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December 20, 2002

**VIA E-MAIL, FACSIMILE  
AND FEDERAL EXPRESS**

Mr. Branden Blum  
Senior Counselor  
c/o Office of Assistant General Counsel for Ocean Services  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
1305 East-West Highway  
SSMC-4, Room 6111  
Silver Spring, MD 20910

**RE Proposed Briefing Schedule, Appeal of Islander East Pipeline Company,  
L.L.C., From an Objection by the State of Connecticut, Department of  
Environmental Protection to a Consistency Certification for the Islander  
East Pipeline Project**

Dear Mr. Blum:

As you are aware, Islander East Pipeline Company, L.L.C. ("Islander East") has filed a Notice of Appeal from the Objection interposed by the State of Connecticut, Department of Environmental Protection ("Connecticut") on October 15, 2002 to a consistency certification of the Islander East Pipeline Project ("Objection Letter"). Islander East filed its Notice of Appeal to the Objection Letter with the Secretary of the Department of Commerce ("Secretary") on November 15, 2002 ("Appeal"). On December 5, 2002 all of the parties participated in a conference call with you to discuss procedural aspects of the Appeal. At that time, you recommended that the parties should attempt to reach agreement on a briefing schedule. Unfortunately, the parties have been unable to agree on a briefing schedule and in a conference call among the parties and you on December 16, 2002 you requested that the parties submit in letter form their respective proposed briefing schedule along with any reasoning to support their proposal. This letter complies with that request, (which request also requires a simultaneous submission from Connecticut no later than close of business on Friday, December 20, 2002).

NIXON PEABODY LLP

Mr. Branden Blum  
December 20, 2002  
Page 2

As discussed during the December 16, 2002 conference call, Islander East informed Connecticut and you that it has reconsidered its position regarding the procedural issue of the untimeliness of Connecticut's objection to Islander East's Consistency Certification and that Islander East will not pursue that issue on this Appeal. Among the issues factoring into Islander East's determination with respect to the untimeliness issue was the business reality that expeditious prosecution of this Appeal is of paramount concern.

Accordingly, we propose the following briefing schedule:

- 1/31/03      Islander East Substantive Issues Brief, and  
                  Public and Agency Comment Period to commence
  
- 3/31/03      Public Hearing Held During the Month of March and  
                  Connecticut Brief on Substantive Issues Due
  
- 4/30/03      Submission of replies by both parties simultaneously.  
                  Public and Agency Comment Period Closes.  
                  Record Closed.

The main issue of contention between the parties regarding scheduling revolves around Connecticut's contention that it will not be in a position to submit its substantive issues brief until after the completion of a comprehensive environmental assessment and plan to be completed under the direction of the Institute for Sustainable Energy ("Long Island Sound Report"), which is scheduled to be submitted to the Connecticut Legislature on June 4, 2003.<sup>1</sup> Connecticut's reliance on the issuance of the Long Island Sound Report to assist in its preparation of the substantive issues brief is misplaced and unfairly prejudicial to the due consideration of the Appeal of Islander East.

At the outset, we would note that the Secretary has the authority to establish the timing of submissions for an appeal from an objection by a State to a consistency determination. 15 C.F.R. 930.121. Moreover, the regulations, by imposing strict time constraints on the Secretary to render a decision within 90 days after closure of the Decision Record, 15 C.F.R. § 930.130(b), bespeak a recognition that time is important and that expeditious decisions are mandated. This recognition will be thwarted by acceding to Connecticut's unreasonable request to delay submission of its brief until six months after Islander East brief has been submitted.

There is no additional information that needs to be developed for the Secretary to conduct his analysis as to whether the national interest is furthered by this project while outweighing any adverse coastal impacts, or if reasonable available alternatives exist. 15 C.F.R. § 930.121(a),(b) and (c). In the event the Long Island Sound Report were to identify some heretofore unknown

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A copy of the Connecticut statute authorizing the Long Island Sound Report is annexed for your convenience.

## NIXON PEABODY LLP

Mr. Branden Blum  
December 20, 2002  
Page 3

alternative, Connecticut could petition the Secretary to reopen the record for the limited purpose of supplementing the record with that report. Moreover, there exists the possibility that the Long Island Sound Report may not be completed by June 4, 2003 or that the completion date could be extended to a date later that year or even the following year. To hold this Appeal hostage to the timing of an event that is determined solely by the Connecticut legislature may be an abuse of due process.

