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November 22, 2006

ELECTRONIC FILING
Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426

Re: Motion to Intervene
Town of Huntington
Broadwater LNG Project
FERC Docket Nos. CP06-54-000
CP06-55-000
CP06-56-000

Dear Ms. Salas:

We represent the Town of Huntington in Suffolk County, Long Island, New York (the "Town"). Please find enclosed a copy of the Town's objections to easements that were requested by Broadwater Energy LLC from the New York State Office of General Services (the "OGS"). Said objections were filed with the OGS on November 17, 2006. This document is being filed with the FERC as courtesy as the issues discussed therein clearly bear relevance to the FERC's decision.

If you require any further information do not hesitate to contact this office.

Respectfully Submitted,

s/John C. Farrell
JOHN C. FARRELL

JCF/
cc. Kristine L. Delkus (with enclosures)
Broadwater Energy LLC (with enclosures)
Bruce Neely, Esq. (with enclosures)

D#522579F#045253

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STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
----------X

In the Matter of the Petition of Broadwater Pipeline, LLC for a grant of easement in lands under the waters of Long Island Sound situated approximately nine miles off the coasts of the Towns of Huntington, Smithtown and Riverhead, which Towns are located in the County of Suffolk.

OBJECTIONS TO NOTICE

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OBJECTIONS OF THE TOWN OF HUNTINGTON, NEW YORK TO BROADWATER'S NOTICE

The Town of Huntington (the "Town" or "Huntington"), by its attorneys, Jaspan Schlesinger Hoffman LLP, Special Counsel to the Huntington Town Attorney, John Leo, hereby submits these objections to the October 20,2006 Notice by Broadwater Pipeline, LLC ("Broadwater Pipeline") setting forth the intention of Broadwater Pipeline to petition the New York State Office of General Services ("OGS") for the grant of an easement pursuant to the provisions of Section (3) Subdivision (2) of the Public Lands Law (the "Notice"). The Notice states that the easement is for a mooring tower, subsea pipeline and liquefied natural gas terminal or floating storage and regasification unit ("FSRU") to be located in New York State waters and on New York State underwater lands in Long Island Sound (the "Broadwater Project"). The Town abuts Long Island Sound and that natural gas from the Broadwater pipeline subject of the Notice will make landfall in Huntington.

The Town first objects that it was not served a copy of the Notice. The Town further objects to the Petition for the easement as described in the Notice and submits that the Notice is defective and void and therefore must be disregarded by the OGS.

Huntington further demands that the OGS deny Broadwater Pipeline's request in all aspects.

The Town objects at this time to the Notice and any related Petition for the following reasons:

(1) Any Petition for such an easement is simply premature, because, among other things, an environmental impact statement has not been prepared or issued for the Broadwater Project pursuant to the New York State Environmental Conservation Law, ECL8-0113 ("SEQRA") and the National Environmental Policy Act of 1969 ("NEPA").

(2) OGS lacks jurisdiction to grant an easement for the mooring system and the FSRU under §3(2) of the Public Lands Law ("PLL"), as any application for an easement for the mooring system and the FSRU as proposed must be made pursuant to Public Lands Law §75. In addition, the Notice and any related Petition is defective without including Broadwater Energy LLC as well as Broadwater Pipeline (collectively referred to herein as "Broadwater").

(3) Pursuant to Public Lands Law §75 any such application or Petition for an easement must be reviewed by OGS in coordination with the Department of State and the Department of Environmental Conservation, in which public hearings must be conducted.

(4) The easement sought for the Broadwater Project violates the Public Trust Doctrine, the federal Long Island Stewardship Act of 2006, the New York Ocean and Great Lakes Ecosystem Conservation Act and the Laws of Suffolk County.

(5) The Broadwater Project is inherently dangerous and would violate the public health, safety and security of the residents of the Town.

PRELIMINARY STATEMENT

The Town has intervened in the ongoing Federal Energy Regulatory Commission ("FERC") proceeding in opposition to the application by Broadwater Pipeline and Broadwater Energy LLC for an application to construct the FSRU under §3 of the Natural Gas Act ("NGA") (FERC Docket No. CP 06-54) and Certificates of Public Convenience and Necessity for Construction and Operation of an underwater pipeline pursuant to §7 of the NGA to transport natural gas from the FSRU to an existing underwater pipeline in the Long Island Sound (FERC Docket CP06-55 and CP06-56). In addition to Huntington, the Towns of Southold, Riverhead and Brookhaven, as well as the County of Suffolk, have been granted intervention status in the pending Broadwater FERC proceedings. The Town of East Hampton has recently made application for intervenor status. Huntington is particularly impacted by the Broadwater Project as the landfall of Iroquois Pipeline, to which the Broadwater pipeline will ship gas from the FSRU, is in Huntington.

