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July 18, 2008

## **VIA HAND DELIVERY AND FIRST-CLASS MAIL**

The Honorable Carlos M. Gutierrez  
Secretary of Commerce  
Herbert C. Hoover Building  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Reply of Broadwater Energy LLC and Broadwater Pipeline LLC to New York State Department of State's Opposition to Motion to Supplement the Decision Record

Dear Secretary Gutierrez:

This letter represents the reply of Broadwater Energy LLC and Broadwater Pipeline LLC (collectively, "Broadwater") to Susan L. Watson's July 11, 2008 letter on behalf of the New York State Department of State's ("NYSDOS") opposing Broadwater's July 7, 2008 Motion to Supplement the Decision Record ("Opposition Letter").

Broadwater is appealing an April 10, 2008 objection ("Objection") by NYSDOS to Broadwater's coastal zone consistency certification ("CZCC") for its construction and operation of a liquefied natural gas import terminal (the "Project") in Long Island Sound. Broadwater's motion seeks to supplement the decision record with four additional documents that relate exclusively to the two Atlantic Ocean alternatives ("Alternatives") to the Project proposed by NYSDOS in its Objection. Specifically, Broadwater seeks to introduce (1) a June 2008 Port & Terminal Logistics Review – Broadwater, Long Island Sound versus Atlantic Alternatives, Witness Modeling (Supplemental Document I); (2) a June 2008 Alternative Site Operability Study prepared by Moffatt & Nichol (Supplemental Document II); (3) a June 2008 Broadwater Energy Alternative Pipeline Cost Estimate (Supplemental Document III); and (4) a Coastal Fish

& Wildlife Rating Form for Great South Bay – West, prepared by NYSDOS on March 15, 1987 (Supplemental Document IV) (collectively, the “Supplemental Documents”).<sup>1</sup>

The Secretary may accept supplemental information into the decision record that clarifies information contained in the consolidated record.<sup>2</sup> 15 C.F.R. § 930.130(a)(2)(ii)(B). The Secretary enjoys wide latitude and “broad authority” in determining the content of the decision record so as “to ensure efficiency and fundamental fairness to all parties.” 15 C.F.R. § 930.127(e)(1).

Broadwater moves to include the Supplemental Documents in the decision record because NYSDOS never proposed its two specific Alternatives to Broadwater prior to publication of the Objection on April 10, 2008. NYSDOS’s failure to propose these Alternatives to Broadwater prior to issuing the Objection is particularly egregious given NYSDOS’s admission in its Opposition Letter that NYSDOS and Broadwater had earlier “agreed to fully share technical data related to the Atlantic Ocean alternatives.”<sup>3</sup> As a result of NYSDOS’s failure to adhere to this agreement, the consolidated record is deficient in analysis of the particular Alternatives proposed in the Objection (rendering NYSDOS’s opposition to Broadwater’s motion to supplement especially iniquitous). Accordingly, “fundamental fairness” demands that Broadwater be allowed to supplement the decision record so as to be afforded substantive input on the merits of the specific Atlantic Ocean FSRU locations that comprise NYSDOS’s Alternatives. 15 C.F.R. § 930.127(e)(1).

Although NYSDOS’s Opposition Letter concedes that the Supplemental Documents are being introduced “to directly respond to two alternatives raised in the NYSDOS decision,” NYSDOS contends that Broadwater’s motion should be denied because Broadwater “had specific information on the NYSDOS alternatives as early as April 2007.”<sup>4</sup> NYSDOS is mistaken. While vast amounts of critical information are missing from the vague and insufficient descriptions of NYSDOS’s Alternatives in the Objection, NYSDOS proffers coordinates for the proposed Atlantic Ocean FSRU locations in its Objection for the very first time: W 73° 37’ 00’’, N 40° 23’ 00’ (Alternative 1) and W 73° 10’ 05’’, N 40° 20’ 00’

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<sup>1</sup> NYSDOS does not object to the inclusion of Supplemental Document IV in the decision record, yet NYSDOS fails to explain the legal or logical difference between that document and Supplemental Documents I-III.

