Attachment E

Comments of Iroquois Gas Transmission System, L.P. on Draft Environmental Impact Statement

Iroquois Gas Transmission System, L.P.

May 20, 2002

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Islander East Pipeline Company, LLC	)	Docket No. CP01-384-000
	)	
Algonquin Gas Transmission Company	)	Docket No. CP01-387-000

COMMENTS OF IROQUOIS GAS TRANSMISSION SYSTEM, L.P. ON DRAFT ENVIRONMENTAL IMPACT STATEMENT

Pursuant to the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission") and the Commission's "Notice of Availability of the Draft Environmental Impact Statement for the Proposed Islander East Pipeline Project" ("Notice") issued on March 29, 2002, Iroquois Gas Transmission System, L.P. ("Iroquois") respectfully submits its comments on that Draft Environmental Impact Statement ("DEIS").

I.

BACKGROUND

According to the Notice, the DEIS has been prepared to satisfy the requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA"). The DEIS concludes that, with the modifications recommended by the Staff and with appropriate environmental mitigation, the Islander East Pipeline ("Islander East") project would have limited adverse environmental impact. Among the matters reviewed in the DEIS were alternatives to the proposal, including system alternatives. In reviewing these alternatives, Staff evaluated three alternatives that are based upon

Iroquois' proposed Eastern Long Island Extension ("ELI") project pending in Docket No. CP02-52-000:

1. The "One-Pipe System Alternative" would transport the total volume of gas from both proposals (435,000 Mcf per day);
2. The "ELI System Alternative" would only transport Islander East's proposed firm volumes (260,000 Mcf per day) which, as noted in the DEIS, is approximately equivalent to the total of Iroquois' proposed deliveries for the ELI project and Islander East's proposed deliveries to two power plants; and
3. The "Long Island System Alternative" would use a single pipeline on Long Island, since, if the Commission approved both projects, both the Islander East and the ELI projects would use the same route on Long Island.[1]

With respect to the One-Pipe System Alternative, the Staff indicates in the DEIS that:

> It appears that since the One-Pipe System Alternative reduces the amount of pipeline constructed it would reduce impact to: Long Island, including the Central Pine Barrens; Long Island Sound, including the Connecticut shellfish beds; and the Branford Land Trust. It would also reduce emissions since only one compressor station would be constructed. However, although it eliminates impacts to one group of landowners in Connecticut along the 10 mile mainline, it creates new impacts to another group of landowners in Connecticut along the 16 mile loop. At this time we do not have sufficient information to recommend the One-Pipe System Alternative.[2]

Similarly, with respect to the ELI System Alternative, the Staff concludes that:

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[1] The DEIS also evaluated a fourth alternative, the Tennessee Connecticut-Long Island Lateral Project System Alternative, which Staff did not consider to be a reasonable alternative, because it would require a system that was 60 miles longer that the Islander East project. DEIS at 4-20.

[2] Id. at 4-13.

> Based on our preliminary analysis, if the ELI System Alternative was constructed instead of the Islander East Project there would be no change in impacts on Long Island. Air Emissions would increase due to the greater amount of compression at Milford (versus Cheshire). In Connecticut the impacts would be moved from the landowners along the Islander East mainline to those along the loop. Impacts to Long Island Sound should be reduced since the crossing length would be reduced by 5.5 miles. At this time we do not have sufficient information to recommend the ELI System Alternative.[3]

Finally, with respect to the Long Island System Alternative, the Staff indicates that "[c]onstructing a single 12-mile-long, 30-inch-diameter pipeline instead of dual pipelines would result in a reduction of environmental impacts... ."[4] The Staff notes, however, that "the Long Island System Alternative would also require the construction of a 5,000 hp compressor station near landfall in Shoreham, New York."[5] Staff concludes "[a]t this time we do not have sufficient information, particularly on the compressor station, to recommend the Long Island System Alternative."[6]

Within these comments, Iroquois will provide additional information on the ELI System Alternative and the Long Island System Alternative to assist Staff in its further evaluation of these alternatives.

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3 DEIS at 4-18.

4 Id. at 4-19.

5 Id.

6 Id.

II.

RESPONSE

A. COMMENTS ON ALTERNATIVES

Iroquois appreciates the recognition in the DEIS that the ELI project facilities could be utilized as system alternatives to the Islander East project and could satisfy the criteria for being environmentally preferable alternatives to Islander East. In particular, Iroquois believes strongly that the ELI project, as proposed, satisfies these criteria, because it (1) is technically and economically feasible and practical, (2) possesses significant environmental advantages over Islander East, and (3) is capable of meeting the stated objectives of Islander East. Iroquois also appreciates the recognition in the DEIS that the Commission has not yet determined whether the Islander East and ELI projects are competing projects and whether demand for natural gas on Long Island will be sufficient to warrant both projects and that the DEIS has structured the system alternatives in recognition of these pending threshold issues.

