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Our File No.
19301-100

February 22, 2006

BY FEDERAL EXPRESS AND E-MAIL

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Director, Division of Local Governments
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Thomas G. Dvorsky
Director, Office of Gas and Water
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223
Email: thomas_dvorsky@dps.state.ny.us

Re: Broadwater Energy LNG
FERC Docket Nos. CP06-54-000
CP06-55-000
CP06-56-000

Dear Ms. Murphy and Mr. Dvorsky:

This firm represents the County of Suffolk, New York ("Suffolk County") in the Broadwater Energy LNG proposed project (the "Broadwater Project"). I am in receipt of copies of letters that you wrote earlier this month to local governmental officials requesting information ~~about safety issues of concern to local officials to be included in the review being conducted by~~ the Federal Energy Regulatory Commission ("FERC").

Suffolk County has many serious safety concerns about the Broadwater Project. Enclosed are copies of the following documents that specify Suffolk County's safety concerns, as well as specifying other types of adverse impacts of concern to Suffolk County, associated with the Broadwater Project. These documents include oral and written comments submitted to FERC by the Hon. Steve Levy, Suffolk County Executive, at the September 14, 2005 public hearing; Suffolk County's Comments to FERC in Opposition to the Broadwater Project, filed October 6, 2005 and Suffolk County's Supplemental Comments to FERC, filed December 12,

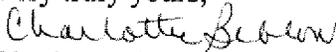
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2005. These documents identify many safety concerns with the Broadwater Project and demonstrate why FERC must deny the application.

In addition, these documents demonstrate that FERC and the applicant, Broadwater Energy LLC, ("Broadwater Energy") have withheld from public disclosure and scrutiny crucial safety information, as well as other types of information. FERC and Broadwater Energy's refusal to release this information prevents Suffolk County from fully evaluating the safety issues and other detrimental impacts posed by the Broadwater Project. For example, FERC issued a blanket policy withholding engineering and design information about proposed new LNG terminals, such as Broadwater, because FERC believes that the information would be useful to terrorists or saboteurs because incapacity or destruction of an LNG terminal would "negatively" impact public health and safety. This fact alone demonstrates that the Broadwater Project presents unacceptable safety concerns and that the Broadwater Project is inherently unsafe. As a result of the above circumstances, Suffolk County reserves the right to supplement its comments.

Suffolk County reminds you that the New York State Department of State ("NYSDOS") has a significant role to play in evaluating safety issues. The Broadwater Project cannot be approved unless the NYSDOS establishes on the public record that the project is consistent with the Long Island Sound Coastal Zone Management Plan (LIS CMP). One LIS CMP policy is particularly relevant to the discussion about safety. Policy 13.4 of the LIS CMP provides that "LNG facilities must be safely sited and operated." Given that crucial safety documents are being withheld from the public record by FERC and Broadwater Energy, NYSDOS cannot determine on the *public record* that Broadwater can be safely sited and operated nor can it determine that the project is "consistent" with the LIS CMP.

We request that the safety issues identified in this letter and in the enclosed documents be considered in the review of the Broadwater Project.

Very truly yours,

Charlotte Biblow

Encls.

cc: John M. Armentano, Esq. (w/encls) (via e-mail)
Christine Malafi, Esq. (w/encls) (via e-mail)
George Nolan, Esq. (w/encls) (via e-mail)
G.S. Peter Bergen, Esq. (w/encls) (via e-mail)
George R. Stafford, Director, Division of Coastal Resources and Waterfront
Revitalization, New York State Department of State (w/encls) (via Federal
Express)
FERC (via electronic filing)

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
U.S. DEPARTMENT OF HOMELAND SECURITY,
U.S. COAST GUARD

JOINT PUBLIC MEETING
BROADWATER LNG PROJECT
DOCKET NO. PF05-4-000

Shoreham-Wading River
Middle School
100 Randall Road
Shoreham, New York

September 14, 2005

7:00 p.m.

JIM MARTIN, Presiding

1 I will say something that your time is over about the same
2 time the three-minute mark comes around. I apologize, but
3 that is the only way we will get through all the speakers
4 we have on the list tonight.

5 We will start with some elected representatives
6 of your community. Speaking first, Steve Levy.

7 MR. LEVY: Thank you, gentlemen and lady. You
8 threw me for a loop with the three minutes. I will do the
9 best I can here. I had some prepared text.

10 Let me just start by noting that it was just a
11 couple of weeks ago that I had the honor of joining many of
12 the elected officials in this room and many of the
13 community activists to meet with Senator Clinton at the
14 Long Island Sound waterfront. It was ironic because on one
15 side we were viewing the amazing landscape of the Long
16 Island Sound and on the other side was the white elephant
17 of the Shoreham nuclear power plant and it harkened back
18 the memories for me, about twenty years ago when I was out
19 there with droves of people, such as those behind me, who
20 were trying to get across to the federal government that
21 this was not something that was wanted in our very
22 environmentally sensitive area.

23 I just can't help think what would have
24 happened, how much money would have been saved, how much
25 aggravation could have been spared had the federal
26

1 government heard from these people and listened very early
2 on.

3 With the case of the Shoreham nuclear power
4 plant it was 1965 that there were first licensing
5 procedures taking place. It was in the late seventies that
6 the community started to become active in regard to that
7 particular facility and throughout the eighties we engaged
8 in court battles and eventually it was closed down.

9 We are at the early stages here. In this
10 particular case, we are looking to nip this in the bud
11 right now, so we don't have to go through...

12 We don't need to spend tens of millions of
13 dollars from our legal fees or from the perspective of the
14 federal government as well.

15 These crowds are not going away. They are going
16 to get bigger, they are going to get bigger, they are going
17 to get bigger. The bottom line is, this community does not
18 want this facility in the Long Island Sound.

19 I speak as their representative, someone who is
20 in charge of public health and safety in this area, but
21 also from an economic perspective. Not only does this
22 community not want it, we don't believe we need it. There
23 are plenty of other alternatives. We have a new pipeline
24 coming down that is going to provide us ample natural gas
25 and other facilities.

26

1 Finally, we have been spending on the state
2 level, the federal level, the local level, not millions of
3 dollars, not tens of millions of dollars. Hundreds of
4 millions of dollars to take care of Long Island Sound,
5 which is officially designated as an estuary, and to
6 replenish it, to bring it to its pristine state. In one
7 fell swoop with this particular structure, all of that hard
8 work, all of that money could go down the drain. It is not
9 worth it. It is not needed. It is not wanted.

