

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

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

vs.

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

**MOTION IN OPPOSITION TO BROADWATER’S SECOND AND THIRD
MOTIONS TO SUPPLEMENT THE DECISION RECORD**

NYSDOS objects to the inclusion of Broadwater’s Supplemental Documents VI, VII, VIII, XI, XII, XIV, XV, XVI, XVII, and XVIII in the decision record because they do not serve as “clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency”. For this reason, they do not qualify as “supplemental information” under 15 C.F.R. § 930.127(i)(4) and should be rejected. 15 C.F.R. § 930.130(a)(2)(ii)(B).

Supplemental Document V: Summary of Applicable Coastal Policies for Broadwater

NYSDOS has no objection to the inclusion of this document in the decision record.

Supplemental Document VI : U.S. Coast Guard and U.S. Maritime Administration, Final Environmental Impact Statement for the Gulf Landing LLC Deepwater Port License Application, Appendix G: Ichthyoplankton Assessment Model Methodology and Results (Docket No. USCG-2004-16860)

NYSDOS objects to the inclusion of Supplemental Document VI, a FEIS for a different project, into the decision record.. Broadwater strains credulity by claiming that its Supplemental Document VI provides clarifying information “through accepted modeling methodology to assess potential ichthyoplankton entrainment impacts” and by “provid[ing] an estimate of the potential entrainment impacts for the proposed Gulf Landing Deepwater Port in the Gulf of Mexico.” However, Broadwater is actually requesting that the Secretary substitute the modeling

methodology used to determine potential ichthyoplankton entrainment/impingement impacts as calculated in the Broadwater project FEIS with the methodology used for the Gulf Landing Deepwater Port project in the Gulf of Mexico (Broadwater Reply Brief at p. 12).¹

The Broadwater FEIS explains the methodology used to obtain its ichthyoplankton mortality estimates, which NYSDOS has never disputed. (Broadwater FEIS [Doc. # 1911_0007] at pp. 3-81 - 3-83 [BW28928-28930]). The Broadwater FEIS presents the maximum estimated annual impingement/entrainment rate for eggs and larvae to be 274 million killed, and does not translate these numbers into Age 1 or adult equivalents.² Nor has Broadwater ever expressed in

¹ The Broadwater Reply Brief attempts to introduce a new form of modeling methodology by stating "[t]his is why state and federal regulators routinely require that entrainment losses at electric generating facilities be expressed in terms of Age 1 or adult equivalents, or in comparison to the standing crop of eggs and larvae in the source water body. For instance, measurement of Age 1 or adult equivalent results is the method used by the Coast Guard and NOAA for evaluating the impacts of LNG facilities under the Deepwater Port Act." (Broadwater Reply Brief at p. 12). However, the new modeling methodology that Broadwater is introducing for the first time in this motion does not provide any clarifying information but merely points out that a different modeling methodology was used in the Gulf Point Landing Project in comparison to the Broadwater Project. While Supplemental Document VI may have been a failed attempt by Broadwater to back away from its own FEIS, the document provides no clarifying information to the adverse coastal effects of the Broadwater Project and is actually an unrelated stand alone document.

² Further, Broadwater also incorrectly states that NYSDOS is the source of the estimated 274 million ichthyoplankton killed annually due to entrainment/impingement by the FSRU. (Broadwater Reply Brief at p. 12). However, the ichthyoplankton entrainment/impingement numbers cited by NYSDOS have not been generated by NYSDOS but come directly from the Broadwater project FEIS. (Broadwater FEIS [Doc. # 1911_0007] at pp. 3-90 - 3-91 [BW28937-28938]). The 274 million figure is derived from the addition of the maximum mortality number for eggs and the maximum mortality number for larvae.

