

SE4 –Connecticut Attorney General Richard Blumenthal

Unofficial FERC-Generated PDF of 20061226-0068 Received by FERC OSEC 12/21/2006 in Docket#: CP06-54-00

ORIGINAL

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford
December 20, 2006

OFFICE OF THE
SECRETARY

2006 DEC 21 A 11: 33

SENT VIA FEDEX OVERNIGHT

The Honorable Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**RE: Broadwater Energy Project Security
Docket Nos. CP06-54-000 and CP06-55-000**

Dear Secretary Salas:

Recent authoritative reports of fiasco and scandal in the Coast Guard's modernization program add compelling weight to my fight against the Broadwater Project. I have opposed this project since its inception because it will convert Long Island Sound into a major industrial site, at the expense of public safety and environmental interests, with major new tasks for the Coast Guard.

Now, newly disclosed information shows that safety risks of this project are far greater than previously recognized because the Coast Guard will clearly lack the capacity to protect the public as deemed necessary under its own report regarding the Broadwater proposal. This new information shows that the Coast Guard's plan to expand and upgrade its fleet is a colossal failure and provides strong new evidence that the Coast Guard cannot address accidents or attacks on the proposed Broadwater Energy facility or tankers supplying it.

Plans for the modernization -- calling for 91 new ships, 124 small boats, 195 new or rebuilt helicopters and 49 unmanned aerial vehicles -- are critical to the Coast Guard's mission in interdicting drugs and illegal immigrants, and escorting and guarding precisely the kind of facilities and tankers that Broadwater would entail. The need for robust, aggressive Coast Guard capacity is clear from the nature and public exposure of the Broadwater facility and supertankers supplying it. The Coast Guard's report states explicitly the dangers from potential catastrophic fires that may result from a collision, other accidents or an attack on the facility or on the supertankers that will be used to re-supply it. Among the possible disastrous consequences are loss of human life and environmental damage to the Sound. The litany of failures in the Coast Guard program -- ballooning costs, expanding delays, structural flaws such as hull cracks, engine

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failure and inoperative equipment -- is another compelling reason that Broadwater cannot safely be approved.

SE4-1

As the recently released draft environmental impact statement (DEIS) for this project shows, there are hundreds of thousands of registered boats in the Long Island Sound area and thousands of commercial ship crossings that could be affected by a fire or collision with either the floating terminal or an LNG carrier. So highly dangerous are these possibilities that the Coast Guard's Waterway Suitability Report released September 21, 2006 (WSR) required the establishment of a 1210 foot security zone around the floating terminal and a security zone 2 miles ahead, 1 mile astern and 750 yards on either side of the LNG carriers.

SE4-1

As stated in Section 8.4 of the WSR (Appendix C of the final EIS), the Coast Guard has made the preliminary determination that the risks associated with operation of the FSRU and LNG carriers would be manageable with implementation of its recommended mitigation measures. Section 3.10.4 of the final EIS also addresses LNG carrier safety and risks, and Section 3.7.1.4 addresses potential impacts of the Project on marine transportation.

SE4-2

Despite the importance of the Coast Guard's protective role, it will lack the capability to perform it. As the Coast Guard itself has noted in its own report, effective law enforcement is vital to public safety for this project, but currently lacks sufficient resources to conduct the necessary security mission if the Broadwater project is approved. Specifically, the report states, "Based on current levels of mission activity, Coast Guard Sector Long Island Sound currently does not have the resources required to implement the measures that have been identified as being necessary to effectively manage the potential risk to navigation safety and maritime security associated with the Broadwater Energy proposal." WSR pp. 156-157. The Coast Guard's resources will soon be stretched thinner, with fewer assets and no effective way to replace or upgrade them.

SE4-2

Neither FERC nor the Coast Guard would allow operation of the Project until the appropriate security measures are in place. If the Project is initially approved, Broadwater would work with the appropriate federal, state, and local agencies to develop the most appropriate security plan for the Project, and take the appropriate steps to provide the necessary level of Coast Guard resources. If the needed resources are not available and properly funded, operation of the Project would not be approved.

There is no suggestion in the FERC record of the capability, readiness or willingness of any other military or law enforcement agency to supply the security that the Coast Guard explicitly states it cannot provide. No town or city -- not even the states of New York or Connecticut -- can address these security and safety concerns.

The Coast Guard must accomplish the tasks that, by law, only it is authorized to conduct; but the Coast Guard may share other law enforcement responsibilities with state or local law enforcement agencies. 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 Memoranda of Agreement for this purpose. Enforcement of the safety and security zones cannot be delegated to private security forces. Private security forces could provide notification to vessels approaching the safety and security zone around the FSRU but 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.

In other words, even before the release of this new information, the Coast Guard said it was incapable of providing security for the Broadwater project. Now, published news reports show that the Coast Guard's multi-year, multi-billion dollar Deepwater project is disastrously over budget, behind schedule, and unsuccessful. The project, designed to provide new ships, planes and helicopters to replace aging and outdated equipment, has foundered. See Billions Later, Plan to Remake the Coast Guard Fleet Stumbles, NY Times, December 9, 2006. The Deepwater plan was designed to increase the Coast Guard's capabilities at a time when its responsibilities to protect the nation's coasts, ports and shipping from terrorists, drug smugglers, and polluters have greatly increased. This project is plagued by major cost overruns and design failures. A plan to modernize the Coast Guard's 110 foot cutters, mainstays of the fleet, has been cancelled because the remodeled vessels were found to be unseaworthy. A planned new 147 foot ship design failed so completely that it has been scrapped. The first production model of a new, heavy cutter has cost almost twice as much as planned and has structural weaknesses that may threaten its safety. Plainly, the Coast Guard's lack of adequate resources will soon be even worse.

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SE4-3

Without adequate security and safety resources absolutely assured, the Broadwater project cannot be approved. The risk is too great -- to natural resources, the general public and to the nation's vital shipping and commercial fishing and shellfishing industries, as well as mention recreational boaters, and neighboring communities. For the foreseeable future, the Coast Guard cannot effectively enforce the minimum required security zones around the Broadwater project and its supply tankers. No other military or law enforcement agency has that capability. Therefore, this project cannot receive FERC approval.

Very truly yours,



RICHARD BLUMENTHAL

RB/pas

c: FERC Service List by Email

SE4-3

The commentor has correctly noted that the Coast Guard presently does not have the resources required to implement the mitigation measures recommended in Section 8.4 of the WSR (Appendix C of the final EIS). However, the Coast Guard would prepare a proposal for obtaining additional personnel and equipment to implement the recommendations, as described in Section 8.4.2 of the WSR. If the Project receives initial authorization to proceed, Broadwater would work with the appropriate federal, state, and local agencies to develop a safety and security plan for the Project. If the needed resources are not available and properly funded, construction and operation of the Project would not be approved.

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*STATEMENT OF CONNECTICUT ATTORNEY GENERAL
RICHARD BLUMENTHAL REGARDING THE BROADWATER DRAFT
ENVIRONMENTAL IMPACT STATEMENT
JANUARY 16, 2007*

I oppose the Broadwater project because it is an unacceptable security danger, an environmental atrocity, and an aesthetic monstrosity. The deficiencies in this Draft Environmental Impact Statement (DEIS) are stark and stunning.

The Long Island Sound is a vital and vulnerable treasure. Long Island Sound contributes at least \$5.5 billion to the regional economy each year. The continued attempts by large utility companies to industrialize this national treasure – to create an industrial development corridor – threaten our vital natural resources, economic interest, public safety, quality of life, and marine ecosystem. I was the first state official to oppose it and I will fight as long and hard as necessary – before FERC, in the courts, as well as before state agencies in New York and Connecticut. I will continue to oppose similar badly sited and unnecessary projects that line utility company pockets at the expense of consumers and the environment.

As the most recent reason to reject this monstrous, misguided project – if more were needed – I urged that the Federal Aviation Administration (FAA) must establish no fly zones over Broadwater. Neither the Coast Guard nor FERC has considered the potential security risks from the air – accident or attack – in one of the most heavily used air traffic approach areas in the nation. Broadwater would be an easy target - a catastrophe waiting to happen - from aircraft using LaGuardia, Kennedy, Westchester,

SE5-1

SE5-1 As stated in Section 8.4.2 of the WSR (Appendix C of the final EIS) and in Section 3.5.2.2 of the final EIS, if the Project is authorized by FERC, the Coast Guard would coordinate with the Transportation Safety Administration and Federal Aviation Administration to determine what, if any, flight restrictions should be put in place for the FSRU or the LNG carriers.

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SE5-2 [

MacArthur, Tweed and others. A no-fly zone is necessary, but would be environmentally problematic in creating noise and air pollution when aircraft are redirected over densely populated areas. Noise and air pollution would be greatly exacerbated, and private and commercial air traffic disrupted at substantial cost.

This DEIS fails to meet the minimum standards of the National Environmental Policy Act (NEPA) because it does not, and cannot, fully and accurately evaluate the environmental impacts of this mammoth project on the Long Island Sound ecosystem. Its evaluation of critical environmental issues is plainly, demonstrably and indefensibly wrong. Further, critical studies of important aspects of the project have not been completed or, in some cases, not even started, and parts of the project rely on plans, technology and systems that do not exist.

The unknowns are unacceptable. Key facts about the design and configuration of the facility and the oversized tankers supplying it are undeveloped and unspecified in the proposal. For example, Broadwater does not even know precisely how it will build and install the critical anchoring system for its huge installation, or whether it will meet still-developing new standards for seaworthiness in severe storms, whatever method is eventually chosen.