Still, as will be discussed below in greater detail, Iroquois believes that the system alternatives utilizing the ELI project facilities that are defined in the DEIS are flawed in two important respects. First, the system alternatives defined in the DEIS are based on unreasonable hypotheticals that do not reflect the market conditions faced by both Islander East and the ELI project. Second, these system alternatives utilizing the ELI project facilities overstate the environmental impact of such alternatives. Iroquois believes that the most valid system alternative to the Islander East project is the ELI project as proposed and submits that, to fulfill its obligations under NEPA, the Commission must make this comparison.

1. The One-Pipe System Alternative is Both Unrealistic and Overstates the Environmental Impacts

The One-Pipe System Alternative is the first alternative analyzed by Staff. This alternative would expand Iroquois' proposed ELI project to transport the total volumes of gas proposed for both the Islander East and ELI projects, about 435,000 Mcf per day. As stated in Iroquois' April 8, 2002 Motion to Consolidate,[7] sufficient market on Long Island does not exist to warrant the construction of facilities capable of delivering anything close to the 435,000 Mcf per day case analyzed in the One-Pipe System Alternative and Iroquois is not proposing to construct such facilities. Therefore, the One-Pipe System Alternative is simply not a realistic alternative for Staff to analyze.

The only conceivable basis for analyzing the One-Pipe System Alternative would be to ascertain possible future environmental impacts if either the Islander East or the ELI project is constructed and ultimately expanded in the future to serve this level of market. Even if that is the purpose of this analysis, the DEIS misses the mark by comparing the impacts of an expanded ELI project (i.e., the One-Pipe System Alternative) with the combined impacts of the Islander East and ELI projects. This is not an "apples to apples" comparison. The appropriate comparison would be between an expanded ELI project and an Islander East project expanded to provide this same level of service.

The Islander East certificate application indicated that contract quantities for the project ultimately would reach 445,000 Dth per day by November 1, 2008.[8] Islander East stated that its proposal was designed to meet future capacity requirements with a minimum of environmental impact

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[7] Motion of Iroquois Gas Transmission System, L.P. to Consolidate Proceedings and for Comparative Evidentiary Hearing, Docket No. CP01-384-000, et al., (Apr. 3, 2002) ("Motion to Consolidate").

[8] Islander East Pipeline Company, Abbreviated Application for a Certificate of Public Convenience and Necessity, Docket No. CP01-384-000, at 21 (June 15, 2001) ("Islander East Certificate Application").

and that it would file "as necessary additional applications to install compression and/or minor looping when final capacity commitments are made and the ultimate needs of its customers are known."[9] Beyond this representation by Islander East, Iroquois is unaware whether Islander East ever has been asked in this proceeding to identify the additional facilities that would be required to deliver 445,000 Dth per day.[10] A review of Exhibit G to the Islander East certificate application indicates that the Algonquin system feeding Islander East is constrained by the 16-inch line and the 10-inch line in Connecticut. A means of accommodating the additional volumes would be for Algonquin to replace the 13.7 mile 10-inch C1 line with a new 20-inch line and then remove the 10-inch C1 line. In addition, some increased compression would be required. There in fact may be a variety of possible facility configurations by which Islander East and Algonquin could accommodate 445,000 Dth of deliveries. The record in this proceeding, however, is devoid of details regarding any of these configurations and, without such details on the configuration of the Islander East project expanded to provide this level of service (or the slightly lower level of 435,000 Dth per day assumed in the One-Pipe System Alternative), any analysis of the One-Pipe System Alternative is inappropriate.

Furthermore, the DEIS significantly overstates the environmental impact of the One-Pipe System Alternative. The One-Pipe System Alternative analysis includes the impacts of a 16-mile, 36-inch diameter loop of Iroquois' existing mainline in Connecticut, which Staff characterizes as "[t]he only facility required for the system alternative which has not been proposed in either the ELI Extension

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[9] Islander East Certificate Application at 22.