In effect, Connecticut seems to be asking for a stay of the entire proceeding. According to the regulations, such a stay must be predicated on an objection which is specifically based on a lack of information. Here, the Objection Letter was not based on a claim of lack of information as contemplated by 15 C.F.R. § 930.127(d). Rather, Connecticut focused on what it claimed was a reasonable alternative. Specifically, it relied on a hypothetical alternative that was proposed by the Federal Energy Regulatory Commission's ("FERC") environmental staff as part of its alternatives analysis for the Final Environmental Impact Statement that was issued for the Islander East Pipeline Project. Connecticut cannot now claim that it needs to wait to see the Long Island Sound Report because it may recommend the use of subsea utility corridors for future projects that the State would claim should be considered for the development of an alternative to the Islander East Pipeline Project.

This project has been in development for several years and Connecticut has been involved with it since early last year, when Islander East first notified the DEP of the project. A detailed permit application was filed with the DEP on February 13, 2002 and several meetings between DEP and Islander East have occurred since that filing. Moreover, there has been considerable commentary and analysis throughout the federal and state reviews to date.

The Long Island Sound Report, by its statutory authorization, is a general overview and analysis of numerous issues relating to the Long Island Sound. The statute in section 3 provides for the Report to: (A) inventory all existing Long Island Sound environmental data, (B) evaluate natural resources, (C) assess impacts of regional energy needs, (D) evaluate methods to minimize impacts of Sound crossings, (E) inventory current Sound crossings, (F) evaluate the reliability and operational impacts of proposed Sound crossings, (G) make recommendations for regional energy needs while protecting the Sound, and (H) make recommendations on natural resource performance bond levels. As such, the Long Island Sound Report will encompass much more than the narrow issue before the Department of Commerce raised by the Appeal.<sup>2</sup> The Long Island Sound Report will undoubtedly be focused on more general policy considerations relating to development in Connecticut waters of Long Island Sound. In contrast, the Appeal is

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<sup>2</sup> The composition of the Task Force assigned by the statute is noteworthy as much for its members as for those not included. The Connecticut DEP's Office of Long Island Sound Programs which oversees the Coastal Zone Management program is not included in the Task Force. This omission is further indication that the focus of the Long Island Sound Report will not be on coastal zone management per se and will be unlikely to generate information useful to the Secretary's deliberations on the Islander East Appeal.

## NIXON PEABODY LLP

Mr. Branden Blum  
December 20, 2002  
Page 4

specifically constrained to an evaluation by the Secretary as to whether the specific and intricately detailed Islander East Pipeline Project is consistent with the Coastal Zone Management Act.

To the extent Connecticut requests a delayed briefing schedule with the hope that the Long Island Sound Report will evaluate alternative pipeline approaches, this is contrary to the scope of review of the Secretary. As set forth in 15 C.F.R. 930.121(c), a federal license or permit activity will be consistent with the Coastal Zone Management Act if, "there is no reasonable alternative available". The regulations provide that in making a determination as to whether a reasonable alternative is available, "... the Secretary may consider ... alternatives described in objection letters and alternatives and other new information described during the appeal". *Id.* Key to this analysis is that the alternative be available, not theoretical or hypothetical. In order for an alternative to be "reasonable" it must be specific, current, and available.

With respect to Connecticut's contention that it is necessary for the public to comment on the Islander East Project in light of the Long Island Sound Report, Connecticut ignores the extensive public involvement in this project to date. For example, there have been approximately sixty meetings between Islander East and various municipalities in Connecticut even beginning before Islander East filed its application with the FERC on June 15, 2001. FERC held two public hearings in Connecticut dated October 17, 2001 and May 8, 2002. In addition, there were proceedings initiated before the Connecticut Siting Council starting in December, 2001 which included the direct and cross examination of Islander East experts during more than one and a half weeks of public hearings this past April. Consequently, there has been substantial and consistent public involvement in this project. The schedule proposed by Connecticut sacrifices Islander East's right to reasonably prompt consideration of its Appeal on the altar of unending public consideration.

To the extent that Connecticut seeks to interject the state moratorium into this Appeal process, it is inapplicable and inappropriate. This appeal is one aspect of a multi-faceted application process that Islander East must satisfy. Islander East needs multiple permits from different jurisdictions. The state moratorium has no bearing on the instant appeal. Moreover, the state previously asked the FERC to refuse to act on Islander East's application during the state moratorium and the FERC declined to honor Connecticut's request for the reasons set forth in its order authorizing this pipeline project on September 19, 2002.

It should be noted that the statute authorizing the Long Island Sound Report specifically addresses the situation where a Connecticut State agency unsuccessfully asks the FERC to refrain from considering a project. In such a situation, the statute provides that the state agency shall review the project "... to the degree such assessment and plan information is available." Public Act No. 02-95, § 5 (emphasis added). This highlighted language has twofold significance. First, the Legislature recognized that projects would continue to wend their way

## NIXON PEABODY LLP

Mr. Branden Blum  
December 20, 2002  
Page 5

through the permit process. And, second, the state agencies would conform their actions to the degree the Long Island Sound Report information is available. At this point in time, the information of the Long Island Sound Report has not been compiled and is therefore not "available." Accordingly, it would be contrary to the Connecticut statute to wait months for the arrival of the Long Island Sound Report.