SE5-3 [

Approving this project would be faith based regulation. Adequate protection cannot simply rely on prayer, and trust in Broadwater's corporate pronouncements. Strict scrutiny of specifics is a legal as well as a moral imperative. Non-existent plans cannot be studied and evaluated, as the law requires. Details critical to safety and the environment cannot be left to later disclosure or development. Further, FERC continues its steadfast, but illegal, refusal to consider regional needs as a whole, and to approve

SE5-2 Please refer to our response to comment SE5-1.

SE5-3 As is typical for large energy projects, preparation of an EIS is intended to publicly describe the proposed project as it relates to potential environmental impacts. As specified in Section 5.1 of the final EIS, we have identified many additional mitigation measures and other procedures that Broadwater must adhere to in design and implementation of the Project. Throughout the design, construction, and operational phase, there would be ongoing coordination, oversight, design review, and approval requirements for federal, state, and local agencies to ensure that the proposed Project is developed and implemented in accordance with all laws, regulations, and permitting requirements. This includes development and review of critical documents such as an Emergency Response Plan (as described in Section 3.10.6 of the final EIS), an SPCC plan (as described in Section 3.2.2.1 of the final EIS), a Facility Security Plan (as outlined in 33 CFR 101-105), and an operations plan. These plans must be reviewed and approved prior to FERC authorizing operation to proceed. If FERC or the Coast Guard has concerns about the safety, security, or environmental impacts of the Project at any point in the continuing review process, FERC would not authorize further development of the Project until the deficiencies are corrected.

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only the least damaging alternatives, rather than the first plans to cross the finish line. This draft environmental impact statement, therefore, is illegal and fundamentally deficient and must be withdrawn until it can be properly completed.

Among the central deficiencies in this draft document, the following are most dramatic:

- SE5-4 • Even though the U.S. Coast Guard itself says that it lacks the resources to protect Broadwater and its delivery tankers, the DEIS offers no plan to provide that protection – simply assuming that it will somehow be arranged later.
- SE5-5 • Even though no government, public agency or private party has the ability to provide emergency response to a fire, accident, attack or other disaster at the Broadwater facility, the DEIS offers no emergency response plan – thus obstructing legally required evaluation of an emergency’s environmental consequences.
- SE5-6 • Even though Hurricane Katrina destroyed 50 oil platforms and drill rigs in the Gulf of Mexico in 2005 and new design standards for anchoring systems to better withstand similar storms are still under development, the DEIS presumes there is a reliable method of attaching the Broadwater mooring system to the floor of the Sound.
- SE5-7 • Even though there is real risk that the Broadwater facility could break loose in a hurricane or other disaster, the DEIS gives no meaningful consideration to how that event would affect shipping and commerce in the Sound.

SE5-4 Neither FERC nor the Coast Guard would allow operation of the Project until the appropriate safety and security measures are in place. If the needed resources are not available and properly funded, construction and operation of the Project would not be approved. As described in Section 8.4 of the WSR (Appendix C of the final EIS), if FERC authorizes the Broadwater Project, the Coast Guard would prepare a proposal to obtain additional personnel and equipment to implement its safety and security recommendations.

SE5-5 As stated in Section 3.10.6 of the final EIS, Broadwater would be required to develop an Emergency Response Plan in consultation with federal, state, and local agencies. If the plan is not sufficient or if either FERC or the Coast Guard has additional concerns about safety or security, Broadwater would not be authorized to initiate construction. As a result, prior to construction, all aspects of the emergency response needs would be addressed by FERC.

SE5-6 As described in Section 3.10.2.3 of the final EIS, the YMS would be designed to withstand the forces equivalent to those of a Category 5 hurricane. The YMS design would be reviewed by FERC, the Coast Guard, and an independent certifying entity.

SE5-7 Section 3.10.2.3 of the final EIS and Sections 4.3.5 and 4.6.2.1 of the WSR (Appendix C of the final EIS) address the possibility and the risk of the FSRU breaking away from the YMS. In addition, as described in Section 3.10.6 of the final EIS Broadwater would be required to prepare an Emergency Response Plan. The plan would address a wide spectrum of emergency situations and appropriate responses, including the FSRU breaking away from the YMS. The Emergency Response Plan would need to be approved by FERC before Broadwater could receive approval to begin construction.

As described in Section 4.3.5 of the WSR, if the FSRU did disconnect from the YMS in a hurricane or other major storm, there would be no effect on marine transportation since there would be little or no marine transits during conditions severe enough to result in the breakaway.

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- SE5-8 [
 - Even though the Broadwater pipeline will be buried well within the reach of the heavy anchors of large ships, the DEIS gives no consideration to the potential catastrophe of pipeline damage from an anchor strike.
- SE5-9 [
 - Even though every single bit of evidence from past utility installations in the Sound is to the contrary, the DEIS assumes that the pipeline trench habitat and ecology will naturally recover after the pipeline is installed.
- SE5-10 [
 - Even though the DEIS concedes that this project will cause long term damage to essential fish habitats, it has failed to complete an evaluation of the nature and extent of that impact.
- SE5-11 [
 - Even though the law – NEPA – plainly requires full evaluation of the reasonable alternatives to a major project such as Broadwater, the DEIS simply, and unlawfully, refuses to conduct it all, asserting that no study of regional gas needs and how to meet them is needed before considering piecemeal approval of individual proposals all along the Eastern Seaboard.
- SE5-12 [
 - Even though the law requires this “alternatives” analysis, the DEIS undertakes no meaningful comparative environmental analysis of any pending alternative proposals.
- SE5-13 [
 - In short, despite obvious environmental dangers and damage, the DEIS provides no analysis of the environmental impact and destruction to the natural resources of Long Island Sound from a fire, explosion, attack or accident at the Broadwater facility.

Even in its incomplete form, the DEIS plainly establishes that the Broadwater proposal threatens immense damage to human health and safety and the critical

SE5-8 As described in our responses to comments SE3-5 and SE3-33, Section 3.1.2.2 of the final EIS has been updated to address this concern.

SE5-9 As discussed in response to comment FA4-4, potential impacts to benthic habitat are described in Section 3.3.1.2 of the final EIS. This section also discusses post-construction monitoring results for previous linear projects in Long Island Sound. Several post-construction monitoring reports show areas that successfully recovered from installation. In addition, FERC has included a recommendation that Broadwater file plans describing methods to mechanically backfill the trench (Section 3.1.2.2 of the final EIS). The plan must incorporate interagency coordination to identify the appropriate methods for backfilling and detailed post-construction monitoring criteria to assess success.

SE5-10 Appendix J of the final EIS contains the EFH assessment. Section 6.0 of the EFH assessment discusses Project-specific impacts to EFH and EFH-managed species.

SE5-11 Sections 1.0 and 4.0 of the EIS discuss the energy needs for the region, focusing on Connecticut, Long Island, and New York City. They also address whether conservation, renewable energy projects (tidal and wind projects), and other natural gas pipelines and LNG terminals could satisfy those needs. As discussed in the alternatives analysis, these alternatives would not be able to satisfy projected energy needs (singly or in concert) with less environmental impact than the proposed Broadwater Project.

SE5-12 Please see our response to comment SE5-11.

SE5-13 The individual resource sections of Section 3.0 in the final EIS have been revised to include information on potential impacts due to accidental or intentional releases of LNG.

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environment of Long Island Sound, a precious national resource. The risks of serious accidents or attacks associated with the Broadwater project are real and substantial, as proved by the United States Coast Guard Waterway Suitability Report (WSR), incorporated in the DEIS, and the recently published New York State Office of Homeland Security Focus Report: Maritime Terrorist Threat, dated February 21, 2006, ("NY Terrorist Report"). The project raises the clear and present danger of an accident or attack causing catastrophic and lasting damage to human life, the environment, and commercial and recreational use of the Sound. It shows that no one can provide the level of protection and safety the public has a right to expect.

SE5-14

Defying clear facts, this DEIS comes to the unsupportable conclusion that the risks can be mitigated or minimized and therefore this project can proceed. The DEIS thus is clearly flawed and requires sweeping revision. Compounding the failure, FERC staff has failed to apply the legal procedures required by NEPA, rendering the DEIS legally flawed as well.

SE5-15

While the Northeast undeniably needs additional supplies of clean energy, there are far safer and sounder ways to obtain it. Numerous other projects are under review by FERC, including new major pipelines and safer and environmentally less damaging offshore terminals in New Jersey and Maine. FERC has so far not fulfilled its legal and common sense obligations to consider all reasonable alternatives for new clean energy supplies for the Northeast together, and to permit only the most prudent, safest, least damaging proposals necessary to ensure adequate natural gas supplies. A careful, honest, complete evaluation will show that Broadwater is among the least safe, most dangerous and damaging proposals, and it should not be approved.

SE5-16

SE5-14 The Coast Guard conducted a detailed and extensive assessment of the risks associated with the proposed Project. As stated in Section 8.4 of the WSR (Appendix C of the final EIS), the Coast Guard's preliminary determination is that the risks of operation of the FSRU and the LNG carriers are manageable with implementation of its recommended mitigation measures. 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. Final operation of the facility would not be authorized until these plans were completed and approved.

SE5-15 Thank you for your comments. We believe that the conclusions in the draft EIS are supported. Both the draft EIS and final EIS apply the legal procedures required by NEPA.

SE5-16 Please see our response to comment SE5-11.

SE6 – State of Connecticut Senator Andrea L. Stillman

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January 9, 2007

LNG EIS Testimony

Good evening and welcome to my district. For the record, I am State Senator Andrea Stillman. I represent the 20th district here in Connecticut, which stretches from New London to Old Saybrook and also includes the towns of Salem and Montville. As you can see it is mostly a shoreline district that abuts Long Island Sound.

I also serve on the LNG Taskforce that Governor Rell established more than a year ago. I am a past Chairman of the Environment Committee and now serve as a Chair of the Public Safety and Security Committee in the state legislature. Those two committees are most likely involved in this project.