<sup>2</sup> The Opposition Letter appears to suggest, erroneously, that supplemental materials may be received into the decision record only to the extent the Secretary makes an affirmative request. Opposition Letter at 2. Under the unambiguous language of 15 CFR § 930.130(a)(2)(ii)(B), however, the Secretary may accept “clarifying information submitted by a party” without regard to whether the Secretary affirmatively requested the supplemental materials in question.

<sup>3</sup> Opposition Letter at 4. See also 15 C.F.R. § 930.56 (requiring NYSDOS to assist Broadwater in ensuring that the Project could be conducted in a manner consistent with the Long Island Sound Coastal Management Program).

<sup>4</sup> Opposition Letter at 1.

(Alternative 2).<sup>5</sup> Prior to issuing the Objection, NYSDOS never proposed an FSRU at either of these Atlantic Ocean locations to Broadwater. Tellingly, NYSDOS does not (and cannot) cite to *a single document* from the consolidated record analyzing the feasibility of an FSRU at these particular coordinates (because no such document exists). Instead, NYSDOS resorts to repeatedly citing to large tracts of documents that contain only general discussions of the feasibility of locating an LNG terminal in the Atlantic Ocean.<sup>6</sup> There were general discussions of the feasibility of locating an LNG terminal in the Atlantic Ocean. But those general discussions in no way support NYSDOS's erroneous contention that it proposed an FSRU located at the aforementioned particular coordinates to Broadwater.<sup>7</sup> A cursory review of every document referenced in NYSDOS's Opposition Letter confirms that NYSDOS's repeated assertion that Broadwater has "exhaustively analyzed these *specific* alternatives" has absolutely no support in the record and is, therefore, baseless.<sup>8</sup>

For instance, NYSDOS contends that an April 2007 report prepared by its consultant, Battelle Memorial Institute ("Battelle Report"), demonstrates "the feasibility of these two alternative locations."<sup>9</sup> NYSDOS goes so far as to claim that the Battelle Report "analyzes, with specificity, the ocean conditions of the alternative Atlantic sites and concludes that the alternatives are feasible locations for Broadwater's project."<sup>10</sup> While the Battelle Report analyzes three "Potential Locations" for an Atlantic-based LNG terminal (styled PL1, PL2 and PL3 in the Battelle Report), those Potential Locations *are not* the same locations as the Alternatives proposed by NYSDOS in its Objection.<sup>11</sup> The coordinates for PL1, PL2 and PL3 in the Battelle Report are completely different than the coordinates provided in the Objection for Alternatives 1 and 2.<sup>12</sup> And NYSDOS cannot cite to any portion of the Battelle Report that analyzes an FSRU at the coordinates included in the Objection. Moreover, the Potential Locations described in the Battelle Report involve interconnections "at point of Transco

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<sup>5</sup> Objection at 62-63, 70 (BW33796-33797, BW33804).

<sup>6</sup> Objection at 4 (citing Consolidated Record Documents 1317 [BW17058-17110], 1664 [BW24066-24157]).

<sup>7</sup> As Broadwater noted in its initial moving papers (¶ 6), "[w]hile the general concept of an FSRU in the Atlantic Ocean was mentioned in a 2007 metocean analysis commissioned by NYSDOS, the specific locations of Alternatives 1 and 2 were not provided to Broadwater."

<sup>8</sup> Opposition Letter at 3 (emphasis supplied).

<sup>9</sup> Opposition Letter at 4.

<sup>10</sup> Opposition Letter at 4.

<sup>11</sup> Battelle Report at 2 (BW41957).

<sup>12</sup> The coordinates given in the Battelle Report for PL1, PL2 and PL3 are as follows: PL1=W 73° 39.5', N 40° 24.0', PL2=W 73° 30.0', N 40° 21.5', and PL3=W 73° 18.7', N 40° 20.0'. (BW41958). Contrast with the coordinates given in the Objection for Alternatives 1 and 2: W 73° 37' 00'', N 40° 23' 00'' and W 73° 10' 05'', N 40° 20' 00'', respectively. Objection at 62-63, 70 (BW33796-33797, BW33804).

Landfall,” in contrast to Alternative 1’s proposed interconnection “about 1 to 2 miles offshore.”<sup>13</sup> Thus, NYSDOS’s repeated assertion that the Alternatives proposed in the April 2008 Objection were first submitted to Broadwater in the April 2007 Battelle Report is simply incorrect.

