2.1.8 Responses to Comments from the Applicant

Letter Number	Commentor
AP-1	Broadwater (LeBeouf, Lamb, Greene, & McCrae)
AP-2	Broadwater (LeBeouf, Lamb, Greene, & McCrae)

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

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January 23, 2007

Ms. Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Broadwater Energy, LLC, *et al.*
Docket Nos. CP06-54-000, CP06-55-000, and CP06-56-000
Comments on Draft Environmental Impact Statement

Dear Secretary Salas:

Broadwater Energy LLC and Broadwater Pipeline LLC (jointly hereinafter referred to as "Broadwater" or "the Applicants") have reviewed the Draft Environmental Impact Statement (FERC/EIS-0196D) (hereinafter "the DEIS") for the Broadwater LNG Project (hereinafter "the Project") and, in accordance with the notice issued by the Federal Energy Regulatory Commission (hereinafter "the FERC"), respectfully submit their initial comments on the DEIS.

Consistency with Legal Standards

The FERC DEIS in all material respects is consistent with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA"), Council on Environmental Quality ("CEQ") Regulations for the Preparation of Environmental Impact Statements (40 C.F.R. Part 1500), and the FERC Regulations Implementing the National Environmental Policy Act, 18 C.F.R. Part 380, as well as the NEPA regulations and guidance of the United States Army Corps of Engineers ("USACE") and the United States Coast Guard ("USCG").

NEPA was enacted for the purpose of protecting the environment by requiring federal agencies to carefully consider the environmental consequences of their proposed actions. Under Section 4332(2)(C), federal agencies are required to conduct an environmental analysis

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

and prepare an EIS for any "major federal actions significantly affecting the quality of the human environment." *See, e.g., Sierra Club v. Morton*, 427 U.S. 390 (1976); *Stewart Park & Preserve Coalition, Inc. ("SPARC") v. Slater*, 352 F.3d 545, 557 (2d Cir. 2003); *Hudson River Sloop Clearwater, Inc. v. Dept. of the Navy*, 836 F.2d 760, 763 (2d Cir. 1988). Broadwater may be considered to be such a "major federal action." Regulations promulgated by the CEQ, 40 C.F.R. Part 1500, §§ 1500-1508, provide guidance for federal agency implementation of NEPA.

The purpose and intent of the EIS is to focus the attention of the federal government and the public on a proposed action, so that the consequences of the action can be studied before the action is implemented. 42 U.S.C. § 4321; 40 C.F.R. § 1501.10; *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). NEPA's mandate to federal agencies is "essentially procedural ... It is to insure a fully informed and well-considered decision ...." *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

While NEPA mandates a process to be used by federal agencies in considering the environmental impacts of their proposed actions, it does not dictate the substantive results; agencies that have taken the requisite "hard look" at the environmental consequences of a project and various alternatives are free to chose an option that achieves a proposed project's purposes, even if that option has impacts upon the environment. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Stryker's Bay Neighborhood Council v. Karlen*, 444 U.S. 223, 227-28 (1980) (citing *Vermont Yankee Nuclear Power Corp.* 435 U.S at 558).

General Comments

The Executive Summary (*see* ES-1) acknowledges that the DEIS is the product of extensive participation by numerous federal and state agencies with relevant special expertise and/or jurisdiction over aspects of the Project. It also makes the point that the scope for the DEIS was based upon input from these and other agencies and members of the public, as well as the FERC staff's independent research, analyses and inspections.

Extensive information about the beneficial and potential adverse environmental impacts of the Project, mitigation measures to minimize potential adverse impacts and alternatives to the Project has been distributed widely to the public through the FERC Office of Energy Project's NEPA Pre-Filing Process that commenced in November 2004 in Docket No. PF05-4-000, nearly two years before the DEIS was produced. Broadwater participated in the then-voluntary pre-file process to ensure full disclosure of Project information and to maximize the opportunity for early public involvement as contemplated by NEPA and the CEQ's implementing regulations. Since its public announcement in November 2004, Broadwater has engaged in extensive outreach to agencies, legislators and other stakeholders to make available information about the Project and to identify relevant environmental, safety and security considerations. Drafts of the reports required by the FERC NEPA implementing regulations were provided to agencies and the public at a very early stage of this pre-file process. Interested parties could and did participate in the NEPA pre-filing process, both in writing and at public meetings (six open houses and four meetings hosted by FERC and the Coast Guard), and Broadwater took interested parties' comments into account when revising its environmental

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

reports. The final environmental reports prepared by Broadwater pursuant to the FERC's NEPA regulations, which were filed with the applications and have been available in Docket No. PF05-4-000 since January 31, 2005, are the source of substantial field investigation information and data considered by the Commission staff and their independent consultants for preparation of the DEIS. Based upon Broadwater's preliminary evaluation of comments presented at the public meetings, it is readily apparent that substantive information that is responsive to the issues and concerns raised in the comments are contained in those reports, which are part of the record.

The Commission's staff's DEIS distills information received from the involved government agencies, the applicant and the public, and presents existing environmental conditions in the area of the Project, as well as its benefits and potential adverse impacts, in a balanced and objective manner. Recognizing that the Project has generated considerable interest, the Commission's staff has gone to great lengths to receive comments from affected persons. In light of the amount of information that has been publicly available over the past two years and the depth of the government's review of existing data to produce the DEIS, these efforts have been more than adequate to provide interested persons the opportunity to provide comments. The application and the DEIS have been the subject of comments from individuals and commercial enterprises, some expressing favor and some expressing concern.

The Applicants are in general agreement with the FERC staff's environmental analyses and recommended mitigation measures reflected in Sections 1 through 4 of the DEIS and the summaries presented in Section 5. Listed below, however, are several comments that are submitted for clarification of issues addressed in the DEIS and/or specific recommendations of the FERC staff. In addition, a section entitled "Errata" has been included that reflects minor corrections to portions of the text.

Specific Comments

1. *Pipeline Installation – Use of Mid-Line Buoys on All Anchors (Recommendation No. 13 at p. 5-20)*

In Section 3.1.2.2 (p. 3-9), temporary impacts to seafloor sediments from pipeline construction are discussed and at p. 3-13, the FERC staff recommends either the use of mid-line buoys on all anchor cables of construction vessels or the use of a dynamically positioned lay barge for pipeline installation. The DEIS indicates this would reduce seafloor sediment impacts from anchor sweeps by approximately 90 percent.

AP1-1 Broadwater recognizes the mitigative effect of the use of mid-line buoys to minimize seafloor sediment disruption from anchor cable sweeps during installation of the pipeline connecting the FSRU to the existing Iroquois Gas Transmission System, LP line and has proposed the use of mid-line buoys on the quarter anchors. However, the use of mid-line buoys on all anchors will not completely eliminate anchor sweep nor achieve the 90 percent reduction projected by the DEIS. Based on the data provided to FERC, Broadwater believes the DEIS overestimates the reduction in impact that would be realized in recommending the application of mid-line buoys for all anchor cables.

