

- Crown Landing would develop and implement mitigation plans for permanent shallow water habitat impacts and wetland transition area impacts and Texas Eastern would mitigate for permanent wetland impacts;

- all applicable federal, state, and local permits and authorizations would be obtained by Crown Landing and Texas Eastern prior to initiating activities requiring such permits and authorizations;

- the safety features that would be incorporated into the design and operation of the LNG import terminal and the LNG vessels;

- the operational controls to be imposed by the local pilots and Coast Guard to direct the movement of LNG vessels, and the security provisions to deter attacks by potential terrorists; and

- the environmental inspection and mitigation monitoring program that would ensure compliance with all mitigation measures that become conditions of any FERC authorization.

1.0 INTRODUCTION

On September 16, 2004, Crown Landing LLC (Crown Landing), a BP Energy Company (BP) affiliate, filed an application with the Federal Energy Regulatory Commission (FERC or Commission) under section 3(a) of the Natural Gas Act (NGA) for a proposed liquefied natural gas (LNG) import terminal (referred to as the Crown Landing LNG Project). Texas Eastern Transmission, LP (Texas Eastern) also filed an application on September 17, 2004 with the FERC under section 7(c) of the NGA for an associated natural gas pipeline (referred to as the Logan Lateral Project). The applications were noticed in the Federal Register on October 6, 2004. In Docket No. CP04-411-000, Crown Landing seeks authorization to site, construct, and operate an LNG import terminal in Logan Township, New Jersey. In Docket No. CP04-416-000, Texas Eastern seeks a Certificate of Public Convenience and Necessity (Certificate) to site, construct, and operate a new natural gas pipeline and ancillary facilities to connect the proposed LNG terminal to Texas Eastern's interstate gas transmission facilities.

Crown Landing proposes to construct and operate an LNG import terminal on the shoreline of the Delaware River in Logan Township, Gloucester County, New Jersey. The LNG terminal would consist of facilities capable of unloading LNG ships, storing up to 450,000 cubic meters (m^3) of LNG (9.2 billion cubic feet of natural gas equivalent), vaporizing the LNG, and sending out natural gas at a baseload rate of 1.2 billion cubic feet per day (Bcfd) and a maximum rate of 1.4 Bcfd (using spare equipment). Crown Landing proposes to interconnect the LNG facilities onsite with three pipelines. One interconnect would be with the new pipeline that Texas Eastern proposes to construct and operate (i.e., Logan Lateral) between its existing Chester Junction facility in Brookhaven Borough, Pennsylvania to the proposed LNG terminal. The other two interconnects would be with existing pipelines that currently cross the site, one pipeline owned and operated by Columbia Gas Transmission Company (Columbia Gas) and the other pipeline owned and operated by Transcontinental Gas Pipe Line Corporation (Transco). To date, these latter two companies have not filed applications with the FERC to construct and operate the interconnects. The Crown Landing LNG Project would have a maximum delivery capacity of 0.5 Bcfd to the Columbia Gas pipeline system, 0.6 Bcfd to the Transco pipeline system, and 0.9 Bcfd to the Texas Eastern pipeline system.

The LNG terminal and pipeline facilities would consist of:

- a ship unloading facility capable of receiving LNG ships with capacities up to 200,000 m^3;
- three 150,000 m^3 (net capacity) full-containment LNG storage tanks, comprised of 9 percent nickel steel inner tank, pre-stressed concrete outer tank, and a concrete roof;
- a closed-loop shell and tube heat exchanger vaporization system;
- various ancillary facilities, including administrative offices, warehouse/maintenance building, main control center, guardhouse, and a pier control room;
- three meter and regulation stations located on the proposed LNG terminal site; and
- approximately 11.00 miles of 30-inch-diameter natural gas pipeline (4.92 miles in Pennsylvania and 6.08 miles in New Jersey), a pig launcher and receiver facility at the beginning and end of the pipeline, a mainline valve, and a meter and regulation station at the end of the pipeline.

The vertical line in the margin identifies text that has been modified in the final EIS and differs from the corresponding text in the draft EIS.

1.1 PURPOSE AND SCOPE OF THIS STATEMENT

The FERC is the federal agency responsible for authorizing applications to construct and operate onshore LNG import and interstate natural gas transmission facilities. The U.S. Coast Guard (Coast Guard) is the federal agency responsible for determining the suitability of the waterway for LNG marine traffic. The FERC is the lead federal agency for the preparation of this Environmental Impact Statement (EIS) in compliance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40, Code of Federal Regulations (CFR) 1500-1508), and the FERC's regulations implementing NEPA (18 CFR 380). A draft EIS was prepared and issued for public comment on February 18, 2005. This document is a final EIS that has been prepared to respond to comments received on the draft EIS. The distribution list for the final EIS is provided in Appendix A.

Our[1] principal purposes in preparing this EIS are to:

- identify and assess potential impacts on the natural and human environment that would result from the implementation of the proposed actions;
- describe and evaluate reasonable alternatives to the proposed actions that would avoid or minimize adverse effects on the human environment;
- identify and recommend specific mitigation measures, as necessary, to minimize the environmental impacts; and
- facilitate public involvement in identifying the significant environmental impacts.

The FERC will consider the findings in this final EIS in its determination of whether the project should be approved. A final approval will only be granted if after consideration of both environmental and non-environmental issues, the FERC finds that the proposed project is in the public interest. The environmental impact assessment and mitigation development discussed herein will be important factors in this final determination.

Our analysis in this EIS focuses on the facilities that are under the FERC's jurisdiction (i.e., the LNG import terminal proposed to be constructed by Crown Landing and the natural gas sendout pipeline proposed to be constructed by Texas Eastern) as well as a non-jurisdictional electric transmission line that would be constructed to the LNG terminal site to supply power to the facilities.

The topics addressed in this EIS include geology; soils and sediments; water use and quality; wetlands; vegetation; wildlife; fish and invertebrates; threatened, endangered, and special-status species; land use, recreation, and visual resources; cultural resources; socioeconomics and traffic; air quality and noise; reliability and safety; cumulative effects; and alternatives. The EIS describes the affected environment as it currently exists, discusses the environmental consequences of the proposed project, and

[1] The pronouns "we," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects (OEP).

compares the project's potential impact to that of alternatives. The EIS also responds to public comments on the draft EIS and presents our conclusions and recommended mitigation measures.

1.2 PROJECT PURPOSE AND NEED

Crown Landing proposes to provide additional natural gas supplies primarily to the Mid-Atlantic region (i.e., New York, New Jersey, Pennsylvania, and Maryland) to meet the increasing energy demands in this region of the United States. With interconnections to three interstate pipeline systems, the project would also be capable of supplying natural gas to other portions of the East Coast. The Crown Landing LNG Project would provide:

- a new LNG import terminal in the Mid-Atlantic region;
- storage facilities for LNG;
- access to natural gas reserves in production areas throughout the world that are inaccessible by conventional pipelines; and
- a new supply of natural gas to the Mid-Atlantic region as well as other portions of the East Coast.

We received comments on the draft EIS regarding the need for the project and suggesting that this need may be satisfied by other means such as conservation or renewable energy sources. The following paragraphs provide a summary of what we believe has been confirmed by other recent assessments of the Mid-Atlantic's energy supply and infrastructure needs.

Each year the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) assesses the key energy issues, including economic growth, energy prices, energy consumption, energy intensity, electricity generation, energy production and imports, and carbon dioxide emissions. According to the EIA's Annual Energy Outlook 2005 with Projections to 2025 Report (EIA, 2005a), energy consumption is predicted to increase nationally an average of about 1.4 percent per year until 2025. Energy consumption is expected to increase in all sectors, particularly in the transportation sector (1.8 percent increase per year), electric generation sector (1.8 percent increase per year), and the commercial sector (1.9 percent increase per year). Nationally, the demand for natural gas is projected to increase during the same timeframe at an annual rate of 1.5 percent. The EIA estimates that natural gas demand nationally could be as high as 30.7 trillion cubic feet (Tcf) annually by 2025, which represents an almost 33 percent increase in demand over the 2002 level of about 23 Tcf (EIA, 2005a). Several other studies, including those by Global Insights, Inc.; the National Petroleum Council (NPC), Energy Ventures Analysis, Inc.; PIRA Energy Group; Deutsche Bank; and McKinsey & Company/National Energy Board Canada, also predict similar trends in gas consumption.

Use of natural gas for electricity generation and industrial applications are expected to account for almost 75 percent of the projected growth in natural gas demand. This compares to increases in projected demand for coal of 1.5 percent per year, petroleum of 1.5 percent per year, and renewable fuels, including ethanol and wind, of 1.5 percent per year during the same period. As described in the EIA's report, the projections for natural gas demand and other fuels are sensitive to cost and other factors. For example, the EIA reduced its projections for energy consumption from all energy sources except nuclear energy between 2004 and 2005 due in part to higher energy prices; lower projected growth rates in industrial production; specific updates in the chemical, pulp, and paper industries; revisions to the capital cost of generating technologies; and revisions to transportation sector vehicle miles traveled.

Natural gas is used in the Mid-Atlantic region for home heating and cooking, commercial heating, a variety of industrial applications, including electrical power generation. The EIA projections for the Middle Atlantic[2] are similar to the nation as a whole. The EIA estimates that energy consumption in the Middle Atlantic region will rise from 10.950 quadrillion British thermal units (Btu) in 2003 to about 13.666 quadrillion Btu in 2025. Consumption of natural gas during this same period is expected to increase from 2.466 quadrillion Btu to about 3.268 quadrillion Btu, which represents an average annual increase in gas consumption of about 1.3 percent per year over 22 years. During this same period, consumption of energy from both petroleum and coal is predicted to increase 1.0 and 1.3 percent a year, respectively, whereas consumption of energy from nuclear power is only expected to increase 0.3 percent. The consumption of renewable energy is expected to increase by 0.5 percent a year.

It is anticipated that most of the future increase in demand for natural gas will be the result of the increased use of gas for electrical power generation. Many electric utility companies are switching to natural gas as an environmentally preferred fuel source to reduce air emissions and to meet the U.S. Environmental Protection Agency's (EPA) air quality standards for ozone. The demand for natural gas for use in electrical generation is expected to increase about 0.5 trillion cubic feet/year or 2.6 percent annually from 2001 to 2025 (DOE, 2004).

According to a New York Independent System Operator (NYISO) report, the increased demand for electricity in New York has exceeded the supply (NYISO, 2001). Furthermore, a study conducted by Charles River Associates (CRA) for the New York State Energy Research and Development Authority concluded that between 2005 and 2010, demand for natural gas for electricity generation will increase 20 percent (CRA, 2002). As a result, the NYISO recommends long-term goals of increasing and upgrading natural gas transmission facilities and facilitating the development of natural gas-fired power plants.

The natural gas currently delivered to this region comes primarily from domestic sources in the Gulf of Mexico. Some gas supplies are imported from Canada and more recently provided by LNG imports, as the result of the reactivation of the Cove Point LNG Terminal in southern Maryland. In considering the current balance of gas supply to the Mid-Atlantic region, it is important to recognize that the sources of natural gas are not static. Based on a review of historical well production data from the lower 48 states and western Canada that analyzed initial production rates, production decline rates, and total well recoveries for each major producing basin, a 2003 study by the NPC (NPC, 2003) concluded that:

> "…conventional gas production will inevitably decline in the future, and that the overall level of indigenous production will be largely dependent on the industry's ability to increase its production of nonconventional gas. Nonconventional gas includes gas from tight formations, shales, and coal seams. Given the relatively low production rates from nonconventional wells, the analysis further suggests that even in a robust future price environment, industry will be challenged to maintain overall production at its current level".

Because the Mid-Atlantic region is located far away from the domestic and Canadian sources of natural gas and near the end of the North American natural gas pipeline grid, the region experiences increased transportation costs and decreased gas availability, resulting in price volatility. The supply available to the Mid-Atlantic area may also be affected by other regional markets. For example, growth in the New England area will likely compete with the Mid-Atlantic region for the natural gas from producing basins in the Gulf of Mexico. In summary, there is strong evidence that indigenous sources of

[2] The EIA defines the Middle Atlantic as the states of New Jersey, Pennsylvania, and New York but includes Maryland and Delaware in the South Atlantic region.

natural gas supplies will not be able to keep up with future demand without the addition of new sources of gas in the form of LNG from overseas.

Since neither the domestic production of natural gas nor the importation of Canadian gas is anticipated to keep up with projected increased demand, the increased importation of LNG is viewed as a means of meeting the projected shortfall in domestic supplies, as well as providing back-up supplies of natural gas during periods of peak demand. In addition, LNG marine transportation is recognized as a viable way of accessing "stranded" natural gas reserves in production areas throughout the world that are inaccessible by conventional pipelines, thereby increasing available supplies.

1.3 PERMITS, APPROVALS, AND REGULATORY REQUIREMENTS

As the lead federal agency for the Crown Landing LNG and Logan Lateral Projects, the FERC is required to comply with section 7 of the Endangered Species Act of 1973 (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSA), section 106 of the National Historic Preservation Act (NHPA), and section 307 of the Coastal Zone Management Act of 1972 (CZMA). Each of these statutes has been taken into account in the preparation of this document.

The Coast Guard exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways under Executive Order 10173; the Magnuson Act (50 United States Code (USC) section 191); the Ports and Waterways Safety Act of 1972, as amended (33 USC section 1221, et seq.); and the Maritime Transportation Security Act of 2002 (46 USC section 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval and compliance verification as provided in Title 33 CFR Part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility.

As required by its regulations, the Coast Guard is responsible for issuing a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG marine traffic. The LOR would be based on the following items:

- Density and character of marine traffic;
- Locks, bridges, or other manmade obstruction in the waterway; and
- The following factors adjacent to the facility:
    a. Depth of water;
    b. Tidal range;
    c. Protection from high seas;
    d. Natural hazards, including reefs, rocks, and sandbars;
    e. Underwater pipes and cables; and
    f. Distance of berthed vessels from the channel and the width of the channel.

In accordance with Title 33 CFR Part 127.007, each applicant must submit a Letter of Intent (LOI) to the local Captain of the Port to begin the LOR process. On June 14, 2005, the Coast Guard issued a *Navigation and Vessel Inspection Circular – Guidance on Assessing the Suitability of a Waterway for Liquefied Natural Gas (LNG) Marine Traffic* (NVIC). The purpose of this NVIC is to provide Coast Guard Captains of the Port/Federal Maritime Security Coordinators, members of the LNG industry, and port stakeholders with guidance on assessing the suitability of a waterway for LNG marine traffic that takes into account conventional navigation safety/waterway management issues contemplated by the existing LOI/LOR process, but in addition, will also take completely into account maritime security implications. In accordance with this guidance, each LNG project applicant is to submit a Waterway Suitability Assessment (WSA) to the cognizant Captain of the Port. The WSA is to address the transportation of LNG from the LNG tanker's entrance into U.S. territorial waters, through its transit to and from the LNG receiving facility, including operations at the vessel/facility interface. In addition, the WSA should address the navigational safety issues and port security issues introduced by the proposed LNG operations. The NVIC 05-05 also provides specific guidance on the timing and scope of the WSA.

Section 7 of the ESA, as amended, states that any project authorized, funded, or conducted by a federal agency (e.g., the FERC) should not "jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined...to be critical" (16 USC § 1536(a)(2)(1988)). The FERC, or the applicant as a non-federal party, is required to consult with the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries to determine whether any federally listed or proposed endangered or threatened species or their designated critical habitat occur in the vicinity of the proposed project. If, upon review of existing data or data provided by the applicant, the FERC determines that these species or habitats may be adversely affected by the proposed project, the FERC is required to prepare a biological assessment (BA) to identify the nature and extent of adverse impact, and to recommend measures that would avoid the habitat and/or species, or would reduce potential impacts to acceptable levels and to initiate formal consultation with FWS or NOAA Fisheries. Because a federally listed species may be adversely affected by the Crown Landing LNG Project, the draft EIS served as the BA and was used to initiate formal consultation with NOAA Fisheries (see section 4.7.1).

The MSA, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established procedures designed to identify, conserve, and enhance Essential Fish Habitat (EFH) for those species regulated under a federal fisheries management plan. The MSA requires federal agencies to consult with the NOAA Fisheries on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH (MSA §305(b)(2)). Although absolute criteria have not been established for conducting EFH consultations, the NOAA Fisheries recommends consolidated EFH consultations with interagency coordination procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, or the ESA (50 CFR 600.920(e)) to reduce duplication and improve efficiency. As part of the consultation process, the FERC prepared an EFH Assessment which is included in Appendix E of this EIS (also see section 4.6.3). NOAA Fisheries is a cooperating agency assisting in the preparation of this EIS.

Section 106 of the NHPA requires the FERC to take into account the effects of its undertakings on properties listed on or eligible for listing on the National Register of Historic Places (NRHP), including prehistoric or historic sites, districts, buildings, structures, objects, or properties of traditional religious or cultural importance, and to afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on the undertaking. The FERC has requested that Crown Landing and Texas Eastern, as non-federal parties, assist in meeting the FERC's obligation under section 106 by preparing the necessary information and analyses as required by the ACHP procedures in 36 CFR 800. Section 4.10

of this EIS provides a discussion of cultural resources in the project area and addresses compliance with the section 106.

The CZMA calls for the "effective management, beneficial use, protection, and development" of the nation's coastal zone and promotes active state involvement in achieving those goals. As a means to reach those goals, the CZMA requires participating states to develop management programs that demonstrate how these states will meet their obligations and responsibilities in managing their coastal areas. The agencies responsible for administering Coastal Zone Management Programs (CZMP) in the three states include: the New Jersey Department of Environmental Protection (NJDEP), Office of Coastal Planning and Program Coordination (OCPPC); the Delaware Department of Natural Resources and Environmental Control (DNREC), Coastal Management Program (CMP); and the Pennsylvania Department of Environmental Protection (PADEP), Office of Water Management (OWM). Because section 307 of the CZMA requires federally licensed or permitted activities to be consistent to the maximum extent practicable with the enforceable policies of a management program, the FERC has requested that Crown Landing and Texas Eastern seek determinations of consistency with the applicable state's CZMPs. Section 4.8.3 of this EIS provides additional discussion of New Jersey's, Delaware's, and Pennsylvania's CZMPs.

At the federal level, required permits and approval authority outside of the FERC's jurisdiction include compliance with the Clean Water Act (CWA) of 1972, the Rivers and Harbors Act of 1899, the Clean Air Act (CAA), and issuance by the Coast Guard of a LOR regarding the suitability of the waterway for LNG marine traffic.

The U.S. Army Corps of Engineers (COE) has the authority to issue permits for work or structures in navigable waters under section 10 of the River and Harbors Act and the discharge of dredged or fill material into waters of the United States under section 404 of the CWA. The COE would regulate the dredging of the ship berth, the construction of the pier, and filling and grading activities in wetlands and waterbodies crossed by the proposed pipeline. The EPA has the authority to review and veto COE decisions on section 404 permits. The Coast Guard has the primary responsibility for reviewing and approving the navigational and security aspects of the project in accordance with 33 CFR 127 and 66. All three of these federal agencies are cooperating agencies assisting in the preparation of the EIS.

