

that Islander East complete its cultural resource investigation and report. Under this condition, Islander East cannot commence construction of the proposed pipeline until: (1) the section 106 investigation and report are complete; (2) the Advisory Council on Historic Preservation and the State Historic Preservation Officer (SHPO) have commented on Islander East's report; and (3) those comments have been filed with the Commission for review by the Director of OEP. If North Branford believes that Islander East's investigation is improper it should bring its allegations to the attention of the Connecticut SHPO for further investigation.

**b. Bedrock Testing**

131. North Branford also contend that Islander East has not consulted with the pertinent staff of the Connecticut Department of Environmental Protection with regard to bedrock testing in areas of known land contamination in North Branford. Environmental Condition No. 14 requires that Islander East, in consultation with the Connecticut Department of Environmental Protection, conduct a site-specific study to determine if construction activities, particularly blasting, would effect contaminated groundwater migration in North Branford. Islander East has to file documentation of its consultations, the work plan, and results of the study prior to constructing the proposed facilities.

**c. Branford Steam Railroad**

132. In comments filed in response to the final EIS, Jerry C. Shaw states that the Unexpected Contamination Encounter Plan (Contamination Plan) prepared by Islander East would fail to identify the type of contamination related to railroad operations on the Branford Steam Railroad and that soil testing should be required in this area. Specifically, he contends that Islander East's visual inspection of the area may not be sufficient to detect the presence of polyaromatic hydrocarbons (PAHs) that are prevalent along utility rights-of-way and railroad lines. In addition, he recommends that procedures should be developed for construction adjacent to the railroad and that effective erosion control has not been identified.

133. As discussed in the final EIS,<sup>69</sup> due to access difficulties Islander East has not yet conducted all the required surveys for this portion of the proposed route. Therefore, Environmental Condition No. 38 requires that Islander East develop and file a site-specific plan for this area for approval by the Director of OEP prior to construction of the facilities. As also noted in the final EIS, the Commission is aware of the potential for encountering contaminated

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<sup>69</sup>See final EIS at 3-135 to 3-136, and Appendix M, comment letter G65.

soil in the area of the Branford Steam Railroad.<sup>70</sup> We believe the Contamination Plan and the Erosion Control Plan are sufficient to address any potential impacts should PAHs be detected.

**d. Certificate Conditions**

134. In its comments to the final EIS, Islander East raises two concerns related to two of the proposed Environmental Conditions. First, it states that Environmental Condition No. 11 implies that the AES Calverton power plant that will be supplied by the Calverton Lateral needs to be constructed prior to construction of the Calverton Lateral. Islander East states that the AES Calverton power plant will require natural gas service to complete start up and commissioning activities. Therefore, it asserts that Islander East will need to construct and complete the lateral and meter station facilities before the power plant is completed. Therefore, Islander East requests that the Commission clarify that Environmental Condition No. 11 to state that Islander East shall not commence construction of the Calverton Lateral prior to the New York PSC approval of the AES Calverton power plant.

135. The purpose of Environmental Condition No. 11 was to assure Islander East's Calverton Lateral was not constructed unless the AES Calverton power plant was constructed. The Commission did not intend for Islander East to wait until the plant was totally completed before commencing construction of the Lateral. Therefore, we will revise Environmental Condition No. 11 to state that Islander East shall not commence construction of the Calverton Lateral until the New York PSC approves that AES Calverton power plant and AES Calverton commences construction of the power plant. Islander East can construct the Calverton Lateral concurrent with the construction of the power plant.

136. Islander East also states that Environmental Condition No. 21 requires that it complete the HDD installation of the Connecticut shore approach before it can commence construction of the other offshore facilities. It states that it developed its winter offshore construction schedule to minimize environmental impacts on threatened and endangered species at the request of Federal and State regulatory agencies. Islander East states that in order to complete offshore construction during the winter months, it must complete the installation of the HDD section on the Connecticut shore approach and install pipe across Long Island Sound concurrently. Islander East states that the possibility of failure of the HDD is with the pilot hole drilling. Therefore, it requests that the Commission clarify Environmental Condition No. 21 consistent with the Connecticut Siting Council's Decision and Order that requires offshore construction activities, except where related to HDD installation, not occur until the successful completion of the HDD pilot hole.

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<sup>70</sup>See final EIS at 3-141.

137. We agree with Islander East's concern and have revised Environmental Condition No. 21 to reflect the requirement that it complete the HDD pilot hole for the Connecticut shore approach before commencing construction of the other offshore facilities. However, we will also require that Islander East file a construction plan for each offshore spread or segment that includes the schedule, locations, and duration of construction after it completes construction of the pilot hole for approval by the Director of OEP before commencing construction of the other offshore facilities.

## 5. State and Local Permits

138. Finally, as noted above, any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>71</sup> Islander East and Algonquin shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies the pipeline. Islander East and Algonquin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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<sup>71</sup>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. 1989); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

**E. Other Issues**

**1. Property Values**

139. Many commentators raise concerns regarding the impact the pipeline will have on property values. Generally, compensation for the granting of a pipeline easement is determined as the result of negotiations between the pipeline company and the landowner. These negotiations could potentially include compensation for damage to the property or for any perceived loss of property value.<sup>72</sup> If an easement cannot be negotiated with the landowner, the company may exercise in court the right of eminent domain granted to the pipeline under section 7(h) of the NGA. In an eminent domain proceeding, the court will require the pipeline to compensate the landowner for the right-of-way, as well as for any damages incurred during construction. The level of compensation would be determined by the court according to the state laws that set forth the procedures for the use of eminent domain once the Commission issues a certificate.

**2. Performance Bonds/Damages/Liability Insurance**

140. Bradford requests that Commission require that Islander East secure a performance bond for potential financial risks. Pipeline companies are responsible for damages that result from the construction of the pipeline facilities. In its comments on the final EIS, North Branford also requests various conditions requiring that Islander East purchase liability insurance and enter into damage agreements.

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<sup>72</sup>See, e.g., Appeal of Giesler, 622 A.2d 408 (1993).

141. The Commission is reasonably assured that Islander East will be able to provide for any damages that may result from the construction of the proposed facilities. However, compensation for rights-of-way and for damages that result from the construction of the pipeline facilities generally are issues that are addressed during the easement negotiation process between the pipeline and impacted parties.<sup>73</sup>

#### F. Conclusion

142. Having previously made preliminary findings based on all non-environmental issues relating to Islander East's and Algonquin's applications, and having now conducted an environmental review of the proposal, we are able to determine that the proposed facilities and services are required by the public convenience and necessity. This order incorporates the findings with respect to the non-environmental issues contained in the preliminary determination to the extent they are not modified herein, and constitutes the Commission's final decision on Islander East's and Algonquin's request for authorizations.

143. At a hearing held on September 18, 2002, the Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) Certificates of public convenience and necessity are issued to Islander East and Algonquin to construct and operate natural gas facilities and lease capacity, as described and conditioned herein and in the December 21 order.

(B) Any certificate and authority issued in a final order in this proceeding will be conditioned, as discussed in this order, on the following:

(1) Islander East and Algonquin completing the authorized construction within two years of the final order; and

(2) Islander East's and Algonquin's complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

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<sup>73</sup>See Agreement among the City of New York, New York City Economic Development Corporation and Iroquois Gas Transmission System, L.P. filed in Docket No. CP00-232-000 on June 18, 2002.

(C) Islander East shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates, as discussed in this order.

(D) Islander East shall file sixty days after the order issuing a certificate, rates and pro forma tariff sheets consistent with the discussion in the December 21, order, NAESB (formerly GISB), Order No. 637 standards, and negotiated rate authority in effect at that time.

(E) Islander East shall make a filing within three years after its in-service date, either justifying its existing recourse rates or proposing alternative rates, as discussed in the December 21 order.