The FERC proceedings are still in their initial phases. FERC has not yet issued a draft environmental impact statement ("DEIS") under NEPA and therefore has not issued any approvals or certificates. Indeed, the United States Coast Guard ("USCG") has issued a report in the Broadwater FERC proceedings, the "Waterway Suitability Report for the Proposed Broadwater Liquefied Natural Gas Facility" released by the USCG on September 21, 2006 ("Water Suitability Report"), wherein the USCG admitted it has neither the assets nor the manpower to provide adequate safety and security for the Broadwater Project. In addition to FERC approval, the Broadwater Project, will require

approvals from the United States Army Corps of Engineers, the USCG, the New York State Department of State and the New York State Department of Environmental Conservation, among others. There is broad and adamant public opposition throughout Long Island and the State of Connecticut to the Broadwater Project. Putting the proverbial cart before the horse, Broadwater is now seeking, albeit improperly, an easement from OGS for the pipeline to be placed in the underwater lands of Long Island Sound, the FSRU to sit over such lands and the mooring system to anchor the FSRU to the bottom lands of the Long Island Sound.

As is further explained below, Broadwater Pipeline has incorrectly presented the Notice for the Petition under §3(2) of the Public Lands Law and the regulations at 9 NYCRR Part 271. These regulations only apply to routine cable, conduit and pipeline applications, but not to the massive and inherently dangerous FSRU structure and its mooring system as proposed. The Town submits that Broadwater Pipeline has wrongfully chosen to proceed only under this inapplicable section of the Public Lands Law rather than the applicable PLL §75 in order to circumvent the more stringent review required and extensive criteria set forth under §75 of the Public Lands Law and the regulations promulgated thereunder. Indeed, the purpose and intent of the applicable regulations promulgated to implement Article 6 of the Public Lands Law is to manage the State's interest in its underwater lands, to regulate the projects and structures constructed in or over such underwater lands consistent with the public interest in navigation, commerce, public access, fishing, bathing, recreation, environmental and aesthetic protection (emphasis added). The Town opposes the location of the FSRU, the mooring system and the pipeline in Long Island Sound because it would be unsafe, unduly restrict

public access, use and enjoyment of Long Island Sound and would impose unacceptable environmental risks and negative aesthetic impacts.

THE PETITION IS PREMATURE

The regulations promulgated pursuant to SEQRA identify an action as a "project or physical activity such as construction or other activities that may affect the environment by tainting the use, appearance or condition of any natural resource or structure that . . .requires one or more new or modified approvals from an agency or agencies. See 6 NYCRR §617.2(b). Obviously then the location and construction of the FSRU, mooring system and the pipeline is an action under SEQRA. Here, since FERC is the first agency to be considering the proposed action, FERC is conducting its review under NEPA. In such cases involving approval by a Federal agency, the SEQRA regulations provide, at 6 NYCRR §617.15(a), that a state agency "has no obligation to prepare an additional environmental impact statement under this part, provided that the Federal Environmental Impact Statement is sufficient to make findings under §617.11 of this Part. . . No involved [New York State] agency may undertake, fund or approve the action until the federal final environmental impact statement has been completed and the involved agency has made the findings prescribed in §617.11 of this Part." The regulation at §617.15 goes on to provide that in the event the state agency disagrees with the federal environmental finding, it may conduct its own review under State law. However, that review cannot begin under New York State law and regulations, specifically 6 NYCRR §617.15(a), until the Federal NEPA review has been completed. Here, of course, the NEPA process has barely begun, so any action by the OGS to consider or approve an easement petition is premature and unlawful. Further, once the

federal NEPA review is completed, the OGS and other participating State agencies under PLL § 75(7)(b) and 9 NYCRR Part 270 must review both the mooring system and the FSRU together with the pipeline.