Over the years the people of Connecticut have invested billions of tax dollars in cleaning-up Long Island Sound and have made great headway to restoring the delicate balance necessary for a cleaner body of water that we all enjoy and treasure. It is a precious public estuary that provides recreational and commercial use opportunities and contributes more than \$5 billion to the regional economy, and provides for our better quality of life here, as well.

You are certainly familiar with all aspects of the Broadwater proposal and so I will not rehash the details of the project. I will though, share my concerns with

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State Elected Officials Comments

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you as to the inadequacy of the draft EIS report that we are here to testify about.

- SE6-1 [Hypoxic conditions in Long Island Sound have been a problem for both New York and Connecticut and increased water temperatures are linked to this condition. The lobster disease that contributed to the recent lobster die-offs and the oyster diseases associated with its die-offs have been linked to increased water temperature. Increase in water and sediment temperature from discharges and gas transport tankers could contribute to the negative impact on the Sound.
- SE6-2 [Construction of the 22 miles of pipeline will move a tremendous amount of sediment and the floor of the Sound could be damaged for decades and will impact the fish habitat. It has taken millions of years to form these layers and the habitats are delicate. Also the intake of the 5.5 to 8.2 million gallons of Sound water used by the facility every day may have a negative impact on juvenile fish and larvae.
- SE6-3 [The Sound is a significantly stressed body of water and the cumulative impacts may result in long term damage to this most precious resource.
- SE6-4 [The industrial lighting that will illuminate the night sky could impact migrating birds and certainly ruin the vista. Visual impacts from industrial facilities such as this one are important to consider.
- SE6-5 [This part of the United States does not meet air quality standards that the federal government mandates and I believe that the impact to air quality that traffic from the supplemental vessels, tankers and other Broadwater associated facilities could deposit in our air may only make it worse.
- SE6-6 [The LNG Taskforce recently held a hearing on your report and the four noted scientists that testified came to similar conclusions that this DEIS did not provide sufficient statistical analysis nor quantitative data to conclude that the environmental impacts on Long Island Sound will be minimal, which seems to be your conclusion. This document was poorly researched and used statistics that are out of date. Yes, your list of references in the report is lengthy, but those references were not researched adequately.

As you know, The Race, here in this area of the Sound, will be the route that the tankers travel as they enter and leave the Sound to deliver LNG three times

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- SE6-1 As discussed in response to comment SA2-8, no impacts to water temperature would be associated with operation of the FSRU or the subsea pipeline. As discussed in Section 3.2.3.2 of the final EIS, modeling results for the proposed pipeline covered with 3 feet of sediment indicate that thermal impacts to water and surficial sediments surrounding the pipeline would be negligible. There could be minor, highly localized impacts to temperatures associated with the riser (within 4 feet of the 140-foot pipe) and the LNG carrier discharges. As described in Sections 3.2.3 and 3.3.1 of the final EIS, these minimal impacts would not be expected to influence conditions related to hypoxia or lobster die-off. Both the volume and the thermal differential associated with the discharge are overtly insignificant relative to both the standing volume and the daily hydrologic inputs to the Sound.
- SE6-2 Potential impacts to benthic habitat are described in Section 3.3.1.2 of the final EIS. This section also discusses post-construction monitoring results for previous pipeline projects. Several post-construction monitoring reports indicate areas that have successfully recovered from pipeline installation. In addition, FERC has included a recommendation that Broadwater file plans describing methods to mechanically backfill the trench (see Section 3.1.2.2 of the final EIS). The plan must incorporate interagency coordination to identify the appropriate methods for backfilling and detailed post-construction monitoring criteria to assess its success. The final EIS discusses entrainment and impingement impacts in Section 3.3.2.2, including measures to minimize potential impacts of water intakes.
- SE6-3 Cumulative impacts to Long Island Sound are described in Section 3.11 of the final EIS.
- SE6-4 As discussed in responses to comment FA 1-2 and FA 1-6, potential impacts to avian resources and humans regarding proposed lighting are discussed in Sections 3.3.5 and 3.5.6 of the final EIS.
- SE6-5 Potential impacts to air quality are discussed in Section 3.9.1.2 of the final EIS, including measures to minimize the potential impacts of Project-related emissions.
- SE6-6 We met with the Task Force and the identified scientists to better understand the comments they provided. Some of the comments may be credited to a misunderstanding regarding the target audience for a NEPA document versus the target audience for a scientific paper.

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SE6-7 [a week. You have come to the conclusion that traveling that narrow access point is not an issue, I beg to differ. The amount and type of traffic that comes through The Race, especially in the summer, will be greatly impacted by these enormous tankers. The quarantine of this constricted point as the tankers move through the area will impact the daily activity and prohibit public use of this very busy part of the Sound. This is another time that the existing commercial and recreational use of the Sound will be limited.

SE6-8 [Also, the safety zones surrounding the FSRU will extend into Connecticut waters and impact the routes of regular traffic in the Sound. Existing routes will no longer be available to public travel due to this private industrial complex's safety area being off limits. I certainly hope that people won't be arrested for violating the boundary!

SE6-9 [There are other public safety concerns as well. The USCG has stated that there will need to be adequate response teams in place on both shorelines in case of an accident involving the FSRU or the tankers, or some other disaster. It will be the responsibility of the shoreline communities to provide those teams to assist the USCG. The shoreline communities do not currently have the resources and it is still unclear as to what that will entail, as it has not been researched sufficiently to make a solid determination. The USCG will depend on these towns because they do not have adequate federal dollars to spare and do not have any indication that money will be made available. There needs to be adequate fire fighting capability to handle any accident that can happen. It will mean that citizens will be responsible for subsidizing Broadwater's project. There will be a hearing at East Haven High School on January 11 to hear from the public safety departments of various communities.

SE6-10 [We all know that there are many LNG projects on the drawing boards and that this currently seems to be the answer to our energy needs. According to ISO New England, as stated at our task force meeting, there is a finite amount of LNG that will be available – only for 30 years. This begs other questions – why are you considering permitting a monstrosity such as this FSRU in the middle of this sensitive body of water, that is held in trust for the citizens of Connecticut and New York, that will have a very short life span and leave a mausoleum in our midst some day, and why are you co-opting the public waters for one private industrial use that will undoubtedly due irreparable damage to the fish habitats that will take years to repair and set a bad precedent for future use of the Sound?

SE6-11 [

SE6-12 [

SERVING EAST LYME, MONTVILLE, NEW LONDON, OLD LYME, OLD SAYBROOK, SALEM, WATERFORD

SE6-6 (Continued)

Specific responses to the technical comments made by the experts that testified to the Connecticut LNG Task Force are provided in Table 2.2-5 (Appendix N in this final EIS). The issues identified by the experts are addressed in the final EIS, particularly in Sections 3.1 and 3.3.

SE6-7 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 effects of the proposed use by the Broadwater Project. Because LNG carriers and the proposed moving safety and security zones around the carriers would pass through the Race in about 25 to 35 minutes up to six times per week, FERC and the Coast Guard cannot conclude that these transits would “prohibit public use.” As noted in Section 3.7.1.4 of the final EIS and in Section 4.6.1.4 of the WSR, some vessels using the Race may experience temporary delays; other vessels may not be affected at all because there would be room alongside the proposed moving safety and security zones of the carriers, and because alternative routes would be available for many vessels. These temporary delays would occur no more than once per day and therefore would not result in a permanent disruption of the Race, although they would occur periodically for the life of the Project.

SE6-8 The proposed location of the FSRU would avoid areas of common recreational use, ferry routes, and primary commercial vessel routes. Sections 2 and 3 of the WSR (Appendix C of the final EIS) and Section 3.7.1.3 of the final EIS present the results of a detailed analysis of the current uses of Long Island Sound. Section 4 of the WSR and Section 3.7.1.4 of the final EIS provide assessments of the effects of the proposed use of the Project Waterway by the Broadwater Project. As described in those sections, the proposed fixed safety and security zone would result in a minor effect on commercial and recreational vessel traffic.

The Coast Guard made the preliminary determination that, with the implementation of mitigation measures it has proposed, operation of the Project in Long Island Sound would be manageable; and 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 describe FERC's approach to this issue.

SE6-9 Neither FERC nor the Coast Guard would allow operation of the Project until the appropriate safety and security measures were 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). In addition, Broadwater would need to prepare an Emergency Response Plan as described in Section 3.10.6 of the final EIS; this plan would include a Cost-Sharing Plan that would address the funding concerns of the state and local agencies. FERC would need to approve the Emergency Response Plan before authorizing initiation of construction, and final operation of the facility would not be authorized until the Facility Security and Facility Response Plans were approved.

SE6-10 We are not aware of studies that conclude that only a 30-year supply of LNG is available throughout the world. As noted in Section 2.7 of the final EIS, Broadwater anticipates that the facilities would have a minimum useful life of 30 years, although the FSRU and pipeline could be maintained and operated for 50 years or more.

SE6-11 Please see our response to comment SE6-2.

SE6-12 Please see our response to comment LA11-2.

SE6 – State of Connecticut Senator Andrea L. Stillman

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There are two facilities in Canada that are currently being built that are designed to feed the Northeast through the Maritimes and Northeast Pipeline. In late December 2006, Massachusetts gave approvals for two ocean based LNG proposals as well. These are the latest of the 65 North American proposals that are in various stages of development and a very small percentage will be built according to energy experts. There are pipeline upgrades that are already being built in the region as well.

The inherent problem with entertaining the Broadwater project is that this country and region does not have an energy policy. It is long overdue that we address our future energy needs with a policy that encourages conservation, biodiesel, and other alternative energy sources to meet our energy needs. Instead we are being lured by ideas that will damage our precious environment, endanger our safety, and cost us more money in the long run.

