

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

DOWNEAST LNG, INC. AND	)	
DOWNEAST PIPELINE, LLC	)	Applications for: Air Emission,
Robbinston, Calais, Baring Plantation,	)	Site Location of Development,
Baileyville, Princeton	)	Natural Res. Protection Act
	)	and Water Quality Certification
Washington County, Maine	)	
	)	
# A-000960-71-A-N	)	
# L-23432-26-A-N	)	
# L-23432-TG-B-N	)	

**AFFIDAVIT OF MARTEN van HEUVEN**

I, Marten van Heuven, being properly sworn, state that following:

1. I am a resident of Moretown, Vermont.
2. I am retired from the United States Department of State where I began work in 1957, when I entered the Office of Legal Advisor and served for six years. From 1963 to 1987, I served as a U.S. Foreign Service Officer. From 1987 to 1991, I was the National Intelligence Officer for Europe. This involved exchanges with Canadian officials. I continue to work for the Department in a contract capacity. I am presently a senior consultant at the RAND Corporation, a Distinguished Lecturer at the Foreign Service Institute, and director of the Atlantic Council of the United States.
3. I am a 1953 graduate of Yale College and a 1956 graduate of Yale Law School. I received a Master of International Affairs from Columbia School of International Affairs in 1957.
4. In the Course of my federal service I have dealt with Canadian officials on a range of issues including law of the sea, arms control, human

rights and estimative intelligence. These contacts span a period of over 40 years. What I have learned – as with any American official dealing with Canada – is that on issues Canada regards as important, it will go to significant lengths to protect their interests against their “big neighbor to the south.”

5. I have reviewed the February 14, 2007 letter from Canadian Ambassador Michael Wilson to Federal Energy Regulatory Commission Chair Joseph Kelliher.

6. This affidavit’s purpose is to interpret Ambassador Wilson’s letter. Diplomats often use nuanced language with greater meaning and precision than language used by other professions. I also wish to provide context for the letter within the field of diplomacy and explain its significance.

7. Judging by the standards of my business – diplomacy – Ambassador Wilson’s letter is strong. It says bluntly that: (1) the proposed LNG installations will present an environmental risk unacceptable to the Government of Canada, and (2) that passage of tankers through Head Harbour Passage would also present unacceptable risks. It goes on to say that Canada will use domestic law to prevent passage of tankers through Canadian coastal waters. (Since there is no jurisdiction, Canada cannot prevent the installation on US territory of the terminals) It states that the projects cannot proceed as currently envisioned.

8. I assume that the Canadians are sure that they have an uncontrovertable right to jurisdiction over at least part of the route the tankers would take. Persons affected by the letter should make the same assumption. This letter thus represents the Government of Canada's firm position.

9. Any disagreement with Canada's strong position is a matter of diplomacy or alternative means of settlement such as international arbitration. It is not a matter to be reviewed or weighed by U.S. domestic tribunals.

10. Resolution of this issue with Canada, either through diplomatic or other means or by the International Court of Justice could easily take several years. I base this estimate on my knowledge of on-going trade disputes with Canada and on my familiarity with the judicial or extra-legal process.

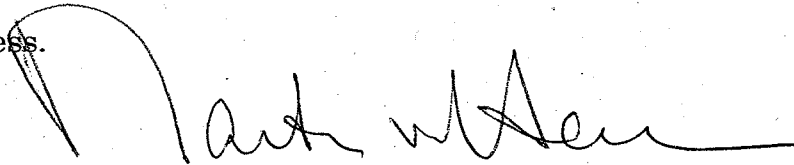
11. The warning is clear: Canada will keep tankers from passage through Head Harbour. The conclusion is equally clear: Come up with another alternative. This message is addressed to the top level of the U.S. Federal Departments directly concerned.

12. The letter is also an unambiguous warning that on this issue Canada will use its weight in government-to-government relations with the United States. The US and Canada have long had bitter disputes over issues

such as fisheries and softwood lumber - to name just a few. Some of those issues have festered, some eventually get brokered.

13. Canada, having raised this issue, is willing to play "hard ball." Ottawa may calculate that, on an environmental issue, the public mood in both countries will favor its stance. Of course, there is also domestic politics. There's no harm to the government parties in having Ottawa stand up for the interests of one of the provinces.

13. In sum, based on my long and significant experience with these types of matters, Canada's letter is a very clear statement at top level of its position. A person here cannot presently assert a right to transit LNG tankers through Canadian waters specified in Ambassador Wilson's letter without Canadian permission. Canada has put on the record that such permission for LNG tankers is not forthcoming. The diplomatic or other processes that would seek to change Canada's position could take years with no guarantee of success.



Marten van Heuven

Signed and sworn to before me on March 23, 2007



Notary Public

My commission expires on 02/10/2011