NYSDOS’s Opposition Letter states that “[b]oth the draft environmental impact statement [“DEIS”] and the final environmental impact statement [“FEIS”] for the Broadwater project contain analyses of the two Atlantic Ocean alternatives identified in the DOS Objection letter.”<sup>14</sup> This statement is also inaccurate. Neither the DEIS nor the FEIS contain analysis of *any* specific alternative locations. Instead, the DEIS and FEIS generally (and sufficiently for EIS purposes) discuss the infeasibility of Atlantic-based LNG terminals from an environmental safety and operational perspective.<sup>15</sup> Unable to cite to any particular page from the DEIS or the FEIS containing analysis of “the two Atlantic Ocean alternatives identified” in the Objection (because no such analysis exists), NYSDOS attempts to support its erroneous assertion by merely referencing the entire alternative locations analysis sections from the DEIS (47 pages) and the FEIS (57 pages).<sup>16</sup>

In addition to the patently erroneous contention that the Alternatives proposed in the Objection were first submitted to Broadwater in the April 2007 Battelle Report, NYSDOS also posits unsupportable legal arguments in opposition to Broadwater’s motion to supplement the decision record.

NYSDOS’s argument that supplemental materials cannot include documents prepared subsequent to issuance of the Objection is without merit or legal support. NYSDOS states: “Clarifying information is intended to shed light on information in the Consolidated Record; it is not meant to introduce entirely new studies or information, which require independent verification.”<sup>17</sup> In support of this erroneous contention, NYSDOS cites the April 22, 2008 letter from Jane C. Luxton, NOAA General Counsel, in regard to the Consolidated Consistency Appeal of Weaver’s Cove Energy, LLC and Mill River Pipeline, LLC (“April 22 Weaver’s Cove Letter”) (attached hereto as Exhibit A). But there is nothing in the April 22 Weaver’s Cover Letter that remotely stands for the legal proposition advanced by NYSDOS – *i.e.*, that “clarifying materials” cannot include documents prepared subsequent to a state’s objection. In fact, General Counsel Luxton issued another decision letter in the Weaver’s Cover matter on June 24, 2008 (attached hereto as Exhibit B) in which she notes that the decision record had been supplemented

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<sup>13</sup> Objection at 63 (BW33797).

<sup>14</sup> Objection Letter at 3.

<sup>15</sup> See, e.g., FEIS §§ 4.4.2.1, 4.4.2.3 (BW29212, BW29216-29217).

<sup>16</sup> Objection Letter at 3 (citing generally DEIS § 4.0 [BW9547-9593], FEIS § 4.0 [BW29174-29230]).

<sup>17</sup> Objection Letter at 2.

with at least 20 additional documents, including at least four “new studies or information” that had been prepared after the state’s objection was issued.

Likewise, NYSDOS’s contention that the Supplemental Documents are being submitted to “circumvent” the 50-page limit on principal briefs is baseless. The Supplemental Documents are limited to factual, technical and scientific data, and do not contain legal arguments. The Supplemental Documents relate only to the alternatives analysis and are being submitted to clarify gaps in the decision record caused by NYSDOS’s failure to propose the Alternatives to Broadwater prior to issuance of the Objection.

