

**Islander East Pipeline Company, L.L.C.:**

**Significant New Information relevant to Connecticut's Review of the Projects' Consistency with its Coastal Zone Management Program.**

Pursuant to 15 C.R. § 930.129(d), Islander East Pipeline Company, L.L.C. ("Islander East") requests that the Secretary continue the stay of Islander East's appeal from Connecticut's denial of a consistency determination to the Islander East pipeline project ("the Project")<sup>1</sup>, and further, that the Secretary remand the matter to the Connecticut Department of Environmental Protection ("CT DEP") for reconsideration of the Project's consistency with the enforceable policies of the state's Coastal Zone Management Program in accordance with the Secretary's regulations. The basis for this request is that Islander East has submitted significant new information relevant to the state agency's objection that was not previously considered as part of CT DEP's consistency review. This significant new information has been incorporated into Islander East's § 401 Water Quality Certificate Application on file with the CT DEP ("§ 401 Application") and additional information provided subsequent to the § 401 Application. The significant new information involves revised construction techniques which will reduce construction related impacts on the offshore environment in Long Island Sound and is supported by new studies and modeling analysis.

**I. Summary of CT DEP and Islander East Discussions**

Islander East has presented its modified construction techniques to a multi-agency group on several occasions. The CT DEP hosted a multi-agency meeting on February 3, 2003, which was attended by the following interested state and federal agencies:

- Federal Energy Regulatory Commission ("FERC");
- U.S. Army Corps of Engineers ("ACOE");
- U.S. Environmental Protection Agency ("EPA");
- Connecticut Department of Agriculture – Bureau of Aquaculture ("Bureau of Aquaculture"); and
- National Marine Fisheries Service ("NMFS").

At this first multi-agency meeting, Islander East provided a detailed description of its proposal to modify dredged material handling and anchoring operations. The modified dredged material handling includes provisions to reduce the depth of cover over the pipeline from three feet to 18 inches and avoid sidecasting spoil on the seafloor between mileposts 10.9 and 12.0 (the horizontal directional drill exit area and dredged trench section).

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<sup>1</sup> The Project is a pipeline installation which consists, *inter alia*, of upgrading existing interstate natural gas pipeline facilities and installation of 22.6 miles of 24-inch diameter pipeline under Long Island Sound between Branford, Connecticut and Long Island, New York.

A follow up multi-agency meeting was hosted by CT DEP and NMFS shortly thereafter. At this second multi-agency meeting, Islander East provided additional information on:

- The Connecticut horizontal directional drilling;
- Sediment characteristics along the dredge section;
- Depth of cover and construction tolerance;
- Offsite dredge disposal;
- Anchor strikes and cable sweep; and
- Engineered backfill.

The federal and state agencies in attendance recommended that Islander East provide additional details on its Engineered Backfill Plan for the next scheduled meeting.

Concurrent with these meetings were discussions between CT DEP and Islander East with respect to its request for a permit under § 401 of the Clean Water Act.

By way of background, on February 13, 2002, Islander East submitted its application to the State of Connecticut for authorization to discharge materials regulated under Section 401 of the Clean Water Act ("original § 401 Application"). One year later, the CT DEP issued a Notice of Tentative Determination ("Notice") to deny Islander East's original § 401 Application and invited interested parties to comment on the Notice by March 13, 2003. In response to this Notice, on February 19, 2003, Islander East submitted an amendment to its original § 401 Application and offered the CT DEP additional time to review its original § 401 Application. In the amendment, Islander East modified its construction techniques to reduce further impacts on the seafloor and benthic community. The CT DEP advised that a time extension to Islander East's original § 401 Application would not be possible due to the legal mandates concerning review of § 401 Application and that a new application for a § 401 Water Quality Certificate would need to be submitted. In a letter to the CT DEP dated March 13, 2003, Islander East withdrew its original § 401 Application and refiled its § 401 Application to provide the CT DEP with sufficient time to review its modified construction techniques. A copy of the re-submitted § 401 Application accompanies this letter for your review because it contains details of modifications to construction techniques that Islander East has proposed.

