



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108



21 NOV 2002

REPLY TO
ATTENTION OF

Mr. Scott B. Gudes
Deputy Under Secretary for Oceans and Atmosphere
Department of Commerce
National Oceanic & Atmospheric Administration
SSMC4, Room 6111
1305 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Gudes:

I am responding to your letter of September 26, 2002, to the Honorable Donald Rumsfeld, Secretary of Defense, regarding the Millennium Pipeline Company project. Specifically, you requested comments concerning an administrative appeal brought by the Millennium Pipeline Company before the Secretary of Commerce, pursuant to the Coastal Zone Management Act. I am responding on behalf of Secretary Rumsfeld because this office has policy oversight responsibility for the Army Corps of Engineers civil works activities, including the regulatory program. The Corps has regulatory jurisdiction over pipeline installation activities that occur in waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

I am enclosing a letter dated August 13, 2002, signed by the District Engineer, Colonel John O'Dowd, to the Millennium Pipeline Company, that outlines the New York District's concerns with the subject project. The District's concerns are similar concerns being expressed by the New York Department of State (DOS) regarding the environmental impacts of the proposed Hudson River crossing. Additionally, the District Engineer noted that alternatives recommended by DOS that would avoid the necessity for crossing the Hudson River could largely address his concerns.

I appreciate the opportunity to provide comments on the Millennium Pipeline project. If you need additional information concerning the Regulatory Program, please contact Mr. Chip Smith, my Assistant for Environment, Tribal and Regulatory Affairs at (703) 693-3655.

Sincerely,


George Dunlop
Deputy Assistant Secretary of the Army
(Civil Works)

Enclosure



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

Regulatory Branch

13 August 2002

SUBJECT: Permit Application Number 1999-00640
by Millennium Pipeline Co.

Mr. Richard E. Hall, Jr.
Millennium Acting Facilities Manager
Columbia Gas Transmission Corporation
2150 NYS Route 12
Binghamton, New York 13901

Dear Mr. Hall:

This is to advise you of the status of New York District's action regarding your company's application for a Department of the Army permit. Millennium seeks authorization from this agency to construct a natural gas pipeline through waters of the United States, including wetlands, from a point in Lake Erie through southern New York to Mount Vernon, Westchester County, New York.

I note, in a letter dated May 9, 2002, that the New York Department of State (DOS) has objected to the consistency certification provided by Millennium for the proposed activity, under authority of the federal Coastal Zone Management Act (CZMA, 16 U.S.C. 1451 et seq.). Although DOS objected to the entire project, that agency's objections focused on proposed pipeline crossings at three locations: at Haverstraw Bay in the Hudson River in Rockland and Westchester Counties; at the Village of Croton well field in Westchester County; and at water supply land located in the New Croton Reservoir Watershed in Westchester County. I have also received a copy of a July 12, 2002 letter from the Office of General Counsel of the United States Department of Commerce, indicating that Millennium has appealed the State's objection to the Secretary of Commerce.

The letters from DOS and the Department of Commerce both indicate that other federal agencies cannot issue licenses or permits for an activity subject to a state objection under the CZMA, unless the Secretary of Commerce overrules the objection. This is consistent with the Corps of Engineers' regulations, regarding a permit application that has not obtained State certification of CZMA compliance, as set forth at 33 CFR Parts 320.4(h) and 320.4(j)(1).

FIVCL

I also have substantial concerns about the environmental impacts of the proposed Hudson River crossing, similar in nature to those expressed by DOS. As a result, I must consider whether a permit authorizing the proposed project might compromise the public interest.

I note in their letter that DOS had outlined specific project alternatives which, if implemented, might permit the activity to be conducted in a manner consistent with the CZMA, and might then support a decision by this agency to permit construction. These alternatives include terminating the pipeline at Bowline Point in Rockland County (which would avoid the necessity to cross the Hudson River); routing the Hudson River crossing north and outside of Haverstraw Bay; or using excess capacity in the existing Algonquin pipeline to supply gas to points east of the Hudson River. Implementation of any of these alternatives would largely address my concerns. I am also aware that implementation of these alternatives might address objections received by the Corps of Engineers from other agencies, including the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

In making any decision to issue a DA permit as requested by Millennium, I must determine that a permit would not be contrary to the public interest, and I must weigh carefully expressions of the public interest as defined by those providing comment, including state and federal government agencies. For that reason I encourage you to keep me advised of possible project modifications Millennium may be considering, to meet its needs to furnish gas supplies to downstate New York, while protecting resources that have been identified as important.

