



June 24, 2003

Christine Godfrey
Chief, Regulatory Division
New England District, Corps of Engineers
Department of the Army
696 Virginia Road
Concord, Massachusetts 01742-2751

Re: Islander East Pipeline Project, Application No. 200103091

Dear Ms. Godfrey:

Islander East Pipeline Company, LLC ("Islander East") is in receipt of your May 21, 2003 letter ("Letter") relating to Islander East's application for a Clean Water Act Section 404 permit ("404 Permit") authorizing discharges associated with Islander East's construction of the interstate natural gas pipeline facilities (the "Project") certificated by the Federal Energy Regulatory Commission ("FERC") by order dated September 19, 2002 and reaffirmed on January 17, 2003.¹

The Letter indicates your desire to conduct an analysis of pipeline facility and routing alternatives which is largely duplicative of the alternatives analysis conducted by FERC under the National Environmental Policy Act of 1969, as amended ("NEPA") and reflected in the Draft and Final Environmental Impact Statements ("DEIS" and "FEIS", respectively) prepared by FERC for the Project. As a justification for performing that review, your letter adopts a "purpose" for the Islander East Project which differs significantly from the Project purpose as defined by Islander East and FERC, and supported by the New York Public Service Commission ("NYPS").

Islander East respectfully submits that the positions reflected in your Letter violate the spirit—if not the letter—of Executive Orders issued by President Bush in May of 2001 and 2003, the May 2002 InterAgency Agreement to which the COE is a party, and the Administration's stated national energy policy. Islander East also believes that the COE's positions are at odds with the comprehensive regulatory and environmental reviews of the Project which have already been undertaken by other Federal and State regulatory bodies, in which the COE participated, and the COE's own regulations, which discourage duplicative environmental reviews. In addition, Islander East believes that (i) the purpose of the Project as defined by FERC is correct and

¹ *Islander East Pipeline Company, LLC.*, 100 FERC ¶61,276 (Sept. 19, 2002), *aff'd*, 102 FERC ¶61,054 (2003).

controlling; (ii) the Project is by definition a water dependent activity; (iii) there therefore is no presumption that there is a less environmentally damaging practicable alternative ("LEDPA"); and (iv) the record already contains sufficient information, including a sufficient analysis of alternatives, demonstrating that the proposed discharge complies with the 404 Permit requirements. For all of these reasons, Islander East urges you to reconsider the positions taken in your letter.

As you are aware, Executive Order No. 13212, issued by President Bush on May 18, 2001, states that "increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people" and that therefore it is the Administration's policy that executive agencies "shall take appropriate actions, to the extent consistent with applicable law, to expedite" projects which increase the transmission of energy.² The Executive Order was modified in May 2003 to specifically reference "projects that will strengthen pipeline safety."³

Following promulgation of the Executive Order, in May of 2002 FERC, the COE and eight other executive agencies or departments executed an InterAgency Agreement⁴ which "[recognizes] the fact that the timely authorization of new interstate natural gas pipeline projects is essential to facilitate the nation's ability to meet the goal of sufficient availability and use of natural gas."⁵ The stated purpose of the Agreement is to "enhance coordination of the processes through which [the agencies'] environmental . . . review responsibilities under [NEPA] and other related statutes are met in connection with the authorizations that are required to construct and operate interstate natural gas pipeline projects certificated by [FERC]". In order to "facilitate the timely development of needed natural gas pipeline projects," the participating agencies have committed to "expedite the environmental permitting and review" for such projects.⁶ Specifically, the participating agencies have committed to early involvement in the review process, consultation with FERC (the agreed lead agency for NEPA review of FERC certificated facilities) on the schedule for review, cooperation in identifying and developing the information to be required of project applicants, and cooperative development of alternative routes and actions.⁷

Islander East is clearly a pipeline project which, under the Executive Orders and the spirit and intent of the InterAgency Agreement, should be the subject of

² Executive Order 13212 of May 18, 2001, § 1, 66 Fed. Reg. 28357 (2001).

