

2.1.6 Responses to Comments from Organizations and Companies

Letter Number	Commentor
OC-01	Save the Sound ,Appendix Synapse comments, Coastal Vision comments
OC-02	Citizens Campaign for the Environment (also includes IN40 – Tettelbach)
OC-03	CT Stop the Pipeline (Katherine G. Kennedy)
OC-04	Cross Sound Ferry Services
OC-05	Nature Conservancy
OC-06	Save the Sound
OC-07	Audubon Connecticut
OC-08	New England Energy Alliance
OC-09	The Maritime Aquarium at Norwalk (Amy Ferland)
OC-10	Repsol Energy North America Corp.
OC-11	South Fork Groundwater Task Force (Julie Penny)
OC-12	South Fork Broundwater Task Force (Julie Penny)
OC-13	Group for the South Fork (Robert DeLuca)
OC-14	Norwalk River Watershed Association (Lillian Willis)
OC-15	Miller Marine Services (James Miller)
OC-16	Long Island MidSuffolk Business Action (Ernest M. Fazio)
OC-17	Norwal River Watershed Association (Kathleen Holland and Micael Law)
OC-18	Greenport Seafood Dock, Inc. (Mark S. Phillips)
OC-19	Cross Sound Cable Company (Robert Daileader, Jr.)
OC-20	Wading River Civic Association (Sid Bail)
OC-21	Guilliani Partners, LLC (Richard Sheirer and Thomas Von Essen)
OC-22	South Nassau Communities Hospital
OC-23	New York City Economic Development Corporation (Gil Quiniones)
OC-24	Connecticut Harbor Management Association (John T. Pinto)
OC-25	Connecticut Harbor Management Association (John T. Pinto)
OC-26	Southern New England Fishermen's and Lobstermen's Association
OC-27	Norwalk Shellfish Commission (John Frank)
OC-28	Nassau Hiking and Outdoor Club (Guy Jacob)
OC-29	Citizens Campaign for the Environment (Maureen Dolan Murphy)
OC-30	Friends of the Bay (Kyle Rabin)
OC-31	Huntington Hospital
OC-32	League of Women Voters of Connecticut
OC-33	Citizens Campaign for the Environment) (Kasey Jacobs)
OC-35	Conservationists United for Long Island Sound

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OC1-2  Long Island Sound for a private industrial use is inconsistent with New York State's Coastal
Policies and would violate the Coastal Zone Management Act.

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OUTLINE OF ARGUMENT

I. BACKGROUND

II. THE PROCESS HAS NOT ALLOWED FOR SUFFICIENT PUBLIC PARTICIPATION AND TRANSPARENCY

- A. The DEIS has not provided sufficient information or supporting documentation.
- B. DEIS has not provided an adequate public comment period.
- C. CFE/STS has not received all CEH materials relevant to the Broadwater proceeding.

III. THE DEIS FAILS TO FULLY AND FAIRLY DISCUSS AND SUPPORT ITS ANALYSIS OF THE REGIONAL ENERGY ALTERNATIVES

- A. The purpose of the project is defined inappropriately narrow as to define competing alternatives out of contention.
- B. Feasible energy alternatives to Broadwater exist such as other supplies of natural gas to the region and efficiency and conservation programs.
- C. At a minimum, a regional approach to site LNG facilities is needed.
- D. The DEIS relies on incorrect energy assumptions to form its conclusions.
 - 1. The DEIS relies on outdated reports to substantiate the finding that Broadwater will save citizens money.
 - 2. The DEIS fails to support a finding that Broadwater might save citizens money.
 - 3. The energy information the DEIS relies on is out of date, misinterpreted and unsupported.
 - 1. Outdated Information
 - 2. Misinterpreted Information
 - 3. Unsupported Information

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- IV. THE DEIS FAILS TO ADEQUATELY ADDRESS AND ANALYZE THE ENVIRONMENTAL ALTERNATIVES AND FAILS TO PROVIDE ADEQUATE SUPPORT FOR ITS CONCLUSIONS.
- A. The DEIS fails to adequately address and analyze feasible and practical Environmental Alternatives
 - B. The DEIS Fails to provide adequate support for its conclusions
- V. THE DEIS FAILS TO FULLY AND FAIRLY DISCUSS THE ENVIRONMENTAL CONSEQUENCES OF THE PROJECT OR PROVIDE SCIENTIFIC SUPPORT FOR ITS CONCLUSIONS
- A. The DEIS fails to substantiate that Broadwater will positively impact air and water quality through repowering of dirtier plants.
 - B. Broadwater should be regulated as a fuel conversion plant under the Prevention of Significant Deterioration ("PSD")rules of the Clean Air Act.
 - C. General DEIS Air Comments
 - D. The DEIS fails to adequately assess the potential for creating an opportunity for introduction of invasive species.
 - E. The DEIS claim that efforts to restore pipeline trenches will mitigate the impacts caused by installation is not supported by the evidence.
 - F. The DEIS contains numerous deficiencies and inaccuracies related to the environmental assessment of Broadwater.
- VI. THE BROADWATER PROPOSAL IS INCONSISTENT WITH NEW YORK'S COASTAL ZONE MANAGEMENT PROGRAM
- A. Broadwater is inconsistent with NY coastal policies and violates the public trust doctrine.
 - 1. Broadwater will negatively impact the developed coast.
 - 2. Broadwater will negatively impact the public coast.
 - 3. Broadwater will negatively impact the working coast.
 - 4. Coastal Safety DEIS Comments
 - i. The heat flux value used in establishing zone 1 is low and should be adjusted.

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ii. To the extent that the DEIS relies on Sandia to establish safety and security zones, its analysis should be re-evaluated under the more current Cabrillo standard.

iii. The DEIS fails to provide sufficient details on the duration of a tanker's moving security zone.

iv. The DEIS fails to provide sufficient details of the security response to a breach of an established safety and security zone.

VII. THE DEIS FAILS TO PROPERLY TAKE INTO ACCOUNT THE CUMULATIVE IMPACTS OF MULTIPLE INDUSTRIAL AND ENERGY PROJECTS IN THE LONG ISLAND SOUND

- A. The analysis contained in the DEIS is insufficient to determine if Broadwater will cause cumulative impacts to the seafloor, water and wildlife of Long Island Sound.
- B. The analysis contained in the DEIS is insufficient to determine Broadwater's cumulative energy or air quality impact on the Northeast and/or Long Island Sound region.
- C. While the information contained in the DEIS is sufficient to determine that Broadwater will result in the cumulative industrialization of Long Island Sound, the final conclusion is flawed.
- D. The analysis in the DEIS is insufficient to determine Broadwater's cumulative acoustic and light impacts

VIII. THE DEIS FAILS TO FULLY AND FAIRLY DISCUSS THE IMPACT OF THE PROJECT ON OTHER STATE STATUTORY AND REGULATORY SCHEMES AND PROGRAMS

- A. The analysis contained in the DEIS is insufficient to determine if Broadwater will cause cumulative impacts to the seafloor, water and wildlife of Long Island Sound.
- B. The analysis contained in the DEIS is insufficient to determine Broadwater's cumulative energy or air quality impact on the Northeast and/or Long Island Sound region.
- C. The information contained in the DEIS is insufficient to determine whether Broadwater will result in the cumulative industrialization of Long Island Sound.

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- D. The analysis in the DEIS is insufficient to determine Broadwater's cumulative acoustic and light impacts

IX. CONCLUSION

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I. BACKGROUND

Broadwater Energy, LLC, a joint venture of Shell and Transcanada, filed an application in Docket No. CP06-54-000, pursuant to Section 3 of the National Gas Act ("NGA"), for authorization to construct and operate a Liquefied Natural Gas ("LNG") terminal and associated facilities in Long Island Sound on January 30, 2006.

Broadwater Pipeline LLC ("Broadwater Pipeline") filed an application in Docket Nos. CP06-55-000 and CP06-56-000, pursuant to Section 7(c) of the NGA, Part 157 subpart A of the Commission's regulations (a certificate of public convenience and necessity), and Part 157, Subpart F (blanket construction certificate) for authorization to construct, own, operate, and maintain a subsea pipeline to transport natural gas from the LNG terminal to the existing Iroquois pipeline on January 30, 2006.

Broadwater is proposed for the middle of Long Island Sound, in New York state waters. It will be approximately 11 miles south of the nearest Connecticut coastline and nine miles north of the New York shore of Long Island. The Broadwater Complex is expected to be serviced by 2 to 3 weekly tanker shipments of LNG. These tankers will enter the waters of Long Island Sound through the eastern most access point--The Race. The security zones associated with the proposed project (with includes the tanker traffic) will lie within the territorial limits of the State of New York and, in part, within the territorial limits of the State of Connecticut. Such zones will affect important marine and other natural resources and will impact uses including but not limited to commercial shipping, recreational boating, and commercial and recreational fishing within both States. These resources are held in public trust for the residents of New York and Connecticut, thus the proposal raises important legal issues concerning the rights of both states' citizens.

Additionally, the construction, operation, and maintenance of the Broadwater Complex and the Broadwater Pipeline's 30-inch, 22-mile subsea pipeline will impact the water quality, habitats and marine resources of Long Island Sound.

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FERC issued a Draft Environmental Impact Statement ("DEIS") in the above captioned proceeding on November 17, 2006,¹ noticed that DEIS in the Federal Register on November 27, 2006,² and set a deadline of January 23, 2007 for public comment.³ Nearly one month after issuing the DEIS, FERC issued a Notice of Intent to Hold Public Meetings on January 9, 10, 11, and 16, 2006.⁴

II. THE PROCESS HAS NOT ALLOWED FOR SUFFICIENT PUBLIC PARTICIPATION AND TRANSPARENCY

A. The DEIS has not provided sufficient information or supporting documentation.

OC1-3 [FERC has not provided the sufficient information or supporting documents to provide for adequate public participation in this process. As potentially the first FSRU worldwide, and as the first and only water based terminal in FERC's jurisdiction, this projects warrants close and careful consideration beyond what has been characterized as the "clear intention for expedition under the FERC's light-handed approach regarding new LNG projects."⁵

OC1-4 [The level and detail of an EIS should be commensurate with the importance of the impact.⁶ Broadwater signifies a shift in Long Island policy, has a significant number of environmental impacts, and represents the first time FERC has jurisdiction over a floating regasification unit. There are no existing facilities like the one Broadwater proposes anywhere in the world, as such the level and detail required by this DEIS should be of the highest level. Currently, the DEIS is inadequate to determine the full construction and operational impacts of this facility.

¹Notice of Availability of the Draft Environmental Impact Statement for the Proposed Broadwater LNG Project, 71 Fed. Reg. 68,597 (November 27, 2006).

²*Id.*

³*Id.* at 68,598.

⁴ Notice of Intent to Hold Public Meetings and to Hear Public Comment on the Proposed Broadwater LNG Project Draft Environmental Impact Statement, 71 Fed. Reg. 77,009 (Dec. 15, 2006).

⁵ Brian D. O'Neill, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., 3-56 *Energy Law and Transactions* 56.02, *Energy Law and Transactions*, Copyright 2006, Matthew Bender & Company, Inc., a member of the LexisNexis Group. 6 CONVENTIONAL ENERGY SOURCES: PRODUCTION, TRANSMISSION, DISTRIBUTION, AND END USES CHAPTER 56: Synthetic Natural Gas (SNG) and Liquefied Natural Gas (LNG) 3-56 *Energy Law and Transactions* 56.02.

⁶ 40 CFR § 1502.15.

OC1-3 All Project-related information that is not considered Critical Energy Infrastructure Information (CEII) or Sensitive Security Information (SSI) is available to the public in FERC's electronic docket for the Project (Docket Nos. CP06-54-000 and CP06-55-000).

Individuals can obtain the CEII and SSI information by signing a confidentiality agreement. The draft EIS was sent to more than 5,000 individuals, agencies, and organizations, including public libraries in the general Project area. In addition, we have provided information regarding the proposed Project and invited public comment about the Project at four public scoping meetings and at four public comment meetings on the draft EIS.

OC1-4 We have expanded sections in the final EIS, as appropriate. The final EIS provides more than enough information to fully evaluate the potential impacts of the Broadwater Project in accordance with NEPA requirements.

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OC1-5 The intervenors and the general public have a right to comment on a full and complete project, not a partially designed one. It appears from the numerous pages of additional recommendations listed by the Commission in the DEIS,⁷ that there are substantial information gaps including significant portions of the actual design that have not yet been engineered or finalized. As is indicated by the 6 pages of detailed design questions FERC still needs from Broadwater, the current design uncertainties,⁸ lack of quantitative information to assess potential air quality impacts,⁹ lack of information on hazardous materials receipt and storage,¹⁰ and lack of a draft emergency response and evacuation plan¹¹ are but a few such data gaps to which the public is entitled to a full review and opportunity to comment before the official comment period actually closes.

OC1-6 Without those components, members of the public, intervenors, and intervenor's experts are only commenting on a partial project. An approach that pushes an application through a comment period while filling the details in at a later date does not afford adequate public participation. Without the full design there can be no draft finding of "no significant impact."

OC1-7 While reasonably accessible documents can be incorporated by reference to cut down on bulk, documents not likely to be easily accessible may not be incorporated by reference.¹² Section 4.0 *Alternatives*¹³ states "information used to evaluate alternatives to the proposed Project included published studies, comments and suggestions from regulatory agencies, analyses prepared for similar projects, comments from the public and data and analyses provided by Broadwater in its application." This information was not accessible. On 5/15/2006 2:49 PM an electronic request was sent to Broadwater requesting paper or CD versions of certain resource reports. With that request denied, an electronic request was made to FERC on 5/19/2006 3:38 PM explaining that there was a glitch with the eLibrary and Save the Sound, as well as other citizens, were unable to access large portions of the application documents over the course of

⁷ Fed. Energy Reg. Comm'n DEIS, at 3-6, 3-13-15, 3-24, 3-55, 3-78-80, 3-85, 3-141, 3-157, 3-172, 3-195-3-201, 3-203, 3-204, 3-228-9.

⁸ *Id.* at 3-195 - 3-201.

⁹ *Id.* at 3-172.

¹⁰ *Id.* at 3-203.

¹¹ *Id.* at 3-228-9.

¹² 40 C.F.R. § 1502.21 (2007).

¹³ DEIS 4.0 (p. 4-1).

OC1-5 FERC believes that the EIS provides adequate detail on the proposed Project to assess environmental impacts in accordance with NEPA. Additional engineering plans and an Emergency Response Plan will be developed and finalized in coordination with the appropriate federal, state, and local agencies and will be available for public review on the FERC docket.

OC1-6 Please see our response to comment OC1-5.

OC1-7 Appendix B of the final EIS provides a comprehensive list of the technical references that were used in our evaluation of the proposed Broadwater Project. Broadwater's application and draft versions of the application have been available on the FERC website since they were filed. Any "glitch" was temporary. Certain information was not available over the internet but is available upon request by contacting FERC's Public Reference Room. We are unaware of any attempt by Save the Sound to acquire non-internet public documents from FERC.

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OC1-7 weeks. FERC was on notice that the documents were not accessible, and six months later on November 17, 2007 the DEIS was issued incorporating by reference data in those same reports.

OC1-8 The DEIS must also include discussion of any irreversible or irretrievable commitment of resources which would be involved in the proposed action.¹⁴ The Emergency Response Plan that impacts the citizens' financial liability and personal safety and provides for an irreversible or irretrievable commitment of resources, is not included in this DEIS and is not otherwise available.¹⁵ As such the public is unable to provide comment. In light of the fact that the citizens will pay, through federal taxes, the costs associated with the U.S. Coast Guard expenses, and may pay, through state and local taxes, a portion of the costs for upgrades to state and local emergency response as well as training, citizens should have an opportunity to comment on that plan prior to the issuance of any approvals to Broadwater.

OC1-9 B. The DEIS has not provided an adequate public comment period.

