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July 8, 2002

Mary G. Holt, Esq.  
 Office of the General Counsel  
 National Oceanic and Atmospheric Administration  
 U.S. Department of Commerce  
 Room 6111 SSMC 4  
 1305 East West Highway  
 Silver Spring, MD 20910

Re: CZMA Consistency Appeal of  
 Millennium Pipeline Company, L.P.

Dear Ms. Holt:

We have received your June 26, 2002 letter regarding the procedural requests of the law firm of Kirkland & Ellis for the Village of Croton-on-Hudson, New York (the "Village"). On behalf of Millennium Pipeline Company, L.P. ("Millennium"), we offer the following response:

1. **The Village is not entitled to any special status in this proceeding.**

Kirkland & Ellis asks that the Village be accorded the rights of "a party co-defendant," the rights of an "intervenor," "special participant status," or "other such recognition as the Secretary deems appropriate to allow the Village to fully participate in all appeal proceedings." Letter from Neil L. Levy to Karl Gleaves dated June 21, 2002 ("K&E Letter"), at 1-2. In our view, the Village is not entitled to any special status in this case.

Nothing in the Coastal Zone Management Act ("CZMA") provides the Village with any special rights or status with respect to either the prior state proceedings before the New York Department of State ("NYDOS") or in this appeal by Millennium to the Secretary of Commerce. Section 307(c)(3)(A) of the CZMA requires only that (a) the state must "establish procedures for public notice . . . and, to the extent it deems appropriate, procedures for public hearings in connection therewith," and (b) that the Secretary, on appeal, must provide "a reasonable opportunity for detailed comments from the Federal agency involved and from the state . . ." 16 U.S.C. § 1456(c)(3)(A) In the state proceedings below, the Village was provided by the NYDOS with an opportunity to file comments on the proposed Millennium Pipeline Project, and the Village is plainly entitled to no greater rights on appeal.

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Likewise, NOAA's regulations under the CZMA regarding consistency appeals do not confer any special rights or status on the Village. The NOAA regulations allow the Village to comment on the appeal (15 C.F.R. § 930.128), but they only permit "the appellant and the state agency" to submit briefs and supporting materials to frame the issues. *Id.* § 930.127. Adherence to those regulations would further NOAA's objective to "minimize duplicative effort and unnecessary delay . . . ." *Id.* § 930.1(c).

Nor would granting the Village special rights or status in this case be "consistent with [the] past practice of the Secretary," contrary to Kirkland & Ellis's contention. K&E Letter at 2. The only decision cited by Kirkland & Ellis in support of this alleged "consistent . . . past practice," *Virginia Electric and Power Co.* (May 19, 1994) ("*VEPCO*"), is wholly inapposite. In that case, the appellant applied for necessary Federal authorizations "on behalf of" the City of Virginia Beach, Virginia and, following the State of North Carolina's objection to the proposed project, filed a notice of appeal with the Secretary "on behalf of" the City, which was clearly the real party in interest and was thus permitted to intervene. *VEPCO*, at 23-25 (emphasis added). Because the NYDOS is the real party in interest in this case and is obviously not acting on behalf of the Village, the *VEPCO* decision is inapplicable and does not support the Village's request for intervenor status.

In further support of its request for preferential treatment, Kirkland & Ellis claims that the Village has a "unique position" in this appeal because it is located in the state's designated coastal zone and has adopted a local waterfront revitalization program ("LWRP") that has become a part of the NYDOS's coastal management program. K&E Letter at 2. But thousands of communities across the Nation are located in the coastal zone, yet none of them has been accorded any special status by the CZMA, by NOAA's regulations, or by the Secretary in a CZMA appeal. Tellingly, the Village was not even accorded any special rights or status by the NYDOS in the state proceedings, notwithstanding its alleged "unique position." Moreover, neither the NYDOS's coastal management program nor the Village's LWRP will be at issue in this appeal. *See* Decision and Findings in the Consistency Appeal of Chevron U.S.A. Inc. (January 8, 1993), at 12-13; Decision and Findings in the Consistency Appeal of Chevron U.S.A. Inc. (October 29, 1990), at 22-23. Thus, there will be no need in this case for the Village to defend its LWRP or local laws.

