

Finally, the Pipeline would run parallel to and bisect several roads and two major arteries Route 9 and the Taconic State Parkway – that partly comprise the Indian Point nuclear-emergency evacuation network.<sup>25</sup> An accident or attack during the Pipeline’s construction, or intentional sabotage thereafter, could thus isolate thousands of coastal-zone residents from their only escape route during a nuclear emergency.

ARGUMENT

POINT I

THE SECRETARY SHOULD NOT OVERRIDE  
THE DOS OBJECTION ON PROCEDURAL GROUNDS

Millennium first petitions the Secretary to override the DOS Objection due to an alleged procedural defect: that DOS failed to issue its Objection in a timely manner. The Town respectfully refers the Secretary to the DOS October 16, 2002 brief’s discussion of the timeliness of DOS’ consistency review, which the Town hereby adopts.

In its brief, DOS makes clear that its Objection to the Pipeline was issued within six months of the date that Millennium provided DOS with the detailed blasting data required to make its application complete. Millennium admits that it failed to notify DOS that blasting of some 200 to 400 feet of rock was needed in the critical-fisheries area of Haverstraw Bay – let alone provide DOS with data and information sufficient to determine the effects of such extensive blasting on the coastal zone – until November 27, 2001.<sup>26</sup> Such blasting information

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<sup>25</sup> See <http://www.westchestergov.com/indianpoint/planningforemerg.htm>.

<sup>26</sup> Millennium now disingenuously asserts that its blasting revelation was not a “project change” because it previously identified “the Hudson River ... as one of the waterbodies within possible blasting areas” as early as March 26, 1999. (Millennium Br. at 17.) This is patently untrue, and contradicted by a March 14, 2002 letter from Millennium to DOS (which Millennium (...continued)

was “necessary” to start the six-month clock pursuant to 15 C.F.R. § 930.58, because without such information, it was impossible for DOS to have “a detailed description of the proposed activity . the coastal effects, and comprehensive data and information sufficient to support [Millennium’s] consistency certification.” 15 C.F.R. § 930.58 (a) (1).

Therefore, because DOS’ time to render its consistency decision did not begin to run until it received from Millennium “all necessary data and information required” to begin review, DOS complied with the CZMA’s six-month mandate. 16 U.S.C. § 1456 (c)(3)(A); 15 C.F.R. § 930.60; Mountain Rhythm Resources v. Federal Energy Regulatory Comm’n (“Mountain Rhythm Resources”), 302 F.3d 958, 966-67 (9th Cir. 2002) (rejecting argument that state waived right to object to consistency certification even after seven years, due to applicant’s failure to provide local shoreline permits determined by the state to be “necessary information and data” under 15 C.F.R. § 930.58). The DOS Objection was timely, and Millennium’s procedural challenge to the DOS Objection should be dismissed.

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(..continued)

conveniently did not cite in its brief), wherein counsel for Millennium wrote to DOS that Millennium “recognizes that the possible need for a limited amount of blasting in the Hudson River was not addressed until recently in Millennium’s submissions to DOS, regrets that oversight, and renews its commitment to provide DOS with full and complete information....” (DOS Brief, Exhibit 13 at 2.)