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March 23, 2001

HAND DELIVERED

William F. Barton, Assistant Director  
New York State Department of State  
Division of Coastal Resources &  
Waterfront Revitalization  
41 State Street  
Albany, New York 12231-0001

RE: Millennium Pipeline Company, L.P.  
Docket No. CP98-150-000

Dear Mr. Barton:

Enclosed please find two copies of a supplemental submission by Millennium Pipeline Company, L.P. ("Millennium") respecting the consistency of the Millennium Pipeline Project (the "Project") with the New York State Coastal Management Program ("CMP"). This submission (1) contains a comprehensive evaluation of the entire Project under the State CMP and the Local Waterfront Revitalization Program ("LWRP") of the Village of Croton-on-Hudson; and, as requested, (2) includes data and analyses regarding site-specific sampling along the proposed pipeline route in Haverstraw Bay. Also enclosed is a copy of the Supplemental Draft Environmental Impact Statement (March 2001) ("SDEIS") issued by the Federal Energy Regulatory Commission ("FERC") Staff relative to the Project. The SDEIS supplements the analyses of the Hudson River crossing at Haverstraw Bay contained in both the Essential Fish Habitat Assessment and the Biological Assessment, both issued by the FERC Staff in January of 2001. Copies of those documents were transmitted to your office on January 24, 2001.

The evaluation and analyses enclosed submission, the SDEIS, the Essential Fish Habitat Assessment and the Biological Assessment all serve to demonstrate that Project construction will create only temporal, localized disturbances and, therefore, result in only short-term, ecologically insignificant consequences. Accordingly, all segments of the Project, including the Haverstraw Bay crossing, are fully consistent with the CMP and LWRP.

Because the Haverstraw Bay route emerged as the primary issue regarding the Project's consistency with the CMP, a synopsis of the pertinent issues bears mentioning here. Of significance to the CMP consistency determination is the fact that Haverstraw Bay is designated as a "significant coastal fish and wildlife habitat." Under state guidance documents, CMP consistency is, thereby, premised on there being no destruction of habitat, or significant impairment of the viability of the habitat.

That standard is clearly met here. In short, the proposed pipeline construction across Haverstraw Bay (1) follows the preferred route having the least environmental and human impact (as determined by the FERC Staff); (2) utilizes the best available construction technology; (3) affects only a very minor percentage of both the functional habitat and the designated habitat; and, even at that; (4) has only temporary, localized effects of no ecological significance, as confirmed by conservative modeling of this Project. These facts, coupled with the Congressionally-mandated priority consideration that this Project must receive as a major energy facility, render the Project fully compliant with the CMP.

First, regarding alternate routes to avoid Haverstraw Bay, that issue has now been resolved by the FERC Staff. Indeed, the FERC Staff has identified the Haverstraw Bay crossing as being the preferred route, concluding that there is "no alternative that minimizes the impacts to the natural and human environment to any greater extent." Essential Fish Habitat Assessment, January 2001, at 17. See also, SDEIS, Part I at 3-1 to 3-5 and Part II at 3-1 to 3-8 (rejecting multiple alternative routes and routing options, including proposed regional routing through other gas transmission systems).

As to the Project's technical aspects, a combination of factors unique to the Project and the natural environment of Haverstraw Bay establish that construction effects will be ecologically inconsequential. The innovative lay barge construction technology that will be utilized in Haverstraw Bay is a phased, low-impact methodology that will cause only short-term,

localized disturbances. Significantly, in reviewing the various construction techniques available for the Haverstraw Bay crossing, the FERC Staff concluded that the lay barge "construction technique would be the 'best available' method with the least overall impact on [Essential Fish Habitat] in Haverstraw Bay." Essential Fish Habitat Assessment, January 2001, at 21. Moreover, and as also acknowledged by the FERC Staff, the phased, lay barge construction stands in marked contradistinction to traditional dredging techniques, "represent[ing] a significant reduction in impact when compared to [ ] conventional dredging...." Essential Fish Habitat Assessment, January 2001, at 8. The lack of consequential impact on the Haverstraw Bay habitat is confirmed by the conservative modeling utilized by Millennium on the Project. In both its assessment of Essential Fish Habitat and its assessment of endangered species (the Biological Assessment), the FERC Staff found Millennium's modeling efforts and attendant predictions regarding turbidity to be "reasonable and conservative" and "appropriately conservative for a sensitive habitat such as Haverstraw Bay." Essential Fish Habitat Assessment, January 2001, at 12; Biological Assessment, January 2001, at 3-5. See also, SDEIS, Part II at 2-35 to 2-44 (setting forth a comprehensive evaluation of various alternative construction methods and concluding that the proposed lay barge method would result in the least overall impact of all of the construction methods considered).

As a consequence, impacts will be very limited spatially and will be extremely short-lived; moreover, there will be no permanent loss, or significant impairment, of habitat. First, the pipeline footprint will affect only 0.08% of the functional habitat; and only 1.2% of the designated habitat will experience temporal effects during construction. As for those effects, physical effects will be quite transient: (1) construction will take place in small segments (i.e., no one of which will remain open for more than 14 days) and will be completed within the period established by environmental agencies; and (2) the substrate will be rapidly returned to its original composition and contours. Chemical effects on habitat will be virtually nonexistent since the original sediments contain very low contaminant levels and will be used to backfill the trench. Biological impacts will be limited to short-term loss of benthic life and temporary displacement of mobile aquatic life in the vicinity of the pipeline construction.