10 Most of all, what I think the community doesn't
11 want is to be the test case, the guinea pig. This is an
12 untested type of situation of this magnitude. There was
13 nothing ever this large that has been placed in such an
14 environmentally sensitive area. We, in Suffolk, have put
15 our money where our mouths are when it comes to
16 environmental preservation. We spend millions of dollars
17 to preserve our open spaces. We fought the dumping of
18 dredge spoils into that Long Island Sound, successfully I
19 might add. And thanks to the federal government, who
20 listened to people like this, we were successful in
21 stopping that attempt to place dredge spoils into the
22 Sound.

23 Now we are asking you once again to please
24 listen. Let's not make the mistake we did with Shoreham.
25 We let millions and millions of dollars go down the rat
26

1 hole. We had lawsuit after lawsuit, and in the end it
2 didn't open anyway. Let's avoid that. Let's do what we
3 have to do with energy conservation, with other
4 alternatives to provide the needs to meet our energy
5 requirements. We will meet them. We are doing fine. We
6 don't need another white elephant this time in the Long
7 Island Sound.

8 I thank you very much and I will present my
9 comments.

10 MR. STAEGER: The next speaker will be Jennifer
11 Gund, representing Congressman Bishop's office.

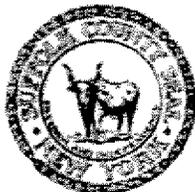
12 MS. GUND: Good evening. Jennifer Gund,
13 Congressman Bishop's office.

14 Congressman Bishop has asked me to read the
15 following statement.

16 "I would like to thank the FERC, U.S. Department
17 of Homeland Security and the U.S. Coast Guard for holding
18 this meeting tonight. I regret I am unable to attend in
19 person as the House of Representatives is back in session.
20 While I appreciate this hearing, I oppose the process that
21 Congress and the administration have created where FERC has
22 the ability to dismiss state, county and local concerns. I
23 would urge FERC to remember a piece of school yard wisdom.
24 Just because you can doesn't mean you should.

25 "I would especially like to thank all the
26

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

TESTIMONY ON NOTICE TO PREPARE EIS FOR BROADWATER LNG FACILITY

SUFFOLK COUNTY EXECUTIVE STEVE LEVY
SEPTEMBER 14, 2005

THANK YOU FOR THE OPPORTUNITY TO SPEAK HERE THIS EVENING ON THE NOTICE TO PREPARE AN EIS AND A SAFETY AND SECURITY ANALYSIS FOR THE BROADWATER LIQUID NITROGEN GAS FACILITY PROPOSED TO BE SITED IN THE LONG ISLAND SOUND.

AS THE SUFFOLK COUNTY EXECUTIVE, MY FOREMOST RESPONSIBILITY IS TO PROTECT THE HEALTH AND SAFETY OF OUR NEARLY ONE AND A HALF MILLION RESIDENTS. SUFFOLK COUNTY HAS A LONG AND RICH HISTORY IN PROTECTING AND PRESERVING OUR ENVIRONMENT. OUR RESIDENTS HAVE CONSISTENTLY AND OVERWHELMINGLY SUPPORTED A WIDE RANGE OF ENVIRONMENTAL INITIATIVES, FROM THE PRESERVATION OF THE PINE BARRENS AND DRINKING WATER PROTECTION PROGRAMS TO THE RESTORATION OF SIGNIFICANT BODIES OF WATER – AND AT THE OUTSET I WOULD NOTE THAT THE LONG ISLAND SOUND IS A FEDERALLY DESIGNATED ESTUARY OF SIGNIFICANCE.

THE MANY UNIQUE NATURAL FEATURES OF OUR ISLAND – OUR WATERWAYS, OUR BEACHES AND OUR SHORELINES – HELP MAKE SUFFOLK COUNTY ONE OF THE MOST DESIREABLE PLACES IN THE WORLD TO LIVE, AND IT IS NOT A STRETCH OF THE IMAGINATION TO SAY THAT SUFFOLK COUNTY RESIDENTS HAVE ENTRUSTED THEIR ELECTED REPRESENTATIVES, FROM THE LOCAL LEVEL ON UP TO WASHINGTON, D. C., TO WORK TOWARDS PROTECTING THE ENVIRONMENT AND PRESERVING THIS WAY OF LIFE FOR GENERATIONS TO COME.

FOR THAT REASON IT IS PARTICULARLY IMPORTANT THAT THE LOCAL AND STATE REPRESENTATIVES – FROM BOTH NEW YORK AND CONNECTICUT – AS WELL AS OUR FEDERAL OFFICIALS BE HEARD DURING EVERY STEP OF THIS PROCESS AND THAT OUR JURISDICTIONAL AND REGULATORY POWERS BE RESPECTED. AND IT IS EQUALLY IMPORTANT TO REALIZE THAT THE CONCERNS RAISED BY LOCAL OFFICIALS ARE REFLECTIVE OF THE CONSTITUENTS WE REPRESENT.

WHILE MANY OF THE SPECIFIC DESIGN ELEMENTS, TECHNOLOGIES, PROCEDURES AND PLANS FOR THE PROPOSED FACILITY HAVE NOT YET BEEN FORMULATED OR RELEASED, IT IS MY OPINION THAT THE RISK OF LEAKS AND SPILLS, THE NEGATIVE IMPACT ON THE LONG ISLAND SOUND ECOSYSTEM AND THE POTENTIAL FOR CATASTROPHIC FAILURE OR DESTRUCTION OF THE BROADWATER LNG FACILITY OUTWEIGH ANY POTENTIAL BENEFITS OF THIS PRIVATE, COMMERCIAL VENTURE.

A PROJECT OF THIS SIZE, WITH UNTESTED TECHNOLOGY, WROUGHT WITH SAFETY AND SECURITY CONCERNS, LOCATED IN THE MIDDLE OF AN ESTUARY OF SIGNIFICANCE AND IN PROXIMITY TO DENSELY POPULATED AREAS IS JUST A BAD IDEA FROM THE START.