[10] In response to the Commission's September 7, 2001, data request, Islander East responded on September 24, 2001, that "[a]s these markets rationalize in ensuing years, Islander East anticipates that it will expand its capacity to the extent the market requires by installing compression and/or minor pipeline looping." This response was in answer to a question focused primarily on what approach Islander East would take to Commission filings for new

Project or Islander East Project...."[11] This, however, is not necessarily the only system configuration or the most environmentally benign system configuration that could be used to achieve the assumed level of service. The configuration utilizing the 16-mile loop to provide the 435,000 Mcf per day level of service is based on Iroquois' responses to data requests by the Staff in the ELI project proceeding.[12] In its response to the Commission's February 8, 2002 data request, Iroquois simply provided one configuration capable of achieving the 435,000 Mcf per day level of service. Iroquois did not understand this data request to be asking Iroquois to provide all of the alternative system configurations to achieve this level of service or the most environmentally benign configuration.[13]

In fact, the 16-miles of loop could be constructed anywhere within the approximately 29.5 miles between Brookfield, Connecticut and Devon, Connecticut. Also, the 16-mile loop would not need to be continuous, but could be divided into smaller segments to avoid identifiable environmental impacts. Therefore, the Staff's statements on page 4-12 of the DEIS that "[the 16-mile loop] would cross about 13.3 miles of forest and at least 15 streams" is based on a misplaced assumption regarding the required location of this looping.[14] Similarly, Staff's conclusion on page 4-13 of the DEIS that "although [the

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facilities to expand its system. It does not appear as if the Commission ever asked about the actual facilities that Islander East thought would be required to affect such expansions.

[11] DEIS at 4-3.

[12] Iroquois Gas Transmission, L.P., Response to the Federal Energy Regulatory Commission's Data Request dated February 7, 2002, Question No. 002 (Feb. 19, 2002).

[13] Iroquois had only 20 days to respond to this data request. It did not have the time or resources to perform a complete analysis of more environmentally benign configurations. In any event, Iroquois does not believe that there is a need for such facilities and is not proposing to construct such facilities.

[14] In conjunction with a Connecticut Siting Council hearing regarding the proposed Islander East project, Islander East prepared a document titled "Comments on Iroquois ELI and One-Pipe System Alternatives" dated April 12, 2002. That document purports to analyze the impacts of the 16-mile loop included in the Staff's analysis of the One-Pipe System Alternative. It concludes that "FERC's preliminary examination of the One-Pipe System Alternative, as presented in the Islander East DEIS, significantly understates the environmental resources that would be affected

One-Pipe System Alternative] eliminates impacts to one group of landowners in Connecticut along the 10 mile mainline, it creates new impacts to another group of landowners in Connecticut along the 16 mile loop," suffers from the same malady.

2. The ELI System Alternative Overstates Both the Necessary Facilities and the Resulting Environmental Impact

The ELI System Alternative is the second system alternative that the Staff analyzes in the DEIS. In Section 4.2.2 the Staff indicates that "[i]n the event that the Commission decides that there is a market for only one pipeline to serve eastern Long Island we have examined using the Iroquois' proposed ELI Extension Project (ELI System Alternative) instead of the Islander East Project to deliver 260,00 Mcf per day."[15] Staff recognizes that Iroquois has not proposed to serve the Calverton Plant when it states that "since Islander East has one customer (AES Calverton) which could not be served by Iroquois proposed facilities we are including the Calverton Lateral as part of this system alternative."[16]

Iroquois does not believe that the proposed AES/Calverton plant is a realistic market in the near term. In fact, testimony by Iroquois' Vice President for Marketing and Transportation, Herbert Rakebrand, submitted as part of Iroquois' April 8, 2002 Motion to Consolidate, indicated that the New York Public Service Commission's website page

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by the construction and operation of the 36"-diameter mainline loop along the existing Iroquois easement." This analysis suffers from the same defects found in the DEIS in that it assumes that the 16 mile loop would necessarily have to be located as indicated in the DEIS. As noted above, while Iroquois is not proposing to construct such facilities, much of the impact identified in this report could be avoided through selective placement of looping between Brookfield and Devon, Connecticut.

[15] DEIS at 4-13.

[16] Id.

> contains no indication that AES/Calverton has even filed any preliminary scoping statements. Therefore, it is very unlikely that this facility could enter service any time before 2004. Even if it filed immediately and the Article X process takes as long as it has taken the Brookhaven site, the AES/Calverton facility would not be in-service prior to 2005.[17]

Therefore, Staff's inclusion of the Calverton Lateral to serve that plant as part of the ELI System Alternative is misplaced.