This is the wrong project in the wrong place, at any time. I know you will hear that many times, but it is the truth. Private energy conglomerates should not be allowed to steal our public waters, determine our energy and environmental future and diminish our quality of life. You have heard that from hundreds of groups, 50 towns, more than 55,000 citizens, members of Congress, Attorney General Blumenthal and Governor Rell. We all feel that this is an environmentally unsafe, and unnecessary project.

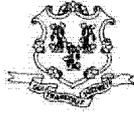
I encourage you to deny this application for the Broadwater project and join the vast majority of the public who are opposed and protect this national treasure called Long Island Sound. There are better options to address our energy needs. Thank you.

SERVING EAST LYME, MONTVILLE, NEW LONDON, OLD LYME, OLD SAYBROOK, SALEM, WATERFORD

SE7 – Connecticut Representative Toni Boucher

Unofficial FERC-Generated PDF of 20070126-0090 Received by FERC OSEC 01/19/2007 in Docket# 07-0000

ORIGINAL



State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

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FEDERAL ENERGY
REGULATORY COMMISSION

REPRESENTATIVE TONI BOUCHER
ONE HUNDRED FORTYTHIRD DISTRICT

5 WICKS END LANE
WILTON, CONNECTICUT 06897
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1-800-642-1423

January 19, 2007

ASSISTANT MINORITY LEADER
MEMBER
APPROPRIATIONS COMMITTEE
EDUCATION COMMITTEE
HIGHER EDUCATION AND EMPLOYMENT
ADVANCEMENT COMMITTEE

E-MAIL: Toni.Boucher@ps.state.ct.us

Magalia R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Broadwater Energy Docket Nose. CAP-54-000, CAP-55-000, and CAP-56-000

Dear Secretary Salas:

I am writing in opposition to the Broadwater Energy proposal. Projects like Broadwater must be proposals of last, not first, resort. By creating national and regional energy policies and taking advantage of programs currently required by law and state energy plans, we can protect Long Island Sound for future generations and ensure a sustainable, efficient energy system.

Broadwater is the wrong project, in the wrong place, at the wrong time. As a state representative from this region, I ask that you and the New York state agencies with permit authority, deny Broadwater's permit application.

The proposed, permanently anchored Liquefied Natural Gas (LNG) processing would negatively affect the ecology of Long Island Sound, a congressionally declared estuary of national significance that contributes \$5.5 billion dollars to the regional economy every year; industrialize the currently open mid-waters of Long Island Sound; and sell off a portion of public trust waters, which are owned by the citizens, to a private entity. High priced LNG will not save my constituents money, but more importantly there are alternatives that do not put Long Island Sound at risk. Those alternatives should be revisited and thoroughly explored in the Draft Environmental Impact Statement.

SE7-1

Broadwater is not a solution; it is a symptom of the problem. This project would delay the implementation of alternative energy strategies, increase our dependence upon

SE7-1

As discussed in Section 4.0, the final EIS evaluates a wide variety of alternatives to the proposed Broadwater Project and concludes that these alternative projects could not satisfy projected natural gas and other energy demands of the New York City, Long Island, and Connecticut markets) without greater environmental impact. These alternatives include energy conservation; renewable energy sources, including wind and tidal power; and other existing and proposed LNG terminal and pipeline projects. Section 3.6 of the final EIS notes that LIPA estimated a state-wide savings for New York of \$14.8 billion between 2010 and 2020.



SE7 – Connecticut Representative Toni Boucher

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Secretary Magalia R. Salas
Federal Energy Regulatory Commission
Page Two
January 19, 2007

foreign fossil fuels, and jeopardize the region's coastal environments and create safety risks for residents.

For the health and safety of New York and Connecticut's people and the environment, please listen to the thousands upon thousands of citizens who implore you to deny the proposed Broadwater application.

Very truly yours,



Toni Boucher
Assistant Minority Leader

TB: mlb

Cc: The Honorable Eliot Spitzer
Executive Chamber
State Capitol
Albany, NY 12224

The Honorable M. Jodi Rell
Office of the Governor
State Capitol
210 Capitol Avenue
Hartford, CT 06106

SE8 – Connecticut Attorney General Richard Blumenthal

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ORIGINAL

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

**BROADWATER ENERGY LIQUEFIED
NATURAL GAS PROJECT**

**DOCKET NOS. CP06-54-000
CP06-55-000
CP06-56-000**

FILED
OFFICE OF THE
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**REQUEST OF RICHARD BLUMENTHAL, ATTORNEY GENERAL OF
CONNECTICUT, FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS ON
THE DRAFT ENVIRONMENTAL IMPACT STATEMENT**

To: The Commission

SE8-1

In accordance with the provision of Rule 212 of the Commission's Rules of Practice and Procedure, Richard Blumenthal, Attorney General of Connecticut, requests leave to file these supplemental comments on the Draft Environmental Impact Statement ("DEIS") for the above-captioned project.

On February 26, 2007, Broadwater Energy LLC and Broadwater Pipeline LLC (together, "Broadwater"), filed for leave to file supplemental comments on the Draft Environmental Impact Statement. The Attorney General seeks leave to file these comments for the limited purposes of providing information, clarification, and controlling case law, where relevant, on new and incorrect assertions in Broadwater's supplemental comments. The Attorney General's supplemental comments will enhance the record upon which the Final Environmental Impact Statement ("FEIS") will be based and assist the Commission in entering proper and complete orders.

SUMMARY

The DEIS for this illegal and dangerous project fails to provide a complete environmental impacts and alternatives analysis and is therefore in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.* Basic data is

SE8-1

The Attorney General has provided comments on Broadwater's supplemental comments on the draft EIS. We do not consider it appropriate for us to respond to comments directed to Broadwater. Further, the comments provided on the draft EIS in this letter essentially reiterate the comments presented in one of the Attorney General's earlier letters and do not raise any new issues. We have addressed those previous comments in responses to Letter SE3.

SE8 – Connecticut Attorney General Richard Blumenthal

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missing and necessary technical analysis is either incomplete or absent. Because the probable impacts of this project have not been adequately identified or studied, it is also impossible to provide a clear picture of the cumulative impacts of this project along with other planned and already approved projects that also affect the Long Island Sound ecosystem. Furthermore, the DEIS fails to properly evaluate the purpose and need for the project in the context of actual regional needs and available and reasonably foreseeable alternative projects. The DEIS also fails to address the lack of legal authority of FERC to infringe on state sovereign control over public trust lands in violation of the Tenth Amendment. Broadwater's supplemental comments add no new *facts* of relevance -- only unsupported self-serving *conclusions* that the manifestly insufficient DEIS meets regulatory requirements. In fact, the DEIS does not meet the minimum requirements of NEPA.

Statement of Purpose

On January 23, 2007, the Connecticut Attorney General filed comments ("Attorney General's Comments") on the DEIS prepared for the Broadwater project, demonstrating that critical data was missing, that the consideration of project alternatives was inadequate and that the DEIS's cumulative impacts analysis was incomplete. Attorney General's Comments, pp. 9-20, 36-45, 31-36. In addition, no effective emergency response plan has been prepared and the discussion of environmental impacts was clearly insufficient. Attorney General's Comments, pp. 17, 21-28. Consequently, the DEIS fails to satisfy the requirements of the National Environmental Policy Act ("NEPA") and applicable regulations.

SE8 – Connecticut Attorney General Richard Blumenthal

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By way of response to the Connecticut Attorney General's comments, and the comments of other parties, Broadwater has prepared supplemental comments. None of Broadwater's comments change the fact that major additional technical work must be completed before the DEIS could possibly be considered complete. For example, the Coast Guard's new offshore infrastructure anchoring specifications are not complete and geotechnical work necessary for designing the yoking system has not been done. Indeed, the Supplemental Comments nowhere address the fact that the emergency response plan needed for the facility, a plan which will depend heavily on the cooperation of state and local governments, does not exist. Without such a plan, it is impossible to quantify the environmental and social impact of an accident or attack on the project. Finally, the Supplemental Comments attempt to elide over the fact that the project depends on new and untried technology by claiming, in effect, that LNG tankers and offloading facilities exist elsewhere and have been used for years and LNG technology is mature. Supplemental Comments, ¶ 52. In fact, no storage and regasification facility of the size and type of the planned one exists anywhere and the proposed generation of mega-tankers has not been built yet, and so there is plainly no proven safety record.¹

Beyond technical comments, Broadwater has included in its supplemental comments a series of incorrect legal conclusions, which are also addressed in these supplemental comments.

Compliance With NEPA

Broadwater asserts that the investigation and review conducted by FERC to date meet, if not exceed, the requirements of the National Environmental Policy Act, 42 U.S.C

¹ The Supplemental Comments, ¶ 54, attempts to address the clear danger of anchor strikes on the planned pipeline by saying, *inter alia*, that the pipeline will be clearly delineated on nautical charts. So are the CL&P transmission lines that have been struck over 50 times by anchors.

SE8 – Connecticut Attorney General Richard Blumenthal

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§ 4321, *et seq.* (“NEPA”), and that the various commenters are either “confused,” ¶ 13, or fundamentally misunderstand[],” ¶ 9, the requirements of NEPA.

NEPA, however, mandates that federal agencies involved in activities that may have significant impact on the environment must complete a *detailed* statement of the environmental impacts *and project alternatives*. NEPA provides, in pertinent part, as follows:

The Congress authorizes and directs that, to the fullest extent possible . . .

(2) all agencies of the Federal Government shall -- . . .

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332.