NYSDOS’s attacks on the validity or persuasiveness of the information contained in the Supplemental Documents are not only incorrect but are also irrelevant to the instant motion. NYSDOS claims that the Supplemental Documents comprise “biased or otherwise unsubstantiated reports.”<sup>18</sup> The Supplemental Documents are purely technical analysis that could be reproduced by any objective party performing like evaluations – including NYSDOS’s consultant, Battelle Memorial Institute. There was no manipulation of the data that forms the basis of any of the Supplemental Documents. NYSDOS denigrates the Witness Modeling (Supplemental Document I)<sup>19</sup> as a “fill-in-the-blank business simulation software product” that amounts to “merely an extension of Broadwater’s brief.”<sup>20</sup> The Witness Model does not interpret wave data in an *ad hoc* fashion; instead, it uses the monthly downtime figures computed by Moffatt & Nichol (“M&N”) (in Supplemental Document II) as pure data inputs. Witness is a third-party generic modeling software developed by the Lanner Group that is capable of simulating any system, including the modeling of random events and their follow-on impacts (such as ships standing by outside a port after a weather delay).<sup>21</sup> Witness is capable of modeling continuous events such as in-tank inventory and gas send-out. NYSDOS posits two critiques of the June 2008 M&N Alternative Site Operability Study (Supplemental Document II), neither of which are valid: first, NYSDOS notes that M&N used 20 years of data in their analysis, as opposed to the 10 years used by Battelle, but a larger data set renders any analysis more valid, not less; second, NYSDOS contends that M&N used metocean data from a different buoy than Battelle, but the buoy used by M&N (NOAA National Data Buoy Center 44025) is actually located 4.5 nautical miles south of the Alternative 2, whereas the WIS119 buoy relied upon by Battelle is located 10.5 nautical miles northeast of Alternative 2. Finally, NYSDOS contends that “Supplemental Document III is an Alternative Pipeline Routes Cost Estimate prepared by Broadwater.” In reality, Supplemental Document III was prepared by Project Consulting Services Inc. (“PCS”), a well-respected and highly-utilized pipeline engineering firm with projects throughout the U.S. PCS performed an engineering design analysis of NYSDOS’s

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<sup>18</sup> Objection Letter at 1.

<sup>19</sup> The Objection Letter refers to Supplemental Document I as Supplemental Document II, and vice versa.

<sup>20</sup> Objection Letter at 6.

<sup>21</sup> See [http://www.lanner.com/en/simulation\\_solutions/witness\\_suite.php](http://www.lanner.com/en/simulation_solutions/witness_suite.php).

Alternatives and extrapolated a comparative cost estimate between those Alternatives and the Broadwater Project in 2005 dollars. As a result, the Supplemental Documents are based on accepted methodologies and otherwise valid in all respects.

The foregoing notwithstanding, to the extent NYSDOS incorrectly believes that the analysis or conclusions presented in the Supplemental Documents are biased or otherwise unsound, at best those arguments address the ultimate *weight* the Secretary affords the Supplemental Documents, not the initial admissibility of those Documents into the decision record. The threshold inquiry for supplementing the decision record is whether the subject documents clarify information contained in the consolidated record. 15 C.F.R. § 930.130(a)(2)(ii)(B). The Supplemental Documents clarify information currently contained in the consolidated record with respect to alternatives analysis. Supplemental Document II analyzes the impact of metocean conditions in the Atlantic Ocean on the operability of an FSRU located at the site of NYSDOS's proposed Alternatives. Supplemental Document I uses this metocean/operability data to model the natural gas send-out profiles of NYSDOS's Alternatives. Supplemental Document III provides a systematic cost estimate for NYSDOS's Alternatives (which NYSDOS failed to provide in its Objection). Thus, because the Supplemental Documents provide additional detail on NYSDOS's Alternatives to assist the Secretary's analysis, they satisfy the plain meaning of the phrase "clarifying information."<sup>22</sup> 15 C.F.R. § 930.130(a)(2)(ii)(B). Other than the erroneous interpretation of the April 22 Weaver's Cove Letter, NYSDOS's Opposition Letter does not factually dispute that the Supplemental Documents clarify the alternatives analysis in the consolidated record by providing analysis of the Alternatives set forth for the first time in NYSDOS's Objection. Accordingly, the Supplemental Documents should be included in the decision record.

Finally, both NYSDOS's request for a 45-day extension to submit its principal brief and leave to file a 25-page sur-reply brief should be denied. While Broadwater will consent to a reasonable extension of time, a 15-day extension (to August 22, 2008) is, respectfully, more than adequate for NYSDOS to prepare whatever rebuttal materials it deems necessary. Broadwater notes it kept its discussion of the Supplemental Documents in its initial brief within the page limits established by NOAA; thus, NYSDOS should do likewise. And the supplementation of the decision record in no way justifies granting NYSDOS more time to file its principal brief *and* the right to file an additional 25-page sur-reply brief. Moreover, as the party bearing the burden of proof in this appeal, basic axioms of jurisprudence mandate that Broadwater be provided the opportunity of final reply – and NYSDOS provides no support whatsoever for why it should be granted a sur-reply.

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<sup>22</sup> Merriam-Webster defines "clarify" to mean "to make understandable" or "to free of confusion."