In addition, Kirkland & Ellis asserts that the Village's "particularized knowledge of the factual and legal issues on appeal" merits some special status. K&E Letter at 2. In response, Millennium would observe that the NYDOS is perfectly capable of addressing the factual and legal issues on appeal on behalf of the State of New York and that NOAA's regulations will provide the Village with an ample opportunity to espouse any "particularized knowledge" that it may have.

In that regard, Millennium would note that Kirkland & Ellis' insinuations that the Village has steadfastly opposed the Millennium Project and that the Project would cut through the heart of the Village and the coastal zone are unfounded. In fact, the Village itself proposed,

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endorsed, and publicly supported what is now the proposed pipeline route through the Village. In a letter to the Federal Energy Regulatory Commission ("FERC") dated March 28, 2001, the Village and certain other communities proposed a route they called the "ConEd Offset/Taconic Alternative" (the route approved by the FERC but now opposed by the Village) and stated that the adoption of that route by the FERC would "avoid[] further protracted legal proceedings . . . ." Attachment 1, at 3. Shortly thereafter, the Village Manager informed the FERC that the Village's Board of Trustees had unanimously adopted a resolution "strongly urging" the New York Public Service Commission ("NYPSC") to also designate the same "ConEd Offset/Taconic Alternative" as the "preferred routing" for the Millennium Project -- and the NYPSC followed the Village's recommendation. Attachment 2, at 2. Significantly, moreover, the Village's opposition to the route it first proposed is surprising, since the Millennium pipeline would only traverse isolated sections of the Village that are far removed from the coastal zone, as shown in the map set forth as Attachment 3.

2. The Village's request for "full due process rights" (K&E Letter at 5) is unnecessary. NOAA's regulations already provide Kirkland & Ellis with entirely adequate procedural rights. Under the procedural schedule proposed by Millennium and the NYDOS, moreover, the Village would have an opportunity to comment upon all of the procedural and substantive issues raised by Millennium and the NYDOS in their briefs.

Unlike other appeals to the Secretary under the CZMA, it must be emphasized that this case involves a major Federal project that has already been reviewed and approved by the FERC, the Federal agency that has been entrusted by Congress to balance national interests and environmental impacts to determine whether and where proposed interstate gas pipelines should be constructed. Based upon more than four years of extensive proceedings and the most voluminous record ever compiled for a proposed interstate pipeline, the FERC issued a certificate of public convenience and necessity under Section 7 of the Natural Gas Act (15 U.S.C. § 717f) that authorizes Millennium to construct the pipeline as proposed and to acquire right-of-way along the route through the exercise of the right of eminent domain, if necessary. The Village has had an opportunity to exercise its "full due process rights" in the lengthy FERC proceedings, and has exercised those rights through the submission of numerous, lengthy pleadings on virtually every material issue -- and on many immaterial issues as well. In these circumstances, the Village's "due process demand" for duplicative procedures that are unnecessary for a timely decision on Millennium's appeal should be rejected.

As part of its "due process demand," for example, Kirkland & Ellis requests that the Village be provided with "a period of at least 60 days for comments" in this proceeding. K&E Letter at 6. There is no reason why NOAA's standard 30-day comment period is inadequate in this case. Indeed, the procedural schedule that has been proposed by Millennium and the NYDOS would provide Kirkland & Ellis with four months from the submission of Millennium's case to file the Village's comments. No further delay is warranted.

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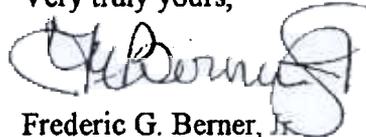
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Finally, Kirkland & Ellis asks the Secretary to "decline[] to bifurcate the appeal and review[] all matters together in one consolidated proceeding." K&E Letter at 6. There has been no request for NOAA to bifurcate the appeal, however, and Millennium and the NYDOS have agreed to brief all matters together. Accordingly, there is simply no basis for this further procedural request.