"Using these various approaches, annual impingement/ entrainment for eggs ranged from 49.8 to 101.9 million eggs, with the most valid estimate of 53.1 million eggs based on the location of the proposed location of the FSRU in the middle of the central basin of Long Island Sound and adjusting for day/night differences in abundance. The annual impingement/ entrainment estimate for larvae ranged from 67.4 to 173.1 million, with the most valid estimate being 78.4 million." (Broadwater FEIS [Doc. # 1911_0007] at p. 3-90 [BW28937]).

The annual impingement/entrainment of 101.9 million eggs plus the annual impingement/entrainment of 173.1 million larvae equals 274 million total organisms

the record their anticipated ichthyoplankton impingement/entrainment rates as Age 1 or adult equivalents as does the Gulf Landing project. If Broadwater believes that a different methodology of analysis, or expression of mortality numbers, is required to adequately characterize the effects of their proposed project, then these should have been communicated to FERC to include in the FEIS or expressed in previous briefs. The Gulf Landing FEIS does not provide any clarification of the estimated rates of ichthyoplankton impingement/entrainment anticipated as a result of Broadwater but instead confuses and distorts the methodology used to calculate the destruction of aquatic eggs and larvae. The Gulf Landing Project uses completely different modeling methodologies than the Broadwater project and, therefore, is irrelevant.

Supplemental Document VI solely provides information on the modeling methodology used in a completely unrelated project and the document has absolutely no bearing or relevance to the Broadwater Project. NYSDOS objects to the inclusion of Supplemental Document VI as its only purpose is to add irrelevant information to the record regarding Broadwater's attempt to now adopt a different modeling methodology, for the first time in this appeal in its reply brief, than the one used in the Broadwater Project FEIS.³

impinged/entrained annually by the Broadwater project. See also NYSDOS Supplemental Document 5, NYSDEC June 11, 2008 letter from John Ferguson to Murray Sondergard of Broadwater Energy stating that the 274 million organisms impinged/entrained are derived by the Broadwater project FEIS. Broadwater is incorrectly stating that NYSDOS is the source of the "274 million figure" because it disagrees with NYSDEC using the maximum annual number of organisms killed through impingement/entrainment, although NYSDEC must use the maximum number in evaluating a project's potential impacts on the environment. (See NYSDOS Supplemental Document 5, NYSDEC June 11, 2008 letter at p. 2). Broadwater is attempting to confuse the indisputable data regarding the maximum values for impingement/entrainment data by disowning its own research. Broadwater's selective presentation of scientific data does not provide clarifying information but serves only to distort data and ignore the adverse coastal impacts of the project on Long Island Sound.

³ Interestingly, Broadwater is attempting to expand the "clarifying" standard as a pathway to add irrelevant information generated by an unrelated project to the decision record. By comparison, in Broadwater's previous objection to NYSDOS' Motion to Supplement, Broadwater expressed concerns with the submission of NYSDOS Document 10, which is a letter from David Kennedy, Director, Office of Ocean and Coastal Resource Management (OCRM) to Ruth E. Ehinger, N.J. Coastal Program Manager (dated Oct. 4, 2006).

This official OCRM document was distributed to the state Coastal Management Programs as a guide in interpreting the effect of the amendments to the Natural Gas Act by section 311(c)(2) of the Energy Policy Act of 2005. Many coastal states, like New York, had applications pending for LNG facilities and had policies, like LISCMP 13.4, which specifically dealt with LNG siting. OCRM's timely advice established the parameters of NYSDOS's consistency review of the Broadwater Project. NYSDOS complied with the EPAct of 2005 and

If the Secretary does accept Supplemental Document VI into the record then it is NYSDOS's position that the Broadwater FEIS is fundamentally flawed and would need to be redrafted using the Gulf Landing modeling methodology that Broadwater is now attempting to proffer for the first time as the Broadwater Project's impingement/entrainment scientific standard.