Based on the foregoing, Broadwater respectfully requests that the Secretary accept the Supplemental Materials into the decision record in this matter.

Very truly yours,



Robert J. Alessi

Attachments

cc: New York Secretary of State Lorraine Cortés-Vázquez  
Susan L. Watson, Esq.  
Joel La Bissonniere, Esq.

## **Exhibit A**



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

OFFICE OF THE GENERAL COUNSEL

APR 22 2008

**VIA FAX [(202) 639-7890 AND (617) 727-9665] AND U.S. MAIL**

Bruce F. Kiely, Esq.  
 Baker Botts LLP  
 1299 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20004

Carol Iancu, Esq.  
 Assistant Attorney General  
 Office the Attorney General  
 One Ashburton Place  
 Boston, MA 02108

RE: Consolidated Consistency Appeal of Weaver's Cove Energy, LLC and  
 Mill River Pipeline, LLC

Dear Mr. Kiely and Ms. Iancu:

This letter concerns the parties' March 14, 2008 motions to supplement the record, two documents forwarded to this office on April 11, 2008 by counsel for Massachusetts, and additional comments recently solicited from the U.S. Coast Guard (USCG), Department of the Interior (DOI), the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency (EPA), and the Northeast Field Office of the National Marine Fisheries Service's (NMFS) Habitat Conservation Division.

### **I. Motions to Supplement**

Massachusetts requests that the Secretary accept and include in the decision record two Massachusetts Department of Environmental Protection (MassDEP) documents dated March 10, 2008.

Appellants, for their part, move to supplement the record with the following documents:

- (1) Letters from the New England Regional Council of Carpenters Local 1305, Local 51 Plumbers and Pipefitters, Construction and General Laborers Local 610, and Massachusetts Chemistry & Technology Alliance to FERC;
- (2) U.S. Department of Energy, Energy Information Administration (EIA), Supplemental Tables to the Annual Energy Outlook 2007, Energy Consumption in New England by Sector and Source – Table 1 (Feb. 2007);
- (3) Weaver's Cove's Response to the U.S. Fish and Wildlife Service (FWS) Comments on Dredging Proposals and Modeling (June 8, 2006);



- (4) E-mail from M. Thabault, Assistant Northeast Regional Director, FWS, to M. Bartlett, New England Field Office Supervisor, FWS (Nov. 6, 2006);
- (5) Weaver's Cove Responses to MassDEP's Inquiry Regarding Water Quality Issues (Apr. 17, 2007) and SSFATE Modeling (July 2, 2006);
- (6) Appeal of Weaver's Cove under 33 C.F.R. § 127.015(b) of the Letter of Recommendation and Response to Request for Reconsideration (Jan. 11, 2008).

Under the Natural Gas Act and the Coastal Zone Management Act, as amended by the Energy Policy Act of 2005, the consolidated record prepared by the lead Federal permitting agency is the initial record used by the Secretary for consistency appeals. 15 U.S.C. § 717n; 16 U.S.C. § 1466. The Secretary may accept supplemental information into the decision record that clarifies information contained in the consolidated record. 15 C.F.R. § 930.130(a)(2)(ii)(B). The Secretary enjoys wide latitude in determining the content of the appeal decision record. 15 C.F.R. § 930.127(e)(1).

In this instance, inclusion of the above documents is appropriate because they clarify information already contained in the consolidated record of this appeal. The two MassDEP documents clarify and update information contained in the consolidated record and in Massachusetts' briefs regarding the views of MassDEP on several state authorizations related to the Project and Massachusetts' consistency objections. The remaining documents clarify and update information contained in the consolidated record and in Appellants' briefs regarding the Secretary's analysis under Ground I.

Accordingly, the parties' March 14, 2008 motions to supplement the decision record are *granted*. The documents discussed above shall be considered part of the decision record for this consistency appeal.

## **II. Appellants' Further Change of Information and Berthing Proposals**

I next address two letters authored by Weaver's Cove, which Massachusetts provided to this office on April 11, 2008.