(F) Algonquin shall maintain separate records for the Islander East lease comparing the revenue responsibilities with and without the proposed lease and also provide for the tracking of fuel costs associated with Islander East's leased facilities.

(G) Islander East shall execute contracts for the level of service and for the terms of service represented in the precedent agreements prior to commencing construction.

(H) A certificate of public convenience and necessity is issued to Islander East in Docket No. CP01-385-000 for a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.

(I) Certificate of public convenience and necessity is issued to Islander East in Docket No. CP01-386000 for a blanket construction certificate to Islander East under Subpart F of Part 157 of the Commission's regulations.

(J) Islander East shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Islander East. Islander East shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(K) Meadowcrest's motion to intervene out-of-time is denied. Meadowcrest's motion to intervene on environmental grounds is granted.

(L) All filings are accepted into the record.

(M) The motions to consolidate are denied.

(N) The requests for rehearing are denied, in part, and granted in part, as discussed above.

By the Commission.

(SEAL)

Linwood A. Watson, Jr.,  
Deputy Secretary.

## Appendix

### Environmental Conditions

144. Islander East and Algonquin shall follow the construction procedures and mitigation measures described in its application, supplemental filings, and as identified in the EIS, unless modified by this Order. Islander East and Algonquin must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the OEP **before using that modification.**
  
2. The Director of OEP has delegated authority to take whatever steps necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impacts resulting from project construction and operation.
  
3. **Prior to any construction**, Islander East and Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
  
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include the staff's recommended facility locations. **As soon as they are available, and before the start of construction**, Islander East and Algonquin shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Islander East's and Algonquin's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Islander East's and Algonquin's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Islander East and Algonquin shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that will be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction** in or near that area.

This requirement does not apply to route variations recommended herein or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this Certificate and before construction begins**, Islander East and Algonquin shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Islander East and Algonquin will implement the mitigation measures required by this Order. Islander East and Algonquin must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Islander East and Algonquin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction inspection personnel;

- b. the number of environmental inspectors assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
- c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
- d. what training and instructions Islander East and Algonquin will give to all personnel involved with construction and restoration (initial and refresher training, as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
- e. the company personnel (if known) and specific portion of Islander East's and Algonquin's organization having responsibility for compliance;
- f. The procedures (including use of contract penalties) Islander East and Algonquin will follow if noncompliance occurs; and
- g. For each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
  - (1) the completion of all required surveys and reports;
  - (2) the mitigation training of onsite personnel;
  - (3) the start of construction; and
  - (4) the start and completion of restoration.

7. Islander East and Algonquin shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all environmental mitigative measures required by this Order, Islander East's and Algonquin's ESC Plan, and other grants, permits, certificates, or other authoring documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see recommendation 6 above) and any other authorizing documents;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
  - d. a full-time position separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. Islander East and Algonquin shall file updated status reports prepared by the head environmental inspector with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:

- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspectors during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirement imposed by other Federal, state, or local agencies);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Islander East or Algonquin from other Federal, state or local permitting agencies concerning instances of noncompliance, and Islander East's and/or Algonquin's response.
9. Islander East and Algonquin must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Islander East and Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable - conditions; or
  - b. identifying which of the certificate conditions Islander East and Algonquin have complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Islander East shall not commence construction of the Calverton Lateral until the New York PSC approves that AES Calverton power plant and AES Calverton commences construction of the power plant.
12. For residential areas and the Branford Land Trust property where Islander East or Algonquin do not test for soil compaction, Islander East and Algonquin shall monitor the progress of revegetation annually for 3 years following construction and file a report on the level of revegetation success each year with the Secretary. If revegetation is unsuccessful in a residential area, Islander East and Algonquin shall identify in the report the measures they plan to implement to restore the area. If an area continues to be

unsuccessfully restored after 3 years, Islander East and Algonquin shall file a restoration plan for the area and the landowner's comments on it for the review and written approval of the Director of OEP **prior to its use.**

13. Algonquin and Islander East shall notify the South Central Connecticut Regional Water Authority and the Suffolk County Department of Health Services of activities that would occur within Class I Watershed or aquifer protection area wellhead boundaries. In the event of a spill in a Class I Watershed or an aquifer protection area wellhead boundary, Algonquin and Islander East shall notify the CTDEP and/or NYSDEC, the Haz/Mat Spill Response Program, and the South Central Connecticut Regional Water Authority and/or the Suffolk County Department of Health Services immediately.
14. Islander East shall conduct a site-specific study between mileposts 5.4 and 5.6 to determine if construction activities, particularly blasting, would affect contaminated groundwater migration in this area. Islander East shall prepare a work plan in consultation with the CTDEP **prior to conducting the study.** Islander East shall file documentation of consultations, the work plan, and the results of the study with the Secretary, **prior to construction.**
15. Algonquin shall store all DOT-regulated hazardous materials within secondary containment and obtain approval from the CTDEP **prior** to installing any underground storage tanks at the proposed Cheshire Compressor Station.
16. Islander East's and Algonquin's proposed pre- and post-construction monitoring shall include well yield and water quality for both private and public wells. Water quality testing shall be conducted using testing criteria for new water wells in each state as dictated by each state's Department of Health. **Within 30 days** of placing the facilities in service, Islander East and Algonquin shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved. In addition, Islander East and Algonquin shall file a report with the Secretary identifying all potable water supply systems damaged by construction and how they were repaired.
17. In the event that the HDD of the Carmans or Peconic River fails, Islander East shall file with the Secretary an updated plan including site-specific drawings identifying all areas that would be disturbed by construction using an alternate crossing method at the Carmans and Peconic Rivers on Long Island. Islander East shall file this plan concurrent with its application to the COE and NYSDEC for a permit to construct using this plan. The Director of OEP must review and approve this plan in writing **before construction** of the crossing.
18. Islander East shall submit a Directional Drill Contingency Plan for each waterbody crossed by directional drilling. Each Directional Drill Contingency Plan shall address how Islander East:

- a. will handle any inadvertent release of drilling mud into the waterbody or areas adjacent to the waterbody, including procedures to contain inadvertent releases;
  - b. will seal the abandoned drill hole; and
  - c. clean up any inadvertent releases.
19. Islander East shall file the completed site-specific contaminated sediment studies in the Sound with the appropriate Federal or state agencies with regulatory authority, and consult with these agencies, to determine which, if any, known or suspected contaminated sites require further investigation and what mitigation may be employed to minimize impact in the event that contaminated areas are crossed. Islander East shall file with the Secretary any comments received from regulatory agencies and identify any mitigation measure development as a result of consultation, **before construction**, for review and written approval from the Director of OEP.
20. Islander East shall obtain trench fill material only from EPA- or state-approved sources, if additional material is needed to establish the required depth of cover over the pipeline in offshore areas. Islander East shall inform the FERC and the CTDEP or NYSDEC, as appropriate, about their need for extra trench fill and shall provide milepost locations where the extra fill was used.
21. Offshore construction, except where related to HDD installation, shall not occur until Islander East successfully completes the HDD pilot hole for the Connecticut shore approach, and files with the Secretary a construction plan for each offshore spread or segment that includes the schedule, locations, and duration of construction. The Director of OEP must review and approve the offshore construction plan in writing **before construction** in Long Island Sound.

In the event that the directional drill is unsuccessful, Islander East shall file with the CTDEP and the Secretary a plan for the crossing of the Connecticut shore. This shall be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. Islander East shall file this plan concurrent with its application to the COE for a permit to construct using this plan. The Director of OEP must review and approve this plan in writing **before construction** of the crossing.

22. **Before construction**, Islander East shall update the "Directional Drill Monitoring and Operations Program for Natural Gas Pipeline Installation in Long Island Sound" plan to add FERC to the list of agencies that would be contacted in the event of any releases of drilling mud to the environment. A report of any releases and remediation measures taken shall also be included in the notification to all appropriate agencies.