Supplemental Documents VII and VIII: October 27, 2005 Biological Fact Sheet – Cooling Water Intake Structure for the Northport Power Station and January 4, 2006 Final State Pollutant Discharge Elimination System (“SPDES”) Permit, Responsiveness Summary and Cover Letter for the KeySpan Generation – Northport Power Station; Northport, Suffolk County, respectively

NYSDOS objects to the inclusion of the Northport Biological Fact Sheet (Supplemental document VII) and Northport SPDES Permit (Supplemental Document VIII) pertaining to the annual ichthyoplankton entrainment, as these documents are not clarifying information to the consolidated record but rather provide information on a power station that predates the implementation of the Long Island Sound Coastal Management Plan (LISCMP).

The relevance of Supplemental Documents VII and VIII is highly questionable. NYSDOS does not dispute the existence of other water intake systems in and around the Sound that impinge and entrain higher numbers of ichthyoplankton than is estimated for the Broadwater project. NYSDOS has already presented its concern about the cumulative impact of allowing Broadwater's water intake system in an environment that is already affected by substantial ichthyoplankton mortality from existing water intakes such as Northport. In addition, NYSDOS continues to raise the estimated annual ichthyoplankton mortality rate as a concern because it has been, and continues to be, cited and supported by New York State's primary fisheries management agency, NYSDEC. NYSDEC has expertise regarding fisheries in this state and whether the "274 million figure" articulated in the FEIS, representing the estimated annual ichthyoplankton mortality from Broadwater, is significant, and they have stated concretely and repeatedly that it is indeed significant and cause for concern. The reauthorization of the existing Northport water intake system and the magnitude of its allowed intake as reflected in Supplemental Document VIII, is not relevant to the Broadwater decision, other than to emphasize that NYSDOS is correct in objecting to the Broadwater Project on the basis of cumulative adverse effects.

the guidance provided by OCRM. Had NYSDOS used LISCMP subpolicies 13.3 and 13.4, we would have been in violation of the law. Broadwater's claim of a post-hoc rationalization is completely unfounded. (See Broadwater's Reply Brief at 4-5).

Supplemental Document IX: Map of Atlantic Ocean South of Long Island

NYSDOS has no objection to the inclusion of this document in the decision record. However, there are already numerous maps in the consolidated record that reflect the exact same data so it is unclear as to why Broadwater is compelled to label Supplemental Document IX as clarifying information.

Supplemental Document X: Coastal Engineering Manual: Chapter 2 Site Selection

NYSDOS has no objection to the inclusion of this document in the decision record. However, the inclusion of the Supplemental Document X for the purpose that Broadwater has selected, which is to argue for the “worst-case scenario” belies that fact that Broadwater has rejected the same “worst-case scenario” standard for the impingement/entrainment data by insisting on using the lowest numbers available from the FEIS to argue a de minimus impact on ichthyoplankton mortality. (See Broadwater’s Reply Brief at p. 12, n. 72). Broadwater provides no scientific explanation for its selective use of the “worst-case scenario” standard, as none exists.

Additionally, the Yoke Mooring System (YMS) of the FSRU has purportedly been designed to withstand a Category 5 hurricane event. (See FEIS [Doc. # 1911_0006] at p. 2-13 [BW28817]). To date, “the strongest hurricane to cross over Long Island Sound on record was a Category 3 hurricane in 1938, with sustained winds estimated at 120 mph and tidal surges of 12 to 16 feet.”⁴ It appears as though the FEIS supports a finding that Broadwater’s project has already been designed to withstand a “worst-case scenario”.

Supplemental Documents XI: Environmental Report of the Safe Harbor Energy Project Deepwater Port License Application May 2007, Topic Report Nine-Alternatives

NYSDOS objects to the inclusion of Supplemental Document XI into the decision record. Broadwater’s Supplemental Document XI is a report Safe Harbor Energy prepared to support its project design in its chosen LNG facility location in the Atlantic Ocean. Supplemental Document XI does not clarify any information in the consolidated record as the Safe Harbor Energy Project has chosen to use a completely different facility design, and, therefore, is inapplicable to the Broadwater Project. Additionally, Supplemental Document XI incorrectly labels the Broadwater Project in the Long Island Sound as a Deepwater Port (Supplemental Document XI at p. 9-39; SD397).