- The first is a letter to the USCG dated March 21, 2008, entitled "Further Change of Information in the Letter of Intent" (Further Change of Information Proposal). This letter contains additional information on Weaver's Cove's proposal for transporting liquefied natural gas (LNG) on the Taunton River, using an alternate tanker size. It clarifies Weaver's Cove's views on the USCG's previously-issued Letter of Recommendation, and was previously discussed in Appellants' Joint Supplemental Reply Brief. Accordingly, the letter is hereby incorporated into the decision record. Appellants are requested to provide any additional materials sent to the USCG along with the Further Change of Information Proposal, to the extent such documents are not currently in the decision record.
- The second is a letter from Weaver's Cove to FERC dated March 28, 2008, concerning a new proposal for transferring LNG from tankers to the terminal (Berthing Proposal). The Berthing Proposal, sent to FERC, involves "the

construction of an offshore berth and LNG pipeline to transfer the LNG to the terminal site previously approved by FERC." In the Berthing Proposal, Weaver's Cove observes that "[i]n the near future, Weaver's Cove will initiate FERC review of this alternative berthing and unloading option by requesting to participate in FERC's pre-filing review process." On April 21, 2008, Appellants filed objections to including this document. However, because this letter clarifies the information contained within the consolidated record, it is hereby incorporated into the decision record.

The Further Change of Information and Berthing Proposals raise potentially significant issues related to the sufficiency of the information before the Secretary as to the coastal effects associated with the Project. These documents arguably inject uncertainty as to, *inter alia*, (a) the size of LNG tankers and frequency of tanker trips Weaver's Cove will employ to transport LNG; (b) whether Weaver's Cove will abandon its plan to transport LNG to the terminal by vessel; (c) the nature and extent of dredging within the Taunton River (based upon whether dredging is undertaken to accommodate tanker traffic or install a four-mile LNG pipeline); and (d) whether any additional coastal effects not currently discussed in the record could result under these proposals.

I have asked FERC to provide its views, if any, on the significance of the Berthing Proposal. Any views FERC offers will likely be included in the record. A copy of this letter is attached and any response from FERC shall be provided to the parties.

### **III. Additional Federal Agency Solicitation Responses**

The parties in their March 14 and 21, 2008, supplemental briefs and Fall River in its *amicus* brief raise a number of issues necessitating further consultation with potentially interested federal agencies. For this reason, on April 9 and 14, 2008, letters were sent to the USCG, DOI, EPA, and the Northeast Field Office of NMFS' Habitat Conservation Division. Copies of these letters are attached. Responses were requested on or before April 25, 2008.

On April 17, 2008, the Northeast Field Office of NMFS' Habitat Conservation Division provided comments, a copy of which is enclosed. It will also be posted on the website for this appeal. As these comments clarify and update information contained in the consolidated record, they are hereby included in the decision record for this appeal.

Any responses received in the future will be forwarded to the parties upon receipt and will likely be included in the record.

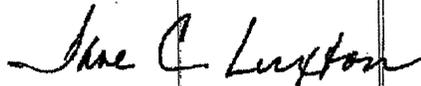
### **IV. Supplemental Briefing Schedule**

In light of the forgoing, the parties are invited to comment on the response of the Northeast Field Office of NMFS' Habitat Conservation Division, any responses received in the future from the USCG, DOI, EPA, or FERC, as well as all other documents included in the decision record by this letter. The parties are also invited to comment on

the Further Change of Information and Berthing Proposals, in particular addressing the impact, if any, they have on: (a) FERC's July 15, 2005 'Order Granting Authority under Section 3 of the Natural Gas Act and Issuing Certificate'; (b) FERC's prior findings concerning the Project, including its May 2005 Environmental Impact Statement; and (c) the Secretary's analysis in this appeal as required under 15 C.F.R. § 930.121(b).

These additional briefs should be submitted on or before **May 5, 2008**. Should your staff have questions concerning this letter, please contact Mr. Grosko at (301) 713-7384 or by e-mail at [brett.grosko@noaa.gov](mailto:brett.grosko@noaa.gov).

Sincerely,



Jane C. Luxton  
General Counsel

Enclosures (6)

## **Exhibit B**



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

OFFICE OF THE GENERAL COUNSEL

JUN 24 2008

VIA FAX [(202) 639-7890 AND (617) 727-9665] AND U.S. MAIL

Mr. Bruce F. Kiely, Esq.  
Baker Botts LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Ms. Carol Iancu, Esq.  
Assistant Attorney General  
Office the Attorney General  
One Ashburton Place  
Boston, MA 02108

RE: Consistency Appeals of Weaver's Cove Energy, LLC and Mill River Pipeline, LLC

Dear Mr. Kiely and Ms. Iancu:

Please be advised that on May 5, 2008, the decision record for the above appeal was closed. Closure of the record by this date was required pursuant to 16 U.S.C. § 1465(b).