Islander East shall file the updated "Directional Drill Monitoring and Operations Program for Natural Gas Pipeline Installation in Long Island Sound" plan with both the CTDEP and the NYDEC for consultation, **prior to construction**. Islander East shall notify the Secretary in writing of the outcome of the state reviews.

23. **Before construction**, Islander East shall file with the Secretary for review and written approval from the Director of OEP, a plan to perform long-term monitoring to assess the impacts of pipeline construction to the sea floor of Long Island Sound. Monitoring shall occur for a minimum of 5 years unless results indicate that the areas have recovered. The monitoring shall include a comparison of the benthic community structure of the impaired areas (i.e., trench, anchor scar, and areas of anchor sweep) with nearby control areas that have conditions similar to pre-construction conditions. In addition, one component of the monitoring plan shall focus on nearshore shellfish habitat. Upon completion of monitoring, Islander East shall file with the Secretary the results of the monitoring program.
24. Islander East shall use the subsea plow construction method, where technically feasible, between MPs 12.0 and 32.15 for pipeline trenching and backfill operations.
25. **Before construction**, Islander East shall file with the Secretary the final plan for crossing shellfish lease area L-555 and the unleased shellfish areas between MPs 11.5 and 13.0, and documentation of consultation with the State of Connecticut, Department of Agriculture, Aquaculture Bureau, the Town of Branford and the lease holder on the final plan.
26. **Prior to construction**, Islander East shall file with the Secretary copies of all correspondence with the NMFS regarding measures to avoid and minimize potential impacts to EFH and EFH-managed species.
27. **Prior to construction**, Islander East shall file with the Secretary copies of all final site-specific invasive species control plans and correspondence with individuals, organizations, and agencies, including the FWS, COE and EPA, regarding measures to control the introduction and spread of invasive species.
28. Islander East shall continue consultation with the FWS and the NYSDEC regarding the least tern and piping plover and any requirements for surveying, monitoring, or avoiding piping plovers and their habitats. Islander East shall **not begin construction activities** until:
  - a. the staff receives comments from the FWS regarding the proposed action;
  - b. the staff completes formal consultation with the FWS, if required; and

- c. Islander East has received written notification from the Director of OEP that construction or use of mitigation may begin.

29. Islander East and Algonquin shall file with the Secretary an annual summary monitoring report documenting the revegetation status of each wetland affected by construction.

Post-construction reports shall be filed for each of the first three years, at a minimum, or until each wetland is successfully revegetated. The reports shall include an inventory of exotic nuisance plant species present on the construction right-of-way. For any wetlands that have not been restored by the third growing season, Islander East and Algonquin shall file with the Secretary a site-specific plan to restore these problem areas, for review and written approval by the Director of OEP.

30. **Prior to construction**, Islander East shall develop a storm contingency and harbor of refuge plans for use during construction of its offshore facilities.
31. For any residence closer than 25 feet to the construction work area, Islander East shall file a site-specific plan with the Secretary for the review and written approval of the Director of OEP **before construction**. The plan shall include:
  - a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:
    - (1) the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
    - (2) the edge of the construction work area;
    - (3) the edge of the new permanent right-of-way; and
    - (4) other nearby residences, structures, roads, or waterbodies.
  - b. a description of how Islander East will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
  - c. evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence.
32. Islander East and Algonquin shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way, **prior to construction**. Islander East and Algonquin shall mail the complaint procedures to each

landowner whose property would be crossed by the project. In a letter to affected landowners, Islander East and Algonquin shall:

- a. provide a local contact that the landowner should call first with their concerns; the letter shall indicate how soon a landowner should expect a response;
- b. instruct the landowner that if they are not satisfied with the response to call Islander East and Algonquin's Hotline; the letter shall indicate how soon a landowner should expect a response; and
- c. instruct the landowner that if they are still not satisfied with the response from Islander East and Algonquin's Hotline, they should contact the Commission's Enforcement Hotline at (877) 303-4340.

In addition, Islander East and Algonquin shall include in weekly/bi-weekly status reports a copy of a table that contains the following information for each problem/concern:

- the date of the call;
- the identification number from the certified alignment sheets of the affected property;
- the description of the concern/problem; and
- an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

33. **Before construction**, Islander East shall inspect Mr. Nargi's property at MP 8.9 to determine the feasibility of reconstructing this septic system to code on the land available outside of the proposed pipeline right-of-way and file this information with the Secretary.
34. **Prior to construction**, Islander East shall file with the Secretary an updated list of residences within 50 feet of the construction workspace areas in the Meadowcrest subdivision (MPs CA2.0 to CA2.35) and the Spring Meadow subdivision (MPs CA1.5 to CA1.7). Islander East shall include any newly-identified residences within 25 feet of construction in its requirement for preparation of site-specific plans.
35. **Prior to construction**, Islander East shall develop, with affected landowners or land managers, if requested, and file with the Secretary, a description of how it would control or limit potential all-terrain vehicle use and damage on its right-of-way. Installation of barriers such as gated fences or other obstructions or devices shall be considered.
36. **Before construction**, Islander East shall file with the Secretary any revised construction and restoration plans for crossing the properties administered by North Haven Land Trust (MP 0.3), the North Branford Land Trust (MP 4.2, 4.3) and the Branford Land Trust (MPs 8.1, 8.9, and 9.7).
37. Prior to construction, Islander East, in consultation with the applicable land management agencies including the applicable land trusts, shall develop site-specific construction

plans describing the construction methods that would be used for crossing the trail at MP 10.0 and construction across or adjacent to any other actively used trails within the project area. Islander East shall file the site-specific plans and documentation of consultation with the appropriate land management agencies with the Secretary, **prior to construction.**

At a minimum, the plan shall include site-specific details on:

- a. construction and restoration timeframe, including any timing restrictions; and
  - b. access for hikers.
38. Islander East shall develop and file with the Secretary for review and written approval by the Director of OEP **prior to construction**, a site-specific plan for construction of the pipeline adjacent to the Branford Steam Railroad, including site-specific construction/restoration plans developed in coordination with affected adjacent residential landowners, addressing how Islander East will minimize visual impacts of vegetation clearing for those residences whose vegetative screening will be removed during construction.
39. Islander East shall continue to consult with the Pine Barrens Commission concerning construction through the Central Pine Barrens. If mitigation is required by any agency for the construction in the Central Pine Barrens, Islander East shall file copies of the final mitigation plan and any related correspondence **prior to construction.**
40. **Prior to construction**, Islander East shall prepare and file with the Secretary a final site-specific Construction, Restoration and Invasive Species Control Plan for the Central Pine Barrens Region.  
For the forested areas where tree clearing is required in the Central Pine Barrens, provide a detailed vegetation map that shows the location and types of arboreal species that would be removed, including any Federal or state protected species or local species of concern.
41. **Before construction**, Islander East shall file with the Secretary a plan for the crossing of each segment of the Central Pine Barrens in the event one or more of the proposed HDD segments is unsuccessful. This shall be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. The Director of OEP must review and approve this plan in writing before an alternate construction methodology may be used in the Central Pine Barrens region.
42. Islander East shall file documentation of concurrence from the New York and Connecticut agencies for its Certification of Consistency with the New York and Connecticut CZMP with the Secretary, **before construction.**

43. Islander East and Algonquin shall defer construction and use of the proposed project facilities together with the use of related ancillary areas for staging, storage, and temporary work areas and new or to-be-improved access roads, until:
- a. Islander East and Algonquin file with the Secretary all additional required cultural resources inventory and evaluation reports, and any necessary treatment plans;
  - b. Islander East and Algonquin file the appropriate SHPO and any other appropriate parties' comments on all cultural resources investigation reports and plans;
  - c. The ACHP has been given an opportunity to comment if any historic properties would be affected; and
  - d. The Director of OEP reviews and approves all cultural resources reports and plans, and notifies Islander East and Algonquin in writing that they may proceed with mitigation programs or construction.

