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January 24, 2003

Branden S. Blum, Esq.
Senior Counselor
National Oceanic and Atmospheric Administration
United States Department of Commerce
1305 East West Highway
Silver Spring, MD 20910

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

Dear Mr. Blum:

As you know, representatives of Millennium Pipeline Company, L.P. ("Millennium") and the New York State Department of State ("NYSDOS") discussed procedural issues relating to the filing of the parties' reply briefs with you during a telephone conference call on January 17, 2003. At the conclusion of that discussion, you indicated that NOAA was considering the establishment of a "staggered" reply brief schedule that would require Millennium to submit its final brief within 35 days and would then permit the NYSDOS to submit a reply brief within 10 days thereafter. You asked the parties to submit their comments on such a procedural schedule.

Millennium would oppose the adoption of a "staggered" briefing schedule that would provide the NYSDOS with "the last word" on the legal and factual issues to be resolved in this proceeding. Under the Coastal Zone Management Act, Millennium shoulders the burden of proof in this case, and thus it should be entitled as a matter of fundamental fairness to respond to any evidence or arguments that are presented by the NYSDOS. Moreover, Millennium is the appellant in this proceeding, and thus it should be entitled to make the closing presentation, consistent with Rules 31(a)(1) and 34(c) of the Federal Rules of Appellate Procedure. At the

very least, NOAA should follow its standard procedure in consistency appeals and provide for the concurrent filing of reply briefs within 35 days to ensure that Millennium's rights are not prejudiced.

Very truly yours,

Frederic G. Berner, Jr.

Attorney for Millennium
Pipeline Company, L.P.

cc: Glen T. Bruening
William L. Short

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January 24, 2003

Karl D. Gleaves, Esq.
Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
1305 East-West Highway
Silver Spring, Maryland 20901

RE: Federal Consistency Appeal by Millennium Pipeline Company From an Objection by the New York Department of State; Scheduling of Reply Briefs

Dear Mr. Gleaves:

The purpose of this letter is to respond to the request of Mr. Branden Blum for comments on a proposed schedule for the submission of reply briefs in the captioned matter. The proposed schedule would require Millennium Pipeline Company, LP to submit its brief within 35 days following receipt of the Department of Commerce Briefing Order. The New York Department of State would be required to submit its brief 10 days following the Company's brief.

The New York Department of State (DOS) supports the sequencing of reply briefs proposed by the Department of Commerce, but respectfully requests that the time period for the DOS reply brief be established at no less than 35 days following the Company's brief.

The Department of Commerce has traditionally permitted sequential reply briefs in complex consistency appeals. This is a complicated appeal in which numerous separate alternatives have been identified for routing a natural gas pipeline to avoid impact to the important Haverstraw Bay habitat. As Commerce's review and decision will be based almost entirely on a written record, it is important to develop a complete record and to respond to issues raised, for the first time, by the Company in its reply brief.

We have not yet had the benefit of Millennium's comments on the alternative routes. By agreement, Millennium did not provide any testimony at the public hearing on the alternatives. Its reply brief will, therefore, be the first time that Millennium fully addresses the routing alternatives. DOS should have the opportunity to respond to those comments. Millennium cannot fairly argue against sequential briefs as its reply brief will likely raise new technical and engineering design matters requiring a response. Simultaneous briefs would not allow for DOS to respond to those comments. Moreover, we do not expect Millennium to offer any adjustments to the alternatives in order to address any such technical or design matters. Similarly, DOS should have the opportunity to do so.

In addition, just as Millennium has changed its route numerous times throughout the regulatory process, it is reasonable to anticipate minor adjustments in the alternative routes if any technical or engineering design issues are raised by the Company. As the alternatives were not given adequate consideration in the regulatory process, it has been left to DOS to help complete the record. Sequential reply briefs will allow DOS to fulfill that obligation.

The Department of Commerce has proposed that Millennium submit its reply brief within 35 days following the Briefing Order but has given DOS only10 days to submit its reply brief. On less complex appeals, Commerce has scheduled reply briefs a minimum of 60 days following its Briefing Order. This is a complex appeal with numerous specific alternatives. The DOS reply brief will be responding not only to public comments, but also to engineering issues raised for the first time in Millennium's brief. We believe that 10 days would not be sufficient for DOS to address both public comments and Millennium's anticipated issues regarding the alternatives. DOS respectfully requests at least 35 days from Millennium's brief to submit its reply.

Millennium has not yet adopted any of the alternatives that DOS identified. For that reason, it will presumably attempt to show that all alternatives are not reasonable (taking into account cost and benefit) and not available. We expect Millennium to submit engineering and technical materials regarding the alternative routes. The State's engineers and consultants must be given adequate time to review Millennium's comments and determine whether route adjustments to resolve those concerns can be made.

Millennium and its engineering consultants have already had more than three months to review and prepare materials regarding the alternatives. With 35 additional days to prepare its brief, Millennium will have much more time than the proposed 10 days that DOS would have to address new technical issues raised by Millennium. DOS has not seen and cannot anticipate all routing issues Millennium may raise on each of the alternate routes. Therefore, DOS will need more than the 10 days to provide an adequate response. We propose at least 35 days following Millennium's brief.

Thank you for the opportunity to provide our comments on the proposed briefing schedule, and thank you for your consideration.

Sincerely,

Glen Bruening

Glen Bruening
General Counsel

GB/dw
cc: Frederic Berner, Esq.