



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

November 17, 2006

VIA U.S. MAIL AND TELEFAX [(617) 542-2241]

Ralph A. Child, Esq.
Mintz, Levin, Cohn, Ferris, Glosky and Popeo, P.C.
One Financial Center
Boston, MA 02111

VIA U.S. MAIL AND TELEFAX [(617) 626-1095]

Bennett Heart, Esq.
Massachusetts Executive Office of Environmental Affairs
100 Cambridge, Suite 900
Boston, MA 02114

Re: Mirant Kendall, LLC

Dear Mssrs. Child and Heart:

This letter responds to a request by Mirant Kendall LLC (Mirant Kendall) for an extension of time to file its notice of appeal, in order to obtain the consolidated record relative to this consistency appeal.

On November 7, 2006, the National Oceanic and Atmospheric Administration (NOAA) granted Mirant Kendall an initial extension until November 21, 2006, to file its notice of appeal and the consolidated record. On November 13, 2006, Mirant Kendall requested an additional extension of time until December 29, 2006. This second request is based upon the following considerations: (a) the Environmental Protection Agency (EPA) – the agency purportedly responsible for maintaining the consolidated record at issue – has yet to produce a number of documents constituting part of the record; and (b) counsel for EPA has indicated that it should be able to produce these documents by early to mid-December 2006.¹ Mirant Kendall has attached to its request an e-mail from EPA to this effect. Mirant Kendall also requests that should EPA not produce the missing documents by December 15, 2006, NOAA permit Mirant Kendall to request a third extension of

¹ Mirant Kendall's proposed date of December 29, 2006 includes a two week period to allow the company to assemble and file the required four copies of the consolidated record. Under National Oceanic and Atmospheric Administration's (NOAA) Coastal Zone Management Act (CZMA) consistency appeal regulations, appellants in energy appeals must file three hard copies of the consolidated record, plus one electronic copy along with their notice of appeal. 15 C.F.R. § 930.127(i)(2) (2005), *as amended*, 71 Fed. Reg. 787, 830-31 (Jan. 5, 2006).



time. NOAA has received no objection from Massachusetts concerning these two requests.

Applicable regulations permit the Secretary of Commerce to extend the time for "filing a notice of appeal in connection with an energy project *for good cause shown* to allow appellant additional time to prepare the consolidated record for filing." 15 C.F.R. § 930.127(i)(2) (2005), *as amended*, 71 Fed. Reg. 787, 830-31 (Jan. 5, 2006) (emphasis added). Given the above considerations, good cause exists to provide Mirant Kendall with an additional extension of time in which to further gather the necessary consolidated record. Therefore,

- Mirant Kendall's request for an extension of time to file its notice of appeal and consolidated record is *granted*. Mirant Kendall shall have until December 29, 2006 to submit its notice of appeal and four copies of the consolidated record.
- If Mirant Kendall believes additional time beyond this extension is required, it may file a new motion for extension of time on or before December 19, 2006, setting forth: (a) when the company believes it can reasonably produce the consolidated record; and (b) why its proposed extension of time is warranted.

Sincerely,



Joel La Bissonniere
Assistant General Counsel for Ocean
Services

cc: Bruce Carlisle, Assistant Director, Massachusetts OCZM