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

OFFICE OF THE GENERAL COUNSEL

VIA FACSIMILE

MAY 20 2003

Frank L. Amoroso, Esq.
Nixon Peabody LLP
990 Stewart Avenue
Garden City, NY 11530

David H. Wrinn
Carmel A. Motherway
Assistant Attorneys General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141

Re: Reply Date for Connecticut Department of Environmental Protection's Response to Remand Request - Consistency Appeal of the Islander East Pipeline Company

Dear Counsel:

On May 15, 2003, Islander East Pipeline Company, L.L.C. (Islander East) filed a request seeking to continue a stay for its consistency appeal pending before the Department of Commerce pursuant to the Coastal Zone Management Act. The extension was requested to allow the proceeding to be remanded to the Connecticut Department of Environmental Protection, pursuant to 15 C.F.R. §930.128(d). The remand would allow Connecticut to reconsider its objection to Islander East's proposed natural gas pipeline project, based on significant new information not provided to the State at the time the project's consistency certification was reviewed.

The immediate issue involves setting a date by which Connecticut must reply to Islander East's request. The State expects to make a decision no later than May 22, 2003, and would submit its views by the following day. Islander East considers this proposal to be a dilatory tactic, noting that Connecticut has been aware for several weeks of the company's intention to seek a remand. Consequently, Islander East suggests May 20, 2003 as an appropriate deadline for the State's response.

The Department recognizes the interests of parties in obtaining timely decisions of CZMA appeals and seeks to avoid unreasonable delay throughout the appeals process. In this case, however, the difference in deadlines proposed by the parties is *three* days. In objecting to Connecticut's proposed comment deadline, Islander East fails to identify the degree to which its interests would be adversely affected if Connecticut filed comments on Friday instead of

Tuesday. Further, we note that Islander East seeks an extension of the stay – from May 15, 2003 through July 31, 2003.[1] The three days at issue here are but a fraction of the much longer period Islander East anticipates the stay being continued. We conclude, in the absence of evidence to the contrary, that the possible harm to Islander East's interests resulting from the later due date proposed by Connecticut would be minimal.

In addition, there is no indication of the extent to which, if at all, senior officials in the Connecticut Department of Environmental Protection were briefed about a possible remand prior to the filing of Islander East's request. Clearly they should have an opportunity to consider Islander East's filings, including implications of the underlying information.[2] Although it might be desirable for Connecticut to respond more promptly, under the circumstances, we do not find its proposed due date unreasonable, and for the foregoing reasons grant its request. Therefore, Connecticut's comments on the remand and the extension of the stay requested by Islander East shall be due on **May 23, 2003.**

If there are any questions concerning this matter, please contact Branden Blum of this office.

Sincerely,

James R. Walpole
General Counsel

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[1] Islander East proposes the extension to facilitate Connecticut's review of changes to the natural gas pipeline project in connection with the requested remand. Letter from Frank L. Amoroso, Nixon Peabody LLP (representing Islander East) to Branden Blum, NOAA, U.S. Department of Commerce, May 15, 2003, at 2.

[2] As of May 5, 2003, Connecticut appeared to question the sufficiency of the new information provided by Islander East. See letter from Charles H. Evans, Connecticut Department of Environmental Protection to Gene Muhlherr, Islander East Pipeline Company, dated May 5, 2003, a copy of which was submitted to the Department of Commerce on May 15, 2003, by Islander East in connection with its remand request.