Should you care to meet with me regarding this application, please contact my office at 212-264-0100. You are also invited to contact Richard L. Tomer, Acting Chief of New York District's Regulatory Branch, should you have questions, at (212) 264-3996.

Sincerely,



John B. O'Dowd
Colonel, Corps of Engineers
District Engineer

Cf: USACE - Buffalo & Pittsburgh
USFWS
FERC
USEPA
NMFS
NOAA
NYSDOS
NYSDEC
NYSOPRHP



US Army Corps
of Engineers,
New York District

Millennium Pipeline Company

Permit Application 1999-00640-YN

FACT SHEET

August 2002

PROJECT DESCRIPTION: Millennium Pipeline Company, L.P. (Millennium), is proposing to construct an underground natural gas pipeline extending from an interconnect with TransCanada Pipelines Ltd., at the U.S./Canadian border, crossing Lake Erie with a landfall near Ripley, New York, and then across southern New York State to Mount Vernon, Westchester County, New York. The pipeline would consist of approximately 373 miles of 36-inch diameter pipe extending from the U.S./Canadian border to Ramapo, New York, and 44 miles of 24-inch diameter pipe extending from Ramapo, New York to Mount Vernon, New York. Approximately 86 percent of the on-land pipeline would be constructed adjacent to or within existing rights-of-way. Approximately 414 acres of wetlands would be temporarily disturbed during construction of the pipeline. The pipeline would cross a total of 308 perennial streams and 199 intermittent waterbodies. Major navigable waterway crossings include Lake Erie and the Hudson River. Approximately 1.89 acres of wetlands would be permanently impacted. The project bisects the geographic boundaries of the Pittsburgh, Buffalo and New York Districts; Buffalo District is the lead District for this permit application. The portion of the pipeline within in the New York District regulatory boundary lies in the Counties of Delaware, Sullivan, Orange, Rockland, and Westchester.

AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344)

STATUS: The Corps issued a public notice for this project on March 3, 2000 and a supplemental notice was issued on March 12, 2001 following a change in a portion of the pipeline route. Approximately 100 letters were received in response to the public notices, with the major concerns related to private property impacts along the pipeline route and alternative routes in Westchester County. The USFWS and NMFS have objected to the project primarily based on impacts to the Hudson River and have recommended that a Corps permit be denied pursuant to the Section 404(q) memorandum with the Corps. The Federal Energy Regulatory Commission (FERC), as lead federal agency for this project, published a Final Environmental Impact Statement (FEIS) for this project in October 2001. The Corps was a cooperating agency in that effort. On December 19, 2001, FERC issued an "Interim Order" with a requirement for Millennium to negotiate with the City of Mount Vernon towards an agreement on a route through that city prior to the issuance of a "Final Order." In addition, FERC has required that Millennium consider alternative crossing locations of the New York City Water Supply Aqueduct, in consultation with the NYC Department of Environmental Protection.

Subsequent to the issuance of the FEIS, Millennium indicated the need to perform blasting along the eastern side of the Hudson River to facilitate installation of the pipeline. Due to the blasting activity, re-initiation of consultation with the NMFS for impacts to Endangered Species (shortnose sturgeon) and Essential Fish Habitat was required. This coordination was reinitiated by FERC on July 3, 2002, with additional information provided to NMFS on August 1, 2002. New York State has issued their Section 401 Water Quality Certificate, but Millennium will need to re-coordinate with them in light of the blasting and a revised route within Westchester County. On May 9, 2002, New York State objected to the Coastal Zone Management Consistency determination provided by Millennium for the proposed activity. These objections focused on environmental impacts from the Hudson River crossing, and the need to address alternative routes in Westchester County. Millennium filed an appeal of this decision with the Secretary of Commerce on June 7, 2002, with a subsequent submittal of its brief on August 12, 2002. New York State has until September 30, 2002 to file its initial brief and any supporting information it chooses to include to Commerce. On August 13, 2002, the New York District notified Millennium that it also has serious concerns regarding the Hudson River Crossing. The activity may affect properties listed on, or eligible for listing on the National Register of Historic Places. Consultation is ongoing with FERC, the State Historic Preservation Office, and the Advisory Council on Historic Preservation to develop a Programmatic Agreement to ensure compliance with Section 106 of the National Historic Preservation Act.

CONTACT: POC for this project is Mr. George Nieves, Chief of the Western Permits Section, Regulatory Branch, at (212) 264-0182.