116 FERC ¶61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Broadwater Energy LLC	Docket Nos. CP06-54-000
Broadwater Pipeline LLC	CP06-55-000
	CP06-56-000

ORDER DIRECTING RELEASE OF INFORMATION
UNDER A PROTECTIVE AGREEMENT

(Issued July 12, 2006)

1. In letters dated February 23 and March 15, 2006, the County of Suffolk, New York (Suffolk) requested, under the Freedom of Information Act (FOIA),[1] certain non-public information in the application filed by Broadwater Energy LLC and Broadwater Pipeline LLC (Broadwater) to site, construct, and operate an offshore liquefied natural gas (LNG) import terminal and related pipeline facilities. As discussed below, Suffolk, an intervenor in the proceeding,[2] may obtain access to such information under a protective agreement.

I. Background

2. On January 30, 2006, Broadwater filed an application requesting authorization to construct and operate an offshore LNG receiving terminal in Long Island Sound approximately nine miles from the shore of Long Island in New York state waters. Additionally, Broadwater proposes to construct and operate a 30-inch, 22-mile subsea lateral pipeline to interconnect with an existing interstate pipeline.

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[1] 5 U.S.C. 552 (2000).

[2] On February 17, 2006, Suffolk filed an unopposed, motion to intervene in this proceeding. Thus, Suffolk is a party to this proceeding under Rule 214 of the Commission's regulations.

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3. Suffolk filed a FOIA request seeking certain non-public information filed in Broadwater's application. While some of the requested information was released, Suffolk's request as it pertained to certain capital cost, cultural resource, and carrier route information and engineering data, plans, and schematics of the proposed facilities was denied.[3]

II. Discussion

4. The Commission believes that Suffolk and any other party to the proceeding should be able to obtain access as necessary to information filed under section 388.112 of the Commission's regulations for which special treatment has been requested under a protective agreement.[4] While there is a model protective order on the Commission's website,[5] protective agreements should be drafted in light of the facts in a particular case. The goal is "to issue the least restrictive order that will accomplish the purpose of protecting against the harm of disclosure."[6] The burden is on the party seeking to safeguard this information to show that the protective agreement does not adequately protect its interests.[7]

5. Accordingly, we hereby order Broadwater to enter into a protective agreement consistent with the discussion above and to provide Suffolk with the non-pubic information it has requested, within 15 days of the date of this order. Should the parties desire additional assistance, they may make use of the Commission's designated on-call

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[3] Appeals of the denials are currently pending.

[4] We believe that a protective agreement entered into by the parties will provide as much protection as a Commission issued protective order. *See, e.g. Jason Atwood*, 108 FERC ¶ 62,283 (2004)(Electric Form 715).

[5] A link to the model protective order can be found on the Commission's website at http://www.ferc.gov/legal/admin-lit.asp#skipnavsub.

[6] *Mojave Pipeline Co.*, 38 FERC ¶ 61,249 at 61,842 (1987).

[7] *Id.,* ("Since in most instances a protective order can protect against harmful disclosure, a party claiming that confidential treatment should be withheld entirely will be expected to show that a protective order will not adequately safeguard its interests and that this concern outweighs the need for the material to develop the record.")

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settlement judge. However, the use of such a procedure shall not extend the 15-day deadline for production of the requested material.

The Commission orders:

Within 15 days after the issuance of this order, Broadwater shall provide the requested information to Suffolk under the terms of an executed protective agreement. A copy of the executed agreement shall be filed with the Commission.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.