³ Executive Order 13302 of May 15, 2003, § 1, 66 Fed. Reg. 27429 (2003).

⁴ Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted In Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (May 2002).

⁵ See *id.* at 2.

⁶ See *id.* at 1.

⁷ See *id.* at 4-6.

coordinated and priority review. It is an interstate natural gas pipeline project which will both increase transmission of energy and, by providing a second, separate Long Island Sound crossing, enhance the overall safety and reliability of the U.S. Northeast energy infrastructure. Indeed, as your Letter acknowledges, FERC has identified increasing the "reliability of natural gas delivery services to Long Island by installing a separate natural gas pipeline across Long Island Sound" as a key component of the purpose of the Project.⁸ In short, Islander East is a "project that will strengthen pipeline safety" within the meaning of the Executive Order, as just amended in May 2003.

FERC has already conducted "an exhaustive study of the project's environmental impacts as required by [NEPA] and other environmental statutes."⁹ That review "focused in particular on the impact the proposed project will have on Long Island Sound."¹⁰ In the course of conducting that review, FERC concluded:

The project will contribute to Long Island's energy security, a particularly vital national consideration at the present time. The Islander East Project will also increase the diversity of available pipeline transportation options and access to supply sources and introduce pipeline-to-pipeline competition into eastern Long Island for the first time. Moreover, the pipeline will increase overall regional infrastructure reliability and offer an additional source of outage protection to an area which is currently served mainly by one source of supply.¹¹

FERC analyzed, and rejected, the very alternatives which the COE now wishes to analyze. FERC explained that:

In certificate proceedings, the Commission's primary responsibility under the NGA is to determine if the proposed facilities are required by the public convenience and necessity. The term public convenience and necessity connotes a flexible balancing process, in the course of which all the factors are weighed prior to final determination. The Commission's obligation is to weigh all relevant factors in exercising its responsibilities under the NGA. A flat rule making one factor dispositive in the certificate decision is contrary to the Commission's responsibility to consider and balance all relevant factors. Thus, although the final EIS finds, solely from an environmental standpoint, that the ELI System Alternative is the preferred environmental alternative to Islander

⁸ See Letter at 3 n.4.

⁹ Letter from Pat Wood, III, Chairman, FERC, to Scott Gudes, Deputy Secretary for Oceans and Atmosphere, U.S. Department of Commerce, at 1 (Mar. 11, 2003).

¹⁰ *Id.*

¹¹ *Id.* at 2.

East's proposal, that factor is not the end of our inquiry into the public convenience and necessity.

The Commission also reviewed the filings made by Islander East's proposed customers and the New York PSC emphasizing the need for a totally separate sound crossing to provide contingency protection for both gas and electric systems against a total loss of supply if damage were to occur to the Iroquois line. . . .

Accordingly, after taking the hard look required by NEPA, the Commission concluded, under the NGA, that the other values of the proposed project outweighed what the final EIS described as the project's limited, but acceptable, environmental costs. As such, it determined that, under the NGA, it was required by the public convenience and necessity to approve the Islander East Project.¹²

Finally, FERC clarified in its order on rehearing that FERC "did not state, nor does it support, a one pipeline alternative for the crossing of Long Island Sound" and that if a one pipeline alternative had to be built, it "would have to be a facility similar to the proposed Islander East Pipeline Project" because alternatives based on Iroquois' present or proposed facilities would not satisfy the energy and safety policy objectives which Islander East was designed to meet.¹³ FERC's conclusions are fully supported by the NYPSC, and its sister agency, the New York Department of Environmental Conservation, has issued applicable state permits for the construction of the Project as certificated by FERC.

The definition of the Project purpose by the lead agency – which in this case expressly reflects the safety, security and reliability attributes of Islander East – is controlling. The COE itself has determined that the "overall project purpose" is to "construct and operate a pipeline with the capability to deliver . . . natural gas . . . to energy markets in CT, New York City and Long Island, NY."¹⁴ There is no basis for the COE's arbitrary reduction of that overall purpose to a "basic purpose" of "transmission of natural gas," other than to support a conclusion that the Project is not a water dependent activity and thus to invoke the LEDPA presumption. But this conclusion is insupportable. Even if the Project's "basic purpose" is defined as the transportation of natural gas to Long Island, and even without reference to the FERC-identified purposes

¹² *Islander East Pipeline Co., et al.*, 102 FERC ¶61,054 at ¶¶56, 61-62 (2003) (footnotes omitted).