ENVIRONMENTAL IMPACTS

GIVEN THE SIZE AND SCOPE OF THE PROJECT – A 1,200 FOOT-LONG FLOATING STORAGE UNIT WHICH WILL HOLD 8 BILLION CUBIC FEET OF NATURAL GAS, WITH TANKERS TRAVELING TO AND FROM THE SITE EVERY TWO DAYS CARRYING 3.5 BILLION CUBIC FEET OF GAS – WE ARE CERTAINLY JUSTIFIED IN OUR CONCERNS REGARDING THE POTENTIAL SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS.

SHORT-TERM IMPACTS INCLUDE SIGNIFICANT DISTURBANCE TO THE UNDERWATER ECOSYSTEM OF THE LONG ISLAND SOUND AS THE 1,200 FOOT-BY-800 FOOT FLOATING FACILITY AND SUPPORTING PIPELINE SYSTEMS ARE CONSTRUCTED. LONG-TERM IMPACTS, SUCH AS THE CONTINUED STORAGE, USE AND TRANSMISSION OF TOXIC AND HAZARDOUS MATERIALS, COULD HAVE A DEVASTATING EFFECT ON THE SOUND.

THE LOCATION OF THIS FACILITY IS PARTICULARLY INAPPROPRIATE GIVEN THE VAST SUMS OF PUBLIC MONEY WHICH HAVE BEEN SPENT TO RESTORE AND PRESERVE THE WATER QUALITY AND HABITATS OF THE LONG ISLAND SOUND AS PART OF THE NATIONAL ESTUARY PROGRAM.

THERE ARE NO FLOATING STORAGE REGASIFICATION UNITS OF THIS TYPE IN OPERATION ANYWHERE IN THIS COUNTRY. PICTURES ARE STILL FRESH IN EVERYONES' MINDS OF GAS AND OIL PLATFORMS RIPPED FROM THEIR BASES IN THE GULF OF MEXICO DURING HURRICANE KATRINA AND THROWN TO SHORE, AND THIS MUST LEAD US TO QUESTION THE WISDOM OF A PLACING A FACILITY OF THIS SCOPE AND SCALE IN A REGION NOT ONLY SUSCEPTIBLE TO HURRICANES BUT KNOWN FOR ITS FEROCIOUS NOR'EASTERS.

IT IS ALSO FAIR TO CALL INTO QUESTION THE NEED OF SUCH A PROJECT WHILE THERE ARE OTHER ENERGY RESOURCES WHICH ARE BEING PURSUED BOTH PUBLICLY AND PRIVATELY ON LONG ISLAND WHICH CAN MEET OUR FUTURE ENERGY NEEDS WITHOUT THE POTENTIAL DEVASTATING HEALTH, SAFETY AND ENVIRONMENTAL RISKS OF THIS LNG FACILITY. FURTHERMORE, SUCH A HEAVY INVESTMENT INTO THE FINITE SUPPLY FOSSIL FUELS IS CONTRARY TO THE PURSUIT OF RENEWABLE ENERGY SOURCES.

SAFETY CONCERNS

THE BROADWATER PROPOSAL RAISES A NUMBER OF SERIOUS AND SIGNIFICANT SAFETY CONCERNS.

AS WE HAVE LEARNED FROM SEPTEMBER 11, AS WELL AS THE RECENT NATURAL DISASTER OF HURRICANE KATRINA, EMERGENCY AND DISASTER PLANNING REQUIRES US TO PLAN FOR THE WORST AND TO IMAGINE EVERY CONTINGENCY.

THE WORST-CASE SCENARIO OF A CATASTROPHIC LNG SPILL WITHOUT FIRE COULD RESULT IN A LARGE, UNIGNITED LIQUID NITROGEN GAS VAPOR CLOUD THAT COULD MIGRATE OVER POPULATED AREAS OF SUFFOLK COUNTY.

JUST AS SUFFOLK COUNTY CONCLUDED IN THE CASES OF THE SHOREHAM NUCLEAR POWER PLANT IN THE 1980S, AND MORE RECENTLY THE MILLSTONE NUCLEAR PLANT, THERE IS NO GUARANTEE THAT SAFE AND TIMELY EVACUATION OF A LARGE SEGMENT OF THE COUNTY IS POSSIBLE, GIVEN THE UNIQUE GEOGRAPHY OF OUR ISLAND, OUR POPULATION AND OUR LIMITED TRANSPORTATION INFRASTRUCTURE.

OF EQUAL CONCERN IS THAT IT IS ANTICIPATED THAT EVERY TWO DAYS A LNG TANKER CAPABLE OF CARRYING UP TO 3.5 BILLION CUBIC FEET OF GAS WILL BE TRAVELING THROUGH THE LONG ISLAND SOUND, POSING THE POTENTIAL OF ACCIDENTS OR COLLISIONS WITH OTHER COMMERCIAL OR PRIVATE CRAFT.

THERE WOULD BE THE NEED TO RESTRICT MARINE TRAFFIC IN THE AREA AROUND THE PERMANENT FLOATING FACILITY, AND THE IN-TRANSIT LNG TANKERS, WHICH WOULD IMPACT COMMERCIAL MARINE TRANSPORTATION, COMMERCIAL FISHERIES AND RECREATIONAL USE OF PORTIONS OF THE LONG ISLAND SOUND. ADDITIONALLY, THE PROJECT WOULD IMPACT THE FINANCIAL, TECHNICAL AND PERSONNEL RESOURCES OF SUFFOLK COUNTY AND TOWN GOVERNMENTS IN TERMS OF ADDITIONAL POLICE, FIRE, EMERGENCY AND MARINE SAFETY SERVICES. IT IS ESTIMATED THAT THE ANNUAL COST OF PROTECTING TANKERS COMING IN AND OUT OF THE REGION COULD BE AS HIGH AS \$12.5 MILLION.