All material filed with the Secretary containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**"

44. **Before construction**, Algonquin and Islander East shall prepare a plan to minimize impacts to air quality, including fugitive dust and vehicle emissions, and submit this to the CTDEP and for the review and written approval of the Director of OEP.
45. **Before construction**, Algonquin shall file the following information with the Secretary:
- a. make and model number of the turbine or compression to be installed at the Cheshire Compressor Station; and
  - b. the manufacturer's emission estimates in tons per year for NO<sub>x</sub>, CO, VOC, PM<sub>10</sub>, and SO<sub>2</sub> for the selected turbine unit.
46. Algonquin shall file a noise survey with the Secretary **no later than 60 days** after placing the Cheshire Compressor Station in service. If the noise attributable to the operation of the station at full load exceeds an L<sub>dn</sub> of 55 dBA at any nearby NSAs, Algonquin shall install additional noise controls to meet the level **within 1 year** of the in-service date. Algonquin shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

47. Algonquin shall incorporate the high performance noise control measures identified in the February 18, 2002 horizontal directional drilling site noise study into bid requirements and contract specifications for the Juniper Point horizontal directional drilling operation.
48. Islander East shall incorporate the State Route 25 Route Alternative into the proposed route. Islander East shall file a site specific plan for this route alternative with the Secretary for review and written approval by the Director OEP, **prior to construction**. This plan shall include at a minimum the specifications for a directional drill of Horn Pond; location and size of extra workspace; areas where the construction right-of-way can be reduced to no more than 60 feet; erosion control; and restoration.
49. Islander East incorporate the Town Line Variation into the proposed route. Islander East shall file a site specific plan for this variation with the Secretary for review and written approval by the Director OEP, **prior to construction**. This plan shall include at a minimum the specifications for landowner limitations, including building, storage, and equipment operation.
50. Islander East shall incorporate the Marshalling Yard Variation into the proposed route. Islander East shall also continue to consult with Tilcon regarding its future plans for the marshalling yard.
51. Islander East shall incorporate the Pond Variation into the proposed route. Islander East shall also file with Secretary for review and written approval by the Director of OEP, **prior to the start of construction**, a site-specific plan for the crossing of the pond. This plan shall include, at a minimum: construction methods; extra workspace location, size, and purpose; erosion control methods and placement; restoration and revegetation specifics; and a monitoring plan
52. Islander East shall incorporate the William Floyd Parkway Variation into the proposed route between MPs 41.0 and 42.4.
53. To the extent that they are compatible with any Commission-required alternative routes, Islander East shall incorporate the fourteen route variations contained in Table 4.4.9-1 of the FEIS into the proposed route.
54. Islander East shall run the offshore sedimentation model on the shallower sections of the spoil mounds (at the northern portion of the horizontal directional drill transition basin), prior to submitting the offshore monitoring plan, in order to determine additional near-shore areas that may require monitoring for sedimentation impacts. Islander East shall file with the Secretary the results of the revised modeling along with the offshore monitoring plan.
55. Islander East shall monitor the near-shore areas for sedimentation impacts. If monitoring results show that the erosion and deposition exceed either the depth of sediment

deposition or the areal extent of coverage that was estimated by Islander East's modeling, Islander East is responsible for mitigation of the additional effects. Such mitigation could include clam and oyster seeding or replacement of oyster habitat, sufficient or compensate for the unpredicted impacts. Mitigation shall be determined through consultation with the lease holder and/or appropriate Federal or state agency.

Attachment B

**Comments of the Public Service Commission of the  
State of New York on the Draft Environmental Impact  
Statement**

The Public Service Commission of the State of New York

May 17, 2002

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FEDERAL ENERGY  
REGULATORY COMMISSION

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Islander East Pipeline Company, L.L.C.  
Algonquin Gas Transmission Company**

**Docket Nos. CP01-384-000  
CP01-387-000**

**COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK  
ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Pursuant to the procedural dates established in a Letter Order issued by the Secretary of the Federal Energy Regulatory Commission (Commission) in the above captioned proceeding, the Public Service Commission of the State of New York hereby files its comments to the Draft Environmental Impact Statement (DEIS).

In March 2002, the Commission issued its DEIS on the proposed Islander East Pipeline Project (Islander East). Islander East proposes to construct pipeline facilities that would cross Long Island Sound (Sound) to provide 285,000 dekatherms per day of firm transportation capacity to eastern Long Island, New York.

The DEIS concludes that with Islander East's proposed mitigation and adoption of measures recommended in the DEIS, construction and operation of the proposed facilities would have limited adverse environmental impact. The Commission also seeks comments on a system alternative which utilizes the Iroquois proposal for its eastern Long Island (ELI) extension project.

The ELI Project or the Islander East proposed routing would meet eastern Long Island's need for additional capacity by providing an additional delivery point to eastern Long Island where significant load growth has been experienced

and is expected to continue in the future. However, in evaluating these two alternative routes, the competitive market and downstream system impacts are important considerations which should weigh heavily in the decision of which route to certify. A critical downstream consideration is the extent to which the route will increase the diversity of gas supply delivery to Long Island. While the Iroquois ELI Project routing is slightly shorter, it uses a portion of the existing Iroquois Long Island Sound crossing. The Islander East proposal provides contingency protection for both the gas and electric systems because it would include a separate Sound crossing. This separate pipeline would provide protection against total loss of supply if damage were to occur to the Iroquois line upstream of the interconnection to the ELI facilities.

Load on Long Island, both electric generation and core gas markets are already heavily dependent upon deliveries through the Iroquois system. The New York State Reliability Council rules require that the bulk power system be operated so that the loss of a single gas facility does not result in the loss of electric load. Because of Long Island's dependence on the delivery of significant volumes of gas for electric generation from a single pipeline (Iroquois), the number of gas fired generators must be limited when electric load is above critical system load levels. Consequently, specific dual fuel capable units must be switched to oil burning when loads are above those levels. Similarly on the gas side, the Long Island market is heavily dependent on deliveries over the Iroquois system. Diversifying the gas delivery system by selecting a route that is totally independent of the existing Iroquois Sound crossing will enhance the reliability of the energy infrastructure to Long Island. Additionally, to the extent operational constraints are reduced and increased gas firing does not create a reliability risk, environmental impacts of stack emissions will also be reduced.

## CONCLUSION

Islander East's proposed route should be certified if only one line is built. It will add another source of delivery to Long Island, which will provide contingency protection and improve reliability. We urge the Commission to certify the route proposed by Islander East.

Respectfully submitted,

THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK



David D. Alessandro  
Kelly A. Daly  
Morrison & Hecker L.L.P.  
1150 18th Street, N.W., Suite 800  
Washington, DC 20036

Its Attorneys

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C., this 17<sup>th</sup> day of May 2002.



