

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LIQUEFIED
NATURAL GAS PROJECT

DOCKET NOS. CP06-54-000
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COMMENTS OF THE ATTORNEY GENERAL

Richard Blumenthal, Attorney General of Connecticut, an intervenor in the above-captioned proceeding, hereby files these preliminary comments with the Federal Energy Regulatory Commission (FERC or the Commission) regarding the proposed Broadwater Liquefied Natural Gas (LNG) facility in Long Island Sound.

SUMMARY

The Broadwater proposal is ill-conceived and unacceptable. It threatens immediate damage to the critical environment of Long Island Sound, a precious national resource. The risks of serious accidents or attacks associated with the Broadwater project are real and substantial. The project raises the clear and present danger of an accident or attack causing catastrophic damage to human life, the environment, and commercial and recreational use of the Sound. Many of the relevant facts are detailed in the report filed by the Connecticut Long Island Sound Task Force, a report the Attorney General fully supports.

While the Northeast needs additional supplies of clean energy, there are far safer and sounder ways to obtain it. FERC has a legal and moral obligation to consider all reasonably possible alternatives for new clean energy supplies for the Northeast together,

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and to permit only the most prudent, safest, least damaging proposals necessary to ensure adequate natural gas supplies. A careful, honest overall evaluation will show that Broadwater is the least safe, most dangerous and damaging proposal, and it should not be approved.

1. Safety and Security

One critical area of concern regarding the Broadwater proposal is its risk to public safety and security. Natural gas is a highly flammable product and the storage and transportation of natural gas has resulted in accidental fires and explosions, sometimes of massive proportions.

In fact, as early as 1944, an East Ohio Gas LNG tank breached, a vapor cloud formed and ignited, and the conflagration killed 128 people. Even when LNG does not cause an initial accident, the fact that LNG is involved can make an otherwise minor incident into a catastrophe. For example, in 1973 a Texas Eastern Transmission LNG tank was undergoing repairs from a construction accident. A fire developed associated with the repair process, causing the temperature in the LNG tank to rise, and creating enough pressure to dislodge the top of the tank, crushing 40 workers. In 1979 in Maryland, LNG leaked through a pump at an LNG terminal and arcing of a circuit breaker caused an explosion, killing one and seriously injuring another. Fatal accidents continue to plague LNG facilities. As recently as 2004, 27 people were killed and 56 injured in a fire at an LNG facility in Algeria.

One key area of concern, uniquely important in the context of the Broadwater proposal, involves the potential for catastrophic failure caused by embrittlement and fracture of deck and hull structures of the Broadwater facility (technically, the floating

storage and regassification unit, of "FSRU") or of LNG tankers unloading at the facility in the event of leakage of LNG. Natural gas is transported in its liquid state by cooling it to 260 degrees below zero (Fahrenheit). At this temperature, if LNG contacts steel, such as that making up the hull, deck plates, and structural support members of the FSRU or a tanker, is exposed to LNG, the steel becomes instantly brittle and fractures.

This is not merely a technical concern. In 1965, a storage tank on the *Jules Vernet* overflowed and LNG came in contact with deck plates, instantly fracturing them. Similarly, in 1974 in Massachusetts, LNG leaked from a valve and, once again, fractured a vessel's deck. In 1977, a worker was frozen to death when a valve came into contact with cryogenic temperatures and LNG was released. In 1979, not one, but two ships -- the *Mostefa Beb-Boulaid* and the *Pollenger* -- experienced valve failures leading to leakage leading to metal fractures in either deck plates or tank cover plates. A similar incident occurred in 1985 on the tanker *Isabella*.

Perhaps the most serious past accident of concern for the Broadwater Project occurred in 2002, when the *Norman Lady*, an LNG carrier, was involved in a collision with the U.S.S. *Oklahoma City*, a nuclear powered attack submarine, east of the Strait of Gibraltar. The LNG carrier suffered a breach of its double bottom dry tank area and took on seawater, but did not sink.

