

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Millennium Pipeline Company, L.P.,)
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)
)
)
v.)
)
State of New York, Department of State,)
)
)
Respondent.)

**NOTICE OF APPEAL OF
MILLENNIUM PIPELINE COMPANY, L.P.
FROM AN OBJECTION BY THE STATE OF NEW YORK,
DEPARTMENT OF STATE, TO A CONSISTENCY
CERTIFICATION FOR THE MILLENNIUM PIPELINE PROJECT**

Pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act (the “Act”) and 15 C.F.R. § 930.125, Millennium Pipeline Company, L.P. (“Millennium”) hereby files with the Secretary a notice of its appeal from each and every part of the May 9, 2002 objection of the State of New York, Department of State (“NYDOS”), to Millennium’s consistency certification for the proposed Millennium Pipeline Project.

As a threshold procedural matter, Millennium requests the Secretary to override the objection of the NYDOS and dismiss this appeal pursuant to 15 C.F.R. § 930.129(a)(6) on the ground that the objection of the NYDOS is not in compliance with Section 307 of the Act and the Department of Commerce’s implementing regulations. Section 307(c)(3)(A) of the Act requires that “[i]f the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant’s certification, the state’s concurrence with the certification shall be conclusively presumed.” In this case, the NYDOS received Millennium’s certification on November 20, 1998, and the required notification was furnished on

May 9, 2002, or well over three years later. The State's concurrence with Millennium's consistency certification must therefore be conclusively presumed as a matter of law.

If the Secretary does not override the objection of the NYDOS as untimely, then Millennium requests the Secretary to find and conclude, pursuant to Section 307(c)(3)(A) of the Act and 15 C.F.R. § 930.120, that the Millennium Pipeline Project may be federally approved because it is "consistent with the objectives" of the Act or is "otherwise necessary in the interest of national security." Significantly, the NYDOS failed to recognize that the Millennium Project is a major energy facility entitled to priority consideration under the Act and that its significant public interest benefits far outweigh any limited adverse effect on the coastal zone. As the Federal Energy Regulatory Commission ("FERC") concluded in its December 19, 2001 order approving Millennium's application to construct and operate the Millennium Project under the Natural Gas Act (97 FERC ¶ 61,292), the benefits of the project "are clear and significant" (97 FERC at 62,321):

"Market demand projections in the region lend support to the need for this project. Specifically, studies conducted by government, industry, and private organizations, including the EIA, Gas Research Institute, Interstate Natural Gas Association of America, and the Cambridge Energy Research Associates, forecast increasing demand for natural gas in the northeastern United States (particularly for electric generation) and the need for increased pipeline capacity to meet that demand.⁵⁶

⁵⁶ See 'Staff Analysis of Natural Gas Consumption and Pipeline Capacity in New England and the Mid-Atlantic States,' December 1999. In addition, on July 27, 2000, the NYPSC filed comments in support of Millennium's proposal, stating that the need for new pipeline capacity into New York City is critical because existing capacity is constrained. The NYPSC states that New York City needs 300 MW of in-city electric generation immediately and 200 MW each year thereafter to meet expected demand. The NYPSC also states that this new generation must be within city limits because of transmission constraints and must be almost exclusively gas-fired because of environmental guidelines."

“The project will also diversify the range of gas supplies available to the northeast. Millennium will provide another pipeline for shippers to transport Canadian gas supplies to the region and Millennium’s interconnects with Columbia, Algonquin, and Tennessee will provide access to gas supplies from domestic supply areas as well. The addition of a new pipeline in the region, with access to multiple supply areas, will expand shippers’ options, promoting the growth of competitive markets for natural gas and potentially contributing to lower and more stable natural gas prices over the long term. The project will also increase the overall reliability of the region’s infrastructure and offer an additional source of outage protection. In addition, the pipeline capacity created by Millennium’s proposals should foster the development of more North American energy supplies. Finally, the project will allow for a greater measure of energy independence, especially to the extent new gas supplies delivered to the region by Millennium displace overseas energy supplies.”

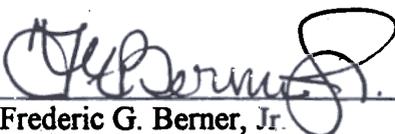
Apart from these “clear and significant” public benefits, the FERC also concluded in its Final Environmental Impact Statement, issued pursuant to the National Environmental Policy Act, that the project would have only limited adverse environmental impacts on the coastal zone and other affected areas. Balancing the project’s environmental impacts “with our overriding responsibility to insure the timely development of an adequate energy infrastructure, particularly in large employment and population centers such as New York City,” the FERC found that the project was in the public interest and therefore authorized its construction and operation.

Millennium reserves the right to raise and address such other procedural and substantive issues as may be necessary and appropriate in support of its appeal, including, inter alia, the NYDOS’s lack of jurisdiction or authority to object to portions of the Millennium

Pipeline Project that are located outside of the coastal zone (e.g., the pipeline crossings of the New York City watershed and the Catskill Aqueduct).

Respectfully submitted,

MILLENNIUM PIPELINE COMPANY, L.P.

By  _____

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Dated: June 7, 2002

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June 7, 2002

The Honorable Donald L. Evans
Secretary of Commerce
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

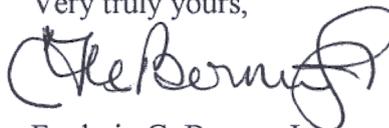
Re: Notice of Appeal of Millennium Pipeline
Company, L.P. from an Objection by
the State of New York, Department of
State, to a Consistency Certification for
the Millennium Pipeline Project

Dear Secretary Evans:

Enclosed for filing on behalf of Millennium Pipeline Company, L.P. ("Millennium") in accordance with 15 C.F.R. § 930.125 is the referenced Notice of Appeal and a check in the amount of \$500.00 in payment of the application fee. As required by 15 C.F.R. § 930.125(c), copies of the Notice of Appeal are being sent to the State of New York, Department of State, 41 State Street, Albany, NY 12231-0001, and to the Assistant General Counsel for Ocean Services, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910.

Millennium respectfully requests the Secretary to promptly establish a schedule for the submission of briefs and supporting materials by Millennium and the Department of State in accordance with 15 C.F.R. § 930.127(a).

Very truly yours,



Frederic G. Berner, Jr

Attorney for Millennium
Pipeline Company, L.P.

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VOUCHER	INVOICE	DATE	DESCRIPTION	GROSS	DISC	NET AMOUNT
1124343	060602	06/07/02	FILING FEE	500.00	0.00	500.00
816164 US DEPARTMENT OF COMMERCE				500.00	0.00	500.00

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