AP1-1 In addressing concerns regarding anchoring impacts, marine experts conducted a review of existing post-construction monitoring literature relating to the value of mid-line buoys. Section 3.1.2.2 of the final EIS has been revised to incorporate the results of the third-party review and identifies technically valid estimates of expected seafloor disturbance associated with anchoring. The third-party review is included as Appendix G of the final EIS.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

AP1-2 It is incorrect to assume that use of mid-line buoys would entirely eliminate anchor cable sweep impacts, as slack cables during anchor deployment will contact the seafloor, with or without mid-line buoys. Rather than being placed directly over the anchor set, a mid-line buoy will be placed at an intermediate point between the lay barge and the actual anchor set. This is required to allow movement of the laybarge along the pipeline centerline. An anchor cable will assume a catenary shape. With the use of the mid-line buoys, the actual portion of the cable that has the potential to sweep the Sound bottom is reduced, but not eliminated. While the differential between mid-line buoy and no mid-line buoy is significant on the quarter anchors, as they are positioned off to the sides of the lay barge and sweep a much larger area, the difference for the bow and stern anchors is much less due to the narrower angle to the centerline.

AP1-3 In its March 31, 2006 Environmental Information Request (EIR), FERC staff requested that Broadwater discuss the feasibility of using mid-line anchor buoys on all anchors and not just the quarter anchors. In Broadwater's response, it was noted that total anchor sweep impact would be reduced from an estimated 6810 acres (without any mid-line buoys) to 2020 acres (with mid-line buoys on the quarter anchor). If mid-line buoys are required to be set on all anchor cables, the area temporarily disturbed would be 1031 acres.

AP1-4 Further, anchor lines associated with static construction vessels (including DSV vessels and construction support vessels) that need to maintain specific positioning above the pipeline trench will create significantly smaller zones of anchor drag than have been noted for pipeline laying and plowing vessels and, therefore, do not warrant the imposition of mid-line buoys on all of their anchors. It should be noted that in response to a Commission staff information request regarding the seafloor acreage impacted by the anchor footprint and cable sweeps associated with the static construction vessel used for installation of the YMS, Broadwater advised that a heavy lift crane barge will be used to install the mooring tower. A crane barge typically holds station (but is not propelled) with anchors; thus there is only minor disturbance of the seabed due to touchdown of the slack cable during anchor deployment and there is no anchor line sweep. Assuming an 8-point anchor set is used to hold station during work on the mooring tower, the seafloor area impacted by anchor footprints is estimated at less than half an acre.

AP1-5 Finally, it also should be noted that the imposition of mid-line buoy requirements on all anchors of all construction vessels creates the distinct possibility that installation cannot be completed during the limited period available from October to April for construction, which was established to minimize environmental impacts and temporary inconvenience to recreational uses of a portion of the Sound. The marginal incremental benefit from using mid-line buoys on all anchors must be weighed against the potential impacts associated with construction outside of the preferred period.

2. *Pipeline Installation – Trench Backfilling (Recommendation No. 15 at p. 5-20)*

In Section 3.1.2.2 (p. 3-15), the DEIS discusses Broadwater's proposal, based on modeling, to allow the majority (approximately 20 miles) of the pipeline trench to backfill

AP1-2 Please see our response to comment AP1-1.

AP1-3 Please see our response to comment AP1-1.

AP1-4 Please see our response to comment AP1-1. In addition, we have specified that the mid-line buoy recommendation would apply to all construction vessels associated with pipeline installation.

AP1-5 Based on the engineering information provided by Broadwater and available for other marine pipeline projects, FERC understands that incorporation of mid-line buoys on all anchor cables would not prevent complete installation within a 7-month period.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

naturally because of its location within a depositional area in central Long Island Sound. Mechanical backfilling with clean rock will occur along the remainder of the line.

While the DEIS recommends active restoration, it also acknowledges that mechanical backfilling has proven unsuccessful in the Eastchester Expansion Pipeline Project. A similar conclusion was reached during the post-construction monitoring of the Hubline Pipeline Project, prompting the use of rock to backfill portions of the trench. There clearly is disagreement in the scientific community as to whether active restoration is prudent.

AP1-6 Broadwater submits that the appropriate recommendation is for Broadwater to continue its ongoing coordination with involved government agencies (i.e. FERC, USACE, National Marine Fisheries Services) to develop a final plan which ensures proper backfilling, but which allows for the possibility of several scenarios (i.e., active restoration by mechanical plowing or deposition of clean rock, as well as natural backfilling) to achieve the desired result with the least additional environmental impact. For example, it should be recognized that running the subsea plow over the installed pipe to actively backfill the trench will increase the amount of seafloor disturbance from anchor sweeps.

Broadwater acknowledges that its recommended approach may require an increased post-construction monitoring effort to ensure the successful application of the appropriate methodologies and is committed to cooperating in such an effort.

3. *Pipeline Installation – Alternative Installation Method Contingency Plan – Stratford Shoal (Recommendation No. 14 at p. 5-20)*

In Section 2.3.2.2 – Special Construction Techniques – at p. 2-30 and Section 3.1.2.2 the DEIS raises the possibility that geotechnical conditions in the Stratford Shoal may preclude the use of subsea plowing for completion of construction and in Recommendation No. 14 (p. 5-20) requires the submission of an alternative installation plan.

For purposes of clarification, a plowing test across the Shoal is proposed using a scaled down subsea plow (i.e., a cable plow) during the detailed design phase. If the test shows plowing to be feasible, during construction the full size plow would be used in a post-lay sequence, but the process would likely be modified by slowing down the speed of plowing and increasing diver checks and interventions as required to protect the plow and pipeline from damage by boulders and cobbles that may get jammed between plow shares and the pipeline.

AP1-7 This procedure was described in Appendix C to Resource Report No. 1 which was submitted with the Project applications and it has been specified in the USACE Public Notice. Further, Broadwater has proposed the use of a barge mounted long-armed heavy duty excavator as one alternative; a second option would involve placing the pipeline on the seafloor across the Shoal and covering it with concrete mats. Broadwater is not proposing the use of blasting as an alternative methodology for installation.

AP1-6 As stated in our recommendation (Section 3.1.2.3 of the final EIS), the appropriate methods for successful backfilling must be developed through interagency consultation. This consultation would evaluate all impacts before deciding on an appropriate method.