The absence of any significant impairment of habitat is underscored by studies which have examined impacts from conventional dredging operations. These studies (some of which

have examined the effects of traditional dredging in Haverstraw Bay and/or similarly situated environments, as well as in more ecologically sensitive environments) demonstrate rapid recovery rates of under one year for most benthic communities. By comparison with conventional dredging, lay barge construction "represents a significant reduction in impact..." Essential Fish Habitat Assessment, January 2001, at 8. Further, the shallow estuarine environment of the Haverstraw Bay ecosystem will be able to readily recover from the small-scale localized disturbance caused by the proposed construction. Because estuaries of this type are naturally subject to periodic disruption by tidal forces, river discharge and wind/storm events, the aquatic life is well-adapted to, and capable of, withstanding disturbances of a much grander scale than will result from the lay barge construction at issue here. Thus, the spatially limited, temporal disturbance resulting from pipeline construction will have no significant adverse impact on the Haverstraw Bay habitat.

Accordingly, the construction through Haverstraw Bay will cause no permanent or long-term loss, destruction or impairment of habitat. There will be no permanent or biologically consequential change in substrate, water quality or other physical/chemical parameter; and there will be no appreciable damage to the functioning of the Haverstraw Bay habitat or ecosystem. In accord with this conclusion, the FERC Staff has found that the construction through Haverstraw Bay would result in only temporary, insignificant impacts on Essential Fish Habitat-designated fish populations and their habitat, Essential Fish Habitat Assessment, January 2001, at 13, 15 & 16, and that, with the mitigation measures and conditions that Millennium is committed to incorporating into the construction, "there would be no substantial adverse impact (individual or cumulative) on [Essential Fish Habitat] in Haverstraw Bay." Essential Fish Habitat, January 2001, at 24. Consequently, the proposed pipeline construction through Haverstraw Bay fully satisfies the standard applicable to significant habitat and renders the Project fully compliant with the CMP.

In prior meetings with the Department of State ("DOS"), it had been suggested that the habitat rating form, which was utilized by the DOS in designating Haverstraw Bay as a significant coastal fish and wildlife habitats, may stand as a prohibition of the activities proposed by Millennium. Importantly, it bears noting that the limited, low-impact excavation activities at issue here are not, and cannot be, unqualifiedly precluded merely because Haverstraw Bay is designated as significant habitat. First, as is

obvious, and as the FERC Staff has expressly acknowledged, the proposed lay barge construction has far fewer impacts than conventional dredging. With conventional dredging, bottom sediments are generally removed and redeposited elsewhere. The physical environment experiences long-term (if not permanent) alterations, which may stress species' ability to adapt or recolonize. These impacts are simply not present here: that is, with lay barge construction, the excavated area is (1) rapidly refilled with the original sediments, (2) returned to its original contours and composition within an extremely short timeframe, and, therefore, (3) rapidly recolonized, resulting in no long-term loss or significant impairment of habitat. Thus, to the extent (if any) that the habitat rating form which was used in designating Haverstraw Bay as a significant habitat is somehow deemed to preclude traditional dredging operations in a designated habitat, that prohibition is inapt here.

Secondly, recent DOS CMP determinations demonstrate that there is, in fact, no per se prohibition on excavation activities - - even conventional dredging - - in significant habitat, including in Haverstraw Bay. For example, the DOS recently concurred in the consistency certification given to the U.S. Gypsum Company for maintenance dredging of at least 60,000 cubic yards<sup>1</sup> of material in the Haverstraw Bay significant habitat. DOS Consistency Concurrence (September 18, 2000) and DOS Consistency Decision Record (September 8, 2000), U.S. Gypsum Company, Project No. F-2000-0284. By restricting the dredging to September 1 to November 15, and noting that a closed bucket would be used for the excavation, the DOS determined that the resources of the significant habitat in Haverstraw Bay would be adequately protected. Id. By comparison, Millennium has also committed to using a closed bucket and performing pipeline excavation during any reasonable window agreed to by regulatory agencies.<sup>2</sup> Millennium has gone even further, however, to minimize potential effects; i.e., by

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Documents obtained from the U.S. Army Corps of Engineers confirm that the actual quantity dredged may be in excess of 100,000 cubic yards.

<sup>2</sup> Following a long process of collaboration concerning the appropriate window for construction in Haverstraw Bay, the New York agencies (DOS and The New York Department of Environmental Conservation) agreed to the crossing window proposed by the National Marine Fisheries Service of September 1st through November 15th. Although the FERC Staff has proposed a construction window of August 1st through October 31st in the Biological Assessment, the Essential Fish Habitat Assessment, and the SDEIS, Millennium supports the consensus window (September 1st through November 15th) chosen by the resource agencies.