Including the Calverton lateral greatly skews the resulting DEIS analysis. In order to serve the Calverton plant, Staff includes in the ELI System Alternative analysis not only the 5.6 miles of 24-inch-diamter pipeline lateral in Suffolk County, New York (the Calverton Lateral), but 7 miles of 36-inch-diameter pipeline loop in Connecticut. This 7-mile loop forms the basis for Staff's conclusion that "[i]n Connecticut the impacts would be moved from the landowners along the Islander East mainline to those along the loop."[18] In light of the serious doubt as to the timing and ultimate construction of the Calverton Plant, these additional facilities should not be included in the Staff's analysis of the ELI System Alternative.

Even if Staff concludes that including the Calverton lateral is appropriate in the ELI System Analysis, the assumption about the 7 miles of 36-inch loop in Connecticut is unsupportable. Unlike the 16-mile loop analyzed by Staff as part of the One-Pipe System Alternative, Iroquois has never been asked to provide information regarding the facilities that would be required to increase the deliverability of the ELI project from 175,000 Mcf per day to 260,000 Mcf per day. Presumably, Staff determined

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[17] Prepared Direct Testimony of Herbert A. Rakebrand, III on Behalf of Iroquois Gas Transmission System, L.P. at 7. The latest updated listing (May 16, 2002) of Article X Cases on the New York Public Commission is void of any indication that AES/Calverton has in any way initiated the Article X process. (Article X of the New York Public Service Law, enacted July 24, 1992, controls citing and certification of electric generation in New York).

[18] DEIS at 4-18.

through its own modeling that the 7 miles of 36-inch looping would be required and that such looping would have to be located "in a rugged, mainly forested area."[19]

As with the One-Pipe System Alternative, this entire section of the ELI System Alternative analysis is based on a faulty assumption. Iroquois would not have to construct 7 miles of 36-inch loop in "rugged, mainly forested area" to increase the deliverability of the ELI project from 175,000 Mcf per day to 260,000 Mcf per day.[20] The table attached as Exhibit 1 demonstrates that there are several different facility configurations that would achieve this same result, including additional compression in place of any looping. If, however, looping proves to be the best alternative, the 6.6 miles of 36-inch loop could be located anywhere between Brookfield, Connecticut and Devon, Connecticut (a span of about 29.5 miles) and would not need to be continuous. Therefore, through compression or selective placement of looping, Iroquois could significantly reduce the environmental and landowner impacts of these additional facilities.[21]

The ELI System Alternative is certainly more realistic than the One-Pipe System Alternative. Still, including the Calverton Lateral and the Connecticut loop in the ELI System Alternative for the

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[19] Id. at 4-14.

[20] The Islander East "Comments on Iroquois ELI and One-Pipe System Alternatives" noted in footnote 14 above, also purport to describe the impacts of the 7-mile loop of Iroquois' system included in Staff's analysis of the ELI System Alternative. It states that "The ELI mainline loop would have to cross rugged, forested terrain across various wetlands and watercourses (including Pond Brook and the Pootatuck River) and through new residential areas." It concludes that, "like the evaluation of the One-Pipe option, [the ELI System Alternative] understates the environmental impacts of constructing the 7.1-mile pipeline loop along the Iroquois mainline through the towns of Brookfield and Newtown." Again, all that the Islander East study has analyzed is the impacts of one particular 7-mile stretch downstream of Brookfield, Connecticut. Thus, these suggested impacts are meaningless.

[21] In testimony before the Connecticut Siting Council, representatives of Islander East conceded that typically a pipeline has flexibility in its choice between compression and looping and in the particular location and number of segments of pipeline looping. Algonquin Gas Transmission Company and Islander East Company, LLC, Application for a Certificate of Environmental Compatibility and Public Need, Hearing Transcript, at 112-15 (Apr. 12, 2002), attached hereto as Exhibit 2.

purpose of serving the AES Calverton plant, a plant which likely will not be constructed in the timeframe contemplated by either of these projects, seriously skews this analysis. In any event, much like the One-Pipe System Alternative, the Staff's ELI System Alternative suffers from faulty assumptions regarding the facilities that would be required to expand the deliverability of the ELI Project. As a result, the DEIS ELI System Alternative seriously overstates the impacts of the ELI Project as compared to the Islander East project and should be revised accordingly.

3. The Long Island System Alternative is Unrealistic Because There is Inadequate Market to Support Both Projects

The Long Island System Alternative analysis assumes that both the Islander East Project and the ELI project are constructed. As Iroquois stated in its April 8, 2002 Motion to Consolidate, there is inadequate market for the two projects and, therefore, they are mutually exclusive. Simply stated, if the Islander East project is constructed, Iroquois would not consider building the ELI project. Therefore, the Long Island System Alternative is not a realistic alternative and Iroquois will make no further comment in that regard.