AP1-7 Thank you for the clarification. Section 2.3.2.2 of the final EIS reflects this additional information. Section 5.0 of the final EIS includes a recommendation requiring FERC approval prior to implementation of any alternative methods to achieve pipe burial in Stratford Shoal.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

4. *Environmental Analysis – Impacts to Commercial Fisheries*
Filing of Final Compensation Plan
(Recommendation No. 24 at p. 5-21)

In Section 3.3.3.2, the DEIS describes the proposed Project area as a dense lobster fishing area and an area for finfish trawling. In Section 3.6.8.1 at p. 3-118, the potential impacts to these commercial interests are described. In Recommendation No. 24, documentation of final compensation agreements with the affected lobstermen and trawl fishermen is to be filed with the FERC. Broadwater is committed to offsetting demonstrated fishing losses that would occur as a result of Project construction and operation.

AP1-8 It should be noted with respect to Recommendation 24 that the final compensation plans be filed with the FERC, to date the commercial fishermen have requested confideatiality for their impact/compensation discussions, a request with which Broadwater concurs. The desirability of honoring these confidentiality concerns should be taken into account in connection with the DEIS recommendation.

5. *Recommended Mitigation*
(Recommendation Nos. 4, 5, 7, 12, 13, 15, 16, 17, 19, 20, 21 and 23)

AP1-9 Broadwater submits that there is a need to differentiate between "construction" for purposes of recommendations related to the commencement of certain activities related to the pipeline versus the FSRU. It is suggested that for the above-referenced Recommendations, "construction in Long Island Sound" should become the standard.

6. *General Conformity with State Implementation Plan*
(Recommendation No. 27 at p. 5-21)

Broadwater's supplement to the General Conformity discussion and supporting materials provided to the FERC in Resource Report 9 is enclosed.

7. *Information on hazardous substances which may be used on the FSRU*
(Recommendation No. 29 at p. 5-22)

The documentation requested by the FERC staff will be provided on or before January 31, 2007.

AP1-8 FERC is confident that we can honor the request for confidentiality by the commercial fishermen.

AP1-9 Thank you for your comment. We have revised the final EIS where appropriate to acknowledge this difference.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

Errata

Broadwater submits the following few minor edits to the current text for consideration:

	Page	Reference	Comment
AP1-10	3-240	3.11 Cumulative Impacts Table 3.11-1	ConocoPhillips Northport Platform – should be Northville Platform
AP1-11	3-245	3.11.3.2 Nearshore Oil Transfer Platforms	ConocoPhillips Northport Platform – should be Northville Platform
AP1-12	3-15	3.1.2.2 Potential Impacts and Mitigation	In the last paragraph beginning: "We received comments ..." at line 8 (top of p. 3-16), substitute "natural gas" for "LNG".
AP1-13	3-231	3.10.9 Pipeline Reliability and Safety	In line 5, insert "potential" after "limited."
AP1-14	3-165	Table 3.9. 1-7	Broadwater notes that the 1-hour ozone standard has been revoked. The PM 2.5 24-hour primary and secondary standard are now 35 ug/m3. The annual PM 10 standard also has been revoked.
AP1-15	3-167	Section 3.9.1.1	Broadwater notes that the EPA has promulgated the final rule for 40 CFR Part 60, Subpart KKKK. As such, the selected turbines will be subject to this subpart.
AP1-16	3-170	Table 3.9. 1-8 and Table 3.9.1.9	The FSRU's annual potential to emit nitrogen oxides is now estimated at 61 tpy instead of the 71 tpy shown in the table due to a downward revision in the emission estimate for the dual fuel gas turbine when burning distillate oil. This change will be reflected in Broadwater's air permit application to the NYSDEC. The total estimated annual PTE for NOx is, therefore, also lower by 10 tpy. We do not believe that this change affects the regulatory conclusions stated.

AP1-10 Table 3.11-1 of the final EIS has been clarified.

AP1-11 Section 3.11.3.2 of the final EIS has been clarified.

AP1-12 Thank you for your comment. The text has been revised as appropriate.

AP1-13 Thank you for your comment. The text has been revised as appropriate.

AP1-14 Table 3.9.1-7 has been updated to reflect the new $PM_{2.5}$ standard finalized in December 2006, and to reflect revocation of the 1-hour ozone standard and the annual PM_{10} standard.

AP1-15 The discussion of 40 CFR Part 60 Subpart KKKK in Section 3.9.1.1 has been updated to reflect recent approval of the regulation.

AP1-16 Section 3.9.1.1 of the final EIS has been updated to reflect that the total PTE for NOx is 10 tpy lower in the appropriate table.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

Sincerely,

James A. Thompson, Jr.
Counsel for Broadwater Energy LLC and Broadwater Pipeline LLC

JAT:jzg

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

AP1-17

Broadwater General Conformity Applicability Analysis

1.0 Project Description

Broadwater Energy, a joint venture between TCPL USA LNG, Inc., and Shell Broadwater Holdings LLC (Broadwater), has filed an application with the Federal Energy Regulatory Commission (FERC) seeking all of the necessary authorizations pursuant to the Natural Gas Act to construct and operate a marine liquefied natural gas (LNG) regasification facility (the Project) and subsea pipeline for the importation, storage, regasification, and transportation of natural gas. The Broadwater LNG Project (the Project) will increase the availability of natural gas to the New York and Connecticut markets through an interconnection with the Iroquois Gas Transmission System (IGTS).

The Project will be located approximately 9 miles from Long Island in Long Island Sound, in approximately 90 feet of water and offshore of Riverhead, Suffolk County, New York. The LNG terminal facilitates the sea-to-land transfer of natural gas. It will be designed to receive, store, and regasify LNG at an average throughput of 1.0 billion cubic feet per day (bcfd) and will be capable of delivering a peak throughput of 1.25 bcfd. The Project will deliver the regasified LNG to the existing natural gas pipeline system via an interconnection to the IGTS pipeline.

The proposed LNG terminal will consist of a floating storage and regasification unit (FSRU) that is approximately 1,215 feet (370 meters [m]) in length, 200 feet (60 m) in width, and rising approximately 80 feet (25 m) above the water line to the trunk deck. The FSRU's draft is approximately 40 feet (12 m). The FSRU will be designed with a net temporary storage capacity of approximately 350,000 cubic meters [m^3] of LNG (equivalent to 8 billion cubic feet [bcf] of natural gas), with base vaporization capabilities of 1.0 bcfd using a closed-loop shell and tube vaporization (STV) system. The LNG will be delivered to the FSRU in LNG carriers with cargo capacities ranging from approximately 125,000 m^3 up to a potential future size of 250,000 m^3 at the frequency of two to three carriers per week.