We have consulted with the U.S. Department of Defense (DOD), as required by the Energy Policy Act of 2005 and section 3 of the NGA, to determine if there is an effect on training or activities on any military installations from the project. No comments or concerns were received from any branch of the military regarding effects on military installations in reply to the FERC's *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Crown Landing LNG and Logan Lateral Projects, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting* (NOI) issued April 19, 2004. Further, no comments were received from any DOD branch in response to the FERC's draft EIS issued on February 18, 2005.

In addition, in letters dated January 9, 2006 to the Army, Navy, and Air Force at the Pentagon, we requested any information on effects on military installations. Since no effects have been identified, we conclude that there is no effect on military installations from this project; therefore, no concurrence from the Secretary of Defense is required under the Energy Policy Act of 2005. We will notify the DOD of this conclusion in writing to confirm it.

Crown Landing and Texas Eastern must also obtain Water Quality Certifications pursuant to section 401 of the CWA. The federal authority to issue Water Quality Certifications in New Jersey, Delaware, and Pennsylvania has been delegated to the NJDEP, DNREC, and PADEP, respectively.

In addition to the federal permits and approvals discussed above, Crown Landing and Texas Eastern would obtain other permits and approvals from state and local agencies. Table 1.3-1 lists the major federal, state, regional, and local permits, approvals, and consultations for the Crown Landing LNG Project and table 1.3-2 lists these permits, approvals, and consultations for the Logan Lateral Project. Regarding state permitting, the States of New Jersey and Delaware disagree on which state has jurisdiction over the proposed LNG terminal. Because the proposed unloading facility would be located in waters that are within the state boundaries of Delaware, the State of Delaware has been exerting its regulatory authority over that portion of the project. However, in a May 24, 2005 letter from Joseph J. Seebode, the Assistant Commissioner of the NJDEP, to David Blaha, environmental consultant to Crown Landing, Mr. Seebode alleges that the entire project, including the proposed unloading facility, is "subject to New Jersey's exclusive review and permitting authority, and not that of Delaware." Mr. Seebode goes on to state the reason for this exclusive authority is the Compact of 1905 between New Jersey and Delaware, "which gives New Jersey exclusive riparian jurisdiction of every kind and nature on its side of the Delaware River." For the purpose of this EIS, we have assumed that both states have authority over portions of the project and, therefore, table 1.3-1 lists the permits required by both states.

The FERC encourages cooperation between applicants and state and local authorities, but this does not mean that state and local agencies, through application of state and local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by the FERC. Any state or local permits issued with respect to jurisdictional facilities must be consistent with the conditions of any Certificate the FERC may issue.[3]

1.4 STAKEHOLDER INVOLVEMENT PROCESS

On December 5, 2003 and January 9, 2004, Crown Landing and Texas Eastern, respectively, filed requests with the FERC to use the NEPA Pre-filing Process. At that time, both companies were in the preliminary design stages of the projects and no formal applications had been filed with the FERC. Crown Landing's and Texas Eastern's requests to use the NEPA Pre-filing Process were approved on January 8, 2004 and January 20, 2004, respectively. Pre-filing docket numbers (PF04-2-000 for the Crown Landing LNG Project and PF04-5-000 for the Logan Lateral Project) were established to place information filed by the companies and related documents issued by the FERC into the public record. The Pre-filing Process provided opportunities for interested stakeholders to become involved early in project planning, facilitated interagency cooperation, and assisted in the identification of issues prior to the companies filing their applications with the FERC.

Since initiating the project in 2003, Crown Landing and Texas Eastern have conducted open houses for the general public, attended several meetings with federal, state, and local agencies, and met with various elected officials in New Jersey, Pennsylvania, and Delaware. Crown Landing sponsored three informational open houses: March 9 in Claymont, Delaware; March 10 in Logan Township, New Jersey; and March 11 in Marcus Hook, Pennsylvania. Texas Eastern participated in the March 10 open house in Logan Township and then held additional open houses in Pennsylvania on March 30 in Brookhaven, March 31 in Chester Township, and April 1 in Chester. The primary purpose of these open houses was to provide project information to interested stakeholders and to respond to questions and comments regarding the projects. A FERC representative was in attendance at these open houses to provide information on its regulatory process.

[3] See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission. 894 F.2d 571 (2d Cir. 1990); and Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

TABLE 1.3-1

Major Permits, Approvals, and Consultations for the Crown Landing LNG Project

Agency	Permit/Approval/Consultations	Actual or Anticipated Application Filing/Consultation Date
FEDERAL		
Federal Energy Regulatory Commission	Authorization to construct and operate an LNG import facility under section 3(a) of the Natural Gas Act (NGA)	September 2004
Advisory Council on Historic Preservation	Comment on the project under section 106 of the National Historic Preservation Act (NHPA)	Consultation, as necessary
U.S. Army Corps of Engineers	Authorization required for work (including dredging) or structures in navigable waters under section 10 of the Rivers and Harbors Act of 1899 and the discharge of dredged or fill material (including filling and grading activities) into waters of the United States (including wetlands) under section 404 of the Clean Water Act (CWA) of 1972	January 2005
U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) NOAA Fisheries	Consultation regarding compliance with section 7 of the Endangered Species Act; the Magnuson-Stevens Fishery Conservation and Management Act; and the Marine Mammal Protection Act	Consultation ongoing
U.S. Department of the Interior U.S. Fish and Wildlife Service	Consultation regarding compliance with section 7 of the Endangered Species Act, the Migratory Bird Treaty Act, and the Fish and Wildlife Coordination Act	Consultation completed, April 2005
U.S. Department of Homeland Security U.S. Coast Guard	Letter of Intent Permission for establishment of aids to navigation Spill prevention and spill response plan approval	August 2004 July 2006 July 2006
U.S. Department of Defense	Consultation as required by section 311 of the Energy Policy Act of 2005 and section 3 of the NGA	Letters sent on January 9, 2006.
STATE – NEW JERSEY		
New Jersey Department of Environmental Protection		
Land Use Regulation Program	Wetlands Letter of Interpretation Freshwater Wetlands Permit Waterfront Development Permit	February 2004 January 2005 January 2005
Bureau of Tidelands Management	Tidelands License	October 2004
Office of Dredging and Sediment Technology	Section 401 Water Quality Certificate	January 2005
Air Quality Bureau of Preconstruction Permitting	Subchapter 8 Air Quality Permits	October 2004
Air Quality Bureau of Operating Permitting	Subchapter 22 Title V Air Quality Permit	One year after operations commence

TABLE 1.3-1 (cont'd)

Major Permits, Approvals, and Consultations for the Crown Landing LNG Project

Agency	Permit/Approval/Consultations	Actual or Anticipated Application Filing/Consultation Date
Water Quality Bureau of Nonpoint Pollution Control	Industrial Stormwater Permit	July 2006
	Treatment works approval for subsurface disposal system	July 2006
Bureau of Point Source	Surface Water Discharge General Permit	July 2006
Bureau of Release Prevention	Approval of Discharge Prevention, Containment and Countermeasure Plan and Discharge Cleanup and Removal Plan	July 2006
Bureau of Safe Drinking Water	Well Drilling Permit	July 2006
Bureau of Water Allocation	Water Allocation Permit	July 2006
Division of Fish, Game, and Wildlife	Endangered species review	Consultation ongoing
State Historic Preservation Office	Review under section 106 of the NHPA	August 2004 and October 2004 (no effect letters)
Office of Coastal Planning and Program Coordination	Coastal zone consistency determination	January 2005
Division of Watershed Management	Water Quality Management Plan consistency	August 2004 (Informal Determination)
New Jersey Department of Transportation	Road Opening and Access Permit	July 2006
STATE – DELAWARE		
Delaware Department of Natural Resources and Environmental Control		
Office of the Secretary	Coastal Zone Status Decision and Permit	December 2004
Coastal Management Program	Coastal zone consistency determination	Unknown a/
Division of Water Resources	Subaqueous Lands Permit	Unknown a/
	Water Allocation Permit	
	Section 401 Water Quality Certificate	
Division of Fish and Wildlife	Endangered species review	Unknown a/
Delaware State Historic Preservation Office	Review under section 106 of the NHPA	September 2004 (no effect letter)
REGIONAL AND LOCAL		
Delaware River Basin Commission	Approval under section 3.8 of the Delaware River Basin Compact	Pending
Gloucester County Soil Conservation District	Approval of Soil Erosion and Sedimentation Control Plan	July 2006
	Discharge of Stormwater from Construction Site General Permit	July 2006

TABLE 1.3-1 (cont'd)

Major Permits, Approvals, and Consultations for the Crown Landing LNG Project

Agency	Permit/Approval/Consultations	Actual or Anticipated Application Filing/Consultation Date
Gloucester County Health Department	Septic system approval	July 2006
Logan Township Zoning Commission	Redevelopment plan approval	June 2005
Logan Township Planning Commission	Site plan approval/building permit	July 2006

a/ Because the legal authority of the State of Delaware is in dispute, Crown Landing has not provided updated filing dates for the Delaware permits.

TABLE 1.3-2

Major Permits, Approvals, and Consultations for the Logan Lateral Project

Agency	Permit/Approval/Consultations	Anticipated Application Filing/Consultation Date
FEDERAL		
Federal Energy Regulatory Commission	Certificate of Public Convenience and Necessity to construct, install, own, operate, and maintain a pipeline under section 7(c) of the Natural Gas Act (NGA)	September 2004
Advisory Council on Historic Preservation	Review under section 106 of the National Historic Preservation Act (NHPA)	Consultation, as necessary
U.S. Army Corps of Engineers	Authorization required for work (including dredging) or structures in navigable waters under section 10 of the Rivers and Harbors Act of 1899 and the discharge of dredged or fill material (including filling and grading activities) into waters of the United States (including wetlands) under section 404 of the Clean Water Act of 1972	February 2005
U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)		
NOAA Fisheries	Consultation regarding compliance with section 7 of the Endangered Species Act (ESA); the Magnuson-Stevens Fishery Conservation and Management Act; and the Marine Mammal Protection Act	Consultation completed (no effect letter)
U.S. Department of the Interior		
U.S. Fish and Wildlife Service	Consultation regarding compliance with section 7 of the ESA, the Migratory Bird Treaty Act, and the Fish and Wildlife Coordination Act	Consultation ongoing
STATE – NEW JERSEY		
New Jersey Department of Environmental Protection		
Land Use Regulation Program	Freshwater Wetlands Permit Stream Encroachment Permit Waterfront Development Permit Section 401 Water Quality Certificate Coastal Zone Consistency Determination	August 2006
Bureau of Tidelands Management	Tidelands License	August 2006
Bureau of Water Allocation	Water Allocation Permit	March 2008
Bureau of Point Source	Surface Water Discharge General Permit	March 2008
Division of Fish, Game, and Wildlife	Endangered species review	Consultation ongoing
State Historic Preservation Office	Review under section 106 of the NHPA	Consultation completed (no effect letter)

TABLE 1.3-2 (cont'd)

Major Permits, Approvals, and Consultations for the Logan Lateral Project

Agency	Permit/Approval/Consultations	Anticipated Application Filing/Consultation Date
STATE – PENNSYLVANIA		
Pennsylvania Department of Environmental Protection		
Office of Water Management	Coastal zone consistency determination	June 2005
Bureau of Watershed Management	Water Allocation Permit	March 2008
	Submerged Lands License Agreement	June 2005 (License Agreement received November 2005)
Bureau of Water Supply and Wastewater Management	National Pollutant Discharge Elimination System General Permit for Hydrostatic Test Water Discharges	March 2008
Permits and Technical Services Section	Chapter 105 Wetlands and Water Obstructions Permits	June 2005 (Draft Permit received December 2005)
Pennsylvania Department of Natural Resource Conservation	Endangered species review (plants)	Consultation completed (no effect letter)
Pennsylvania Game Commission	Endangered species review (mammals)	Consultation completed (no effect letter)
Pennsylvania Fish and Boat Commission	Endangered species review (fish, reptiles, and amphibians)	Consultation completed (no effect letter)
Pennsylvania State Historic Preservation Office	Review under section 106 of the NHPA	October 2004 (no effect letter)
REGIONAL AND LOCAL		
Delaware Regional Basin Commission	Approval under section 3.8 of the Delaware River Basin Compact	December 2007
Gloucester County Soil Conservation District	Approval of Soil Erosion and Sedimentation Control Plan	March 2008
	Discharge of Stormwater from Construction Site General Permit	March 2008
Delaware County Conservation District	Approval of Soil Erosion and Sedimentation Control Plan	March 2008
	Discharge of Stormwater from Construction Site General Permit	March 2008
	Chapter 105 Waterways and Wetlands General Permits	March 2008
Delaware County, Brookhaven Borough, City of Chester, Chester Township, Aston Township, Logan Township	Road Crossing Permits	March 2008

Five interagency meetings were held on March 4, March 9, May 6, May 20, and August 19, 2004 with state and federal agencies to discuss the project and to identify issues that need to be addressed in the EIS. Table 1.4-1 lists the location and attendees at each of the interagency meetings that were conducted during the pre-filing process. Crown Landing and Texas Eastern have continued to consult and meet with many of these agencies prior to the issuance of this final EIS.

TABLE 1.4-1

List of Interagency Meetings Conducted for the Proposed Projects

Meeting Date	Meeting Location	Meeting Attendees
March 4, 2004	Trenton, New Jersey	FERC, Coast Guard, COE, FWS, NJDEP, NJ State Historic Preservation Office (SHPO), NJ Department of Transportation (DOT), Delaware River Basin Commission, Texas Eastern, and Crown Landing
March 9, 2004	Dover, Delaware	FERC, DNREC, Delaware SHPO, Delaware Energy Office, and Crown Landing
May 6, 2004	Swedesboro, New Jersey	FERC, COE, FWS, EPA, NOAA Fisheries, U.S. DOT Office of Pipeline Safety, NJDEP, PADEP, Texas Eastern, and Crown Landing
May 20, 2004	Dover, Delaware	FERC, COE, EPA, NOAA Fisheries, DNREC, Delaware SHPO, and Crown Landing
August 19, 2004	Swedesboro, New Jersey	FERC, COE, FWS, EPA, NOAA Fisheries, NJDEP, DNREC, Delaware River Basin Commission, Crown Landing, and Texas Eastern

Crown Landing and Texas Eastern also established project web sites (www.bpcrownlanding.com and www.degt-loganlateral.com), which are periodically updated with project information.

Within 3 days of filing their applications with the FERC, and in accordance with the Commission's regulations and Orders 609 and 609-A, Crown Landing and Texas Eastern notified affected landowners and residents within 0.5 mile of the LNG terminal site and along the pipeline route that they filed their applications. Crown Landing and Texas Eastern also published notices of their applications in newspapers that are in general circulation in the project area and placed copies of their applications at the following libraries:

- Crown Landing LNG Project - Logan Branch of the Gloucester County Library, Logan Township; Brandywine Hundred Branch of the New Castle County Library, Wilmington; and
- Logan Lateral Project – J. Lewis Crozier Library, Chester; Aston Public Library, Aston; Logan Branch of the Gloucester County Library, Logan Township

1.5 PUBLIC REVIEW AND COMMENT

On April 19, 2004, the FERC issued a NOI. The NOI was sent to 793 interested parties, including federal, state, and local officials; agency representatives; conservation organizations; Native American tribes; local libraries and newspapers; residents within a 0.5 mile of the proposed LNG terminal; and property owners along the proposed pipeline route. Issuance of the NOI signified the start of the time period for receiving written comments on the projects. On September 29, 2004, the FERC issued a *Notice of Applications*. This second notice announced the filing of FERC applications by Crown Landing and Texas Eastern and a final opportunity to submit comments.

As noticed in the April 19, 2004 NOI, FERC staff initially conducted two public scoping meetings: one meeting on May 5, 2004 in Chester Township, Pennsylvania; and another meeting on May

6, 2004 in Swedesboro, New Jersey. At the request of Delaware officials, a third public scoping meeting was held on June 9, 2004 in Claymont, Delaware (notice of this meeting was issued by the FERC on May 26, 2004). These meetings provided an opportunity for the general public to learn more about the proposed projects and to participate in our analysis by commenting on issues to be included in the EIS. A total of about 200 people attended these meetings and 38 people provided oral comments (7 commentors at the Pennsylvania meeting, 20 commentors at the New Jersey meeting, and 11 commentors at the Delaware meeting). Transcripts of these meetings are part of the public record for the projects.

On January 11, 2005, the FERC conducted an inspection of the proposed terminal site that was open to the public. The next day, the FERC conducted a cryogenic design and technical conference with Crown Landing personnel in Swedesboro, New Jersey to discuss design and engineering aspects of the Crown Landing LNG Project. The meeting was limited to existing parties to the proceeding (i.e., anyone who specifically requested to intervene as a party). Attendees included Crown Landing representatives, agency representatives (U.S. Department of Transportation (DOT) Office of Pipeline Safety (OPS) and Coast Guard), industry representatives, and other interested parties.

Although the NOI established an initial closing date of June 21, 2004 for scoping comments on the projects, FERC staff continued to receive, accept, and consider comments through the end of the comment period specified in the second notice (comment period ending October 20, 2004). A total of 36 comment letters were received in response to the notices; 16 of these letters were in support of the project and the other 20 letters identified specific issues and concerns. Table 1.5-1 briefly summarizes the primary issues identified and comments received during the public scoping process.

The FERC prepared a draft EIS for the Crown Landing LNG and Logan Lateral Projects and issued a Notice of Availability (NOA) of the draft EIS on February 18, 2005. In accordance with CEQ's regulations implementing NEPA, the NOA established a public comment period ending on April 18, 2005, described procedures for filing comments on the draft EIS, and announced the time, date, and location of public comment meetings. The NOA also indicated that additional project information could be obtained from the Commission's Office of External Affairs and on the FERC's Internet website. A formal notice was also published in the Federal Register on February 25, 2005, indicating that the draft EIS was available and had been mailed to individuals and organizations on the mailing list prepared for the project.

The FERC mailed approximately 1,255 copies of the draft EIS to interested parties, including federal, state, and local officials and agencies; special interest groups; parties to the proceedings; areas libraries and newspapers; and individuals and affected landowners who requested a copy of the draft EIS. The FERC also conducted public comment meetings in Swedesboro, New Jersey on March 29, Chester, Pennsylvania on March 30, and Claymont, Delaware on March 31, 2005. A total of 37 people provided comments at these three meetings. In addition, the FERC received 48 comment letters in response to the draft EIS. Our responses to these comments are provided in Appendix J and in the various sections of this final EIS. The substantive changes in the final EIS are indicated by vertical bars that appear in the margins. The changes were made both in response to comments received on the draft EIS and as a result of updated information that became available after issuance of the draft EIS.

