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

OFFICE OF THE GENERAL COUNSEL

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VIA FAX AND U.S. MAIL

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Re: Consistency Appeal of Broadwater Energy LLC and Broadwater Pipeline LLC

Dear Mr. Blumenthal, Mr. Alessi, and Ms. Watson:

This letter is in reference to the Attorney General of Connecticut's Motion for Leave to File Brief in Support of Respondent ("Motion"), with the enclosed brief, filed in the above-referenced consistency appeal.

The Attorney General filed his Motion on August 15, 2008. Appellants Broadwater Energy LLC and Broadwater Pipeline LLC ("Broadwater") opposed the Motion, arguing that neither NOAA's federal consistency regulations nor the Administrative Procedure Act provide for *amicus curiae* participation in this appeal. In addition, Broadwater argued that the Attorney General's brief raises issues that are unrelated to the appeal, already addressed in the public record, or adequately presented by the New York Department of State ("New York"). Finally, Broadwater argued that the Motion is untimely and would negatively impact the timing of the proceedings. The Attorney General filed a reply on August 28 and New York filed a response in support of the Motion on September 3, 2008.

The Attorney General's Motion is granted and the brief is hereby incorporated into the decision record in this consistency appeal.

Permitting the Attorney General to submit an *amicus curiae* brief is consistent with past agency practice allowing *amicus curiae* briefs from entities having a significant interest in an appeal.[1] In this instance, the State of Connecticut plainly has a significant interest in both the Project and this appeal. As Broadwater conceded in its response brief, its proposed liquefied natural gas terminal (the "Project") will have coastal effects on the State of Connecticut[2] and the safety and security zones proposed by the U.S. Coast Guard will extend into Connecticut waters.[3] Therefore, it is appropriate to allow the Attorney General to submit an *amicus curiae* brief.

Broadwater's arguments against including the brief in the decision record are unpersuasive. Connecticut's failure to independently review the Project for federal consistency or seek leave to intervene as a party in this proceeding does not preclude it from submitting an *amicus curiae* brief. Additionally, Broadwater's argument that the Attorney General's brief adds little substantive information regarding the potential coastal effects of the Project *in Connecticut* does not diminish the significance of the State's interest in this appeal. Furthermore, any information in the Attorney General's brief that is unrelated to the appeal will not be considered by the agency. To the extent the brief discusses matters already addressed in the public record or adequately presented by the New York Department of State, that discussion will not be prejudicial to Broadwater. Finally, the Motion is not untimely because no deadline for *amicus curiae* briefs had been established. The Motion also will not negatively impact the timing of the proceedings, as the agency does not expect any interruption of the proceedings as a result of the arguments set forth in the Attorney General's brief.

If Broadwater or New York wish to submit a reply to the Attorney General's brief, they may do so by October 3, 2008. Briefs shall not exceed ten pages, double spaced. No further briefs will be considered.

Questions should be directed to Jamon Bollock, NOAA Office of General Counsel for Ocean Services ("GCOS"), at jamon.bollock@noaa.gov.

Sincerely,

Jane C. Luxton
General Counsel

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[1] *See Decision and Findings by the U.S. Secretary of Commerce in the Consolidated Consistency Appeals of Weaver's Cove Energy, LLC and Mill River Pipeline, LLC from Objections by the Commonwealth of Massachusetts* (June 26, 2008) at 9-10 (permitting an *amicus* brief from the City of Fall River); *Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Millenium Pipeline Co., LP from an Objection by the State of New York* (Dec. 12, 2003) at 34-35 n.109 (citing *amicus* brief filed by New York City); *Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Amoco Prod. Co. from an Objection by the Div. of Governmental Coordination of the State of Alaska* (July 20, 1990) at 2-3 (permitting North Slope Borough to submit *amicus* brief).

[2] App. Resp. Br. at 6 (admitting that the Project will have minor visual effects).

[3] *Id.* at 6-7.

cc: Robert Snook, Assistant General Counsel, State of Connecticut
Jeffrey Kuhn, Dewey & LeBoeuf LLP
James Thompson, Dewey & LeBoeuf LLP
Lorraine Cortes-Vazquez, Secretary of State, State of New York