Broadwater seeks to include Supplemental Document XI into the decision record as clarifying information on the two Atlantic Ocean alternative locations. However, Supplemental Document XI does not provide clarifying information. It instead provides an opinion of the Atlantic Sea Island Group LLC, sponsor of the Safe Harbor Energy LNG project, as to why it

⁴ FEIS [Doc. # 1911_0007] at p. 3-3 [BW28850]).

prefers its business plan and facility design over other available facility designs, such as a FSRU, in its application to site a LNG facility in the Atlantic Ocean. Broadwater quotes entire select passages from Supplemental Document XI in its attempt to find some clarifying information to support Broadwater's business design and plan in Long Island Sound.⁵ Simply quoting general information based upon opinion with absolutely no reference to any scientific research is simply nothing more than Broadwater attempting to frame a completely different project to explain why the two Atlantic Ocean alternatives are unavailable.

Furthermore, the Safe Harbor Energy Project report was prepared with the analysis to include two FSRUs at the proposed project location in the Atlantic Ocean. The entire analysis and conclusions regarding alternatives of the Safe Harbor Energy Project are not applicable to Broadwater's Project, which includes only one FSRU. (Supplemental Document XI at p. 9-16, SD 374; Table 9-4, p. 9-33, SD391). In order to meet their project objectives, **two** FSRU units would be required for the Safe Harbor Energy Project and the entire Alternatives Section analysis regarding FSRUs is based on the design for two FSRUs. Safe Harbor Energy Project also did not consider the use of two FSRUs as its project design because it perceived the dual FSRU design to be financially burdensome and not because of any evidence of severe weather conditions. Broadwater's reference to "heavy seas and severe weather" does not provide any clarifying information to the Atlantic Ocean alternative locations aside from providing a generalized opinion that is not supported by any new scientific research. While an opinion may prove helpful in certain circumstances, it is not clarifying information in this case where extensive metocean data is already in the consolidated record.

Additionally, Supplemental Document XI also has attached to it Attachment 9-1 LNG Vaporization Study (Supplemental Document SD400-SD436). The Vaporization Study is specific information as it relates to the Safe Harbor Energy Project and does not provide any clarifying information to any aspect of the Broadwater Project. NYSDOS objects to its inclusion in the decision record.

In the event the Secretary finds that Supplemental Document XI provides clarifying information to the two alternative Atlantic Ocean locations, then NYSDOS takes the position that Supplemental Document XI actually supports a finding that the Atlantic Ocean alternatives are available and reasonable. The Atlantic Sea Island Group LLC did not consider the FSRU for additional reasons that go beyond the narrow scope that Broadwater seeks to include here as clarifying information, including "high construction costs, regasification [having] more air emissions, greater use of sea water, high operating costs, . . . , periodic shutdown and dry docking for maintenance, concerns relative to confined space maintenance, and on-deck flaring." (Supplemental Document XI at p. 9-12 - 9-13; SD370-371). Broadwater, however, recognizes that "[t]he unloading system would have to be designed to relieve stresses during operation over a range of sea conditions, and protect against spills of cryogenic liquids (LNG)." (Supplemental Document at p. 9-13; SD371; Broadwater Reply Brief at p. 24, n. 157). Despite Broadwater's

⁵ See Broadwater's Reply Brief at p. 24, n. 157.

claims that an FSRU could not operate in the Atlantic Ocean, Supplemental Document XI supports the conclusion that a FSRU can be designed to operate in the Atlantic Ocean, as well as the “advantage of an FSRU is that at a given water depth, it is flexible as to where it can be located.” (Supplemental Document at p. 9-12; SD370). NYSDOS is not responsible for designing Broadwater’s project, including the FSRU. (NYSDOS Principal Brief at pp. 30-31, n. 135). Although Broadwater refuses to consider alternative designs to its project this refusal, supported by selected text from Supplemental Document XI supports a finding that Broadwater’s Project could operate in the alternative locations with the design changes suggested in Supplemental Document XI.