THE OGS LACKS AUTHORITY TO GRANT AN EASEMENT FOR THE MOORING SYSTEM AND FSRU PURSUANT TO PUBLIC LANDS LAW §3(2)

Broadwater provided Notice of its Petition as an application pursuant to Public Lands Law §3(2) and the regulations at 9 NYCRR Part 271-1.3. The provisions cited in the Notice, however, only provide a carve out from the extensive and stringent criteria generally provided in Article 6 of the Public Lands Law limited only to petitions for an easement for cables, conduits or pipelines.

While Public Lands Law §3(2) is a statute of general applicability for easements, Broadwater failed to make notice and presumably an application under Public Lands Law §75(7) which applies specifically to moorings and other structures, applicable to its mooring system and FSRU as described in the Notice. The regulations promulgated pursuant to Public Lands Law §75 at 9 NYCRR Part 270 provide for a far more rigorous review than the inapplicable sections under which Broadwater chose to cite in their Notice and presumably their Petition. Pursuant to the applicable and more stringent PLL § 75(7)(b), "no wharf, dock, pier, jetty, platform, breakwater, mooring or other structure shall be constructed, erected, anchored, suspended, placed or substantially replaced, altered, modified, enlarged or expanded in, on or above state-owned lands underwater. . .unless a lease, easement, permit, or other interest is obtained from the Commissioner which authorizes the use of an occupancy of those state-owned lands underwater. . ."

Further, pursuant to PLL §75(d)(i), the Commissioner of the Department of Environmental Conservation and Secretary of State shall review any such proposed

easement. The Commissioner of Environmental Conservation is required to recommend conditions to protect the environment and natural resources. Id. In addition, the Commissioner of General Services is required to give "due regard to the recommendations of the Secretary of State with respect to coastal issues, or deny the proposal if the Commissioner of Environmental Conservation, upon administrative findings, determines that the environmental and natural resources cannot be adequately protected." Id. Review is also required by the Office of Parks Recreation and Historic Preservation. Id. Thus, under the applicable and more stringent PLL §75, public hearings are contemplated for objections to be heard, a record to be made and findings to be determined.

The regulations promulgated under PLL §75 at 9 NYCRR Part 270-3.2 require the Commissioner of General Services, in consultation with the Commissioners of the other three State agencies referenced above to review (1) environmental impact of the project; (2) values for natural resource management, public recreation and commerce; (3) size, character and effects of the project in relation to neighboring uses; (4) potential for interference with navigation, public uses of waterway and riparian/littoral rights; (5) water dependent nature of use; adverse economic impact on commercial enterprises; (6) effect of the project on the natural resource interests of the State in the lands; and (7) consistency with the public interests for purposes of fishing, bathing and access to navigable waters and the need of the owners of private property to safeguard their property.

In addition, 9 NYCRR Part 270-3.2(b) requires the Commissioner of General Services to make administrative findings, again contemplating a hearing. Indeed, the

Commissioner is to determine if a hearing on the objections is to be held. See 9 NYCRR §270-5.5. There are no similar hearing provisions under the more general statute Public Lands Law §3(2) or the regulations pursuant to which Broadwater has provided the Notice.

In sum, the provisions in the regulations under which Broadwater has provided their purported Notice, apply only to cables, conduits, pipelines and hydroelectric power and appurtenant structures. The attempt to squeeze the totality of the Broadwater Project application into this limited section of the Public Lands Law is deceptive and indeed nonsensical. It strains common sense for Broadwater to attempt to denominate the FSRU and mooring system as appurtenant to the pipeline. Blacks Law Dictionary defines appurtenant as "annexed to a more important thing". In other words, under the Petitioners' view the massive FSRU and mooring system would be considered to be less important than the pipeline. Furthermore, the American Heritage Dictionary defines "appurtenant" as "something added to another, more important thing; an "appendage." The FSRU and mooring system could hardly be considered an appendage to the pipeline, when indeed the converse is true – the pipeline is appurtenant to the FSRU, contemplated to be hooked to the mooring system. Without the FSRU hooked to the mooring system, there would be no need for the pipeline. Broadwater's attempt to squeeze its entire application into the inapplicable provisions of the Public Lands Law, looking for less governmental and public scrutiny, cannot be condoned. Simply put, the Notice is defective and void, and the Notice must be rejected as well as any Petition arising from the Notice.