TABLE 1.5-1

Primary Issues Identified and Comments Received During the Public Scoping Process for the Crown Landing LNG and Logan Lateral Projects

Issue	Specific Comments	EIS Section Where Comments are Addressed
ALTERNATIVES	alternative LNG terminal sites, pipeline routes, and dredge disposal areas; alternative LNG terminal sites that are less populated and have fewer nearby industrial sites; alternative pipeline routes that avoid residences and residential streets	3.0
DREDGING AND DREDGE DISPOSAL	the quantity and quality of sediments to be dredged from the ship berth area; future maintenance dredging and dredge disposal needs	2.4.1.3 and 4.2.2
WATER RESOURCES	impacts of dredging and terminal construction and operation on water quality of the Delaware River	4.3
WETLANDS	impacts on tidal wetlands along the Delaware River and Oldmans Creek	4.4
FISH AND WILDLIFE	impacts on shallow water habitat in the Delaware River; impacts on spawning and foraging habitat of striped bass, shortnose sturgeon, and other resident and transient aquatic organisms; potential impingement and entrainment impacts on fish and fish eggs as the result of appropriating hydrotest water and ballast water; impacts on a heron rookery on Pea Patch Island; impacts on pied-billed grebe inhabiting wetlands along Birch Creek; impacts on bald eagles	4.6 and 4.7
LAND USE	effects of LNG ships on other ship and boat traffic in the Delaware River; effects of construction-related traffic on existing traffic levels on U.S Route 130; impacts on public access to tidal waters and recreational fishing areas; potential to encounter contaminated sites in the project area; impacts on nearby commercial developments	4.8
SOCIOECONOMICS	economic impacts on Logan Township and surrounding communities; environmental and economic justice associated with constructing the proposed pipeline in minority and low-income neighborhoods; potential for and economic impact of closure of Delaware Memorial Bridge; impacts on property values and insurance rates; the demand of the project on local police and fire services; the potential for the project to provide jobs and support economic development; costs of providing security to LNG terminal and ships	4.9
CULTURAL RESOURCES	impacts on cultural resources including architectural resources and marine archaeological sites	4.10
AIR QUALITY AND NOISE	air and noise impacts including the effects of dust and emissions from construction equipment and facility operations; the potential for odors and noise associated with construction and operation of the proposed facilities	4.11
RELIABILITY AND SAFETY	Impacts on public safety, particularly the safety of people that live or work near proposed LNG terminal; risks associated with storing and transporting LNG; safety and security measures to protect ships and the terminal, the potential for terrorism; emergency preparedness and response planning with local communities; effects of releases of LNG from ships or the terminal; potential impacts on the Salem Nuclear Power Plant, Logan Generating Station, or other industrial facilities as the result of an LNG-related incident; impacts of security zone around LNG ships and terminal	4.12
CUMULATIVE IMPACTS	cumulative impacts on the Delaware River as a result of the project and existing industrial activities	4.13

This final EIS was mailed to the agencies, individuals, and organizations on the mailing list provided in Appendix A and submitted to the EPA for formal issuance of a NOA. In accordance with CEQ's regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the EPA publishes a NOA of the final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. Should the

FERC issue authorization for Crown Landing LNG and Logan Lateral Projects for the proposed action, it would be subject to a 30-day rehearing period. Therefore, the FERC could issue its decision concurrently with the EPA's NOA.

1.6 NONJURISDICTIONAL FACILITIES

Electrical power to operate the LNG terminal facilities would be provided by a new 69 kilovolt (kV) electric transmission line that would be constructed from an existing Conectiv Power Delivery substation (Conectiv's Nortonville Substation) located on the south side of U.S. Route 130 to the LNG terminal site. The transmission line would cross U.S. Route 130 and follow the proposed access road into the LNG facility (which is the existing access road into the Logan Generating Station). Approximately 3,500 feet of dual feed electric transmission line supported on transmission poles spaced about 225 feet apart would be installed. This transmission line would replace a smaller existing powerline that extends along the site entrance road to the proposed terminal area. The Nortonville Substation and two other substations would need some modifications but none of these modifications would result in expansions of the facilities or land-disturbing activities outside of the existing fence lines. An environmental analysis of these nonjurisdictional facilities is included in this EIS.

2.0 DESCRIPTION OF PROPOSED ACTION

The FERC is the federal agency responsible for authorizing applications to construct and operate onshore LNG import and interstate natural gas transmission facilities. The Coast Guard is the federal agency responsible for determining the suitability of the waterway for LNG marine traffic. The Coast Guard is also the federal agency responsible issuing a LOR regarding the suitability of the waterway for LNG marine traffic.

The proposed action before the FERC is to consider issuing to Crown Landing a section 3 authorization for the LNG import facilities and to Texas Eastern a section 7 Certificate for a new natural gas pipeline. The proposed action before the Coast Guard is to consider issuing Crown Landing a LOR finding the waterway suitable for LNG marine traffic, with certain conditions. These conditions are outlined, in part, in the Coast Guard's December 1, 2005, letter to FERC (attached as Appendix L). Specifically, these conditions require that all agencies that would be involved in navigation safety and maritime security aspects of LNG vessels transiting to and operating at the Crown Landing terminal be adequately staffed, equipped, and funded to fully implement the safety and security measures. These measures include, but are not limited to, security zones around the LNG carriers, a vessel traffic control plan, escorts by armed law enforcement vessels, a variety of waterway and shoreline surveillance measures, and multi-agency cooperation and communication. Specific details of these measures are further outlined in the Coast Guard's December 19, 2005, letter to FERC which has been designated Sensitive Security Information as defined in Title 49 CFR Part 1520. Because any unauthorized disclosure of these details could be employed to circumvent the proposed security measures, they are not releasable to the public.

2.1 EXISTING SITE CONDITIONS

The proposed LNG import terminal would be located on a 175-acre undeveloped parcel located along the Delaware River between Oldmans Creek and the Logan Generating Station, a pulverized coal-fired power plant owned by National Energy Power Company, L.L.C. The site is predominantly agricultural land and wetland. Ten pipelines, including three natural gas pipelines, one nitrogen pipeline, and six Sun Oil Company pipelines traverse the site. Of the six Sun Oil Company pipelines on the site, three of the pipelines transport petroleum products (butane, jet fuel, and gasoline) and the other three pipelines are currently inactive. U.S. Route 130 borders the southern boundary of the site and provides access to the site via the existing road to the Logan Generating Station. The offshore portions of the proposed project would be located in the Delaware River between the Marcus Hook anchorage area and the shoreline. An aerial photograph showing the existing conditions on the LNG terminal site is provided on figure 2.1-1.

2.2 PROPOSED PROJECT

The Crown Landing LNG Project would consist of onshore LNG storage and process facilities located in Logan Township, Gloucester County, New Jersey and an offshore ship unloading facility located in New Castle County, Delaware. The LNG import terminal would have interconnections with three natural gas pipeline systems. One of these interconnections would be the Logan Lateral Project, which would consist of 11.0 miles of 30-inch-diameter natural gas pipeline from Texas Eastern's Chester Junction facility located in Brookhaven Borough, Delaware County, Pennsylvania to the LNG facility. Other towns and townships crossed by the Logan Lateral route include the City of Chester, Aston Township, and Chester Township in Pennsylvania and Logan Township in New Jersey. The other two interconnections (Columbia Gas and Transco pipelines) would be within the proposed LNG facility site. A general project location map for both projects is provided on figure 2.2-1.

Final Grading and Site Restoration

After final grading, the areas around the process buildings, equipment, piping, and storage tanks would be covered with crushed rock. Other disturbed areas would be seeded and planted in accordance with Crown Landing's Vegetation Management Plan (see section 4.5).

2.4.1.2 Ship Unloading Facility

The first step in construction of the ship unloading facility would be the dredging of a slip berth adjacent to the anchorage area in the Delaware River. The berth would be oriented perpendicular to the ship channel and out of the anchorage area to enhance the safety of the LNG ship while berthed. Section 2.4.1.3 provides additional information on these proposed dredging and dredge disposal activities.

The next step would be to construct the pier for the ship unloading facility. The pier would be constructed using a conventional "over the top" method of construction, which involves using land-based equipment to build the pier from the shore out into the river. This method would minimize the dredging that would otherwise be required to provide sufficient water depths for a barge-based construction approach. A large crawler crane would be used to drive the steel piles and to pick up and set the structural elements of the pier. Once the piles are in place, either precast concrete or fabricated steel pile caps and precast/prestressed girders or fabricated steel beams would be installed. A concrete deck with appropriate railing or barriers would be cast in place to contain the piping and form a roadway on the pier.

The final step would be the construction of the berth structure, including the unloading platform and dolphins. The platform and dolphins would likely consist of cast-in-place or precast concrete decks with steel pipe pile foundations. Once the deck is completed, the unloading arms, fenders, mooring equipment, and walkways would be installed. Due to the sizes of some of the structural elements of the unloading platform and dolphins, a barge-based approach using marine equipment would be used to construct the berth structure.

2.4.1.3 Dredging and Dredge Disposal

About 1.24 million cubic yards of sediment would be dredged from the berth area to construct a slip for LNG ships. The berth area would be dredged to a depth of 40 feet below mean lower low water (MLLW), which is the current depth of the adjacent anchorage area and ship channel. To reduce the dredging volume and to minimize impacts on subtidal shallow habitats, sheet piling would be used on two sides of the berth (upstream and shoreline sides) to form perpendicular walls. The sheet piling would extend about 30 feet above the dredged mud line and buoys would mark the locations of the submerged sheet piling. The downstream side of the berth would consist of a stabilized soil terrace. Figure 2.4.1-1 shows the proposed dredging area within the slip berth for LNG ships.

Because a disposal site is within feasible pumping distance and the sediments are relatively soft and unconsolidated, Crown Landing proposes to remove the sediments by hydraulic dredging (a 240-foot-long, 8,000 horsepower dredge that is rated for up to 2,880 cubic yards per hour would likely be used). This type of dredging uses a dredge with a cutter suction head to produce a slurry of sediments and water (approximately 20 percent solids and 80 percent water), which is essentially vacuumed up and pumped to a disposal site via a temporary discharge pipe. If boulders are encountered that would preclude the use of a hydraulic dredge, the dredged material would be removed through the selective use of a clamshell dredge, loaded in scows, and transported to the disposal facility discussed below.

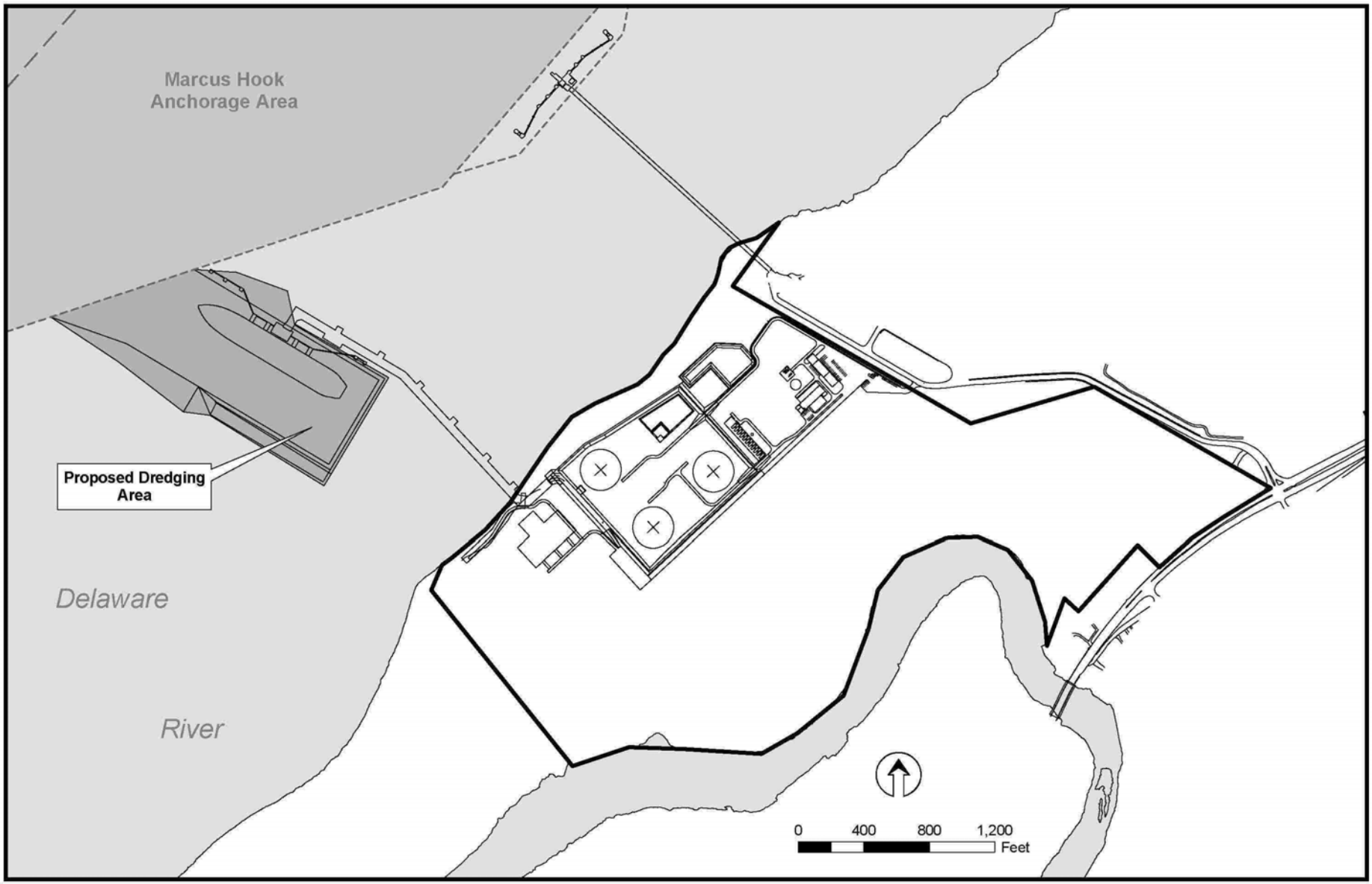


Figure 2.4.1-1
Crown Landing LNG Project
Proposed Dredging Area

The Crown Landing LNG Project is not subject to the CAFRA or the Hackensack Meadowlands Reclamation and Development Act because the project facilities are not located within the areas subject to these laws[6]; however, it is subject to the other laws associated with the NJCMP. On January 7, 2005, Crown Landing filed a compliance statement for coastal zone management rules as part of its Waterfront Development Permit application. The compliance statement indicated that the Crown Landing LNG Project was designed to comply with the coastal zone rules; however, on February 4, 2005, the NJDEP indicated that Crown Landing's Waterfront Development Permit application was deficient and requested additional information. Crown Landing provided the additional information on May 11, 2005 but received a second notice of deficiency from the NDJEP on July 15, 2005. On August 23, 2005, Crown Landing provided the NJDEP with additional information requested in the second notice of deficiency.

On June 10, 2005, Texas Eastern filed a compliance statement for coastal zone management rules as part of its Waterfront Development Permit application. Texas Eastern indicated that the Logan Lateral Project would be in compliance with all applicable coastal zone rules; however, in late September 2005, the NJDEP requested that Texas Eastern withdraw its Waterfront Development Permit application because it was approaching the time limit for department review under New Jersey's 90-day Construction Law. The NJDEP indicated that Texas Eastern could not adequately justify the purpose and need for the Logan Lateral Project until the issues associated with the Crown Landing LNG Project were resolved (see section 4.8.3.2). Texas Eastern withdrew its permit application on October 7, 2005.

If the Crown Landing LNG and Logan Lateral Projects are approved by the Commission, concurrence from the NJDEP that the projects are consistent with the NJCMP must be received prior to any issuance of a Notice to Proceed with construction from the Secretary of the FERC. Therefore, **we recommend that:**

- **Crown Landing and Texas Eastern file documentation of concurrence from the NJDEP that the projects are consistent with the NJCMP with the Secretary prior to construction.**

4.8.3.2 Delaware

The agency responsible for implementing Delaware's coastal zone management program is the DNREC. The Delaware Coastal Management Program (DCMP) was approved by the OCRM in 1979 and updated in 1993 and 1998. Delaware differentiates between the 'coastal zone' and the 'coastal strip' of the state. The coastal zone includes the entire state, which is managed by the DCMP through several state laws and authorities, including the federal CZMA. The coastal strip was defined by the Delaware State Coastal Zone Act of 1971 (DSCZA) as a band of land approximately 4 miles wide that parallels the entire Delaware coastline. The DSCZA is the primary authority for regulating heavy industry, manufacturing, and bulk transfer facilities in the coastal strip (DNREC, 2004b). The DSCZA is also incorporated into the DCMP.

The offshore facilities of the Crown Landing LNG Project would be located within the coastal zone of Delaware, which extends to the New Jersey shoreline. The offshore facilities would also be located within the coastal strip as defined by the DSCZA. For these reasons, the State of Delaware has claimed permitting authority for these facilities.

[6] The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge in Middlesex County and extends south along the coast around Cape May and north along Delaware Bay to the Kilcohook National Wildlife Refuge in Salem County, about 15 miles downstream of the proposed LNG terminal site. The Hackensack Meadowlands District is a 19,730-acre area of water, wetlands, and associated uplands in Hudson and Bergen Counties.

According to the DSCZA, "heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefore. In addition, offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefore" (7 Del. C. 1953, § 7003; 58 Del. Laws, c. 175; 64 Del. Laws, C. 240, § 6; 66 Del. Laws, c. 256, § 1; 71 Del. Laws, c. 348, § 2). Bulk product transfer facilities are defined as "any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition" (7 Del. C. 1953, § 7002; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116, § 88(a); 62 Del. Laws, c. 119, § 1,2; 63 Del. Laws, c. 191, § 1(a); 71 Del. Laws, c. 348, §).

Because the Crown Landing LNG Project would involve transit of LNG ships and construction of a new pier and other facilities within Delaware's coastal zone to convey LNG from ships to the terminal, a determination on whether the facilities would be a permissible use under the DSCZA is required. On December 7, 2004, Crown Landing submitted an application to the DNREC for a status determination on the new pier within Delaware's coastal zone. The application is the first step in determining whether the pier would be permitted under the DSCZA. In its application, Crown Landing claimed that the construction of the proposed pier is a permissible use under the DSCZA pursuant to the provisions of § 7002(f) of title 7 because it would exclusively support a single facility that meets the definition of "manufacturing" pursuant to § 7002(d).

In a letter dated February 3, 2005 from DNREC to Crown Landing, the DNREC issued a Coastal Zone Act Status Decision, which determined that the proposed LNG off-loading pier in the Delaware River is prohibited by the State's Coastal Zone Act. On February 15, 2005, Crown Landing filed an appeal of the February 3, 2005 ruling with the State Coastal Zone Industrial Control Board. The State Coastal Zone Industrial Control Board held a public hearing on March 30, 2005 to consider Crown Landing's appeal. The DNREC's ruling was upheld by the State Coastal Zone Industrial Control Board at the March 30, 2005 hearing. Crown Landing had 20 days to appeal the State Coastal Zone Industrial Control Board's decision to the Delaware Superior Court but no appeal was made.