The FSRU will be connected to the send-out pipeline, which rises from the seabed and is supported by a stationary tower structure. In addition to supporting the pipeline, the stationary tower also serves the purpose of securing the FSRU in such a manner to allow it to orient in response to prevailing wind, wave, and current conditions (i.e., weathervane) around the tower. The tower, which is secured to the seabed by four legs, will house the yoke mooring system (YMS), allowing the FSRU to weathervane around the tower. The total area under the tower structure, which is of open design, will be approximately 13,180 square feet (1,225 square meters [m^2]).

A 30-inch-diameter natural gas pipeline will deliver the vaporized natural gas to the existing IGTS pipeline. It will be installed beneath the seafloor from the stationary tower structure to an interconnection location at the existing 24-inch-diameter subsea section of the IGTS pipeline, approximately 22 miles (35 km) west of the proposed FSRU site. To

AP1-17 The draft General Conformity Applicability Analysis will be used to complete the General Conformity Analysis for the Project.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

stabilize and protect the operating components, sections of the pipeline will be covered with engineered back-fill material or spoil removed during the lowering operation.

The Project is located within AQCR 43 (New Jersey-New York-Connecticut Interstate Area Quality Control Region). This AQCR is also known as the New York-Northern New Jersey-Long Island, NY-NJ-CT area. The portion of this area which is located in New York State is designated moderate nonattainment for the 8-hour ozone standard. Previously the AQCR was designated severe nonattainment for the 1-hour ozone standard; this designation was vacated on June 14, 2005 by USEPA. New York State continues to apply control programs addressing the 1-hour ozone standard as more protective of air quality. This area is designated as nonattainment for the $PM_{2.5}$ standard, effective April 5, 2005. These nonattainment designations result in the regulation of oxides of nitrogen (NO_x), volatile organic compounds (VOCs) and $PM_{2.5}$ (and specified $PM_{2.5}$ precursors) which may trigger the General Conformity requirements established by USEPA. This area is designated attainment for all other criteria pollutants.

2.0 General Conformity – Regulatory Background

Section 176(c) of the Federal Clean Air Act (CAA) provides that Federal agencies cannot engage, support, or provide financial assistance for licensing, permitting, or approving any project unless the project conforms to the applicable State Implementation Plan (SIP). A SIP is a compilation of a state's air quality control plans and rules, approved by the USEPA. The State and USEPA's goals are to eliminate or reduce the severity and number of violations of National Ambient Air Quality Standards (NAAQS) and achieve expeditious attainment of these standards.

Pursuant to CAA Section 176(c) requirements, the USEPA promulgated Title 40 of the Code of Federal Regulations (CFR) Part 51 (40 CFR § 51) Subpart W and 40 CFR § 93 Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans" (see Volume 58 of the Federal Register, November 30, 1993 (58 FR 63214)). These regulations, commonly referred to as the General Conformity Rule, apply to all Federal actions except for those Federal actions which are excluded from review (e.g. stationary source emissions) or related to transportation plans, programs, and projects under Title 23 U.S. Code or the Federal Transit Act, which are subject to Transportation Conformity. 40 CFR Part 51 Subpart W applies in states where the state has an approved SIP revision adopting General Conformity regulations; 40 CFR Part 93 Subpart B applies in states where the state does not have an approved SIP revision adopting General Conformity regulations.

In New York State, the New York State Department of Environmental Conservation (NYSDEC) has not promulgated a rule incorporating Federal General Conformity regulations by reference or establishing its own General Conformity regulations. Therefore, the NY SIP does not contain an USEPA-approved SIP revision incorporating General Conformity. Although a proposed New York State General Conformity rule (Part 241) was slated for development in the NYSDEC January 2006 regulatory agenda, the rule has not been developed. NYSDEC has indicated the development of this rule will likely be taken off of the regulatory agenda for 2007. As specified in 40 CFR Part 93,

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

Subpart B, if a State has not developed its own General Conformity rule or formally adopted the Federal General Conformity rule, then the provisions in 40 CFR Part 93 Subpart B apply. It should be noted that General Conformity provisions in 40 CFR Part 93 Subpart B are identical to those in 40 CFR Part 51 Subpart W.

The current SIP addressing 1-hour ozone nonattainment is the New York State Implementation Plan for Ozone Phase II Alternative Attainment Demonstration. This SIP has been approved by the USEPA to attain the 1-hour ozone national ambient air quality standard (NAAQS). The attainment date identified in the SIP is November 2007. NYSDEC is in process of developing SIPs for the attainment of the 8-hour ozone NAAQS and $PM_{2.5}$ NAAQS. These future SIPs are not available for review as part of this General Conformity analysis. However, these SIPs are scheduled to be issued prior to commencement of on-site construction and operation.

2.1 General Conformity Requirements

The General Conformity Rule is used to determine if Federal actions[1] meet the requirements of the CAA and the applicable SIP by ensuring that air emissions related to the action do not:

- Cause or contribute to new violations of a NAAQS;
- Increase the frequency or severity of any existing violation of a NAAQS; or
- Delay timely attainment of a NAAQS or interim emission reduction.

A Federal action is subject to the General Conformity Rule if it is not classified as an exempt activity, as listed in 40 CFR Part 93 Subpart B and if the total direct and indirect emissions of a pollutant (or its precursors), for which the area is classified as nonattainment or a maintenance area, equal or exceed (1) emission thresholds established in the General Conformity regulations or (2) 10% of the total emissions budget for the entire nonattainment or maintenance area. If emissions are less than these criteria levels, then the Federal action is presumed to conform to the SIP.

Conformity regulatory criterion are listed in 40 CFR § 93.158 (note that the criterion listed here are the same as listed in 40 CFR § 51.858). An action will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in 40 CFR Part 93.153(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of § 93.158.

[1] The General Conformity Rule defines a Federal action as any activity engaged in by a department, agency, or instrumentality of the Federal government or any activity that a department, agency, or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves. The General Conformity Rule applies only to Federal actions in locations designated as nonattainment or maintenance areas for any criteria air pollutant under 40 CFR Part 81, "Designation of Areas for Air Quality Planning Purposes."

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

The lead Federal agency for the Project is FERC and, as such, FERC will prepare the EIS for the Project and the General Conformity determination. The Project would be located in an area designated nonattainment for ozone and $PM_{2.5}$. Therefore, in accordance with 40 CFR §§ 93.153 and 93.158, emissions of ozone precursor compounds nitrogen oxide NO_x and VOC and $PM_{2.5}$ and $PM_{2.5}$ precursor compounds (sulfur dioxide (SO_2) and NO_x) are analyzed in a General Conformity analysis.

2.2 New York State SIP

The current New York State SIP contains provisions for control programs for ozone under the 1-hour standard, total suspended particulate, sulfur dioxide and carbon monoxide. The provisions currently included in the SIP for total suspended particulate (a maintenance plan for the Niagara Frontier Air Quality Control Region), sulfur dioxide (two provisions specific to the Lovett Generating Station) and carbon monoxide (provisions for an oxygenated gasoline program and control period associated with a Downtown Brooklyn maintenance plan and an Onondaga County maintenance plan) are not applicable to the Project.