Supplemental Document XII: Det Norske Veritas, “Sloshing Analysis of LNG Membrane Tanks” June 2006

NYSDOS objects to the inclusion of Supplemental Document XII into the decision record. In this motion, Broadwater presents documents for the first time on “sloshing” as a basis for the Secretary to find that the Atlantic Ocean alternative sites are unavailable or unreasonable. Sloshing was not addressed in Broadwater’s Initial Brief. The FEIS does not make one mention of sloshing as a barrier to locating a FSRU in the Atlantic Ocean. By raising sloshing for the first time in its Reply Brief and then attempting to support it with supplemental documents. Broadwater is conducting the legal equivalent of “sandbagging.” Broadwater misrepresents Supplemental Document XII as supporting the proposition that “[t]he majority of the world-wide LNG carrier fleet has not been designed to withstand the effects of sloshing”, and then supplies a definition of sloshing. (Broadwater’s Reply Brief at 24, n. 158). Broadwater wrongly claims that the document provides clarifying information related to NYSDOS’s proposed alternatives.⁶ (See Broadwater Reply Brief at p. 24; Broadwater’s Second Motion to Supplement at p. 3). NYSDOS, therefore, objects to the inclusion of Supplemental Document XII into the decision record.

When properly read, Supplemental Document XII weakens Broadwater’s sloshing argument. The article is a complex scientific and engineering analysis of the research conducted on the necessary materials and methodology that are to be employed in the construction of LNG carriers and the steps to be taken by currently existing LNG carriers to minimize sloshing. The authors are part of a foundation, Det Norske Veritas (DNV), which “undertakes classification, certification, and other verification and consultancy services relating to the quality of ships, offshore units and installations, and onshore industries worldwide, and carries out research in relation to these functions.” (Supplemental Document XII at p. SD438).

⁶ Broadwater attempts to demonstrate that Supplemental Document XII supports its generalized statement regarding the world-wide fleet by citing to the entire document. (See Broadwater Reply Brief at 24, n. 158). Broadwater distorts the article to support its business plan of supposedly being able to accept the entire world fleet of LNG carriers at the FSRU.

Supplemental Document XII summarizes the results of sloshing experiments and the strength assessment of LNG carrier tank membranes using a range of sloshing loads that can be used to determine how to contain and limit sloshing in current LNG carriers and for future ship designs. (Supplemental Document XII at p. SD442). The sloshing experiments assume that the LNG carrier tanks will be used at offshore LNG terminals and the research, to the direct contradiction of Broadwater's position in its reply brief, actually supports the findings that sloshing can be managed and limited in "increased size LNG carriers [ranging in size from 210,000 to 250,000 m³], offshore loading/unloading and partially filled LNG tanks on a particular trade route." (Supplemental Document XII at pp. SD 442-443). Supplemental Document XII in no way stands for Broadwater's proposition that sloshing would be a barrier to locating a FSRU in the Atlantic Ocean.

Broadwater's own Supplemental Document XII provides evidence that directly contradicts Broadwater's position that a FSRU can operate only in benign waters.⁷ Despite Broadwater strictly adhering to one design and a business plan, this article documents the position of the scientific community that it is expected that LNG offshore facilities will be located in ocean waters where sloshing will be contained and not a limiting factor.

Supplemental Document XIII: Article Entitled "ExxonMobil Shifts Import Focus to US Northeast"

Broadwater classifies Supplemental Document XIII, an undated document,⁸ as containing information supporting its position that "BlueOcean is still in the most preliminary stages of the project planning and its proponents have never reported reliability estimates or even established a project design..." (Broadwater Reply Brief at p. 25, n. 162). A close reading of the article reveals that the exact opposite is true. Supplemental Document XII explains ExxonMobil's choice design of locating a FSRU at an Atlantic Ocean site.