Because the DSCZA is incorporated into the DCMP, Crown Landing has not filed a draft federal consistency certification with the DNREC. The DNREC's decision on the DSCZA would likely result in its objection to a consistency certification for the project. If the DNREC did object to a federal consistency certification, Crown Landing could appeal Delaware's decision to the U.S. Department of Commerce. The provisions of 15 CFR Part 930, Subpart H, outline procedures by which the Secretary of Commerce may override a state's objection if the Secretary of Commerce finds that a federal license or permit activity, which is inconsistent with the DCMP, may be federally approved because the activity is consistent with the objectives or purposes of the federal CZMA or is necessary in the interest of national security (DCMP, 2004). In order to be consistent with the objectives or purpose of the federal CZMA, an activity determined to be inconsistent with the DCMP must be found by the Secretary of Commerce to be permissible because it satisfies the following four requirements:

- the activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the CZMA;
- when performed separately or when its cumulative effects are considered, it would not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest;
- the activity would not violate any requirement of the CAA or CWA as amended; and

- there is no reasonable alternative available that would permit the activity to be conducted in a manner consistent with the DCMP.

In another development, the NJDEP in a letter dated May 24, 2005 stated that although a portion of the pier would be located in Delaware waters, construction of the entire pier and any associated dredging would be subject to New Jersey's exclusive review and permitting authority and not that of the State of Delaware. The NJDEP cited the Compact of 1905 between New Jersey and Delaware, which was approved by the legislatures of both states and the United States Congress and gives New Jersey exclusive riparian jurisdiction of every kind and nature on its side of the Delaware River. The State of New Jersey has advised the State of Delaware that Article VII of the Compact of 1905 prohibits Delaware from using its DSCZA authority or any other state permitting authority to block the construction of projects appurtenant to the New Jersey shoreline. In July 2005, New Jersey asked the U.S. Supreme Court to hear the case and in November 2005 the U.S. Supreme Court agreed (New Jersey v. Delaware, 126 S. Ct. 713 (U.S. Nov. 28, 2005)).

At the present time, this issue is not resolved. Therefore, **we recommend that:**

- **Crown Landing file documentation of concurrence from the DNREC that the projects are consistent with the DCMP with the Secretary prior to construction:**

4.8.3.3 Pennsylvania

Pennsylvania's coastal zone management program is administered by the PADEP and its Coastal Zone Management Plan (PCZMP) was approved by the OCRM in 1980. The PCZMP is based on a network of regulatory and non-regulatory policies that require specific coastal activities to comply with performance standards defined in the plan and in the regulations of other state authorities (PADEP, 2002). Pennsylvania's coastline along the Delaware River is 57 miles long and includes land in Bucks, Philadelphia, and Delaware Counties. The coastal zone along this area varies from about 0.1 mile wide in urban areas to over 3.5 miles in rural areas and extends to the boundary with New Jersey in the middle of the Delaware River. In the proposed project area, the coastal zone parallels the active Amtrak/SEPTA rail line running north to south. About 0.8 mile of the pipeline associated with the Logan Lateral Project would be located within the coastal zone of Pennsylvania and subject to the policies and performance standards of the PCZMP.

On October 4, 2005, Texas Eastern submitted its Commonwealth of Pennsylvania/COE Joint Permit Application, which was sent to the PADEP for a federal consistency determination. The PADEP provided its determination that the project is consistent with the PCZMP on February 17, 2006.

4.8.4 Hazardous Waste Sites

No hazardous waste sites have been identified within the proposed LNG terminal site; however, eight potential areas of concern were identified through site reconnaissance and a prior Phase I Environmental Site Assessment. Soils around two of the sites contained elevated concentrations of total petroleum hydrocarbons and one site contained elevated concentrations of arsenic. No contamination was found at the remaining five sites. Additional information on potential contamination of soils and groundwater within the LNG terminal site are provided in sections 4.2.1 and 4.3.1, respectively, and potential contamination of sediments within the Delaware River is provided in section 4.2.2.

A search of several databases was conducted to identify hazardous waste sites within 0.25 mile of the proposed pipeline facilities. The databases identified a total of 30 hazardous, potentially hazardous,

EXHIBIT B

No. 134, Original

In the

Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

Before the Special Master
the Hon. Ralph I. Lancaster, Jr.

RESPONSE TO
RULE 45 SUBPOENAS SERVED ON BP AMERICA INC. AND AFFILIATES

Stuart A. Raphael
Jill M. Dennis
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive
Suite 1700
McLean, VA 22102
(703) 714-7463
(703) 714-7410 (fax)

Counsel for BP America Inc., BP Corporation North America Inc., BP Company North America Inc., BP America Production Company, BP Energy Company, and Crown Landing LLC

RESPONSE TO
RULE 45 SUBPOENAS SERVED ON BP AMERICA INC. AND AFFILIATES

BP America Inc., BP Corporation North America Inc., BP Company North America Inc., BP America Production Company, BP Energy Company, and Crown Landing LLC (collectively referred to as "BP"), by counsel and pursuant to Rule 45 of the Federal Rules of Civil Procedure, respond to the identical subpoenas *duces tecum*, served by Defendant State of Delaware, as follows:

GENERAL RESPONSE AND OBJECTIONS

1. BP understands, pursuant to CMO 1 and CMO 2, that the State of New Jersey has filed a motion objecting to the scope of discovery sought by the State of Delaware relating to the "Crown Landing Facility" (as defined in Definition G of the subpoenas). Notwithstanding that motion, on the return date of the subpoenas, or as soon thereafter as is feasible, BP will produce non-privileged documents describing the portion of the Crown Landing Facility extending below the mean-low water line on the New Jersey side of the Delaware River, provided that an appropriate protective order can be entered concerning: BP's confidential and proprietary business documents; documents that have been designated as "privileged" or "CEII" under the Federal Energy Regulatory Commission's rules, *see* 18 C.F.R. §§ 388.112(a), 388.113(c)(iii); or documents classified as "SSI" under the rules of the Department of Homeland Security or the United States Coast Guard, *see* 49 C.F.R. § 1520.9. Please note that federal law prohibits disclosure of SSI except in accordance with 49 C.F.R. Part 1520, and that the Coast Guard and the Department of Homeland Security may have specific requirements with respect to access to such SSI that make a protective order insufficient.

2. BP objects to the balance of the subpoena to the extent it would require the production of documents unrelated to those describing the portion of the Crown Landing Facility

that extends below the mean-low water line on the New Jersey side of the Delaware River. Such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

3. BP objects to producing documents requested in the subpoena that are protected from disclosure by the attorney-client privilege, work-product doctrine, common interest rule, and/or any other applicable privilege. Based on discussions with counsel for Delaware, BP understands that Delaware is not requesting BP to produce a privilege log with respect to documents protected by the attorney-client privilege or work-product doctrine unless such documents passed between BP and New Jersey. To the extent that such documents are also the subject of (i) a relevance objection by BP or (ii) New Jersey's pending motion to limit discovery, BP objects to the burden of having to produce a privilege log with respect to such documents until a reasonable time following the Court's ruling (or agreement between BP and the parties), that the subject matters in question are proper for discovery.

4. BP objects to the "Definitions" contained in the subpoena to the extent that they impose or attempt to impose undue burdens that are not permitted under Fed. R. Civ. P. 45. For instance, but not by way of any limitation, BP objects to: producing multiple, identical copies of the same document (Def. A); the unnatural grammatical instructions in Definitions C-E; and Definitions B, K, and N, to the extent they would purport to reach documents with respect to which the subpoenaed BP entities have no possession, custody or control.

5. The document requests contained in the subpoenas cover a vast quantity of records. Consistent with the discovery obligations in Fed. R. Civ. P. 26(g)(2), BP is conducting a reasonable inquiry in searching for responsive documents. As of the date of this response, it has not yet been able to fully compile such records and counsel for BP has not yet had an

opportunity to review such records for privilege in the 14 days permitted for an objection under Rule 45. Accordingly, BP reserves the right to supplement these objections as categories of records are identified that may be responsive to the subpoenas.

SPECIFIC RESPONSES

1. All Documents referring, reflecting, or relating to the Declaration of Lauren B. Segal, Vice President of Crown Landing LLC, dated June 27, 2005 ("Segal Declaration"), which New Jersey attached to its initial filing of July 28, 2005 in *New Jersey v. Delaware*, including but not limited to drafts of the declaration and memoranda, correspondence, and communications, whether internal to BP, between BP and a Third Party, or between BP and New Jersey, and whether they occurred before or after *New Jersey v. Delaware* was filed.

RESPONSE:

In addition to its general objections, BP objects to this Request because drafts of the Declaration of Lauren Segal are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, because the declaration was prepared with advice of counsel in connection with this litigation, the drafts are protected from disclosure by the attorney-client privilege and work-product doctrine. Communications between BP and New Jersey about the declaration were conducted through counsel for BP and New Jersey, respectively, and are likewise protected by the attorney-client privilege, work-product doctrine and common interest rule.

2. All Documents referring, reflecting, or relating to *New Jersey v. Delaware*, the 1905 Compact, the proposed Crown Landing Facility, any other proposed BP LNG Facility to be located in any way in Delaware Territory, including but not limited to any and all legal briefs, drafts, memoranda, other declarations, affidavits, correspondence, and communications whether internal to BP, between BP and a Third Party, or between BP and New Jersey, and whether they occurred before or after *New Jersey v. Delaware* was filed.

RESPONSE:

Subject to its general objections:

(a) BP will produce non-privileged documents describing the portion of the Crown Landing Facility extending below the mean-low water line on the New Jersey side of the Delaware River pursuant to an appropriate protective order as described above;

(b) BP objects to producing documents relating to the portion of the Crown Landing Facility located entirely within New Jersey, above the mean-low water line on the New Jersey side of the River. Such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, this request would impose an undue burden on BP;

(c) To the best of BP's knowledge, there is no "other proposed BP LNG Facility to be located in any way in Delaware Territory," so BP is unaware of any documents responsive to that part of the request;

(d) BP objects to producing documents "referring, reflecting or relating to *New Jersey v. Delaware* [or] the 1905 Compact . . . ." Such documents are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule. In addition, although counsel for BP has collected certain primary and secondary source documents concerning *New Jersey v. Delaware* and the 1905 Compact, such documents were selected or culled solely from public sources available equally to counsel for the State of Delaware. The selection of particular documents to be collected reflects counsel's thought-processes and judgment as to which documents are significant or important, and therefore is protected by the attorney work product doctrine.

3. All Documents referring, reflecting, or relating to the nature and amount of dredging of submerged lands of the Delaware River, all facilities used to transfer liquefied natural gas from ship to shore, and any activity that would occur on, in, over, or under Delaware Territory if the proposed Crown Landing Facility were permitted and/or constructed, including but not limited to the assertions made in paragraph 4 of the Segal Declaration.

RESPONSE:

Subject to its general objections, BP will produce non-privileged documents describing the portion of the Crown Landing Facility extending below the mean-low water line on the New Jersey side of the Delaware River pursuant to an appropriate protective order as described above.

4. All Documents referring, reflecting, or relating to the following statement in paragraph 20 of the Segal Declaration, including but not limited to any communications and correspondence with New Jersey preceding the events described herein: "Officials of the State of New Jersey have recently informed BP that New Jersey objects to the efforts of the State of Delaware to apply its permitting requirements to th[e] [Crown Landing] Project."

RESPONSE:

Subject to its general objections, BP will produce the documents identified below, in which New Jersey State officials made clear in 2005 that Delaware lacked jurisdiction over the portion of the Crown Landing Facility extending below the low-water line on the New Jersey side of the Delaware River:

- Letter of April 11, 2005, from Paul T. Fader to Joseph Schoell at 2-3 ("It is evident that Delaware does not have jurisdiction over the construction of the pier or any other part of this project . . . . Please review the New Jersey - Delaware Compact of 1905, and particularly Article VII, under which New Jersey clearly has the right to exercise riparian jurisdiction over the proposed Crown Landing Facility . . . . I would hope that in view of these rights . . . Delaware would acknowledge New Jersey's proper jurisdiction. If not, New Jersey will be forced to take all appropriate action to enforce its rights.");

- N.J. A. Res. 260 (adopted May 2, 2005) (urging "the Governor of the State of Delaware and the Delaware General Assembly to amend the Delaware Coastal Zone Act to conform it to the Compact of 1905 between New Jersey and Delaware . . . to make clear that the Delaware Coastal Zone Act does not apply to facilities over which New Jersey retains riparian jurisdiction pursuant to Article VII of the Compact.");

- Letter of May 24, 2005 from Joseph J. Seebode to David Blaha at 2-3 ("As State officials have made clear, and as recognized in a May 13, 2005 letter from Gregory S. Roden, Esq., Senior Attorney for BP America, Inc., to David Risilia of ODST, although a portion of the pier is proposed to be in Delaware, construction of the entire pier, and any associated dredging, is subject to New Jersey's exclusive review and permitting authority, and not that of Delaware. This is the

case because the Compact of 1905 between New Jersey and Delaware, which was approved by the Legislatures of both States and by the United States Congress, gives New Jersey exclusive riparian jurisdiction of every kind and nature on its side of the Delaware River.");

- Letter of May 25, 2005 from Kenneth C. Koschek to Magalie R. Salas at 1 (confirming "that New Jersey, and not Delaware, has exclusive State regulatory authority over the plant, and the associated pier and dredging. This authority is reflected in the 1905 Compact between Delaware and New Jersey, which was approved by Congress in 1907.");

- Letter of June 13, 2005 from Suzanne U. Dietrick to Magalie R. Salas ("As explained in our letter to BP representatives of May 24, 2005, which was forwarded to you on May 25, 2005, the 1905 Compact between New Jersey and Delaware recognizes that New Jersey has exclusive riparian jurisdiction, of every kind and nature, on its side of the Delaware River.")

BP further states that communications took place between BP and New Jersey concerning New Jersey's objections to Delaware's asserted authority over the Project and New Jersey's plans to vindicate the rights of the State of New Jersey under the Compact of 1905. These communications are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule, and BP objects to producing them. BP shares a common legal interest with New Jersey in the outcome of this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation.

5. All Documents referring, reflecting, or relating to the following statement in paragraph 21 of the Segal Declaration, including but not limited to any communications and correspondence with New Jersey concerning or informing BP's "understanding" of the "action" that 'New Jersey would undertake": "Crown Landing further advised FERC that it was its understanding that New Jersey would undertake whatever appropriate action is necessary to confirm that Delaware lacks the authority to require any Delaware permits for the [Crown Landing] Project."

RESPONSE:

Subject to its general objections, BP is producing the documents identified below:

- Crown Landing, LLC, New Jersey Waterfront Development Permit Response to Deficiency Letter, FERC Docket CP04-411-000 (filed May 26, 2005) (Letter of May 11, 2005 from Greg Roden to David Risilia at 2 ("As has been recently reiterated by various New Jersey officials, activities taking place in connection with the Crown Landing Import Terminal, whether outshore or landward of the MLWL are under the regulatory jurisdiction of the State of New Jersey by virtue of the Compact of 1905.")); and

- Crown Landing Response to FERC May 16, 2005, Additional Information Request at 3, FERC Docket CP04-411-000 (filed May 26, 2005) ("Crown Landing understands that New Jersey will undertake whatever appropriate action is necessary to confirm that Delaware lacks the authority to require any Delaware permit for this project.").

Crown Landing submitted these filings in reliance upon New Jersey's official position with respect to the Compact of 1905 discussed in response to Request No. 4. Communications also took place between BP and New Jersey concerning New Jersey's objections to Delaware's asserted authority over the Project and New Jersey's plans to vindicate the rights of the State of New Jersey under the Compact of 1905. These communications are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule, and BP objects to producing them. BP shares a common legal interest with New Jersey in the outcome of this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation.

6. All Documents referring, reflecting, or relating to any discussions or communications to or from New Jersey or any Third Party relating to New Jersey's regulatory authority and/or jurisdiction over the proposed Crown Landing Facility.

RESPONSE:

In addition to its general objections:

(a) BP objects to this Request on the ground that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence;

(b) BP will produce non-privileged documents describing the portion of the Crown Landing Facility extending below the mean-low water line on the New Jersey side of the Delaware River pursuant to an appropriate protective order as described above;

(c) BP objects to producing documents relating to the portion of the Crown Landing Facility located entirely within New Jersey, above the mean-low water line on the New Jersey side of the River. Such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, this request would impose an undue burden on BP;

(d) BP objects to producing documents reflecting communications between BP and New Jersey concerning New Jersey's objections to Delaware's asserted authority over the Project and New Jersey's plans to vindicate the rights of the State of New Jersey under the Compact of 1905. These communications are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule. BP shares a common legal interest with New Jersey in the outcome of this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation.

7. All Documents referring, reflecting, or relating to any discussions or communications, including but not limited to those to or from New Jersey or any Third Party, relating to the proposed Crown Landing Facility, any other proposed BP LNG Facility to be located in any way in Delaware Territory, Delaware's regulatory authority over such projects (including via Delaware's Coastal Zone Act), and/or New Jersey's regulatory authority over such projects.

RESPONSE:

Subject to its general objections:

(a) BP will produce non-privileged documents describing the portion of the Crown Landing Facility extending below the mean-low water line on the New Jersey side of the Delaware River pursuant to an appropriate protective order as described above;

(b) BP objects to producing documents relating to the portion of the Crown Landing Facility located entirely within New Jersey, above the mean-low water line on the New Jersey side of the River. Such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, this request would impose an undue burden on BP;

(c) To the best of BP's knowledge, there is no "other proposed BP LNG Facility to be located in any way in Delaware Territory," so BP is unaware of any documents responsive to that part of the request.

8. All Documents referring, reflecting, or relating to any discussions or communications, including but not limited to those to or from New Jersey or any Third Party, relating to *New Jersey v. Delaware, Virginia v. Maryland*, or the 1905 Compact, including but not limited to Documents referring, reflecting, or relating to the following statement in paragraph 23 of the Segal Declaration, "Crown Landing is not, and has never been, a party to any proceeding in which it has attempted to obtain a ruling concerning New Jersey's rights under the Compact of 1905."