Compliance with NEPA is mandatory. “NEPA was created to ensure that agencies will base decisions on detailed information regarding significant environmental impacts and that information will be available to a wide variety of concerned public and private actors. *Morongo Band of Mission Indians v. Federal Aviation Administration*,

SE8 – Connecticut Attorney General Richard Blumenthal

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161 F.3d 569, 575 (9th Cir. 1998).” *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000).

As the Tenth Circuit has held:

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

Utahns For Better Transportation v. United States Dept. of Transp., 305 F.3d 1152, 1162 (10th Cir. 2002); *Jones v. District of Columbia Redevelopment Land Agency*, 162 U.S. App. D.C. 366, 499 F.2d 502, 512 (D.C. Cir. 1974); *Illinois Commerce Com. v. Interstate Commerce Com.*, 848 F.2d 1246, 1259 (D.C. Cir. 1988).

It is not only the government decision-makers who are to be served by an EIS. As one court noted: “The purpose of an EIS is to ‘compel the decision-maker to give serious weight to environmental factors’ in making choices, *and to enable the public to understand and consider meaningfully the factors involved.*” *County of Suffolk v. Secretary of Interior*, 562 F.2d at 1375 (citing *Sierra Club v. Morton*, 510 F.2d 813, 819 (5th Cir. 1975)).” *Town of Huntington v. Marsh*, 859 F.2d 1134, 1141 (2d Cir. 1988).

In this case, it is clear that the DEIS does not even begin to meet the requirements of NEPA. The facts are not in dispute. Significant technical data has simply not been collected yet. The new design standards for offshore energy infrastructure do not yet exist. Attorney General's Comments, p. 10. The necessary geotechnical work has not been done for the anchoring yoke. Attorney General's Comments, pp. 11-12. Insufficient baseline environmental and benthic studies exist. Attorney General's

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Comments, pp. 18, 21-28. There is no emergency response plan to deal with the environmental consequences of a grounding, accident, attack or fire at the FSRU or any of the LNG carriers. Attorney General's Comments, p. 17. There can be no "hard look" when there is nothing to look at.

It is instructive to compare the Broadwater DEIS with the impact statement prepared by the Army Corps of Engineers, and rejected as insufficient by the Second Circuit in *Town of Huntington v. Marsh*, 859 F.2d 1134 (2d Cir. 1988). In *Huntington*, the court concluded that necessary "data was insufficient to permit an informed site designation decision by the Corps. The vast bulk of material . . . was not analyzed in the study." *Id.* at 1141.

The Court emphasized that, even when a government agency is

satisfied with its [EIS], public scrutiny of the basis for the Corps' decision is "essential to implementing NEPA." 40 C.F.R. 1500.1(b). See *Sierra Club v. United States Army Corps of Engineers*, 701 F.2d 1011, 1029 (2d Cir. 1983) (EIS must set forth sufficient information for general public to make informed evaluation). We note in particular the comments by agency experts from the Department of Interior Office of Environmental Project Review, the Department of Commerce Office of Marine Pollution Assessment, and the Fish and Wildlife Service which indicated that evaluation of the merits of WLIS III as a dumpsite was made difficult or impossible by the lack of sufficient data in the EIS submitted. For these reasons, we hold that the Corps violated NEPA by not including analysis of the types, [and] quantities . . . of waste disposal in its EIS.

Huntington, at 1143. Similarly, for Broadwater, the mandatory essential fish habitat (EFH) assessment, along with various technical studies described above, including those related to the anchoring system, are not complete.

In light of these omissions, and contrary to the requirements of NEPA, the DEIS is not based on detailed information regarding significant environmental impacts and detailed information will not be available to a wide variety of concerned public and

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private actors because vital information and studies have not been completed, or even begun, regarding important aspects of this project. *Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 575 (9th Cir. 1998),” *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000).

Cumulative Impacts Analysis

Broadwater claims that the cumulative impacts analysis in the DEIS exceeds the requirements of NEPA, Supplemental Comments, p. 16, but it plainly fails to do so. NEPA requires a reviewing agency to consider the impact on the environment resulting from the total cumulative effects of the contemplated action and other past, present, and “reasonably foreseeable” future actions. See 40 C.F.R. 1508.7 (1990). A consideration of potential cumulative impacts is an integral, critical element of an environmental impact statement under NEPA:

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

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

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Federal regulations are clear. A reviewing agency must consider "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment." 40 C.F.R. 1508.27(b)(7). The relevant implementing regulations further define cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. 1508.7

Once again, it is instructive to compare the Broadwater DEIS with the Army Corps' similarly defective document in *Town of Huntington v. Marsh*, 859 F.2d 1134 (2d Cir. 1988). Huntington also involved a proposed project in the Sound. The Corps' EIS was rejected for, among other reasons, an inadequate cumulative impacts analysis. The Second Circuit noted:

The objective criteria by which this Court will evaluate the Corps' EIS are discussed extensively in *Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 88-89 (2d Cir. 1975). That case is strikingly similar to the instant case in that the Callaway decision involved a challenge to an EIS allegedly deficient in its discussion of the types, quantities and cumulative effects of dredged waste disposal projects in the Long Island Sound. There the plaintiff claimed that several projects were pending while the EIS was being prepared by the U.S. Navy and that those projects were sufficiently foreseeable to have been included in the statement. This Court held in *Callaway* that the EIS failed to meet NEPA's standard of comprehensive evaluation, citing the CEQ guidelines for preparation of an EIS. *Id.* at 89. We so hold here.

Huntington, supra. at 1141-1142.

The Court added

it is well settled that the cumulative effects of a proposed

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federal action must be analyzed in an EIS. The Supreme Court in *Kleppe v. Sierra Club* has stated:

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

427 U.S. 390, 410, 96 S. Ct. 2718, 49 L. Ed. 2d. 576 (1976). The genesis of this requirement is in the CEQ guidelines which provide that an EIS should analyze cumulative impacts when to do so is "the best way to assess adequately the combined impacts of similar actions." 40 C.F.R. 1508.25(a)(3). We do not take issue with particular conclusions reached by an agency after it has taken a "hard look" at environmental factors involved. See *City of New York v. U.S. Dep't of Transp.*, 715 F.2d at 748 (NEPA mandates no particular substantive outcomes). However, it is improper to defer analysis of the types, quantities and cumulative effects of waste dumping when designating a new waste disposal site.

Huntington, supra, at 1142-1143.

This point is reinforced by the very recent case of *Oregon Natural Resources Council v. U.S. Bureau of Land Mgt.*, No. 05-35245, 2006 U.S. App. LEXIS 29688 (9th Cir. Dec. 4, 2006). In *ONRC*, the Ninth Circuit remanded an environmental assessment performed by the Bureau of Land Management because, as here, it lacked the requisite site-specific information and an adequate evaluation of the cumulative environmental impacts. *Id.* at *9. As the Court noted:

[*Kern v. United States BLM*, 284 F.3d 1062, 1069-60 (9th Cir. 2002)] addressed a similar cumulative impact objection to EAs. Like the Mr. Wilson EA, the EAs at issue in *KSWC* did not contain objective quantified assessments of the combined environmental impacts of the proposed actions. *KSWC*, 387 F.3d at 994. The discussion of future foreseeable actions consisted of "an estimate of the number of acres to be harvested. A calculation of the total number of acres to be harvested in the watershed is a necessary component of a cumulative effects analysis, but it is not a sufficient description of the actual environmental effects that can be expected from logging those acres." *Id.* at 995. The EAs also stated that environmental concerns such as air quality, water quality, and endangered species would not be affected. *Id.* However, "[t]he EA is silent as to the degree that each factor will be impacted and how the project design will

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reduce or eliminate the identified impacts. This conclusory presentation does not offer any more than the kind of general statements about possible effects and some risk which we have held to be insufficient to constitute a hard look." *Id.* (internal quotation marks omitted). Both the Mr. Wilson and the *KSWC* EAs "do not sufficiently identify or discuss the incremental impact that can be expected from each successive timber sale, or how those individual impacts might combine or synergistically interact with each other to affect the [watershed] environment." *Id.* at 997.

ONRC, at *11-*12.

In the present case, there is no detailed analysis of the cumulative impacts of the Broadwater Project along with the known and foreseeable impacts of, for example, the Islander East pipeline or any of the other reasonably foreseeable projects in the vicinity, on water quality, benthic environment, fin fish and shellfish resources and other elements of the Long Island Sound ecosystem. The required cumulative impacts analysis is simply absent.

Alternatives Analysis.

Broadwater claims that it is not necessary for the DEIS to consider all available alternatives. Supplemental Comments, ¶ 12. This position is incorrect and unlawful. A central responsibility of any EIS is an evaluation of the public need for the project and a careful review of any reasonably foreseeable alternatives that could meet that need with fewer adverse impacts. As the United States Court of Appeals for the Second Circuit said over thirty years ago, the

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

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NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.' . . . But implicit in this rule of reason is the overriding statutory duty of compliance with impact statement procedures to 'the fullest extent possible.'

Scientists Institute For Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (2d Cir. 1973). See also, *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) ("[T]he requirement in NEPA of discussion as to reasonable alternatives does not require 'crystal ball' inquiry. Mere administrative difficulty does not interpose such flexibility into the requirements of NEPA as to undercut the duty of compliance 'to the fullest extent possible.'")

While an analysis of alternatives is a clear NEPA requirement, the DEIS in this case contains no such analysis at all. Broadwater, however, claims in its Supplemental Comments that FERC is not really required to look at regional need and determine which projects meet that need. ¶¶ 12-15. In fact, Broadwater claims that that is Congress' job. Supplemental Comments, ¶ 13.