4. The ELI Project, as Proposed, is the Reasonable Alternative to the Islander East Project That Should be Considered

The system alternatives defined by the DEIS are unrealistic hypotheticals that do not respond to the market needs that are driving both the Islander East project and Iroquois' competing ELI project. The reasonable alternative to the Islander East project that should be considered by the DEIS is the ELI project as proposed by Iroquois.

First, as noted in Iroquois' Motion to Consolidate, the ELI project is capable of meeting the project objectives of the Islander East project.[22] Second, the ELI project as proposed clearly is technically and economically feasible and practical. Third, the ELI project possesses significant environmental advantages over the Islander East project with regard to the differences in both the near-shore and on-shore environmental impacts.

In particular, Islander East would have a much more significant adverse impact on the near-shore shellfish beds in Connecticut, which are extremely valuable to the State of Connecticut from both an environmental and a commercial perspective, than would the ELI project. Islander East is proposing to traverse the Town of Branford, Connecticut shellfish beds by using horizontal directional drilling. The horizontal drill will emerge within a transition basin that must be constructed approximately 4,100 feet offshore. According to Exhibit 27 to the Islander East Certificate Application, this transition basin will be approximately 200 feet in length, have a maximum depth of 20 feet and a width of 130 feet. Approximately 6,500 yards of sediment will be removed and placed around the basin perimeter, forming a berm that will have a base of 65 feet and and a maximum height of 11 feet. Islander East's expert has acknowledged that virtually all shellfish within this area will be buried and will not survive.[23]

Beyond the point where directional drilling ends, Islander East will use mechanical dredging and plowing to lay pipe across approximately 2,500 feet of state-owned shellfish beds. The width of the dredged trench will be approximately 50 feet, and beside one side of the trench there will be a mound of dredged material approximately 60 feet wide. Mechanical plowing will result in a trench that is 25 feet

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[22] Motion to Consolidate at 7-8.

[23] Exhibit 2 at 127-30.

wide, with displaced materials along both sides of the trench in an area that will be approximately 25 feet wide on each side. A copy of the Initial Evaluation of Marine Sediment Dispersion Associated with the Installation of the Islander East Natural Gas Pipeline, which details the dispersion of sediment associated with the transition basin and the dredging and plowing, is attached as Exhibit 3. Islander East's expert concedes that virtually all shellfish within the area disturbed by dredging and plowing will be buried and will not survive.[24]

This description is not intended to criticize the techniques proposed by Islander East for traversing the shellfish beds adjacent to the shoreline in Branford, although Iroquois believes generally that both the Islander East certificate application and the DEIS understate the environmental impact attributable to the Islander East project.[25] The proposed techniques are likely those which will cause the least environmental impact given the technology available to Islander East and the particular terrain that the proposed pipeline must cross. Still, the Commission cannot ignore that the ELI project avoids virtually all of these kinds of environmental disturbance where it will traverse the near-shore sea bottom adjacent to Milford, Connecticut.[26] This is because the existing Iroquois pipeline already crosses the Connecticut shoreline and the near-shore shellfish beds. It is proposed that the ELI project tap into the existing Iroquois pipeline near the edge of the shellfish beds just before the bottom of Long Island Sound drops off to deeper water. Iroquois must construct a much smaller transition basin (only one

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[24] Id.

[25] E.g., Letter to the Honorable Magalie R, Salas from Raymond J. Cincavage dated May 8, 2002. (Homeowner concerned about clearcut for pipeline corridor and the destruction of noise and visual barrier between residences and railroad).

[26] In testimony before the Connecticut Siting Council, Islander East's expert conceded that the ELI System Alternative would avoid the near-shore impacts that would be caused by the construction of the Islander East project adjacent to Branford, Connecticut. See Exhibit 2 at 132-33.

quarter the size of the Islander East basin) to tap its existing pipe and must traverse only a limited span of shellfish bed before exiting this area. In addition to this difference in the projects' near-shore impacts, the total span of the ELI project crossing Long Island is over five miles shorter than the crossing route proposed by Islander East.