We have supplemented the record with the following documents, which were received prior to the close of the decision record and deemed necessary to complete the appeal:

- Two letters from Elizabeth A. Kouloheras, Massachusetts Department of Environmental Protection (MassDEP), to Ted Gehrig, Weaver's Cove Energy, LLC (WCE), dated April 18, 2008, regarding Fall River and Somerset Conservation Commission Superseding Orders of Conditions.
- Letter from John K. Winkler, MassDEP, to Ted Gehrig, WCE, dated March 13, 2008, regarding conditional approval under Massachusetts's air pollution control regulations.
- Letter from WCE to FERC, dated April 18, 2008, regarding initiation of Federal Energy Regulatory Commission (FERC) National Environmental Policy Act pre-filing review for its berthing proposal (Pre-Filing Request).
- Letter from WCE to FERC, dated April 21, 2008, asking that FERC replace attachment 9 to WCE's Pre-Filing Request with a revised/corrected version.



- Letter from Theodore A. Barten, Epsilon Associates, Inc., to Theodore M. Lento, U.S. Army Corps of Engineers (Corps), New England District, dated June 29, 2005.
- Letter from Karen Kirk Adams, Corps, to Ted Gehrig, WCE, dated April 5, 2006.
- WCE's Response to SSFATE Modeling Questions from the MassDEP, dated July 26, 2006.
- Letter from Michael D. Howard and Theodore A. Barten, Epsilon Associates, Inc., to Ken Chin, MassDEP, dated April 25, 2007.
- Letter from Michael D. Howard, Epsilon Associates, Inc., to Ken Chin, MassDEP, dated May 3, 2007.
- Elutriate Dilution Analysis, dated May 31, 2007.
- FERC report entitled *Northeast Natural Gas Market: Overview and Focal Points*, dated April 2008.
- The Honorable Samuel Bodman, Secretary of Energy's Prepared Remarks for the Opening of the Cheniere Sabine Pass LNG Regasification Facility, dated April 21, 2008.
- ISO New England, Inc. report styled *2007 Regional System Plan*, dated October 18, 2007.
- ISO New England, Inc. report entitled *New England Electricity Scenario Analysis*, dated August 2, 2007.
- Report entitled *World Gas Prices Reflect Regional Split*, dated February 4, 2008.
- Report entitled *Natural Gas, Oil Prices Set to Hit Consumers Hard*, dated March 11, 2008.
- FERC report entitled *LNG Market*, dated April 4, 2008.
- FERC report entitled *LNG Market*, dated January 9, 2008.
- Letter from Gordon Shearer, WCE, to Raymond J. Perry, U.S. Coast Guard, dated April 30, 2008 (Letter of Intent).

- White House National Economic Council, *Advanced Energy Initiative* (Feb. 2006).

If you have any questions, please contact Brett Grosko, NOAA Office of General Counsel for Ocean Services, at [Brett.Grosko@noaa.gov](mailto:Brett.Grosko@noaa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Jane C. Luxton".

Jane Luxton  
General Counsel

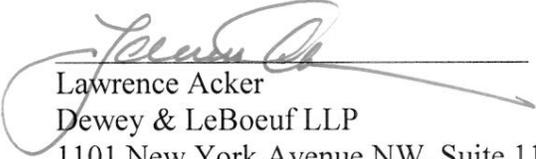
## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply of Broadwater Energy LLC and Broadwater Pipeline LLC to New York State Department of State's Opposition to Motion to Supplement the Decision Record was served this 18<sup>th</sup> day of July 2008, by first-class mail unless otherwise indicated, on the following persons at the addresses listed below.

Joel La Bissonniere  
Assistant General Counsel for Ocean Services  
1305 East West Highway  
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Silver Spring, MD 20910  
(By Hand)

Hon. Lorraine Cortes-Vazquez  
Secretary of State  
State of New York Department of State  
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Susan Watson  
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