To the contrary, Congress delegated to FERC the responsibility to determine the public need for proposed energy projects and NEPA mandates a full alternatives analysis. See, 15 U.S.C. § 717f(c) and 42 U.S.C. § 4332. In fact, the Natural Gas Act not only directs FERC to determine the public necessity for a given project, but also directs FERC to determine the geographic area to be serviced or to order extension or modification of existing infrastructure as needed. 15 U.S.C. §§ 717f(a), (c), (f). Thus, FERC has broad power to determine regional need and the proper mix of new or improved infrastructure to meet that need. Broadwater's assertion that a full review of alternatives and need is some else's job is a tacit acknowledgment that FERC has failed

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to conduct this review in the DEIS. The absence of this review is another reason the DEIS fails to meet minimum legal standards.

Public Trust Doctrine

Broadwater states that several commenters argue that the public trust doctrine prohibits a governmental grant of "permission to moor the FSRU on submerged land in state waters, or create a security exclusionary zone for the FSRU that precludes fishing and other recreational activities." Supplemental Comments, ¶ 115. Broadwater then adds that the "commenters' arguments are tantamount to asserting that no private entity is allowed to anchor, moor, or attach a structure to submerged land. . . ." *Id.* Broadwater asserts that this position is clearly wrong because boats anchor all the time in New Haven harbor.

Broadwater's specious reasoning is based on a fundamentally incorrect statement of the commenters' position. No party has said that government cannot grant a private party "permission to moor" a boat or other vessel on public trust land. To the contrary, government continually acts to preserve public access to public trust submerged lands for, among other things, boating and fishing. Broadwater's claim that commenters' position is undermined by the fact that boats anchor in New Haven harbor is completely incorrect. The State of Connecticut carefully monitors the use of New Haven harbor to ensure that commercial and recreational boating, as well as commercial shellfishing, is encouraged. All manner of vessels are permitted to anchor or moor in the harbor, but none are permitted exclusive use of the harbor for their individual use alone.

Broadwater's supplemental comments further evince a deliberate misunderstanding of the public trust doctrine. That doctrine is well established. In

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Shively v. Bowlby, 152 U.S. 1 (1894), the Supreme Court conducted an extensive survey of its prior cases, the English common law, and various cases from the state courts, and concluded:

At common law, the title and dominion in lands flowed by the tide water were in the King for the benefit of the nation. . . . Upon the American Revolution, these rights, charged with a like trust, were vested in the original States within their respective borders, subject to the rights surrendered by the Constitution of the United States.

As more recently elaborated upon by the Supreme Court in *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 474 (1988),

Shively rested on prior decisions of this Court, which had included similar, sweeping statements of States' dominion over lands beneath tidal waters. *Knight v. United States Land Association*, 142 U.S. 161, 183 (1891), for example, had stated that "[i]t is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the several States, and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess within their respective borders." On many occasions, before and since, this Court has stated or restated these words from *Knight* and *Shively*.

Numerous other Supreme Court decisions have concluded similarly. See, *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10, 15 (1935); *Appleby v. City of New York*, 271 U.S. 364, 381 (1926); *Illinois Central R. Co. v. Illinois*, 146 U.S. 387, 435 (1892); *Hardin v. Jordan*, 140 U.S. 371, 381 (1891); *McCready v. Virginia*, 94 U.S. 391, 394 (1877); *Weber v. Harbor Comm'rs*, 18 Wall. 57, 65 (1873); *Goodtitle v. Kibbe*, 9 How. 471, 477-478 (1850).

State law is also very clear. Lands held in public trust are held by the state for the use and benefit of all of its citizens. See, e.g., *Chapman v. Kimball*, 9 Conn. 38, 40-41 (1831); *Orange v. Resnick*, 94 Conn. 573 (1920); *Bloom v. Water Resources Commission*, 157 Conn. 528 (1969); *Mihalcz v. Woodmont*, 175 Conn. 535 (1978); *Matto v. Dan*

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Beard, Inc., 15 Conn. App. 458 (1988), *cert. den.* 209 Conn. 812 (1988). The Connecticut Supreme Court has stated

that [the term public trust] traditionally has been used to refer to the body of common law under which the state holds in trust for public use title in waters and submerged lands waterward of the mean high tide line. See, e.g., *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 476, 108 S. Ct. 791, 98 L. Ed. 2d 877 (1988); *Mihalcz v. Woodmont*, 175 Conn. 535, 538, 400 A.2d 270 (1978); *Brower v. Wakeman*, 88 Conn. 8, 11, 89 A. 913 (1914); *Simons v. French*, 25 Conn. 346, 351 (1856).

Leydon v. Town of Greenwich, 257 Conn. 318, 331 n. 17 (2001).

Not only do New York decisions similarly support the continued vitality of the public trust doctrine, but courts of New York have employed the public trust doctrine to render large grants of land to private individuals *ultra vires* and void. See *Marba Sea Bay Corp. v. Clinton St. Realty Corp.*, 272 N.Y. 292, 296, 5 N.E.2d 824 (1936).

Broadwater claims that, once it obtains FERC approval, it may compel the States of New York and Connecticut to cede control over state public trust land to a private company for its sole long term use and enjoyment. In fact, because enforcement of the mandatory security zone is a law enforcement obligation that cannot be delegated to a private entity, Broadwater expects the Coast Guard, or local law enforcement acting on Broadwater's behalf, to forcibly exclude the public from public trust lands. See, DEIS, Appendix D, pp. 142-143, Supplemental Comments, p. 44.

This upending of the traditional notions of a state's public trust responsibilities to its citizens not only offends public policy, but also marks an unacceptable and unconstitutional intrusion into state sovereignty.

The exercise of public trust responsibility is an essential aspect of residual state sovereignty preserved to the states by the Tenth Amendment. The actions of FERC

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would have the same effect as that of the Coeur d'Alene Tribe in *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 283, 117 S. Ct. 2028, 2041 (1997), in which case the Supreme Court held:

Not only would the relief block all attempts by these officials to exercise jurisdiction over a substantial portion of land but also would divest the State of its sovereign control over submerged lands, lands with a unique status in the law and infused with a public trust the State itself is bound to respect. As we stressed in *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195-198, 107 S. Ct. 2318, 2320-2322, 96 L.Ed.2d 162 (1987), lands underlying navigable waters have historically been considered 'sovereign lands.' State ownership of them has been 'considered an essential attribute of sovereignty.' *Id.* at 195, 107 S. Ct., at 2320.

See also, *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 481, 108 S. Ct. 791, 799 (1988); *Hughes v. Washington*, 389 U.S. 290, 295, 88 S. Ct. 438, 441 (1967); *United States v. New Jersey*, 831 F.2d 458, 466 (1987).

The Tenth Amendment to the United States Constitution preserves to states the traditional aspects of sovereignty not surrendered to the federal government. "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." *New York v. United States*, 505 U.S. 114, 156, 112 S. Ct. 2406 (1992). "The [Tenth] Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." *Fry v. United States*, 421 U.S. 542, 547, 95 S. Ct. 11792, 1795 (1975).

Congressional interference with the sovereignty of the States is never to be lightly inferred. As the Supreme Court has held:

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"[I]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.' *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 [105 S. Ct. 3142, 3147, 87 L.Ed.2d 171] (1985); see also *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 [104 S. Ct. 900, 907, 79 L.Ed.2d 67] (1984). *Atascadero* was an Eleventh Amendment case, but a similar approach is applied in other contexts. Congress should make its intention 'clear and manifest' if it intends to pre-empt the historic powers of the States, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 [67 S. Ct. 1146, 1152, 91 L.Ed. 1447] (1947). . . . 'In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.' *United States v. Bass*, 404 U.S. 336, 349 [92 S. Ct. 515, 523, 30 L.Ed.2d 488] (1971)."

Will v. Michigan Dept. of State Police, 491 U.S. 58, 65, 109 S. Ct. 2304, 2308 (1989).

Thus, this case involves an unconstitutional attempt by a private company to seize public lands. To the extent a federal agency is used to accomplish this effort, the attempt constitutes a violation of the Tenth Amendment.

Broadwater also asserts what it describes as a "public interest" exception to the public trust doctrine. Supplemental Comments, ¶ 116. The public interest "exception" is not really an exception, however. The language in *Illinois Central* that Broadwater cites in support of its position is nothing more than the recognition that the public trust doctrine preserves public land for public use and, therefore, a public bridge or other structure for public use is not necessarily inconsistent with use of public trust land.

For example, in a Connecticut case, *Groton v. Hurlbut*, 22 Conn. 178, 185 (1852), the Connecticut Supreme Court held that construction of a highway over a creek did not offend federal control over navigable waterways and did not require a special grant of power under state law. 22 Conn., at 185-189. Moreover, the *Groton* decision noted that construction of the highway put the lands to a publicly beneficial use, and that

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any navigation of the creek by small boats was not impaired by the construction. *Id.*, at 187-189. A similar case with similar results is *Wethersfield v. Humphrey*, 20 Conn. 218, 227 (1850).

What these cases demonstrate is that there is no necessary conflict between the public trust doctrine and construction of public infrastructure that does not preclude other public uses. Nowhere is there any support in this so-called “exception” for the proposition that a private entity can take sole control of a public trust asset and exclude the public from its use and enjoyment, -- in effect, converting public trust state ownership to the benefit of a purely private venture.

In fact, as noted above, New York law explicitly permits the State to void transfer of public trust land to private parties as *ultra vires*. See *Marba Sea Bay Corp. v. Clinton St. Realty Corp.*, 272 N.Y. 292, 296, 5 N.E.2d 824 (1936). As the Supreme Court has stated “While *Montana v. United States* [450 U.S. 544 (1981)] and *Illinois Central R. Co. v. Illinois* [46 U.S. 387 (1892)] support the proposition that alienation of the beds of navigable waters will not be lightly inferred, property underlying navigable waters can be conveyed in recognition of an “international duty.” *Montana v. United States*, *supra*, at 552.” *Summa Corp. v. California*, 466 U.S. 198 (1984). Here, of course, there is no international duty, but simply a private energy project that could more properly (and safely) be placed on land, which the company would unquestionably have to pay for.

