

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
U.S. Coast Guard  
Sector Long Island Sound

120 Woodward Ave.  
New Haven, CT 06512  
Staff Symbol: Prevention  
Phone: (203) 468-4454  
Fax: (203) 468-4443  
Email: william.g.dwyer2@uscg.mil

16613/08-395

JUN 25 2008

Mr. James A. Thompson Jr.  
Dewey & LeBoeuf LLP  
Goodwin Square  
225 Asylum Street, 13<sup>th</sup> Fl  
Hartford, CT 06103

Dear Mr. Thompson:

This is my Letter of Recommendation (LOR) issued pursuant to 33 C.F.R. § 127.009. It is issued in response to the Letter of Intent of November 9, 2004 submitted on behalf of your client, Broadwater Energy, LLC and Broadwater Pipeline, LLC ("Broadwater"), and your subsequent amendment dated April 26, 2005. You proposed the use of the Block Island Sound and Long Island Sound waterways for Liquefied Natural Gas (LNG) carrier transits to and from a proposed Floating Storage and Regasification Unit (FSRU). The FSRU is proposed to be located in Long Island Sound with a modified base location of 41 degrees 06 minutes 1.31 seconds North Latitude and 72 degrees 50 minutes 44.56 seconds West Longitude.

This LOR is based on Coast Guard Sector Long Island Sound's Waterway Suitability Report (WSR) dated September 21, 2006. The waterways in which LNG carriers would need to transit are described in detail in Section 2, and depicted in figures 1-1, 2-1, and 2-2, of the WSR. Specifically, these waterways include: territorial sea entry to Point Judith Pilot Station; the territorial sea entry to Montauk Point Pilot Station; Point Judith Pilot Station to The Race; Montauk Point Pilot Station to The Race; The Race and Long Island Sound.

In the process of assessing the suitability of the waterway and making this recommendation, a comprehensive administrative record was compiled and considered. A listing of these documents is provided in the enclosure. In addition, in compliance with the National Environmental Policy Act, 42 U.S.C. § 4321, et. seq., a Record of Decision has been compiled for this recommendation and has been placed in the docket. This LOR is based upon a review of the aforementioned record along with knowledge of current vessel traffic using the proposed transit route. The WSR and the entire administrative record described in the enclosure are incorporated by reference into this LOR.

In addition, I considered thousands of waterway safety and security related comments received from the public in response to the development of the WSR and in the development of the Federal Energy Regulatory Commission's (FERC) Environmental Impact Statement (EIS).

In accordance with 33 C.F.R. § 127, I considered the following factors in determining the suitability of the waterway for LNG marine traffic and they are referenced in the WSR and in FERC's EIS accordingly:

- (1) The proposed physical location of the facility (WSR section 3.1.2);
- (2) The description of the facility (WSR section 3.1.1);
- (3) The proposed LNG vessels' characteristics and the frequency of LNG shipments to or from the facility (WSR section 3.1.1);

- (4) Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway proposed to be used by LNG vessels en route to the facility, within 25 kilometers (15.5 miles) of the facility (EIS pages 3.6-3.13);
- (5) Density and character of marine traffic in the waterway (WSR sections 2.2.1-2.2.2)
- (6) Any locks, bridges, or other man-made obstructions in the waterway (WSR section 3.2)
- (7) Depth of the waterways (WSR section 3.2);
- (8) Tidal range (WSR section 3.2);
- (9) Protection from high seas (WSR Section 2);
- (10) Any natural hazards, including reefs, rocks, and sandbars (WSR section 3.2);
- (11) Any underwater pipelines and cables (WSR section 3.2);
- (12) The distance of berthed vessels from any channels (not applicable) and the width of the channels (WSR section 3.2.5).

Based upon the record, my recommendation is that the waterway is not currently suitable, but can be made suitable for the LNG marine traffic associated with the proposed LNG terminal, if the risk mitigation measures detailed in section 8.4.1 of the WSR are implemented.