3. **The Village's request for a public hearing is premature.** Kirkland & Ellis's request for a public hearing in the Village should be recognized for what it is -- an obvious ploy to further delay this proceeding and the Millennium Pipeline Project. At this preliminary stage of the proceeding, moreover, the request for a public hearing is plainly premature, for Millennium and the NYDOS have not had an opportunity to submit their briefs, and Federal agencies and the public have not had an opportunity to comment on the Project's national interests and its coastal zone impacts.

While Millennium therefore believes that the Secretary should not rule on the Village's request for a public hearing at this time, we would note that the FERC has already held 13 public meetings along the pipeline route in New York State to receive comments from the public on the environmental impact of the Millennium Project, including its impact on the coastal zone. One of those 13 public meetings was held in the Village, and three other public meetings were held at locations within 25 miles of the Village. While Millennium would not object to the receipt into the record in this proceeding of the transcripts of those public meetings, including the meeting in the Village, we respectfully submit that a further public hearing in the Village would serve no meaningful purpose.

Very truly yours,



Frederic G. Berner, Jr.

Attorney for Millennium  
Pipeline Company, L.P.

cc: Glen T. Bruening  
Neil L. Levy

VILLAGE OF  
BRIARCLIFF MANOR  
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March 28, 2001

Via Hand Delivery

David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

ORIGINAL

FILED  
OFFICE OF THE SECRETARY  
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REGULATORY COMMISSION

Re: Millennium Pipeline Company, L.P., Docket No. CP98-150-000  
Columbia Gas Transmission Corporation, Docket No. CP98-151-000

Dear Secretary Boergers:

On February 6, 2001, and February 23, 2001, the Villages of Briarcliff Manor, Croton-on-Hudson, and Ossining, New York, and the Town of Ossining, New York (collectively "Croton, Ossining and Briarcliff"), filed additional comments in these proceedings to express their continued concern with the Millennium Pipeline Company's ("Millennium") proposal to construct a new interstate pipeline through our communities along Routes 9 and 9A. In those comments, we asked that the FERC examine alternative systems and routes, address a variety of environmental and safety concerns, and recommend a pipeline route that avoids the Route 9-9A corridor.

The FERC's Supplemental Draft Environmental Impact Statement ("SDEIS"), dated March 2001, addressed some, but by no means all, of the issues that Croton, Ossining and Briarcliff, and other parties, have raised about the suitability of the 9-9A corridor. Section 6.1, p. 6-18 of the SDEIS, concludes, in part, that "[w]e [FERC] believe that with the use of the recommended mitigation the 9/9A Proposal is a viable option."

Croton, Ossining, and Briarcliff respectfully continue to disagree with this finding, for the reasons already provided and made part of the record in this proceeding. However, in Section 6.1, p. 6-18, the Commission further states that "[i]f the PSCNY is willing to revise its MOU [Memorandum of Understanding] to incorporate construction of this alternative route, then we believe that the ConEd Offset/State Route 100 Alternative is a viable option."

Croton, Ossining, and Briarcliff strongly endorse this finding and the FERC's recommendation that the Public Service Commission of the State of New York ("PSCNY") and Millennium work together to achieve a mutually satisfactory agreement. Notwithstanding, for the reasons outlined below, it is the position of Croton, Ossining, and Briarcliff that the routing ultimately approved for the pipeline should follow the Taconic State Parkway right-of-way ("ROW") rather than Route 100, from the Millwood area, where the ConEd, Taconic, and Route 100 ROWs briefly converge, and then diverge, to the area in southern Briarcliff Manor just north of Route 117, where the three ROWs again converge. We propose to refer to this variation of the "ConEd Offset/State Route 100 Alternative" as the "ConEd Offset/Taconic Alternative."

