

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE**

**Broadwater Energy LLC and Broadwater Pipeline LLC,
Appellants,**

vs.

**New York Secretary of State Lorraine Cortés-Vázquez,
Respondent.**

SECOND MOTION TO SUPPLEMENT THE DECISION RECORD

Pursuant to 15 C.F.R. § 930.127(i)(4) and 15 C.F.R. § 930.130(a)(2), New York State Department of State (NYSDOS) requests the US Secretary of Commerce to supplement the decision record with four (4) documents, identified below. These documents should be included in the decision record because they serve as “clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency” and thus qualify as “supplemental information” under 15 C.F.R. § 930.127(i)(4). 15 C.F.R. § 930.130(a)(2)(ii)(B).

Supplemental Documents

Document 13: Coastal Engineering Manual, Part V, Chapter 3

This document provides information on the acceptable engineering standards defining the range of the design life of a project as 25 to 50 years, which clarifies Broadwater’s incorrect assertion that the project is not “permanent.” (See Broadwater’s Initial Brief at 14).

Document 14: “The Race” Significant Coastal Fish and Wildlife Habitat Narrative. Updated October 15, 2005

Document 2 is the habitat map and narrative for The Race and based on a recommendation from the NYS Department of Environmental Conservation, the NYSDOS designated The Race- a Significant Coastal Fish and Wildlife Habitat (SCFWH). A habitat map and narrative are created for each SCFWH specifying the location and description of the habitat, the habitat’s fish and wildlife values, and an impact assessment. The habitat narrative serves as a record of the basis for designating the habitat a SCFWH and also assists in evaluating the impact

of proposed projects on the habitat and its fish and wildlife values. The habitat narrative and map is used in the consistency review to determine if the proposed activity is consistent with the habitats policy.

Document 2 is available from the NYS DOS Division of Coastal Resources website at: http://www.nyswaterfronts.com/downloads/pdfs/sig_hab/LongIsland/The_Race.pdf.

Document 15: Balcom and Howell, CTSG-06-02, "Responding to a Resource Disaster: American Lobsters in Long Island Sound, 1999-2004"

The NYS Consistency Decision extensively cited to this study. This scientific study provides clarifying information on lobsters as a natural resource in the Long Island Sound and assesses the economic value of the lobster population in Long Island Sound.

Document 16: Review of Additional Supplemental Information, August 15, 2008, Prepared by Battelle.

This report, prepared by Battelle, provides clarifying information on Broadwater's Supplemental Documents I, II, and III regarding costs, reliability, and the Witness Model.

Conclusion:

In consideration of the foregoing, NYSDOS requests the Secretary to include these documents in the decision record because they are clarifying information related to information in the Consolidated Record.

Respectfully submitted,



Susan L. Watson
General Counsel to the
NYS Secretary of state