



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

AUG -5 2008

Robert J. Alessi
Dewey & LeBoeuf LLP
125 West 55th Street
New York, NY 10019

Susan L. Watson
General Counsel to the New York Secretary of State
New York State Department of State
One Commerce Plaza, 11th Floor
Albany, NY 12231

RE: Motions to Supplement Decision Record
Appeal of Broadwater Energy LLC

Dear Mr. Alessi and Ms. Watson:

This letter concerns the motions to supplement the decision record that were filed by Appellant Broadwater Energy LLC and Broadwater Pipeline LLC (Broadwater) and the New York State Department of State (NYSDOS), as well as a motion by NYSDOS for additional time to respond to new information offered by Broadwater.¹

I. Motions to Supplement

Broadwater moves to supplement the decision with the following documents:

1. Port and Terminal Logistics Review prepared by Moffat and Nichol, July 2008;
2. Broadwater Long Island Sound versus Atlantic Alternatives Witness Modeling, June 2008;
3. Alternative Pipeline Routes Cost Estimate, June 2008; and
4. Coastal Fish and Wildlife Habitat Rating Form, Great South Bay – West, March 15, 1987.
5. Summary of Applicable Coastal Policies for Broadwater.

¹ On July 7, 2008, Broadwater moved to supplement the decision record with four (4) documents. In responses dated July 11, 23 and 28, NYSDOS responded, largely objecting to Broadwater's motion to supplement and offering twelve (12) additional documents for inclusion in the decision record. On August 1, 2008, Broadwater responded, largely consenting to inclusion of those additional documents offered by the NYSDOS, and requesting it be allowed to include one (1) additional document in response to one of the documents offered by NYSDOS.



NYSDOS similarly requests that the Secretary supplement the decision record with the following documents:

1. NYSDOS Consistency Decision, April 10, 2008;
2. Letter of Recommendation from Daniel A. Ronan, Captain, U.S. Coast Guard, to James A. Thompson, Jr., June 25, 2008;
3. USCG Record of Decision, filed June 27, 2008;
4. Letter from John King, National Oceanic and Atmospheric Administration, to George Stafford, February 20, 2002; letter from Charles T. McCaffrey, Jr., to William O'Bierne, March 20, 2002; Public Notice, Department of State Routine Program Change Notice, March 13, 2002; Long Island Sound Coastal Management Program, January 1999;
5. Letters from John J. Ferguson to Murray Sondergard, December 26, 2007; February 12, 2008; and June 11, 2008;
6. Public Notice, Department of State, Notice of Routine Program Change Implementation of the New York Coastal Management Program; E-mail from Carleigh Trappe to Steven Resler, March 28, 2006 2:57:42 PM; letter from John King to George R. Stafford, March 28, 2006; Public Notice, Department of State, Notice of Routine Program Change to the New York Coastal Management Program, February 8, 2006; letter from Steven C. Resler to John King, February 6, 2006; New York State Coastal Management Program Routine Program Change, Request for OCRM Concurrence, February 2006;
7. Advanced Energy Initiative, The White House National Economic Council, February 2006;
8. Senate Committee on Commerce, Coastal Zone Management Act Amendments of 1975, S. Rep. 277, 94th Cong., 1st Sess. 24 (1975);
9. Transcript: Chairman Kelliher with Mark Haines and Erin Burnett, CNBC's "Squawk on the Street," available at: <http://www.ferc.gov/about/com-mem/kelliher/cnbc0609.pdf>, June 9, 2008;
10. Letter from David Kennedy to Ruth E. Ehinger, October 4, 2006;
11. North American LNG Import Terminals Potential, As of June 19, 2008, Office of Energy Projects;
12. New York Department of State, Proposed Broadwater Liquefied Natural Gas Project in Long Island Sound, Review of Supplemental Information, NYSDOS Purchase Order A080276, Prepared by Battelle, July 25, 2008.

Under the Coastal Zone Management Act, the consolidated record prepared by the lead Federal permitting agency is the initial record used by the Secretary for consistency appeals. 16 U.S.C. § 1466. The Secretary may accept supplemental information into the decision record that clarifies information contained in the consolidated record. 15 C.F.R. § 930.130(a)(2)(ii)(B). The Secretary enjoys wide latitude in determining the content of the appeal decision record. 15 C.F.R. § 930.127(e)(1).

In this instance, including the above documents in the decision record is appropriate because they clarify information already contained in the consolidated record of this appeal. The documents requested by Appellant clarify information regarding analysis of

Alternatives 1 and 2 identified by NYSDOS in its April 10, 2008 consistency decision and contained in the consolidated record. The documents requested by NYSDOS clarify information in the consolidated record, including coastal effects, the national interest, and Alternatives 1 and 2.

Accordingly, the parties' motions to supplement the decision record are granted. The documents discussed above shall be considered part of the decision record for this consistency appeal.

II. NYSDOS's Request for an Extension of Time to Respond

NYSDOS seeks additional time in which to respond to the new information offered by Broadwater and argued in its principal brief. Specifically, NYSDOS seek a 45 day extension of time to: a) prepare a counter study responding to the information offered by Broadwater; and b) to either file its principal brief or, in the alternative, file a supplemental brief (the latter if NYSDOS must still file its principal brief on August 6). NYSDOS also asks that it be afforded an additional 25 pages in which to address this new information.

I am unwilling to extend the current briefing schedule to allow for the development of new studies. Under the CZMA, decisions on appeals must be issued within strict deadlines and NYSDOS's request could jeopardize the Secretary's ability to timely issue a decision. Having said this, at any time prior to closure of the decision record, NYSDOS is free request further supplementation of the decision record with additional information (including new studies) that will assist the Secretary in the review of this appeal.

Additionally, I do not believe that NYSDOS needs a significant extension of time in which to respond to the new information offered by Broadwater. I am, however, willing to provide NYSDOS an additional 9 calendar days to consider the supplemental information in the preparation of its principal brief. NYSDOS does not need an extension of the page limits for their principal brief (which already have been extended significantly by way of a prior order).

Accordingly:

- Broadwater's and NYSDOS's motions to supplement the decision record with the documents identified above are granted.
- NYSDOS's motion for an additional 45 days time to file its principal brief in order to prepare a counter study is denied.
- NYSDOS's motion for leave to file an additional 25 page supplemental brief is denied.

- NYSDOS will be afforded an additional 9 days in which to file its principal brief in order to respond to new information offered by Broadwater that has been accepted into the decision record. With this extension of time, NYSDOS's principal brief shall be due on August 15, 2008. Broadwater's reply brief shall be due September 4, 2008.

If either party has questions concerning this letter, please contact Ted Beuttler at (301) 713-7383 or by e-mail at Ted.Beuttler@noaa.gov.

Sincerely,



Jane C. Luxton
General Counsel