FINALLY, AS THE EVENTS OF SEPTEMBER 11, 2001 TAUGHT US, THERE ARE FACTIONS ACROSS THE GLOBE DETERMINED TO STRIKE AGAINST THE UNITED STATES WITH HEINOUS AND PREVIOUSLY UNTHINKABLE TERRORIST ACTS. ANY ENVIRONMENTAL IMPACT STATEMENT OR SAFETY ANALYSIS MUST SERIOUSLY CONSIDER THE FLOATING FACILITY AND THE TANKERS ACCESSING THE SITE AS POTENTIAL TARGETS AND EXAMINE THE WORST-CASE SCENARIO. QUITE FRANKLY, TO DATE, PROPONENTS OF THE BROADWATER PLAN HAVE ALL-TOO-CASUALLY DISMISSED THE IDEA OF A TERRORIST ATTACK AGAINST AN LNG SITE; MUCH IN THE SAME WAY OUR U.S. INTELLIGENCE DISMISSED THE NOTION OF HIJACKING PLANES AND FLYING THEM INTO BUILDINGS.

QUALITY OF LIFE ON THE LONG ISLAND SOUND

ACCORDING TO THE ENVIRONMENTAL PROTECTION AGENCY, THE LONG ISLAND SOUND GENERATES \$5.5 BILLION PER YEAR FOR OUR REGIONAL ECONOMY.

LONG ISLANDERS RELY ON OUR WATERWAYS NOT JUST FOR COMMERCIAL AND TRANSPORTATION PURPOSES BUT FOR RECREATION AND RELAXATION. THE BROADWATER PERMANENT FACILITY AND THE TANKER TRAFFIC WILL HAVE A PROFOUND AND UNAVOIDABLE IMPACT ON NAVIGATION ROUTES, WILL RESULT IN THE LOSS OF FISHING AREAS AND PROHIBIT THE USE OF SEVERAL SQUARE MILES OF OPEN WATER AND ITS RESOURCES.

A FULLY-ILLUMINATED, 100-FOOT-TALL ACTIVE LOADING, STORAGE AND UNLOADING FACILITY WITH ITS REQUISITE TANKER TRAFFIC IN THE MIDDLE OF THE LONG ISLAND SOUND WOULD RESULT IN THE PERMANENT INDUSTRIALIZATION OF THIS FEDERALLY-DESIGNATED ESTUARY OF SIGNIFICANCE AND FOREVER ALTER THE ECOLOGICAL AND AESTHETIC BALANCE OF THE NORTH SHORE.

CONCLUSION

IN CONCLUSION, I APPRECIATE THE OPPORTUNITY FOR MYSELF AND MY COLLEAGUES IN LOCAL, STATE AND FEDERAL GOVERNMENTS TO WEIGH IN ON THIS PROPOSAL. IN THE COMING DAYS I WILL BE FORWARDING A SPECIFIC LIST OF ISSUES AND CONCERNS DEVELOPED BY SEVERAL COUNTY AGENCIES THAT NEED TO BE STUDIED IN-DEPTH AT THE OUTSET OF THIS PROCESS.

HOWEVER, AS I SAY THIS, GIVEN THE POTENTIAL NEGATIVE IMPACTS ON THE HEALTH, SAFETY, ENVIRONMENT AND ECONOMY OF THE LONG ISLAND SOUND AND THE SURROUNDING REGION, I DO NOT BELIEVE THE BROADWATER LNG FACILITY BELONGS IN THE LONG ISLAND SOUND.

I URGE THE FEDERAL GOVERNMENT AND THE APPLICANTS TO COMMIT TO LOCAL REVIEW OF DETAILED DESIGNS AND TECHNICAL DOCUMENTS, INCLUDING ENGINEERING REPORTS, EQUIPMENT AND PIPING SCHEMATICS AND OPERATING SPECIFICATIONS AS WE SEEK TO DETERMINE THE JURISDICTION OF THE SUFFOLK COUNTY SANITARY CODE AND LOCAL GOVERNMENTS FOR THE BROADWATER FACILITY.

I HOPE THAT THE AGENCIES HERE TONIGHT WILL HEAR THE COLLECTIVE AND NEARLY UNANIMOUS CALL FROM A BI-PARTISAN GROUP OF ELECTED OFFICIALS -- AS WELL AS THE VOICES OF EDUCATED AND INFORMED COMMUNITY GROUPS -- WHO ARE ALL ACTING IN THE SAME INTEREST: TO PROTECT THE ENVIRONMENTAL INTEGRITY OF OUR LONG ISLAND SOUND FOR GENERATIONS TO COME.

Submission Contents

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**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Broadwater Energy

Docket No. PF05-4-000

**COMMENTS OF THE COUNTY OF SUFFOLK, NEW YORK
IN RESPONSE TO FERC'S REQUEST FOR COMMENTS
ON THE ENVIRONMENTAL ISSUES FOR THE
PROPOSED BROADWATER ENERGY LNG FACILITY¹**

The County of Suffolk, New York ("Suffolk" or the "County"), by its attorneys, Farrell Fritz, P.C. hereby submits these comments in response to the Federal Energy Regulatory Commission's ("FERC's") Request for Comments on Environmental Issues, dated August 11, 2005, in connection with the Broadwater Energy LNG ("Broadwater") proposed project. Suffolk urges FERC to deny the license and authorization requested by Broadwater.

Both branches of Suffolk's government are on record as opposing the project. In response to FERC's August 11, 2005 Notice, the Hon. Steve Levy, Suffolk County Executive, verbally testified at one of FERC's Public Meetings, held on September 14, 2005 at the Shoreham-Wading River Middle School, and expressed Suffolk's strenuous opposition to this project. Mr. Levy also submitted written comments to FERC and to the U.S. Coast Guard. In addition, the Suffolk County Legislature adopted resolutions also expressing Suffolk's strong opposition to this proposed project.

Suffolk's opposition is founded upon both legal and technical grounds. Suffolk has significant concerns about the serious negative environmental, health, economic and safety risks posed by the proposed project. Suffolk's concerns are widely shared by the 1.5 million residents of Suffolk County, as well as by residents of surrounding communities, including those residing

¹ These comments are supplemental to those presented by County Executive Steve Levy, Legislator Daniel Losquadro and Legislator Jay Schneiderman at the FERC/U.S. Coast Guard Hearing on September 14, 2005.

in Nassau County and the State of Connecticut as evidenced by the thousands of comments already submitted to FERC by these residents, including many local, state and federal elected officials, in opposition to the proposed project.

A. The Issues.

The County urges FERC to fully and publicly explore all issues related to the proposed project's environmental, health, safety, security and financial impacts during the NEPA process, as is required by FERC's regulations at 18 CFR Part 380 and the Council on Environmental Quality's (CEQ's) regulations at 40 CFR Parts 1500 et seq. These categories of issues are identified in FERC's August 11, 2005 Notice, and are the subject of Resource Reports being filed by the Applicant. In particular, Suffolk has major concerns about the following issues.