In fact, the *Illinois Central* case relied upon by Broadwater has been cited as support for the rule that states can block the sort of land transfer contemplated here. “To the extent that the conveyances to private parties purported to include public trust lands, the States may strike them down, if state law permits. *Illinois Central R. Co. v. Illinois*,

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146 U.S., at 452-454; see *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 339, 342-343 (Fla. 1986), cert. denied sub nom. *Mobil Oil Corp. v. Board of Trustees of Internal Improvement Trust Fund of Fla.*, 479 U.S. 1065(1987).” *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 494(1988) (O’Connor, dissenting). As the Court elaborated in *Coeur D’Alene Tribe*:

Not surprisingly, American law adopted as its own much of the English law respecting navigable waters, including the principle that submerged lands are held for a public purpose. See *Arnold v. Mundy*, 6 N.J.L. 1 (1821). A prominent example is *Illinois Central R. Co. v. Illinois*, 146 U.S. 387, 36 L. Ed. 1018, 13 S. Ct. 110 (1892), where the Court held that the Illinois Legislature did not have the authority to vest the State’s right and title to a portion of the navigable waters of Lake Michigan in a private party even though a proviso in the grant declared that it did not authorize obstructions to the harbor, impairment of the public right of navigation, or exemption of the private party from any act regulating rates of wharfage and dockage to be charged in the harbor. An attempted transfer was beyond the authority of the legislature since it amounted to abdication of its obligation to regulate, improve, and secure submerged lands for the benefit of every individual. *Id.*, at 455-460. While *Illinois Central* was “necessarily a statement of Illinois law,” *Appleby v. City of New York*, 271 U.S. 364, 395, 70 L. Ed. 992, 46 S. Ct. 569 (1926), it invoked the principle in American law recognizing the weighty public interests in submerged lands.

Idaho v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261, 284-285 (1997).

Ultimately, because Congressional interference with state sovereignty is not to be lightly inferred, and because alienation of public trust land is similarly disfavored and is voidable, it is clear that a generic authority in the Natural Gas Act granting eminent domain authority to utility companies may permit the taking of private land, but cannot be interpreted to infringe on constitutionally protected state sovereign interests.

Finally, Broadwater makes a passing comment to the effect that the existence of a security zone at the Millstone Nuclear Power Station somehow justifies its seizure of New York public trust land. Supplemental Comments, ¶ 115. This assertion is false

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because the State of Connecticut not only consented to this security zone, but in fact demanded it and uses state officials to enforce it.

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Conclusion

Broadwater's Supplemental Comments reconfirm that the DEIS remains woefully incomplete and should be immediately and thoroughly revised. The comments also show that Broadwater has no legal authority to take public trust land for its own purposes and any attempted grant of authority to do so is unconstitutional and *ultra vires*.

Respectfully submitted,



RICHARD BLUMENTHAL
Attorney General, State of Connecticut

Dated: March 7, 2007

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CERTIFICATE OF SERVICE

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

Dated at Hartford, Connecticut this 7th day of March, 2007.



Robert Snook
Assistant Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

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 ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

BROADWATER ENERGY LIQUEFIED
NATURAL GAS PROJECT

DOCKET NOS. CP06-54-000
CP06-55-000
CP06-56-000

2007 APR 20
7:11 AM EDT

REQUEST OF RICHARD BLUMENTHAL, ATTORNEY GENERAL OF
CONNECTICUT, FOR LEAVE TO FILE SECOND SUPPLEMENTAL
COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

To: The Commission

In accordance Rule 212 of the Commission's Rules of Practice and Procedure, Richard Blumenthal, Attorney General of Connecticut, requests leave to file these second supplemental comments on the Draft Environmental Impact Statement ("DEIS") for the above-captioned project.

On February 26, 2007, Broadwater Energy LLC and Broadwater Pipeline LLC (together, "Broadwater") filed for leave to file supplemental comments on the Draft Environmental Impact Statement. On March 7, 2007, the Attorney General filed responsive supplemental comments. However, on April 16, 2007, new evidence was introduced at a hearing of the Long Island Sound LNG Task Force ("Task Force") directly relevant to the Broadwater DEIS. The Attorney General therefore seeks leave to file these additional comments to provide this new information. The Attorney General's supplemental comments will enhance the record upon which the Final Environmental Impact Statement ("FEIS") will be based and assist the Commission in entering proper and complete orders.

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SUMMARY

New information presented to the Long Island LNG Task Force conclusively shows that an important marine community of sponges and coral which will be damaged by Broadwater pipeline construction was not even identified or mentioned in the DEIS. As a result, the DEIS fails to provide a complete environmental impacts analysis and is therefore in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.* It is now even more apparent that basic environmental data is missing from the DEIS and necessary technical analysis is incomplete. The DEIS does not meet the minimum requirements of NEPA and cannot meet those requirements without substantial additional study.

Further, a new review by the Government Accountability Office (GAO) shows that Broadwater safety claims about its project do not have a factual basis.

Inadequate Baseline Environmental Data

Dr. Peter Auster, Science Director for the National Undersea Research Center at the University of Connecticut, provided the Task Force photographic evidence of sponge communities, sometimes called "forests," and hard coral growing on the Stratford Shoals, an undersea ridge that the proposed Broadwater pipeline will have to cross. *See*, Exhibit I attached hereto. Dr. Auster, a Ph. D. marine ecologist with twenty years experience, told the Task Force that the habitat of the shoals supports important benthic communities, including coral and sponges, that have not been described in any of the materials submitted by Broadwater and not discussed at all in the DEIS.¹ He further stated that the information provided by Broadwater to date is so incomplete that he has not even been

SE9-1 Section 3.3.1 of the final EIS has been revised to describe the available information on these organisms in Long Island Sound, including information provided by Dr. Auster regarding corals and sponges in the Stratford Shoal area.

SE9-1

¹ Dr. Auster's testimony can be found at <http://www.ctm.state.ct.us/>.

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SE9-1
SE9-2

able to determine how Broadwater conducted its review of the ecology of the Stratford Shoals area.

It is self-evident that an evaluation of impacts cannot be completed until there is a comprehensive understanding of the environment to be impacted. Several commenters have noted the inadequacies of the DEIS in this regard. The evidence submitted to the Task Force is photographic proof that important ecosystems have not been identified, let alone evaluated, in the DEIS.

As noted in the very recent case of *Oregon Natural Resources Council v. U.S. Bureau of Land Mgt.*, No. 05-35245, 2006 U.S. App. LEXIS 29688 (9th Cir. Dec. 4, 2006), an EIS is incomplete without adequate information. In *ONRC*, the Ninth Circuit remanded an environmental assessment performed by the Bureau of Land Management because, as here, it lacked the requisite site-specific information and an adequate evaluation of the cumulative environmental impacts. *Id.* at *9. As the Court noted:

[*Kern v. United States BLM*, 284 F.3d 1062, 1069-60 (9th Cir. 2002)] addressed a similar cumulative impact objection to EAs. Like the Mr. Wilson EA, the EAs at issue in *KSWC* did not contain objective quantified assessments of the combined environmental impacts of the proposed actions. *KSWC*, 387 F.3d at 994. The discussion of future foreseeable actions consisted of "an estimate of the number of acres to be harvested. A calculation of the total number of acres to be harvested in the watershed is a necessary component of a cumulative effects analysis, but it is not a sufficient description of the actual environmental effects that can be expected from logging those acres." *Id.* at 995. The EAs also stated that environmental concerns such as air quality, water quality, and endangered species would not be affected. *Id.* However, "[t]he EA is silent as to the degree that each factor will be impacted and how the project design will reduce or eliminate the identified impacts. This conclusory presentation does not offer any more than the kind of general statements about possible effects and some risk which we have held to be insufficient to constitute a hard look." *Id.* (internal quotation marks omitted). Both the Mr. Wilson and the *KSWC* EAs "do not sufficiently identify or discuss the incremental impact that can be expected from each successive timber sale, or how

SE9-2 Please see our response to comment SE9-1.

SE9 –Connecticut Attorney General Richard Blumenthal

those individual impacts might combine or synergistically interact with each other to affect the [watershed] environment." *Id.* at 997.

SE9-3

ONRC, at *11-*12. The Broadwater DEIS cannot meet the minimum requirements of NEPA because it contains no objective quantified assessment, nor any assessment at all, of the Stratford Shoals ecosystem.

GAO Report

SE9-4

As noted in the Attorney General's earlier comments, this project is based on novel applications of LNG technology. No facility of the proposed type exists anywhere in the world. Not only does this fact raise important safety and security concerns, but it also makes it impossible to develop an appropriate emergency response plan.

On March 17, 2007, the GAO released its Maritime Security Report ("Report"), discussing the extent of current knowledge of large scale marine LNG fires. See, Exhibit 2. The Report is solid proof, if any more is needed, that the planned Broadwater project is an unacceptable security danger. This report confirms that the so-called safety zone around the planned facility and supporting tankers is based on woefully inadequate data and that the facility poses a significant threat to public safety and the vital natural resources of the Long Island Sound.

SE9-5

Specifically, the GAO Report confirms that critical information about the safety and security of marine LNG facilities and the characteristics of large LNG fires is non-existent. Report, p. 8. According to the GAO Report, the few studies that have been done are inconsistent and often do not include any consideration of the effects of wind and weather. Report, pp. 8, 13, 14. No consensus exists on even the most basic issue – how large is the danger zone from a large LNG fire?