The risks and dangers shown by this accident are clear. The U.S. Navy maintains an important nuclear submarine base at New London, Connecticut and Electric Boat has a nuclear submarine construction facility nearby. Consequently, nuclear submarines frequently cross the Sound through the Race. Obviously, a collision between a nuclear-

powered and armed vessel and an immense commercial tanker laden with highly flammable natural gas could create an unmitigated catastrophe.

What is particularly important about these accidents is that they involve tankers employing a mature technology that has been used for decades -- insulated LNG containers. Even then, accidents occur with disturbing frequency. These accidents highlight the fact that LNG is most dangerous, not when it is in its special holding tanks, but when it is being moved into or out of these tanks. In normal shipping, the loading/unloading phase is generally brief and for the bulk of the time, the LNG is contained within the specially designed hull tanks.

The reverse is true with the Broadwater FSRU. The FSRU is not intended to be a large holding tank for LNG but primarily a regassification facility. Thus, the natural gas in the FSRU will reside in the insulated tanks only briefly while it is being processed and then be offloaded into the pipeline system. In effect, the gas will be offloaded from the tankers into the FSRU and begin to be immediately pumped out of the holding tanks and into the processing area and then pumped into the main underwater pipeline. This approach maximizes the time the LNG is being moved back and forth from the ship to the holding tanks to the processing area and then into the pipeline. Consequently, the LNG will not spend most of its time in the relatively safe holding tanks but will be constantly in motion being pumped around outside the insulated containers and in constant proximity to the deck and hull. Further, unlike a shore-based facility, the FSRU will not be fixed and stationary while this loading and unloading takes place, but will be subject to wind, tide and waves, raising a new range of risks for system failure which could result in release of LNG into contact with the deck or hull of the tanker or the FSRU.

2. Denial of Access to Technical Information.

FERC has, to date, refused to make public vital information regarding the design, structure and safety of the proposed FSRU. This unprecedented and indefensible policy needs to be immediately reversed before any meaningful analysis and public review of the Broadwater project can begin.

Specifically, FERC has classified much of the safety and design information associated with the FSRU as Critical Energy Infrastructure Information (CEII). Once classified, this very important information is withheld from the public, or disclosed only on a very limited basis that makes it virtually impossible to conduct a full public discussion. FERC's regulations governing CEII classification fail to establish any meaningful standards for granting requests for access. FERC further insists that any person or organization seeking to review this material sign a form to the effect that violation of the terms of release can result in immediate criminal sanctions. The confusion and incoherence of the various FERC regulations and public statements about CEII information does nothing to protect the nation from terrorists and effectively prohibits the robust public discussion necessary regarding the safety of this mammoth project.

3. Terrorism

FERC cannot discount the possibility of a potential terrorist attack on the FSRU or an LNG tanker. A recently published document written by Abdul Aziz bin Rasheed al-Anzy, described by Saudi authorities as a key ideologue for al-Qaida, states that "In this era, economic jihad is one of the best ways to spite unbelievers." He continues:

“Pipelines may be the front line in a long-term war of attrition Pipelines are an easy target militarily. Their protection is virtually impossible because of their length.” He added, “tankers also are fair targets.”

The Broadwater proposal includes both a pipeline and tankers in addition to the FSRU itself, a hugely attractive target for purposes of “economic jihad” – all together near New York City, an established target for terrorism.

This threat is hardly hypothetical. Al-Qaida operatives have repeatedly attacked energy infrastructure systems in Saudi Arabia and Iraq. Further, at least one seaborne attack was made on a French tanker and there have been several successful terrorist and/or pirate attacks on tankers and shipping in the Middle East and Southeast Asia including the infamous seizure of the *Achille Lauro*.

Clearly, terrorists desire to attack the United States energy infrastructure and they have a demonstrated capability to launch seaborne attacks or hijacking of surface vessels. FERC must determine the nature and extent of the terrorism threat and convincingly protect the public from it.