¹³ See *id.* at ¶102. On January 31, 2003, Iroquois withdrew its application for a FERC certificate for its ELI project, further confirming that the alternatives based on that project are not reasonable or practicable alternatives.

¹⁴ Letter at pp. 2-3, *citing* Islander East's March 2002 §404 application.

of enhancing the security and reliability of the U.S. Northeast transmission infrastructure, it is clear that construction of facilities to transport gas to Long Island "require[s] access or proximity to or siting within" Long Island and therefore a Long Island Sound crossing. The very alternatives which the COE wishes to re-analyze – including the ELI-based alternatives – demonstrate that simple fact. Thus, the Project is a water dependent activity, and there is no LEDPA presumption. Moreover, under FERC's definition of the Project's purpose to increase pipeline reliability and safety, it is clear that this Project would meet the LEDPA standard, because none of the identified alternatives – especially the Iroquois-based alternatives – are capable of achieving that Project purpose.¹⁵ Accordingly, there is no basis for a sequential, duplicative review of alternatives. To the contrary, such a review would be inconsistent with the national energy policy goals of expediting energy transmission projects and projects which promote pipeline safety, and with the COE's own stated desire to "avoid unnecessary regulatory controls . . . over activities . . . which are adequately regulated by another agency"¹⁶ and its belief "that state and federal regulatory programs should complement rather than duplicate one another".¹⁷

FERC duly notified the COE of the preparation of the DEIS and the FEIS for this Project in 2002, and the COE commented on those documents and otherwise participated in FERC's NEPA review process. In the course of its certificate process, FERC reviewed and considered all alternative projects and alignments presented to it. FERC ultimately approved the current Project route. The COE did not seek review of the FERC order certifying that route, nor did it seek the preparation of a supplemental EIS, despite the fact that Islander East's request for a 404 Permit has been pending with the COE for over a year, and certainly during the same period that FERC was processing the Project's certificate application. For the COE to request that Islander East conduct additional studies and alternatives analyses to be reviewed by the COE at this late date, after foregoing the opportunity to seek additional environmental review during the FERC certificate process, would run afoul of the commitments made in the

¹⁵ See Letter from Islander East to Ms. Cori M. Rose dated July 1, 2002 (the benefits of a new, separate transmission line across Long Island Sound "were a driving force behind the proposal to build and operate the Islander East Pipeline and thus are a stated objective of Island[er] East that cannot be matched by the Iroquois ELI Project, which relies on Iroquois's single line delivery system"); Letter from Islander East to Ms. Cori Rose dated October 11, 2002 ("the ELI System Alternative is clearly not available, it is not practicable, nor is it capable of adequately fulfilling an elemental purpose of the Islander East Project; it cannot provide the operational and security of supply benefits of a separate natural gas pipeline crossing"). Copies of both letters (without attachments) are appended for convenience.

¹⁶ 33 C.F.R. §320.1(a)(3).

¹⁷ 33 C.F.R. §320.1(a)(5).

InterAgency Agreement to cooperative and expeditious review of priority energy infrastructure projects.¹⁸

Time is of the essence with respect to the matters addressed in this letter. This Project has already been delayed a full year from its intended schedule. Islander East now must construct its pipeline facilities and place them in operation by November 1, 2004, in order to meet the requirements of the market. This will require Islander East to commence construction by early Fall 2003. Islander East urges the COE to complete its review and issue its permits on a timetable which will permit Islander East to achieve that schedule.