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Attachment C

**Answer of the KeySpan Delivery Companies and  
KeySpan Utility Services, L.L.C in Opposition to  
Motion to Consolidate Proceedings and For  
Comparative Evidentiary Hearing**

The KeySpan Delivery Companies

April 23, 2002

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FILED  
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
BEFORE THE

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FEDERAL ENERGY REGULATORY COMMISSION

FEDERAL ENERGY  
REGULATORY COMMISSION

In The Matter Of:	:	Docket Nos.	CP01-384-000
	:		CP01-385-000
Islander East Pipeline Company, L.L.C.	:		CP01-386-000

Iroquois Gas Transmission System, L.P.	:	Docket No.	CP02-52-000
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**ANSWER OF THE KEYSpan DELIVERY  
COMPANIES AND KEYSpan UTILITY SERVICES, L.L.C.  
IN OPPOSITION TO MOTION TO CONSOLIDATE PROCEEDINGS  
AND FOR COMPARATIVE EVIDENTIARY HEARING**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the KeySpan Delivery Companies and KeySpan Utility Services, L.L.C. (collectively "KeySpan") hereby submit this answer in opposition to the Motion of Iroquois Gas Transmission System, L.P. ("Iroquois") to consolidate proceedings and for a comparative evidentiary hearing, dated April 8, 2002. As more fully discussed below, granting Iroquois' motion would have a serious adverse impact on the ability of KeySpan to obtain critically needed gas supplies from and after November 1, 2003. Iroquois' motion should be denied summarily. In support of this answer KeySpan states as follows:

(1) Two of the KeySpan Delivery Companies, KeySpan Energy Delivery Long Island and KeySpan Energy Delivery New York have entered into precedent agreements with Islander East Pipeline Company, LLC ("Islander East") for firm transportation service up to a maximum daily quantity that increases from 110,000 dth in the first year of Islander East's operation to 295,000 dth in the fifth year of operation. KeySpan's precedent agreements with Islander East contemplate that

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service on that pipeline will commence on or about November 1, 2003. The affected KeySpan Delivery Companies require the additional gas supplies to be provided by Islander East to ensure that they have sufficient natural gas supplies to reliably serve the needs of their firm customers during the winter of 2003-2004.

(2) The KeySpan Delivery Companies that have entered into precedent agreements with Islander East have public service obligations to provide safe and adequate gas distribution services to consumers in the Boroughs of Brooklyn, Queens and Staten Island in New York City and on Long Island. The affected companies currently serve approximately 1.8 million customers - - most of whom are low load factor residential and small commercial customers who utilize natural gas for such life sustaining uses as heating and cooking. These customers have been termed the Commission's "prime constituency."<sup>1</sup>

(3) The affected KeySpan Delivery Companies are not only putative customers of Islander East, they are also Iroquois' largest firm transportation customers. Collectively, KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island hold contracts with Iroquois for 145,650 dth of firm transportation service. Iroquois is currently the only transmission pipeline that serves Suffolk County, Long Island. This service is provided through a single delivery point located in South Commack, Long Island. The disruption of existing firm service from Iroquois for any significant period potentially could require KeySpan to curtail service to up to approximately 124,000 customers on Eastern Long Island. Such curtailments would have a significant and possibly disastrous impact. With the addition of Islander East as a supplier to Eastern Long Island, KeySpan

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<sup>1</sup> *Maryland People's Counsel v. FERC*, 761 F2d 780, 781 (D.C. Cir. 1985).

believes that the loss of service from either the proposed Islander East system or the existing Iroquois system would not require KeySpan to curtail service to any firm customer. Thus, the construction of Islander East significantly enhances the reliability of the KeySpan Delivery Companies' distribution services.

(4) KeySpan's reliability concerns extend not only to gas distribution but also to the cost and reliability of electric supply. KeySpan Utility Services, LLC is the purchasing agent for fuel used by KeySpan Generation LLC ("KeySpan Generation") to generate up to 4000 megawatts of generating capacity on Long Island. This capacity constitutes most of the generating capacity on Long Island. Iroquois is the single interstate natural gas pipeline currently delivering gas for use in KeySpan's generating plants located in Suffolk County. Local electric reliability rules issued by the New York State Reliability Council require planning for the single failure of any gas pipeline. The expansion of Iroquois to the exclusion of Islander East would significantly complicate and potentially compromise the ability to comply with these reliability standards.

(5) KeySpan chose to enter into precedent agreements with Islander East to ensure that it would procure new firm capacity in a timely fashion in a manner that would enhance the reliability of its distribution systems. The Iroquois ELI project does not offer the same reliability benefits to KeySpan as Islander East. This fact has been recognized by the Public Service Commission of the State of New York.<sup>2</sup>

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<sup>2</sup> See "Notice Of Intervention And Comments Of The Public Service Commission Of The State Of New York" dated January 22, 2002 in Docket No. CP02-52-000, which states: "The contingency protection of both the gas and electric systems afforded by a totally separate sound crossing as proposed by Islander East, is protection against total loss of supply if damage were to occur to the Iroquois line upstream of the interconnection to the ELI facilities, either the portions in the sound or upstream of that."

(6) KeySpan has no objection to Iroquois' proposal to attach additional pipeline capacity to KeySpan's distribution system.<sup>3</sup> KeySpan believes that all market participants benefit from additional competition among pipeline suppliers. However, KeySpan strenuously objects to Iroquois' effort to engage in shopworn legal maneuvering to attempt to prevent KeySpan from purchasing the firm transportation services that it desires. KeySpan believes that Iroquois' attempt to manufacture legal and procedural impediments to the construction of Islander East is particularly without merit in this case because Iroquois' motion comes nearly a year after Islander East was filed and nearly five months after the Commission issued a preliminary determination of non-environmental issues<sup>4</sup> that Iroquois now attacks.

(7) Iroquois' April 8, 2002 motion does not represent its first attempt to require the Commission to convene a comparative hearing concerning Islander East and the ELI project. By a motion dated February 19, 2001 in Docket No. CP01-384 *et al.*, Iroquois sought essentially the same relief. In response thereto, the KeySpan Delivery Companies submitted an answer dated March 5, 2002 which set forth numerous reasons why Iroquois' request should be rejected. A copy of that response is attached as Appendix A to this answer. In the interest of brevity, KeySpan will incorporate the arguments in its previous response with this answer.

(8) While Iroquois apparently recognizes that the Commission has narrowly construed the circumstances in which it will require a comparative hearing for two or more pipeline

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<sup>3</sup> KeySpan does have issues about how that attachment will be effectuated. These issues are currently being negotiated between the parties.

<sup>4</sup> *Islander East Pipeline Company, L.L.C.*, 97 FERC ¶ 61,363 (2001).

construction projects,<sup>5</sup> Iroquois nonetheless attempts to shoehorn its presentation within that framework. Iroquois' effort is unavailing for several reasons. First, Iroquois advances the wholly unsupported claim that Islander East and ELI will serve the same markets. With respect to this claim, KeySpan is unaware that any shipper on the proposed Iroquois ELI project has committed to purchasing between 110,000 dth and 295,000 dth of peak day capacity on Iroquois that is absolutely committed to serving customers behind KeySpan's distribution systems for the next 10 years. To the extent that marketers have committed to incremental capacity on Iroquois, such commitments do not bind the marketers to use the capacity to serve KeySpan's end-use markets. Marketers will doubtlessly use any capacity they contract for to serve the markets that will produce the greatest possible profit margins. Such markets may or may not exist behind KeySpan's city gate. On the other hand, for the foreseeable future, KeySpan must ensure that its distribution companies have a sufficient supply of capacity to ensure that the KeySpan Delivery Companies' firm customers' requirements will be met. KeySpan's precedent agreements with Islander East are designed to enable KeySpan to fulfill its obligations. Under these circumstances there is no basis for Iroquois' claims that its ELI project proposes to serve the same market as Islander East.

(9) In addition, Iroquois' representations about the state of the gas market on Eastern Long Island are wholly without foundation. Iroquois' proposed witness, Mr. Rakebrand sponsors a purported market study by DRI-WEFA that contains the following statement "The 6% annual growth rate for Long Island will not be reached." However, having offered this conclusion, DRI-

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<sup>5</sup> Indeed, given the Commission's ruling in *ANR Pipeline Co.*, 78 FERC ¶ 61,326 (1997), it is clear that the burden of establishing the need for a comparative hearing falls on Iroquois and that Iroquois can only meet that burden by demonstrating that the grant of a certificate to Islander East would totally preclude Iroquois from proceeding with its project. Iroquois cannot possibly meet that burden in this case.

