

140 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Broadwater Energy, LLC
Broadwater Pipeline, LLC

Docket Nos. CP06-54-000
CP06-55-000
CP06-56-000

ORDER VACATING SECTION 3 AUTHORIZATION AND CERTIFICATE
AUTHORIZATION

(Issued July 6, 2012)

1. On March 20, 2008, the Commission authorized Broadwater Energy, LLC (Broadwater Energy) under section 3 of the Natural Gas Act (NGA)¹ to site, construct and operate a liquefied natural gas (LNG) import terminal in Long Island Sound off Long Island, New York.² The Commission also authorized Broadwater Pipeline, LLC (Broadwater Pipeline), an affiliate of Broadwater Energy, under section 7 of the NGA³ to construct and operate a 21.7-mile long pipeline lateral from the outlet of the LNG import terminal to a subsea interconnection with Iroquois Gas Transmission System.⁴ Ordering Paragraph (D) of the 2008 Order required Broadwater to construct the proposed facilities and make them available for service within five years of the date of the order. Broadwater notified the Commission of its acceptance of the certificates on October 2, 2008.

¹ 15 U.S.C. § 717(b) (2006).

² *Broadwater Energy, LLC*, 122 FERC ¶ 61,255, *reh'g denied*, 124 FERC ¶ 61,225 (2008) (2008 Order).

³ 15 U.S.C. § 717(f) (2006).

⁴ Hereinafter, the Commission will collectively refer to Broadwater Energy and Broadwater Pipeline as Broadwater.

2. In letters filed with the Commission on March 7 and 9, 2012, Broadwater states that it will not construct the facilities authorized by the 2008 Order and will not go forward with any aspect of the project. Thus, Broadwater requests that the Commission vacate the authorizations issued in the 2008 Order.

Response to Broadwater's Request

3. On March 13, 2012, the Towns of Riverhead and Southold, New York (Towns) filed a joint letter requesting that the Commission vacate the 2008 Order and the rehearing order because “vacatur is the proper course under these circumstances.” In support of their request, the Towns cite *Weaver's Cove Energy, LLC*, 136 FERC ¶ 61,015 (2011) (*Weaver's Cove*); *Fishermen Interested in Safe Hydrokinetics v. FERC*, Slip Op. No. 09-72920 (9th Cir. January 28, 2011) (*Fisherman*); and *Oregon v. FERC*, 636 F.3d 1203 (9th Cir. 2011) (*Oregon*).

4. On March 29, 2012, Broadwater filed an answer to the Towns' letter, asserting that the Commission should not vacate the 2008 Order and the rehearing order but should only vacate the authorizations.⁵

5. The determination to vacate an order is an equitable one, requiring exceptional circumstances.⁶ The Commission has previously declined to vacate orders in instances where the order may have value as a policy statement and because the Commission often expends valuable resources to reach a decision.⁷ In other cases, the Commission has declined to vacate orders that provide useful information to the public.⁸

⁵ Under section 385.213(d) of the regulations, an answer to a motion must be made within 15 days after the motion is filed. Broadwater acknowledges that its answer to the Towns' motion was filed one day late, but requests that the Commission waive the 15 day time limitation. The Commission will accept Broadwater's late answer because it will not prejudice any party to this proceeding.

⁶ See *Edwards Manufacturing Co. Inc.*, 84 FERC ¶ 61,228 (1998).

⁷ *KeySpan Energy Development Corp. v. New York Independent System Operator, Inc.*, 108 FERC ¶ 61,201 (2004); *Town of Neligh, Nebraska v. Kinder Morgan Interstate Gas Transmission, L.L.C.*, 94 FERC ¶ 61,075, at 61,348 (2001).

⁸ See, e.g., *Eastern Kentucky Power Cooperative, Inc.*, 121 FERC ¶ 61,255 (2007); *Constellation Power Source, Inc. v. California Power Exchange Corp.*, 100 FERC ¶ 61,380 (2002).

6. The Towns did not present any exceptional circumstances to justify vacating the 2008 Order and the rehearing order. In addition, the cases cited by the Towns do not support their request. In *Weaver's Cove*, the Commission vacated an authorization issued under section 3 of the NGA to construct an LNG terminal and an authorization issued under section 7 of the NGA to construct and operate a related sendout pipeline. *Weaver's Cove* did not vacate the underlying order issuing the authorizations.

7. The *Fishermen* case dismissed as moot a petition for review of a Commission order that denied rehearing of an order issuing a preliminary permit. The court held that the Commission could cancel a preliminary permit during the pendency of a petition for review, if the permit holder failed to comply with the requirements of the permit. *Fishermen* did not present any issues relating to vacatur, since the Commission did not vacate the underlying order when it canceled the permit.

8. In *Oregon*, the petitioners sought review of an order that authorized Bradwood Landing LLC to construct an LNG import terminal under section 3 and authorized NorthernStar Energy LLC to construct and operate a related pipeline under section 7. Due to changed circumstances after the filing of the petition for review, the court dismissed the petition as moot. The court also vacated the underlying Commission order based on the court's procedural policy. The *Oregon* case did not present any issues relating to the Commission's policy on vacating orders.

Conclusion

9. Since there are no exceptional circumstances present in this case, the Commission will not vacate the 2008 Order and the rehearing order. The Commission will, however, vacate the authorizations to construct the LNG terminal and the associated pipeline because Broadwater does not plan to construct the authorized facilities.

The Commission orders:

The authorization under section 3 of the NGA and the certificate under section 7 of the NGA issued in the 2008 Order are vacated.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.