In addition, Islander East respectfully requests that you limit the extension granted to the CTDEP for review of Islander East's Water Quality Certification to the six months requested by the CTDEP. An extension of one year is inappropriate and unnecessary, given that the CTDEP has been reviewing Islander East permitting matters since early 2002, and particularly in light of the fact that CTDEP itself requested only six months. Limiting the extension to six months would require the CTDEP to act on or before September 14, 2003, a date which is consistent with commencement of construction in Fall 2003.

In response to your specific requests for additional information, Islander East is providing herewith material and data in response to paragraphs 7-18 of the Letter. With respect to the materials requested by paragraphs 1-3 and 6 relating to alternatives, Islander East reiterates its request that the COE reconsider the breadth of these requests in light of the established regulatory scheme and the federal and state approvals already issued for the Project. Finally, with respect to paragraphs 4-5, Islander East respectfully suggests that the engineering issues associated with potential future expansions of the Project are neither presented by the applications pending before you or within the scope of the COE's permitting jurisdiction, and therefore declines to provide responses.

¹⁸ The reference in your Letter to the fact that the Connecticut Department of Environmental Protection ("CTDEP") "has informed us that Islander East must fully evaluate project alternatives" cannot be relied upon by the COE. As Islander East informed the CTDEP on May 27, 2003, the requirement that Islander East evaluate newly-minted routing alternatives is clearly beyond the scope of CTDEP's authority and completely at odds with the proper exercise of federally-delegated authority.

We look forward to our continuing discussions with you and would appreciate the opportunity to meet with you regarding this response and the material contained herein.

Sincerely,



Gene H. Muhlherr
Senior Project Manager
Islander East Pipeline Company LLC

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October 11, 2002

VIA FEDEX

Ms. Cori Rose
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U.S. Army Corps of Engineers – New England District
696 Virginia Road
Concord, MA 01742-2751

RE: Islander East Pipeline Project – Application No. 200103091
Least Environmentally Damaging Practicable Alternative

Dear Ms. Rose:

Islander East Pipeline Company, L.L.C. ("Islander East") understands that the U.S. Army Corp of Engineers ("Corps") is conducting a Least Environmentally Damaging Practicable Alternative ("LEDPA") analysis as part of its review of the Islander East Section 404 and Section 10 Permit Application ("Application"). Islander East has reviewed the Guidelines for Specification of Disposal Sites for Dredged or Fill Material ("Guidelines") (40 CFR Part 230) used by the Corps in evaluating projects for a LEDPA determination. Under the Guidelines, the following three general criteria are used in the LEDPA evaluation:

- 1) the relative extent of the public and private need for the proposed activity;
- 2) the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed activity; and
- 3) the extent and permanence of the beneficial and/or detrimental effects which the proposed activity is likely to have on the public and private uses in the areas of consideration.

Islander East offers the following analysis to support the premise that the Islander East Pipeline Project is the LEDPA.

Relative extent of the public and private need for the proposed activity

The public and private need for the Islander East Pipeline Project is set forth in Islander East's Application, which describes the purpose of the project and the specific market need that will be served. The project will provide an initial 260,000 dekatherms per day ("Dth/day") of capacity to meet the immediate gas supply needs of the Islander East customers commencing in 2003 and is of critical importance to the growing Connecticut, Long Island and New York markets. The Islander East Pipeline Project offers significant additional benefits:

greater diversity of supply; fully integrated market access between New York and New England; and enhanced operational flexibility. A unique feature of this project is that it provides a separate connection to the existing mainland natural gas infrastructure that significantly enhances the security and reliability of the Long Island and New York energy infrastructure.

The need for the project has been confirmed in two separate determinations by the Federal Energy Regulatory Commission ("FERC"), which has authority under the Natural Gas Act ("NGA") to regulate and determine the need for interstate natural gas pipelines. The FERC issued a Preliminary Determination ("PD") for the Islander East Project on December 21, 2001, in Docket No. CP01-384-000.