SE9-3

The final EIS has been revised to address the public comments received on the draft EIS, as intended by NEPA.

SE9-4

While the combination of technologies proposed for the FSRU is a new concept, the separate LNG receiving, storage, regasification, and sendout technologies are proven. The American Bureau of Shipping, a certifying entity, reviewed the preliminary design of the FSRU and stated the following in a July 27, 2005 letter to Broadwater: "Whilst the concept of combining a floating re-gasification unit and distribution network with a yoke moored LNG hull can be viewed as a first time combination of systems, the technologies employed are not in themselves novel and are covered by established Rule criteria."

As stated in the final EIS (Sections 2.1.1.1, 2.3.1.1, 3.10.2.1, and 3.10.2.2), federal regulations, industry standards, and classification society rules would govern the safe design, construction, and operation of the FSRU. The Coast Guard evaluated the safety and security aspects of operation of the FSRU (and the LNG carriers) and made the preliminary determination, as reported in Section 8.4 of the WSR (Appendix C of the final EIS), that the risks associated with operation of the FSRU and LNG carriers would be manageable with implementation of the mitigation measures it has recommended. In addition, LNG regasification using equipment on a marine vessel now has precedent in the Gulf of Mexico, where specialized LNG carriers with onboard vaporizers similar to those proposed for the Broadwater FSRU are operating, and two similar projects have also been approved by the Coast Guard (Neptune and Northeast Gateway Projects).

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SE9-5

The GAO Report is absolutely clear on one issue. The experts cited agree that LNG has the potential to pose a grave risk to the public and that much, much more research must be done before anyone can accurately identify the essential safety features required for facilities such as Broadwater. Report, pp. 17-19. For example, the Report points out that an LNG fire burns at an extremely high temperature -- much hotter than oil fires of the same size -- and is very difficult to extinguish, but the DEIS contains no information about or evaluation of local firefighting capabilities. Report, p. 9. Further, despite what Broadwater has said in the past, explosions can happen and must be studied, Report, pp. 9-10, 16, and yet no consideration of LNG explosions was undertaken in the DEIS.

The DEIS, therefore, is utterly incomplete and unreliable in regard to this safety issue, also. The planned facility is based upon novel and untried technology and the inherent dangers of an LNG fire in the crowded waters of the Sound are severe. The GAO Report reinforces this point, showing that existing studies contradict each other and do not include real world information about how LNG fires behave. For example, the Report says that only one study has been done that even considered wind and wave action and that study was based only on conditions in Boston harbor and failed to consider how waves would affect movement of the LNG pool itself. Report, p. 14. It is impossible to maintain that the DEIS is complete and accurate when basic essential scientific information is missing.

A final important issued raised by the GAO Report is the so-called cascading failure scenario. Most studies to date assume that only one of the compartments of an LNG tanker would fail in an accident, attack, or other disaster. Report, pp. 15, 20. The

SE9-5 The GAO Report (GAO 2007) indicates that the primary hazard to the public would be heat from a fire. Eleven of the 15 responding experts described current methods for estimating LNG fire heat hazard distances as "about right" or too conservative. The sizes of the proposed fixed safety and security zone around the FSRU and the proposed moving safety and security zone around each LNG carrier were calculated to protect users of the Sound from the potential effects of an LNG fire. The expert consensus in the GAO Report supports the methods used to determine the proposed safety and security zones for the Broadwater facilities. The GAO Report also indicates that waves can inhibit spread of an LNG pool, which would limit the size of an associated pool fire. Although the GAO Report suggested that further study of the consequences of a large release of LNG to water should be conducted, it endorsed the use of current modeling methods.

Firefighting needs would be identified during development of the Emergency Response Plan, as described in Section 3.10.6 of the final EIS. FERC must approve the Emergency Response Plan prior to final approval to begin construction.

Section 3.10.1 of the final EIS describes the characteristics of LNG; as stated in that section, LNG is not explosive. In addition, the GAO Report notes a consensus among the experts surveyed that an explosion would be unlikely after an LNG spill in unconfined areas (such as on water).

The GAO expert panel agreed that cascading failure is an area with a need for future research. Regardless of the specific mechanics, likelihood, and number of tanks involved in cascading failures, the GAO panel of experts agreed (12 of 16 responders) that the consequences of cascading LNG tank failures would increase the estimated hazard distances by 20 to 30 percent. Broadwater's selection of an offshore location, 9 miles from the Long Island shoreline and 10 miles from the Connecticut shoreline, provides a large safety buffer in excess of any inherent uncertainty in modeling potential LNG spills, including cascading tank failure scenarios.

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SE9-5

Sandia report, relied upon by the DEIS, assumes that up to three of five compartments might fail. *Id.* As the GAO Report notes, many experts agreed that LNG fires can damage LNG tankers and cause multiple compartment failures, increasing the severity of a fire. GAO Report, p. 20. Thus, there is no justification for assuming that only three compartments would fail, and the Report properly urges further study of this issue. See, GAO Report, p. 21.

The GAO report proves that the security zones described in the DEIS are based on inadequate information and contradictory technical studies. Therefore, the DEIS must be completely rewritten with respect to the safety and security issues.

In fact, the experts cited by the GAO Report urge further research on the behavior of large scale fires, spill testing on water, comprehensive modeling, vulnerability of containment systems, mitigation systems and the impact of wind, weather and waves. Report, p. 21. Without this information, FERC cannot claim to have adequately studied the impact of this project as required by the National Environmental Policy Act.

SE9-5 (Continued)

The GAO expert panel did agree that cascading failure is an area with a need for future research (GAO 2007, page 38). Regardless of the specific mechanics, likelihood, and number of tanks involved in cascading failures, the GAO panel of experts did agree (12 of 16 responders) that the consequences of cascading LNG tank failures would increase the estimated hazard distances by 20 to 30 percent (GAO 2007, page 37). Broadwater's selection of an offshore location, 9 miles from the Long Island shoreline and 11 miles from the Connecticut shoreline, provides a large safety buffer in excess of any inherent uncertainty in modeling potential LNG spills, including cascading tank failure scenarios.

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Conclusion

The DEIS remains woefully incomplete and should be immediately withdrawn. Critical environmental baseline data is absent from the DEIS and vital information about the nature and consequences of a large marine LNG fire does not exist. Therefore, no adequate evaluation of the environmental impact of the project has been made. Further, without more information about LNG fires, safety zones cannot be properly calculated and the impacts on the marine environment from an accident or attack are merely guesses.

Respectfully submitted,



RICHARD BLUMENTHAL
Attorney General, State of Connecticut

Dated: April 18, 2007

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CERTIFICATE OF SERVICE

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

Dated at Hartford, Connecticut this 16th day of April, 2007.



Robert Snook
Assistant Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

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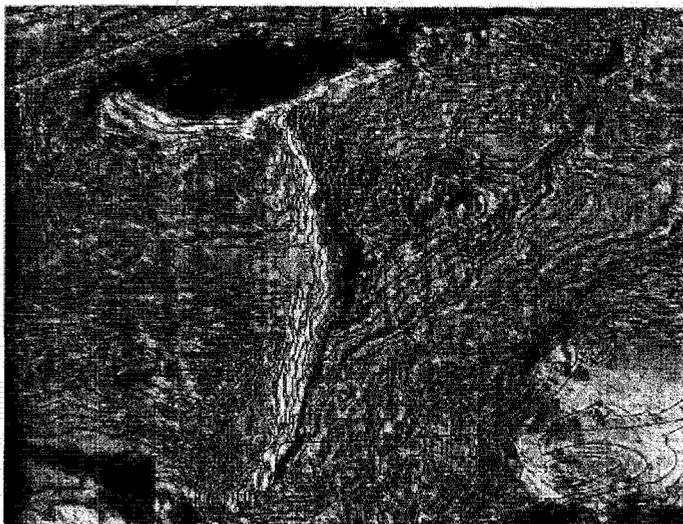
EXHIBIT 1

SE9 –Connecticut Attorney General Richard Blumenthal

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TO: Peter Masi
From: Peter Auster
Date: 3 April 2007

Below is a map of the southern part of Stratford Shoals. The dark line at the top left is the route of the existing Iroquois Gas pipeline. The light line across the bottom is the proposed route of the Broadwater gas pipeline. Note there is a sharp ridge on the map that tends north-south (top to bottom across the lower part of the map). The star indicates the site of an ROV dive in 1991 and is approximately 1.5 km north of the proposed pipe route. The images that follow the map are frame grabs from video that show dense sponge dominated communities (i.e., sponge "forests") and star coral. Based on the video, the ridge is composed of dense boulders.



State Elected Officials Comments

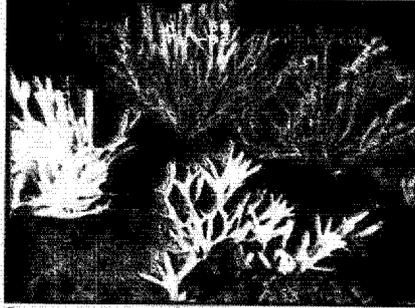
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Images for 1991 ROV dive:



Sponges (*Haliclona* sp.) on crest of boulder.



Sponges (*Haliclona* sp.) on crest of boulder.



Colonies of star coral (*Astrangea poculata*)

SE9 –Connecticut Attorney General Richard Blumenthal

Unofficial FERC-Generated PDF of 20070424-0075 Received by FERC OSEC 04/20/2007 in Docket#: CP06-54-00

EXHIBIT 2

GAO

United States Government Accountability Office
Report to Congressional Requesters

February 2007

MARITIME SECURITY

**Public Safety
Consequences of a
Terrorist Attack on a
Tanker Carrying
Liquefied Natural Gas
Need Clarification**



GAO-07-316

State Elected Officials Comments

N-246

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