OC1-10 FERC has failed to allow proper time for public understanding and comment on this proposal. The timing of the DEIS release and its associated comment period fell within four major holidays and as such, do not afford the greatest possible input from a region so clearly invested in this decision. The bulk of the public's comment period was consumed by four of the nation's largest, most time intensive holidays. The DEIS was issued on the Friday leading into the Thanksgiving week, Hanukkah followed from December 15-23, then Christmas December 25, and finally New Year's Day on January 1. In each case, it is not merely one day of distraction. Each of these holidays is traditionally accompanied by vacations and travel. When these time constraints are overlain the FERC comment period, all that remains for any citizen to truly focus on this document and its foundational reports is a handful of useful days in early December and a couple of weeks in January. As FERC has surely noted from the enormous volume of public letters submitted to the docket, the citizens of this region are willing and able stakeholders in this process. They should be given a full and reasonable opportunity to participate in the permit process.

¹⁴40 C.F.R. §1502.16.

¹⁵Fed. Energy Reg. Comm'n at 3-228-9.

OC1-8 As stated in Section 3.10.6 of the final EIS, if FERC provides initial authorization for the Project, Broadwater would be required to work with the appropriate federal, state, and local agencies to prepare an Emergency Response Plan. As described in Section 3.10.6, a Cost-Sharing Plan must be included in the Emergency Response Plan. FERC must approve the Emergency Response Plan prior to final approval to begin construction.

OC1-9 Please see our response to comment OC1-8.

OC1-10 The Commission did extend its formal comment period from the typical 45 to 60 days. As we stated in the public meetings, we will review and consider all comments received until the Commission meets to formally consider the Project. We have addressed all comments received on the draft EIS between November 2006 and November 2007 in the final EIS.

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OC1-11 [FERC can look to other NY/CT NEPA documents in recent years as an indication of more appropriate comment period. The EPA's NEPA process for the site designation of dredge materials in Western Long Island Sound,¹⁶ a process that only encountered one time distracting holiday, provided a 95 day comment period. Additionally, EPA's extended comment timeline was provided for a process that has a long history in this region, including an existing Long Island Sound dredge disposal policy. In the instant case, there are four conflicting holidays and no existing precedent for this particular use of Long Island Sound. Considering the size, scope and precedent setting nature of this review, a 60 day comment extension is warranted.

OC1-11 Please see our response to comment OC1-10.

OC1-12 [C. Save the Sound has not received all CEII materials relevant to the Broadwater proceeding.

OC1-12 Please see our response to comment OC1-10.

OC1-13 [Save the Sound has not been provided access to all Critical Energy Infrastructure Information ("CEII"). On August 4, 2006 Save the Sound provided a timely request to Broadwater for CEII that had been previously sought by other intervenors in this docket.¹⁷ Shortly thereafter Save the Sound was provided with a protective agreement and associated non-disclosure certificates. Save the Sound executed that document on November 30, 2006 and Broadwater filed it with the Commission on December 13, 2006.¹⁸ A follow-up correspondence was sent on January 2, 2007 reiterating the Save the Sound request for CEII materials and expanding that request to also include any related background material, references, responses or follow-up that accompanied them.¹⁹ Save the Sound has since received a set of CEII materials from the applicant. On January 19, 2007 a follow-up e-mail reasserting resource report CEII materials, which formed the basis for the application, was made.

OC1-13 Save the Sound states that it received a set of CEII materials from Broadwater. It is unclear if the set was deficient and, if so, which items were not provided. Because no further information has been provided to FERC by Save the Sound, we assume that Save the Sound has been provided access to the appropriate documents.

¹⁶Ocean Disposal: Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut, 40 C.F.R. pt. 288 (Env't. May 2005), Email from Ann Rodney, USEPA New England Region, to Leah Schmalz, Director of Legislative and Legal Affairs for Save the Sound, A Program of Connecticut Fund for the Environment (Nov. 27, 2006 6:02 PM EST) (on file with author), U.S. EPA, Final Environmental Impact Statement (EIS) for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York, May 2005 available at http://www.epa.gov/ncr/ndreg/assets/pdfs/eis2003/fis_100.pdf (last visited Jan. 4, 2007).

¹⁷Email from Leah Schmalz, Director of Legislative and Legal Affairs for Save the Sound, A Program of Connecticut Fund for the Environment, to Brett Snyder, LeBoeuf, Lamb, Greene & MacRae LLP (Aug. 4, 2006, 2:46 PM EST) (on file with author).

¹⁸Protective Agreement between Broadwater Energy and Connecticut Fund for the Environment (Dec. 13, 2006), available at http://elibrary.ferc.gov/dmws/file_list.asp?accession_num=20061213-5009 (last visited Jan. 4, 2006).

¹⁹Email from Leah Schmalz, Director of Legislative and Legal Affairs for Save the Sound, A Program of Connecticut Fund for the Environment, to Brett Snyder, LeBoeuf, Lamb, Greene & MacRae LLP (Jan. 2, 2006, 3:08 PM EST) (on file with author).

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III. THE DEIS FAILS TO FULLY AND FAIRLY DISCUSS AND SUPPORT ITS ANALYSIS OF THE REGIONAL ENERGY ALTERNATIVES

OC1-14 Broadwater is not and will not be required by the present or future public convenience and necessity, as prudent, feasible, and practical energy alternatives exist that offer significant environmental advantage over the proposed project or its components.

OC1-15 In March, 2006, Synapse Energy Economics ("Synapse") released a report entitled "The Proposed Broadwater LNG Import Terminal: An Analysis and Assessment of Alternatives"²⁰ ("Synapse Report"). Synapse identified and evaluates potential alternatives to Broadwater that could meet the long-term energy needs of the New York and Connecticut markets.

Based upon available data and research, the Synapse Report demonstrated that: 1) Broadwater is unnecessary; 2) sufficient natural gas demand reduction can be accomplished by fully implementing Connecticut and New York's existing energy efficiency programs and renewable portfolio standards and by investing in new gas efficiency programs; and 3) regardless of our investment in those programs new LNG import facilities and pipeline capacity upgrades are being built in the region.

In January 2006, Synapse revisited the 2006 report in the context of the DEIS and found that those original conclusions have been bolstered by recent developments.

Synapse is a research and consulting firm that specializes in energy, economic and environmental topics. These reports were developed by the following individuals:

- Ezra Hausman, a Senior Associate with Synapse. He holds a Bachelor of Arts degree from Wesleyan University, a Masters degree in Civil Engineering from Tufts University, a Masters degree in Applied Physics and a Doctorate in Earth and Planetary Sciences from Harvard University.²¹
- Kenji Takahashi a Synapse Research Associate, holds a MA in Urban Affairs and Public Policy with a concentration in Energy and Environmental Policy from the

²⁰ Ezra Hausman, et al., Synapse Energy Economics, *The Proposed Broadwater LNG Import Terminal: An Analysis and Assessment of Alternatives* (2006), available at <http://www.synapse-energy.com/Downloads/SynapseReport2006-03.Save-the-Sound.Alternatives-to-Broadwater-LNG-Terminal.05-033.pdf>.

²¹ CV attached for principal draftsmen.

OC1-14 As described in Sections 1.1 and 4.0 of the final EIS, we have determined that (1) there is a need for additional natural gas in the region; and (2) the alternatives that could achieve the same objectives as the proposed Project have greater environmental impacts than the proposed Project.

OC1-15 Section 1.1.5.4 of the final EIS addresses the March 2006 Synapse report, updates to the report, and additional information provided by Synapse.

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University of Delaware and a BA in Law with a concentration in Public Administration from Kansai University in Osaka Japan.

- Bruce Biewald, President of Synapse, has 21 years of experience consulting on issues of energy economics and electric industry restructuring. He has testified in more than seventy regulatory proceedings in twenty four states and two Canadian provinces;
- David Schlissel a Synapse Senior Consultant with 27 years of experience as a consultant and attorney on complex management, engineering and economic issues, primarily in the field of energy. He holds BS and MS engineering degrees from MIT and Stanford, and a JD degree from Stanford Law School;

OC1-16 A. The purpose of the project is defined inappropriately narrow as to define competing alternatives out of contention.
Broadwater and the FERC DEIS define the purpose or need for the project too narrowly. Simply restating Broadwater's specific proposal as an actual claim of "need" does not turn it into fact.

OC1-17 The alternatives analysis generally discusses the "purpose and need" for the project as if these were the same. From the standpoint of alternatives analysis, these should be viewed as distinct concepts. "Purpose" analysis legitimately considers whether other viable alternatives exist which could meet the stated aim of the project, to wit, providing 1 bcf of gas per day to the target market (though Broadwater has not to date identified a target market²²). The analysis in the DEIS generally focuses on this, less important, question. For example:

- 1.1.3.2 Regional Supply (p 1-10)
"Finally, several new pipeline projects have been proposed within or near the regional market areas that would be served by natural gas from the Broadwater Project (see Section 4.3). Each of the projects would supply gas obtained from existing U.S. and Canadian sources. If all were constructed as proposed, the maximum potential increase in gas supply to the New York City, Long Island, and Connecticut markets would be a small fraction of the gas that would be supplied by the Project."

²² Phillip Ribbick, Repsol Energy North America Corp., *Comments on the Draft Environmental Impact Statement for the Broadwater LNG Project* (2007), available at http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20070111-0066. This report is attached. Information contained therein regarding markets and infrastructure upgrades are incorporated by reference.

OC1-16 Section 1.1 of the final EIS describes the regional need for energy. Broadwater has proposed a Project with the purpose of meeting at least a portion of this need by diversifying the source of natural gas, providing storage, and adding up to 1 bcf of natural gas to the regional supply. As a result, we compared the proposed Project with alternatives and combinations of alternatives that can provide similar solutions to the long-term energy needs of the region.

OC1-17 Please see our response to comment OC1-16.

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OC1-18 [This narrow definition of the purpose or need for the project results in a less-than-whole picture. Because these other pipelines do not replace the narrowly defined "purpose" of the Broadwater, the DEIS implies that they do not meet the regional "need" for energy but such a conclusion is neither established nor supported.

In considering alternatives, the first thing an agency must do is to define the purpose of the project.²³ The agency may not "contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence)."²⁴ "If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act."²⁵

OC1-19 [In this case, the need being addressed by the Broadwater Project are the long term energy needs of the region. This question of need is treated only secondarily in this analysis, as it has been in documents provided by Broadwater. Synapse Energy Economics has demonstrated that there are much more cost effective ways to balance supply and demand in the target region,²⁶ which have much lower risks—security, environmental, cost, geopolitical— than engaging in industrial development in Long Island Sound. Such development would increase our reliance on fossil fuels from politically unstable regions of the Mideast and Africa, and facilitate the exposure of the domestic gas market to an OPEC-style international market.²⁷

OC1-20 [Implementation of existing RPS and cost-effective demand management programs, both electricity and gas, will obviate the need for this project. Such renewable energy and demand side measures will add far greater diversity to the mix of energy supply in the region and a much better hedge against fuel prices than the Broadwater LNG project.

B. Feasible energy alternatives to Broadwater exist such as other supplies of natural gas to the region and efficiency and conservation programs.

²³ *Simmons v. US Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Synapse p 10 and 12

²⁷ I Ezzo Hausman, & Kenji Takahashi, Synapse Energy Economics, *The Proposed Broadwater LNG Import Terminal Update of Synapse Analysis* (2007).

OC1-18 Please see our response to comment OC1-16.

OC1-19 Broadwater is proposing a Project that would make a significant contribution to meeting the long-term energy needs of the region. Section 1.1.5.4 of the final EIS addresses the March 2006 Synapse report, updates to the report, and additional information provided by Synapse during the public comment period. Although we agree that the proposed solutions to the long-term energy needs of the region presented in the Synapse report are conceptually sound, they are not practical because there are no proposed or existing funding sources for the substantial infrastructure needed for the development of renewable resource energy projects. In addition, these options would require a major commitment by energy users to change use habits, including financial commitments to replace existing equipment.

OC1-20 We have addressed the options of demand management programs and renewable energy sources in Section 4.2 of the final EIS and have determined that they would offset only a small portion of the region's energy needs.

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1. Broadwater is ill-suited to meet the requirements of the New York/Connecticut region.

There is no dispute that on a national basis, demand for natural gas has been growing while domestic production from conventional sources has struggled to keep pace. This does not mean, however, that a major LNG import terminal in Long Island Sound, is required to meet local gas demand. In fact, the Broadwater Energy documentation does not substantiate any particular requirement for additional natural gas supplies in the target region.

OC1-21 [Synapse showed that the region targeted by Broadwater has and will continue to have ample natural gas import capacity to supply the regional demand for most days of the year and that any import capacity shortfalls would only manifest themselves during peak demand periods during the winter heating season, due to the strong seasonality of gas use.²⁸ And that better infrastructure for storage to meet peak demand, not vast quantities of new supply, is better suited to the actual needs of the CT/NY region.²⁹

2. State mandated efficiency and renewable energy programs can offset growing demand.

OC1-22 [In the 2006 report Synapse found that full implementation of renewable portfolio standards in New York and Connecticut would save approximately 52 bcf of gas each year and that electric energy efficiency initiatives could save an additional 81 bcf at very low cost compared to the cost of natural gas.³⁰ Together these measures alone would offset roughly 75% of the expected gas demand growth in the region through 2012. When supplemented by gas demand side management, expanded use of combined heat and power, and repowering of existing power plants, these measures represent more than enough potential savings to offset all anticipated demand growth over the next decade.

OC1-21 Section 1.1.5.4 of the final EIS addresses the March 2006 Synapse report, updates to the report, and additional information provided by Synapse. Of all of the available projections, the Synapse report is one of only two reports we found that suggests there is not a need for additional natural gas supplies in the area, except during peak winter demand periods.

OC1-22 Please see our response to comment OC1-19.

²⁸ Synapse 2006 at 3.

²⁹ *Id.*

³⁰ *Id.* at 10.

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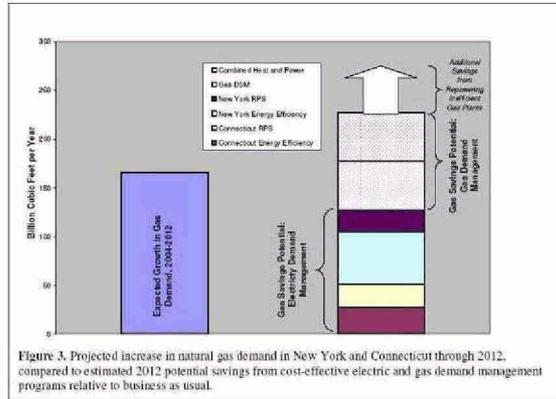


Figure 3. Projected increase in natural gas demand in New York and Connecticut through 2012, compared to estimated 2012 potential savings from cost-effective electric and gas demand management programs relative to business as usual.

OC1-23

In the 2007 update, Synapse found that the federal government forecast for gas demand over the next two decades has been revised significantly downward relative to previously available forecasts.³¹ Referencing the Connecticut’s Energy Independence Act that requires electricity suppliers and distribution companies to acquire 4% of their supply from combined heat and power implementation of commercial/industrial energy efficiency by 2010 and the expanded use of demand management in Southwest Connecticut, Synapse also found that the 2006 report may have been conservative in estimating the future role of efficiency and renewables in meeting the region’s energy needs.³² These programs are among the most cost-effective ways for the states to meet growing demand, to accomplish climate change emission reduction goals and to reduce energy bills.³³

3) New LNG facilities and pipeline upgrades designed to meet the Northeast’s needs are being built.

³¹ Synapse 2007 page 3
³² Synapse 2006 page 3
³³ Synapse 2006 at A-1

OC1-23

Section 1.1.3.1 of the final EIS has been updated to include the 2007 national demand projections, and Section 1.1.5.4 has been updated to address the claim by Synapse Energy Economics that the potential renewable and conservation alternatives presented in its initial report may have been conservative.

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OC1-24 As has been reported, FERC's previous chairman has said the N.E. needs two gas plants for N.E., but that those facilities can be built in Canada.³⁴ Synapse found that new import LNG terminals in Canada and Massachusetts³⁵ designed to meet the requirements of the northeast before Broadwater is built.³⁶

There are eighteen LNG facilities proposed north of Maryland, most notable are the two Massachusetts facilities approved by the Governor on December 19, 2006.³⁷ Both are relatively fast-build buoy projects, with Suez's 400 million-cubic-foot-per-day capacity Neptune terminal planned to go on line 2009, after Exxcelerate's 800 MMcf/d-capacity Northeast Gateway Deepwater Port proposes to begin operation by the end of the 2007.