The PD found that the project is in the public convenience and necessity and the project will fill an immediate market need by serving expected growth in the Northeast market area, subject to an environmental review pursuant to the National Environmental Policy Act ("NEPA"). On September 19, 2002, the FERC, after carefully balancing its staff's environmental analysis with the required non-environmental policy considerations, along with the substantial commentary from participants in that proceeding, issued an Order on Rehearing and Issuing Certificate ("Order") for the Islander East Pipeline Project. Page 2 of the FERC's Order states that the Islander East Pipeline Project will "benefit the public interest because it will increase the flexibility and reliability of the interstate pipeline grid by offering greater access to gas supply sources and increased availability of gas for anticipated electric generation projects. Additionally, it will introduce pipeline-to-pipeline competition to eastern Long Island markets". A copy of the Order is included as attachment A to this letter.

These determinations by the FERC are supported by the New York State Public Service Commission, which stated on page 2 of its comments on the Draft Environment Impact Statement ("EIS") in April 2002 that "diversifying the gas delivery system by selecting a route that is totally independent of the existing Iroquois Sound crossing will enhance the reliability of the energy infrastructure to Long Island". A copy of the New York Public Service Commission's comments is included as attachment B to this letter.

KeySpan Delivery Companies together with KeySpan Utility Services, L.L.C., the fuel purchasing agent for KeySpan's generating affiliates, also provided evidence for the public and private need of the project. The KeySpan Delivery Companies, which have a public service obligation to provide safe and adequate gas distribution services to consumers in New York City and on Long Island, have entered into precedent agreements with Islander East. As stated on page 3 of attachment C to this letter, KeySpan contends that the "construction of Islander East significantly enhances the reliability of the KeySpan Delivery Companies' distribution services."

Practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed activity

In the Draft EIS, FERC's environmental staff developed the ELI System Alternative based on the alignment of the Iroquois Eastern Long Island Extension Project ("ELI Extension Project"). The ELI System Alternative was identified as only being capable of carrying the natural gas volumes proposed by Islander East and not the volumes proposed by the ELI Extension Project. On August 21, 2002, the FERC issued the Final EIS for the Islander East Pipeline Project which described the ELI System Alternative as environmentally preferable to the Islander East Pipeline Project except for emissions. However, FERC's environmental staff carefully distinguished its comments on the premise that the ELI Extension Project would not be constructed and that it did not take into consideration Islander East's project purpose and need, i.e. flexibility and reliability of the interstate pipeline grid, competition, market need, and the underlying agreements for the Islander East project (FEIS, Page 4 - 6). FERC staff clearly stated that the FERC Commissioners "will take the alternative into account when it makes its overall decision on the proposal project." (FEIS, Page 5-1)

As enumerated in 40 CFR Part 230, Section 230.10 (2), an alternative is considered practicable if "it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes" or otherwise the alternative could "fulfill the basic purpose of the proposed activity". The ELI System Alternative does not meet these criteria. The ELI System Alternative is neither reasonable nor practicable because it has not been proposed by any applicant. To be considered viable, the ELI System Alternative would also involve construction of additional facilities including a 10,000 HP compressor that are not proposed to be constructed by any applicant¹.

Assuming for discussion purposes that the ELI System Alternative would be proposed by an applicant and could be constructed, it still cannot fulfill the purpose and need of the Islander East Pipeline Project; which is to provide up to 260,000 Dth/day of natural gas to energy markets in Connecticut, Long Island, and New York City by November, 2003 and to increase the reliability of natural gas delivery services to Long Island by installing a separate natural gas pipeline across Long Island Sound. Because the ELI System Alternative has not been proposed, it could not be constructed in time to meet the in-service date of

¹ Iroquois currently has pending in a separate FERC proceeding the approval of a 10,000 hp compressor station in Brookfield, CT that is not part of its ELI Extension Project but is required to transport the 175,000 Dth/day of capacity for the ELI Extension Project. In considering the ELI System Alternative, FERC's environmental staff not only assumed that the Brookfield Compressor Station would be certificated and constructed but also recommended that another 10,000 hp of compression would be required to transport Islander East's volumes along the ELI System Alternative. These additional facilities are not included in the ELI Extension Project application or any other application.