1. Secrecy.

Suffolk is concerned that FERC has designated various environmental Resource Reports filed by Broadwater at "Critical Energy Infrastructure Information ("CEII"), making such reports "non-public" and available only to certain requesters under the Freedom of Information Act ("FOIA") or related FERC procedures under 18 CFR Part 388. Suffolk is concerned that FERC's CEII designation is overbroad and essentially prevents a full and open discussion of the proposed project's safety – and conversely, its serious dangers. Indeed, Suffolk understands that the CEII designation is intended to keep secret information that could aid terrorists who might choose to attack the facility, a fact, which, *per se*, seems to strongly support Suffolk's concerns that the proposed project poses a serious public danger and should not be authorized. (See Section (A)(4) below.) Suffolk will explore the possibility of seeking access to filings designated CEII, but is gravely concerned as to whether it would be allowed to use any such information in a public forum, and what the consequences would be in cases where CEII

information was disclosed accidentally, and who would be allowed to review and use it. In short, Suffolk is concerned that FERC's CEII designation will severely hamper the efforts of Suffolk and its residents to participate in the FERC process and related proceedings on the proposed Broadwater project.

2. Adverse Environmental Impacts to Long Island Sound.

Suffolk is very concerned about the proposed project's adverse impacts on a unique natural resource, the Long Island Sound. That body of water is a federally designated estuary of significance for which there has been a Comprehensive Conservation and Management Plan ("CCMP") developed and being implemented by federal, state and local government officials. In addition, the Long Island Coastal Zone Management Plan, along with a whole host of other Coastal Zone Revitalization Plans, including local waterfront revitalization zones, were implemented precisely to preserve open space, encourage recreational uses, minimize adverse development and non-water dependent development, preserve historical resources, enhance scenic resources, minimize loss of life and natural resources, manage navigational channels, improve and protect water quality by prohibiting discharges, limit development of public trust lands, protect the health of marine resources, and minimize adverse impacts from fuel storage facilities. These noble and laudable policies are all threatened by the proposed project.

Broadwater admits that its proposed location is within "an area of aesthetic, environmental and economic value to many people." It also admits that the proposed project will have both short-term and long-term impacts, during all phases of the project - construction, operation, dismantling and removal. (See Broadwater Project Description, Section 5, Potential Impacts, p. 30.) These admitted impacts include, among other things, the following concerns:

- (1) significant sediment disturbances;

- (2) extensive interference with marine species, some of which are classified as threatened or endangered under federal and state law;
- (3) extensive disturbances of essential fish habitat, including impacts to several significant fisheries with both commercial and recreational import to residents of Suffolk and the surrounding communities;
- (4) water quality impacts both during construction and operation, including discharges of process water, ballast, and sewage;
- (5) thermal discharges; and
- (6) air emissions.

(Id at pp. 31-33.) It is incumbent upon FERC to thoroughly and completely evaluate and analyze these impacts since many of these impacts have been ignored by the applicant's submissions and many of these adverse impacts cannot be mitigated by Broadwater.

There are also a myriad of other impacts to Long Island Sound, all of which need to be fully and fairly assessed. The proposed technology, an enormous floating storage unit anchored to a tether in the middle of Long Island Sound, is unproven technology, and no other similar type of massive floating storage unit has ever been constructed and operated in the world. Thus, this untested technology and its engineering details must be subject to heightened scrutiny. The proposed project will involve the storage of 350,000 cubic meters of liquefied natural gas ("LNG") which equates to 8 billion cubic feet of gasified natural gas anchored right in the middle of a highly utilized body of water. The Long Island Sound is one of two federally-designated estuaries of national significance and hundreds of millions of dollars in public funds have been expended to restore and enhance it. It is also located in one of the most populated regions of the nation - between Long Island and Connecticut - and the proposed project would

require significant security exclusion zones and would eliminate significant portions of the Long Island Sound to recreational and commercial boaters.

In addition, the storage unit is to be refilled by frequent shipments of LNG that are made via large tanker ships. Broadwater states that these refill shipments will occur every two days and will take 12 to 18 hours to unload. As part of Broadwater's proposed safety precautions, each LNG delivery requires a virtual shut down of Long Island Sound. Thus, out of every 48 hours, 18 will be required to unload and the Long Island Sound will be shut down for these periods. Each shipment will be met by armed Coast Guard ships that will escort the tankers to the floating storage unit. During these frequent deliveries, other recreational and commercial uses of Long Island Sound will be stopped. In other words, Broadwater concedes that the Sound will be virtually closed for 18 out of every 48 hours or 37% of the time. This is in addition to the exclusion zone required around the LNG floating storage unit, which will be off-limits 100% of the time. The continuous disruption posed by these shipments must be fully evaluated from an economic, recreational and safety standpoint. It is simply insufficient and unacceptable for the applicant to state that such interruptions will be without impact.

In addition, the construction and operation of the facility involves frequent tanker shipments that will interfere with important fisheries located in the Long Island Sound. For example, the Long Island Sound lobster industry is just beginning to recover from a catastrophic decrease in population, believed in part to be caused by low oxygen levels in Long Island Sound. The Broadwater project includes construction of the tethering mechanism and installation of 25 miles of pipeline and will involve extensive dredging and disturbance of the seabed, precisely in the environment in which lobsters, clams and other sea-life reside and reproduce. The proponent admits these activities will cause hypoxic conditions, a condition which is fatal to these vital

fisheries. It is also fatal to other marine resources found in the Long Island Sound. Remarkably, the applicant has provided little assessment of the impacts to threatened and endangered species that utilize the Long Island Sound or to the impact on the recreational and commercial fishing and shell fish industries in Suffolk and Connecticut.

Moreover, the project involves construction of a 25-mile pipeline connecting the Broadwater floating facility to the Iroquois Pipeline. That pipeline will be installed into the seabed extending the zone of adverse impacts well beyond the floating storage unit locale well into Long Island Sound. Significantly, very little information is provided by Broadwater about ancillary on-shore structures that are necessary to service the off-shore components. The cumulative impacts of these massive intrusions into the Long Island Sound, its sea-bed and its shores must be fully explored.