Croton, Ossining and Briarcliff submit that the ConEd Offset/Taconic Alternative has the following advantages, compared to the Route 9-9A Alternative:

1. This route would significantly reduce the risk of pipeline damage from third party activities;
2. The route would reduce construction-related impacts. The Taconic Parkway is six lanes wide, with paved shoulders and a widely cleared ROW and median. Further, staging areas still remain from the recent widening of the Parkway. The construction challenges of Route 9-9A have been documented previously, and are significant.
3. This route would affect far fewer people. Approximately 3,600 people live within 220 yards of the 9-9A corridor. Millennium informally estimates that the comparable number for the Taconic option would be a few hundred.
4. This route offers significantly less traffic impact during construction.
5. This route avoids the Van Cortlandt Manor National Historic Landmark, which would be crossed by the Route 9-9A option.
6. This route would cross the Croton River further upstream by means of conventional construction techniques. The Route 9-9A Alternative would require a directional drill to cross the Croton River estuary near its widest point.
7. This route avoids two major railroad crossings in the Village of Croton.
8. This route avoids previously expressed concerns about impacts to the Village of Croton's waterfront park.
9. The Town of New Castle has expressed interest in the possibility of obtaining gas from the pipeline, as has the Briarcliff Manor School District. While the feasibility of doing this remains to be determined, such a proposal would not be possible under the 9-9A alternative.

The ConEd Offset/Taconic Alternative is preferable to the ConEd Offset/Route 100 Alternative for the following reasons:

In close proximity to the west side of Route 100 are a townhouse development in the Town of New Castle, a large commercial zone in the Town of Ossining, and apartment, townhouse and condominium developments and a commercial area in Briarcliff Manor. The Pocantico River also flows adjacent to a portion of the east side of Route 100 in this area, thereby reducing construction alternatives. The Taconic option, located further east, places the pipeline further away from those properties and populations.

2. The ConEd Offset/Route 100 Alternative, south of its intersection with Route 9A in Briarcliff, is in close proximity to a number of residences. In this area, the route is actually part of the Route 9-9A alternative, and is objectionable for the reasons previously stated. The Taconic variation, being further east, avoids this area as well.
3. Informally, Millennium has indicated to Croton, Ossining, and Briarcliff that it would prefer the Taconic variation to the ConEd Offset/Route 100 Alternative, because of greater construction convenience. As stated, the Taconic is six lanes wide with paved shoulders, and has a wide, generally cleared, center median strip and off shoulder strips. Route 100, for most of this segment, is a two lane road with narrow shoulders and little ROW clearing. Both variations are approximately the same length.

In earlier comments, the PSCNY expressed various concerns with respect to locating the Millennium Pipeline within the ConEd ROW. Croton, Ossining, and Briarcliff maintain that there have been significant changes since use of the ConEd ROW was described and evaluated in the DEIS in April 1999.

1. In the DEIS, Millennium proposed a route between the ConEd electrical transmission towers. The concept suggested by FERC in the SDEIS and currently under discussion places the pipeline outside of, but adjacent to, the corridor containing the electrical transmission towers.
2. Millennium is now proposing much more extensive mitigation to protect the electrical transmission towers than was described in the DEIS.
3. While the ConEd Offset/Taconic Alternative and ConEd Offset/Route 100 Alternative both are in close proximity to the ConEd ROW for approximately seven miles, both also utilize alternative routes that avoid the ConEd ROW where practical.

In sum, Croton, Ossining, and Briarcliff reiterate our position supporting the need to increase energy supplies in the northeast, and strongly endorse the FERC's suggestion that the PSCNY revise its MOU with Millennium to encompass the ConEd Offset/Taconic Alternative. We are unaware of any significant opposition to the Taconic variation from neighboring communities and other constituencies and are engaged in ongoing discussions with all potentially affected by this route alternative to obtain their endorsements.

Within the next few days our respective elected Boards will pass resolutions endorsing the FERC's proposal with the incorporation of the Taconic variation, and strongly urge that the PSCNY modify its MOU with Millennium to make the ConEd Offset/Taconic Alternative a reality, thereby avoiding further protracted legal proceedings over the issues associated with the Route 9-9A Alternative.