November 1, 2003 required by Islander East's customers. Moreover, even though Iroquois received a PD on September 19, 2002 for its ELI Extension Project, Iroquois filed with the FERC a motion on October 4, 2002 requesting deferral of consideration of Iroquois' application (see attachment D). In addition, Iroquois in its comments to the Draft EIS (see attachment E) stated that "if the Islander East project is constructed, Iroquois would not consider building the ELI project." Consequently, there is considerable doubt as to when or whether the proposed Iroquois facilities on which the ELI System Alternative is partially based will ever be constructed.

Even more significant is that the ELI System Alternative does not meet Islander East's stated purpose of increasing the security and reliability of the existing natural gas pipeline system serving the New York markets by the installation of a second pipeline across Long Island Sound. The FERC stated on page 19 of its Order that "the proposed Islander East project will provide much needed security and reliability by providing a second facility to access supply in the event something happens to either of the pipeline facilities". The ELI System Alternative would rely on the existing Iroquois pipeline located in Long Island Sound and thus would only compound the dependency of natural gas consumers with the reliability of a single-line delivery system. This system configuration would make them vulnerable to any disruptions along to that system.

In summary, the ELI System Alternative is clearly not available, it is not practicable, nor is it capable of adequately fulfilling an elemental purpose of the Islander East Project; it cannot provide the operational and security of supply benefits of a separate natural gas pipeline crossing. With the issuance of the Order for the Islander East Pipeline Project, the FERC has determined pursuant to the NGA, that the project has been competently evaluated for reasonable alternatives and that there are no practicable alternatives that meet the purpose and need of the Islander East Pipeline Project.

Extent and permanence of the beneficial and/or detrimental effects which the proposed activity is likely to have on the public and private uses in the areas of consideration

In preparation of its application to the FERC and through subsequent discussions with regulatory agencies, Islander East has evaluated the "extent and permanence of the beneficial and/or detrimental effects which the proposed activity is likely to have on the public and private uses in the areas of consideration". Islander East's evaluation included potential effects on Long Island Sound, threatened and endangered species and their habitats, cultural resources, and sensitive environmental features.

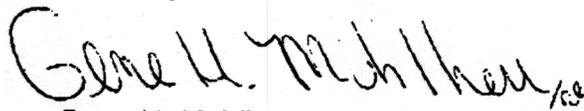
The FERC also evaluated the extent of both the permanent and temporary effects to the proposed project as it relates to both the private and public uses and prepared a Final EIS based on these evaluations in accordance with the

requirements of the NEPA. In the Final EIS, the FERC environmental staff concluded that, with the implementation of Islander East's proposed mitigation and adoption of the recommended mitigation measures provided in the Final EIS, the construction and operation of the Islander East Pipeline Project will have a limited adverse environmental impact.

On September 16, 2002, Brookhaven Energy Limited Partnership ("Brookhaven") filed comments on the Final EIS with the FERC. 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. In its comments, included as attachment F, Brookhaven Energy noted that the New York State Board on Electrical Generation Siting and the Environment issued a Certificate of Environmental Compatibility and Public Need for the construction and operation of the Brookhaven Energy Facility on August 14, 2002. Brookhaven Energy also noted in its comments on the Draft EIS submitted on May 17, 2002, that the environmental benefits of Islander East should include reductions in harmful emissions of nitrogen oxides and sulfur dioxides on Long Island of 1,283 tons per year and 679 tons per year, respectively. Brookhaven Energy further states that the environmental benefits of the Islander East project far outweigh the minimal impacts of the construction of the new pipeline. More importantly, Brookhaven Energy stated "[N]one of the alternative proposals examined in the EIS proposal can provide Brookhaven Energy with the dependable source of natural gas supplies required for the viability of its project."

In conclusion and based on a review of these guidelines, it is reasonable to assert that there is no "practicable" alternative to the Islander East Pipeline Project and that Islander East is qualified to be a recipient of a federal permit from the Corps. Please call Joe Reinemann at (203) 488-1800 or e-mail at jreinemann@duke-energy.com if you have any questions.