The preservation of the near-shore shellfish beds is an environmental and economic priority of the State of Connecticut and the cumulative impact of multiple energy transmission and telecommunications lines proposed to be constructed across Long Island Sound from Connecticut to Long Island, New York has been a major focus for the legislative and executive branches of the State of Connecticut government.[27] The Connecticut General Assembly recently passed legislation establishing a one-year moratorium on the consideration or final approval of applications (including pending applications) to construct natural gas pipelines, electric transmission lines or telecommunications lines across Long Island Sound. By the end of the one-year moratorium, the legislation requires the preparation and completion of a comprehensive environmental assessment and plan for the Long Island Sound's resources. The legislation also requires the Connecticut Siting Council, within 15 days of passage, to request that the Commission not approve any new electric transmission line or natural gas pipeline across Long Island Sound until the State has completed its assessment. A copy of Substitute House Bill No. 5609 is attached as Exhibit 4. It is anticipated that this recently passed legislation will be signed by the Governor of Connecticut. Additionally, the Governor of Connecticut issued an executive order requiring a moratorium on permitting energy projects in Long Island Sound and establishing a

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[27] The State of Connecticut has a unique legal interest in the submerged lands beneath Long Island Sound that would be traversed by these projects. Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 281-87 (1997); Hartford Elec. Light Co. v. Water Res. Comm'n, 162 Conn. 89, 101 (1971); Conn. Gen. Stat. §§ 22a-359 to 22a-363f.

parallel environmental assessment process. A copy of Executive Order No. 26 issued by Governor John G. Rowland is attached as Exhibit 5. In compliance with the Governor's Executive Order and in anticipation of the effectiveness of the new legislation, the task force, which includes a representative from the Commission, already has been convened and has issued a request for comments to assist it in preparing the required environmental assessment.[28]

Finally, in addition to the comparative near-shore environmental impacts of the Islander East and ELI projects, the ELI project as proposed also is an environmentally preferable alternative from the perspective of on-shore impacts in the State of Connecticut. Islander East has proposed constructing 10.2 miles of mainline facilities plus additional compression in Connecticut. In contrast, the ELI project as proposed would require only the construction of additional compression in Connecticut.

B. LEGAL ARGUMENTS

The DEIS Does Not Evaluate Reasonable Alternatives to the Proposed Islander East Project

NEPA requires federal agencies to evaluate and disclose to the public the environmental consequences of their proposed major actions. As the regulations of the Council on Environmental Quality ("CEQ") emphasize, the "heart" of that analysis is a comparison of the effects of a proposed action with the environmental impacts of reasonable alternatives to the action.[29] To clarify the environmental issues and to provide a clear basis for choice among options by the decisionmaker and by the public, agencies must "rigorously explore and objectively evaluate all reasonable alternatives."[30]

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[28] See Exhibit 6, Task Force Investigation of All Proposals for Gas or Electric Transmission Projects, Request for Written Comments, May 29, 2002, Notice of Meeting, May 17, 2002, and Agenda, May 17, 2002.

[29] 40 C.F.R. § 1502.14(a) (2001).

[30] Id.

The range of alternatives that should be considered in any particular case is determined by reference to the purpose of the agency action: "The broader the purpose, the wider the range of alternatives; and vice versa."[31] But an agency frustrates the primary purposes of the NEPA if it defines the range of alternatives too narrowly, or ignores reasonable alternatives that may have less environmental impact than its proposed course.[32]

The consideration of alternatives in the DEIS for the Islander East project, unfortunately, is so fundamentally flawed that Iroquois believes that a new draft EIS must be prepared and circulated for comment. As discussed in detail above, the alternatives defined by the Commission's Staff are unrealistic hypotheticals that do not respond to the market needs that drive both the Islander East project and Iroquois' competing proposal, the ELI project. Even more disturbing, the DEIS does not provide a fair comparison between the Islander East project and an existing, credible and less environmentally-damaging alternative, the ELI project. Rather than objectively evaluating both proposed projects on their own terms, to permit the Commission and the public to evaluate which might better serve the public interest with less environmental harm, the DEIS alters Iroquois' proposal to provide an expanded capacity beyond Iroquois' present intentions and to serve a potential customer that Iroquois considers entirely speculative. The additional pipeline construction envisioned by the Staff to realize this "ELI System Alternative" distorts the comparison between the ELI project as Iroquois has actually proposed it and the Islander East project. The actual ELI project in fact has significantly less environmental impact than the Islander East proposal, particularly on sensitive aquatic resources.

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31 Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664, 666 (7th Cir. 1997).

32 Id.

Unfortunately, the DEIS's discussion of the inflated ELI System Alternative fails to recognize this critical point.