The current New York State SIP provisions for attaining the 1-hour ozone standard contain control programs focused on motor vehicle emissions, certain specific industrial categories and stationary source programs for NO_x and VOC control. The SIP provisions for motor vehicles and the industrial categories listed are not applicable to Broadwater. The only current provision in the SIP potentially governing Broadwater in regard to General Conformity is the NY SIP Implementation Plan for Ozone - Phase II Alternative Attainment Demonstration; however the projected emission budget in this latter SIP extends only to 2007. USEPA also has determined that conformity requirements under section 176 (c) no longer apply once the 1-hour ozone NAAQS is revoked. Therefore, there is no current SIP applicable to the 2009 and post-2009 time period.

Historically, exceedance of the 1-hour and 8-hour ozone NAAQS have been found to occur between May 1 and September 30 in the nonattainment area. A combination of ozone precursor emissions and meteorological conditions during this period can cause formation of ozone. Thus, control programs in New York State are aimed at controlling emissions of ozone precursors (NO_x and VOCs) during this period each year.

In addition to existing and new stationary source control programs, other national air quality programs that are likely to be relied upon in New York State's upcoming SIPs for 8-hour ozone and $PM_{2.5}$ include new regulations for nonroad diesel engine emissions (engine emission standards and sulfur-in-fuel limits). There are no SIP provisions currently available for $PM_{2.5}$ nonattainment since areas within New York State have not previously been designated with respect to the $PM_{2.5}$ standard.

3.0 Project Emissions

Emissions will occur during two phases of the Project: construction and operation. Construction emissions will not occur simultaneously with operations emissions. Construction emissions will occur in calendar years 2009 and 2010, followed by

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

operations emissions that include a facility shakedown period followed by commencement of regasification operations.

3.1 Construction Emissions

Construction emissions will occur from construction of offshore facilities in New York State waters. Although onshore facilities in New York State will be utilized as well, temporary onshore facilities used during construction for the milling, concrete coating and temporary storage of pipeline will be existing facilities located in New York State but outside the Project area. Temporary use of dock, office and warehouse space for construction contractors will utilize existing facilities.

Offshore construction activities will consist of pipeline installation, the installation and hook up of the mooring tower and FSRU towing. The FSRU will be constructed in a shipyard away from the Project site and towed to the site. Thus, the primary sources of emissions during construction activities will be the marine construction vessels used to install the pipeline and FSRU. Ships of various sizes, ranging from small day-use workboats to large supply vessels, pipeline construction vessels and ocean-going tug boats, will be used. Emission estimates from construction activities are based on the anticipated duration of use of each vessel type during the construction period, the vessels' engine characteristics and duty cycles, and emission factors. The construction emission estimate includes emissions from towing the FSRU while in New York State waters to its mooring location.

Construction is anticipated to occur during winter months only over a two-year period (2009 and 2010). A spreadsheet emission estimate tool provided by the U.S. Department of the Interior, Minerals Management Service, developed specifically for estimating construction in the marine environment, was used to estimate construction-related emissions. The emission estimate requires the use of a detailed construction schedule, inventory of vessel types, quantity and duration of use, and emission factors. Emission estimates for construction activity are presented in Table 1; the detailed construction emission estimate study is provided in Appendix A.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

Table 1 Estimated Emissions from Construction Activities

Year	$PM_{10}/PM_{2.5}$ (tpy)	SO_2 (tpy)	NO_X[1,2] (tpy)	Ozone Control Period NO_X (tons)	VOCs[1] (tpy)	Ozone Control Period VOCs (tons)
1	13	32	269	0	14	0
2	18	62	477	0	22	0
Annual General Conformity *de minimis*	100[2]	100[2]	100	n/a	50	n/a

(1) Assumes that *de minimis* thresholds proposed by USEPA for a moderate ozone nonattainment area are applicable. The *de minimis* threshold for NO_x under the USEPA's $PM_{2.5}$ *De Minimis* Emission Levels for General Conformity Applicability (See FR Vol. 71, No. 65 April 5, 2006) is equal to 100 tpy, which is the same as the *de minimis* threshold proposed by USEPA for moderate ozone nonattainment.

(2) USEPA's $PM_{2.5}$ *De Minimis* Emission Levels for General Conformity Applicability (see FR Vol. 71, No. 65 April 5, 2006) sets *de minimis* levels for direct $PM_{2.5}$ and $PM_{2.5}$ precursor compounds (SO2 and NO_x) at 100 tpy. However, the final rule allows a State or USEPA to make a finding that VOC and/or ammonia are $PM_{2.5}$ precursors and to make a finding that NO_x is not a $PM_{2.5}$ precursor.

3.2 Operational Emissions Not Subject to Permitting

Emissions will be produced by LNG carriers during transit to and from the FSRU and by support vessel operation during routine operation of the FSRU. Vessels associated with routine operation of the FSRU include the LNG carrier and tug boats which will escort and assist the LNG carriers while approaching, positioning, docking, and leaving the FSRU. The final location of the permanent on-shore facility has not been chosen. Broadwater has identified locations in Greenport NY and Port Jefferson NY (both in Suffolk County) that can provide the needed facilities. Permanent on-shore facilities will utilize existing office space, warehouse and docks. The permanent onshore facility will not construct any new stationary emission sources or compression facilities. Small supply vessels will deliver supplies for use on the FSRU from the onshore facility.

Emissions for the LNG carriers are calculated for the complete delivery cycle beginning at the location at which the vessel enters New York State waters, as it travels inbound to the FSRU, unloads LNG at the FSRU, and as it travels outbound until it reaches the boundary of New York State waters. The USCG provides recommendations with respect to LNG carrier routes in the Waterways Suitability Report (USCG 2006).

Tug boats will be used to assist an LNG carrier during its operation in the vicinity of the FSRU. The tugs are used to aid in making turns and positioning the LNG carrier alongside the FSRU. In addition, tug boats will typically meet the inbound LNG carrier at the Race during transit into Long Island Sound, escort it to the FSRU, and escort the outbound LNG carrier out to the Race after it delivers its LNG cargo. The number of tug boats required for these operations will vary depending on the size of the LNG carrier and USCG requirements. For the purposes of this emission analysis, Broadwater has

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

assumed that three tug boats will assist the LNG carrier while berthing to the FSRU and two escort tugs will travel with the LNG carrier inbound and outbound through Long Island Sound. One supply vessel will typically visit the FSRU per each LNG delivery. Based on LNG deliveries from a conventional LNG carrier with a cargo capacity of 140,000 m^3, 118 supply vessel trips will be made to the FSRU annually.