OC1-25 Additionally, on January 9, 2007 FERC was notified that Repsol Energy North America Corporation, part owner of the Canaport LNG facility in Saint John, New Brunswick, wished to clarify the record to reflect that Canaport has firm commitments from the Maritimes and Northeast Pipeline company to deliver 0.73 bcf of gas into the northeastern United States.³⁸

OC1-26 Moving parallel to this proceeding are the following: the Islander East Pipeline process; the newly energized Connecticut Light and Power Bethel-to-Norwalk (B/N) 345-kilovolt (kV) electric transmission line (will allow an additional 600 megawatts of electricity to be delivered to southwest Connecticut and the region);³⁹ Connecticut Light and Power's other projects currently underway like the Middletown-to-Norwalk project, the Glenbrook Cables project, and the Long Island Replacement Cable; the Millennium Pipeline Company, which will serve the Southern Tier and Lower Hudson areas, and New York City markets through its pipeline interconnections with up to 525,000 Dth/day starting November, 2008⁴⁰ (please keep in mind that the Millennium Pipeline could be a link in the larger "NE 07 Project" that includes new facilities for Algonquin Gas Transmission, Empire State Pipeline and Iroquois Gas Transmission to connect the Dawn

³⁴ Howe, Peter J., "2 Gas Plants Needed for N.E.: But Facilities Can Be Built in Canada Instead of Here, US Official Says," The Boston Globe, September 14, 2004, p. C3

³⁵ Natural Gas Weekly December 25, 2006 p.2

³⁶ Synapse 2007 page 2

³⁷ See attachment

³⁸ http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20070111-0066. See appendix.

³⁹ <http://www.marketwatch.com/news/story/clp-energizes-new-bethel-to-norwalk-transmission/story.aspx?guid=%7B5C407C:EF-1925-4D87-82C5-97053AC5CA53%7D&sid=3442&symp>

⁴⁰ Millennium Pipeline Co., 117 F.E.R.C. P. 61,319 (2006). See also Press Release, Millennium Pipeline, Millennium Receives FERC Approval to Construct (Dec. 22, 2006), available at http://www.millenniumpipeline.com/news_12_22_06.htm.

OC1-24 Section 4.4.2 of the final EIS addresses potential alternatives to the Project in Canada and offshore of Massachusetts that could meet the currently projected natural gas needs of the region Broadwater proposes to serve.

OC1-25 Section 4.3.2 of the final EIS has been revised to reflect the recent increase in subscribed gas for the Maritimes & Northeast pipeline from the Canaport LNG Terminal and to quantify the environmental impacts associated with transporting that gas to the Connecticut, Long Island, and New York City markets. Impacts associated with these improvements would not be less than those associated with the proposed Broadwater Project.

OC1-26 Section 4.0 of the final EIS evaluates a wide variety of alternatives to the proposed Broadwater Project that could provide projected natural gas and other energy demands of the New York City, Long Island, and Connecticut markets. These alternatives include energy conservation, renewable energy sources (including wind and tidal power), and other existing and proposed LNG terminal and pipeline projects (including Islander East, Millennium, Northeast - 07, and Safe Harbor).

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OC1-26 [supply hub to eastern markets in New York, New Jersey and New England through Millennium); Yankee Gas continued work on an LNG facility in Waterbury with the storage equivalent of 1.2 billion cubic feet of natural gas which may be able to take advantage of other regional LNG facility overflow; The Long Island Offshore Wind Initiative; new proposals for Tidal Energy which have been proposed to FERC; and movement in the application process for the Atlantic Sea Island Group, LLC South Shore Long Island LNG facility. A true review of regional energy needs and a full alternative's analysis of all potential options, must be done.

OC1-27 [NEPA provides in part that the heart of the environmental impact statement is the alternatives analysis⁴¹ and using the information and analysis presented in the sections on the Affected Environment⁴² and the Environmental Consequences⁴³ it should present the environmental impacts of the proposal and the alternatives to sharply defining the issues and provide a clear basis for choice among options. Among other requirements, FERC is to (a) Rigerously explore and objectively evaluate all reasonable alternatives and (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

OC1-28 [In the case of Broadwater, FERC has failed to "rigorously explore and objectively evaluate all reasonable alternatives."⁴⁴ It relied on outdated and misinterpreted data from the Broadwater Resource Reports, mistook energy alternatives provided by Synapse, failed to fully evaluate pipeline and LNG alternatives, and failed to evaluate pipeline route and FSRU siting alternatives specific to Broadwater's application. FERC also failed to "devote substantial treatment to each alternative considered."⁴⁵ As evidenced from the Synapse reports, comment on

⁴¹ 40 C.F.R. § 1502.14 (2007).

⁴² *Id.* § 1502.15.

⁴³ *Id.* § 1502.16.

⁴⁴ It is "absolutely essential to the NEPA process that the decisionmaker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as 'the linchpin of the entire impact statement.'" *NRDC v. Callaway*, 524 F.2d 79, 92 (2d Cir. 1975) (citation omitted); see *Siva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973); *All Indian Pueblo Council v. U.S.*, 975 F.2d 1437, 1444 (10th Cir. 1992) (holding that a thorough discussion of the alternatives is "imperative").

⁴⁵ "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate."⁴⁵ *Resources Ltd. v. Robertson*, 35 F.3d 1309, 1307 (9th Cir. 1993) (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992)); see *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1072 (1st Cir. 1980).

OC1-27 It is FERC's opinion that the needs analysis presented in Section 1.1 of the final EIS and the alternatives analysis presented in Section 4.0 of the final EIS meet the requirements of the NEPA environmental review for the Project. In addition, those sections provide an accurate review of regional energy needs and an analysis of all potential alternatives.

OC1-28 Section 4.0 of the final EIS provides a quantitative evaluation of environmental impacts of a wide variety of alternatives to the proposed Project, in accordance with NEPA. Additional technical responses to specific comments that are intended to support the commenter's general premise are provided in responses to comments OC1-47 and OC1-48.

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OC1-28 Atlantic Sea Island Group's Safe Harbor project, Repsol's letter on the Canaport project, and DEIS's understatement of conservation and renewables options, FERC did not fully investigate or give substantial treatment to other alternatives.

OC1-29 Furthermore, in delimiting alternatives, an agency cannot define its purpose so narrowly that there will be no other alternatives.⁴⁶ By defining the purpose of alternatives to Broadwater so narrowly, a single source to provide 1bed/day natural gas within or near the targeted region, FERC has created a situation where the alternatives inquiry will likely yield no alternatives.

C. At a minimum, a regional approach to site LNG facilities is needed.

OC1-30 With approximately 65 North American LNG Terminals in various phases of proposal, approval or existence, and best estimates indicated only seven to nine are needed,⁴⁷ there is a need for a coordinated analysis of alternatives that drives LNG proposals, not visa-versa. Such a process would be a departure from FERC's current process of refusing to choose between competing alternatives on an environmental and energy policy basis. A more robust consideration of need and alternatives could result in a transparent process that includes specifically defined criteria for identifying potential LNG terminal (on or offshore) sites, quicker siting, increased efficiencies, and lessened environmental impacts and local opposition.

OC1-29 Please see our response to comment OC1-16.

OC1-30 FERC has the responsibility to consider each application for development of an LNG terminal on its own merit, and the standard FERC EIS for each LNG project evaluates the project's purpose and need. The alternatives considered and evaluated in our review consider alternative technologies and locations capable of meeting the project objectives. All of these have been considered in the Broadwater final EIS.

(Even the existence of supportive studies and memoranda contained in the administrative record but not incorporated in the EIS cannot "bring into compliance with NEPA an EIS that by itself is inadequate.")

⁴⁶ *Simmons v. US Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997), which issued a finding of inadequate review when an alternative was defined narrowly as a single source to provide supply.

⁴⁷ Brian D. O'Neill, Lobosoff, Lamb, Greene & MacRae, L.L.P., Washington, D.C., 3-56 *Energy Law and Transactions* 56.02, *Energy Law and Transactions*; Copyright 2006, Matthew Bender & Company, Inc., a member of the LexisNexis Group. 6 CONVENTIONAL ENERGY SOURCES: PRODUCTION, TRANSMISSION, DISTRIBUTION, AND END USES CHAPTER 56. Synthetic Natural Gas (SNG) and Liquefied Natural Gas (LNG) 3-56 *Energy Law and Transactions* 56.02 referencing: *Balancing Natural Gas Policy - Fueling the Demands of a Growing Economy*

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OC1-31

Failing a national approach, FERC in partnership with the appropriate states, should consider alternatives on a regional basis that is able to vet supply, demand and siting location in the North East based on public safety, environmental protection and good public policy. We should be assessing the actual need of the region and creating a roadmap of how to get there, not siting energy infrastructure on an *ad hoc* basis.

OC1-31

The Commission is responsible for reviewing applications for authorization of energy projects. We have conducted an extensive review of available needs studies for the region that would be served by the proposed Project and provided a summary of the relevant information in Section 1.1 of the final EIS.



OC1-32

Additionally, while Save the Sound does not have a position on LNG as a fuel, it does question the long-term viability and economic feasibility of increasing reliance on foreign fossil fuel consumption; both in a context of timing-- this new LNG rush has come at a time when the federal government has declared a need to reduce reliance on foreign oil sources-- and policy. An

OC1-32

FERC considered renewable energy and conservation, and concluded that reliance on these sources alone is not a practical solution for satisfying the need for a reliable source of energy to the target markets (see Section 1.1.5.4 of the final EIS). This is because there is neither a proposed or existing funding source for the substantial infrastructure needed for the development of baseload renewable energy projects nor is consumer behavior consistent with the supposition of significant reductions in per capita energy consumption. In addition to supply volumes, FERC considered overall supply reliability and price volatility (see Section 3.6.8 of the final EIS).

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OC1-32 ↗ assessment of LNG in the region should go hand-in-hand with a thoughtful and serious renewable energy, conservation, and improved efficiency program.

D. The DEIS relies on incorrect energy assumptions to form its conclusions.

1. *The DEIS relies on outdated reports to substantiate the finding that Broadwater will save citizens money.*

OC1-33 [Energy assumptions in the Draft Environmental Impact Statement⁴⁸ and subsequently Broadwater's claim that its facility will save citizens \$300 to \$400 dollars are faulty. The DEIS relies on, and Broadwater points to reports that are misinterpreted, outdated, and filled with phrases like "has the potential" and "has been estimated." The underlying report⁴⁹ are based on 2004 and 2005 data which have been superseded by more current projections.⁵⁰ Excerpts are as follows:

- The Project's throughput *has the potential* to dampen or moderate seasonal price spikes in regional natural gas markets..."
- "LNG imports, enabled by the Project development, *have the potential* to offer price stability and a reliable new source of energy secured by long-term supply contracts."
- "It *has been estimated* that the additional supply...will reduce regional area basis differentials between the benchmark Henry Hub price and New York City regional price...(Energy and Environmental Analysis 2005)."
- "Average household energy expenditures are higher in the Northeast compared to the national average (DOE 2005), and the Project *has the potential* to lower these expenditures closer to the national average. Reduced energy expenditures...*have the potential* to effectively raise household disposable incomes and thereby boost consumer spending or increase savings. The savings *can potentially* boost regional gross domestic product."
- "Furthermore, the incremental natural gas supply available to power generators *has the potential* to provide lower-cost energy...(DOE 2004)."
- "This *potential* positive impact on households *assumes* that these producer savings will *eventually* be passed on to end-users/consumers."

OC1-34 ↘ 2. *The DEIS fails to support a finding that Broadwater might save citizens money.*

⁴⁸ See Fed. Energy Reg. Comm'n DEIS, at 3.6.8, 3.6.8.5

⁴⁹ Broadwater's Resource Report #5

⁵⁰ See discussion on DEIS section 1.1.3.1 and 1.1.2.2

OC1-33 Section 1.1 of the final EIS has been revised to include the most up-to-date projections available to us at the time the final EIS was written. In preparing Section 1.1 of the EIS, we reviewed Broadwater's analysis of energy demand for the region, but we did not rely on that analysis in conducting our own assessment. FERC staff reviewed the available literature on the subject and presented our own analysis in all versions of the EIS. FERC has not used Broadwater's statements as if they were our own. Further, we want to make it clear that the assertion that the proposed Project would save citizens an average of \$300 to \$400 dollars per year was made by Broadwater, not FERC. That claim did not appear in any version of the EIS.

OC1-34 The EIS does not address any claim Broadwater may have made regarding saving money. Section 3.6 of the final EIS does note that LIPA estimated \$14.8 billion in New York State-wide savings between 2010 and 2020. An analysis of specific cost savings to individual citizens is not a part of our environmental review process. However, we addressed the general issue of price stability in Sections 1.1 and 3.6 of the final EIS. In those sections, we assert that if regional prices are to be stabilized and if the integrity and reliability of the region's home heating and energy networks are to be maintained, new sources of natural gas—preferably from regions outside the Gulf of Mexico and Canada—are needed for the New York City, Long Island, and Connecticut markets. We also state that use of LNG would diversify the energy portfolio of New York City, Long Island, and Connecticut and could ease the upward pressure on natural gas prices associated with a tightening domestic gas market.

Absent firm contracts, LNG carriers can deliver their cargo to any LNG terminal with excess capacity in the world. This spot market flexibility, combined with long-term contracts where entities find such flexibility to be beneficial, is in fact one of the features that mitigates price differentials and fluctuation.

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OC1-34 ↑
To date there is no evidence in any background materials nor the DEIS to show that long-term supply contracts have been secured. Without formal commitments to low-cost long term supplies, prices and availability will be dictated by market forces only. If Shell can sell their gas at a higher price elsewhere in the world, that is the market they will gravitate toward.

OC1-35 [As described in Section VI of the March 2006 Synapse Report,⁵¹ the global demand for LNG is growing faster than supply, and international price trends and tanker transport costs to Long Island Sound suggest that costs for purchasing and delivering gas to Broadwater would be high. Moreover, recently supplies destined for a new LNG facility in Louisiana were re-routed to Asia because it offered to pay higher prices.⁵² Receipt, into the docket, of sufficient long term supply contracts to ensure citizens will not be subject to the whim of the spot market, should be a condition required prior to the granting of any approval under federal or state law.

3. *The energy information the DEIS relies on is out of date, misinterpreted and unsupported.*

a.) Outdated Information

OC1-36 [The underlying information relied on in reaching energy conclusions in the DEIS is outdated. This underlying information, compiled as part of the application by Broadwater, are based on 2004 and 2005 reports which have been superseded by more current projections. Projections that have quite a different story to tell. Additionally, the DEIS relies on old projections of gas demand growth that have already been proven wrong. As an indication of the severity of change, those 2004 and 2005 reports assumed nearly all new electricity generating plants in the region will be powered by gas, but the actual number of natural gas plants being proposed or built is significantly lower than previous expectations.

OC1-37 ↓ In the first two paragraphs of *Natural Gas Supply: National Supply*⁵³ the DEIS cites to the Energy Information Administration Report of 2005; reports that have been superseded in

⁵¹ Synapse 2006 at 12-4.

⁵² LNG Blog—Liquefied Natural Gas Law and News on Federal Regulation, Regusification, Environmental, Safety and Security Issues, <http://www.lnglawblog.com/BlogArchive.aspx?mo=1&yr=2007> (last visited January 19, 2007). (Summarizing the World Gas Intelligence report that several U.S. LNG terminals along the Gulf Coast may not operate at full capacity because much of the Qatari supply originally destined for those facilities has been rerouted to Asian markets offering higher prices.)

⁵³ DEIS 1.1.3.1 p1-7

OC1-35 All regulatory authority concerning the purchase and importation of LNG falls under the jurisdiction of the Department of Energy. FERC does not have the legal authority to require the Broadwater Project to have firm contracts in place as a condition of approval, as requested by the commentor.

OC1-36 Please see our response to comment OC1-33.

OC1-37 Please see our response to comment OC1-33.