Please take notice that this LOR will have no effect until the outstanding issues listed below, the determination of which are not controlled by the Coast Guard, are resolved favorably:

- (1) Satisfactory completion of Endangered Species Act (ESA) consultations with the National Marine Fisheries Service and the Fish and Wildlife Service that result in a finding of “would not be likely to adversely affect Federally-listed species as the impacts would likely be insignificant or discountable”;
- (2) Satisfactory final consultations with the New York State Historic Preservation Office, pursuant to the National Historic Preservation Act of 1966 (NHPA) and the New York State Historic Preservation Act of 1980 with respect to the status of Race Rock Light as a property on the National Register of Historic Properties;
- (3) Finally, in light of the pending the New York State Coastal Zone Management Act (CZMA) appeal filed by Broadwater, a finding by the Secretary of Commerce that the project is consistent with the objectives of the CZMA or a settlement agreement is reached between New York State and Broadwater on the CZMA issues.

Additionally, I note that, pursuant to Rule 713 of the FERC’s Rules of Practice and Procedure, 18 C.F.R. § 385.713, and Section 19 of the Natural Gas Act (“NGA”), 15 USCA § 717r, multiple parties have requested a rehearing with respect to FERC’s March 20, 2008 “Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificates in this proceeding” (“Order”). Should FERC’s ruling on the collective motions cause it to revise its Order or Final EIS, I will review this LOR to determine if it is moot.

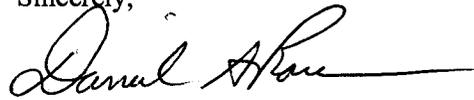
In the future, should you move forward with the project, I intend to initiate rulemaking to complete the implementation of the mitigation measures contained in the WSR. Once the mitigation measures in section 8.4.1 of the WSR are implemented, my rulemaking is complete, and the ESA, NHPA and CZMA issues are satisfactorily resolved in your favor, barring any changes to the major physical and environmental characteristics of the waterway, the waterway would be suitable for the transit of LNG tankers of the type, size and at the frequency you propose.

Nothing in this Recommendation changes or limits my existing organic authority under the Ports and Waterways Safety Act, 33 U.S.C. §1221, *et. seq.*, the Magnuson Act, 50 U.S.C. 191, *et. seq.*, the Maritime Transportation & Security Act of 2002, 46 U.S.C. 70101, *et seq.* or any other federal law. For example, a change in Maritime Security Conditions (MARSEC) may justify heightened security requirements. More generally, should particular safety, security, or environmental protection concerns come to light for any specific LNG or other vessel transit, or facility operation, I will exercise my authority to safeguard the port. This includes, if necessary, my authority to deny vessel entry into the territorial sea.

Should Broadwater feel aggrieved by this Letter of Recommendation, it may request reconsideration by me pursuant to 33 C.F.R. § 127.015(a). Any request for reconsideration must be submitted to me, in writing, within 30 days of receipt of this letter. If the delay in presenting a written request for reconsideration has an adverse impact on your operations you may request reconsideration in person, pursuant to the procedures at 33 CFR 127.015(e).

If you have any questions regarding this letter, please contact Lieutenant Commander Bill Dwyer at (203) 468-4454 or [william.g.dwyer2@uscg.mil](mailto:william.g.dwyer2@uscg.mil).

Sincerely,



DANIEL A. RONAN  
Captain, U.S. Coast Guard  
Captain of the Port

Encl: List of Documents in the Administrative Record (Hard Copy Only)

Copy: Commandant (CG-52) (CG-522), (w/out enclosures)  
Commander, Atlantic Area (Ap), (w/out enclosures)  
Commander (d) (dl) (dp), First Coast Guard District, (w/out enclosures)  
Commander, Civil Engineering Unit Providence, (w/out enclosures)  
Federal Energy Regulatory Commission  
The Honorable David Patterson, Acting Governor of New York  
New York State, Department of State  
New York State, Office of Environmental Conservation  
New York State, State Historic Preservation Office  
The Honorable Steve Levy, Suffolk County Executive  
The Honorable Phil Cardinale, Riverhead, NY Town Administrator  
The Honorable Jodi Rell, Governor of Connecticut  
The Honorable Richard Blumenthal, Connecticut Attorney General  
State of Connecticut, Department of Environmental Protection