THE EASEMENT SOUGHT BY BROADWATER VIOLATES THE PUBLIC TRUST DOCTRINE

Pursuant to the Public Trust Doctrine, New York State holds underwater lands navigable waters in its sovereign capacity as trustee for the beneficial use and enjoyment of the public. In Illinois Central Railway Co. v. Illinois, 146 U.S. 387 (1892), the Supreme Court explained the public trust doctrine to prohibit easements such as the one Broadwater seeks in the instant Notice. In Illinois, the Illinois legislature claimed to have transferred rights to a one-thousand-acre portion of the bed of Lake Michigan adjacent to Chicago to the Illinois Central Railroad Company. Id. at 452. The Supreme Court ruled that the transfer was a "gross perversion of the trust over the property under which it was held" by the State of Illinois. Id. at 455. The Supreme Court explained that under the public trust doctrine, the State holds underwater lands in trust for the public so that the public "may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, *freed from the obstruction or interference of private parties.* Id. at 452 (emphasis added). The very nature of Broadwater's request violates the canons of the public trust doctrine set forth long ago by the Supreme Court and adopted by the highest court of New York. In Coxe v. State of New York, 144 N.Y. 396 (1895), a physical obstruction of the public's access to navigable waters was found to violate the public trust doctrine. In Coxe, the State Legislature purported to transfer the State's title to all of the submerged lands adjacent to Staten Island and Long Island. The Court of Appeals rejected that transfer as being "absolutely void", stating that "so far as the statutes [conveying the land] attempted to confer titles to such a vast domain which the state held of the benefit of the public, they are absolutely void..." Id. at 405. The Coxe court articulated the test for a public trust doctrine violation. It held that, "title which the

state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, *except for some public purpose, or some reasonable use which can be fairly be said to be for the public benefit.*" Id. at 406 (emphasis added). The Coxe court further noted that the public trust doctrine is so broad that it would also prohibit transfers that are "for the public benefit" if they "might seriously interfere with the navigation upon the waters..." Id. at 408. If Broadwater is permitted to go forth with their Project, like the voided transfer in Coxe, they would "seriously interfere with the navigation upon the waters", depriving the public of the use and enjoyment of thousands of acres of the surface of Long Island Sound. As stated in Cox v. City of New York, 26 Misc. 177 (1898), "[t]he right of navigation is a public right, belonging not to towns, villages or cities as corporations, but rather to all citizens in severalty." Id. at 178. It goes against the long established and consistently held principles of the public trust doctrine to permit Broadwater, a private for profit entity, to have permanent and exclusive access and management of a significant portion of the unique and national treasure of Long Island Sound.

THE EASEMENT SOUGHT BY BROADWATER VIOLATES THE LONG ISLAND SOUND STEWARDSHIP ACT OF 2006

The Long Island Stewardship Act of 2006 (the "Stewardship Act"), signed into law by President Bush on October 16, 2006, declares Long Island Sound as a "national treasure of great cultural, environmental, and ecological importance." See Stewardship Act § 2(a)(1). The Stewardship Act also praises Long Island Sound's economic contribution to the regional economy, decries the inadequate public access to its shoreline, and establishes the "Long Island Sound Stewardship Initiative." Plainly put, the Long Island Sound Stewardship Initiative requires the identification and preservation

of desirable parcels of property adjacent to Long Island Sound that may serve important ecological, educational, open space, public access, or recreational uses of Long Island Sound. The Broadwater Project goes against the very goals of the Stewardship Act, which are to preserve Long Island Sound for "ecological, educational, open space, public access, or recreational use." Stewardship Act § 2(b). Allowing Broadwater to permanently moor an FSRU containing ninety million gallons of toxic and flammable liquid natural gas in the center of Long Island Sound strongly conflicts with this federally-declared purpose and is in direct violation of the Act.

THE EASEMENT SOUGHT BY BROADWATER VIOLATES THE NEW YORK OCEAN AND GREAT LAKES ECOSYSTEM CONSERVATION ACT

In its most recent session, the New York State Legislature adopted the New York Ocean and Great Lakes Ecosystem Conservation Act (the "Conservation Act") which was signed by the Governor on July 26, 2006. See Chapter 432 of the Laws of 2006. The Conservation Act amends the NYS Environmental Conservation Law and finds and declares that "New York's coastal ecosystems, which include Long Island Sound, are critical to the State's environmental and economic security and are integral to the State's high quality of life and culture." Id. The Conservation Act further declares that it is the policy of the State of New York to "conserve, maintain and restore coastal ecosystems so that they are healthy, productive and resilient and able to deliver the resources people want and need." The Broadwater Project and certainly granting of any easement in Long Island Sound for such use is contrary to the express policy set forth in the Conservation Act.