WEFA then makes the rather astounding statement that “Detailed historic natural gas consumption data was not readily available for the area of interest . . . . Consequently, for their analysis, DRI-WEFA relied on the LDC projections developed in the Merrimack Study for its LDC forecast.” In other words, DRI-WEFA is offering a conclusion that the projections contained in the Merrimack study are overstated that is the product of *no independent analysis* of the data used in the Merrimack Study. Given this lack of analysis, the Commission need not concern itself with Iroquois’ study, particularly since it was filed five months after the Commission has already issued a preliminary determination of non-environmental issues for the Islander East project.

(10) The only information concerning future gas demand that is presented in the DRI-WEFA analysis is the Energy Information Agency’s forecast for New York, New Jersey and Pennsylvania. This information is used by DRI-WEFA to make a classic apples-to-oranges comparison between data applicable to a tri-state area and data relevant to the Long Island market. Clearly, DRI-WEFA’s Mid-Atlantic data has no bearing on whether Islander East or the ELI project should be built to serve incremental demand on Long Island and in New York City. This data provides no basis for the Commission to revisit its previous conclusion concerning the justification for Islander East.

(11) In sum, while Iroquois’ April 8 motion contains what purports to be new material, claims and allegations, it ultimately fails to provide any real basis for the Commission to establish a comparative hearing on two projects that purport to serve different shippers in different timeframes. The Commission should reject Iroquois’ further belated attempt to derail a competitive alternative by summarily rejecting Iroquois motion.

## CONCLUSION

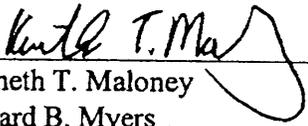
Wherefore, the KeySpan respectfully request the Commission to:

- (1) deny Iroquois' Motion For Consolidation and a Comparative Hearing; and
- (2) grant KeySpan such other and further relief as may be required to protect its interests.

Respectfully submitted,

The KeySpan Delivery Companies  
KeySpan Utility Services L.L.C.

By: \_\_\_\_\_

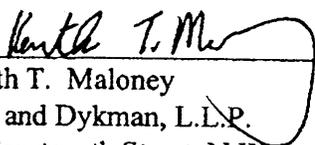
  
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Edward B. Myers  
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1101 Fourteenth Street, N.W.  
Suite 550  
Washington, D.C. 20005  
(202) 223-8890

Dated: April 23, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties to 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 23<sup>rd</sup> day of April, 2002

  
\_\_\_\_\_  
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# *Appendix A*

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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REGULATORY COMMISSION  
FILED  
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REGULATORY COMMISSION

In The Matter Of: : Docket Nos. CP01-384-001  
: CP01-385-001  
Islander East Pipeline Company, L.L.C. : CP01-386-001

**ANSWER OF THE KEYSpan DELIVERY COMPANIES  
TO MOTION FOR LEAVE TO FILE ANSWER AND ANSWER  
OF IROQUOIS GAS TRANSMISSION SYSTEM, L.P.**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the KeySpan Delivery Companies submit this answer in response to the "Motion for Leave to File Answer and Answer of Iroquois Gas Transmission System, L.P.," filed February 19, 2002 in the above captioned proceeding.<sup>1</sup>

**I. BACKGROUND**

On December 21, 2001, the Commission issued a preliminary determination in support of granting a certificate to Islander East Pipeline Company, L.L.C. ("Islander East") to construct and operate certain new pipeline facilities to transport gas in Connecticut and New York and to lease existing pipeline capacity from Algonquin Gas Transmission Company ("Algonquin").<sup>2</sup>

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<sup>1</sup> Insofar as the instant pleading might be construed as an "answer to an answer," the KeySpan Delivery Companies ask the Commission's leave to file. As prospective customers of the Islander East Project, the KeySpan Delivery Companies offer a unique perspective on the need for and merits of the Islander East proposal which will assist the Commission in its review of Iroquois' February 19 motion and answer. See, *Dynegy Power Marketing v. Southwest Power Pool, Inc.*, 97 FERC ¶ 61,340 at 62,592 (2001); *Northeast Texas Electric Cooperative, Inc., et al.*, 97 FERC ¶ 61,313 at 62,437, n.8 (2001); and *U.S.A. Inc. et al. v. Venice Gathering System, L.L.C.*, 97 FERC ¶ 61,045 at 61,246 (2001).

<sup>2</sup> *Islander East Pipeline Company, L.L.C. and Algonquin Gas Transmission Company*, 97 FERC ¶ 61,363 (2001).

Among other prospective shippers on Islander East, two of the KeySpan Delivery Companies -- KeySpan Long Island and KeySpan New York -- have executed precedent agreements related to the proposed Islander East facilities. These precedent agreements contemplate that service to these two KeySpan Delivery Companies will commence at a combined level of 110,000 dth/day on November 1, 2003 and will phase-in at increasing levels each succeeding year until the two companies' take levels reach 295,000 dth/day by November 1, 2008.<sup>3</sup>

The December 21 Order is currently pending rehearing. Four requests for rehearing were timely submitted.<sup>4</sup> On February 6, 2002, Islander East filed a motion for leave to reply and reply to the pending rehearing requests ("Islander East reply"). Islander East's reply supports the December 21 Order. Although it did not seek rehearing of the December 21 Order, Iroquois submitted its February 19 motion and answer in opposition to the Islander East reply. In its February 19 motion and answer, Iroquois asked the Commission to convene a comparative hearing weighing the merits of the Islander East Project against Iroquois' Eastern Long Island ("ELI") Project pending before the Commission in Docket No. CP02-52-000.

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<sup>3</sup> *Id.* at (slip op. at 3).

<sup>4</sup> The rehearing requests were filed by the Connecticut Attorney General; the Town of Branford, *et al.*; the Southern Connecticut Gas Company and Connecticut Natural Gas Corporation; and the Central Pine Barrens Joint Planning and Policy Commission.

## II. SUMMARY OF POSITION

The KeySpan Delivery Companies oppose Iroquois' motion for leave to file answer and answer.<sup>5</sup> First, Iroquois' reliance on *Ashbacker Radio Corp. v. FCC* ("*Ashbacker*")<sup>6</sup> is misplaced. Iroquois wrongly contends that the Commission is obliged to hold a comparative hearing weighing the merits of the Islander East Project against the merits of the Iroquois ELI Project. The *Ashbacker* doctrine does not apply because Iroquois' proposed ELI Project is not mutually exclusive of the Islander East Project. Second, a comparative hearing is inconsistent with the Commission's *1999 Policy Statement* which supports certification where there is no subsidization or significant adverse impacts associated with a proposed project.<sup>7</sup> Third, a comparative hearing would likely delay completion of the Islander East Project beyond the projected in-service date to the substantial detriment of shippers like the KeySpan Delivery Companies which are relying on the facilities coming on-line on a timely basis. Finally, any such delay also would impair the progress that the Commission has made in expediting its certificate review procedures in recent years in order to meet the growing demand for natural gas.

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<sup>5</sup> As a matter of law, the Commission also should not grant Iroquois' motion for leave to file its answer because the answer constitutes a collateral attack on, and untimely request for rehearing of, the December 21 Order, *i.e.* it raises arguments that could have been raised by a timely application for rehearing. Since Iroquois did not file an application for rehearing and because the Commission does not have authority to waive the statutory 30 day deadline on rehearing requests contained in Section 19 of the Natural Gas Act, 15 U.S.C. 717r, the motion for leave to file should be denied and the pleading should be rejected. *See, Tennessee Gas Pipeline Company v. FERC*, 871 F.2d 1099 (D.C. Cir. 1989).

<sup>6</sup> 326 U.S. 327 (1945).