3. Safety Hazards.

FERC must also fully investigate the enormous safety hazards posed by the Broadwater project. These include fire hazards that will overwhelm the region's ability to handle such disasters in light of the billions of cubic feet of LNG that will be contained in the floating storage unit and in the tankers. There are three types of fire hazards, pool fires, jet fires and flash fires associated with LNG. Pool fires are believed to be the most likely problem, but the other two types cannot be ruled out. Pool fires involve releases of the LNG from the floating storage unit or the tankers which rapidly vaporize and ignite, placing into jeopardy the entire stored material.

This is no guarantee that this fireball will remain at the 9 mile off-shore location as the tethering mechanism can become compromised, resulting in a wandering floating fireball, subject to waves, tides and winds found in Long Island Sound. Moreover, since the LNG tankers will be moving around in the waters, they could be virtually anywhere in the Long Island Sound during

such pool fires. Although Broadwater asserts that jet fires and flash fires are less likely to occur, it must be remembered that this is untested technology and Broadwater's calming assertions cannot alone be the basis to exclude thorough evaluation of all three types of fire hazards. In addition, the project will require thermal exclusion zones, pursuant to 49 CFS §193, further spreading out the impacts of the proposed project and further increasing the restricted area that will become unavailable to other users of the Long Island Sound.

In addition, FERC must fully evaluate the impacts of a catastrophic spill of most or all of the LNG stored in the floating storage unit. Such analysis must also include an evaluation of a similar loss of LNG from one of the tankers. FERC must also evaluate the simultaneous catastrophic loss of LNG from both a tanker and the floating storage unit occurring at the same time. The latter assessment must take into account the fact that the simultaneous losses may be temporal in nature but occur in different parts of the Long Island Sound. The assessed impacts must consider the population density surrounding the Long Island Sound as well as the impacts that the diverse weather patterns found in this region would have in carrying these catastrophic events to on-shore locations.

Furthermore, FERC must fully examine energy supply impacts that could result from the proposed project. If the project is built as proposed, it will influence the flow of natural gas in the entire region. The existing patterns of pipeline activity will be altered by the proposed project, but no thought has been given to alternative supplies for the region if the floating storage unit suffers a catastrophic loss, is unable to be refilled because of weather-related conditions or due to other disruptions in supplies, or simply malfunctions.

Long Island Sound is also used by hundreds of thousands of people for recreational boating. In addition, thousands of commercial boating operations already regularly use the Long

Island Sound for fishing and for cross-Sound transportation. All of these users will be adversely impacted by the floating storage unit and frequent refill tanker traffic. The area gobbled up by the proposed project and the closing of the broader area for 37% of the time is significant and is located in the middle of the Sound. The resultant water-based traffic hazards must also be fully evaluated.

The impacts posed by weather conditions in the Long Island Sound must also be properly investigated. Suffolk is quite concerned about the impacts hurricanes, storms, blizzards, nor'easters and other common weather events can have on the proposed project. Given the damage incurred by sturdy off-shore rigs from Hurricanes Katrina and Rita, it is imperative that the impact of weather to the fragile tethering device must be appropriately evaluated. Broadwater should be required to study and produce a plan of action if the storage facility is ripped from the tether and moorings and sent adrift in a storm. How would it be handled in a fire? Without a fire? How would it be "recaptured"?

The Environmental Impact Statement must also include a full assessment of the impacts on the professional and volunteer first responders, including state and local police, fire, and emergency medical and rescue personnel. The assessed impacts must include economic, safety and physical constraints that these responders are likely to encounter.

4. Terrorism.

It cannot be emphasized strongly enough that this proposed project, if built, will be a target for terrorism, not just the floating storage unit but also the refill tankers. While the proposal includes an exclusion zone, recent history from the Persian Gulf has shown us that such a zone is an insufficient barrier to prevent terrorist attacks on floating vessels. Moreover, the sources of the LNG cited to by Broadwater, and thus, the sources of the refill tankers, in fact

increase the level of the threat as the LNG is expected to be shipped into Long Island Sound from Iran, Algeria, and Malaysia, among other countries. The mere fact that armed escorts are needed to escort the refill tankers to the floating storage unit emphasizes the terrorism and safety issue.

5. Danger Inherent In LNG Facilities.

The history of problems at other more traditional LNG facilities must be fully evaluated. While Broadwater asserts that there have been a limited number of accidents at LNG facilities, Broadwater ignores the fact that when accidents have occurred at such facilities, they have been catastrophic in nature, with extensive loss of life. Moreover, Broadwater has given no thought to the longitudinal increase in such dangers posed by such accidents occurring in the middle of Long Island Sound.

6. Use of Lands Under the Long Island Sound.

Broadwater proposes to anchor its massive floating storage unit and 25-mile pipeline into the seabed of the Long Island Sound. That land is owned by the State of New York under the public trust doctrine. Broadwater states that it will obtain an easement from the New York State Offices of General Services ("NYSOGS") for this purpose. As the underwater land in question is public trust land, the NYSOGS cannot issue an easement without an act of the New York State Legislature. Moreover, even if the easement is so authorized, a complete and thorough review ~~under the New York State Environmental Quality Review Act would be mandated prior to its~~ issuance as the State would be acting in its proprietary capacity. Furthermore, easements applicable to public trust lands are restricted and FERC must evaluate in its review the impacts of such restrictions on the economics and safety of the proposed project.

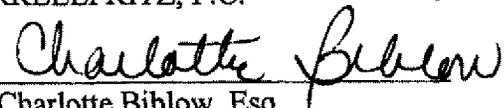
B. Conclusion.

Suffolk is cognizant of the fact that reliable sources of energy are necessary for the citizens of this country. That does not mean that any and every project involving supplying natural gas must be approved as requested by an applicant. The Broadwater project presents too many adverse impacts and inherent risks that cannot be mitigated. Based on these comments, as well as those suggested by County Executive Levy, members of the Suffolk County Legislature, numerous elected officials and members of the public, FERC must reject the proposed project and deny Broadwater the license and authorization it seeks.