4. Commerce

While terrorism is a real and present danger to the Broadwater facility, even in the absence of a deliberate attack, LNG tankers themselves can be a threat to economic and commercial interests. LNG tanker accidents have occurred repeatedly. In 1974, the *Methane Princess* was damaged after grounding at or near port. In 1979 the *El Paso Paul Kayser* suffered severe bottom damage after it became stranded. In 1980 the *LNG Libra* fractured its tail shaft and in 1984 the *Melrose* caught fire in its engine room.

Marine accidents are of particular concern in Long Island Sound because it is heavily used by commercial shipping and because it is narrow. The eastern entrance to the Sound, known as the "Race," is barely 1.5 miles wide and can have treacherous currents and weather conditions.

Every few days, an escorted LNG carrier will pass through the Race, and its passage will require shutting down the Race to other traffic for a period of time. Like the Sound itself, the Race is heavily traveled and congested. Vital fuel tankers and bulk carriers pass through the Race constantly. According to the Connecticut Department of Transportation, fuel tankers are unable to reach the off-loading terminal at New Haven, replacement of that fuel oil and gasoline would require 500,000 fuel truck trips per year – a result with disastrous consequences for traffic congestion, air pollution, and the New England economy. Others have estimated that available inventories of many types of raw materials would permit industrial production facilities in New England to continue to function no more than 5 days should the Sound be closed to marine traffic by a major accident. Any accident in or near the Race can have grave consequences – consequences avoidable at an alternative onshore facility or a ship-based facility in open water.

In addition, the Coast Guard's Ports and Waterways Safety Assessment (PAWSA) report ("Coast Guard Report"), dated July 15, 2005, contains some very disturbing information that calls into question the very possibility of creating an effective security zone around the proposed terminal. The Coast Guard Report involves a systematic assessment conducted by the Coast Guard to identify and evaluate major waterway safety risks. The Coast Guard Report includes a detailed and informative discussion of some of the major risk factors in the Sound today and a consideration of

some of the potential effects of the Broadwater project. The risk factors reviewed by the Coast Guard included the quality of commercial and deep draft vessels, small vessel quality, volume of commercial and pleasure traffic, congestion, wind and water movement, congestion, known obstructions, visibility impediments, possibility of hazardous materials and petroleum products releases, environmental conditions, and threats to aquatic resources.

The Coast Guard Report notes that the consequences of an accident or other incident involving the FSRU would be especially high in terms of overall environmental damage and particularly damage to aquatic resources. As the Coast Guard Report adds, Long Island Sound is a "fragile" and "stressed ecosystem" even without the proposed project.

This project plainly will result in a material increase in shipping traffic in the already crowded Sound is a serious threat to public safety. The initial problem is magnified a thousand-fold with the recognition that LNG carriers, however safe they are claimed to be, cannot ensure the safe operation of the myriad other ships in the Sound. LNG is flammable and a fire caused by an accident can have catastrophic consequences. The Coast Guard Report concludes, accurately, that a closure of the Race due to an accident or attack will quickly result in an economic disaster for the entire region.

Today, total commercial traffic through the Sound is on the order of 700 foreign flag ships and 1200 tugs and barges per year and the volume of traffic in the Sound "is generally going up." Coast Guard Report, page 16. Furthermore, that "[v]olume of traffic is focused at The Race, New London, New Haven, and Port Jefferson." *Id.*

Substantial commercial traffic involves commercial fishing boats. The Coast Guard noted that “some [radio] operators don’t respond or are unintelligible” and that commercial fishing vessels are known to have “[t]rouble with communications with other commercial vessels.” Coast Guard Report, page 14. Particularly chilling is the comment that “East of the Race: operators are tired; boats on autopilot; 90% are a problem.” Therefore, not only will LNG carriers, however safe they are themselves, have to negotiate the Race and part of the Sound to reach the terminal, but they will be sharing the sealanes with an increasing number of commercial vessels, already approximately 2000 in number, including bulk carriers and exhausted commercial fishing vessel operators who sometimes can’t or won’t respond to radio communication.