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OC1-37 ↑ 2006 and 2007.⁵⁴ The 2006 Report contains statements like: future natural gas prices are expected to be higher and demand will grow more slowly than in previous projections; and previous LNG import projections were revised downward because more rapid growth in worldwide demand for natural gas reduces the availability of LNG supplies to the United States and raises worldwide natural gas prices, making LNG less economical in U.S. markets. Indeed, there is no doubt that these reports were available to FERC at the time the DEIS was being prepared. In the very next paragraph, the DEIS refers to a 2006 report by the same agency (Energy Information Administration) to bolster a discussion on dwindling Canadian production basin supplies.

OC1-38 [These *Natural Gas Supply: National Supply* paragraphs serve as an instance where the DEIS uses outdated information and reports as the basis for analysis. A review and updated analysis of all underlying energy data in the following sections must be done: Regional Trends, Natural Gas Supply, Natural Gas Prices, Integrating Supply and Demand, Need for LNG and Alternatives.

Other examples of the pervasive use of outdated materials can be found in the long-range projections regarding natural gas use provided by Synapse below.

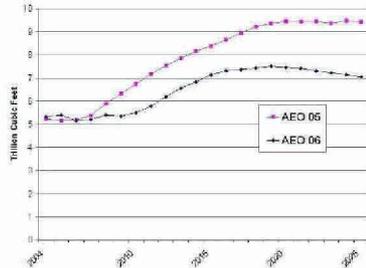
OC1-39 [FERC and Broadwater rely heavily on a report referred to as TFOLIS (2003) to support a trend Connecticut whereby the electric generating fuel mix is expected to increase from 24 percent natural gas in 2002 to 48 percent by 2011. The report also repeatedly stress that the majority of increase in natural gas consumption is driven by the increased natural gas demand for power generation. Natural Gas forecasting horizon looks much different than it did five years ago, indeed it is quite different than just two years ago as the graph reflects.

OC1-38 Please see our response to comment OC1-33.

OC1-39 Please see our response to comment OC1-33.

⁵⁴ See Synapse Energy Report, *supra* note 26. The attached graph, *Project U.S. Demand for Electricity Generation*, details an example of such changes.

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OC1-40

At that time it was still expected that a lot of new gas generation was going to be built around the country but that is no longer the case. This is reflected in the AEO reports, which as of 2005 showed approximately 9.5 tcf of gas per year for electricity generation by 2025, but in 2006 showed just over 7 tcf per year (see Figure 1 EIA Forecasts of Natural Gas Usage by Electric Power Sector in AEO 2005--which was used in the DEIS--and 2006). EIA now predicts national natural gas usage by electric generators will decrease slightly over the next few years, returning to 2005 consumption level by 2010.

OC1-40 Please see our response to comment OC1-33.

b.) Misinterpreted Information

OC1-41

The underlying information relied on in reaching energy conclusions in the DEIS is misinterpreted. Section 1.1.3.2 *Regional Supply*⁵⁵ states “because New York and New England are at the end of these transmission systems, they are subject to the uncertainties of transport and demand at all upstream locations.” This statement misinterprets the concept of firm commitments which will be met no matter what the demand is at upstream locations. While there *may* be an issue of greater risk of supply disruption and security of supply through diversity, this can be addressed by any supply option (i.e., Massachusetts or Canada).

OC1-41 Absent unexpected disruption, the portion of gas supply that is represented by “firm” commitments is fulfilled regardless of demand in other regions. Only the portion of the supply that is represented by interruptible contracts is subject to demand fluctuations. Section 4.4 of the final EIS identifies alternatives that could meet the natural gas demands of the region. However, we determined that each of the alternatives has a greater environmental impact than those of the proposed Project.

Section 1.1.3.2 *Regional Supply*⁵⁶ states “in 1999, the Maritimes & Northeast pipeline began transporting about 0.4 bcf/d of natural gas from Nova Scotia to gas utilities and power producers in New England. Access to this reserve meant that New England was no longer at the end of all supply lines. In addition, construction of the proposed

⁵⁵ DEIS 1.1.3.2 p1-8.

⁵⁶ *Id.*

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OC1-42

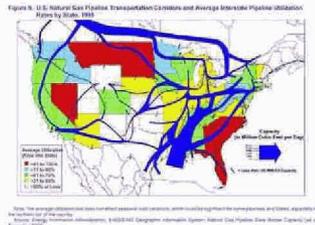
Islander East pipeline would provide regional access to the remaining capacity (about 0.3 bcf/d). However, the Nova Scotia fields are relatively small, and their long-term potential is uncertain.” This interpretation neglects to include the LNG project(s) in Canada that would also feed these pipelines.

3) Unsupported Information

The conclusions in the DEIS are based on faulty energy assumptions. For example, Section 4.4 *Alternative LNG Terminal Designs and Locations*⁵⁷ states “Our analysis was based on the assumption that, irrespective of the design type, the LNG terminal would need to be within or near the targeted region if it is to meet the purpose of the Project without requiring substantial upgrades to the existing infrastructure”

OC1-43

The assumption that an LNG terminal “would need to be within or near the targeted region” is faulty. Currently New York and Connecticut receive natural gas from the Gulf and Canada. As those examples illustrate natural gas need not originate in the region to benefit or be considered an alternative to a source proposed for this region. Nearly any facility that can connect to any portion of the grid currently serving or proposed for the NY and/or CT area should be considered (map below used for illustrative purposes only, it is from 1999 and outdated). Additionally, “within or near the targeted region” is not defined in geographic terms.



⁵⁷ DEIS 4.4 p. 4-21.

OC1-42

As described in Section 4.3.2 of the final EIS, delivery of natural gas from Canadian LNG facilities to the market that Broadwater would serve would require installation of a substantial amount of new infrastructure. We have determined that the environmental impacts associated with the new infrastructure would be greater than the impacts of implementation of the Broadwater Project.

OC1-43

Section 4.4.4 of the final EIS discusses potential site locations for a new LNG terminal that would serve the Connecticut, Long Island, and New York City energy markets. The commentor suggests that an LNG facility located in the Gulf of Mexico and connected to an interstate natural gas “grid” could meet some or all of the Project objectives. We agree that gas can be brought to a particular market from distant sources. However, a new source of gas does not provide additional transportation capacity. The existing infrastructure is already utilized by shippers. New pipeline infrastructure is necessary to transport new sources of natural gas to the target markets. We conclude that, in general, the closer an LNG terminal is to its target markets, the fewer environmental impacts occur. This is because of the need to construct a longer pipe or increased air emissions associated with operation of new or updated compressor stations necessary to ensure that gas enters the interstate pipeline system or systems at an appropriate operating pressure.

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OC1-44 The section 1.1.3.1 *National Supply*⁵⁸ the discussion regarding Canadian energy supplies, the DEIS only considers Canadian basin supplies and does not include information on newly constructed or proposed Canadian LNG import facilities designed and contracted to serve North Eastern demand. Such information should be included.

OC1-45 Section 1.1.4 *Natural Gas Prices*⁵⁹ states "natural gas commodity prices in the New York and Connecticut region have shown a clear tendency toward increasing average prices and increasing price volatility."⁵⁹ What the section fails to reveal is that Broadwater is not likely to stabilize those price increases and price volatility as is not just a regional occurrence, it is a national (even global) one.⁶⁰

OC1-46 Section 1.1.2.2 *Regional Trends: Demand from Connecticut's Electricity Generators*⁶¹ states "However, high voltage transmission lines do not penetrate southwestern Connecticut. As a result, ISO-NE reports that, in order to supply electricity to high demand pockets, up to 2,209 MW of generating capacity can be forced to operate...(TFOLIS 2003)."⁶¹ This statement demonstrates how the outdated information is then misinterpreted. What the section fails to consider is that on October 12, 2006, Connecticut Light and Power energized the new Bethel-to-Norwalk (B/N) 345-kilovolt (kV) electric transmission line. This line will allow an additional 600 megawatts of electricity to be delivered to southwest Connecticut and the region.⁶² These power lines will reduce the need for older plants to run and will better utilize generation in the New England region reducing the need to build new local power plants.⁶³ That same day the company also mentioned other projects currently under way including: the Middletown-to-Norwalk project, the Glenbrook Cables project, and the Long Island Replacement Cable, which further extend the benefits of the 345-kV bulk power system into southwest Connecticut. And, as NU companies provide energy for future needs, planning and

⁵⁸ DEIS 1.1.3.1 p1-7.

⁵⁹ DEIS 1.1.4 p1-10.

⁶⁰ Conversation with Ezra Hausman, Ph.D., Synapse Energy Economics and p4 of the 2006 report

⁶¹ DEIS 1.1.2.2 p.1-6.

⁶² MarketWatch.com, *CT&P Energizes New Bethel-to-Norwalk Transmission Line as Part of Strategy to Meet Regional Energy Needs*, <http://www.marketwatch.com/news/story/clp-energizes-new-bethel-to-norwalk-transmission/story.aspx?guid=%7B5C407CEF-1925-4D87-82C5-97053AC5CA53%7D&sid=3442&symp=> (last visited Jan. 22, 2007).

⁶³ Northeast Utilities System, *Environmental Stewardship*, <http://www.transmission-nu.com/residential/environmental.asp> (last visited Jan. 22, 2007).

OC1-44 Please see our response to comment OC1-42.

OC1-45 As described in Section 1.1.6 of the final EIS, natural gas provided by the Broadwater Project would increase the diversity of the region's energy portfolio and could help stabilize natural gas prices. In a report prepared for LIPA, Levitan and Associates (2007) estimates cost savings to New York State consumers of \$14.8 billion between 2010 and 2020 (see Section 3.6 of the final EIS).

OC1-46 Please see our response to comment OC1-33. Specifically, Section 1.1 of the final EIS has been updated to include the increased transmission capacity in southwestern Connecticut.

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construction are also under way on other projects across NUI's franchise area such as a new liquefied natural gas facility in Waterbury, the Northern Woods Power Plant in New Hampshire, as well as many distribution system upgrades in Connecticut, western Massachusetts and New Hampshire. On its face, it appears that none of this small sampling of projects -- which come from one company in one Northeastern state-- was mentioned or considered in the needs or alternatives portions of the DEIS; FERC should review current status of such projects and include them in the FEIS analysis.

IV. THE DEIS FAILS TO ADEQUATELY ADDRESS AND ANALYZE THE ENVIRONMENTAL ALTERNATIVES AND FAILS TO PROVIDE ADEQUATE SUPPORT FOR ITS CONCLUSIONS.

A. The DEIS fails to adequately address and analyze feasible and practical Environmental Alternatives

In the case of Broadwater, FERC has failed to "rigorously explore and objectively evaluate all reasonable alternatives."⁶⁴ It failed to fully evaluate pipeline and LNG alternatives, and failed to evaluate pipeline route and FSRU siting alternatives specific to Broadwater's application. FERC also failed to "devote substantial treatment to each alternative considered."⁶⁵ According to Drew Carey, Ph.D., on behalf of Coastal Vision, LLC.:

OC1-47

...the most serious omission was the lack of a detailed and supportable alternative siting analysis for the LNG import terminal and pipeline. The siting process did not consider sufficient feasible alternatives, reduced the terminal sites to one without sufficient assessment of environmental impacts or consideration of engineering alternatives, did not collect sufficient data to evaluate alternatives and rejected alternatives without due cause. I conclude that the DEIS and supporting documents have not met the minimum standard for determining the environmental impacts of

OC1-47

Section 4.0 of the final EIS addresses a comprehensive array of pipeline and LNG system alternatives, LNG terminal locations, and pipeline routes. The evaluation provided did not leave "viable alternatives unexamined" and meets or exceeds the requirements of NEPA.

⁶⁴ It is "absolutely essential to the NEPA process that the decisionmaker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as 'the linchpin of the entire impact statement.'" NRDC v. Callaway, 524 F.2d 79, 92 (2d Cir. 1975) (citation omitted); see Silva v. Lynn, 482 F.2d at 1285; All Indian Pueblo Council v. United States, 975 F.2d 1437, 1444 (10th Cir. 1992) (holding that a thorough discussion of the alternatives is "imperative").

⁶⁵ The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." Resources Ltd. v. Robertson, 35 F.3d 1360, 1367 (9th Cir. 1993) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1519 (9th Cir. 1992)); see Grazing Fields Farm v. Goldschmidt, 636 F.2d 1068, 1072 (1st Cir. 1980) (Even the existence of supportive studies and memoranda contained in the administrative record but not incorporated in the EIS cannot "bring into compliance with NEPA an EIS that by itself is inadequate.").

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the Project and have failed to properly evaluate alternative sites for the marine-based LNG import terminal and pipeline.⁶⁶

Dr. Carey is a marine environmental scientist with over twenty year's experience in benthic ecology, sedimentology, environmental monitoring, and marine policy. He is a recognized expert on assessment of environmental impacts on marine ecosystems. In 1999, Dr. Carey formed an environmental consulting firm, CoastalVision, LLC to provide marine environmental technical support and facilitation to government agencies, commercial firms and public interest groups. CoastalVision has established projects compiling data for coastal management in Narragansett Bay, Long Island Sound and Massachusetts waters. Dr. Carey was a senior technical lead for the Dredged Material Disposal Site Designation EIS in Long Island Sound, supporting the Corps of Engineers and EPA. He is the technical studies manager for the Disposal Area Monitoring System (DAMOS) as a subcontractor to ENSR. He is the facilitator for the New England Regional Dredging Team. He has supported numerous projects associated with permitting and aquatic disposal site screening for Massachusetts Coastal Zone and the Coastal Resources Management Council in Rhode Island. Dr. Carey provided facilitation for the Narragansett Bay Summit, the Partnership for Narragansett Bay and the 2004 RI Sea Grant Science Symposium. He is currently conducting a competing site use study for the siting of a wave energy facility in Point Judith, RI.

Coastal Vision reviewed both alternative pipeline routes and alternative FSRU sites near the Iroquois Pipeline.

1. Practical and feasible FSRU site alternatives and pipeline route alternatives that minimizes environmental impacts exist.

OC1-48 ↓

The alternatives analysis for both the FSRU and pipeline were unnecessarily restrictive and lack supporting data to justify the chosen location over alternate sites with engineering, environmental, and socioeconomic advantages.⁶⁷ The apparent cause for the limiting criteria is the jurisdictional line the applicant does not wish to cross; every effort to remain in New York waters "despite substantial environmental and engineering obstacles"⁶⁸ has been made. It was

⁶⁶ Coastal Vision DEIS review memorandum, page 2.
⁶⁷ *Id.* at 7.
⁶⁸ *Id.*

OC1-48

Section 4.4 of the final EIS addresses alternative locations for an LNG terminal that could supply natural gas to markets in Long Island, New York City, and Connecticut. Clear reasoning for the proposed location is provided and discussed. Section 4.5.1 of the final EIS explains that in order to transport significantly more natural gas through this pipeline from a point closer to Connecticut south to Long Island and New York City, the IGTS pipeline would need to be modified to increase its volume. Further, additional onshore or offshore compression would need to be added to push a larger volume of gas through the IGTS pipeline at a sufficient velocity. By placing additional natural gas that is under pressure closer to the IGTS pipeline terminus (downstream or further south), the proposed Project would provide natural gas directly or via displacement to all three markets while avoiding the environmental impacts associated with IGTS pipeline upgrades and construction of additional compression facilities. Finally, an FSRU sited in Connecticut waters would result in greater visual impacts to Connecticut coastal residents than the location proposed by Broadwater.

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OC1-48 [not until sunset of the Connecticut Moratorium on Long Island Sound energy infrastructure that the applicant proposed one new alternative pipeline path that touched upon Connecticut.⁶⁹

In the case of Broadwater, FERC has failed to "rigorously explore and objectively evaluate all reasonable alternatives,"⁷⁰ choosing instead to "contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence)."⁷¹

OC1-49 [As long as the FSRU can safely operate within 4.7 miles of each coastline (the largest zone set by the USCG when evaluating potential effects to humans), the environmentally preferable sites and routes, not geopolitical boundaries, should dictate.

OC1-49 Please see our response to comment OC1-48.