Dated: Uniondale, New York
October 6, 2005

Respectfully submitted,

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**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Broadwater Energy LNG

Docket PF05-4-000

**Supplemental Comments of the
County of Suffolk**

**The Broadwater Energy LNG Pre-Application Process
Must Be Terminated Because Engineering Information
Necessary To Show Whether The Project Would Be Safe
And In The Public Interest Can Not Be Publicly Disclosed**

The County of Suffolk, New York ("Suffolk County"), by its attorneys, Farrell Fritz, P.C., submits these supplemental comments to the Federal Energy Regulatory Commission ("FERC") on the Broadwater Energy LNG ("Broadwater") proposed project. Broadwater seeks authorization to build an LNG terminal and connecting underwater pipeline in the middle of Long Island Sound. In its initial submission, filed October 6, 2005, Suffolk County urged FERC to deny Broadwater its LNG license. Suffolk County submits this supplemental filing to demand that FERC terminate the Broadwater proceeding because the governmental agencies with jurisdiction over this project are unable to publicly disclose certain information necessary to make the statutory determinations required to authorize the project. These agencies include FERC, the New York State Department of State ("NYSDOS") and the New York State Office of General Services ("NYSOGS").

The standards are safety and the public interest

To authorize an LNG terminal under §3 of the Natural Gas Act (NGA), FERC must find that the project is safe and "in the public interest." *See* 15 USCA § 717b(a). To authorize a

pipeline, FERC must determine whether to issue a certificate of “public convenience and necessity” under 15 USCA § 717f (c), which is also a public interest test.¹ Safety is a necessary component of FERC’s required findings under the NGA. *See* § 3A of the NGA as amended by the Energy Policy Act of 2005 and 18 CFR § 380.12(m) requiring submission and analysis of safety data for proposed new LNG facilities.

Similarly, NYSDOS would need to find that the proposed Broadwater project is consistent with the Long Island Sound Coastal Zone Management Plan (LIS CMP) in order for the project to be approved. The LIS CMP provides at Policy 13.4 that “LNG facilities must be safely sited and operated.” Unless NYSDOS is able to rationally determine on the public record that Broadwater will be safely sited and operated, it may not find that the project is “consistent” with the LIS CMP, and FERC would not be able to authorize the project.²

NYSOGS may not grant easements for mooring the LNG storage unit or the pipeline on State-owned lands beneath Long Island Sound unless it determines that such grants are in the public interest. New York Public Lands Law §§ 3 and 75.

Important facts necessary to examine and determine public interest and safety have been classified “Critical Energy Infrastructure Information” (CEII) and may not be made public

FERC and Broadwater have classified all of Resource Report 13, Engineering and Design Material, as CEII. *See* Letter dated September 23, 2005 from Brian McNealy of LeBoeuf Lamb to FERC Secretary Salas, posted in Docket PF05-4. In fact, Resource Report 13 for all LNG projects has been classified as CEII by FERC Order 630 as amended by Order 630-A, stating that:

¹ FERC, as guardian of the public interest, must determine in every proceeding whether the certificate applied for is in the public interest or whether that interest calls for some other disposition. *See Panhandle Eastern Pipe Line Co. v FPC*, 386 F.2d 607, 610 (3d Cir. 1967); *Ecee, Inc. v. FPC*, 526 F.2d 1270 (5th Cir. 1976).

² *See* 16 USCA § 1456(c)(3)(A).

“[T]he Commission considers the following gas information to qualify as CEII...‘environmental resource report 13 for LNG facilities.’”³

Order 630 explains that FERC made this judgment because the engineering and design information for an LNG terminal “provides more than just location” information about “critical energy infrastructure”.⁴ FERC defines “critical energy infrastructure” to be:

“...proposed or existing infrastructure [that relates to energy transportation and transmission, and] could be useful to a person in planning an attack on critical infrastructure...”⁵

FERC defines “critical infrastructure” as:

“...proposed systems and assets ... the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.”⁶

Thus, FERC has determined that the engineering and design information about proposed new LNG terminals, such as Broadwater, would be useful to terrorists or saboteurs because incapacity or destruction of an LNG terminal would “negatively” impact public health and safety. This fact alone shows that the Broadwater project can not be found to be safe or in the public interest. At best, the only presumption that can be drawn from the publicly available information is that Broadwater is inherently unsafe, and therefore, it must be concluded that Broadwater is not approvable.⁷

Earthquake, tsunami, hurricane and flood tide analysis is missing

Broadwater has not provided any analysis showing how the LNG Terminal (the “FSRU”) would survive catastrophic winds, waves and high water caused by natural disasters. The brief information on hurricanes and earthquakes in Resource Report 6 at §6.3, and in Resource Report

³ FERC Order 630, 102 FERC ¶61,190 (Feb 21, 2003) at p. 26 as amended by FERC Order 630-A, 104 FERC ¶ 61,106 (July 23, 2003) at pp. 13-14.

⁴ Order 630, Id.

⁵ 18 CFR § 380.13(c)(1).

⁶ 18 CFR § 380.13(c)(2).

⁷ The issues raised herein apply not just to the off-shore components but also to any on-shore components of the Broadwater proposal.

11 at § 11.3.2.2 is self-serving and unsupported by facts. The public interest demands disclosure of all of the facts concerning the FSRU's ability to withstand natural hazards. FERC staff's September 23, 2005 letter to Broadwater has noted this deficiency in Resource Report 11. FERC's November 23, 2005 letter to Broadwater has also requested further information on Resource Report 13, including details on the structural design and integrity of the yoke mooring system (YMS). Perhaps these important issues will be more adequately addressed in Broadwater's future responses. However, the engineering and design information which might even conceivably support Broadwater's hazard studies have been and will continue to be classified CEII, and, therefore, can not be made public.⁸

Tsunami or tidal wave events are not even mentioned, notwithstanding that earthquake or volcanic activity in the mid-Atlantic are predicted to generate tidal waves that could threaten the East coast of North America, including Long Island Sound and the FSRU.⁹ There is no way that Broadwater can be declared safe and in the public interest given the potential consequences of an accident involving separation of the FSRU from its mooring in a hurricane, high water or earthquake. Yet the consequences of such events are not even discussed by Broadwater.