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committing to (1) utilizing a construction technology of far lower impact than conventional dredging; (2) implementing that technology in a phased manner to further reduce potential impacts; and (3) employing best management practices to again reduce any effects. Consequently, the requested CMP consistency concurrence fully accords with recent DOS determinations. See Id.; see also DOS Consistency Concurrence (June 20, 2000) and DOS Consistency Decision Record (June 16, 2000), Central Hudson Gas & Elec. Corp., Project No. F-00-396 (concurring in consistency certification involving the placing of heavy stone over gas and electric lines in state-designated Poughkeepsie Deepwater significant habitat); DOS Comments on Pre-Construction Notification (September 21, 2000), Bell Atlantic/New York Tel., Project No. F-99-838 (involving installation of fiber optic cable in state-designated Hudson River Miles 44-56 significant habitat; not finding such activity to be unqualifiedly precluded; restricting installation period to avoid impact on striped bass spawning and incubation).

These determinations by the DOS concerning other Hudson River projects are consistent with the position expressed by the DOS concerning the Millennium Project. By a letter dated April 7, 2000, the DOS opined as follows regarding the role of the habitat rating form:

The Department would like to comment upon an issue concerning the habitat impairment criteria listed in the narrative for the Haverstraw Bay significant coastal fish and wildlife habitat. The Haverstraw Bay narrative, in pertinent part, provides: "Any physical modification of the habitat or adjacent wetlands, through dredging, filling or bulkheading, would result in a direct loss of valuable habitat area." This narrative language has the effect of creating a presumption that certain activities, such as dredging, are incompatible with the Haverstraw Bay habitat. This presumption may be rebutted by the provision of appropriate and necessary information, acceptable to the Department of State.

Thus, there is no prohibition of the type of activities proposed by Millennium. Moreover, Millennium has more than met the standard articulated by the DOS for other projects and in its April 7<sup>th</sup> letter to Millennium given the many environmental mitigation

measures and safeguards proposed by Millennium and required by the New York Department of Environmental Conservation ("DEC") in its Section 401 Water Quality Certification issued for the Millennium Project.<sup>3</sup>

A favorable CMP determination is also compelled by the federal directive that major energy facilities, such as the Millennium Project, be given priority consideration. The Project's compliance with the CMP must be viewed from within the context of the underlying enabling statute, namely the federal Coastal Zone Management Act ("CZMA"). The CZMA was designed to balance the competing demands of development with the need to protect coastal resources. Significantly, in achieving this balance, the CZMA directs that states (1) accommodate the need for compatible economic development in coastal areas; and, further, (2) give "priority consideration" to siting major energy facilities (including pipelines). 16 U.S.C. Sections 1452(2)(D), 1453(6), 1455(d)(1), 1455(2)(D). Accordingly, the federal CZMA explicitly recognizes the potential and need for siting energy facilities in coastal zones. Further, not only does the statute allow such to occur (thereby defeating any contention that such projects could be, *per se*, precluded in significant habitat), it goes further and expressly mandates that, in performing the balancing required by the statute, such projects be accorded preferential treatment (i.e., "priority consideration").

Viewed from within this context, a determination in the Project's favor is clearly warranted. Indisputably, the Project qualifies as a "major energy facility," the siting of which is entitled to "priority consideration." The need for the Project has been categorically recognized by the Public Service Commission of the State of New York: the Project would be the means of supplying much-needed clean, efficient energy to alleviate the impending energy crisis in New York. The Project would provide the additional environmental benefit of (1) reducing the dependence of the northeastern United States on coal- and oil--burning facilities; and, thereby, (2) drastically reducing sulfur dioxide and nitrogen oxide emissions in the northeast. Given these circumstances and the absence of any tangible environmental harm to coastal resources resulting from the Project, the balance weighs most decidedly in the Project's favor.

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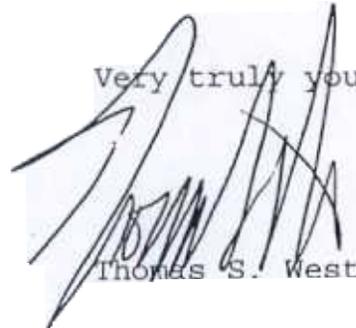
The DEC issued a water quality certification for the Millennium Project, including the crossing of the Hudson River at Haverstraw Bay, on December 8, 1999.

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Finally, it bears mentioning that the SDEIS includes a thorough analysis of the consistency of the Millennium Project with the CMP. In addition to appending Millennium's June 2000 Coastal Zone Consistency Determination to the SDEIS (see Appendix IIE), the document includes its own evaluation of consistency regarding Lake Erie, the Hudson River crossing, and the Village of Croton-on-Hudson LWRP). See SDEIS, Part II at 2-47 to 2-56. As such, the DOS now has all information it needs to proceed with its decision-making concerning the Millennium Project.

For all of these reasons, Millennium respectfully urges that the DOS concur that the Millennium Project is fully consistent with the CMP.

Very truly yours,



Thomas S. West

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cc: James P. King, Esq. (with enclosures)  
Millennium Pipeline Company, L.P.  
Lawler, Matusky and Skelly Engineers, LLP