

ORIGINAL

STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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February 28, 2006



Gina McCarthy
Commissioner

Magalie R. Salas
Federal Energy Regulatory
Commission 888 First Street NE,
Room 1A
Washington, DC 20426

Bruce W. Neely
LeBoeuf, Lamb, Greene & MacRae LLP
Suite 1200, 1875 Connecticut Ave., NW
Washington, DC 20009-5728

RE: CZMA Consistency, Broadwater Energy
Docket No. CP06-54 et al.

Dear Ms. Salas and Mr. Neely:

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SECRETARY
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FEDERAL ENERGY
REGULATORY
COMMISSION

On February 17, 2006 we received official notice that Broadwater Energy, LLC and Broadwater Pipeline, LLC had filed applications with FERC under the Natural Gas Act, as amended, on January 30, 2006 to site, construct and operate an offshore liquefied natural gas terminal, pipeline and associated facilities in Long Island Sound. As you know, the proposed Broadwater facilities were also the subject of a FERC pre-filing procedure (Docket No. PF05-4-000). During the pre-filing process I had requested FERC, in a letter of October 27, 2005, to voluntarily submit the Broadwater application to Connecticut's federal consistency process under the federal Coastal Zone Management Act (CZMA). FERC responded on November 22, 2005 that it was referring the CZMA issues to the National Oceanographic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. Under the assumption that the Broadwater project would be located entirely within the state of New York, staff of that Office later advised my staff by telephone that Connecticut CZMA consistency could not be applied at that time to the Broadwater application. Subsequently, we received information from the Coast Guard indicating that assumption is incorrect, and I am writing now to reiterate Connecticut's request for a determination of Broadwater's consistency with Connecticut's coastal zone management program.

Under Section 307(c)(3) of the CZMA, an applicant for a federal agency license or permit must certify that the proposed activity complies with the enforceable policies of the state's federally-approved coastal zone management (CZM) program. Without a concurrence from the state CZM program, the federal agency may not grant the license or permit unless overruled by the Secretary of Commerce. While the Energy Policy Act of 2005 has made certain changes in the scheduling, record and appeals provisions of the

consistency process as applied to LNG applications to FERC, the underlying requirements of CZMA consistency remain applicable. We understand that the New York CZM program, housed in that state's Department of State, will be conducting a CZMA consistency review with regard to its state's enforceable policies, since the proposed Broadwater terminal and pipeline are both to be located in New York waters and on and over New York submerged public trust lands.

However, at the time of my October 27, 2005 letter, we did not know the extent to which the Broadwater project would affect Connecticut's coastal resources and uses, since it was not clear whether any portions of the Broadwater facility or operations will be physically located on or over submerged public trust lands in the Connecticut waters of Long Island Sound. Based on the information developed during the pre-filing process, including the preparation of the Coast Guard's Letter of Recommendation pursuant to 33 CFR 127.009, it is now apparent that the operation of the Broadwater terminal and pipeline will directly affect Connecticut's resources and Connecticut citizens in Connecticut waters. In particular, the permanent security zone surrounding the floating storage and regasification unit (FSRU) will likely extend across the boundary line into Connecticut state waters. Also, LNG tanker traffic to and from the FSRU, which will take place several times each week throughout the year, will in some situations need to be routed through Connecticut waters, adding the temporary restrictions of a moving security zone around each tanker. These security zones will have direct and reasonably foreseeable effects on Connecticut's coastal resources and uses by restricting the use of the designated waters by recreational boating, ferries and other commercial traffic, and recreational and commercial fishing, among other uses.

As a result of these effects in Connecticut waters, the Broadwater Energy application to FERC is subject to the provisions of 930 CFR Subpart D concerning CZMA Consistency for Activities Requiring a Federal License or Permit. Please note that FERC's approval of LNG facilities pursuant to the Federal Power Act, the Energy Reorganization Act of 1974, and the Natural Gas Act is a listed federal license or permit under Connecticut's federally-approved coastal zone management program. The security zones, in turn are an integral part of both the Broadwater project and of FERC's review. Operationally, the facility cannot serve its intended purpose without regular supplies of LNG imported by tanker, and neither the FSRU nor the tanker traffic can take place without a Coast Guard-recommended security zone. While the Coast Guard has an independent responsibility to issue a Letter of Recommendation pursuant to 33 CFR Part 127, the Coast Guard's security recommendations are also an integral component of the FERC process. As you know, the Energy Policy Act of 2005 amended the Natural Gas Act as well as the CZMA to establish a single uniform record and process that would examine all issues relevant to the siting, construction and operation of LNG terminals, including the location and effects of security zones. FERC's comprehensive review must therefore address operational impacts of security zones associated with both the FSRU and the LNG tankers, and must incorporate CZMA consistency determinations with regard to the enforceable policies of both the New York and Connecticut CZM programs.

Accordingly, I hereby request that Broadwater Energy, LLC and Broadwater Pipeline, LLC, as applicants for listed federal permits under Connecticut's CZM plan, submit a Connecticut consistency certification pursuant to 15 CFR 930.57. With the certification, please submit all information specified in 15 CFR 930.58, including a complete copy of Broadwater's application in both written and electronic form. Once we have received all of this material, the six-month review period established by 15 CFR 930.62 will commence. To reiterate my October 27, 2005 letter, it is by no means our intention to delay or create unnecessary roadblocks in the Broadwater process. The New York CZM program must observe the same six-month time frame, and we expect that the consistency certification and supporting material to be submitted to the New York CZM program will be similar to the submission I am requesting here. The staff of our CZM program stands ready to work with FERC, New York CZM, other federal agencies, other stakeholders and the public of both states to ensure a comprehensive and timely federal consistency process.

Thank you for your cooperation in helping us manage the vital natural resources and uses of Long Island Sound, Connecticut's greatest natural resource. I look forward to reviewing Broadwater's consistency certification and supporting material. If you have any questions concerning this matter or any other coastal management issue, please contact Charles H. Evans, Director of the Department's Office of Long Island Sound Programs at 424-3034. Thank you.

Yours truly,



Gina McCarthy
Commissioner
Department of Environmental Protection

GM/db

cc:

- Connecticut Congressional Delegation
- Broadwater Energy
- FERC Gas Branch 3, DG2E
- Eldon Hout, NOAA OCRM
- U.S. Army Corps of Engineers
- Captain Peter Boynton, COTP Long Island Sound, USCG
- Randy Daniels, New York Secretary of State
- George Stafford, New York CZM
- Senator Len Fasano, Chair, Long Island Sound LNG Task Force
- Attorney General Richard Blumenthal
- Charles H. Evans, OLISP