The CEII classification means that "public interest" and "safety" can not be determined, and the FERC process should be terminated

There is tremendous public anxiety about Broadwater, especially skepticism and doubt as to its safety, visual impacts, and impairment of Long Island Sound as a public resource. This is clearly shown by the near-universally negative comments of thousands of Suffolk County citizens, in addition to citizens in Nassau County and Connecticut filed in this docket. See FERC

⁸ It is quite interesting that FERC publicly released its comments about the deficiencies in Resource Report 13. (See letter of Jim Martin, FERC's Environmental Project Manager to Broadwater, dated November 23, 2005.) This highlights the need for public evaluation of Resource Report 13. It also casts doubt on FERC's need for secrecy since FERC did not classify its own comments about Resource Report 13 as CEII.

⁹ NOAA's National Data Center has tsunami information. Go to <http://www.ngdc.noaa.gov/seg/hazard/tsu.shtml>. See also <http://www.huttoncommentaries.com/ECNews/GntWavesHitAtlantic.html>.

Docket PF05-4. Given this degree of public concern, neither FERC, nor NYSDOS, nor NYSOGS could properly or lawfully make determinations that the project is in the public interest or safe unless the basis for their determinations was fully disclosed and publicly explained. The thousands of citizens who are frightened, anxious and concerned about Broadwater are entitled to full disclosure of any FERC determination to authorize the Project, especially with regard to the basis for any determination of public safety.

FERC, in Order 630 at ¶36, rather cavalierly claims that protection of sensitive information, other than location, will not interfere with the NEPA process. FERC blandly states, without any support or justification, that “most NEPA commenters” won’t need diagrams of valve and piping details, flow diagrams or where security and computer operations will be housed. This facile dismissal belittles the long-established public NEPA process.¹⁰ NEPA commenters, as well as participants in the Coastal Zone Management consistency analysis, are absolutely entitled to evaluate for themselves, and with their own experts, the structural integrity of the proposed LNG storage facility, the likelihood of its tearing away from its moorings in catastrophic conditions, and the impacts on public health and safety in the event of a “worst case” accident. However, FERC keeps secret the facts allowing analysis of these and similar matters, and thereby emasculates the established, open public NEPA process. Apparently FERC made a policy choice to extend CEII treatment to all proposed LNG projects on the ground that “a patient terrorist” could collect CEII type information during the NEPA/permitting process and use it later, assuming that the project as proposed was eventually built.¹¹ However, the “patient terrorist” hypothesis hardly justifies undermining long-established public NEPA

¹⁰ NEPA’s purposes include informing the public of the environmental consequences of proposed actions. *See* NEPA § 102(2)(C), 42 USCA § 4332(2)(C).

¹¹ Order 630, at ¶ 35.

processes. Moreover, FERC's CEII designation clashes fatally with state agency procedures, which must be public and unclassified.

Suffolk County submits that FERC can not reasonably expect interested parties, such as the County and its citizens to accept a determination to authorize Broadwater on the basis of secret information. Any such determination would have to be open and based on a public record, after full opportunity for interested parties to evaluate all the facts. Suffolk County understands that one or more of its attorneys or employees could apply and may be granted access to the CEII information but those persons must sign a non-disclosure agreement (NDA). That procedure does not address Suffolk County's concern as the information obtained via an NDA can not be publicly used or referenced in briefs or arguments, and each NDA signatory would be at risk of severe civil and criminal penalties in the event that the CEII becomes public, even inadvertently.¹² Moreover, gaining access to CEII implicates the NDA signatory in the secrecy process and further undermines long-standing NEPA policies and public confidence.

Since full public disclosure of Broadwater's engineering information has been classified by FERC Order, public use of that information is not possible. Accordingly, Suffolk County submits that FERC can not authorize the project, and the application process for Broadwater should be terminated.

Moreover, New York law does not allow NYSDOS and NYSOGS to act under a veil of secrecy. Filings with these agencies need to be maintained in public files, and are subject to disclosure under New York's Open Meetings Law and Freedom of Information Law (FOIL)¹³. NYSDOS and NYSOGS must disclose on the record all the facts and information on which they

¹² FERC Order 662 (June 21, 2005) at ¶ 23 emphasizes that criminal and civil penalties can be imposed where CEII is released in violation of a non-disclosure agreement.

¹³ NY Public Officers Law Articles 6 and 7.

base their decisions, including whether Broadwater is safe and in the public interest. To properly make these determinations, NYSDOS and NYSOGS would need to evaluate all the facts, including the CEII engineering and design materials set forth in Resource Report 13 and in part in other Resource Reports, and make them available on the public record. They would need to show that their determinations were rationally based on the record, and were not arbitrary and capricious. However, FERC has determined in Orders 630 and 630-A that public disclosure of the CEII in these Resource Reports is prohibited. This means that NYSDOS is unable to determine whether Broadwater would be safe and consistent with the LIS CZM, and NYSOGS is unable to determine whether Broadwater is in the public interest.

The County is aware that FERC recently noted that “[t]he Commission’s regulations in no way hinder a prospective applicant providing CEII information as is required by permitting agencies as part of their normal deliberations.” (FERC Order 665 (Oct 7, 2005) at fn 18; 70 FR 60426, 60434, fn 18 (Oct 18, 2005)). However this assertion appears to be totally contradicted by FERC’s determination that LNG engineering and design materials, if disclosed, would aid terrorists and negatively impact safety and the public interest. Moreover, disclosure of such information could subject the persons making the disclosure to *civil and criminal penalties*.

Therefore it appears that neither NYSDOS nor NYSOGS could publicly review the facts necessary to determine consistency and public interest in accordance with New York law. Accordingly, the Project can not be approved, and the FERC application process should be terminated forthwith.

Conclusion

Clearly the people of Suffolk County can not be expected to take on faith Broadwater’s assertions that their safety and other concerns have been addressed in classified documents.

Moreover, it is not sufficient for FERC to claim that citizens can gain access to CEII if they can show need and promise not to disclose it, on pain of civil fines and criminal prosecution. The CEII is worthless if it can not be discussed and used by interested parties in a public forum. Given FERC's CEII classification of Broadwater's engineering and design information, the public can have no confidence in the FERC process, and the NYSDOS and NYSOGS are unable to publicly evaluate Broadwater as required by New York law. Since FERC will not allow the facts to be publicly evaluated, the Broadwater Project should be discontinued.

Accordingly, Suffolk County respectfully submits that FERC should terminate the Broadwater application process and close FERC Docket PF05-4.

Dated: Uniondale, New York
December 8, 2005

Respectfully submitted,

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