Sincerely,



Gene H. Muhlherr
Senior Project Manager

Attachments

cc (w/ attachments): Mr. Joe Reinemann, Islander East Pipeline Company
Mr. Tom Stanton, Islander East Pipeline Company
Ms. Joanne Wachholder, Federal Energy Regulatory
Commission

Attachments:

Attachment A:

Watson, Linwood A. Jr. (Federal Energy Regulatory Commission). Order on Rehearing and Certificates. Federal Order. September 19, 2002.

Attachment B

Daly, Kelly A. et al. (The Public Service Commission of the State of New York). Comments of the Public Service Commission of the State of New York on the Draft Environmental Impact Statement. Letter. May 17, 2002.

Attachment C

Myers, Edward B. et al. (The KeySpan Delivery Companies). Answer of the KeySpan Delivery Companies and KeySpan Utility Services, L.L.C in Opposition to Motion to Consolidate Proceedings and For Comparative Evidentiary Hearing. Letter. April 23, 2002.

Attachment D

Santa, Donald F. et al. (Iroquois Gas Transmission System, L.P.). Motion of Iroquois Gas Transmission System, L.P. Requesting Deferral of Consideration. Letter. October 4, 2002

Attachment E

Santa, Donald F. et al. (Iroquois Gas Transmission System, L.P.). Comments of Iroquois Gas Transmission, L.P. on Draft Environmental Impact Statement. May 20, 2002.

Attachment F

Pond, George M. (Brookhaven Energy Limited Partnership). Letter. September 16, 2002.

LD9246

July 1, 2002

Ms. Cori M. Rose
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

**Re: Islander East Pipeline Company: File Number: 200103091
FERC Docket Nos. CP01-384, et seq.**

Dear Ms. Rose:

Islander East Pipeline Company, L.L.C. ("Islander East") is responding to comments provided in a letter dated June 17, 2002 from the New England District, US Army Corps of Engineers (Corps) to the Federal Energy Regulatory Commission ("FERC") regarding system alternatives identified in the Islander East Pipeline Project Draft Environmental Impact Statement (DEIS). The Corps of Engineers stated that the preliminary analysis in the DEIS suggests that the ELI system alternative may be a practicable system alternative to the Islander East Pipeline Project.

As defined by the FERC in Section 4.2 of the DEIS, "system alternatives make use of other existing, modified or planned pipeline systems to meet the stated objectives of the proposed project". Accordingly, FERC is required to consider economic and market need factors in evaluating system alternatives. Islander East and its shippers have repeatedly made clear throughout the above referenced FERC proceeding that the ELI system alternative is not a viable system alternative because it does not meet the stated objectives of the Islander East Pipeline Project. The Islander East Pipeline Project and the Iroquois ELI Project, on which the ELI system alternative is based, involve different facilities, different routes, different delivery volumes, different customers, different market benefits and different in-service dates.

The Islander East and Iroquois ELI projects are designed to serve two completely independent sets of customers requiring service in different time frames. Specifically, Islander East proposes to serve two local distribution companies and two power producers who have contracted for service commencing in November 2003, whereas Iroquois has precedent agreements with five end users and marketers for service commencing in November 2004 and June 2006. The FERC recognized the fundamental differences between the Islander East and Iroquois ELI projects in its *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Eastern Long Island*

Expansion Project and Request for Comments on Environmental Issues (FERC Docket No. CP02-52-000, March 13, 2002, p. 5, n.4), when it stated that

...the filed applications have different proposed customers. This means these projects could potentially serve mutually exclusive needs, and we must evaluate them each on their own merits.

The Iroquois ELI Project cannot meet the needs of Islander East's shippers on a timely basis. Only Islander East can meet the project objective of serving these shippers timely.