<sup>7</sup> *See, Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227; *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128; and *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000) ("*1999 Policy Statement*").

### III. ANSWER

#### 1. **The *Ashbacker* Doctrine Does Not Apply To These Proceedings.**

The *Ashbacker* doctrine requires a comparative hearing where two or more projects are mutually exclusive. Mutual exclusivity does not exist merely because two pipelines may run roughly parallel routes or may compete against one another.<sup>8</sup> The Commission has held and the courts have affirmed that where two pipelines run roughly parallel routes but are not necessarily dependent upon the same gas reserves or upon serving the same customers, the *Ashbacker* doctrine does not apply.<sup>9</sup> Such is the case with respect to the Islander East and Iroquois ELI Projects, and nothing that Iroquois alleges in its February 19 answer supports a different conclusion.

First, the customer support for the two projects is completely different. The KeySpan Delivery Companies, in particular, elected to become shippers on Islander East, but not on the Iroquois ELI Project. Other shippers, presumably with different supply requirements, chose the Iroquois ELI Project. Whatever their reasons, the fact that there is apparent market support for both projects belies Iroquois' argument of mutual exclusivity.

Second, a principal reason that the KeySpan Delivery Companies chose Islander East over the Iroquois ELI Project is the fact that Islander East creates the opportunity for KeySpan to tap supplies of gas reserves throughout the Northeast pipeline grid,<sup>10</sup> including new gas supplies

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<sup>8</sup> *ANR Pipeline Co.*, 78 FERC ¶ 61,326 at 62,405 (1997), *affirmed ANR Pipeline Co. v. FERC*, 205 F.3d 403 (D.C. Cir. 2000).

<sup>9</sup> *Id.*

<sup>10</sup> 97 FERC at 62,691.

from offshore Nova Scotia.<sup>11</sup> The Iroquois ELI Project does not appear to offer the same supply diversity.<sup>12</sup>

Third, the different in-service dates of the two projects differentiate their relative abilities to meet market demands. The Islander East Project is projected to begin service on November 1, 2003.<sup>13</sup> The Iroquois ELI Project is not projected to commence service until one full year later, on November 1, 2004.<sup>14</sup> The earlier in-service date for the Islander East Project will meet the needs of the KeySpan Delivery Companies for new sources of supply, whereas the Iroquois ELI Project will not. The Iroquois ELI Project is planned apparently to meet the later-in-time market needs of the shippers that signed precedent agreements with Iroquois.<sup>15</sup>

Fourth, as a matter of reliability as well as competition, expansion of the Iroquois system alone into eastern Long Island would mean that KeySpan's retail customers on Eastern Long Island would be dependent on a single pipeline for transportation of gas. The Islander East Project, on the other hand, will enhance the reliability and competitiveness of gas transportation service by introducing a second pipeline into the Long Island market. This fact further supports the conclusion that the Islander East Project and the Iroquois ELI Project are significantly different and certainly not mutually exclusive.

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<sup>11</sup> Islander East Application at 5.

<sup>12</sup> See, Iroquois ELI Project Application at 9.

<sup>13</sup> Islander East Application at 2.

<sup>14</sup> Iroquois ELI Project Application at 3.

<sup>15</sup> While Iroquois indicates in footnote 7, page 6, of its February 19 Answer, that it is willing to adjust its schedule to meet the time frame required by the Islander East shippers, it is not at all clear that this could be accomplished.

Fifth, Iroquois' concern that Islander East will be an economic competitor of the ELI Project is not a basis for a comparative hearing. As the Commission has recognized in other proceedings, economic competition between pipelines is a potential benefit to customers, not an adverse consequence within the meaning of the *1999 Policy Statement*.<sup>16</sup> Such competition does not furnish a basis for holding a comparative hearing.

Finally, environmental considerations do not warrant a comparative hearing. Iroquois has not submitted any meaningful evidence to support its supposition that only one of the two projects can be built. Nor has Iroquois demonstrated that the Iroquois ELI Project is an acceptable alternative to Islander East from the standpoint of Islander East's shippers, including the KeySpan Delivery Companies. The existence of roughly parallel routes is simply not by itself a basis for establishing a comparative hearing.<sup>17</sup> Furthermore, in the environmental phase of the Islander East proceeding, all interested persons will have an opportunity to recommend a route for the Islander East Project that best complies with the National Environmental Policy Act<sup>18</sup> ("NEPA"). Similarly, in the proceeding in which the Iroquois ELI Project is under consideration, parties will have an opportunity to recommend an appropriate route for that project. While NEPA clearly requires the Commission to evaluate alternative routes, it clearly does not require the Commission to require shippers to accept an alternative project that will not fulfill their needs.

Iroquois' claims thus do not support the need for an *Ashbacker* comparative hearing.

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<sup>16</sup> See, *Guardian Pipeline, L.L.C.*, 94 FERC ¶ 61,269 (2001) (order supporting the certification of a pipeline in part because it would enable consumers "to enjoy the full benefits of pipeline-to-pipeline competition for the first time." 94 FERC at 61,936).

<sup>17</sup> See, *ANR Pipeline Co.*, *supra*, note 8.

<sup>18</sup> 42 U.S.C. § 4321, *et seq.*

2. **Requiring A Comparative Hearing Is Not Supported By The Commission's Market-Oriented Policies Favoring Certification Where Existing Shippers Will Not Be Required To Subsidize The Proposed Project.**

The Commission's *1999 Policy Statement*<sup>19</sup> establishes a threshold determination in certificate proceedings that existing shippers will not be required to subsidize a proposed project. Once that threshold determination is made, the Commission's policy is to determine the benefits and possible adverse consequences of the project and to assess whether any adverse consequences can be minimized.

In the December 21 Order, the Commission followed its policy statement and ruled that any certificate issued herein will be appropriately conditioned so that Islander East and Algonquin meet the threshold determination.<sup>20</sup> The Commission also fully addressed the relative benefits and possible adverse consequences of the Islander East Project and concluded that, subject to environmental review, certification is required by the public convenience and necessity.<sup>21</sup>

Iroquois' contention in its February 19 motion and answer that the certification of the Islander East Project should be submitted to a comparative hearing is not supported by the *1999 Policy Statement*. The *1999 Policy Statement* is designed to permit the Commission to review and preliminarily approve certificate applications on the basis of a showing of market support and the absence of significant unavoidable adverse impacts. The *1999 Policy Statement* does not contemplate a comparative hearing where, as here, two potential pipeline competitors have set forth

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<sup>19</sup> *Supra*, note 7.

<sup>20</sup> 97 FERC at 62,689-690. Algonquin is an applicant in Docket No. CP01-387 wherein it seeks a certificate to construct the facilities that will be leased to Islander East.

<sup>21</sup> 97 FERC at 62,699.

independent shipper support for their respective projects. For this reason alone, Iroquois' request for a comparative hearing should be rejected.

3. **If The Commission Instituted A Comparative Hearing, The Islander East Project Would Be Delayed Beyond The Projected In-Service Date To The Detriment Of Shippers Like The KeySpan Delivery Companies Which Are Relying On The Facilities Coming On-Line On A Timely Basis.**

The KeySpan Delivery Companies are relying on the timely commencement of service by Islander East in order to meet the growing market demand of retail and electric generation load in their service territories. As the KeySpan Delivery Companies stated in their Motion to Intervene and Request for Expedited Approval, filed July 13, 2001 in these proceedings:

“ Construction of the Islander East pipeline system will create vitally needed firm capacity capable of serving the ever-growing demand for natural gas by both traditional local distribution markets and critically needed new electric generation facilities. Annual demand in the KeySpan Delivery Companies' combined Long Island and New York City service territories is projected to grow at an annual average rate of approximately 3.2 percent over the next three years. In the KeySpan Delivery Companies' Long Island service territory alone, annual demand is projected to grow at an average rate of approximately 5.9 percent during this period. This increase in demand will largely be created by high priority, low load factor residential and small commercial customers -- the Commission's prime constituency. The incremental capacity created by the Islander East project will enable the KeySpan Delivery Companies to serve their growing markets reliably, particularly on the eastern end of Long Island where the need for new pipeline capacity is particularly acute. Given the KeySpan Delivery Companies' current growth pattern, a new pipeline into eastern Long Island is needed to alleviate constraints at existing delivery points and along the KeySpan transmission system.”