In addition, the Coast Guard must account for the myriad small pleasure craft that use the Sound. According to the Coast Guard Report, Long Island has at least 80,000 registered boats and Connecticut another 112,000, with a 2%-4% annual increase in registration. Page 17. This staggering number of almost 200,000 known small craft underscores two very different problems. The first is that the Sound is relatively small and is covered with ships of various sizes. The second is that the non-commercial vessels, while small, pose very unique problems for LNG carriers and the terminal itself. Quite simply, there are huge numbers of these little boats and their operators can be “individuals with little boating knowledge.” Coast Guard Report, page 15.

Overall, the Coast Guard Report paints a picture of the Sound as a “[m]ultiple [use] waterway” with already “[h]eavy interaction between non-commercial and commercial vessels at The Race” and waterway conditions that are “[g]etting worse.” Coast Guard Report, pp. 18, 26. The hundreds of thousands of pleasure craft and almost

2,000 commercial craft already are faced with a difficult and complex maritime environment, sometimes because of poor judgment of operators, but more often because of the simple number of vessels. In these circumstances, the Coast Guard Report notes that “[s]ecurity zone requirements further limit dimensions” of the available and usable waterway. Coast Guard Report, p. 26.

Thus, if the Broadwater project is approved, the negative impact to maritime interests will be direct and immediate. Congestion will get much worse, with a concomitant increase in the probability of a major accident. Furthermore, the consequences of such an accident could be potentially severe for the entire region. As the Report notes, “Long Island Sound contributes at least \$5.5 billion to the regional economy each year.” Coast Guard Report, p. 37. The anticipated LNG shipments “[c]ould freeze traffic at certain places temporarily,” Coast Guard Report, p. 16, and an accident, particularly in The Race, could result in a major adverse impact on shipping. “Closure of the waterway through the Sound could have a multifaceted affect [sic] on the regional area, especially for oil transshipments” and “[j]ust-in-time inventory management means industry has about a week before there is an economic impact.” Coast Guard Report, p. 37.

5. Municipal and State Response Capabilities

First responders to any accident or attack on the proposed Broadwater FSRU or attendant LNG tankers will be drawn from the local communities. There is no State of Connecticut or federal Fire Department or paramedic unit. Fire and other emergency response units, other than law enforcement units such as the State Police, are provided by towns and municipalities. The small communities along the New York and Connecticut

coasts are staffed and equipped to address only their own domestic needs, such as car accidents and fires at residential homes and small businesses. Conventional firefighting trucks and equipment will be useless in responding to a natural gas explosion in the Sound. The limited number of medical evacuation helicopters will be inadequate to address the potentially significant number of casualties on board the FSRU or a damaged or sinking LNG tanker.

Each and every one of these safety issues must be addressed, in detail, in determining the acceptability of this proposal.

6. Technological Risks.

FERC's analysis of the Broadwater Project will be incomplete without an evaluation and assessment of the risks of system failure arising out of the use of novel and untested technology. As Broadwater's documents disclose, the planned FSRU will be the first of its kind in the world. This technology has never been tested or even built. Further, the planned LNG tankers used to reload the FSRU will also be the first of their kind. Existing tankers are only about ½ the size of the planned LNG tankers. Both the scale of the vessels, and the entire concept of piping volatile LNG between two independently moving platforms are new and untried. The potential synergistic effects of concatenating multiple untested and complex technologies must be carefully and thoroughly modeled and examined. FERC must seriously consider whether modeling alone can adequately assure the safety of these new technologies.

Related to the untried technologies issue is the fact that the closest analogs to the FSRU are the fixed oil and gas platforms in the North Sea and Gulf of Mexico. Hurricane Katrina damaged or destroyed 167 offshore platforms, ripping many of them

from their moorings. Katrina, while powerful, was determined by the National Hurricane Center to be only a Category 3 storm, on a rating system which extends to Category 5. Hurricanes have repeatedly struck Long Island Sound, which, obviously, is much narrower than the Gulf of Mexico. If the FSRU is torn loose, there is practically nowhere it could go without endangering commercial shipping or seacoast communities. Therefore, FERC must analyze the consequences of a Class 5 storm on the FSRU and whether it is possible to protect the shoreline communities in the event the anchoring system fails.