This artificial comparison precludes the public or the Commission from fairly evaluating the actual choice that is presented by these competing proposals, in direct violation of NEPA. As Iroquois has made clear to the Commission in its Motion to Consolidate Proceedings and for Comparative Evidentiary Hearing, filed April 8, 2002, the Islander East and ELI proposals are in fact direct competitors, aimed at precisely the same end-user market in Long Island and drawing on the same supply sources of natural gas; therefore, construction of one proposed line will economically preclude the other. Under the *Ashbacker* doctrine, as Iroquois argues in its motion, the Commission has an obligation to consider the merits of the competing proposals against each other.[33] NEPA mandates the same result in environmental analysis: the Commission is required to assess objectively the comparative environmental impacts of these directly-competing proposals against each other. Comparing the Islander East project to a straw-man proposal developed by the Staff, instead of the actual project proposed by Iroquois, distorts the comparison beyond recognition. Only the preparation and circulation of a new draft, with a fair and objective comparison of the impacts of the Islander East project and the actual ELI project, can correct this flaw.

III.

CONCLUSION

Iroquois appreciates the recognition in the DEIS that the ELI project facilities could be utilized as system alternatives to the Islander East project and could satisfy the criteria for being environmentally

[33] See Motion to Consolidate at 4-8.

preferable alternatives to Islander East. Iroquois also appreciates the recognition in the DEIS that the Commission has not yet determined whether the Islander East and ELI projects are competing projects and whether demand for natural gas on Long Island will be sufficient to warrant both projects and that the DEIS has structured the system alternatives in recognition of these pending threshold issues.

Still, Iroquois believes that the system alternatives utilizing the ELI project facilities that are defined in the DEIS are flawed in two important respects. First, the system alternatives defined in the DEIS are based on unreasonable hypotheticals that do not reflect the market conditions faced by both the Islander East and ELI projects. Second, these system alternatives utilizing the ELI project facilities overstate the environmental impact of such alternatives. Iroquois believes that the most valid system alternative to the Islander East project is the ELI project as proposed and submits that, to fulfill its obligations under NEPA, the Commission must make this comparison. The ELI project as proposed clearly is the environmentally preferable alternative to the Islander East project with respect to both the near-shore and on-shore impacts in the State of Connecticut.

NEPA requires federal agencies to evaluate and disclose to the public the environmental consequences of their proposed major actions. As the CEQ regulations emphasize, the "heart" of that analysis is a comparison of the effects of a proposed action with the environmental impacts of reasonable alternatives to the action. An agency frustrates the primary purposes of NEPA if it defines the range of alternatives too narrowly, or ignores reasonable alternatives that may have less environmental impact than its proposed course.

The system alternatives defined in the DEIS are unrealistic hypotheticals that do not respond to the market needs that drive both the Islander East project and the competing ELI project and do not provide a fair comparison between the Islander East project and an existing, credible and less

environmentally-damaging alternative, the ELI project as proposed by Iroquois. Rather than objectively evaluating both proposed projects on their own terms, to permit the Commission and the public to evaluate which might better serve the public interest with less environmental harm, the DEIS alters Iroquois' proposal to provide an expanded capacity beyond Iroquois' present intentions and to serve an entirely speculative potential customer. The additional pipeline construction envisioned by the Staff to realize the ELI System Alternative carries with it substantial additional environmental impacts, distorting comparison between the ELI project as Iroquois has actually proposed it and the Islander East project. The actual ELI project in fact has significantly less environmental impact than the Islander East proposal, particularly on sensitive aquatic resources. Unfortunately, the DEIS's discussion of the ELI System Alternative ignores this critical point.

This artificial comparison precludes the public or the Commission from fairly evaluating the actual choice that is presented by these competing proposals, in direct violation of NEPA. NEPA mandates that the Commission assess objectively the comparative environmental impacts of these directly-competing proposals against each other. Comparing the Islander East project to a straw-man proposal, instead of the actual project proposed by Iroquois, severely distorts the comparison. Only the preparation and circulation of a new draft, with a fair and objective comparison of the impacts of the Islander East project and the actual ELI project, can correct this flaw.

Respectfully submitted,

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Dated: May 20, 2002
Washington, DC

Certificate of Service

I hereby certify that I have this day served the foregoing document via first class mail, postage prepaid, upon Islander East Pipeline Company, L.L.C. and Algonquin Gas Transmission Company and upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, DC, this 20th day of May 2002.

