

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Broadwater Energy, L.L.C. and)	
Broadwater Pipeline, L.L.C.)	
)	
Appellant,)	
)	
-vs-)	
)	
State of New York)	
Department of State,)	August 28, 2008
)	
Appellee)	

**REPLY OF THE ATTORNEY GENERAL OF CONNECTICUT TO RESPONSE OF
BROADWATER ENERGY LLC AND BROADWATER PIPELINE LLC TO MOTION
FOR LEAVE TO FILE BRIEF**

On August 15, 2008, the Attorney General of Connecticut (“Attorney General”) moved for leave to file a brief opposing the request of Broadwater Energy L.L.C. and Broadwater Pipeline L.L.P. (“Broadwater”) for an override by the Secretary of the Department of Commerce (“Secretary”) of the DOS’s objection (“Objection”) to the request of Broadwater for a certification of consistency for its proposed pipeline under Section 387(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. § 1451 *et seq* (“CZMA” or the “Act”). On August 25, 2008, Broadwater filed a Response opposing the Attorney General’s motion to file amicus brief. The Attorney General now replies as follows.

Argument

Broadwater claims that the Secretary “must” deny the Attorney General’s motion to file an amicus brief because 1) an amicus brief may only be permitted if the Secretary determines it

is needed pursuant to 15 C.F.R. § 930.130(a)(2); 2) the Administrative Procedures Act (“APA”) does not provide a “right to unilateral participation” in this appeal; and 3) the proposed amicus brief “would disrupt the ‘orderly conduct of public business’” (Response, pp. 2-4, citation omitted.)

As Broadwater’s Response appears to recognize, the Secretary has authority under the regulations of the National Oceanic and Atmospheric Administration (“NOAA”) to permit supplemental comment if the Secretary deems it necessary. See, 15 C.F.R. § 930.130(a)(2). The Secretary has exercised this discretion in the past to permit amici briefs. See, Decision and Findings of the Secretary of Commerce in the Consistency Appeal of Millennium Pipeline, L.P. from an Objection by the State of New York, Dec. 12, 2003. Thus, far from being prohibited by NOAA’s regulations, the Attorney General’s motion is a proper and timely request for permission under the appropriate regulations to file a brief in support of the New York Department of State (“NY DOS”).

With regard to the APA, Broadwater asserts that there is no “right to unilateral participation in this proceeding.” (Response, p. 3.) Broadwater adds that the Nuclear Regulatory Commission’s regulations generally prohibit amici briefs. *Id.* In light of the fact that NOAA regulations expressly grant the Secretary the discretion to admit an amicus brief which is what the Attorney General is seeking, these assertions are utterly irrelevant.

Finally, Broadwater claims that, even if the Secretary has discretion, he should still not grant permission to file the Attorney General’s brief because that would disrupt the orderly conduct of public business. Response, p. 4.

This argument is nonsensical. Nothing about the filing of the Attorney General’s brief will affect the schedule or procedures in this pending case in any way. The Attorney General is

the chief legal officer of the State of Connecticut and has had a continued interest in protecting the rights of the citizens of the State. Long Island Sound is a shared body of water and this project would have direct and significant impacts of the coastal resources of both the States of New York and Connecticut. The Attorney General's brief addresses numerous issues of direct relevance to the State of Connecticut that no other party is positioned to raise and will assist the Secretary in his deliberations on this matter. Finally, the Attorney General's brief was attached to the motion for leave to file and could not result in delaying this proceeding

In sum, the Attorney General's brief was properly submitted, and should be accepted and considered.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served this 28th day of August, 2008, on the following:

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