Detailed surveys are necessary to select a specific site to anchor the FSRU, although ExxonMobil is concentrating its search on a 150-foot deep area 20 miles off the New Jersey coast. An offshore reconnaissance program is being launched to help narrow down the list of potential sites, and NOAA has provided important wave and wind data from its extensive system of weather buoys in the area. Other studies on ocean conditions, the optimal pipeline route to shore, ship traffic patterns and security issues will all factor into the decision on where to site the terminal. The current design calls for the construction of a steel hull patterned on the Kizomba-A Floating Production, Storage and Offloading vessel deployed on Angola's oil block 15. But it will be larger with a length overall of 1,100 feet and

⁷ See Supplemental Document XII at p. SD442.

⁸ Based upon the information on page SD488, Supplemental Document XIII was generated sometime during January 2008.

a width of about 200 feet. It will also rise some 98 feet above the water line and have four football fields worth of deck area. (Supplemental Document XII at SD 486).

NYSDOS does not object to the introduction of this document but seeks to have the document entered into the consolidated record based upon an accurate interpretation of the information. ExxonMobil is conducting detailed surveys to determine where to site the FSRU and not, as Broadwater incorrectly represents, whether or not to site the BlueOcean project in the Atlantic Ocean. ExxonMobil has chosen an FSRU design for its project and provides clarifying information on the ability to design and site an FSRU in the Atlantic Ocean. (Supplemental Document at SD 487). If the Secretary includes Supplemental Document XIII in the decision record, the document should be viewed as clarifying that the Atlantic Ocean sites are available and reasonable for siting an FSRU. ExxonMobil's research is focused on finding the most suitable Atlantic Ocean site and not whether the BlueOcean project will be sited in the Atlantic Ocean at all as Broadwater has incorrectly suggested.

Supplemental Documents XIV and XV: Buchner, B., P. Dierx and O. Waals. June 2005. The Behaviour of Tugs in Waves Assisting LNG Carriers During Berthing Along Offshore LNG Terminals. Proceedings of OMAE 2005, 24th International Conference on Offshore Mechanics and Arctic Engineering, Halkidiki, Greece and Draft Report "Operational and Training Guidelines" dated June 12, 2007, prepared by Marin, respectively

NYSDOS objects to the inclusion of Supplemental Documents XIV and XV into the decision record. Broadwater moves to include Supplemental Document XIV and XV as clarifying information on the Atlantic Ocean alternatives sites. Supplemental Document XIV study reflects tugboat behavior when assisting berthing and offshore operations at offshore terminals and Supplemental Document XV is a guideline for the operation of tugboats. However, the Broadwater FEIS makes absolutely no reference to the behavior of tugboats as a limiting factor for locating the FSRU at either Atlantic Ocean alternative location. (FEIS at pp. 4-1 - 4-55). Broadwater has chosen itself to make the issue of tugboat operation a limiting factor.

Furthermore, the Broadwater Project FEIS instructs Broadwater to:

- Conduct the simulations described in Section 4.6.1.3 of the WSR (Appendix C) to determine the number and capabilities of the assist tugs required to support LNG carrier berthing and unberthing; and
- Conduct the modeling necessary to establish the performance requirements for escort tugs as addressed in Section 6.3.1 of the WSR (Appendix C). (FEIS [Doc. # 1911_0007] at p. 3-204 [BW29051]).

To date, Broadwater has not completed either of these studies and should not be allowed to introduce third party generated studies that do not meet the study criteria as required in the

Broadwater FEIS, in lieu of the research requirements as set forth in the U.S. Coast Guard Water Suitability report.

