

in offshore waters of Long Island Sound in the coastal area of the Town of Branford, Connecticut, excavation, dredging and stockpiling of dredge spoils, and trenching of substrate for the purpose of laying a gas transmission pipeline between Connecticut and New York were inconsistent with Connecticut's federally-approved Coastal Zone Management Plan ("CZMP"), thus: "[T]he proposed work would cause significant adverse environmental impacts on coastal resources and would be inconsistent with the enforceable policies of the Connecticut CZMP."

2. The Commissioner's October 15, 2002 objection listed categories of impact that were deemed inconsistent with the CZMP. In addition, the Commissioner concluded that review of an Environmental Impact Statement ("EIS") developed by the Federal Energy Regulatory Commission ("FERC") for the Islander East proposal demonstrated that at least one alternative for the pipeline exists, which alternative would eliminate some of the anticipated adverse impacts altogether and reduce other onshore and offshore impacts. Clearly, there are a number of serious issues arising out of Islander East's certification request with which the Secretary will have to make findings.

3. Owing to the increased interest of energy companies to provide both gas and electric power to New York via Long Island Sound crossings, the State of Connecticut's General Assembly enacted Public Act 02-95, effective date June 3, 2002, which inter alia provided for the convening of a legislative task force under the direction of the Institute for Sustainable Energy located within Eastern Connecticut State University to undertake a comprehensive study, among other objects, of the ecology of the Sound including, man-made impacts, with a focus upon what utility infrastructure already exists, and upon how to minimize the numbers and impacts occasioned by the construction of electric powerline crossings, *gas pipeline crossings*,

and telecommunications crossings within the Sound. Said task force was required to file a report of its investigations on or before June 3, 2002. P.A. 02-95, § 3.

It is beyond serious dispute that the present review proceedings within the Department of Commerce would benefit from a consideration of the conclusions reached by this task force. The task force's membership is itself a cross-section of stakeholders: utility representatives; regulators; academics, and others who have an in-depth knowledge of the Sound's ecology and the concerns of the stakeholders. P.A. 02-95, § 3. The very point of this legislatively mandated body is to encourage a review of the cumulative effects of the various proposed projects and, in a fair and reasonable manner, to balance the needs of the stakeholders. Such information is not merely highly relevant in the context of the review that will occur under the Secretary, but it would hardly be consistent with the CZMA's stated goal of encouraging the active participation of the states in resolving competing interests in finite and severely threatened fragile coastal resources. Islander East's view that the task force study is but a generic report of no real relevance to this particular proposed project notwithstanding, the fact is that not only is the task force charged with examining precisely the same issues as those described in 15 C.F.R. Part 930.121, but *it also has explicitly entertained comment from Islander East during the course of its deliberations*. Accordingly, the task force's conclusions will be of direct relevance to the present proceeding.

4. This public act places a moratorium on state permitting activities for energy transmission projects; moreover, the task force report' findings must be cross-referenced and its recommendations evaluated in any subsequent permit decision tendered after the date of the lifting of the moratorium. P.A. 02-95, §§ 1, 4. Islander East's proposal necessarily involves the

issuance of state environmental permits—structures and dredging, and tidal wetlands—that are affected by and subordinate to the mandate of P.A. 02-95. Accordingly, a decision on these state permits, without which Islander East may not proceed with marine construction, can be issued at the earliest mid-August of calendar year 2003. The Commissioner is required by statute to publish a notice of tentative determination of his decision and receive public comment for forty days thereafter. Such period also cannot commence until after the moratorium ends. Moreover, if an administrative hearing on the state permits is requested by twenty-five or more people, the Commissioner must by statute convene an adjudicatory proceeding that has appeal rights associated with it. That contingency could take the decision process out even farther, realistically late calendar 2003.¹

5. Significant interest—of numerous stakeholder groups and municipalities—is likely to be manifested respecting Islander East's appeal of the DEP's objection based upon the State of Connecticut's CZMP.² Although previous public input has been tendered and received in the context of Islander East's FERC licensure application, no similar vetting of the proposed project has been done in the specific context of coastal consistency and the threatened adverse impact upon coastal and nearshore water resources identified by the Commissioner in his October 15, 2002 objection. The Commissioner will seek a public hearing from the Secretary as part of the

¹ The Commissioner also notes that both he and the Connecticut Attorney General have sought a rehearing on FERC's September 19, 2002 Order relating to Islander East's proposal. Once the rehearing process is completed, the FERC Order will undoubtedly be taken up to the Court of Appeals for review, and this appeal will likely take a substantial amount of time to resolve.