RESPONSE:

Subject to its general objections:

(a) BP objects to producing documents regarding communications with New Jersey concerning "*New Jersey v. Delaware, Virginia v. Maryland,* or the 1905 Compact." These communications are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule. BP shares a common legal interest with New Jersey in the outcome of this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation;

(b) BP objects to producing documents concerning *Virginia v. Maryland.* The undersigned served as Special Counsel for the Commonwealth of Virginia in that litigation. As written, this request would cover most if not all of counsel's files concerning that case. The request is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and would require production of documents protected by the attorney-client and work-product privileges belonging to counsel's other clients. Based on discussions with counsel for Delaware, BP understands that Delaware is limiting this portion of the request to documents from *Virginia v. Maryland* that were provided to New Jersey and communications with New Jersey about that litigation. Even as so limited, the request seeks materials that are protected from disclosure by the work product doctrine and common interest rule. The selection of particular documents from that litigation to share with New Jersey reflects counsel's thought-processes and judgment as to which documents are significant or important, and therefore is protected by the attorney work product doctrine. Please see part (a) above;

(c) With respect to the last three lines of the request, BP has not been a party to date in any legal proceeding in which it has attempted to obtain a ruling concerning New Jersey's rights under the Compact of 1905. In its December 7, 2004, memorandum to Delaware Secretary John A. Hughes, Crown Landing stated:

> The following is a discussion of the applicability of Delaware's Coastal Zone Act ("CZA") to that portion of the Docking Facility within the State of Delaware, and thus inside the "coastal zone" as defined in the CZA. This memorandum does not address, and is not intended to address, the impact of the New Jersey – Delaware Interstate Compact of 1905, nor is this memorandum intended to address the effect of § 3 of the Natural Gas Act of 1938. Accordingly, this memorandum does not reach the issue of the legal capacity of the State of Delaware to regulate the Crown Landing facility under the CZA.[3]
>
> . . .
>
> n.3 Accordingly, Crown Landing and BP reserve any and all rights with respect to the relative ability of the State of Delaware to regulate within the riparian jurisdiction granted under the Compact to the state of New Jersey, or to assert jurisdiction over activities which are the exclusive regulatory province of the Federal Energy Regulatory Commission.

(Footnote omitted). However, BP anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation.

9. All Documents referring, reflecting, or relating to all historical or archival research, legal research, or expert research performed by BP, its attorneys, or agents pertaining to *New Jersey v. Delaware*, the 1905 Compact, and Delaware's or New Jersey's jurisdiction over the proposed Crown Landing Facility, including but not limited to any such discussions, memoranda, or communications between BP and New Jersey.

RESPONSE:

In addition to its general objections, BP objects to this request because the documents sought are protected from disclosure by the attorney-client privilege, work-product doctrine, and

common interest rule. In addition, although counsel for BP has collected certain primary and secondary source documents concerning *New Jersey v. Delaware*, 1905 Compact, and Delaware and New Jersey's respective sovereignty and jurisdiction in the Delaware River, such documents were obtained solely from public sources available equally to counsel for the State of Delaware. The selection of particular documents to be collected reflects counsel's thought-processes and judgment as to which documents are significant or important, and therefore is protected by the attorney work product doctrine.

10. All Documents referring, reflecting, or relating to any discussions or communications with New Jersey or any Third Party regarding the public trust doctrine, riparian rights, the riparian privilege, or riparian jurisdiction.

RESPONSE:

In addition to its general objections, BP objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. BP also objects because the documents sought are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule. BP shares a common legal interest with New Jersey in the outcome of this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation.

11. All Documents referring, reflecting, or relating to any agreements or contracts (formal or informal) with New Jersey relating to the proposed Crown Landing Facility or *New Jersey v. Delaware*, and any actual, promised, or proposed payments associated with either.

RESPONSE:

Subject to its general objections, BP states:

(a) As to the Crown Landing Facility, neither Crown Landing nor any BP affiliate has any agreement or contract with New Jersey. This Request does not cover proposed agreements or contracts. Nonetheless, Crown Landing discloses that it engaged in preliminary discussions with New Jersey about the possibility of New Jersey owning the pier and leasing it to Crown Landing. Those discussions did not culminate in any agreement or contract. To the extent Delaware intended this Request to cover documents relating to such discussions, BP objects to producing them on the ground that they are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

(b) As to *New Jersey v. Delaware*, BP has no formal agreement with New Jersey. BP does have a common legal interest with New Jersey concerning the issues in this litigation. Should New Jersey prevail, the Crown Landing Facility will not require the Delaware permits that have been withheld by the State of Delaware. BP also anticipates being a party to future litigation with the State of Delaware (potentially prior to the resolution of this litigation) in which BP will assert that Delaware lacks jurisdiction over the Crown Landing Facility under the Compact of 1905, an issue to be decided in this litigation. BP has been acting in accordance with the reasonable expectation that privileged communications relating to the common legal interest will remain confidential. No BP affiliate has proposed or promised any payment whatsoever to New Jersey in connection with this common interest. BP objects to producing documents in connection with its common interest with New Jersey. Such documents are protected from disclosure by the attorney-client privilege, work-product doctrine, and common interest rule.

Respectfully submitted,

BP AMERICA INC.
BP CORPORATION NORTH AMERICA INC.
BP COMPANY NORTH AMERICA INC.
BP AMERICA PRODUCTION COMPANY
BP ENERGY COMPANY
CROWN LANDING LLC

By: _____
Counsel

Stuart A. Raphael
Jill M. Dennis
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102
(703) 714-7463
(703) 714-7410 (fax)
sraphael@hunton.com

Counsel for BP America Inc., BP Corporation North America Inc., BP Company North America Inc., BP America Production Company, BP Energy Company, and Crown Landing LLC

CERTIFICATE OF SERVICE

I certify that on March 21, 2006, the foregoing Response To Rule 45 Subpoenas Served on BP America Inc. and Affiliates was served by electronic mail, and two copies by U.S. Mail, to the offices of:

Counsel for the State of Delaware:

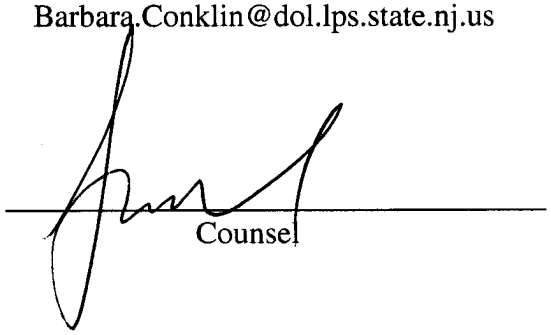
David C. Frederick
KELLOGG HUBER HANSEN TODD
EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036
dfrederick@khhte.com

Counsel for the State of New Jersey:

Rachel J. Horowitz
Deputy Attorney General
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 112
Trenton, N.J. 08625
Rachel.Horowitzr@dol.lps.state.nj.us

Collins J. Seitz, Jr.
Max B. Walton
CONNOLLY BOVE LODGE HUTZ LLP
1007 North Orange Street, 9th Floor
P.O. Box 2207
Wilmington, DE 19889
cseitz@cblh.com
mwalton@cblh.com

Barbara Conklin
Deputy Attorney General
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 112
Trenton, N.J. 08625
Barbara.Conklin@dol.lps.state.nj.us



Counsel

EXHIBIT C

HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
1751 PINNACLE DRIVE
SUITE 1700
MCLEAN, VIRGINIA 22102

TEL 703 • 714 • 7400
FAX 703 • 714 • 7410

STUART A. RAPHAEL
DIRECT DIAL: 703-714-7463
EMAIL: sraphael@hunton.com

FILE NO: 66524.000002

April 21, 2006

BY EMAIL AND OVERNIGHT DELIVERY

Collins J. Seitz, Jr.,
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899

Re: *New Jersey v. Delaware*, No. 134, Orig.
BP Response to Subpoenas

Dear CJ:

Thank you for your cordial letter of April 17, 2006. I am writing to correct a handful of misunderstandings and to identify the remaining areas of disagreement. For sake of clarity, I will track your numbered points.

1. FERC-Related Documents.

Your statements are generally accurate except I want to make clear that we have produced only those FERC-filings that contain information about the pier, the berth, or dredging and related activities in the Delaware River. (For ease of reference, I will refer to this as the "in the River" information). We have not included every document filed with FERC concerning the Crown Landing Project although, for the sake of context, we generally produced the entire filing if a portion of it contained such "in the River" information. (As a practical matter, this meant that you obtained substantially more information about the Project than we think is relevant to this litigation.) We have also not produced drafts of FERC filings or communications internal to BP and its consultants or counsel relating to those filings; your statement about our agreement on that subject is accurate.

BP recently completed a second sweep of its FERC filings with a view to confirming that responsive, "in the River" materials are produced. I am enclosing under this cover letter a CD containing documents BP-SCT-134-0004079 through -5481, which includes the records

identified during that review. Please note that a number of these documents contain "Privileged--Do Not Release" and "CEII--Do Not Release" designations pursuant to CMO 4.

2. New Jersey Permitting Documents.

You are correct that we have agreed to produce permit applications and filings with New Jersey agencies relating to the Crown Landing project, reserving our objection that such documents are not relevant to this litigation. I recently learned from Ms. Horowitz, however, that you may have already obtained the New Jersey state filings from your informal discovery of New Jersey. If that is correct, do you still require those filings from BP? As with the FERC-filings, we are not producing drafts of the New Jersey filings or communications internal to BP and its consultants or counsel relating to those filings.

3. Any Crown Landing project changes resulting from possible New Jersey ownership.

As we have advised you, the referenced discussions between New Jersey and BP about the possibility of New Jersey owning the pier did not result in any such agreement. We also continue to object on relevance grounds to this particular line of discovery. In any case, my client advises that there were no design changes to the Project in connection with these discussions, so there are no documents responsive to this request.

4. Communications Between BP and Its Counsel.

We are in agreement that we will not be required to log privileged communications (work product or attorney-client communications) between BP and its counsel. In addition to Hunton & Williams LLP and Parkowski, Guerke & Swayze, P.A., other counsel for BP in connection with the Crown Landing Project are:

Reed Smith LLP
136 Main Street, Suite 250
Princeton Forrestal Village,
Princeton, NJ 08540

Jones Day
717 Texas Ave., Ste 3300
Houston, TX 77002

Archer & Greiner
One Centennial Square
33 East Euclid Avenue
Haddonfield, NJ 08033

DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis & Lehrer, P.C.
15 Mountain Blvd.
Warren, NJ 07059

5. Communications between BP and New Jersey.

This portion of your letter combines two issues: relevance and privilege. I want to unpack them to make sure our position is clear.

With respect to communications between BP and New Jersey about the 1905 Compact, the Crown Landing Project, or this litigation, we have objected to producing those records based on relevance and based on New Jersey's pending motion to limit discovery. (*See* Response to Rule 45 Subpoenas, General Response Nos. 1-2.) The one exception is for Crown Landing's permit applications and filings with New Jersey agencies, which we have agreed to produce (albeit without waiving our relevance objection).

Although we are standing on our relevance objection and New Jersey's motion to limit discovery, in the event these objections are overruled, the independent question of privilege will remain with respect to those BP-New Jersey communications that we contend are privileged and subject to the common interest rule. We think Rule 45(c)(2)(B) would allow us to object to producing a privilege log until the Special Master determines relevance. That is why we said in our Response to Rule 45 Subpoenas that we believed the proper course would be to obtain a ruling from the Special Master first, before being subjected to the burden of compiling a privilege log.

However, in the spirit of cooperation, we proposed as a compromise to log privileged documents through the date of New Jersey's initial court filing, July 27, 2005. You responded that the log should run through the date of the Special Master's appointment, January 23, 2006. We accept your proposal to use this later date.

We are continuing to work on the log and will send it to you next week, hopefully on Monday. We have exercised our best efforts in the time allowed to compile this log and have reviewed the records of those persons most likely to have copies of privileged communications. We are still collecting and reviewing records, however. In the event our continuing review identifies additional privileged records dated on or before 1/23/2006, we will identify them promptly on a supplemental log.

Once you have had a chance to review our log, I assume we will have further meet-and-confer discussions about the common interest issue. You inquired about the legal basis for our common interest argument. Without limiting the authorities on which we may rely, we think the Restatement (Third) of the Law Governing Lawyers §§ 76, 91 (2000) provides an excellent summary of the applicable rules. We also intend to rely on federal common law, among other

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legal sources. If there is clear legal authority which stands for the proposition that the common interest rule would *not* apply to our Compact-related discussions with New Jersey, we would likewise appreciate your letting us know so we can take that into account in our discussions.

In the event we cannot resolve our differences on this issue, we are agreeable to your filing a motion to compel and accompanying brief on May 5, 2006. May I ask that our opposition be due on May 29, rather than May 22? We are agreeable to your reply being due June 12 (extending your time from the June 5 date proposed in your letter).

Best regards,

Stuart A. Raphael

Enclosure: 1 CD (BP-SCT-134-0004079 through -5481)

cc: David C. Frederick, Esq.
Rachel J. Horowitz, Esq. (w/ encl.)
Barbara Conklin, Esq.
Jill Marie Dennis, Esq.

EXHIBIT D

HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
1751 PINNACLE DRIVE
SUITE 1700
MCLEAN, VIRGINIA 22102

TEL 703 • 714 • 7400
FAX 703 • 714 • 7410

STUART A. RAPHAEL
DIRECT DIAL: 703-714-7463
EMAIL: sraphael@hunton.com

FILE NO: 66524.000002

April 25, 2006

BY EMAIL AND U.S. MAIL

Collins J. Seitz, Jr.,
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899

Re: ***New Jersey v. Delaware*, No. 134, Orig.**
Common Interest Privilege Log

Dear CJ:

Pursuant to our agreement to provide the State of Delaware a privilege log with respect to "common interest" communications between the State of New Jersey and BP/Crown Landing through January 23, 2006, please find enclosed the following:

1. Declaration of Stuart A. Raphael; and
2. Declaration of David S. Swayze.

The privilege log is attached as Exhibit A to my declaration. The two declarations support the entries on the log that are covered by the common interest doctrine, which protects confidential, privileged communications between BP and New Jersey in connection with their shared legal interest in confirming New Jersey's exclusive riparian jurisdiction under the 1905 Compact.

Please note that these materials have been designated as "Confidential" pursuant to CMP ¶ 9. *See, e.g.,* Restatement (Third) of Law Governing Lawyers § 59 (2000) (defining "confidential client information" as "information relating to representation of a client, other than information that is generally known").

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Please do not hesitate to call me if you have any questions about this matter.

Best regards,

Stuart A. Raphael

Enclosures

cc (w/encl.): David C. Frederick, Esq.
Rachel J. Horowitz, Esq.
Barbara Conklin, Esq.
Jill Marie Dennis, Esq.

No. 134, Original

In the

Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

Before the Special Master
the Hon. Ralph I. Lancaster, Jr.

DECLARATION OF STUART A. RAPHAEL

I, Stuart A. Raphael, state that the following facts are true to the best of my knowledge, information and belief:

1. I am admitted to the Bar of the United States Supreme Court and am a member in good standing of the District of Columbia Bar and the Virginia State Bar. I am a partner in the law firm of Hunton & Williams LLP, resident in the McLean, Virginia office.

2. I represent BP America Inc. and its affiliates (collectively "BP") in connection with the subpoenas served by the State of Delaware in this matter. Since April 2005, I have also provided legal advice and counsel to BP and its affiliate, Crown Landing LLC ("Crown Landing"), in connection with the attempted exercise of jurisdiction by the State of Delaware over that portion of Crown Landing's proposed LNG facility, to be constructed in Logan Township, New Jersey, that would extend below the mean low water mark on the New Jersey

side of the Delaware River (the "Delaware River Dispute").

3. In late March and early April 2005, prior to my being engaged by BP and Crown Landing, I participated in confidential communications with counsel for New Jersey about the possibility of my representing New Jersey in an original action proceeding against the State of Delaware to vindicate New Jersey's rights to exclusive State riparian jurisdiction on the New Jersey side of the Delaware River pursuant to the Compact of 1905 between Delaware and New Jersey. As part of these confidential communications, New Jersey sought and I provided legal advice on matters related to the Compact of 1905 and the Delaware River Dispute. My law firm and I have experience in interstate riparian rights disputes. I served as special counsel to the Commonwealth of Virginia in the original action *Virginia v. Maryland*, 540 U.S. 56 (2003). Ultimately, however, New Jersey decided not to retain the services of my law firm to represent it in this matter.

4. As described below, BP and Crown Landing have significant common legal interests with New Jersey in establishing New Jersey's exclusive State riparian jurisdiction under the Compact of 1905. When New Jersey decided not to retain me to represent it in this matter, I was retained by BP and Crown Landing to represent them in connection with the Delaware River Dispute. Counsel for New Jersey advised that New Jersey would like to have access to our attorney work product concerning the Compact of 1905 and related issues, and invited assistance that we could provide in connection with New Jersey's pursuit of its legal claims against Delaware.

5. In this proceeding, New Jersey seeks to establish its exclusive State riparian jurisdiction under the Compact of 1905 over improvements appurtenant to the New Jersey side of the Delaware River in the Twelve-Mile Circle. It is also Crown Landing's legal position that

the 1905 Compact grants New Jersey exclusive State riparian jurisdiction over that portion of Crown Landing's proposed unloading pier that would extend below the mean low water mark on the New Jersey side of the Delaware River. Crown Landing specifically reserved its Compact claims when it applied in December 2004 to the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC") for a status determination that the Crown Landing project was authorized under the Delaware Coastal Zone Act. (*See* Declaration of David S. Swayze.) Crown Landing reasonably anticipates being a party to future litigation with the State of Delaware, potentially prior to the resolution of this litigation, in which it will assert that Delaware lacks jurisdiction over the Crown Landing project under the 1905 Compact.

6. Since my engagement as counsel for BP, I have participated in confidential communications with counsel and other personnel in the New Jersey Office of the Attorney General and the Office of the Governor in connection with the common legal interest shared by BP and New Jersey in vindicating New Jersey's exclusive State riparian jurisdiction under the Compact of 1905. As part of these communications, I have shared work product and advice with New Jersey relating to arguments, strategy, and primary and secondary legal sources and authorities that advance our common legal interest.

7. As part of my engagement by BP, my firm also created a secure, password-protected website called "Client Workroom" to organize and make available to BP and to other of BP's attorneys working on this matter the documents, correspondence, filings and attorney work product relevant to the Delaware River Dispute. At the request of counsel for New Jersey, and with the agreement of BP and Crown Landing, my law firm granted access to specific attorneys for New Jersey or their assistants. To the extent that we have shared with New Jersey information supporting New Jersey's position on the Compact of 1905, the documents reflect my

work product, that of other members of my law firm, and that of BP and Crown Landing's other counsel, including our thought-processes and judgment as to which documents and authorities were significant or important to the legal issues surrounding New Jersey's and Crown Landing's rights and interests under the Compact of 1905, and their claims and potential claims against Delaware.

8. I have been aware of the common interest doctrine for many years. I reasonably anticipated at all times that my communications with New Jersey concerning this litigation and the Compact of 1905 -- which were made pursuant to the clear, common legal interest shared by BP and New Jersey -- would remain confidential pursuant to the common interest doctrine and would not be subject to compulsory disclosure in discovery.