The Secretary's authority to include clarifying information in the decision record implies that there is already information on the topic that needs to be clarified. Such is not the case here. Supplemental Documents XIV and XV do not clarify information in the consolidated record about tugboats. NYSDOS objects to the introduction of both Supplemental Documents as both documents provide new information.

In the event the Secretary decides to accept Supplemental Documents XIV and XV into the decision record, then NYSDOS takes the position that Broadwater is using the documents to demonstrate that no LNG facility would ever be located in the Atlantic Ocean because of the rare occurrence of waves heights greater than 3 meters. However, Supplemental Document XIV advises against "generaliz[ing] the present results: with an optimised tug design and operation the tugs can be used in more severe conditions." (See p. SD489). Furthermore, numerous offshore LNG facilities, such as ExxonMobil's BlueOcean project and the Safe Harbor Energy Project, are being proposed in the same ocean conditions. No other offshore project has taken the position that the behavior of tugboats would be a limiting factor in locating a LNG facility in open ocean waters.

Supplemental Document XVI: Excelerate Northwest Gateway Energy Bridge FEIS/FEIR

NYSDOS objects to the inclusion of Supplemental Document XVI into the decision record. Broadwater attempts to include Supplemental Document XVI as clarifying information regarding the two Atlantic Ocean alternative locations. However, Supplemental Document XVI is a selection of passages from a entirely different LNG project, the Excelerate Northwest Gateway Energy Bridge project, regarding the project selection of mooring Energy Bridge Regasification Vessels (EBRVs) 13 miles off the coast of Massachusetts. (Supplemental document XVI at p. SD515). Broadwater's select inclusion of passages on FSRUs is not applicable to the Broadwater project as it pertains to the opinions and evaluations completed by a company seeking to employ its own chosen design at an offshore ocean location. The information on FSRUs does not clarify any information in the consolidated record regarding the availability of the Atlantic Ocean alternatives in the New York bight. The addition of the FEIS from a completely different project does not clarify the Atlantic Ocean metocean data already contained in the consolidated record for the Broadwater project.

While the Secretary has the discretion to add clarifying information in the consolidated record, NYSDOS objects to the inclusion of Supplemental Document XVI as the document would accomplish nothing more than adding unnecessary pages to an already voluminous record.

Supplemental Document XVII: Excelerate Energy Presentation "LNG Ship-to-Ship Transfer" at the LNG Transshipping Conference in Houston on January 25, 2007

NYSDOS objects to the inclusion of Supplemental Document XVII into the decision record. Broadwater moves to include Supplemental Document XVI as clarifying information regarding the two Atlantic Ocean alternative locations. Supplemental Document XVI is a presentation by Excelerate Energy explaining how ship-to-ship transfer will be completed using its project design of Energy Bridge Regasification Vessels (EBRV). Broadwater has chosen to use a FSRU for its project design and, therefore, the inclusion of a document describing the ship-to-ship transfer of LNG using an EBRV design is completely irrelevant to the Broadwater project. It does not clarify any information in the consolidated record.

Supplemental Document XVIII: Federal Regulatory Commission's ("FERC's") Order Denying Rehearing, *Broadwater Energy LLC*, 124 FERC ¶ 61, 225 (2008)

NYSDOS objects to the inclusion of Supplemental Document XVIII into the decision record. NYSDOS will be submitting to FERC a motion for rehearing, pursuant to Rule 713 of the Rules of Practice of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.713, and section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a), of the September 4, 2008 order denying NYSDOS's motion to intervene. As FERC's decision is not final, NYSDOS objects to the inclusion of nonfinal Supplemental Document XVIII as it does not clarify information in the consolidated record but instead is a currently unchallenged and incorrect document.

Conclusion:

In consideration of the foregoing, NYSDOS requests the Secretary rule to not include Broadwater Supplemental Documents VI, VII, VIII, XI, XII, XIV, XV, XVI, XVII, and XVIII in the decision record because they are not clarifying information related to information in the consolidated record.

Respectfully submitted,



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