² DEP previously published notice of its intent to *object* to Islander East's coastal consistency certification request in early October, 2002. Of course, those who would have been opposed to the project need not have filed comments at that point in time. The instant appeal, however, presents the contrary opportunity.

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receive public comment, and schedule and hold a public hearing is, therefore, appropriate in
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Islander East's proposal, had associated with it a public comment period open for approximately six months. The instant project proposal is no less complex nor are the associated environmental and alternatives issues less numerous.

6. As part of the review process that the Secretary will initiate, comment from other federal agencies will be solicited. 15 C.F.R. § 930.128(c). It is a given that certain federal agencies, that is, the Environmental Protection Agency, National Marine Fisheries Service and Army Corps Of Engineers ("ACOE") will have significant interests and issues to bring to the Secretary's attention. In ACOE's case, federal licenses must be issued to Islander East prior to the proposed project going forward. It is obvious that, even if each and every other issue were resolved, it would be highly unlikely that these federal permits, just like their state counterparts, could be adjudicated before late summer of calendar 2003.

7. The Secretary's recently adopted regulations as applicable to a petition for override do not preclude the possibility that the alternatives analysis can embrace materials developed and presented at a time posterior to the Commissioner's coastal consistency determination. Part 930, Subpart H, § 930.121(c) states that "[w]hen determining whether a reasonable alternative is available, the Secretary may consider, but is not limited to considering . . . alternatives described in objection letters and alternatives and *other new information described during the appeal.*"

(emphasis added). Thus, the very text of the Secretary's own regulation supports, for example, not only the consideration of issues to be addressed in the task force report, but it also permits other interested parties to offer reasonable, realistic route alternatives to the challenged project. After the public comment record closes, the DEP needs sufficient time within which to undertake a technical CZMP consistency review of environmentally worthy materials collected from this public comment record, and, further, to build the chief points of that review into its substantive brief

8. Based upon the foregoing considerations, the Commissioner respectfully requests that the Secretary's scheduling order provide at least the following deadlines for the various phases of his review of Islander East's petition for override, viz.:

January 31, 2003	Islander East's Opening Brief
March 15, 2003	DEP's Opening Brief
February 1, 2003	Notice of Public Comment Period; Period Opens
February 1, 2003 onwards	Dept. of Commerce requests position statements from Army Corps of Engineers, Environmental Protection Agency, and National Marine Fisheries Service.
[n.d.]	Public Hearing
June 3, 2003	Connecticut State Task Force's Final Report of Long Island Sound Utility Projects.
August 1, 2003	Public Comment Record Closes.
September 30, 2003	Final briefs of the parties and any other formal participants in the coastal consistency review process.

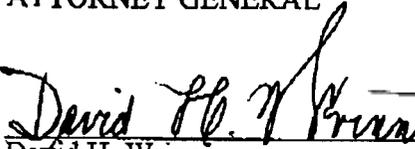
DEP offers the above schedule in an effort seriously to address Islander East's repeated assertion that this particular review should be decided quickly. Nevertheless, the DEP's willingness to accede to a relatively short schedule should not be understood as any concurrence that hurrying this appeal along should be a paramount consideration of the process, or an acknowledgment that this appeal will ultimately be the controlling issue in the timing of this project.

Dated at Hartford, Connecticut, this 20th day of December, 2002.

RESPONDENT
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CERTIFICATION

I hereby certify that a copy of the foregoing Submission re Scheduling was e-mailed and mailed, first-class postage prepaid, this 20th day of December, 2002 to:

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