9. Attached as Exhibit A is a log identifying privileged, written communications that were made between BP and New Jersey pursuant to the common legal interest described above. The log also identifies the folder structure and categories of information contained in Client Workroom.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 25, 2006

Stuart A. Raphael

Privilege Log: Common Interest Communications
(Through January 23, 2006)

Entry	Date	Type	From	To	CCs	Description	Privilege
1	2/10/2005	e-mail	Swayze, D.	Andersen, W.		Communication from BP counsel to NJ counsel attaching CZICB filing and discussing strategy regarding same and dispute with Delaware over 1905 Compact	WP
2	2/10/2005	e-mail	Andersen, W.	Swayze, D.		Communication from NJ counsel to BP counsel in response to prior e-mail and discussing legal position re New Jersey's riparian rights	WP
3	2/10/2005	e-mail	Swayze, D.	Andersen, W.	Roden, G.	Communication from BP counsel to NJ counsel in response to prior e-mail, discussing strategy regarding dispute with Delaware and noting forthcoming attorney work product regarding 1905 Compact	WP
4	2/16/2005	e-mail	Pascrell, B.	Campbell, B.		Communication from BP representative to NJ official attaching communication from BP counsel with BP's CZICB filing and with counsel's work product regarding 1905 Compact, and inquiring about status of NJ's position on Delaware regulatory proceedings	WP; AC
5	2/16/2005	e-mail	Campbell, B.	Pascrell, B.		Communication from NJ official to BP representative providing his position on various legal issues relating to Delaware regulatory proceedings	WP; AC
6	2/17/2005	e-mail	Pascrell, B.	Campbell, B.		Communication from BP representative to NJ official forwarding communication between BP and its counsel regarding strategy position in relation to dispute with Delaware, Delaware regulatory proceedings and original action against Delaware, and inquiring about NJ position	WP; AC
7	2/17/2005	e-mail	Campbell, B.	Bauer, V.; Fortkiewicz, V.; Pascrell, B.; McCormac,		Communication from NJ official to various NJ officials, counsel to NJ Governor and BP representative commenting on strategy summary provided in prior e-mail relating to Delaware regulatory proceeings and dispute with Delaware	WP; AC
8	2/17/2005	e-mail	Pascrell, B.	Campbell, B.	Bauer, V.; Fortkiewicz, V.; McCormac, J.	Communication from BP representative to NJ official acknowledging prior e-mail (attaching prior e-mail string)	WP; AC
9	2/17/2005	e-mail	Campbell, B.	Bauer, V.; Fortkiewicz, V.; Pascrell, B.; McCormac,		Communication from NJ official to various NJ officials and BP representative re BP's legal position and commenting on NJ's legal position relating to dispute with Delaware (with prior e-mail string)	WP; AC
10	3/24/2005	e-mail	Fortkiewicz, V.	Shute, G.; Pascrell, B.	Fader, P.	Communication from counsel to NJ Governor to BP representatives regarding possible meeting and inquiring of BP regarding communication from Governor Minner in relation to dispute between NJ and Delaware	WP; AC
11	3/29/2005	e-mail	Raphael, S.	Fader, P.		Attorney communication with Counsel to New Jersey Governor transmitting letter discussing possible representation of New Jersey and providing preliminary analysis of legal issues regarding 1905 compact and attaching materials relating to analysis along with Raphael biography and contact information	WP; AC

Entry	Date	Type	From	To	CCs	Description	Privilege
12	4/1/2005	e-mail	Raphael, S.	Hartpence, E.	Fader, P.	Communication from attorney to New Jersey Assistant AG transmitting letter for NJAG Peter Harvey discussing possible representation of New Jersey and/or Crown Landing in litigation with Delaware	WP; AC
13	4/8/2005	e-mail	Burke, G.	Picco, S.		Communication from NJ counsel to BP counsel discussing possible Raphael engagement	WP
14	5/6/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting draft common interest agreement	WP; AC
15	5/9/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel transmitting court filing in selected case with comments (in e-mail) and annotations (to attachment) reflecting mental impressions of BP counsel on issues relating to 1905 Compact	WP
16	5/11/2005	e-mail	Burke, G.	Picco, S.	Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel requesting access to work product of BP counsel prepared in anticipation of dispute with Delaware over 1905 Compact and soliciting recommendations from BP counsel on strategies for litigation	WP
17	5/12/2005	e-mail	Burke, G.	Raphael, S.	Andersen, W.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel requesting access to work product of Raphael prepared in anticipation of dispute with Delaware over 1905 Compact	WP
18	5/12/2005	e-mail	Raphael, S.	Burke, G.	Andersen, W.; Horowitz., R; Picco, S.	Communication from BP counsel to NJ counsel in response to request for access to work product and discussing means for sharing work product relating to dispute with Delaware over 1905 Compact	WP
19	5/12/2005	e-mail	Burke, G.	Picco, S.	Raphael, S.; Donlon, A.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel proposing meeting of counsel for NJ and BP	WP
20	5/13/2005	e-mail	Burke, G.	Raphael	Donlon, A.; Renella, J.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel identifying NJ counsel to have access to work product relating to dispute with Delaware over 1905 Compact	WP
21	5/13/2005	e-mail	Raphael, S.	Burke, G.	Donlon, A; Renella, J.; Horowitz, R.; Andersen, W.; Picco, S.	Response of BP counsel to NJ counsel's May 13, 2005 e-mail, discussing work product to be shared and attaching document from prior litigation reflecting counsel's mental impression of its relevance to dispute with Delaware over 1905 Compact	WP
22	5/16/2005	e-mail	Burke, G.	Raphael, S.; Picco, S;	Rennella, J.; Stanley, L.; Horowitz, R.	Communication from NJ counsel to BP counsel requesting additional meeting with counsel	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
23	5/16/2005	e-mail	Picco, S.	Burke, G.; Raphael, S.	Renella, J.; Stanley, L.; Horowitz, R.	Communication from BP counsel to NJ counsel responding to 5/16/05 e-mail requesting additional meeting with counsel (with prior email string)	WP
24	5/16/2005	e-mail	Raphael, S.	Picco, S.; Burke, G.	Renella, J.; Stanley, L.; Horowitz, R.	Communication from BP counsel to NJ counsel responding to 5/16/05 e-mail requesting additional meeting with counsel (with prior email string)	WP
25	5/16/2006	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel regarding meeting among counsel (with prior 5/16/05 e-mail string)	WP
26	5/17/2005	e-mail	Raphael, S.	Burke, G.	Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel transmitting FERC data request and providing mental impressions of relevance of same to dispute with Delaware over 1905 Compact	WP; AC
27	5/18/2005	e-mail	Raphael, S.	Burke, G.	Roden, G.; Pascrell, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting BP counsel's work product regarding portions of FERC data request that implicate NJ's regulatory rights under 1905 Compact	WP
28	5/24/2005	e-mail	Raphael, S.	Andersen, W.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product on 1905 Compact issues and discussing possible work product/litigation strategy	WP
29	5/25/2005	e-mail	Renella, J.	Raphael, S.; Burke, G.	Picco, S.	Communication from NJ counsel to BP counsel requesting copies of filings in case cited in e-mail; discussing strategy for better access to BP counsel's work product relating to dispute with Delaware over 1905 compact; and inquiring about status of BP declaration	WP
30	5/25/2005	e-mail	Raphael, S.	Renella, J.	Picco, S.: Burke, G.;	Communication from BP counsel to NJ counsel responding to previous e-mail inquiry	WP
31	5/25/2005	e-mail	Raphael, S.	Andersen, W.; Chudzik, H.; Goldman, J.; Jabolonski, D.; Renella, J.; Weyl, L.; Donlon, A.; Horowitz, R.; Kelly, E.; Weeks, B.	Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel discussing strategy for sharing/accessing work product relating to dispute with Delaware over 1905 Compact	WP
32	5/25/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel transmitting BP counsel work product on issue relating to 1905 Compact and strategy for use in dispute with Delaware	WP
33	5/25/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel regarding work product transmitted by BP counsel in prior e-mail	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
34	5/25/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel in response to prior e-mail and discussing work product and further litigation strategy	WP
35	5/25/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel regarding NJ counsel's creation of possible submission in litigation with Delaware over 1905 Compact and soliciting additional information for same	WP
36	5/25/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel in response to last e-mail regarding creation of work product and discussing potential litigation strategy regarding same	WP
37	5/29/2005	e-mail	Raphael, S.	Burke, G.; Andersen, W.	Picco, S.	Communication from BP counsel to NJ counsel transmitting two documents representing attorney work product and discussing potental significance in dispute with Delaware over 1905 Compact	WP
38	6/1/2005	e-mail	Raphael, S.	Burke, G.; Andersen, W.; Renella, J.; Horowitz, R.	Picco, S.	Communication from BP counsel to NJ counsel attaching attorney work product on 1905 Compact for possible court submission and discussing possible litigation strategy	WP
39	6/2/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Horowitz, R.; Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel attaching work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission regarding dispute with Delaware over 1905 Compact and proposing conference call to discuss	WP; AC
40	6/3/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel forwarding 6/2/2005 e-mail exchange among NJ personnel regarding litigation with Delaware and project issues agenda, and requesting telephone call from BP counsel	WP; AC
41	6/3/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor regarding discussions with NJAG's office and regarding access to litigation work product relating to dispute with Delaware over 1905 Compact, and providing contact information	WP
42	6/6/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel regarding mechanism for providing access to work product relating to dispute with Delaware over 1905 Compact, and discussing rescheduling of meeting	WP; AC
43	6/6/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor responding to 6/6/05 e-mail regarding scheduling meeting regarding dispute with Delaware (with prior email string)	WP; AC
44	6/7/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel responding to 6/6/05 e-mail regarding scheduling meeting regarding dispute with Delaware (with prior email string)	WP; AC
45	6/7/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor responding to 6/6/05 e-mail regarding scheduling meeting and responding to counsel's voice mail message (with prior email string)	WP; AC

Entry	Date	Type	From	To	CCs	Description	Privilege
46	6/7/2005	e-mail	Andersen, W.	Raphael, S.	Horowitz, R.	Communication from NJ counsel to BP counsel forwarding document assembled by counsel for purposes of litigation with Delaware and requesting assistance in preparing document to accompany original action filing	WP
47	6/10/2005	e-mail	Raphael, S.	Andersen, W.; Burke, G.; Horowitz, R.; Renella, J	Belin, D.; Picco, S.	Communication from BP counsel to NJ counsel transmitting documents prepared by BP consultant D. Belin for possible use in original action litigation against Delaware	WP
48	6/10/2005	e-mail	Raphael, S.	Raphael, S.; Andersen, W.; Burke, G.; Horowitz, R.; Renella, J.	Belin, D.; Picco, S.	Communication from BP counsel to NJ counsel transmitting revised version of previous document	WP
49	6/13/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Horowitz, R.; Andersen, W.; Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission regarding dispute with Delaware over 1905 Compact and relating to other possible court submissions in litigation with Delaware	AC; WP
50	6/14/2005	e-mail	Pascrell, B.	Burzichelli, J.		Communication from BP representative to NJ legislator discussing legislation and common legal interest in dispute with Delaware over 1905 Compact	WP; AC
51	6/14/2005	e-mail	Burzichelli, J.	Pascrell, B.		Communication from NJ legislator to BP representative acknowledging prior e-mail and seeking further information (attaching prior e-mail)	WP; AC
52	6/14/2005	e-mail	Pascrell, B.	Burzichelli, J.	Crowther, L.; Arbaugh, S.	Communication from BP representative to NJ legislator responding to prior e-mail and confirming forthcoming information on strategy for dispute with Delaware over 1905 Compact	WP; AC
53	6/14/2005	e-mail	Pascrell, B.	Crowther, L.	Burzichelli, J.; Arbaugh, S.	Communication from BP representative to NJ legislator transmitting attorney work product relating to proposed legislation and strategy regarding dispute with Delaware over 1905 Compact	WP; AC
54	6/15/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel transmitting document of possible interest regarding dispute with Delaware	WP
55	6/15/2005	e-mail	Raphael, S.	Fader, P.; Fortkiewicz,V. ; Burke, G.		Communication from BP counsel to NJ counsel and counsel to NJ Governor regarding BP's position on certain legislation relation to compact dispute and attaching same (with 6/14/2005 cover transmittal letter from J. Burzichelli to B. Coleman)	WP; AC

Entry	Date	Type	From	To	CCs	Description	Privilege
56	6/16/2005	e-mail	Burke, G.	Raphael, S.	Renella, J.; Horowitz, R; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product relating to NJ declarations for court submission regarding dispute with Delaware over 1905 Compact; soliciting input on same; and discussing NJ counsel's forthcoming input on BP counsel's work product relating to BP declaration for court submission regarding dispute with Delaware over 1905 Compact	WP; AC
57	6/16/2005	e-mail	Donlon, A.	Raphael, S.	Burke, G.; Picco, S.	Communication from NJ counsel to BP counsel transmitting a selection of documents that reflects counsel's mental impressions of relevance to dispute with Delaware over 1905 Compact	WP
58	6/16/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel responding to 6/16/2005 e-mail (with prior email string)	WP
59	6/16/2005	e-mail	Donlon, A.	Raphael, S.		Communication from NJ counsel to BP counsel responding to prior (6/16/2005) e-mail (with prior email string)	WP
60	6/16/2005	e-mail	Horowitz, R.	Raphael, S.		Communication from NJ counsel to BP counsel confirming receipt of work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission regarding dispute with Delaware over 1905 Compact and relating to other possible court submissions in litigation with Delaware (with prior email string)	WP
61	6/16/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product for possible court submission in dispute with Delaware over 1905 Compact	WP
62	6/16/2005	fax	Donlon, A.	Raphael, S.		Communication from NJ counsel to BP counsel transmitting a selection of documents that reflects attorney work product and mental impressions of potential relevance to dispute with Delaware over 1905 Compact	WP
63	6/16/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of BP counsel's work product relating to court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
64	6/16/2005	e-mail	Raphael, S.	Andersen, W.; Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel providing input on NJ counsel's work product relating to NJ declaration for court submission in dispute with Delaware over 1905 Compact	WP
65	6/16/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel noting internal review of BP counsel's work product relating to court submission in dispute with Delaware and confirming forthcoming comments on same	WP
66	6/16/2005	e-mail	Andersen, W.	Raphael, S.		Communcation from NJ counsel to BP counsel requesting input on court submission in dispute with Delaware over 1905 Compact	WP
67	6/16/2005	e-mail	Raphael, S.	Andersen, W.	Burke, G.	Communication from BP counsel to NJ counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact	WP
68	6/16/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel confirming receipt of BP counsel's work product relating to court submission in dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
69	6/17/2005	e-mail	Raphael, S.	Burke, G.; Donlon, A; Andersen, W.	Picco, S.	Communication from BP counsel to NJ counsel providing mental impressions of significance of selection of documents transmitted by BP counsel on 6/16/2005	WP
70	6/17/2005	e-mail	Raphael, S.	Fader, P.		Communication from BP counsel to counsel to NJ Governor transmitting, as requested, BP counsel's work product relating to court submission in dispute with Delaware over 1905 Compact	WP
71	6/17/2005	e-mail	Burke, G.	Raphael	Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel requesting further input on work product relating to court submission in dispute with Delaware over 1905 Compact	WP
72	6/17/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel transmitting requested input on work product relating to court submission in dispute with Delaware over 1905 Compact and discussing possible strategy for same	WP
73	6/17/2005	e-mail	Burke, G.	Raphael, S.	Renella, J.; Horowitz, R.	Communication from NJ counsel to BP counsel regarding BP counsel's input on NJ counsel's work product relating to NJ declarations for court submission in dispute with Delaware over 1905 Compact	WP
74	6/17/2005	e-mail	Raphael, S.	Burke, G.	Renella, J; Horowitz, R.; Picco, J.	Communication from BP counsel to NJ counsel providing further input on NJ counsel's work product relating to NJ declarations	WP
75	6/17/2005	e-mail	Raphael, S.	Donlon, A.	Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel providing analysis and mental impressions of signficance of selected documents in relation to dispute with Delaware over 1905 Compact	WP
76	6/17/2005	e-mail	Burke, G.	Raphael, S; Picco, S.		Correspondence from NJ counsel to BP counsel transmitting work product regarding court submission in dispute with Delaware over 1905 compact and discussing next steps	WP
77	6/19/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product for court submission in dispute with Delaware over 1905 Compact	WP
78	6/20/2005	e-mail	Raphael, S.	Burke, G.	Donlon, A.; Renella, J; Andersen, W.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel transmitting selected documents that reflects attorney work product and mental impressions of document's potential relevance to dispute with Delaware over 1905 Compact, and recommending strategy for obtaining additional information relating to dispute	WP
79	6/20/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Renella, J.; Andersen, W.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel responding to receipt of selected document transmitted in prior e-mail and discussing plans to follow-up	WP
80	6/20/2005	e-mail	G. Burke	Raphael, S.; Picco, S.	Horowitz, R.	Communication from NJ counsel to BP counsel transmitting work product relating to BP declaration for court submission in dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
81	6/20/2005	e-mail	Raphael, S.	Burke, G.	Andersen, W.; Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing declaration for court submission in dispute with Delaware over 1905 Compact and discussing counsel's mental impressions regarding strategy for same	WP; AC
82	6/20/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel seeking NJ counsel's work product on court submission in dispute with Delaware over 1905 Compact and offering selected document for possible inclusion with same	WP
83	6/20/2005	e-mail	Donlon, A.	Raphael, S.	Burke,G.; Horowitz, R.	Communication from NJ counsel to BP counsel requesting versions of selected documents for court submission in dispute with Delaware over 1905 Compact, reflecting mental impression of signficance of same (with string of prior e-mails)	WP
84	6/20/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel seeking clarification of request in prior e-mail	WP
85	6/20/2005	e-mail	Donlan, A.	Raphael, S.		Communication from NJ counsel to BP counsel providing clarification requested in prior e-mail	WP
86	6/20/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel acknowledging clarification in last email (with prior email string)	WP
87	6/20/2005	e-mail	Donlon A.	Raphael, S.		Communication from NJ counsel to BP counsel acknowledging last email (with prior email string)	WP
88	6/20/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel transmitting selected documents requested in prior e-mails, discussing additional forthcoming requested documents, and providing attorney mental impressions relating to strategy for court submission of particular documents in dispute with Delaware over 1905 Compact (with prior e-mail string)	WP
89	6/21/2005	e-mail	Fortkiewicz, V.	Raphael		Communication from counsel to NJ Governor to BP counsel forwarding communications (e-mail string) among various NJ counsel about discussions with BP counsel and follow-up inquiry regarding litigation strategy in dispute with Delaware over 1905 Compact, and requesting conference with BP counsel to discuss same	WP; AC
90	6/21/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Picco, S.	Communication from NJ counsel to BP counsel regarding strategy for contents of court submission in dispute with Delaware over 1905 Compact	WP
91	6/21/2005	e-mail	Raphael, S.	Donlon, A.	Horowitz, R.; Andersen, W.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel transmitting selected documents requested in 6/20/2005 e-mails for court submission in dispute with Delaware over 1905 Compact (with prior e-mail string)	WP
92	6/21/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel seeking copies of a selection of documents that reflects attorney's mental impression of significant of same to dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
93	6/21/2005	e-mail	Raphael, S.	Andersen, W.	Belin, D.; Burke, G., Picco, S.	Communication from BP counsel to NJ counsel transmitting work product for possible court submission in dispute with Delaware over 1905 Compact and discussing edits to same	WP
94	6/21/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.; Picco, J.	Communication from BP counsel to NJ counsel providing strategy for possible inclusion with court submission in dispute with Delaware over 1905 compact and transmitting work product relating to same	WP
95	6/21/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel regarding impact of pending legislation on litigation with Delaware over 1905 Compact	WP
96	6/21/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel in response to prior e-mail	WP
97	6/21/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.; Picco, J.	Communication from NJ counsel to BP counsel in response to BP counsel's 6/21/2005 e-mail transmitting work product relation to possible court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
98	6/22/2005	e-mail	Pascrell, B.	Fader, P.	Fortkiewicz, V.; Arbaugh, S.; Burzichelli, J.	Communication from BP representative to counsel to NJ Governor transmitting article regarding dispute between NJ and Delaware and discussing strategy relative to dispute	WP
99	6/22/2005	e-mail	Fortkiewicz, V.	Pascrell, B.		Communication from counsel to NJ Governor to BP representative acknowledging prior e-mail (attaching e-mail string)	WP
100	6/22/2005	e-mail	Burke, G.	Raphael, S.; Picco, S.	Donlon, A.; Horowitz, R.	Communication from NJ counsel to BP counsel transmitting work product relating to NJ affidavits for court submission regarding dispute with Delaware over 1905 Compact and discussing development relating to BP counsel's document research in relation to dispute with Delaware	WP
101	6/22/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel seeking input on work product relating to possible court submission in dispute with Delaware over 1905 Compact	WP
102	6/22/2005	e-mail	Burke, G.	Raphael, S.		Communication from NJ counsel to BP counsel in response to prior e-mail seeking input on work product and confirming forthcoming action on same	WP
103	6/22/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission in dispute with Delaware over 1905 Compact, and commenting on same	WP; AC
104	6/23/2005	e-mail	Pascrell, B.	Burzichelli, J.		Communication from BP representative to NJ legislator transmitting attorney work product and advice relating to legislation and dispute with Delaware over 1905 Compact, and discussing advice	WP; AC