OC1-50 [According to Coastal Vision's review, moderate flexibility in the location of the FSRU would avoid two cable crossings and a shoal crossing. This would allow the investigation of several routes in a habitat with relatively wide distribution and proven response to sediment disturbance.⁷² Most importantly, the total pipeline length required could be reduced by more than half of the proposed length and thereby substantially reduce known environmental impacts.⁷³

OC1-50 Please see our response to comment OC1-48.

OC1-51 [Review of the document yielded that no alternative locations for the FRSU in Connecticut waters were considered.⁷⁴ The "selected site would need to demonstrate environmental, engineering, and socioeconomic preference with respect to the existing site" (RR 10, p.10-45). Several sites meet these criteria in water depths greater than 45 feet that have no greater impact on established shipping routes than the proposed location (see Figures 3.7-1, -2 in

OC1-51 Please see our response to comment OC1-48.

OC1-52 [DEIS). Moving the FRSU 8-10 miles due west places the site in Connecticut waters but does not interfere with shipping routes and has the substantial environmental benefit of eliminating up to 16 miles of pipeline installation impacts. Further details on specific alternative sites and routes can be found in the Coastal Vision appendix.

OC1-52 Please see our response to comment OC1-48.

⁶⁹ *Id.*

⁷⁰ It is "absolutely essential to the NEPA process that the decisionmaker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as 'the linchpin of the entire impact statement.'" *NRDC v. Callaway*, 524 F.2d 79, 92 (2d Cir. 1975) (citation omitted); see *Silva v. Lynn*, 482 F.2d at 1285; *All Indian Pueblo Council v. United States*, 975 F.2d 1437, 1444 (10th Cir. 1992) (holding that a thorough discussion of the alternatives is "imperative").

⁷¹ *Id.*

⁷² *Id.* at 10.

⁷³ *Id.*

⁷⁴ *Id.* at 8.

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OC1-53 [The FEIS must include environmental sampling and engineering analysis of alternate routes that could substantially reduce the impact of pipeline installation through the relocation of the FSRU and the realignment of the pipeline (see Figures 2 and 3 in Coastal Vision Appendix).

OC1-54 [Carey recommends:
...a revision of the DEIS to correct deficiencies and inaccuracies and an alternatives analysis that examines feasible sites for the import terminal, collects data on existing conditions and subjects the alternatives to weighted quantitative assessment of relative environmental, engineering and socioeconomic impacts of each alternative.⁷⁵

B. The DEIS Fails to provide adequate support for its conclusions

An environmental impact statement must provide a full and fair discussion of significant environmental impacts, it must inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment, it must also be concise, clear, to the point and must be supported by evidence that the agency has made the necessary environmental analyses.⁷⁶

Scientists from the Long Island Sound region have indicated,⁷⁷ and FERC staff has concurred to some degree,⁷⁸ that the EIS's discussion of environmental impacts "forms the scientific and analytic basis for the comparisons" of alternatives,⁷⁹ which are "the heart" of the EIS⁸⁰ are inadequate.

First, in some instances the DEIS works in broad brush approach either failing to support the conclusion with scientific data or reflecting misinterpretations of the scientific literature as has

⁷⁵ Coastal Vision DEIS review memorandum, page 2

⁷⁶ 40 C.F.R. § 1502.1 (2007).

⁷⁷ See Attachment CT LNG Taskforce Transcript for December 7, 2006, information contained therein is incorporated by reference.

⁷⁸ Mark Robinson, Director of the Office of Energy Projects at FERC, said that the points raised by Lewis and the other scientists would be useful for revisions. Judy Benson, *Scientists: LNG Draft Analysis Needs More Work*, New London Day, Jan. 17, 2007.

⁷⁹ 40 C.F.R. § 1502.16 (1995).

⁸⁰ *Id.* at § 1502.14

OC1-53 Sections 4.4.2 and 4.5 of the final EIS describe the potential impacts of various alternative pipeline locations.

OC1-54 As described in the responses above, the final EIS has been updated to more completely describe the environmental setting and to assess potential impacts.

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been highlighted by Long Island Sound Scientists Dr. Roman Zajac, Dr. Lance Stewart, Dr. Peter Auster, Former CT State Geologist Ralph Lewis,⁸¹ Dr. Carmella Cuomo,⁸² and Dr. Stephen T. Tettelbach, Ph.D.⁸³ Finding that:

- OC1-55
- The DEIS used questionable documents that have been superseded by better information.
 - The DEIS is a fairly sloppy general overview of the geology of LIS by people who either didn't have knowledge or didn't take enough time to seek the best reference material in support of their arguments.
 - There is neither statistical analysis nor quantitative data provided in the DEIS, and as such it is useless to make good predictions on impact and recovery.
 - The DEIS does not provide sufficient facts to determine Broadwater's impact on Long Island Sound.
 - The document was poorly researched and glossed over numerous issues using minimal literature, analysis or synthesis to reach its conclusion of minimal impacts.

- OC1-56
- Second, since the discussions of environmental impacts are the building blocks for FERC's final decision, the analytical basis should be included in the DEIS. Instead the DEIS chooses to rely on the resource reports compiled by Broadwater's consultants to do the heavy lifting. Because the DEIS must be supported by evidence that the agency has made the necessary environmental analyses,⁸⁴ the DEIS should reference in footnote, not endnote, form each source used in reaching its various conclusions and recommendations.

V. THE DEIS FAILS TO FULLY AND FAIRLY DISCUSS THE ENVIRONMENTAL CONSEQUENCES OF THE PROJECT OR PROVIDE SCIENTIFIC SUPPORT FOR ITS CONCLUSIONS

A. The DEIS fails to substantiate that Broadwater will positively impact air and water quality through repowering of dirtier plants.

⁸¹ See Attachment CT LNG Taskforce Transcript for December 7, 2006, see also Benson, Judy New London Day "Scientists Cite Flaws In LNG Assessment: Finding Of Minimal Impact On Sound 'poorly Researched'" 12/8/06 <http://www.theday.com/re.aspx?re=f3ed3655-13bd-4be0-a095-659bfd48af1d> (last visited January 21, 2007)

⁸² Dr. Carmella Cuomo, Oral Testimony provided at the Fed. Energy Reg. Comm'n/Army Corps of Engineers/U.S. Coast Guard public meeting in Branford, CT (Jan. 16, 2007).

⁸³ See *attached* Memorandum from Dr. Stephen T. Tettelbach, Ph.D., Professor of Biology, C.W. Post Campus of Long Island University, to Citizens Campaign for the Environment (Jan. 8, 2007) (on file with Citizens Campaign for the Environment). Information contained therein is incorporated by reference.

⁸⁴ 40 C.F.R. § 1502.1 (2007).

- OC1-55 FERC has reviewed the comments provided by these scientists, and the issues identified have been addressed in the final EIS. In addition, we have provided responses to their specific comments in both our responses to letter IN-40 and in Table 2.2-5 (Appendix N in this final EIS).

- OC1-56 The final EIS has been expanded, as appropriate, to incorporate the results of recent field studies, additional literature, and technical comments provided by federal, state, and local agencies; organizations; academia; the private sector; and the public. The resource reports included in the Broadwater application were developed with input on draft versions from FERC staff and our federal and state cooperating agencies. These draft versions were also provided in the FERC docket for public review and comment. During the extensive pre-filing process for Broadwater, the resource reports were modified to reflect the needs for the interagency review team. As a result of the input from FERC, the interagency team, and commentors, the resource reports filed with the application did contain many of the elements necessary to generate the draft EIS. Subsequent information gathered from numerous sources has been assembled and analyzed by FERC staff and has been included, as appropriate, in the final EIS.

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OC1-57 [While the DEIS implies,⁸⁵ and Broadwater claims that the facility is needed to positively impact air quality and water quality through the re-powering of older, dirtier plants, there is no evidence in the docket that Broadwater will in fact provide gas to re-power any plants. FERC should require, as a condition of approval, receipt of firm contracts between Broadwater and each non-natural gas power plant in New York and Connecticut to verify any claims of re-powering for the region.

B. Broadwater should be regulated as a fuel conversion plant under the Prevention of Significant Deterioration ("PSD") rules of the Clean Air Act.

OC1-58 [Broadwater's FSRU should be regulated as a major source under the federal Prevention of Significant Deterioration ("PSD") rules. As discussed on 3-168 of the DEIS, the PSD regulations set forth at Section 52.21(b)(1) define a "major emissions source" as any source type belonging to a list of 28 source categories which emits or has the potential to emit 100 tons per year ("tpy") or more of any pollutant regulated under the CAA, or any other source type which emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy.

An internal EPA guidance document from 2003 states:

"... We understand that vaporization of LNG occurs without the need for chemical or process change that generally occurs at other sources that EPA considers as "fuel conversion plants" (e.g., coal gasification, oil shale processing, conversion of municipal waste to fuel gas, processing of sawdust into pellets) under the PSD rules."

OC1-59 [The vaporization of LNG to natural gas differs from the fuel conversion processes discussed in EPA's memorandum regarding Cleveland Electric since the vaporization would occur naturally at ambient conditions without additional processing. Our view is that the PSD rules are not intended to include the vaporization of LNG to natural gas in the source category of "fuel conversion plants"

Converting LNG to natural gas through a manufactured process change is one of the primary functions of the FSRU. While LNG would vaporize naturally at ambient conditions without additional processing, in fact it will not be vaporized naturally as part of the proposed

⁸⁵ DEIS p 1-5.

OC1-57 Section 1.1 refers to New York's Energy Policy Task Force (2004), Con Edison, and TFOLIS (2003) when stating that new gas pipeline capacity would reduce the amount of fuel oil consumed, which would provide regional air quality benefits. We concur with this conclusion. In recent years, the Commission has chosen to exercise a less intrusive degree of economic regulation for new LNG import terminals and does not require the applicant to offer open-access service or to maintain a tariff or rate schedules for its terminal service.

OC1-58 As discussed in Section 3.9.1.1 of the EIS, the Standard Industrial Classification (SIC) code, "natural gas storage and transmission" (SIC 4922) was determined by Broadwater to be the most applicable for the FSRU. Regarding PSD applicability, in a letter dated August 9, 2007, EPA Region 2 made a formal determination to accept the methodology used by Broadwater to calculate the PTE for the Project (including those methodologies used to calculate vessel emissions during LNG unloading activities). This determination also rendered the Project not subject to PSD. However, Broadwater must still demonstrate that emissions do not exceed PSD applicability thresholds and would submit a plan to monitor and demonstrate compliance with its annual PSD limit as part of its Title V Operating Permit application.

OC1-59 Please see our response to comment OC1-58.

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project. The vaporization process will emit substantial pollutants in order to effect a fuel conversion. For this reason, the FSRU should be considered a fuel conversion plant for the purposes of PSD regulations. Save the Sound believes that emissions from the proposed project have been underestimated, and that if all emissions are taken into account the FSRU may exceed 100 tpy of carbon monoxide.

OC1-60

C. General DEIS Air Comments

- OC1-61 [Table 3.9.1-8 on p. 3-170 sets forth potential emissions from LNG cargo tankers. The U.S. Coast Guard Report has indicated Broadwater intends to use larger tankers in the future. The figure set forth in the table should provide data for both size ships.
- OC1-62 [To further reduce CO and NOx from the FSRU and SO2 from the tankers, more stringent controls should be used for NA NSR purposes.
- OC1-63 [An analysis of how this facility might affect Connecticut non-attainment areas should be included.
- OC1-64 [An analysis of how the life cycle of this facility, and all associated components, could impact greenhouse gases.⁸⁶

D. The DEIS fails to adequately assess the potential for creating an opportunity for introduction of invasive species.

The DEIS asserts that the conversion of soft substrate to rock or concrete would improve habitat diversity and increase habitat for some species like oysters, barnacles and mussels⁸⁷ none of which are found at the depths proposed for the concrete pads. Large increases in ballast water discharges from the new vessel traffic could provide a direct source of invasives to that newly converted habitat.⁸⁸ The DEIS should investigate the potential for concrete and rock associated with this project to unwittingly serve as a nursery for invasive species.

OC1-65

E. The DEIS claim that efforts to restore pipeline trenches will mitigate the impacts caused by installation is not supported by the evidence.

It cannot be assumed that efforts to restore habitats after impacts as severe as a pipeline installation will be successful.⁸⁹ In actuality, New England waters have failed to demonstrate success in backfilling, natural infilling or benthic recovery as surveys at dredged material

OC1-66

⁸⁶ Of particular interest is LNG ability to uniquely increases the emissions of CO2 into the atmosphere, <http://ingwatch.com/race/docs/RACE%20-%20Global%20Warming.pdf>
⁸⁷ Carey Memo p6.
⁸⁸ *Id.*
⁸⁹ *Id.*

OC1-60 A description of the carbon monoxide emissions associated with the proposed Project is provided in Section 3.9.1.2 of the final EIS, based on all available information for all potential sources of emissions for Project operation—including FSRU, LNG carriers, tugs, and support vessels.

OC1-61 The data provided in Table 9-13 of Resource Report No. 9 for “LNG carrier unloading” accurately represents emissions from a conventional steam turbine vessel of 140,000-m³ cargo capacity unloading at a rate of 10,000 m³ per hour. Emissions for the LNG carrier portion of “Carrier Transit and Support Vessel” emissions were determined for a conventional steam turbine vessel of 140,000-m³ capacity (Table 3.9.1-13 in the final EIS). This type of vessel, or slightly larger, would deliver LNG to Broadwater throughout the Project life but would most likely predominate in the earlier years. Subsequent to discussions with EPA Region 2 regarding proportioning of emissions from the steam turbine LNG carriers into hoteling, unloading, and transit components, the emission estimates have been revised as presented in Table 3.9.1-13 in the final EIS.

OC1-62 The FSRU would be required to operate in accordance with current nonattainment NSR control strategies, as described in Section 3.9.1.1 of the final EIS, to limit emissions of CO and NO_x from the operation of the FSRU. Although the control technology related to the LNG carriers is beyond the scope of the EIS because carriers would be part of the international fleet and not under the control of Broadwater, in order to further reduce SO2 emissions, Broadwater would accept an annual average fuel sulfur limit of 2.7 percent for the LNG carriers on a 12-month rolling average, and would also accept a maximum sulfur fuel limit of 3.2 percent for LNG carriers servicing the FSRU. This is discussed in Section 3.9.1.2 of the final EIS.

OC1-63 The discussion of nonattainment in Section 3.9.1.1 of the final EIS applies to the NJ-NY-CT Interstate AQCR.

OC1-64 Section 3.9.1 of the final EIS has been updated to address greenhouse gases

OC1-65 As discussed in response to comment LA15-4, the final EIS has been modified to address sediment conversion and invasive species. As stated in response to comments OC1-144 and FA4-2 and in Section 3.2.3.2 of the final EIS, LNG carriers would not be expected to discharge ballast water into Long Island Sound.

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OC1-66 ↑ disposal sites in the Central Basin of Long Island Sound reveal.⁵⁰ Thirty to forty years after an event the physical disturbances is still detectable.⁵¹ Indeed, there is no existing evidence that an installation project in New England has successfully installed cable or pipelines and restored the benthic habitat to prior existing conditions.⁵²

F. The DEIS contains numerous deficiencies and inaccuracies related to the environmental assessment of Broadwater.

OC1-67 □ Please see pages 2-4 of Coastal Vision's memorandum for a full accounting.⁵³

VI. THE BROADWATER PROPOSAL IS INCONSISTENT WITH NEW YORK'S COASTAL ZONE MANAGEMENT PROGRAM AND NEW YORK'S EASEMENT GRANTING AUTHORITY.

OC1-68 [Broadwater does not comport with the goals and policies set forth in New York's Coastal Zone Management Program. The Broadwater facility: 1) would be an unprecedented and inappropriate industrialization of a large portion of Long Island Sound and would make a large area of the Sound off limits to the public, 2) would be environmentally destructive, 3) would be unsafe and 4) is unnecessary.

Due to the safety hazard posed by the facility and the need to enforce security to protect the facility, 1.4 square-miles-- the equivalent of 718 football fields-- of the Sound surrounding the platform will be designated "no boating" and "no fishing," excluding public access to these waters. Water quality in the immediate area would be threatened by water intakes and discharges, sewage wastewater treatment, storm water runoff and potential hazardous waste spills. Potential incidents from platform operations, accidental or purposeful malfunctions, and tankers shipping LNG to the facility will further threaten human and ecological health and safety. The visual and noise impacts of the massive lighted industrial facility would also be

⁵⁰ *Id.*

⁵¹ 40 C.F.R. § 1502.1 (2007).