As we have stated throughout these proceedings, and reiterate here, we welcome the opportunity to discuss with the Commission's Staff, Millennium, the PSCNY and other interested parties the aforementioned issues and suggestions, as well as other possible solutions and remedies to the problems and issues created by the Route 9-9A Alternative.

To that end, we very much look forward to the Public Hearing scheduled for April 9, 2001, in Ossining, and want to express our continued appreciation to the Commission for proposing and endorsing the ConEd Offset Alternative for consideration. We also remain encouraged that Millennium and the PSCNY last week conducted field inspections of both the ConEd Offset/Route 100 Alternative and the Taconic variation to that route.

Thank you for your consideration of these comments.

Very truly yours,



Keith Austin, Mayor, Village of Briarcliff Manor, New York  
Thomas Cambariere, Mayor, Village of Ossining, New York  
John V. Chervokas, Town Supervisor, Town of Ossining, New York  
Robert W. Elliott, Mayor, Village of Croton-on-Hudson, New York

cc: Public File  
All Parties  
The Honorable Curtis L. Hébert, Jr., Chairman  
The Honorable William L. Massey, Commissioner  
The Honorable Linda K. Breathitt, Commissioner  
The Honorable Hillary R. Clinton, United States Senate  
The Honorable Charles J. Schumer, United States Senate  
The Honorable Sue W. Kelly, Member of Congress  
The Honorable Suzi Oppenheimer, New York State Senate  
The Honorable Richard L. Brodsky, New York State Assembly  
The Honorable Sandra R. Galef, New York State Assembly  
The Honorable Andrew J. Spano, Westchester County Executive  
The Honorable Maureen O. Helmer, Chairman, NYPSC  
Daniel M. Adamson, Director, Office of Energy Projects (FERC)  
Richard R. Hoffmann, Gas Group 2 Leader (FERC)  
Jennifer L. Kerrigan, Environmental Project Manager (FERC)  
Kevin P. Madden, General Counsel (FERC)  
Robert F. Christin, Energy Projects, Lead Counsel (FERC)

ORIGINAL

Village of Croton-on-Hudson, New York



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Manager-Clerk  
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Treasurer-Deputy Village Clerk  
ROBERT T. REARDON

Attorney  
SEYMOUR M. WALDMAN

Engineer  
KARY IOANNOU, P.E.  
271-4783

April 5, 2001

Maureen O. Helmer, Chairman  
New York Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

Dear Ms. Helmer:

CP98-150-002

RE: Millennium Pipeline Project and Proposed Route for Westchester County

On April 2, 2001, the attached resolution, requesting the Taconic Option to be the designated route for the Millennium Gas Pipeline, was passed at a regular Board Meeting of the Village of Croton on Hudson by the Village Board of Trustees. The Mayor and Village Board have directed me to send the resolution to the Public Service Commission.

Sincerely,

Richard F. Herbek  
Village Manager

cc: David P. Boergers, Secretary, Federal Energy Regulatory Commission  
Honorable Sandra R. Galef, New York State Assembly  
Keith Austin, Mayor, Village of Briarcliff Manor  
Thomas Cambariere, Mayor, Village of Ossining  
O. Paul Shew, Village Manager, Village of Ossining

On motion of TRUSTEE Grant, seconded by TRUSTEE Harkins, the following resolution was adopted by the Board of Trustees of the Village of Croton-on-Hudson, New York with unanimous vote.

WHEREAS, the Federal Energy Regulatory Commission has found that an alternate route to the Millennium Pipeline Route 9 and 9A proposal is equally acceptable; and

WHEREAS, that alternative, running alongside, by and large, the Con Edison right-of-way and Taconic Parkway, will not pose a threat to people and property in the significant and severe way that the Route 9 and 9A proposal will; and

WHEREAS, the Federal Energy Regulatory Commission has, in essence, given the New York State Public Service Commission the option to select either route,

NOW THEREFORE BE IT RESOLVED: that the Village of Croton Board of Trustees strongly urge the New York State Public Service Commission designate the "Taconic option" as its preferred routing for the Millennium Gas Pipeline and so notify the FERC as soon as that determination is made.

April 2, 2001