A summary of reasonably foreseeable direct and indirect emissions not subject to permitting during normal operation of the Project is presented in Table 2.

Table 2 Operational Emission Summary (Source not Subject to Permitting)

	Annual NO_x (tpy)	Ozone Control Period NO_x (tons)	Annual VOC (tpy)	Ozone Control Period VOC (tons)	$PM_{10}/PM_{2.5}$ (tpy)	SO_2 (tpy)
LNG Carrier Hoteling and Unloading[1]	22	9.3	0.3	0.1	8	172
Carrier Transit and Support Tugs	438	185	19	8.0	28	282
Total	460	194	19.3	8.1	36	454
Annual General Conformity *De minimis*	100[2]	n/a	50[2]	n/a	100[3]	100[3]

(1) All LNG carrier emissions associated with LNG unloading and LNG carrier hoteling while at the FSRU are included in the General Conformity determination.

(2) Assumes that *de minimis* thresholds proposed by USEPA for a moderate ozone nonattainment area are applicable. The *de minimis* threshold for NO_x under the USEPA's $PM_{2.5}$ *De Minimis* Emission Levels for General Conformity Applicability (see Vol. 75, No. 65 April 5, 2006) is equal to 100 tpy, which is the same as the *de minimis* threshold for moderate ozone nonattainment.

(3) USEPA's $PM_{2.5}$ De Minimis Emission Levels for General Conformity Applicability (see FR Vol. 71, No. 65 April 5, 2006) sets *de minimis* levels for direct $PM_{2.5}$ and $PM_{2.5}$ precursor compounds at 100 tpy. By default, SO2 and NO_x emissions are considered $PM_{2.5}$ precursor compounds and ammonia and VOC are not. The final rule allows a State or USEPA to make a finding that VOC and/or ammonia are $PM_{2.5}$ precursors and to make a finding that NO_x is not a $PM_{2.5}$ precursor.

4.0 General Conformity Applicability

Reasonably foreseeable emissions from direct and indirect sources associated with the construction and operation of the Project not subject to air permitting are considered in this analysis. The reasonably foreseeable emissions include the ozone-forming pollutants NO_x and VOCs because the Project area is in nonattainment for the 8-hour and 1-hour ozone standard.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

Suffolk County also is designated nonattainment for $PM_{2.5}$; thus, in accordance with USEPA's General Conformity regulations, direct emissions of $PM_{2.5}$ and emissions of $PM_{2.5}$ precursor compounds (NO_x and SO_2) are compared to General Conformity *de minimis* thresholds defined in the final rule (FR Vol. 71, No. 65). The final $PM_{2.5}$ De Minimis General Conformity rule does not require VOC and ammonia emissions to be included as $PM_{2.5}$ precursor emission but does allow a state and USEPA to determine if VOC and ammonia emissions should be controlled as $PM_{2.5}$ precursors; the final rule includes NO_x emissions as a $PM_{2.5}$ precursor but also allows a state or USEPA to not include NO_x as a precursor if the state and USEPA find that NO_x emissions from sources in the state do not significantly contribute to the $PM_{2.5}$ nonattainment area. At this time, New York State and USEPA have not provided a determination whether VOC, ammonia and NO_x will be regulated as $PM_{2.5}$ precursors. As a result, it is assumed NO_x and SO_2 are considered $PM_{2.5}$ precursor emissions as prescribed by the rule, while VOC and ammonia emissions are not $PM_{2.5}$ precursor emissions.

Construction-related emissions are not covered by an air permit program and are therefore evaluated under the General Conformity rule. Construction-related emissions occur in calendar years prior to commencement of FSRU operations. No other Project-related emissions will occur simultaneously with construction-related emissions. Since the region is in nonattainment for ozone, emissions of NO_x and VOCs are compared to General Conformity *de minimis* thresholds for the 8-hour ozone standard.

The NO_x emissions shown in Table 1 are above the General Conformity *de minimis* threshold of 100 tpy for each year of construction, assuming applicability of the 8-hour moderate ozone nonattainment threshold and assuming that New York and USEPA will not exclude NO_x emissions as a precursor for $PM_{2.5}$. Thus, during the two-year construction period, the full amount of the NO_x emissions is subject to mitigation under General Conformity. However, with construction scheduled to occur outside of the ozone control period (May 1 through September 30), construction emissions will not have any bearing on control period ozone concentrations or violations of the ozone NAAQS.

Direct construction emissions of $PM_{2.5}$ will be less than the *de minimis* threshold. Of the $PM_{2.5}$ precursor compounds (NO_x and SO_2), only NO_x would exceed a *de minimis* threshold. This conclusion is based on the assumption that New York and USEPA will not exclude NO_x emissions as a precursor for $PM_{2.5}$. Thus, NO_x emissions from construction activities in 2009 and 2010 may need to be further mitigated under General Conformity. Conversely, emissions of VOC, $PM_{2.5}$ and SO_2 during each year of the two-year construction period are estimated to be below the *de minimis* threshold for applicability of the General Conformity rule. Therefore, a general conformity determination is not required for these pollutants.

Thresholds for an 8-hour moderate ozone nonattainment area, $PM_{2.5}$ nonattainment area and corresponding emissions associated with the operation of the Project are shown in Table 2. Vessel activity during operation of the facility is shown to result in annual NO_x and SO_2 emissions above the *de minimis* thresholds for these pollutants. Direct emissions

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

of $PM_{2.5}$ and VOC are below *de minimis* thresholds. Thus NO_x emissions and SO_2 emissions in each year of operation will require a General Conformity determination.

4.1 New York State SIP

New York is in process of developing a SIP to address 8-hour ozone nonattainment; the SIP is due to USEPA in June 2007. As of January 2007, the NYSDEC is finalizing the baseline emission inventory budget to be used as the basis for the 8-hour ozone SIP emission budget projections. One of the source groups in the SIP emission inventory is marine vessels. NYSDEC based the marine vessel baseline emission inventory on the "Starcrest" Report (Port Authority NY NJ 2003). This marine vessel emission inventory is a comprehensive evaluation of marine vessel emissions in the waters surrounding the New York City Metropolitan area, including Long Island Sound. Broadwater's marine vessel emission inventory was developed using the same emission factors as used in the Starcrest report.

New York State is also beginning the process of developing SIP provisions to address $PM_{2.5}$ nonattainment. The $PM_{2.5}$ SIP is due April 2008. At this time, these SIP provisions are not available for review. Broadwater may have to address control of $PM_{2.5}$ precursor emissions under a $PM_{2.5}$ SIP depending on the content of control programs New York structures into its SIP provision for $PM_{2.5}$ nonattainment.