⁵² *Id.*

⁵³ *Id.* 2-4

OC1-66 Section 3.1.2.2 of the final EIS has been expanded to more fully describe backfilling success for previous linear projects in Long Island Sound. The results of this review indicate that natural and mechanical backfilling have been largely successful in some areas of Long Island (Cross Sound Cable and offshore portion of the IGTS pipeline) and not in others (Eastchester pipeline and nearshore portion of the IGTS pipeline). The final EIS includes a recommendation that Broadwater backfill the trench and monitor its success.

OC1-67 We have addressed these issues in our specific responses to comments to Coastal Vision's letter (see responses to comments OC1-117 through OC1-153).

OC1-68 Please see our response to comment OC1-2.

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OC1-69

significant. Finally, a report by Synapse Energy Economics, Inc. has shown that Broadwater has failed to identify any compelling need for the new natural gas supply and that several alternatives that would better serve the region exist, including one LNG project under construction in Canada and two LNG facilities approved by the state of Massachusetts.⁹⁴

There has been vast public opposition.⁹⁵ Over 2000 citizens attended the four public meetings held in New York and Connecticut January 9-16, 2007; the overwhelming majority of whom were opposed to the siting of this particular facility in this particular water body. Towns, citizens and environmental organizations vigorously oppose the Broadwater facility,⁹⁶ and nearly 2000 individuals have joined the Sound Alliance: No to Broadwater list. In addition to the County of Suffolk, the New York towns of Riverhead, Brookhaven, Southold and Huntington have intervened in the FERC licensing proceedings to oppose the facility. Moreover, a law passed by the County of Suffolk specifically prohibits construction of floating Liquefied Natural Gas facilities in Long Island Waters in Suffolk County.⁹⁷ In Connecticut, 46 Towns, including almost all of the shoreline towns, have formally opposed or passed formal resolutions opposing the Broadwater facility.⁹⁸ FERC has also been flooded with letters from the public objecting to

OC1-69 Please see our response to comment OC1-15.

⁹⁴ Synapse Energy Economics, Inc. "The Proposed Broadwater Energy Import Terminal. An analysis and Assessment of Alternatives." Available at http://www.savethesound.org/LNG/BW_files/alternatives-analysis.pdf; Synapse Energy Economics, Inc. Update: the Proposed Broadwater Energy Terminal (2007) can be found in the energy appendix.

⁹⁵ Attached in the opposition appendix is a small sampling of the news covering this debate.

⁹⁶ Attached in the Opposition appendix is a copy of the Sound Alliance Organizational Members, Connecticut Towns opposing Broadwater, and the Anti-Broadwater Coalition Organizational Members.

⁹⁷ Suffolk County Resolution 821-2006, "A Local Law to Prohibit the Construction and Operation of Liquefied Natural Gas (LNG) Floating Storage Regasification Units in The Long Island Sound," adopted August 28, 2006.

⁹⁸ Towns that have passed anti-Broadwater resolutions include: City of Millford, City of Norwalk, City of West Haven, Town of Ashford, Town of Bethany, Town of Branford, Town of Chester, Town of Clinton, Town of Darien, Town of Deep River, Town of Easton, Town of Guilford, Town of Lebanon, Town of Lisbon, Town of Newtown, Town of Old Saybrook, Town of Orange, Town of Plainville, Town of Prospect, Town of Redding, Town of Waterford, Town of Westbrook, Town of Weston, Town of Westport, Town of Wethersfield, Town of Woodbridge. Many other towns have expressed opposition but have not passed formal resolutions.

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the facility,⁹⁹ more than 1000 petition signatures and 1150 postcards were sent in to FERC in just the last week.

OC1-70

While pipeline leases connected to land based operations maybe contemplated by the easement provisions of state law, providing an inexpensive water based property to anchor a floating industrial plant was not.¹⁰⁰ As Broadwater would be relieved of the obligation to purchase property on which to site its industrial operations, an easement for Broadwater's facility would amount to a New York State subsidy, at the expense of the public.

A. Broadwater is inconsistent with NY coastal policies and violates the public trust doctrine.

OC1-71

Broadwater violates the long held public trust doctrine. Long Island Sound is held for the citizens of New York and Connecticut under the Public Trust Doctrine (PTD). The PTD is part of our common law that has been handed down from justice system to justice system since Justinian times. In the landmark United States Supreme Court case *Illinois Central R.R. v. Illinois (1892)* the court stated "...the state can no more abdicate its trust over property in which the whole people are interested...so as to leave them entirely under the use and control of private parties...than is can abdicate it[s] role in the administration of government and the preservation of peace." Cases since have clarified that the "trust" is a real trust in the legal sense of the word, with the trustees (the State Legislature and its delegates) being responsible for and having a duty to protect the trust. "There is a clear purpose for the trust: to preserve and continuously assure the public's ability to fully use and enjoy public trust lands, waters and resources for certain public uses."¹⁰¹

Common uses for the public trust grow as times change; generally it has included fishing, navigation, commerce, bathing, swimming, boating, and general recreation purposes. However, it is important to note that all of these uses "must take into account the overarching principle of the public trust doctrine that trust lands belong to the public and are to be used to promote public

⁹⁹ The individual objections and the entire Broadwater FERC Docket may be accessed at the FERC e-library by searching on Docket # CP06-54 at: <http://www.ferc.gov/does-filing/elibrary.asp>

¹⁰⁰ Pub L. § 75(7)(b) and *Matter of Lupo v. Board of Assessors of Town of Huron*, 2005 NY Slip Op 25295, 6 (N.Y. Misc. 2005). ("Such grants may only be made to the upland riparian owner ("proprietor of the adjacent land"), a limitation designed to recognize and protect the riparian right of access to navigable water.")

¹⁰¹ *Putting the Public Trust Doctrine to Work (2nd Ed.)* as prepared in 1997 for the Coastal States Organization.

OC1-70

The NYSOGS is responsible for issuing easements for use of underwater lands of Long Island Sound that are in the State of New York. Section 3.5.2.2 of the final EIS indicates that the Project would not represent the first time the waters of the Sound would be used for private purposes. Commercial and industrial structures in or under offshore waters of the Sound include cable crossings, natural gas and petrochemical pipelines, and two petrochemical platforms. As described in Section 3.6.6.2 of the final EIS, the fees and conditions associated with an easement would be negotiated between Broadwater and New York State.

OC1-71

Section 3.5.7.4 of the final EIS addresses the proposed Project in relation to public trust issues. Legal issues related to public trust lands are not a component of our environmental review process and therefore are not included in the final EIS.

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rather than exclusively private purposes.¹⁰² “Because these goods are to be enjoyed by all, the government must assume a trust-like duty not to waste or expend them for the benefit of just a few.”¹⁰³

Because safety considerations will required a “safety/security exclusion zone” for the life of this platform, the benefit of use for that portion of Long Island Sound will be stripped from the public and given over to the exclusive benefit TransCanada and Shell. There are some existing places along Long Island Sound and river shores that have safety and security zones maintained by the U.S. Coast Guard. Some have safety/security zone in place around the facility on land, others, which have riparian rights through adjacent land, maintain safety/security zones exist only while vessels are in port;¹⁰⁴ none of these locations are in the middle of the widely traversed,¹⁰⁵ widely fished Long Island Sound. This domination conflicts with the reality that these waters are for the use of citizens and any intrusion or limits of that public’s use must be in the public interest and not an unreasonable interference of that use. In this case the platform will be dominating the right of citizens to fish, lobster, and boat in that portion of the Sound.

1. Broadwater will negatively impact the developed coast.

Policy 1: Foster a pattern of development in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.

OC1-72

Broadwater will do nothing to foster a pattern of development in the Long Island Sound coastal area that enhances community character and preserves open space consistent with Policy 1. Development of Broadwater in Long Island Sound could negatively impact commercial, cultural and recreational opportunities both in the Sound and on the coastal waterfronts.

OC1-72 Please see our response to comment OC1-2.

¹⁰² *The Public Trust Doctrine* (California State Lands Commission).

¹⁰³ Delgado, *Trust Theory of Environmental Protection, and Some Dark Thoughts* (www.bepress.com/ils/iss4/art4) summarizing Sax, *the Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 478-89, 553-57.

¹⁰⁴ Information on the existing safety and security zones on Long Island Sound are in 33 CFR 165.140, 154 and 155. The FR notice for the regs in part 154 can be found at 68 FR 48798.

¹⁰⁵ See USCG WSR p30-32.

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Broadwater will mark the shift in a further privatized industrialization pattern of development in the Sound that will “result in an undesirable loss of the community and landscape character of the Long Island Sound coastal region.”¹⁰⁶ Long Island Sound is, perhaps, the region’s largest, most valued open space and the Long Island Sound Coastal Management Plan (LISCMP) advises that “development, public investment, and regulatory decisions should preserve open space and natural resources and sustain the historic waterfront communities as centers of activity.”¹⁰⁷ The construction of Broadwater would be inconsistent with this policy of preserving open space, natural resources, and sustaining waterfront communities such as the Ports of New Haven, CT¹⁰⁸ and Port Jefferson, Ny.

OC1-73 [The construction and operation of a facility the size of Broadwater in conjunction with the enormous increase in magnitude of vessels of this size, will shatter the character of the LIS and its coastal communities. The project will displace commercial and recreational boaters and fishermen, existing water-dependent uses; does not reflect the overall unique qualities of the coastline; will lower aesthetic values associated with the coast; and will strip the Long Island Sound’s mid-waters and subsea area of its natural, open space, and recreational qualities.

OC1-74 [

OC1-75 [The proposed onshore facilities and tugboat docks planned at either Port Jefferson or Greenport could negatively affect the community character.¹⁰⁹ Port Jefferson is a heavily populated town, and Greenport is renowned as one of the jewels of eastern Long Island and it plays a vital role in the tourism of eastern Suffolk County. The effect of either facility could impact the use of the waterfront and be considered a visual bight to the towns situated directly across its harbors: to Belle Terre, in Port Jefferson’s case; and to the residents of the northwest part of Shelter Island, in Greenport’s case. Such considerations should include the following and assessment on the property values around the facilities and across the harbor as well as a thorough analysis of how Broadwater and its associated vessels, support vessels, and equipment may affect development, revitalization programs, visual resources in the towns with onshore

¹⁰⁶ New York State Department of State, Division of Coastal Resources and Waterfront Revitalization, *Long Island Sound Coastal Management Plan*, p. 72 (January 1999).

¹⁰⁷ *Id.*

¹⁰⁸ See testimony given by Michael Piscatelli on behalf of the City of New Haven at the FERC Branford Public Forum held on January 16, 2007.

¹⁰⁹ *Id.* at 2-38 - 2-39.

OC1-73 Seafloor disturbance during construction of the FSRU would take place outside of the United States and would not affect the Sound. Installation of the Broadwater pipeline and the YMS would be similar to previous construction in the Sound, including installation of the IGTS pipeline, the Eastchester pipeline, and the Cross Sound Cable, and construction of the petrochemical transfer platforms off the Long Island coastline. Section 3.7.1.3 of the final EIS and Tables 2-1 and 2-5 of the WSR (Appendix C of the final EIS) make it clear that large commercial vessels would not be new to Long Island Sound: tankers, cargo ships, and large passenger vessels commonly transit the Sound. As addressed in Section 3.5.6 of the final EIS, the presence of the offshore components of the Project and the LNG carriers would not result in a significant impact on the visual resources of the area. Therefore, we have no support for rendering the conclusion that the Project would “shatter the character of the Sound and its coastal communities.”

OC1-74 Please refer to our impact analyses in the final EIS in Sections 3.7.1.4 (commercial fishing and shipping), 3.5.2 (land use), 3.5.5 (recreational boating and fishing and tourism), and 3.5.6 (visual resources).

OC1-75 Impacts associated with use of the onshore facilities are addressed in Sections 3.5.2.3, 3.7.2.3, and 3.8.5 of the final EIS. Broadwater would use existing onshore facilities rather than construct new ones. The onshore facilities would be used to support the offshore operations. This would include providing warehouse space for supplies and materials, office space for workers, and docking areas for tugs. By selecting existing facilities for Project-related use that would be similar to current use, we do not anticipate that significant impacts would be associated with use of the onshore facilities.

Also, as discussed in Section 3.9.1.2 of the final EIS, the increase in tug traffic to and from the onshore facility would have an insignificant impact on onshore air quality.

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OC1-75 support responsibilities, and air quality impacts from increased tug traffic noted on DEIS page 3-152.

FERC states that there are many offshore structures currently operating in LIS, including KeySpan's platform located 1.8 miles off of Northport, and a Conoco-Phillips platform 1 mile off of Riverhead and argues that Broadwater's approval would not spur more offshore LIS construction.

OC1-76 However, platforms associated with the KeySpan and Conoco-Phillips are ancillary to primary operations on the shoreline of each respective companies. Furthermore, the Northport platform, has been in operation since 1967 and the ConocoPhillips platform is been in operation since 1974— both constructed before the advent of modern environmental regulation and New York's Coastal Consistency Program.

OC1-77 Using these existing platforms to support for the claim that Broadwater will not industrialize the Sound, only reinforces the point that industrialization invites industrialization and establishes that indeed a project such as Broadwater sets a precedent to be used in future justifications for exclusive use, industrial projects regardless of exact type or scope.

2. Broadwater will negatively impact the public coast.

Policy 9: Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Long Island Sound coastal area.

LIS CMP, Chapter Three, Recommendation 27: Maintain the public interest in public trust lands along the Sound coast by identifying these lands and ensuring that all private use of these lands comports with the public trust doctrine.

OC1-78 Broadwater will not expand the recreational use of fish and wildlife resources in coastal areas through increased access nor will it maintain the public interest in public trust lands along the coast. To the contrary, the siting of Broadwater would shut down portions of the Sound to public use, impact commercial and recreational boating and fishing, thereby excluding public access to a portion of Long Island Sound held in public trust. Currently there is a need to maintain and improve existing public access and facilities for residents of Connecticut and New York, an intent that has manifested in the creation of the federal Long Island Sound Stewardship Act. As

OC1-76 We have noted the presence of these two facilities as part of the existing environment and indicate that there are existing industrial uses offshore of Long Island.

OC1-77 We do not believe that Broadwater was encouraged to propose its Project due to the presence of the two offshore platforms; these platforms were in place for decades prior to our receipt of the Broadwater application. We find no support for the claim that authorization of the proposed Project could serve as a precedent for further industrialization of the waters of Long Island Sound (see Section 3.5.2.2 of the final EIS).

OC1-78 Section 3.5.7 of the final EIS has been revised to address the proposed Project in consideration of the Long Island Sound Stewardship Act.

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OC1-78 [the Long Island Sound Study Stewardship Initiative has found and the Regional Planning Association maps created for this program show, the existing public and visual access "are inadequate to meet the needs" of the region.

Broadwater would only exacerbate this existing condition. The Sound, in the location of the FSRU, is classified as SA saline surface waters. Designated uses for this area include shellfishing for market purposes, primary¹¹⁰ and secondary contact recreation¹¹¹ and fishing and suitability for fish propagation and survival. Through the creation of an exclusion zone, the waters occupied by the FSRU will no longer be used to support the designated uses.

OC1-79 [With 529,844 boats registered in New York in 2003,¹¹² an estimated 260,000 recreational boaters¹¹³ and 1.5 million fishing trips per year taken by the 355,000 recreational marine anglers residing in Connecticut and New York,¹¹⁴ closing 1.4 square miles surrounding the FSRU and nearly 2.5 square miles around each tanker as it traverses in and out of the Sound (and their accompanying exclusionary zones) alone will result in more than a minor, temporary impact to the coastal zone.