On April 15, 2003, the CT DEP and NMFS hosted a third multi-agency meeting. At this meeting Islander East presented an Engineered Backfill Plan and to reach consensus among the participating state and federal agencies that their environmental concerns had been adequately addressed. The NMFS and the Bureau of Aquaculture indicated that sand used as part of the Engineered Backfill Plan could be susceptible to erosion and asked that Islander East evaluate the sand grain size to determine if it would be susceptible to erosion.

Thereafter, CT DEP provided formal commentary to Islander East in a letter dated May 5, 2003. This letter contained requests for additional information. A copy of letter is included for your convenience. Islander East is compiling the information requested and expects to submit it to CT DEP on or about May 23, 2003. A copy of our response to the May 5<sup>th</sup> letter from CT DEP will be forwarded to you when it is sent to CT DEP. We would ask, that in the event the Islander East appeal is remanded to CT DEP, the additional material submitted to CT DEP be included in the remand's directive that the State reconsider the issue of whether the revised Islander East Project as modified per the § 401 Application is consistent with Connecticut's Coastal Zone Management Program.

## **II. Summary of Modified Offshore Construction Techniques**

The offshore construction modifications that are referenced above are currently under formal review by the CT DEP. These modifications and the supporting studies and models constitute significant new information which was not previously before CT DEP when it declined to render a consistency determination favorable to Islander East. These modifications are designed by Islander East to address and ameliorate the alleged adverse environmental impacts identified by CT DEP and expressed as the bases for Connecticut's consistency denial.

Islander East identified five modifications to its proposed construction installation procedures. These modifications include: 1) avoiding sidecasting of spoil on the seafloor at the horizontal directional drill exit area; 2) avoiding sidecasting of spoil between mileposts 10.9 and 12.0 (the dredged trench section); 3) decreasing depth of cover and associated dredging activities between mileposts 10.9 and 12.0; 4) backfilling the horizontal directional drill exit area and dredge section with an engineered in-fill to restore the seafloor following pipeline installation, and; 5) reducing the number of barge passes from four to three for the plow section. These measures will significantly reduce sediment dispersion, and further minimize benthic impacts and seafloor disturbance.

### **A. Dredged Material Handling**

To reduce direct and indirect seafloor disturbance, Islander East has modified its offshore construction technique by placing the dredged spoil from the HDD exit hole and dredge section on barges. The placement of the dredge material on barges will significantly reduce the area directly disturbed by dredging of the HDD exit hole and the dredge section from milepost 10.9 to milepost 12.0, since the spoil will not be placed on the seafloor. Sedimentation modeling conducted for the proposed change determined that direct and indirect impacts from this change in handling of the dredged material would result in approximately 8.4 acres of disturbance near the HDD exit hole and approximately 5.6 acres of disturbance along the dredge section. This would reduce the overall area of seabed disturbance resulting from pipeline construction by approximately 125 acres which is a 90 percent reduction from Islander East's original application.

In addition to placing the dredged material on barges, Islander East plans to reduce the depth of cover over the pipeline from 3 feet to 18 inches in the area of the dredged installation. This reduction in depth of cover will allow for installation of the pipeline using a narrower trench and would reduce the direct area disturbed during excavation activities.

### **B. Pipeline Stability and Integrity**

Minimizing depth of cover over the pipeline decreases environmental impacts associated with the dredged section of the route by dramatically reducing the volumes of sediments excavated in the trench section. Islander East selected an engineered backfill that would protect the integrity of the pipeline and provide a greater level of protection than the native seabed material. The type and amount of engineered backfill was determined based on the shallow depth of the water throughout the dredged section of the route (less than 20-feet-deep), and the size and type of vessel traffic able to traverse the area (*e.g.*, small fishing and recreational vessels). The engineered backfill is designed to minimize environmental impacts associated with pipeline installation by providing suitable habitat for desirable species such as shellfish and other beneficial benthic organisms, avoiding the creation of potential habitat for undesirable shellfish predator species, and minimizing sedimentation during the backfilling process. The engineered in-fill proposed by Islander East also reduces the risk of pipeline damage due to potential exposure to small boat anchors. To further support its effort to reduce environmental impacts, Islander East completed an evaluation of benthic impacts associated with Islander East's Modified Offshore Construction Techniques. Dr. Roman Zajac, an independent marine biologist consulting on the Islander East project, reviewed the modeling results for these modified construction methods and noted:

There will be no burial and smothering of sea floor areas adjacent to the transition basin and dredge portion of the pipeline with the dredge spoil, reducing the overall area of direct, severe impact. The removal of dredge spoils will eliminate winnowing of sediment on a continual basis to surrounding habitat, and more critically, the potential for severe erosion in the case of a storm event during the construction period.