During the development of both SIPs, it is likely that New York will include the emission reduction benefits provided by new emission standards for marine vessel engines and the fuel sulfur limitations of the nonroad diesel fuel rule in the projected emission budgets.

5.0 General Conformity Determination

As discussed in section 4.1, New York State is currently developing an ozone SIP to address attainment of the 8-hour ozone standard by 2009. Thus, at this time, a final ozone SIP applicable in 2009 and beyond is not available. Similarly, New York State is beginning the process of developing a SIP to address $PM_{2.5}$ nonattainment in the State's nonattainment areas including the project location. The $PM_{2.5}$ SIP is due three years after nonattainment designations are final; therefore the New York $PM_{2.5}$ SIP is due in April 2008 (see FR Vol. 70, No. 210 November 1, 2005).

5.1 Consistency with Relevant SIP Requirements

As noted above, New York State has not finalized SIP requirements beyond calendar year 2007. However, it is reasonable to assume that marine vessel engine standards and nonroad fuel sulfur requirements will be incorporated into future New York SIPs for attainment of the 8-hour ozone standard and attainment of the $PM_{2.5}$ standard.

Broadwater is committed to meeting the requirements and being consistent with the relevant SIPs . Broadwater-owned vessels will comply with applicable marine vessel engine standards and nonroad fuel sulfur requirements. Owners and/or operators of other vessels such as LNG carrier or tug boats will have an independent obligation to comply with marine vessel-related requirements. Broadwater will continue to follow

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

development of the 8-hour ozone and $PM_{2.5}$ SIPs and work with NYSDEC to be consistent with requirements in those SIPs.

5.2 Emission Budgets/Attainment Demonstration

The current emission budget contained in the New York SIP is applicable to attaining the 1-hour ozone standard which has been vacated by USEPA. Since the current emission budget does not extend beyond 2007 and the Project's emissions do not begin until 2009, evaluation of the emissions with respect to attaining the 1-hour ozone standard is not applicable. New York does not have an emission budget in place to address $PM_{2.5}$ nonattainment; $PM_{2.5}$ nonattainment designations are the result of relatively recent promulgation of the $PM_{2.5}$ air quality standard, thus this is the first time that New York State has have received a designation under the $PM_{2.5}$ standard.

The New York SIP emission budget to demonstrate attainment of the 8-hour ozone standard is under development. New York will also begin development in 2007 of a SIP emission budget to demonstrate attainment of the $PM_{2.5}$ standard.

5.3 Project Emissions Mitigation/Offsetting

As lead federal agency for the Project, FERC conducts the full General Conformity determination parallel to its preparation of the Environmental Impact Statement (EIS) process. FERC will utilize emission estimates prepared for this General Conformity analysis (which is similar to emission estimates already provided in Resource Report 9) in its General Conformity determination. The magnitude and potential impact of the emissions will be evaluated, and a determination will be made regarding whether mitigation is necessary.

Several options to demonstrate conformity are available, as provided for in 40 CFR Part 93.158:

- the project can comply with the control measures and regulations included in the applicable SIP; and, the total direct and indirect emissions subject to conformity are specifically identified and accounted for in the SIP's attainment demonstration; or
- the State commits to revise its SIP to accommodate the emissions from the project; or
- for any criteria pollutant except ozone, the total emissions subject to conformity are evaluated through an area-wide and/or local air quality modeling analysis demonstrating that the project does not cause or contribute to any new NAAQS violation or increase the frequency or severity of any existing NAAQS violation in any area; or,
- emissions from the project are mitigated so that there is no net increase in emissions.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

Typically, a SIP revision to include emissions from a specific source in mid-course of an attainment demonstration plan period is not used to demonstrate conformity unless an analysis of the impact of the emission projection change is assessed with regional modeling. However, during the development phase of a new SIP, as is underway in New York State with respect to the 8-hour ozone attainment and $PM_{2.5}$ attainment demonstration SIPs, General Conformity can be demonstrated by incorporating projected emissions for the Project into the inventory. Once the SIPs are submitted, project emissions can then be accounted for in the SIP attainment demonstration. If attainment is demonstrated and the SIP is approved by USEPA with the emission budget containing a project's emissions, then General Conformity is demonstrated.

Given the status of development of two SIP components that affect Broadwater, Broadwater has initiated discussion with NYSDEC regarding General Conformity and the Project's emissions that are subject to General Conformity. Project emission data have been submitted to NYSDEC and are being evaluated by NYSDEC for incorporation into the SIP emission budget for the ozone SIP currently being developed. NYSDEC has indicated they are also considering using the ozone SIP emission source inventory for the $PM_{2.5}$ SIP that will be developed in 2007. Broadwater intends to continue discussions with NYSDEC regarding incorporation of project emissions into the emission inventory budgets as the ozone SIP and $PM_{2.5}$ SIP are developed.

Upon the determinations concerning the budgets, Broadwater will continue to coordinate with FERC, NYSDEC, and USEPA to satisfy the applicable General Conformity requirements. For example, with respect to construction emissions, as stated earlier, construction emissions will occur over a two year period but will not occur during the ozone control period within those years. Thus, construction activities will not contribute to ozone precursor (NO_x) emissions during the May 1 through September 30 ozone control period as long as construction occurs as planned. This mitigation measure contributes to the current 1-hour ozone SIP's goal of reducing ozone control period ozone precursor emissions by limiting construction activities to the non-ozone control period. It is likely that this approach will also serve a similar role with respect to the goals of the 8-hour ozone SIP. A similar mitigation measure was used by the New York Harbor dredging project for its first year of emissions, i.e., emissions of NO_x and VOC will occur outside of the ozone control period and therefore will not contribute ozone precursor emissions during the control period. Broadwater will confirm that this mitigation measure is sufficient for the purpose of satisfying General Conformity requirements to construction and related activities. If Broadwater is required to demonstrate conformity through mitigation, Broadwater will coordinate with NYSDEC and the USEPA and provide all appropriate documents necessary to support the emission reductions associated with these mitigation efforts.

6.0 Additional Considerations

Broadwater introduces a reliable source of new natural gas to the region, offering a compelling solution to the ever-growing demands in the Long Island, New York City, greater New York City metropolitan and Southern Connecticut markets for a competitively priced, reliable and cleaner burning fuel supply. This supply, which will be

20070123506 6 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

used by the residences and businesses, municipal governments, commerce, schools and hospitals in the target markets, will encourage patterns of development that enhance Long Island coastal communities and enable existing coal-and oil-fired electric generating facilities to repower using clean-burning and cost-effective natural gas. The end result will be increased energy reliability and regional power generation and reduced impacts on the natural resources that so greatly contribute to the character of Long Island's coastal communities.