Anna A. McKenna

Attachment F

Letter Submitted to the Federal Energy Regulatory Commission in Support of the Islander East Pipeline Project

Brookhaven Energy Limited Partnership

September 16, 2002

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September 16, 2002

BY ELECTRONIC FILING

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D. C. 20426-0002

Re: Islander East Pipeline Company, LLC
Docket No. CP01-384-000

Algonquin Gas Transmission Company
Docket No. CP01-387-000

Dear Secretary Salas:

Brookhaven Energy Limited Partnership ("Brookhaven Energy") wishes to express to the Commission and its Staff Brookhaven Energy's appreciation for the timely preparation and issuance of the Final Environmental Impact Statement ("FEIS") for the Islander East Pipeline Company, L.L.C. and Algonquin Gas Transmission Company Projects proposed in these proceedings (collectively referred to herein as "the Islander East Project").

In addition, Brookhaven Energy wishes to inform the Commission of a recent development of direct and substantial importance to the Islander East Project: on August 14, 2002, the New York State Board on Electric Generation Siting and the Environment ("the Siting Board") issued a Certificate of Environmental Compatibility and Public Need for the construction and operation of the 580 MW Brookhaven Energy Facility at Brookhaven, New York. [1]

In issuing this certificate, the Siting Board found that failure to approve Brookhaven Energy's proposal "would only serve to delay the environmental and public interest benefits of adding this state-of-the-art, natural gas fuel power plant to the Long Island Power grid at a time of projected capacity shortfalls and during the formative years of the Long Island and State-wide

[1] Case 00-F-0566 – Brookhaven Energy Limited Partnership, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (New York Siting Board, Aug. 14, 2002). A copy of this 105 page order may be downloaded from the following location: http://www.dps.state.ny.us/fileroom/doc12088.pdf.

competitive market for electricity."[2] As Brookhaven Energy noted in its comments on the Draft Environmental Impact Statement ("DEIS") submitted on May 17, 2002, the environmental benefits of this project include reductions in harmful emissions of nitrogen oxides and sulfur dioxide on Long Island of 1,283 tons per year and 678 tons per year, respectively.

Prompt approval of the Islander East Project is essential to the attainment of these environmental benefits and to Brookhaven Energy's ability to provide the additional generating capacity required to meet growing load on Long Island. Brookhaven Energy has signed a precedent agreement with Islander East for firm transportation on the Islander East Project for deliveries to the site of its Brookhaven Energy Facility. None of the alternative proposals examined in the FEIS proposal can provide Brookhaven Energy with the dependable source of natural gas supplies required for the viability of its project.

As Brookhaven Energy pointed out in its comments on the DEIS, alternative projects that would involve the expansion of the existing pipeline serving eastern Long Island could jeopardize the viability of the Brookhaven Project by subjecting it to the prospect that its output may be involuntarily curtailed by the Long Island Power Authority ("LIPA") in periods of high load, when LIPA's ability to meet electric load on Long Island might otherwise be jeopardized in the event of a disruption of the only current source of gas supply to the substantial amount of gas-fired generation located in eastern Long Island.[3] If the Brookhaven Energy Project cannot be assured of the ability to operate at full output in such high demand periods, when the Location-Based Marginal Prices ("LBMP") for electricity can be expected to be relatively high, the financial viability of that project may be jeopardized.

Thus, any short term environmental benefits produced by expanding existing pipeline facilities on the Long Island Sound, rather than constructing a separate new pipeline as Islander East proposes, may be more than offset by the loss of the environmental and other benefits of the Brookhaven Energy Project. Although this point was overlooked by the authors of the FEIS, Brookhaven Energy urges the Commission to recognize that any temporary environmental benefits stemming from the expansion of existing pipeline facilities under the Long Island Sound must be weighed against the substantial and continuing adverse environmental and public interest impacts that would result if Brookhaven Energy were unable to proceed with its project.

For these reasons, Brookhaven Energy urges the Commission to find that there are no viable alternatives to the Islander East Project and that the ongoing environmental and public interest benefits of providing the infrastructure required for the construction and operation of the Brookhaven Energy Facility far outweigh any temporary environmental disruption that may be

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[2] Id., slip op. at 13.

[3] As Brookhaven Energy pointed out in its Comments on the DEIS, the Reliability Rules of the New York State Reliability Council ("NYSRC") expressly authorize LIPA to propose changes to its current procedures for curtailing electric generation by gas-fired plants on Long Island in response to changes in system conditions and other circumstances on Long Island.

caused during the construction of that project. This is particularly true in light of the finding in the FEIS that such temporary disruption can be adequately mitigated.

Accordingly, Brookhaven Energy Limited Partnership urges the Commission to issue the certificates requested in these proceedings at its next session meeting.

Very truly yours,

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Encls.

cc: All parties of record in Docket Nos. CP01-384-000 and- CP01-387-000