Entry	Date	Type	From	To	CCs	Description	Privilege
105	6/23/2005	e-mail	Burzichelli, J.	Pascrell, W.		Communication from NJ legislator to BP representative acknowledging prior e-mail and discussing same (attaching prior e-mail string)	WP; AC
106	6/23/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact and commenting on/explaining same	WP
107	6/23/2005	e-mail	Picco, S.	Burke, G.		Communication from BP counsel to NJ counsel commenting on work product relating to court submission in dispute with Delaware over 1905 Compact and advising of inquiry of third party relative to Delaware permitting issue	WP
108	6/23/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact	WP
109	6/23/2005	e-mail	Burke, G.	Raphael, S.		Communication from NJ counsel to BP counsel transmitting e-mail among NJ counsel with attached document of possible interest in relation to dispute with Delaware over 1905 Compact and reflecting counsel's mental impressions regarding same	WP
110	6/23/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel providing comments on BP counsel work product relating to Declaration of BP/Crown Landing (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact	WP
111	6/23/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to declaration of BP/Crown Landing (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact, with attachments	WP
112	6/24/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel providing input to work product relating to declaration of BP/Crown Landing (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact	WP
113	6/24/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting revised work product relating to BP/Crown Landing declaration for court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
114	6/24/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Picco, S.; Roden, G.	Communication from NJ counsel to BP counsel acknowledging receipt of revised work product and requesting revisions to related documents (with prior email string)	WP
115	6/24/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Horowitz, R; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	WP
116	6/24/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing declaration (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
117	6/24/2005	e-mail	Kaplen, N.	Raphael, S.		Communication from NJAG's office to BP counsel acknowledging receipt of prior e-mail and attachments (with prior email string)	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
118	6/24/2005	e-mail	Raphael, S.	Kaplen, N.		Communication from BP counsel to NJAG's office acknowledging receipt of prior e-mail and transmitting contact information (with prior email string)	WP
119	6/24/2005	e-mail	Raphael, S.	Burke, G; Donlon, A	Horowitz, R; Picco, S.	Communication from BP counsel to NJ counsel transmitting input to NJ counsel's work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact and providing mental impressions of significance of same to dispute with Delaware	WP
120	6/24/2005	e-mail	Raphael, S.	Burke, G.	Donlon, A; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel providing mental impressions of selected document and potential strategy regarding same for dispute with Delaware over 1905 Compact	WP
121	6/24/2005	e-mail	Raphael, S.	Fortkiewicz, V.	Burke, G.	Communication from BP counsel to counsel to NJ Governor transmitting work product relating to sample statement concerning court filing against Delaware	WP; AC
122	6/24/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel in respose to previous e-mail regarding statement concerning court filing against Delaware and inquiring about NJAG office's actions	WP; AC
123	6/24/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor responding to previous inquiry	WP; AC
124	6/24/2005	e-mail	Raphael, S.	Aseltine, P.	Burke, G.	Communication from BP counsel to NJAG's office transmitting contact information and copy of work product concerning court filing against Delaware, as requested by counsel to NJ Governor	WP; AC
125	6/24/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJAG's office to BP counsel acknowledging receipt of prior email (with prior email string)	WP; AC
126	6/24/2005	e-mail	Raphael, S.	Aseltine, P.		Communication from BP counsel to NJAG's office transmitting information for accessing work product relating to dispute with Delaware over 1905 Compact	WP
127	6/24/2005	e-mail	Raphael, S.	Kaplen, N.; Burke, G.	Donlon, A; Jablonski, D.; Horowitz, R; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting additional work product relating to court submission in dispute with Delaware over 1905 Compact discussing litigation strategy	WP
128	6/24/2005	e-mail	Donlon, A.	Raphael, S.	Burke, G.; Horowitz, R.	Communication from NJ counsel to BP counsel confirming receipt of input on NJ counsel's work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact; providing further input on same; requesting copies of particular documents; and discussing tactical significance of specific documents in relation to court submission	WP
129	6/24/2005	e-mail	Burke, G.	Kaplen, N.; Raphael, S.	Andersen, W.; Donlon, A.; Horowitz, R.; Jablonski, D.	Communication from NJ counsel to NJAG's office and to BP counsel regarding BP counsel's recent input on work product on possible court submission and proposing further revision to same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
130	6/24/2005	e-mail	Raphael, S.	Kaplen, N.; Burke, G	Andersen, W.; Donlon, A.; Horowitz, R.; Jablonski, D.; Picco, S	Communication from BP counsel to NJ counsel providing input on NJ counsel's proposed revision to work product on possible court submission in dispute with Delaware	WP
131	6/24/2005	e-mail	Raphael, S.	Donlon, A.	Burke, G.; Horowitz, R.	Communication from BP counsel to NJ counsel in response to prior e-mail; agreeing to provide selected documents requested and commenting on additional input on work product relating to NJ declaration for court submission in dispute with Delaware over 1905 Compact	WP
132	6/24/2005	e-mail	Raphael, S.	Donlon, A.	Burke, G.; Horowitz, R.	Communication from BP counsel to NJ counsel attaching requested documents	WP
133	6/24/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Jablonski, D.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact	WP
134	6/25/2005	e-mail	Raphael, S.	Burke, G.	Jablonski, D; Horowitz, R.; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting comments and work product relating to court submission in dispute with Delaware over 1905 Compact and discussing litigation and strategy with regard to same	WP
135	6/25/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting input on work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	WP
136	6/25/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of input to work product relating to NJ declaration and soliciting further input on additional work product	WP
137	6/25/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Jablonski, D.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel inquiring of BP counsel's efforts to obtain information of potential relevance to, and possible inclusion in, court submission in dispute with Delaware over 1905 Compact	WP
138	6/27/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Picco, S.	Communication from BP counsel to NJ counsel transmitting copy of selected legislation of potential relevance to court submission in dispute with Delaware over 1905 Compact	WP
139	6/27/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.; Andersen, W.	Communication from NJ counsel to BP counsel requesting usable copy of selected document for inclusion in court submission in dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
140	6/27/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting document requested in last e-mail	WP
141	6/27/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting selected documents for inclusion in court submission in dispute with Delaware over 1905 Compact and commenting on possible revisions to same	WP
142	6/27/2005	e-mail	Burke, G.	Raphael, S.; Donlon, A.	Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of input on work product relating to affidavit	WP
143	6/27/2005	e-mail	Roden, G.	Burke, G.; Raphael, S.	Horowitz, R.; Picco, S.	Communication from BP counsel to BP counsel and NJ counsel transmitting final Declaration of Lauren Segal for court submission regarding dispute with Delaware over 1905 Compact and commenting on forthcoming delivery of original of same	WP
144	6/27/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting final Declaration of Lauren Segal for court submission regarding dispute with Delaware over 1905 Compact, with comments, and with attachments to same	WP
145	6/27/2005	e-mail	Raphael, S.	Burke, G.; Donlon, A.	Horowitz, R; Picco, S.	Communication from BP counsel to NJ counsel transmitting input to work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact and explaining reasons for revision to same	WP
146	6/28/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel inquiring about statement by NJAG's office concerning court filing against Delaware	WP; AC
147	6/28/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor in response to inquiry about statement by NJAG's office concerning court filing against Delaware	WP; AC
148	6/28/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Picco, S.	Communication from BP counsel to NJ counsel transmitting documents requested by NJAG's office for inclusion in court submission in dispute with Delaware over 1905 Compact	WP
149	6/29/2005	e-mail	Aseltine, P.	Heck, K.; Fleming, M.; Darcy, S.; Fortkiewicz, V.; Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.; Dugan, M.	Communication from NJAG's office to BP counsel, counsel to NJ Governor and NJ Governor's office transmitting work product relating to proposed statement by NJAG's office in connection with litigation against Delaware	WP; AC
150	6/29/2005	e-mail	Raphael, S.	Burke, G.; Andersen, W.	Picco, S.; Teichman, M.; Donlon, A.	Communication from BP counsel to NJ counsel transmitting a selection of documents that reflects counsel's mental impressions regarding significance of same to dispute with Delaware over 1905 Compact; commenting on potential use of same; and providing possible strategy for obtaining additional documents relevant to dispute	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
151	6/29/2005	e-mail	Raphael, S.	Aseltine, P.	Fortkiewicz, V.; Kaplen, N.; Burke, G.; Horowitz, N.	Communication from BP counsel to NJAG's office providing input on proposed statement regarding litigation with Delaware and discussing strategies for same	WP
152	6/29/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product for court submission in dispute with Delaware over 1905 Compact and soliciting input on same	WP
153	6/29/2005	e-mail	Raphael, S.	Burke, G.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel acknowledging e-mailed request for input on work product for court submission (attaching prior email string)	WP
154	6/30/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ counsel re statement regarding litigation with Delaware	WP; AC
155	6/30/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel acknowledging receipt of input in prior e-mail (attaching prior email string)	WP; AC
156	6/30/2005	e-mail	Aseltine, P.	Raphael, S.	Burke, G.; Kaplen, N.	Communication from NJAG's office to BP counsel transmitting work product relating to proposed statement regarding litigation with Delaware, commenting on input to same and soliciting comments on same	WP; AC
157	6/30/2005	e-mail	Raphael, S.	Aseltine, P.	Kaplen, N.; Burke, G.; Fortkiewicz, V.	Communication from BP counsel to NJAG's office providing input on work product relating to statement regarding litigation with Delaware	WP; AC
158	6/30/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJAG's office to BP counsel acknowledging prior e-mail (attaching prior email string)	WP; AC
159	6/30/2005	e-mail	Raphael, S.	Burke, G.; Kaplen, N.	Fortkiewicz, V.; Aseltine, P.	Communication from BP counsel to NJ counsel transmitting bill introduced in Delaware legislature, and providing mental impressions regarding bill's significance to litigation over 1905 Compact and court submissions relating to same	WP
160	6/30/2005	e-mail	Raphael, S.	Burke, J.; Horowitz, R.; Donlon, A.	Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel attaching copy of DNREC 6/7/2005 letter to FERC, providing mental impressions of same, and discussing BP and Crown Landing's litigation position in DNREC proceeding	WP
161	6/30/2005	e-mail	Burke, G.	Kaplen, N.; Raphael, S.	Fortkiewicz, V.; Aseltine, P.	Communication from NJ counsel to BP counsel acknowledging receipt of e-mail regrading Delaware legislation (attaching email string)	WP
162	7/5/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel soliciting conference call on particular document at issue in litigation with Delaware over 1905 Compact	WP
163	7/5/2005	e-mail	Burke, G.	Raphael, S.	Kaplen, N.	Communication from NJ counsel to BP counsel in response to prior email, stating availability for call (attaching prior email string)	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
164	7/5/2005	e-mail	Raphael, S.	Kaplen, N.; Burke, G.; Horowitz, R.	Donlon, A.; Andersen, W.; Jablonski, D.; Picco, S.	Communication from BP counsel to NJ counsel discussing litigation strategy regarding possible Delaware position, and attaching related input to work product on court submission on dispute with Delaware over 1905 Compact	WP
165	7/5/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel for NJ Governor, forwarding previous e-mail regarding litigation strategy at request of counsel to NJ Governor	WP
166	7/5/2005	e-mail	Raphael, S.	Fortkiewicz, V.	Burke, G.; Horowitz, R.; Donlon, A.; Picco, S.	Communication from BP counsel to counsel for NJ Governor transmitting work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	
167	7/5/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel acknowledging receipt of prior email regarding litigation strategy and noting forthcoming telephone call (attaching prior email string)	WP
168	7/5/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel forwarding, and seeking input concerning, work product relating to Crown Landing letter to FERC in response to DNREC letter	WP
169	7/5/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Kaplen, N.; Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel advising of delay in conference call previously scheduled to discuss litigation strategy	WP
170	7/5/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel inquiring about issues in case cited in e-mail and seeking counsel impressions regarding same in relation to dispute with Delaware over 1905 Compact	WP
171	7/5/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel in response to e-mail soliciting input on work product relating to Crown Landing letter to FERC	WP
172	7/5/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Fortkiewicz, V.	Communication from BP counsel to NJ counsel responding to inquiry about legal issues in case cited in e-mail in relation to dispute with Delaware over 1905 Compact; attaching attaching relevant excerpts from filings in the case cited in e-mail; and providing attorney's legal analysis of pending issues in dispute with Delaware over 1905 Compact and relation to case cited in e-mail	WP
173	7/5/2005	e-mail	Burke, G.	Raphael, S.	Fortkiewicz, V.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of counsel's input and analysis regarding case cited in prior e-mail	WP
174	7/21/2005	e-mail	Raphael, S.	Fader, P.; Fortkiewicz,V.		Communication from BP counsel to NJ counsel forwarding selected article of possible interest to dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
175	7/21/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Kaplen, N.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel attaching work product for court submission in dispute with Delaware over 1905 Compact and soliciting attorney input and analysis on particular legal issue	WP
176	7/21/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Kaplen, N.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel attaching work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	WP
177	7/26/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJAG's office to BP counsel attaching work product relating to statement regarding litigation with Delaware over 1905 Compact	WP; AC
178	8/10/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Rennella, J.; Picco, S	Communication from BP counsel to NJ counsel providing mental impressions of effect of extension of deadline for Delaware's responsive brief on litigation strategy	WP
179	9/13/2005	e-mail	Kelly, E.	Raphael, S.		Communication from NJ counsel to BP counsel requesting copy of specific document potentially relevant to litigation with Delaware over 1905 Compact	WP
180	9/13/2005	e-mail	Raphael, S.	Kelly, E.		Communication from BP counsel to NJ counsel transmitting copy of selected legislation requested in prior e-mail and commenting on same	WP
181	9/13/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Harville, L.	Communication from BP counsel to NJ counsel attaching work product relating to BP regulatory filings implicating dispute with Delaware over 1905 Compact	WP
182	9/13/2005	e-mail	Burke, G.	Raphael, S.	Harville, L.; Picco, S.	Communication from NJ counsel to BP counsel in response to prior e-mail transmitting work product (with prior e-mail string)	WP
183	9/22/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Renella, J.; Donlon, A.; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel summarizing status of document research work product and actions taken in pursuit of litigation strategy, and attaching selected documents deemed by counsel to be potentially relevant to dispute with Delaware over 1905 Compact	WP
184	9/22/2005	e-mail	Raphael, S.	Andersen, W.	Burke, G.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel attaching, commenting on and inquiring about selected document of potential relevance to dispute with Delaware over 1905 Compact	WP
185	9/22/2005	e-mail	Raphael, S.	Donlon, A.	Andersen, W.; Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel commenting on selected document of potential relevance to dispute with Delaware over 1905 Compact and strategy regarding same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
186	9/22/2205	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Andersen, W.; Donlon, A.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel forwarding e-mail from BP counsel (Teichman, M.) which provided update on, and summary of, document research work product and research strategy, and which attached and provided counsel mental impressions of selected documents of potential relevance to dispute with Delaware over 1905 Compact; e-mail to NJ counsel includes BP counsel's comments on same, reflecting mental impressions regarding strategy and relevance to dispute with Delaware	WP
187	9/22/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Andersen, W.; Donlon, A.; Rennella, J.; Picco, S.	Communication from BP counsel to NJ counsel forwarding e-mail from BP counsel to BP counsel (Teichman, M.) and client transmitting, commenting on, and inquiring about selected document deemed by counsel to be potentially relevant to dispute with Delaware and inquiring of NJ counsel about potential follow-up on same	WP
188	9/23/2005	e-mail	Burke, G.	Raphael, S.	Andersen, W.; Donlon, A.; Rennella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel in response to prior e-mail commenting upon selected document and confirming follow-up	WP
189	9/30/2005	e-mail	Renella, J.	Burke, G.; Horowitz, R.; Raphael, S.	Andersen, W.; Donlon, A.; Picco, S.	Communication from NJ counsel to BP counsel proposing and requesting research strategy relating to documents of potential relevance to dispute with Delaware (attaching prior 9/22/2005 e-mail string from Raphael to Burke and Horowitz)	WP
190	9/30/2005	e-mail	Raphael, S.	Renella, J.; Burke, G.; Horowitz, R.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel responding to and commenting on prior e-mail regarding proposed research strategy in relation to litigation with Delaware over 1905 Compact	WP
191	9/30/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel regarding legal issues attendant to production of documents requested by Delaware	WP
192	10/5/2005	e-mail	Burke, G.,	Picco, S.	Horowitz, R.	Communication from NJ counsel to BP counsel forwarding prior e-mail from Ms. Horowitz, discussing strategy for production of documents requested by Delaware and requesting information from BP regarding same	WP
193	10/7/2005	e-mail	Burke, G.,	Picco, S.	Horowitz, R.	Communication from NJ counsel to BP counsel seeking response to request for information in prior e-mail regarding production of documents requested by Delaware	WP
194	10/9/2005	e-mail	Raphael, S.	Renella, J.; Burke, G.; Horowitz, R.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ Counsel responding to 9/30/2005 e-mail proposing document research strategy relating to litigation with Delaware and discussing results of same (with prior e-mail string)	WP
195	10/12/2005	e-mail	Horowitz, R.	Picco, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel requesting advice on legal issues attendant to production of documents requested by Delaware	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
196	10/13/2005	e-mail	Harville, L.	Horowitz, R.	Burke, G.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel providing advice requested in prior e-mail	WP
197	10/14/2005	e-mail	Burke, G.	Harville, L.	Raphael, S.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel following up to telephone conference regarding legal issues attendant to document production and requesting reply to inquiry	WP
198	10/17/2005	e-mail	Burke, G.	Harville, L.	Horowitz, R.; Renella, J.; Raphael, S.; Picco, S.	Communication from NJ counsel to BP counsel providing strategy for production of documents to Delaware in light of legal advice received (with prior e-mail string)	WP
199	10/17/2005	e-mail	Harville, L.	Burke, G.	Horowitz, R.; Renella, J.; Raphael, S.; Picco, S.	Communication from BP counsel to NJ counsel confirming legal advice attendant to production of documents requested by Delaware and requesting copies of produced documents	WP
200	10/17/2005	e-mail	Burke, G.	Harville, L.	Raphael, S.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel responding to request for copies of documents and commenting on shared understanding regarding same	WP
201	10/17/2005	e-mail	Harville, L.	Burke, G.	Raphael, S.; Renella, J.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel acknowledging prior e-mail (attaching prior e-mail string)	WP
202	10/17/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Andersen, W.	Rennella, J.; Picco, S.	Communication from BP counsel to NJ counsel forwarding and explaining e-mail from BP counsel (Teichman, M.) containing selected documents reflecting attorney work product and discussion of counsel's mental impressions of relevance of same to litigation with Delaware, and providing additional mental impressions on same	WP
203	10/17/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Andersen, W.	Rennella, J.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel forwarding and explaining e-mail from BP counsel (Teichman, M.) containing work product in the form of summary of document research results relating to litigation with Delaware	WP
204	10/18/2005	e-mail	Harville, L.	Burke, G.; Horowitz, R.	Raphael, S.; Picco, S.	Communication from BP counsel to NJ counsel discussing DNREC request for documents and stating BP's intended response regarding specific documents	WP
205	10/18/2005	e-mail	Burke, G.	Harville, L.; Horowitz, R.	Raphael, S.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging prior e-mail (with e-mail string attached)	WP
206	10/18/2005	e-mail	Horowitz, R.	Harville, L.; Burke, G.	Raphael, S.; Picco, S.	Communication from NJ counsel to BP counsel regarding DNREC document request and organization of documents being produced (with prior e-mail string)	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
207	10/20/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Andersen, W.; Donlon, A.; Renella, J.	Picco, S.	Communication from BP counsel to NJ counsel forwarding and explaining e-mail from BP counsel (Teichman, M.) which contains analysis and mental impressions of reference in selected document (identified in 9/22/2005 e-mail from Raphael to Burke) as part of research for litigation with Delaware; BP counsel's e-mail provides additional mental impressions on same and on court filing in case referenced in selected document as related to dispute with Delaware over 1905 Compact (attaching prior e-mail string)	WP
208	10/20/2005	e-mail	Horowitz, R.	Harville, L.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel discussing specific document to be produced to Delaware	WP
209	10/20/2005	e-mail	Harville, L.	Horowitz, R.	Burke, G.; Renella, J.	Communication from BP counsel to NJ counsel in response to prior e-mail and providing information on location and producing document (attaching prior e-mail)	WP
210	10/20/2005	e-mail	Horowitz, R.	Harville, L.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel in response to prior e-mails discussing efforts to locate and produce document (with prior e-mail string)	WP
211	10/20/2005	e-mail	Harville, L.	Horowitz, R.	Burke, G.; Renella, J.	Communication from BP counsel to NJ counsel in response to prior e-mails providing additional information on specific document (with prior e-mail string)	WP
212	10/21/2005	e-mail	Horowitz, R.	Harville, L.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel acknowledging information provided in prior e-mail (with prior e-mail string)	WP
213	10/21/2005	e-mail	Horowitz, R.	Harville, L.		Communication from NJ counsel to BP counsel regarding efforts to locate document discussed in prior e-mails and requesting transmittal of same	WP
214	10/21/2005	e-mail	Harville, L.	Horowitz, R.		Communication from BP counsel to NJ counsel in response to prior e-mail and requesting transmittal information	WP
215	10/21/2005	e-mail	Horowitz, R.	Harville, R.		Communication from NJ counsel to BP counsel providing transmittal information sought in prior e-mail (with prior e-mail string)	WP
216	10/27/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.		Communication from BP counsel to NJ counsel commenting on Delaware court submission in original action and requesting copy of additional court submission	WP
217	10/27/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Renella, J.	Communication from NJ counsel to BP counsel responding to prior e-mail request for copy of court submission (with prior e-mail string)	WP
218	10/30/2005	e-mail	Raphael	Burke, G.; Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.	Picco, S.	Communication from BP counsel to NJ counsel transmitting attached BP counsel work product re Compact of 1905 and dispute with Delaware	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
219	10/31/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.;	Picco, S.	Commication from BP counsel to NJ counsel transmitting attorney work product on court submission in original action against Delaware	WP
220	10/31/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting attorney work product relating to court submission in original action against Delaware and commenting on same	WP
221	11/2/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.	Donlon, A.; Andersen, W.	Communication from BP counsel to NJ counsel regarding documents for court submission in original action against Delaware and attaching and explaining one of the referenced documents	WP
222	11/2/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.	Donlon, A.; Andersen, W.	Communication from BP counsel to NJ counsel attaching another of the documents referenced in prior e-mail for court submission in original action against Delaware	WP
223	11/2/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.	Donlon, A.; Andersen, W.	Communication from BP counsel to NJ counsel attaching additional documents referenced in prior e-mail for court submission in original action against Delaware	WP
224	11/3/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel requesting copy of Delaware court submission and seeking information on same	WP
225	11/3/2005	e-mail	Burke, G.	Horowitz, R.; Raphael, S.	Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel and NJ counsel acknowledging 11/3/2005 e-mail request and requesting action on same by Ms. Horowitz	WP
226	11/3/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Horowitz, R.; Picco, S.	Communication from BP counsel transmitting and commenting upon selected document for possible court submission in original action against Delaware, reflecting counsel's mental impression of relevance of same	WP
227	11/3/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Picco, S.	Communication from BP counsel attaching different format of document transmitted in prior e-mail (attaching prior e-mail)	WP
228	11/4/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel discussing document research; attaching, analyzing, summarizing and providing attorney mental impressions of selected documents; and transmitting attorney work product relating to court submission in original action against Delaware	WP
229	11/4/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renello, J.; Picco, S.	Communication from NJ counsel to BP counsel confirming forthcoming copy of Delaware court submission	WP
230	11/4/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel re-sending prior 11/4/2005 e-mail and attachments due to possible non-receipt of same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
231	11/4/2005	e-mail	Horowitz, R.	Burke, G.; Renella, J.; Raphael, S.	Andersen, W.; Donlon, A.; Picco, S.	Communication from NJ counsel to BP counsel confirming receipt of prior e-mail (with prior e-mail string)	WP
232	11/4/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Renella, J.	Andersen, W.; Donlon, A.; Picco, S.	Communcation from BP counsel to NJ counsel attaching different format of selected documents transmitted in prior e-mail	WP
233	11/4/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel noting estimated time of transmission of work product for court submission in original action against Delaware	WP
234	11/4/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product for court submission in original action against Delaware	WP
235	11/5/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Kaplen, N.; Jablonski, D.; Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel commenting on work product on court submission in original action against Delaware and sharing BP counsel's work product on same	WP
236	11/6/2005	e-mail	Burke, G.	Raphael, S.		Communication from NJ counsel to BP counsel commenting on and inquiring about BP counsel's work product on court submission in original action against Delaware	WP
237	11/7/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Harville, L.	Communication from BP counsel to NJ counsel responding to prior e-mail and explaining reasoning/strategy for particular work product on court submission in original action	WP
238	11/7/2005	e-mail	Jablonski, D.	Raphael, S.	Donlon, A.; Kelly, E.; Burke, G.; Renella, J.; Horowitz, R.;	Communication from NJ counsel to BP counsel transmitting work product on court submission in original action against Delaware	WP
239	11/7/2005	e-mail	Raphael, S.	Jablonski, D.; Burke, G.	Donlon, A.; Kelly, E.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from BP counsel to NJ counsel commenting on work product on court submission in original action against Delaware and transmitting BP counsel's work product on same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
240	11/7/2005	e-mail	Burke, G.	Jablonski, D.; Raphael, S.	Donlon, A.; Kelly, E.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel commenting on BP counsel's work product and intended strategy for same and for court submission in original action against Delaware	WP
241	11/10/2005	e-mail	Raphael, S.	Aseltine, P.		Communication (2 consecutive e-mails) from BP counsel to NJ counsel providing links to Supreme Court website pages and providing attorney mental impression on relevance of same to litigation strategy	WP
242	11/10/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJ counsel to BP counsel acknowledging prior e-mail (with e-mail string attached)	WP
243	11/12/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel transmitting Delaware court submission with comment on production of same	WP
244	11/18/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Picco, S.; Harville, L.	Communication from BP counsel to NJ counsel transmitting DNREC letter to FERC of potential relevance to dispute with Delaware over 1905 Compact and commenting on same	WP
245	11/18/2005	e-mail	Burke, G.	Raphael, S.; Horowitz, R.; Renella, J.	Harville, L.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging prior e-mail (with e-mail string attached)	WP
246	12/2/2005	e-mail	Burke, G.; Raphael, S.	Raphael, S.; Burke, G.	Renella, J.; Horowitz, R.	Communications between and among NJ counsel and BP counsel attempting to schedule conference among counsel	WP
247	2/12, 12/13/200	e-mail	Burke, G.; Raphael, S.	Raphael, S.; Burke, G.	Renella, J.; Horowitz, R.	Communications between NJ counsel and BP counsel requesting and scheduling conference	WP
248	12/15/2005	e-mail	Raphael, S.; Burke, G.	Burke, G.; Raphael, S.	Renella, J.; Horowitz, R.	Communication from BP counsel to NJ counsel regarding time for scheduled conference	WP
249	12/28/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.	Burke, G.	Communication from BP counsel to NJ counsel inquiring about status of Delaware's court submission	WP
250	12/28/2005	e-mail	Horowitz, R.	Stuart, R.; Renella, J.	Burke, G.	Communication from NJ counsel to BP counsel in response to prior e-mail regarding Delaware court submission	WP
251	12/28/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.	Communication from BP counsel to NJ counsel commenting on Delaware court submission and discussing possible strategy in response to same	WP
252	12/29/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel responding to prior e-mail and commenting on possible strategy in response to Delaware court filing	WP
253	12/29/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel in response to prior e-mail and further discussing litigation strategy and requesting conference call for further discussion of same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
254	12/29/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel responding to prior e-mail and request for conference call and commenting on possible litigation strategy	WP
255	1/2/2006	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.; Kaplen, N.	Andersen, W.; Donlon, A.; Jablonski, D.; Kelly, E.	Communication from BP counsel transmitting work product on court submission in original action against Delaware and providing analysis of strategy for filing same	WP
256	1/2/2006	e-mail	Raphael, S.	Fader, P.		Communication from BP counsel to counsel to NJ Governor forwarding prior email to Horowitz, et al. (with attached work product) and commenting on proposed litigation/filing strategy	WP
257	1/3/2006	e-mail	Raphael, S.	Horowitz, R.	Renella, J.; Burke, G.	Communication from BP counsel to NJ counsel transmitting work product on court submission in original action against Delaware and commenting on/explaining same	WP
258	1/6/2006	e-mail	Raphael, S.	Horowitz, R.	Renella, J.; Kelly, E.; Jablonski, D.	Communication from BP counsel to NJ counsel inquiring about status of work product on court submission in original action against Delaware	WP
259	1/6/2006	e-mail	Horowitz, R.	Raphael, S.	Burke, G.	Communication from NJ counsel to BP counsel responding to prior inquiry and noting proposed timing for transmittal of work product on court submission	WP
260	1/6/2006	e-mail	Kelly, E.	Raphael, S.	Donlon, A.; Jablonski, D.; Burke, G.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel transmitting work product on court submission in original action against Delaware and commenting on same	WP
261	1/6/2006	e-mail	Raphael, S.	Burke, G.; Renella, J.; Horowitz, R.; Andersen, W.; Kelly, E.; Donlon, A.; Jablonski, D.		Communication from BP counsel to NJ counsel transmitting work product on court submission in original action against Delaware and commenting on/explaining strategy for same	WP
262	1/20/2006	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.		Communication from BP counsel to NJ counsel commenting on Supreme Court weekly conference and schedule in relation to original action against Delaware	WP
263	1/23/2006	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.		Communication from BP counsel to NJ counsel concerning Court's order list and requesting conference call to discuss same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
264	1/23/2006	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Renella, J.	Communication from NJ counsel to BP counsel acknowledging receipt of prior e-mail and agreeing to conference call (with prior e-mail)	WP