7.0 Conclusion

Documentation supporting conformity with the applicable New York State SIPs in accordance with 40 C.F.R §93.158 is not yet available. Broadwater will continue to work with NYSDEC and, as necessary, USEPA to develop this documentation. Broadwater will undertake such actions as necessary to demonstrate General Conformity for the Project.

200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

8.0 References

Code of Federal Regulations, Title 40, Part 51, Subpart W, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans", July 1, 2006.

Code of Federal Regulations, Title 40, Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans", July 1, 2006.

FR Vol. 70, No. 91, May 12, 2005, "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)".

FR Vol. 70, No. 210, November 1, 2005, "Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards".

FR Vol. 71, No. 65 April 5, 2006, "$PM_{2.5}$ De Minimis Emission Levels for General Conformity Applicability".

6 NYCRR Part 204, Title 6 New York Code Rules and Regulations Part 204, NO_x Budget Trading Program.

Port Authority NY NJ, 2003, "The New York, Northern New Jersey, Long Island Nonattainment Area Commercial Marine Vessel Emissions Inventory, Volume 3 – Appendices F and G", Starcrest Consulting Group LLC.

USCG, September 2006, U.S. Coast Guard Captain of the Port Long Island Sound Waterways Suitability Report for the Proposed Broadwater Liquefied Natural Gas Facility, United States Department of Homeland Security.

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200701235066 Received FERC OSEC 01/23/2007 04:12:00 PM Docket# CP06-54-000, ET AL.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 23d day of January 2007.

/s/ Brett A. Snyder
Brett A. Snyder

Excerpts Pertaining to the Draft EIS from
Request of Broadwater Energy, LLC and Broadwater Pipeline, LLC for Leave to File Supplemental Comments on the Draft EIS Environmental Impact Statement

AP2-1

Broadwater requests that the comments contained herein be considered during preparation of the FEIS. Further, in light of the nature of some of the comments before the Commission, Broadwater respectfully submits that the FEIS should specifically refer to materials that are in the record and which have been considered by the FERC staff in the environmental review process by the Commission staff even though they were not included in the list of references (Appendix G) to the DEIS. Specifically, Broadwater's section 3 and section 7 applications, along with Resource Reports 1-13 and all other technical reports and information, including Environmental Information Request and Cryogenic Information Request responses, should be referenced. In addition, Broadwater applications and filings with all other federal and state agencies involved with the project and information supporting such applications and filings, including the Coastal Zone Consistency Certification submitted to the New York State Department of State, should be included in the list of referenced materials.

AP2-2

Broadwater requests that the Commission explicitly refer to the public trust doctrine in the FEIS, that it expressly consider and reference the discussion in the WSR at Section 5.2.2.2 and that the Commission refer to, attach, and make part of the FEIS Broadwater's April 2006 Coastal Zone Consistency Certification filed with the Commission on April 13, 2006 and the October 2006 Supplement filed with the Commission on November 3, 2006 (collectively, the "CZCC") so that there will be no occasion for a separate SEQR review that will delay the final outcome.

Applicant Comments

AP2-1 Section 1.2 of the final EIS describes the Broadwater information considered in our assessment of potential impacts of the Broadwater Project.

AP2-2 Section 3.5.5 of the final EIS describes the public trust doctrine. In addition, Section 3.5.7.1 of the final EIS identifies how to publicly access the Coastal Zone Consistency Certification, including the supplement.

Excerpts Pertaining to the Draft EIS from
Request of Broadwater Energy, LLC and Broadwater Pipeline, LLC for Leave to File Supplemental Comments on the Draft EIS Environmental Impact Statement

AP2-3

(#80) Commenters also identified concerns regarding impacts that the Broadwater project's pipeline may have on the lobster population in the Sound.[1] In Resource Report 3 (page 3-49), Broadwater noted that, unlike many lobster populations in the Northeast, lobsters in Long Island Sound are not migratory. Information obtained from the lobstering community (*See* Appendix C to Resource Report 8) confirms that lobster fishing is not constant throughout the year, but rather two peak fishing periods occur, one during the spring and summer and another during late fall and early winter. As depicted in Figure 3-16, while the lobsters in Long Island Sound do not migrate per se, the lobster populations demonstrate a seasonal pattern with numbers lower in the winter months when Broadwater anticipates installing the pipeline and tower.

AP2-4

(#101) Temperatures at or near the surface range from 65 °F to 77 °F, while temperatures can be as much as 9 °F cooler, at depth. Higher temperatures nearing 83°F likely would occur in shallower near shore estuarine environments that are more influenced by daily temperatures, but not in the deeper central portion of the Sound where the project would be located.

AP2-5

(#102) Finally, the potential impact of the once every five years discharge from purging, cleaning and inspecting of the FSRU storage tanks was evaluated. This activity would occur over a one to two day period. This is a non-contact, 0.29 million gallons per hour cooling water discharge that is expected to have delta T above ambient temperature of 20°F, regardless of the time of year. (Note: Although the DEIS indicates a delta T of

[1] *See* January 23, 2007 Comments of the Connecticut Department of Environmental Protection at p.11-13; *See also* January 23, 2007 Comments of New York State Department of Environmental Conservation at p.3.

AP2-3 Section 3.3.1.1 of the final EIS has been updated to reflect the current information on lobster migration patterns in Long Island Sound.

AP2-4 Section 3.2.1.3 of the final EIS has been updated to provide more detail on water temperatures in the Project area. This revised information includes summer temperatures, including the maximum daily average temperature in surface water recorded during 2004–2005 (79 °F) in the offshore waters of the central basin.

AP2-5 Section 3.2.3.2 of the final EIS has been updated accordingly.

Applicant Comments

Excerpts Pertaining to the Draft EIS from
Request of Broadwater Energy, LLC and Broadwater Pipeline, LLC for Leave to File Supplemental Comments on the Draft EIS Environmental Impact Statement

AP2-5 52°F, per Broadwater's April 20, 2006 response to a FERC Environmental Information Request, Broadwater identified an anticipated increase in temperature of 11°C, or 20°F.) A mixing zone would therefore be required to meet the temperature compliance criteria of no more than 4°F above ambient.

AP2-6 (#118) Broadwater recommends that the Commission explicitly refer to the public trust doctrine in the FEIS, and also expressly consider and reference the discussion in the Coast Guard's WSR at Section 5.2.2.2.

AP2-7 (#148) Accordingly, Broadwater respectfully requests that the Commission refer to, and make part of the FEIS Broadwater's April 2006 Coastal Zone Consistency Certification filed with the Commission on April 13, 2006 and the October 2006 Supplement filed with the Commission on November 3, 2006 (collectively, the "CZCC") so that there will be no occasion for a separate SEQR review that will delay the final outcome.

AP2-6 Section 3.5.5 of the final EIS describes the public trust doctrine and the related discussion in the WSR.

AP2-7 Please see response to comment AP2-2.