July 13 Motion at 5-6 (footnotes omitted).

If the Commission were to initiate a comparative hearing, the likely result is that the construction of and service from Islander East will be delayed. Any such delay is unwarranted, as

discussed above and would unreasonably prevent KeySpan from accessing critically needed gas supplies on Eastern Long Island.

**4. Any Delay In The Construction Of The Islander East Project Would Undermine The Progress That The Commission Has Made In Recent Years In Expediting The Review Of Natural Gas Pipeline Projects.**

The Commission has made significant headway in recent years in expediting its procedures for reviewing pipeline project applications.<sup>22</sup> In the current environment, where new projects must proceed without subsidies, the financial and shipper markets determine whether a project is built. The progress in pipeline construction in turn has enhanced pipeline on pipeline competition.

The KeySpan Delivery Companies support this progress and, in particular, fully endorse the Commission's policy of placing greater emphasis on the market support for a project. Iroquois, by requesting a comparative hearing where none is warranted would undermine this progress by unduly delaying construction of the Islander East Project even though there is clear market support for that project. Such delay, as discussed above, is to the detriment of the customers who need the Islander East system. Unwarranted delay also could result in a constraint on gas transmission capacity in the Long Island market. In addition, any such delay would represent a significant step backward relative to the progress that the Commission has made in expediting its certificate review procedures. The Commission should not sacrifice the progress that it has made

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<sup>22</sup> According to a Commission Staff discussion paper entitled "Energy Infrastructure And FERC's Natural Gas Pipeline Certification Program," dated January 30, 2002, the Commission certificated 11.7 Bcf/day of additional pipeline capacity, comprising of 3,267 miles of gas pipeline, in Year 2001.

in expediting its review of certificate applications only to assist Iroquois at this late stage in the instant proceeding.

#### IV. CONCLUSION

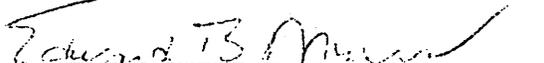
Wherefore, the KeySpan Delivery Companies respectfully request the Commission to:

- (1) grant, as necessary, the KeySpan Delivery Companies' leave to answer Iroquois' February 19 answer;
- (2) deny Iroquois' Motion For Leave To File Answer and reject Iroquois' answer in its entirety; and
- (3) if the Commission does not reject Iroquois' pleading, deny the request of Iroquois therein for a comparative hearing.

Respectfully submitted,

The KeySpan Delivery Companies

By:



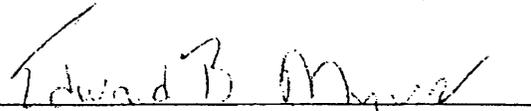
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1101 Fourteenth Street, N.W.  
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Dated: March 5, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties to 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 5<sup>th</sup> day of March, 2002



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Attachment D

**Motion of Iroquois Gas Transmission System, L.P.  
Requesting Deferral of Consideration**

Iroquois Gas Transmission System, L.P.

October 4, 2002

ORIGINAL

FILED  
OFFICE OF THE SECRETARY  
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FEDERAL ENERGY  
REGULATORY COMMISSION

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P. )

Docket No. CP02-52-000

**MOTION OF IROQUOIS GAS TRANSMISSION SYSTEM, L.P.  
REQUESTING DEFERRAL OF CONSIDERATION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. 385.212 (2002), Iroquois Gas Transmission System, L.P. ("Iroquois") hereby requests that the Commission defer consideration of Iroquois' application in the above-captioned proceeding. Specifically, Iroquois requests that the Commission defer the environmental review and analysis that otherwise would be pursued following the Preliminary Determination on Non-Environmental Issues issued on September 19, 2002.<sup>1</sup>

**BACKGROUND**

On December 14, 2001, Iroquois filed an application in the instant docket pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct, own and operate the Eastern Long Island Expansion Project ("ELI Project"). The ELI Project would consist of new pipeline and compressor facilities to provide approximately 175,000 dekatherms per day of firm transportation service to Long Island, New York.

On September 19, 2002, the Commission issued a preliminary determination on non-environmental issues for the ELI Project. The Commission simultaneously issued an Order on Rehearing and Issuing Certificates for Islander East Pipeline Company, L.L.C.'s and Algonquin

<sup>1</sup> *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275 (2002).

Gas Transmission Company's proposals to construct, own, operate and lease pipeline and compressor facilities to provide 260,000 dekatherms per day of firm transportation service to Long Island, New York ("Islander East Project").<sup>2</sup>

### DISCUSSION

In the wake of the Commission's September 19, 2002, orders on the ELI Project and the Islander East Project, Iroquois believes that the Commission should defer action on the environmental reviews and analysis that must be conducted prior to the final approval and issuance of a certificate for the ELI Project. This pause will permit the Commission, governmental entities at the state and local level, Iroquois and interested private stakeholders to conserve valuable time and resources that otherwise would be expended were environmental reviews and analyses to continue on schedule. This pause in the consideration of the ELI Project also will allow time for market participants to consider the implications of the September 19, 2002, orders and to assess the likelihood that the Islander East Project can promptly obtain the various other federal, state and local permits that are prerequisites for the construction of that project.

Iroquois believes that it would be in the best interest of all participants, in both the pending certificate proceeding and in the pending state and local siting proceedings in connection with the ELI Project, for the Commission to defer further action on the ELI Project pending notification from Iroquois regarding its plans to proceed with the project. In this regard, Iroquois proposes to provide the Commission with an update on the status of the ELI Project during the month of January, 2003.

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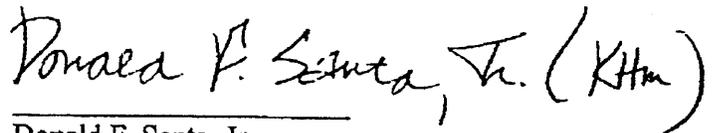
<sup>2</sup> *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276 (2002). As part of its orders, the Commission denied motions to consolidate the Islander East Project and ELI Project proceedings.

In light of this deferral request, Iroquois also seeks an extension of the deadline for filing comments on the Draft Environmental Impact Statement issued in this proceeding on August 23, 2002. Comments are currently due on October 18, 2002. Iroquois suggests that comments now be due thirty days after Iroquois provides notice to the Commission of its plans to proceed with the project, or such other interval following this notice as the Commission deems appropriate.

### CONCLUSION

For the foregoing reasons, Iroquois hereby requests that the Commission defer further consideration of its application in the instant proceeding pending notification of Iroquois' intent to proceed.

Respectfully Submitted,



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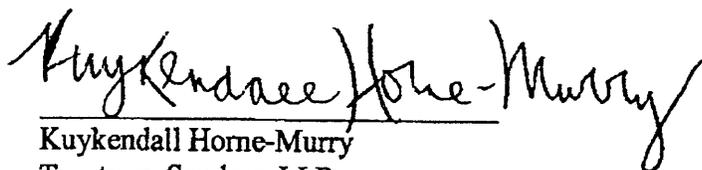
*Attorneys for Iroquois Gas Transmission  
System, L.P.*

Dated: October 4, 2002  
Washington, D.C.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document, by first class mail, postage prepaid, upon each person designated on the official service list compiled by the Secretary for this proceeding.

Dated at Washington, D.C., this 4th day of October, 2002.



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