Pleadings - Final (29 documents)
Transcripts (1 document)
Articles (155 documents)
Pleadings - Draft (2 documents)
Correspondence (28 documents)
Delaware Legislature (6 documents)
Delaware Permits (78 documents)
Federal Permitting, BP Crown Landing (71 documents)
Maps (2 documents)
Memos (2 documents)
New Jersey Legislature (13 documents)
NJ-Del Agreements (1 document)
Legal Research (531 documents)

Personnel in Office of Attorney General with access:
William Andersen, Peter Aseltine, Gerard Burke, Helene Chudzik, Amy Donlon, Julie Goldman, Rachel Horowitz, Dean Jablonski, Eileen Kelly, John Renella, Brian Weeks, Lewin Weyl

Personnel in Office of Governor with access:
Victor Fortkiewicz

First Name	Last Name	Office	Title	Location
William E.	Andersen	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Stacey	Arbaugh	Princeton Public Affairs Group	Assistant to Mr. Pascrell	Trenton, New Jersey
Daniel	Belin	ERM, Inc. (consultant to BP America Inc.)	Consultant	Annapolis, Maryland
Willliam J.	Pascrell, III	Princeton Public Affairs Group	Partner	Trenton, New Jersey
Peter	Aseltine	New Jersey Office of the Attorney General	Public Information Officer	Trenton, New Jersey
Virginia	Bauer	New Jersey Commerce, Economic Growth and Tourism Commission	CEO and Secretary	Trenton, New Jersey
Gerard	Burke	New Jersey Office of the Attorney General	Assistant Attorney General	Trenton, New Jersey
John J.	Burzichelli	New Jersey General Assembly	Assemblyman, Dist. No. 3	Trenton, New Jersey
Bradley	Campbell	New Jersey Department of Environmental Protection	Commissioner	Trenton, New Jersey
Helene	Chudzik	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Leana	Crowther	New Jersey General Assembly	Assistant to Assemblyman Burzichelli	Trenton, New Jersey
Sean	Darcy	New Jersey Office of the Governor	Deputy Press Secretary	Trenton, New Jersey
Amy C.	Donlon	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Mariellen	Dugan	New Jersey Office of the Attorney General	Assistant Attorney General	Trenton, New Jersey
Paul T.	Fader	New Jersey Office of the Governor	Chief Counsel to the Governor	Trenton, New Jersey
Mark	Fleming	New Jersey Office of the Governor	Assistant Counsel to the Governor	Trenton, New Jersey
Victor A.	Fortkiewicz	New Jersey Office of the Governor	Assistant Counsel to Governor	Trenton, New Jersey
Julie	Goldman	New Jersey Office of the Attorney General	Attorney assistant	Trenton, New Jersey
Elisa	Hartpence	New Jersey Office of the Attorney General	Assistant to Attorney General	Trenton, New Jersey
Peter C.	Harvey	New Jersey Office of the Attorney General	Attorney General	Trenton, New Jersey
Lisa D.	Harville	Assistant Counsel	BP America Inc.	Houston, Texas
Kelly	Heck	New Jersey Office of the Governor	Press Officer	Trenton, New Jersey

First Name	Last Name	Office	Title	Location
Rachel	Horowitz	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Dean	Jablonski	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Nancy	Kaplen	New Jersey Office of the Attorney General	Director; Acting Attorney General	Trenton, New Jersey
Eileen P.	Kelly	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
John E.	McCormac	New Jersey Department of the Treasury	State Treasurer	Trenton, New Jersey
Steven J.	Picco	Reed Smith LLP	Partner	Trenton, New Jersey
Stuart A.	Raphael	Hunton & Williams LLP	Partner	McLean, Virginia
John R.	Renella	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Gregg S.	Roden	BP America Inc.	Assistant Counsel	Houston, Texas
Lauren B.	Segal	Crown Landing LLC	Vice President	Houston, Texas
Gary	Shute	BP America Inc.	Regional Vice President	Towson, Maryland
Lawrence	Stanley	New Jersey Office of the Attorney General	Assistant Attorney General	Trenton, New Jersey
David S.	Swayze	Parkowski, Guerke & Swayze, P.A.	Partner	Wilmington, Delaware
Michael W.	Teichman	Parkowski, Guerke & Swayze, P.A.	Partner	Wilmington, Delaware
Brian	Weeks	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Lewin	Weyl	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey

EXHIBIT E

No. 134, Original

In the

Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

Before the Special Master
the Hon. Ralph I. Lancaster, Jr.

DECLARATION OF DAVID S. SWAYZE

I, David S. Swayze, state that the following facts are true to the best of my knowledge, information and belief:

1 I am admitted to the Bar of the State of Delaware and the United States Supreme Court, and am a partner in the law firm of Parkowski, Guerke, & Swayze, P.A., located in the Wilmington, Delaware office. My firm and I have provided legal advice and counseling to BP America Inc. and its affiliate, Crown Landing LLC ("Crown Landing") in connection with Crown Landing's proposed LNG facility, to be constructed in Logan Township, New Jersey. We have also represented Crown Landing in connection with its discussions with the State of Delaware concerning the application of Delaware's regulatory requirements to the proposed unloading pier to be constructed appurtenant to the New Jersey shoreline of the Delaware River, extending below the mean low water mark.

2. On or about December 7, 2004, on behalf of Crown Landing, my office submitted a request for a "status determination" to the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC"), pursuant to the Delaware Coastal Zone Act ("DCZA"). As part of that submission, I specifically reserved, among other legal arguments, Crown Landing's contention that Delaware did not have jurisdiction over the proposed pier by virtue of the Compact of 1905. (See BP-SCT-134-003908.) On or about February 3, 2005, the Secretary of DNREC issued his determination that the Project was prohibited by the DCZA.

3. On or about February 10, 2005, I personally spoke with William E. Andersen, a Deputy Attorney General in the New Jersey Office of the Attorney General, about the common legal interest shared by BP/Crown Landing and New Jersey in confirming that New Jersey, not Delaware, had jurisdiction over the proposed pier. With the client's consent, I offered to provide New Jersey and its counsel our attorney work-product concerning New Jersey's exclusive jurisdiction under the 1905 Compact. Mr. Andersen invited me to do so. I believed at that time (and continue to) that New Jersey and BP/Crown Landing share a common legal interest in establishing New Jersey's exclusive riparian jurisdiction under the Compact. I was aware of the common interest doctrine at the outset of our discussions and I believed that our communications were privileged and reasonably unlikely to be subject to compulsory discovery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/24/06

David S. Swayze

EXHIBIT F

CONTAINS INFORMATION
PROTECTED AS CONFIDENTIAL
PURSUANT TO CMP § 9 AND CMO No. 4