7. Environmental Impacts.

The fundamental goal of an evaluation under NEPA is to require responsible government agencies involved with a given project to undertake a careful and thorough-going analysis of the need for that project and its environmental impacts before committing to proceeding with the project.

As the Tenth Circuit has held:

The purpose of NEPA is to require agencies to consider environmentally significant aspects of a proposed action, and, in so doing, let the public know that the agency's decisionmaking process includes environmental concerns. *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97, 76 L. Ed. 2d 437, 103 S. Ct. 2246 (1983); *Sierra Club v. United States Dep't of Energy*, 287 F.3d 1256, 1262 (10th Cir. 2002).

Utahns For Better Transportation v. United States Dept. of Transp., 305 F.3d 1152, 1162 (10th Cir. 2002)

"The role of the courts in reviewing compliance with NEPA 'is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary and capricious.'" *Utah Shared Access Alliance v. United States Forest Serv.*, 288 F.3d 1205, 1208 (10th Cir. 2002) (quoting *Baltimore Gas*, 462 U.S. at 97-98)

Id. at 1163. As the District of Columbia Circuit has held:

As this court has held, "NEPA was intended to ensure that decisions about federal actions would be made only after responsible decision-makers had fully adverted to the environmental consequences of the actions, and had decided that the public benefits flowing from the actions outweighed their environmental costs." *Jones v. District of Columbia Redevelopment Land Agency*, 162 U.S. App. D.C. 366, 499 F.2d 502, 512 (D.C. Cir. 1974). . . .

Illinois Commerce Com. v. Interstate Commerce Com., 848 F.2d 1246, 1259 (D.C. Circuit 1988).

The Broadwater Project is breathtaking in its size and scope – and its potential impacts. Not only is its sheer physical size and impact enormous, but it is proposed for a uniquely valuable and sensitive environment.

The importance of Long Island Sound -- environmentally, esthetically, and economically – cannot be overstated. Over centuries, for different peoples and cultures, it has been a constant, precious source of nurture and nature. The Sound is one of the largest estuaries in the United States, where the tidal, sheltered waters support unique communities of plants and animals. Birds, mammals, fish, shellfish, and other wildlife depend on estuarine habitats as places to live, feed and reproduce. Numerous marine organisms, including many of the commercially valuable fish and shellfish species, depend on the Long Island Sound estuary at some point in their development. Long Island Sound is also economically important to the Connecticut-New York region for a variety of commercial and recreational purposes. *See*, Connecticut Long Island Sound Task Force Report, pp. 26-33. The Sound has been listed as an estuary of national significance. 33 U.S.C. 1330(a)(2)(B).

An analysis prepared for the United States Environmental Protection Agency concluded that annual Long Island Sound shellfishing and finfishing resources were

valued at approximately \$148 million. Recreational use was valued in excess of \$300 million and the total of all direct and indirect economic use of the Sound produced a “total use value” of more than \$5.2 billion. The Connecticut Long Island Sound Task Force Report puts the total use value at approximately \$5.5 billion. Coastal wetlands associated with the Sound added another \$90-100 million. Staggering as these numbers are, they fail to tell the full story.

While severely threatened by centuries of human activities, industrial pollution and overfishing, the Sound remains “an ‘essential fish habitat’ (EFH), defined as being necessary for fish spawning, breeding, feeding, or growth to maturity, for a variety of fish species.” Connecticut Siting Council Findings of Fact, Dckt. No. 197, TransEnergie Application for Certificate of Environmental Compatibility and Public Need, March 28, 2001, ¶ 86. In fact, “Long Island Sound is an environment used by Kemps ridley, Loggerhead, Green, and Leatherback marine turtles [which species] are listed as State or Federal Endangered or Threatened Species, according to Connecticut DEP and NOAA National Marine Fisheries Service.” *Id.*, ¶ 83. This fact is of obvious importance even beyond the confines of the Sound because “[m]ore than 70 percent of [overall marine] commercial fish stocks are now considered fully exploited, overfished or collapsed. Sea birds and mammals are endangered. And a growing number of marine species are reaching the precariously low levels where extinction is considered a real possibility.” *Has The Sea Given Up Its Bounty?*, *New York Times*, July 29, 2003. The health of the Long Island Sound ecosystem is important because the tidal, sheltered waters of estuaries support unique communities of plants and animals. Birds, mammals, fish, and other wildlife depend on estuarine habitats as places to live, feed, and reproduce.