OC1-80 [Even using the DEIS estimates for acreage affected by this proposal (estimates that are disputed in sections of this document)¹¹⁵ the combined project components will affect 2,235.5 acres of land and water during construction, 79.2 acres during operation, and 950.3 acres including the safety and security zone.¹¹⁶ The safety and security zone for each LNG carrier will be 4,080 acres,¹¹⁷ two to three tanker calls per week combined with the offloading time results in a near constant ribbon of traveling exclusionary area from the Race to the FSRU. This DEIS estimate two or three LNG transport carriers each week amounts to a total of 1048-156 tankers

¹¹⁰ primary contact recreation: recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence; swimming, diving, water skiing, skin diving and surfing.

¹¹¹ Secondary contact recreation: recreational activities where contact with the water is minimal and where ingestion of the water is not probable; includes, but is not limited to boating and fishing.

¹¹² New York Sea Grant study (Connelly et al. 2003)

¹¹³ Long Island Sound PAWSA Report, Appendix B, p. 17.

¹¹⁴ Long Island Sound Interim Task Force 2006.

¹¹⁵ See infra US Coast Guard security zone 1 discussion; see also General Environmental Comments.

¹¹⁶ Broadwater DEIS, p. 2-23.

¹¹⁷ Total per tanker for transit inward and outward bound.

OC1-79 The WSR (Appendix C of the final EIS) presents the results of a detailed analysis of the current uses of Long Island Sound and the effect of the proposed use by the Broadwater Project. Sections 3.5.5.1 and 3.7.1.4 of the final EIS have been revised to provide additional details on potential impacts to recreational boating and fishing due to the presence of the proposed safety and security zones around the FSRU and the LNG carriers. As noted in both the WSR and the EIS, nearly all recreational boating takes place within about 3.5 miles of the shoreline and would therefore not be affected by the Project, except for some recreational boating at and in the vicinity of the Race. In addition, if authorized, it is expected that Coast Guard would require Broadwater to schedule LNG carrier transits to minimize impact to other waterway users, including recreational boaters, to the extent practical, as recommended by the Coast Guard in Section 8.4 of the WSR (Appendix C of the final EIS). Therefore our finding remains the same: the impact to recreational fishing and boating would not be significant for a variety of reasons as described in the above-mentioned sections of the final EIS.

OC1-80 We are not aware of which estimates of acreage in the EIS the commentor is disputing. Sections 3.7.1.4 and 3.5.5.1 of the final EIS address the impacts to public use due to the proposed safety and security zones around the FSRU and the LNG carriers, and describe why we consider the impacts to be minor and temporary when they occur, although they would periodically occur throughout the life of the Project.

OC1-81 The safety and security zone of each LNG carrier would cover an area of approximately 2,040 acres, and only one carrier would be present in the Sound at any one time. Therefore, Save the Sound's use of 4,080 acres of exclusion area is not appropriate. Further, the entire transit path of an LNG carrier would not be an exclusion zone, as implied by the Save the Sound's comment that there would be "a near constant ribbon of traveling exclusionary area from the Race to the FSRU." As described in the EIS and WSR (Appendix C of the final EIS), the amount of time for the LNG carrier and its associated safety and security zone to pass any single point would be about 15 minutes (the length of the safety and security zone from front to back would be about 3.7 miles), and the exclusion area along the 40 miles between the Race and the proposed location of the FSRU would be the 2,040-acre area around the single LNG carrier as it transits the Sound. All other portions of the carrier route, both in front of and behind the carrier's safety and security zone, would be available for use.

Each LNG carrier and its associated safety and security zone would be in transit from the Race to the FSRU and back to the Race for up to about 9 hours (round trip); the berthing, unloading, and deberthing of each carrier within the proposed safety and security zone of the FSRU would be accomplished in approximately 25 hours. Assuming a maximum of three carriers per week (156 per year), LNG carriers and their associated safety and security zones would be in transit in Long Island Sound outside of the proposed safety and security zone of the FSRU about 16 percent of the time each year. Broadwater anticipates that 118 carriers would be required to provide the annual volume of LNG necessary for full production, which would result in carriers and their associated safety and security zones being in transit in the Sound about 12 percent of the time each year. Therefore, the public would not be able to use of an area of about 2,040 acres in Long Island Sound (about 0.2 percent of the area of the Sound) for about 12 to 16 percent of the time each year.

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OC1-82 each year. Depending on the actual number of tankers, 2 or 3, this represents a 3.3x to 5x increase in central Long Island Sound foreign flagged vessel¹¹⁸ arrivals¹¹⁹ and will represent, once Broadwater begins using the larger of the tankers outlined in the USCG report,¹²⁰ a 52x to 78x increase in foreign vessels anywhere near their proposed size.¹²¹ This is inconsistent with the character of the waterway as it exists today, which is, as acknowledged above, already has coastal access problems.

OC1-83 As can be witnessed from the Boaters against Broadwater Campaign, the numerous day sailors, yacht clubs that have spoken at public meetings or submitted documents into the records, Broadwater will permanently and unjustifiably impact the traditional public uses of Long Island Sound

3. Broadwater will negatively impact the working coast.

Policy 10: Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

Broadwater will not further the promotion of siting new water-dependent uses in suitable locations, to the contrary Broadwater seeks to site a gas facility in the middle of an Estuary of National Significance.

OC1-84 The inappropriate siting of a facility could result in impacts to other water dependant uses. In addition to recreational boating and fishing that will be significantly affected, and as indicated by the USCG navigational data¹²² commercial traffic could also be severely hampered by the location of the FSRU and the acreage to be restricted by the security zone. Furthermore, common-sense indicates that when possible commercial vessels, commercial fishermen, and commercial charter captains will want to steer very far from FSRU, far past the security zone, as

¹¹⁸ foreign flagged vessels require protocols, monitoring, and investigation that other domestic ships do not, and as such is the appropriate figure to use.

¹¹⁹ Table 3.2-13 p.93 of USCG Waterway Suitability Report for the proposed Broadwater Proposal.

¹²⁰ Table 3.2-1 p37 USCG WSR.

¹²¹ Table 3-3 p.25 USCG WSR.

¹²² USCG WSR pp30-34.

OC1-82 The overall impact of the Project on marine transportation in Long Island Sound can best be assessed using vessel arrival data for all of Long Island Sound, as presented in Table 2-1 of the WSR (Appendix C of the final EIS). As indicated in Section 2.2.1 of the WSR, approximately 460 foreign-flag vessels enter the Sound per year. As stated in Section 4.4.2 of the WSR, the addition of the LNG carriers would result in a 20- to 30-percent increase in foreign-flag vessels. The overall increase in commercial vessel traffic in Long Island Sound would be less than 1 percent (WSR Section 8.2). Use of the waterway by vessels of the size of the LNG carriers would be consistent with current use, and the Coast Guard considers the addition of the LNG carriers to be a manageable situation with implementation of the mitigation measures they have recommended in the WSR.

OC1-83 Please see our response to comment OC1-79.

OC1-84 As noted in both the WSR (Appendix C of the final EIS) and the EIS, nearly all recreational boating takes place within about 3.5 miles of the shoreline, toward centers of higher population along western Long Island Sound, or is concentrated around the Race. The proposed location of the FSRU is more than 9 miles from the nearest shoreline in the central basin of Long Island Sound. Therefore, the siting of the FSRU would not have a significant impact on existing recreational boating or fishing. In addition, as stated in Section 3.7.1.4 of the final EIS, the proposed location of the FSRU and the surrounding safety and security zone is not an area of heavy commercial traffic, and the Project would have only a minor but long-term impact on commercial vessels. The Coast Guard has made a preliminary determination, pending completion of the NEPA analysis, that with implementation of the mitigation measures it has proposed, operation of the Project in Long Island Sound would be manageable. FERC expects that these mitigation measures would be required if the Broadwater Project is authorized. Section 3.7.1.4 of the final EIS has been revised to more clearly describe FERC's approach to this issue.

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OC1-84 the project area poses increased risks including encounters with armed security, fire from accidental or intentional platform incidents and increased tanker traffic. Removing such a sizeable area from commercial industry could have the unintended result of higher concentration of vessels in other areas of the Sound.

OC1-85 In addition to the mid-waters, the Race is considered to be an area where navigational lanes may be permanently disrupted on a regular basis.¹²³ Such disruptions and the required scheduling of LNG tanker movement, may negatively impact other commercial shipping.

OC1-86 Maritime transportation will also be affected, as FERC states that ferry service will be impacted in a "minor and occasional" way. It is cavalier to think that the carrier routes and FSRU would minimally impact not only the actual route of the ferry but actual use of the Port Jefferson-Bridgeport ferry service.¹²⁴ One ferry service wholly ignored in the DEIS is the ferry service from Greenport to Shelter Island, which currently operates from a Greenport dock that is planned to be incorporated into the Greenport onshore tugboat facility.

OC1-87 Onshore economic activity may also be affected. FERC summarily dismisses any effects to onshore economic activity by concluding that residential property values will not be affected and thus it is unlikely that onshore recreation will be affected. This is a bold assumption, and no studies are cited for the property values conclusion.

4. Coastal Safety DEIS Comments

3. The heat flux value used in establishing zone 1 is low and should be adjusted.

OC1-88 The heat flux value threshold used by the USCG in establishing exclusion zone corresponding to hazard Zone 1, the area of greatest impact should a release of LNG occur:

¹²³ See discussion on tanker timeframes in subdivision 4 of this section
¹²⁴ *Id.* at 3-121.

OC1-85 The WSR (Appendix C of the final EIS) presents the results of a detailed analysis of the current uses of Long Island Sound, including uses of the Race, and the effect of the proposed use by the Broadwater Project. Because LNG carriers would pass through the Race in about 25 to 35 minutes up to six times per week (three round trips), Save the Sound's comment that the "navigational lanes may be permanently disrupted on a regular basis" is unfounded. As noted in both the EIS and the WSR, some vessels using the Race may experience temporary delays, and other vessels may not be affected at all since there would be room between the safety and security zones surrounding the carriers as well as alternative routes for many vessels. Although these temporary delays would occur for the life of the Project, they would not result in permanent or continuous disruption of the Race.

OC1-86 The discussion of impacts to ferry service has been revised in the final EIS, in response to comments from Cross Sound Ferry Services, Inc. (see Section 3.7.1.4). Because the LNG carriers and the FSRU would be at least 15 miles east of the Bridgeport-Port Jefferson ferry route (see Figure 3.5-2 in the final EIS), that ferry system would not be affected by operation of the Project. As addressed in Section 3.7.1.4 of the final EIS, the impact to ferry service within harbors hosting Broadwater tugs and onshore facilities would be mitigated by use of normal maritime protocol. As a result, the Greenport-Shelter Island ferry would not be affected either by operation of the tugs associated with the Project or by the LNG carriers.

OC1-87 The economic theory explaining that property values reflect recreational opportunity and the research supporting the conclusion that the Broadwater Project would not likely alter recreational values are detailed in Sections 3.6.5 and 3.6.8.3 of the final EIS. To summarize, a component of home and property values includes the value associated with proximity to high-quality recreational experiences. In addition, after an extensive literature review (described in Section 3.6.5), FERC found no evidence indicating that property values are likely to be affected by the proposed Project. We consider it highly unlikely that the proposed Project would significantly affect onshore recreation.

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OC1-88 should be increased. As 5kw/2 is the permissible level for emergency operation lasting several minutes with appropriate clothing, and it is highly unlikely that those who may be within the area will be wearing appropriate clothing for an emergency operations, and the exclusion zone corresponding to hazard Zone 1 was created to protect the public from the worst of the potential impacts, the thermal radiation number and the associated exclusion zone used should be revised.

OC1-89 The stated purpose of establishing the safety zone would not be fulfilled at the current distance. If, as the Waterways Suitability Report states, "the purpose of a safety zone is to protect the public and marine transportation system from the hazards associated with a breach of the LNG carrier's tanks," then the safety zone should be extended further. As the Sandia report makes clear, exposure between 37.5kw/m2 and 5kw/m2 can cause severe pain and death, 25kw/m2 would will ignite without a flame, 12.5 kw/m2 plastic will melt, at 5kw/2 pain will set in after 13 seconds of exposure and first-degree burns will occur within 20 seconds. Even a nominal LNG fire lasting eight minutes the ability to seek shelter on the open water is all but impossible and vessels will likely offer only minimal protection to their occupants. The National Fire Protection Association recommends that an incident heat flux value of 5kw/m2 should not be exceeded in areas where more than fifty people might assemble, such a figure is almost reached before even leaving the FSRU.

Table 4: Common, Appropriate Thermal Radiation Damage Levels¹²⁵

Incident Heat Flux (kW/m ²)	Type of Damage
35-37.5	Damage to process equipment including steel tanks, chemical process equipment, or machinery
25	Minimum energy to ignite wood at indefinitely long exposure without a flame
18-20	Exposed plastic cable insulation degrades
12.5-15	Minimum energy to ignite wood with a flame; melts plastic tubing
5	Permissible levels for emergency operations lasting several minutes with appropriate clothing

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ii. To the extent that the DEIS relies on Sandia to establish safety and security zones, its analysis should be re-evaluated under the more current Cabrillo standard.

¹²⁵ Mike Hightower, et. Al. "Guidance on Risk Analysis and Safety Implications of a Large Liquefied Natural Gas (LNG) Spill Over Water." Sandia National Laboratories, December 2004: 38.

OC1-88 While the purpose of the safety zone is to protect the public and the maritime transportation system from the hazards posed by a breach of the LNG carriers or FSRU tanks, the size of the zone is not tied directly to the thermal hazards posed by such a breach. The function of the safety zone is to reduce the probability of such a release occurring by creating a buffer zone around the LNG carriers and the FSRU. Additionally, it provides adequate distance and time for escort vessels to take mitigating measures to prevent accidents.

FERC staff and the Coast Guard, in accordance with NVIC 05-05, used guidance from the Sandia Report to establish hazard zones around the FSRU and LNG carriers. The Sandia Report (Sandia 2004) states that "The hazards would be low, approximately 5 kw/m² beyond 1,600 m from even a large spill." For purposes of onshore siting, 49 CFR 193 and NFPA 59A specify a level of 5 kw/m². Therefore, FERC and the Coast Guard feel that 5 kw/m² is an appropriate value. In addition, the GAO Report (GAO 2007) agreed with the use of the 5-kw/m² endpoint value.

OC1-89 Please see our response to comment OC1-88.

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The Sandia National Laboratories turned their attention to LNG once again in January 2006 with the publication of the "Review of the Independent Risk Assessment of the Proposed Cabrillo Liquefied Natural Gas Deepwater Port Project." Conducted at the behest of the U.S. Coast Guard, the review evaluated an independent risk assessment of the proposed Cabrillo LNG terminal in Southern California (the Cabrillo proposal is broadly similar to Broadwater: an offshore FSRU connected by subsea pipeline to the existing grid). This review differs from the 2004 Sandia report in that it focuses on a specific regasification unit, while the 2004 report centers on accidents on LNG tankers.

The Cabrillo report concentrates mainly on a "worst-case" scenario of a large-scale, intentional event resulting in 200,000 m³ spill, or a total loss of the Cabrillo facility (in comparison, Broadwater is a 350,000 m³ unit) finding that a thermal hazard to humans from a pool fire associated with a 200,000 m³ spill would extend 2 miles from the fire. Additionally for the vapor cloud scenario, the Cabrillo report maintained the "worstcase" condition by using a wind speed of 2 m/s, which would result in the greatest distance to the lower flammability limit. The report's original figure, 7.3 mi, was designated reviewed by Sandia. While Sandia did come up with a more precise distance, 4.34 mi., Sandia still endorsed the coarser original figure as a "conservative estimate of safety hazard distances."

In conclusion, Sandia's 2004 report on accidents for LNG tankers has been revised for FSRUs by Cabrillo, a facility that resembles the Broadwater proposal. It is in this context that the data and evaluations for establishing safety and security zones should be analyzed and made available to the public.

iii. The DEIS fails to provide sufficient details on the duration of a tanker's moving security zone.

The USCG report indicates that a safety and security zone will take, on average, 15min to pass a given point.¹²⁶ After an examination of the DEIS Save the Sound was unable to locate the underlying data to support the assumed average tanker speed of 12 knots. In order to adequately inform the public of potential exclusion zone durations encountered on Long Island Sound, the

¹²⁶ USCG WSR p161.