Lastly, we would suggest that the briefing schedule utilized in the Millennium Pipeline Appeal currently pending before the Secretary of Commerce, sets forth the parameters of a reasonable briefing schedule. There, a briefing schedule of sixty days for the Millennium's brief was followed by a thirty day briefing period by the State of New York and a simultaneous opening of the public comment period. Clearly, in the instant appeal, Islander East's proposed schedule is reasonable as we are proposing twice as long a briefing period for Connecticut's submission.

This dispute over scheduling calls to mind the old truism that justice delayed is justice denied. In accordance with 15 C.F.R. 930.127, the authority to establish a schedule for the submission of briefs and supporting materials rests exclusively with the Secretary. We would urge the Secretary to establish a reasonable schedule of the submission of briefs and public comment period, so that this process can move apace.

Respectfully submitted,



Frank L. Amoroso

FLA:ams  
Enclosure

cc: Connecticut Attorney General's office (via facsimile, with enclosure)  
Attn: David Wrinn, Esq.

Thomas L. Stanton, Jr., Esq. (via facsimile, with enclosure)  
Islander East Pipeline Company, LLC



**Substitute House Bill No. 5609**

**Public Act No. 02-95**

**AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) Notwithstanding any other provision of the general statutes, no state agency, including, but not limited to, the Department of Environmental Protection and the Connecticut Siting Council, shall consider or render a final decision for any applications relating to electric power line crossings, gas pipeline crossings or telecommunications crossings of Long Island Sound including, but not limited to, electrical power line, gas pipeline or telecommunications applications that are pending or received after the effective date of this section for a period of one year after the effective date of this section. Such moratorium shall not apply to applications relating solely to the maintenance, repair or replacement necessary for repair of electrical power lines, gas pipelines or telecommunications facilities currently used to provide service to customers located on islands or peninsulas off the Connecticut coast or harbors, embayments, tidal rivers, streams or creeks. Nothing in this act shall be construed to affect the project in the corridor across Long Island Sound, from Norwalk to Northport, New York, to replace the existing electric cables that cross the sound. During such twelve-month moratorium on applications relating to crossings of Long Island Sound, the Institute of Sustainable Energy at the Eastern Connecticut State University shall chair and convene a task force of the parties described in section 3 of this act in order to undertake the tasks described in section 3 of this act.

Sec. 2. (NEW) (*Effective from passage*) (a) Notwithstanding any other provision of the general statutes, no state agency, including, but not limited to, the Department of Environmental Protection and the Connecticut Siting Council, shall render a final decision for any applications relating to electric transmission lines from Bethel to Norwalk including, but not limited to, applications that are pending or received on and after the effective date of this section until February 1, 2003. During such interim period, the Institute for Sustainable Energy shall chair and convene a working group comprised of: (1) Two representatives chosen by the chief elected officials of Bethel, Redding, Weston, Wilton and Norwalk, one of whom shall have environmental expertise and one of whom shall have energy expertise; (2) one representative of the Connecticut Fund for the Environment; (3) two representatives of the applicant company; and (4) one representative of the New England Independent System Operator, Inc. and develop a comprehensive assessment and report on: (A) The economic

considerations and environmental preferences and appropriateness of installing such transmission lines underground or overhead; (B) the feasibility of meeting all or part of the electric power needs of the region through distributive generation; and (C) the electric reliability, operational and safety concerns of the region's transmission system and the technical and economic feasibility of addressing those concerns with currently available electric transmission system equipment. The Institute for Sustainable Energy shall publish its report on or before January 1, 2003, and shall also include recommendations for any legislative changes deemed necessary as a result of such assessment. Any decision or opinion rendered on any application for an electric transmission line from Bethel to Norwalk by either the Department of Environmental Protection or the Connecticut Siting Council after the publication of such comprehensive assessment and report, shall be evaluated to determine such application's consistency with such assessment. Nothing in this section shall be construed to prevent routine maintenance and repair of such electric transmission lines.

(b) Any applicant that elects to proceed with its application for an electric transmission line from Bethel to Norwalk before any state agency, including, but not limited to, the Department of Environmental Protection and the Connecticut Siting Council, during the interim period described in subsection (a) of this section, shall accrue no legal rights or financial entitlements by proceeding with its application.