The Connecticut legislature has been very clear -- the health of the ecosystem of the Long Island Sound is critical to the State and unchecked development and poorly-sited infrastructure is unacceptable.

The General Assembly finds that the growing population and expanding economy of the state have had a profound impact on the life-sustaining environment. The air, water, land and other natural resources, taken for granted since the settlement of the state, are now recognized as finite and precious. . . . Therefore the General Assembly hereby declares that the policy of the state of Connecticut is to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state.

Conn. Gen. Stat. § 22a-1.

The legislature has done more, expressly defining the policy of the state and making numerous legislative findings, including the following:

- (1) The waters of Long Island Sound and its coastal resources . . . form an integrated natural estuarine ecosystem which is both unique and fragile;
- (2) Development of Connecticut's coastal area has been extensive and has had a significant impact of the Long Island Sound and its coastal resources; . . .
- (5) The coastal area is rich in a variety of natural, economic, recreational, cultural and aesthetic resources, but the full realization of their value can be achieved only by encouraging further development only in suitable areas and by protection of those areas unsuited to development;
- ...
- (7) Unplanned population growth and economic development in the coastal area have caused the loss of living marine resources, wildlife and nutrient-rich areas, and have endangered other vital ecological systems and scarce resources.

Conn. Gen. Stat. § 22a-91. The state has supported its policies with action. Vast sums of public money have been spent to improve municipal waste treatment facilities and reduce

pollution and runoff. Millions more have been invested in our shellfish industry -- an industry once the envy of the nation -- that had been decimated by damage to habitat caused by thoughtless development activities. The state has a direct and immediate interest in the marine environment that is threatened by this project.

Consequently, FERC must produce a detailed and comprehensive analysis of all impacts of the Broadwater project on all relevant marine resources in the Sound including, but not limited to, commercial and recreational finfishing and, shellfishing, impacts to water quality, aquatic plant resources, marine mammals, and waterfowl and migratory birds. In short, FERC is not free to confine its consideration to Broadwater alone.

8. Alternatives

A central element of FERC's responsibilities in reviewing the Broadwater proposal is determining the existence and extent of claimed public need for the project and whether there are any reasonably foreseeable alternatives that could meet that need with fewer adverse impacts. As the United States Court of Appeals for the Second Circuit said almost thirty years ago, the

requirement that the agency describe the anticipated environmental effects of proposed action is subject to a rule of reason. The agency need not foresee the unforeseeable, but by the same token neither can it avoid drafting an impact statement simply because describing the environmental effects of and alternatives to particular agency action involves some degree of forecasting. . . . It must be remembered that the basic thrust of an agency's responsibilities under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects are fully known.

Scientists Institute For Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (2d Cir. 1973).

What is required is a review of projects that are reasonably foreseeable.

“Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry.’ . . . But implicit in this rule of reason is the overriding statutory duty of compliance with impact statement procedures to ‘the fullest extent possible.’” *Scientists Institute For Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079, 1092 (2d Cir. 1973). See also, *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) (“[T]he requirement in NEPA of discussion as to reasonable alternatives does not require ‘crystal ball’ inquiry. Mere administrative difficulty does not interpose such flexibility into the requirements of NEPA as to undercut the duty of compliance ‘to the fullest extent possible.’”)