Furthermore, to advance this policy and create the appropriate governance of coastal ecosystems, the Conservation Act establishes a Conservation Council, consisting

of nine members who are commissioners of State departments and agencies. The Conservation Council is charged with the responsibility of understanding, protecting, restoring and enhancing Long Island Sound, among other coastal ecosystems. Moreover, the Conservation Council, of which the Commissioner of the OGS is a member, is expressly charged with integrating and coordinating ecosystem-based management with existing laws and programs. Therefore, in addition to the applicable provisions and criteria set forth in the Public Lands Law and regulations, OGS must apply ecosystem-based management criteria into any review. The Town submits that the Broadwater Project is, on its face, violative of the ecosystem-based management of Long Island Sound now required under the Conservation Act.

CONVEYANCE OF THE EASEMENT TO BROADWATER WOULD VIOLATE SUFFOLK COUNTY LAW

Broadwater's request to OGS for the grant of an easement in Long Island Sound is misplaced. While the State of New York owns the underwater lands in Long Island Sound, Suffolk County as well as the Town has jurisdiction of the waters of Long Island Sound up to the Connecticut boundary pursuant to Chapter 695 of the Laws of 1881. The statute provides, in pertinent part, that "the jurisdiction of the legally constituted offices of Queens and Suffolk Counties and of their respective towns of said counties bordering on Long Island Sound is hereby extended over the waters of said Sound to the Connecticut State line." Moreover, New York State Navigation Law §§ 1 and 2(4) exempts Suffolk County from the definition of "navigable waters of the state" in purview of all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk Counties, further bolstering Suffolk County's and the Town's authority and control over the waters of Long Island Sound. Importantly, the Suffolk County Legislature acting

pursuant to Chapter 695 of the Laws of 1881, adopted Resolution No. 821 of 2006, which promulgated a new law prohibiting the construction and operation of an FSRU in the waters of Long Island Sound under the jurisdiction and control of Suffolk County. If OGS were to grant Broadwater's application for an easement to build and construct as it contemplates in the waters of Long Island Sound, OGS would be acting in direct violation of express authority granting Suffolk County jurisdiction and control. Accordingly, Broadwater's application must be denied because Suffolk County possesses the jurisdiction to consider an easement to allow the Broadwater Project the waters of Long Island Sound and has expressly adopted a local law prohibiting such a project.

SAFETY AND SECURITY

The Town's public safety concerns are buttressed by the USCG Waterway Suitability Report. Liquefied natural gas is a highly flammable commodity which the Coast Guard noted is a particular safety challenge in connection with the proposal of the FSRU to be located in a highly trafficked waterway (United States Coast Guard Report at page "104"). The safety issues surrounding the FSRU, which will be located off the coast of the Town, stem from the possibility of collisions, release of flammable vapor and the reliability of an untested mooring technology. See the Broadwater Resource Report Nos. 10 and 11, pages 156, 157 and pages 11 through 27. Importantly, the USCG notes that the resources currently do not exist for ensuring public safety if the FSRU, mooring system, pipeline is placed in Long Island Sound.

> According to the United States Coast Guard based on current levels of mission activity, Coast Guard Sector Long Island Sound currently does not have the resources required to implement the measures which have been identified as being necessary to manage effectively the potential risks of navigation safety and maritime security associated with the

> Broadwater energy proposal. . .State or local law enforcement agencies could potentially assist with implementing some of the measures identified for managing potential risks to maritime security associated with the Broadwater Energy Project. . . Currently the agencies that could potentially provide such assistance do not have the necessary personnel training or equipment.

Thus, not only would the Broadwater Project be unsafe and hazardous, Broadwater, as acknowledged by the USCG, wrongfully expects the cost associated with safety and security to fall on the Town and its taxpayers.

CONCLUSION

Accordingly, the Town demands that the OGS reject Broadwater Pipeline's Notice and deny any Petition of Broadwater related to such Notice. The Town expressly reserves the right to submit additional information and comment in support of its objections in the future.

In the event OGS determines it has jurisdiction and authority to proceed with any Petition of Broadwater related to the Notice, it must comply with SEQRA and the Town hereby requests a full evidentiary hearing before any grant of an easement is made for the Broadwater Project. The Town further respectfully requests it be provided with direct

notice of any petition or proceeding submitted to OGS in connection with the Broadwater Project.

Dated: Garden City, New York
November 22, 2006

Respectfully Submitted,

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