In addition, the predicted pattern of deposition indicates that suspended sediments will be deposited on the seafloor in a patchy manner, following the oscillations of the tide. This will result in areas adjacent to the trench receiving 1 millimeter or less of deposited sediments. No mortality would be expected in the areas adjacent to the trench with these levels of deposition.

### **C. Reduced Anchoring Operations**

Islander East has proposed to use the subsea plow construction technique to install the pipeline in Long Island Sound waters greater than 20 feet deep (from MPs 12.0 to 32.1). The subsea plow would be pulled using an anchored barge, and midline anchor buoys would be used to reduce the amount of anchor cable contact with the seafloor.

Islander East originally estimated that four passes of the anchored barge(s) used for pipelay and burial would be necessary to install the pipe with three feet of cover: one pipelay pass, two trench passes, and one backfill pass. Based on this estimation of four passes, Islander East's Final EIS calculated impacts to be 9.7 acres from anchor strikes, 2,807 acres from anchor cable sweep, and 183 acres from plowing and burial.

Based on consultations with experienced offshore pipeline installation contractors and their analysis of the Long Island Sound soil composition, Islander East has determined that it would be feasible to reduce the number of anchored barge passes from four passes to three passes. The top of the pipe could be sufficiently buried with three passes of the anchored barge(s): one pipelay pass, one trench pass, and one backfill pass.

This decrease in the number of anchored barge passes will reduce the anchor strike impact in Long Island Sound from 9.7 acres to 7.3 acres and reduce the anchor cable sweep impact from 2,807 acres to 2,307 acres. Specifically in the Connecticut waters of Long Island Sound, anchor strike impact will be reduced from 4.3 acres to 3.2 acres and anchor cable sweep impact will be reduced from 1,245 acres to 1,023 acres. In addition to reducing acreage impacts, it is expected that the three pass construction method will reduce the duration of construction by eliminating one pass of the barge.

In its denial of a consistency determination for the Islander East project, CT DEP identified, *inter alia*, degradation of water quality impact of shellfish, as bases for its denial.<sup>2</sup> The modification of construction installation techniques proposed in the § 401 Application address and significantly reduce the alleged adverse environmental impacts of the Project. Furthermore, the formal withdrawal by Iroquois of the ELI Project eliminates it in any form from being construed as a reasonable alternative to the Islander East Project. Due to these construction modifications with supporting data and modeling and other developments, Islander East requests remand to the State for a period not to exceed three months in accordance with 15 C.F.R. § 930.129(d).

### III. Iroquois Eastern Long Island Project Withdrawn

On February 7, 2003, Iroquois Gas Transmission System, L.P. filed a formal notice of withdrawal with the Federal Energy Regulatory Commission ("FERC") of the Eastern Long Island Project ("ELI Project") which also constitutes significant new information. The CT DEP in its consistency denial letter to Islander East had noted the FERC staff's stated environmental preference for a modified version of the Iroquois ELI Project was a reasonable alternative. However, the FERC concluded that the Project will provide much needed competition and reliability, and that the Iroquois ELI Project, as a system alternative, could not accomplish the policy goals satisfied by the Project. FERC concluded that the Project is an environmentally acceptable action. The withdrawal of the ELI Project puts to rest consideration of a modification to the ELI Project as a "reasonable alternative" to the Islander East project. This information was not available to the State of Connecticut when it issued its denial of consistency to Islander East.

<sup>2</sup> Connecticut also identified the impact on tidal wetlands and the displacing of water dependent uses with a pipeline which it characterized as a non-water dependent use. Islander East differs with CT DEP with respect to these bases for denial on factual and legal grounds which need not be addressed here.