Islander East's shippers chose service on Islander East's pipeline not only to fulfill their need for additional gas transmission capacity, but because they wanted the benefits of a new transmission pipeline across Long Island Sound (such as enhanced supplier access, diversity of supply, competition, security of supply, reliability of service and operational flexibility). These benefits were a driving force behind the proposal to build and operate the Islander East Pipeline and thus are a stated objective of Island East that cannot be matched by the Iroquois ELI Project, which relies on Iroquois's single line delivery system. For these reasons, the Public Service Commission of the State of New York has stated that "if only one line were to be built, [its] preference would be that Islander East be certified because it will [be] another source of delivery to Long Island." The Public Service Commission has also explained that "a totally separate Sound crossing, as proposed by Islander East, is protection against total loss of supply if damage were to occur to the Iroquois line" (see *Notice of Intervention and Comments of the Public Service Commission of the State of New York*, filed January 22, 2002 in FERC Docket No. CP02-52-000).

Finally, any suggestion that the ELI system alternative may be environmentally preferable fails to adequately weigh the adverse impact of the additional facilities needed to transport the delivery volumes of the Iroquois ELI Project (a capacity of only 175,000 dekatherms), much less those needed to transport the Islander East volumes. The Iroquois ELI Project would involve the environmental impacts of the construction of additional compression facilities on land, as well as the significant environmental impacts of the construction of a tie-in approximately 2 miles offshore from the Iroquois landfall in Milford, CT. Iroquois acknowledges in its Connecticut Siting Council application that locating the tie-in offshore results in pressure drops and "bottlenecks" on the pipeline system, hindering future expandability. At the tie-in location, Iroquois is proposing to construct, within a cultivated shellfish bed, a domed facility to house the mainline valve approximately 10 feet below the surface of the seafloor. This domed facility would be buried following construction. Iroquois anticipates accessing this domed facility approximately every 7 to 10 years to conduct in-line inspections, thereby guaranteeing regular disturbances to cultivated shellfish beds at the tie-in location for the life of the pipeline. From this tie-in point, the Iroquois ELI Project would then cross 936 feet of cultivated shellfish bed used to cultivate oysters (see Iroquois Responses 14 and 15 to FERC's April 23, 2002 data request).

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Environmental impacts associated with the system alternatives described in the FERC DEIS are even greater, due to the addition of significant on-land facilities required to transport Islander East's proposed delivery volumes. These facilities include the additional compression at Brookfield, Connecticut and the use of a larger diameter pipe. The additional environmental impacts include a greater number of stream crossings, the disturbance of more nearby residences, disturbance to steep side slopes and increased blasting. When these factors are taken into account, the impacts of the so called Iroquois ELI system alternative would be comparable if not greater than those of the Islander East Pipeline Project.

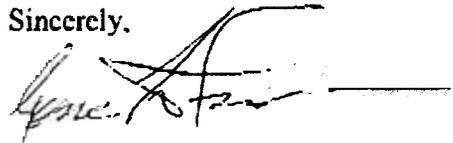
Islander East has continued to develop and refine its pipeline route, making significant environmentally driven commitments to minimize impacts on the aquatic ecosystem, including:

- Using the horizontal directional drill construction method to install the pipeline at the Connecticut and New York landfalls;
Using the subsea plow method for installing the pipe in Long Island Sound;
Using mid-line anchor buoys to minimize anchor footprints; and
Identifying and proposing route variations or alignment modifications to avoid or minimize the disturbance of wetlands and waterbodies.

In sum, the so called Iroquois ELI system alternative identified in the FERC DEIS is not a viable system alternative because it cannot achieve the objectives of the Islander East Pipeline Project. It is anticipated that FERC will thoroughly address the issue of system alternatives to include economic and need factors in its Final EIS. Furthermore, Islander East has developed its project to achieve its stated objectives while avoiding, minimizing and mitigating potential impacts to result in the least environmental impact possible.

To facilitate your review of the Islander East Pipeline Project and provide additional information on the system alternatives described in the FERC DEIS, I am enclosing for your reference a copy of Islander East's Comments on the FERC DEIS. If you have any questions please do not hesitate to contact Joe Reinemann or myself at 1-800-516-9997.

Sincerely,



Gene H. Muhlherr
Senior Project Manager
Islander East Pipeline Company LLC

Enclosure: Comments of Islander East Pipeline Company and Algonquin Gas Transmission Company on Draft Environmental Impact Statement