OC1-90 The Sandia assessment referred to in the comment was conducted specifically for the proposed Cabrillo Port Project. We have revised Section 3.10.3 of the final EIS to compare the Cabrillo Port analysis to the risk analyses conducted for the proposed Broadwater FSRU. In summary, due to project-specific differences, which include tank sizes, spill sizes, and operating environments, the consequence analysis specific to the proposed Cabrillo FSRU is not applicable to the proposed Broadwater FSRU.

OC1-91 The Coast Guard stated in Section 3.2.5.1 of the WSR (Appendix C of the EIS) that "under ideal conditions" LNG carrier transit of the Race would be from 12 to 15 knots and that weather, sea states, vessel traffic and other conditions may reduce the speed of the carriers through this portion of the route. Given the size of a typical LNG carrier, carriers would be able to maintain a 12- to 15-knot speed through a wide range of wind and sea conditions. However, if conditions arise that might significantly affect the speed or maneuverability of a carrier, permission to enter the Sound may not be granted. Further, the 15-minute transit time referred to in both the WSR and the final EIS for the passage of the proposed safety and security zone of a carrier to pass a point is based on a speed of 12 knots.

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OC1-91 ↑ FERC should, in addition to stating the basis of conditions needed to achieve the 12 knot average, include a range of timeframes under a series of different wind, wave and weather conditions.

OC1-92 [iv. The DEIS fails to provide sufficient details of the security response to a breach of an established safety and security zone.
As Long Island Sound is a public resource, the citizens is entitled a detailed explanation of the protocol used by the USCG and any private security force patrolling safety and security zones established pursuant to the USCG evaluation. Additionally, the public should be afforded the opportunity to comment on such potential ramifications prior to federal or state approvals of the Broadwater application.

VII. THE DEIS FAILS TO PROPERLY TAKE INTO ACCOUNT THE CUMULATIVE IMPACTS OF MULTIPLE INDUSTRIAL AND ENERGY PROJECTS IN THE LONG ISLAND SOUND

A. The analysis contained in the DEIS is insufficient to determine if Broadwater will cause cumulative impacts to the seafloor, water and wildlife of Long Island Sound.

The Environmental Protection Agency guidance on the evaluation of cumulative impacts states:

"Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis. While impacts can be differentiated by direct, indirect, and cumulative, the concept of cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of the effects of all actions over time. Thus the cumulative impacts of an action can be viewed as the total effects on a resource, ecosystem, or human community of that action and all other activities affecting that resource no matter what entity (federal, non-federal, or private) is taking the actions."¹²⁷

Such cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.¹²⁸ An oyster crash (linked to shellfish disease), two separate lobster die-offs, and the continued persistence of hypoxic conditions has signaled the

¹²⁷ <http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>.

¹²⁸ 40 C.F.R. § 1508.7 (2007).

OC1-92 As stated in Section 5.2.2.2 of the WSR (Appendix C of the final EIS), "46 U.S.C. § 70119 provides for state and local law enforcement agencies to enforce safety and security zones established by the Coast Guard. The Coast Guard is currently working with the states of New York and Connecticut to establish a Memoranda of Agreement for this purpose.

The Coast Guard is responsible for accomplishing the tasks that by law, only the Coast Guard is authorized to conduct but may share other law enforcement responsibilities with state or local law enforcement agencies. Enforcement of the safety and security zones is a law enforcement function that can not be delegated to private security forces. Private security forces could provide notification to vessels approaching the safety and security zone around the FSRU and provide on-board security for the FSRU, but private security forces cannot act as law enforcement representatives. Broadwater would provide funding for state or local law enforcement agencies for their involvement in the Emergency Response Plan, including enforcing the safety and security zone as described in Section 6.2.3.2 of the WSR.

Neither FERC nor the Coast Guard would allow operation of the Project until the appropriate safety and security measures are in place. If the Project receives initial authorization to proceed, Broadwater would work with federal, state, and local agencies to develop a Facility Security Plan (as outlined in 33 CFR 101-105) and a Facility Response Plan (as outlined in 33 CFR 154). Further, FERC would need to approve the Emergency Response Plan developed by Broadwater as described in Section 3.10.6 of the final EIS. If the resources needed to implement the plans are not available and properly funded, FERC would not allow operation of the Project.

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need for increased efforts to protect the Long Island Sound's ecosystem. The introduction of botanical and zoological invasive species, loss of native eel grass, and over-development of the shoreline threaten the biological integrity of the estuary. Usage issues, such as dredging, utility crossings, and recreational water rights, have impacted seafloor habitats and raised policy question of how to best balance traditional public trust rights of the human community. Point and non-point source pollution contribute stormwater, heavy metals, nitrogen, pesticides and marine debris to the ecosystem which shutdown shellfishing, impacts wildlife, and greatly limits the public's ability to use shoreline resources. Finally, global warming and its effects on water temperature and sea level changes will likely impact fisheries, sensitive tidal marshes, and may lead to the eventual loss of these critical wildlife habitats.

Cumulative impacts need to be considered in light of the baseline conditions, which may include some degree of pre-existing environmental impairment. This does not mean that a potential adverse impact of a project is insignificant if it incrementally contributes to a broader trend of environmental degradation. Broadwater could prove to be incremental impact to each of these already progressing issues the final result of which is collectively significant. The DEIS chooses to focus only on other utility and dredge disposal impacts¹²⁹ which may combine with the assumed impacts of Broadwater and fails to examine the cumulative affects of Broadwater in the context of each of the above described environmental trends. The DEIS should evaluate Broadwater in light of the foregoing concerns.

B. The analysis contained in the DEIS is insufficient to determine Broadwater's cumulative energy or air quality impact on the Northeast and/or Long Island Sound region.

The DEIS discusses other utility and dredge disposal projects located in Long Island Sound; and only to the extent that their activities could result in cumulative impacts on water quality and habitats in Long Island Sound. Broadwater could be one impact compounding the effects of all actions over time, however, the DEIS fails to assess the following: cumulative energy and air impact on the Northeast, and more specifically the Long Island Sound region, posed by the currently approved and proposed LNG facilities¹³⁰ once they become operational.¹³¹

¹²⁹ DEIS E-39 through E-45

¹³⁰ See FERC proposed and potential LNG in the regional planning discussions section.

OC1-93

OC1-93 As discussed in Section 3.11 of the final EIS, we considered potential impacts to the offshore waters of Long Island Sound and those projects that may influence those resources, including pipelines, telecommunication and electric transmission cables, dredge disposal sites, nearshore platforms, and commercial shipping.

OC1-94

OC1-94 As described in Section 3.11.5.6 of the final EIS, the federal and state permitting process for air emissions incorporates the potential cumulative impacts to air quality. Because of the Broadwater Project's distance from shore, proposed emission control technology, and air permitting requirements, no significant cumulative impact to air quality would be associated with the Broadwater Project.

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OC1-94 ↑ cumulative energy and air impact from other fossil fuel conversion projects like the coal gasification projects or the newly proposed plant by NRG;¹³² cumulative impact on air quality in the Long Island Sound region from substantial increase tanker and tug traffic associated with Broadwater; the cumulative impact on air quality in the Northeast from all increased LNG vessel traffic from all new or upgraded LNG facilities; or the cumulative impact on air quality in the United States from the life cycle of LNG facilities and all associated components.¹³³ The DEIS should examine all potential cumulative air impacts associated with the Broadwater application.

C. The information contained in the DEIS is insufficient to determine whether Broadwater will result in the cumulative industrialization of Long Island Sound.

OC1-95 [In considering severity of impact, one factor to consider is the “degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.”¹³⁴ If Broadwater were permitted, it would set a precedent for the industrial use of the Sound’s mid-waters,¹³⁵ establish a defacto industrial marine zone, and create a policy of excluding the public from public trust waters for the exclusive benefit of a private corporate entity that holds no adjacent shoreline.¹³⁶

Marine zoning in Long Island Sound has been discussed for years,¹³⁷ first as a way to improve fishery stocks, then as a way to thoughtfully site energy projects—never has conclusion been reached. This indecision resulted in many debates centered on the issues of public use. Fishermen and boaters wanted to continue to hold their right to freely access all portions of the Sound and resource managers worried that such a paradigm might actually invite unintended consequences. The result a draft bill on marine zoning was floated, but never enacted by the Connecticut General Assembly. Now in one massive move Broadwater seeks to, without a policy or structure for researched marine zoning put in place, create its own defacto marine zone.

¹³¹ When consequences of similar actions will be felt cumulatively (such as coal mines within one region) they should be considered jointly. *KLEPPPE, SECRETARY OF THE INTERIOR, ET AL. v. SIERRA CLUB ET AL.*, 427 U.S. 390; 96 S. Ct. 2718; 49 L. Ed. 2d 576.

¹³² <http://www.ct.gov/cse/lib/cse/f2006/2006forecast.pdf>

¹³³ Of particular interest is LNG ability to uniquely increases the emissions of CO2 into the atmosphere. <http://lngwatch.com/race/docs/RACE%20-%20Global%20Warming.pdf>

¹³⁴ 40 CFR 1508.27(b)

¹³⁵ As discussed in the above section on New York State Coastal Policy 1.

¹³⁶ *Id.*

¹³⁷ See 2004 LISWA Summit and LIS Taskforce 2003.

OC1-95 As described in Section 3.5.2.2 of the final EIS, we found no support for the claim that the proposed Project could serve as a precedent for further industrialization of the waters of Long Island Sound. Section 3.5.2.2 also indicates that the Project would not represent the first time the waters of the Sound would be used for private purposes. Commercial and industrial structures in or under offshore waters of the Sound include cable crossings, natural gas and petrochemical pipelines, and two petrochemical platforms.

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The results of which are the very reasons Long Island Sound stakeholders were hesitant at the outset. In a final twist, this "marine zone" is being used to create an industrial center in the Sound that will negatively impact its waters, habitat, and traditional use and is antithetical to the original intention of Long Island Sound protection.

OC1-96 [Just as existing subsea pipelines, and platforms permitted before modern coastal regulation, have been used by project proponents to bolster its approval, so too would others seeking to industrialize and exclude the public from the center of the Sound in generations to come use the precedent of Broadwater.

D. The analysis in the DEIS is insufficient to determine Broadwater's cumulative acoustic and light impacts

OC1-97 [While the DEIS contains ten pages on cumulative impacts,¹³⁸ the bulk of the analysis relates to describing other utility project. There is no mention of cumulative acoustic impacts caused by the operation of the FSRU and its on board components or the potential cumulative impact of light pollution from facility's operational lights. Save the Sound requests that FERC provide an analysis of both in the FEIS.

OC1-98 [In conclusion, the DEIS did not sufficiently evaluate the cumulative effect Broadwater poses to the seafloor, water quality, wildlife, air quality, aural and visual resources, or future industrialization of the Long Island Sound region.

VIII THE DEIS FAILS TO FULLY AND FAIRLY DISCUSS THE IMPACT OF THE PROJECT ON OTHER STATE STATUTORY AND REGULATORY SCHEMES AND PROGRAMS

OC1-99 [Other existing statutory and regulatory programs pertinent to the protection and management of Long Island Sound will be impacted by the siting of Broadwater. The DEIS fails to assess the extent of that impact.

Long Island Sound is a congressionally declared "Estuary of National Significance." It contributes approximately \$5.5 billion dollars to the regional economy every year and large

¹³⁸ DEIS 3-239 - 3-240

OC1-96 We have found nothing to support the contention that Broadwater was encouraged to propose its Project due to the presence of the two offshore platforms; these platforms were in place for decades prior to our receipt of the Broadwater application. Further, we found no support for the claim that authorization of the proposed Project could serve as a precedent for further industrialization of the waters of Long Island Sound (see Section 3.5.2.2 of the final EIS).

OC1-97 Sections 3.11.5, 3.3 and 3.5.6 of the final EIS have been expanded to more fully describe potential impacts of operational lighting and operational noise.

OC1-98 We prepared the cumulative impact section in compliance with NEPA requirements and according to the guidance of CEQ. As a result, we believe that Section 3.11 of the final EIS provides an adequate evaluation of the potential cumulative impacts associated with the proposed Project.

OC1-99 Section 3.0 of the final EIS describes the various programs and regulatory oversight mechanisms focused on protecting the environment of Long Island Sound. Section 3.5.5.2 addresses dredge disposal areas; Section 3.5.7.1 addresses coastal zone consistency; Section 3.5.7.2 addresses the Long Island Sound Stewardship Act and the Long Island North Shore Heritage area; and Section 3.5.7.3 addresses the Comprehensive Conservation and Management Plan that is part of Long Island's designation as an Estuary of National Significance. The Marine Protection, Research and Sanctuaries Act (MPRSA) is enforced by EPA. As one of the agencies cooperating in the preparation of the final EIS, EPA did not identify any concerns related to the MPRSA.

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amounts of federal, state, municipal, and individual dollars have gone into restoring and protecting its waters and habitats. It has been said that perhaps we can never bring the Sound back to its historic wilds—the way it was when explorer Giovanni Verrazano arrived in the 16th century—however, there is public and governmental agreement that the Sound is our heritage and we can protect it for future generations. The *Listen to the Sound* hearings of 1990 articulated what we all share as a common vision for our regional treasure:

"The vision . . . for the Sound is of waters that are clean, clear, safe to swim in, and charged with life. It is a vision of waters nourished and protected by extensive coastal wetlands, by publicly accessible, litter-free beaches and preserves, and of undeveloped islands. It is a vision of abundant and diverse wildlife, of flourishing commercial fisheries, of harbors accessible to the boating public, and of a regional consciousness and a way of life that protects and sustains the ecosystem."

As these citizens, elected officials, and industry representatives pondered the future of a bountiful Long Island Sound with undeveloped islands, they could not have foreseen that it was the Sound's mid-waters which would become the subject of the next coastal land grab.

Currently the DEIS does not address implications on this project by or on other federal laws, programs, and ongoing processes such as the Comprehensive Conservation and Management Plan, National Estuary Program, the Long Island Sound Stewardship Program, the EPA Dredge Spoil Site Designation, the Marine Protection, Research and Sanctuaries Act (MPRSA), the Nitrogen Total Maximum Daily Load (and the associated nitrogen bubbles of New York City and Connecticut's Nitrogen Trading Program).

The only consideration of any process currently in effect for Long Island Sound is the cursory review of the National Estuary Program (two paragraph) and one conclusion paragraph¹³⁹ that reads: "The proposed Project would not affect DO levels, introduce new toxic contaminants, increase pathogen contamination, generate floating debris, or result in a net degradation of habitat. Further, the Project appears to be consistent with the Plan's stated objective of encouraging environmentally sensitive development and land use planning." This is a sweeping statement which is not supported by the conclusions and mitigation recommendations of the

¹³⁹ DEIS 3-107 and 3-108.

OC1-99

OC1-100

OC1-100 Based on our determination regarding the overall environmental impact of implementation of the proposed Project with the recommended mitigation measures, we believe that our statements regarding the National Estuary are accurate. Further, it is not clear why the CTDEP's assessment of the Islander East Project is relevant because the Broadwater Project is not in the waters of Connecticut, and particularly, not in the nearshore waters of the Sound where there are greater concerns. Section 3.5.7 of the final EIS has been revised to address other management programs relevant to Long Island Sound.

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OC1-100 DEIS, let alone by the data that can be found in Connecticut Department of Environmental Protection's review of the Islander East pipeline or the Long Island Sound Taskforce of 2003. A review and careful analysis of these programs and how Broadwater might impact or be impacted by those programs is necessary.

IX. CONCLUSION

OC1-101 The DEIS is insufficient because it fails to (1) fully and fairly discuss significant environmental impacts presented by the project; (2) provide supporting evidence that the agency has made the necessary environmental analyses; (3) adequately inform decisionmakers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment or (4) adequately assess the cumulative impacts of the project. Moreover, the permanent closing of a large portion of the Long Island Sound for a private industrial use is inconsistent with New York State's Coastal Policies and would violate the Coastal Zone Management Act. In addition to the foregoing we join in comments as filed by the CT Attorney General's office on the DEIS and coastal issues.

OC1-101 We have addressed the issues raised in this comment in the responses above.