“NEPA was created to ensure that agencies will base decisions on detailed information regarding significant environmental impacts and that information will be available to a wide variety of concerned public and private actors. *Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 575 (9th Cir. 1998).” *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000). As the Ninth Circuit recently stated:

When we consider the purposes that NEPA was designed by Congress to serve, what was done here is inadequate. Congress wanted each federal agency spearheading a major federal project to put on the table, for the deciding agency's and for the public's view, a sufficiently detailed *statement of environmental impacts and alternatives so as to permit informed decision making*. The purpose of NEPA is to require disclosure of relevant environmental considerations that were given a “hard look” by the agency, and thereby to permit informed public comment on proposed action ...

Lands Council v. Powell, 379 F.3d 738, (9th Cir. 2004).

With respect to Broadwater, it is clear that several alternatives will have to be thoroughly considered. As the company has stated that the point of the project is to provide increased access to new supplies of natural gas for the regional market, other plans and projects that could provide access to additional supply must be considered.

FERC currently has on its docket several other projects that do precisely that. The Atlantic Project includes a proposed FSRU moored off the New Jersey coast that would, in all material respects, duplicate the purposes of the Broadwater Project. Obviously, FERC must carefully examine which of these projects will result in the lesser environmental and safety impacts. Because the planned project purpose is to provide access to new supplies of gas, alternatives are not limited to floating regassification facilities. The Millennium Phase I series of projects is also designed to provide access to new supplies of Canadian natural gas and would tie into the exact same pipeline network as Broadwater. This new version of the Millennium project, in fact, proposes to use and upgrade existing pipelines in New York and Connecticut and would obviate the need for *any* additional pipeline construction under the Sound. Clearly, these facts must be considered by FERC in its analysis of alternatives.

9. Cumulative Impacts

As one federal appellate court recently noted when considering cumulative impacts in the context of the preparation of an environmental impact statement (“EIS”) under NEPA:

Finally, . . . when several proposals . . . that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, *their environmental impacts must be considered together.*

Churchill County v. Norton, 276 F.3d 1060, 1075 (9th Cir. 2001) (Internal quotation marks omitted)(emphasis added). See also, *Custer County Action Ass'n v. Garvey*, 256 F.3d 1024, 1035 (10th Cir. 2001); *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000); *Colorado Envtl. Coalition v. Dombeck*, 185 F.3d 1162, 1176 (10th Cir. 1999)(“[a]n environmental impact statement must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts of ‘past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.’”)

As noted above, there are at least two major utility projects currently under consideration that involve impacts to Long Island Sound. The Islander East project, while approved by FERC, has not yet obtained regulatory approval under Sections 401 or 404 of the Clean Water Act. Islander East intends to drive a major pipeline for 22.6 miles under the Sound terminating near Shoreham, New York. Construction will displace approximately 650,000 cubic yards of sediment. Broadwater also plans to build a 22 mile long underwater pipeline which will create major impacts to the seafloor. In fact, according to early projections, the two pipelines may, at one point, cross each other. There can be no doubt that the impacts of these major projects need to be considered together, in essence as a 44 mile long pipeline. The seabed, of course, is unaware of the corporate ownership of any particular pipe and for the purposes of NEPA, it is the impact to the affected resource, not the ownership of the projects, that determines when a cumulative impact analysis is required.

CONCLUSION

Broadwater is an immense and unique project. While no one doubts that additional supplies of natural gas are needed, federal law mandates that FERC carefully consider *where* facilities to process these supplies should be located. The highly sensitive character of Long Island Sound is clearly unsuited for a facility of this type. I urge FERC, therefore, to consider carefully all the safety and security risks, particularly those related to accidents and terrorism threats, the economic consequences to the region in the event of an accident or attack, reasonable project alternatives, consider the cumulative impacts of all the relevant projects, and detail the likely environmental and other impacts of this project in the EIS.

Respectfully submitted,



Richard Blumenthal
Attorney General, State of Connecticut

Dated: March 8, 2006

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

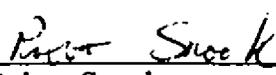
**BROADWATER ENERGY LIQUEFIED
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**DOCKET NO. CP06-54-000
CP06-55-000
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Hartford, Connecticut this 8th day of March, 2006.



Robert Snook
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