Sec. 3. (NEW) (*Effective from passage*) Not later than one year from the effective date of this section, a comprehensive environmental assessment and plan shall be completed under the direction of the Institute for Sustainable Energy. In conducting the comprehensive environmental assessment and plan, a task force shall work with the Institute of Sustainable Energy that consists of the task force members contained in Executive Order Number 26 of Governor John G. Rowland and a representative of: (1) The Bureau of Fisheries of the Department of Environmental Protection; (2) the Director of the Bureau of Aquaculture of the Department of Agriculture; (3) the Bureau of Aviation and Ports, Connecticut Coastline Port Authority of the Department of Transportation; (4) the Connecticut Seafood Council; (5) the Atlantic States Marine Fisheries; (6) Save the Sound, Inc. ; (7) the Connecticut Fund for the Environment, Inc. ; (8) the Long Island Soundkeeper; (9) the State Geologist; and (10) no more than one representative each from the holder of a permit for a merchant cable, one representative from an applicant for a gas pipeline, one representative from each local gas and electric distribution company and one representative from the telecommunications industry. Nothing in this section shall prohibit the task force from soliciting the participation of other persons in the development of the comprehensive environmental assessment and plan including, but not limited to, federal agencies regarding matters within such agency's jurisdiction. Such assessment and plan shall include, but not be limited to, a review and analysis of those criteria set forth in Executive Order Number 26 of Governor John G. Rowland in addition to the following: (A) In consultation with the Institute of Water Resources at The University of Connecticut and The University of Connecticut Cooperative Extension Service, a comprehensive inventory and mapping of all existing environmental data on the natural resources of Long Island Sound, including, but not limited to: All coastal resources, as defined in section 2-2a-93 of the general statutes, all points of public access and public use, locations of rare and endangered species including the breeding and nesting areas for such rare and

endangered species, locations of historically productive fishing grounds and locations of unusual and important submerged vegetation; (B) an evaluation of the relative importance and uniqueness of the natural resources and an identification of the most ecologically sensitive natural resources of Long Island Sound; (C) an assessment of the present status, future potential and environmental impacts on Long Island Sound of meeting the region's energy needs that do not require the laying of a power line or cable within Long Island Sound; (D) an evaluation of methods to minimize the numbers and impacts of electric power line crossings, gas pipeline crossings and telecommunications crossings within Long Island Sound, including an evaluation of the individual and cumulative environmental impacts of any such proposed crossings; (E) an inventory of current crossings of Long Island Sound and an evaluation of the current environmental status of those areas that have crossings; (F) an evaluation of the reliability and operational impacts to the state and region of proposed crossings of Long Island Sound and an evaluation of the impact on reliability by recommended limitations on such crossings; (G) recommendations for providing for regional energy needs while protecting Long Island Sound to the maximum extent possible; and (H) recommendations on natural resource performance bond levels to insure and reimburse the state in the event that future electric power line crossings, gas pipeline crossings or telecommunications crossings substantially damage the public trust in the natural resources of Long Island Sound. For the purposes of sections 1, 3, 4 and 5 of this act, "Long Island Sound" shall include its harbors, embayments, tidal rivers, streams and creeks to the extent that any such projects would impact such harbors, embayments, tidal rivers, streams and creeks.

Sec. 4. (NEW) (*Effective from passage*) Any application for an electric power line, gas pipeline or telecommunications crossing of Long Island Sound that is considered by any state agency, including, but not limited to, the Department of Environmental Protection or the Connecticut Siting Council, after the creation of the comprehensive environmental assessment and plan, described in section 3 of this act, shall additionally be evaluated for such application's: (1) Likelihood to impair the public trust in Long Island Sound based on, but not limited to, the information contained in the comprehensive environmental assessment and plan; (2) consistency with the recommendations of the comprehensive environmental assessment; and (3) environmental impact, both individual and cumulative, including but not limited to those impacts anticipated by the comprehensive environmental assessment and plan described in section 3 of this act.

Sec. 5. (NEW) (*Effective from passage*) Notwithstanding any provision of the general statutes, the Connecticut Siting Council, within fifteen days of the effective date of this section shall submit the state's advisory opinion to the Federal Energy Regulatory Commission requesting that, on behalf of the state, the Federal Energy Regulatory Commission not approve any new individual electric power line crossing, gas pipeline crossing or telecommunications crossing until the comprehensive environmental assessment and plan described in section 3 of this act is completed and that the Federal Energy Regulatory Commission avoid environmental damage to Long Island Sound to the greatest extent possible when licensing any future project by considering the recommendations contained in the comprehensive environmental assessment and plan described in section 3 of this act. Notwithstanding the provisions of this act, if the Federal Energy Regulatory Commission proceeds with consideration of any such

Public Act No. 02-95 for Substitute House Bill No. 5609

project, regardless of the Siting Council's request, the Connecticut Siting Council and any other state agency with jurisdiction over such project shall review such proposed project and recommend siting, construction procedures and environmental mitigation measures to the Federal Energy Regulatory Commission for such project that conform with the comprehensive environmental assessment and plan described in section 3 of this act, to the degree such assessment and plan information is available.

Approved June 3, 2002