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March 14, 2002

George Stafford
New York State Department of State
Division of Coastal Resources and
Waterfront Revitalization
41 State Street
Albany, New York 12231-0001

RECEIVED
MAR 15 2002
OFFICE OF COUNSEL
DEPARTMENT OF STATE

Re: Millennium Pipeline Company, L.P.
F-2001-0246 (formerly F-98-0173)

Dear George:

On behalf of Millennium Pipeline Company, L.P. ("Millennium"), we are responding to the February 19, 2002 letter (hereinafter the "K&E Letter") that was submitted to Mr. Steven C. Resler of the Department of State ("DOS") by the law firm of Kirkland & Ellis. Kirkland and Ellis, as you are aware, has been retained by the Village of Croton-on-Hudson to oppose the Millennium Pipeline Project in various agency proceedings. For the reasons set forth below, there is utterly no basis for any of Kirkland & Ellis' contentions about the potential effects of any limited blasting that may be required to construct the Millennium pipeline near the eastern shore of the Hudson River.

Initially, Kirkland & Ellis' assertion that Millennium has tried to conceal the potential need for a limited amount of blasting in the Hudson River is plainly untrue. Indeed, Kirkland & Ellis concedes in its letter that Millennium disclosed the potential need for blasting in the Hudson River "nearly four years ago" at the very beginning of the regulatory review process

and reconfirmed the potential need for blasting near the eastern shore of the river in an October 2001 submission to the U.S. Army Corps of Engineers (K&E Letter at 2). Millennium, nevertheless, 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 the DOS, regrets that oversight, and renews its commitment to provide the DOS with full and complete information on all aspects of the Millennium Project that are subject to review by the DOS.¹

Kirkland & Ellis also tries in vain (K&E Letter at 5) to contest Millennium's representations that the FERC has confirmed the consistency of the Millennium Project with the New York Coastal Management Program ("CMP") in several important respects. However, Kirkland & Ellis does not and could not deny that the FERC's December 19, 2001 order approving the Millennium Project addressed the key CMP issue of the public need for the Project, concluding that "the benefits of Millennium's proposed project are clear and significant." *Millennium Pipeline Co.*, 97 FERC ¶ 61,292 at 62,321 (2001). Moreover, Kirkland & Ellis' contention (K&E Letter at 5) that the FERC's Final Environmental Impact Statement ("FEIS") "fails to apply or otherwise make any reference" to CMP Policy 7 (the "significant habitat" criteria) is patently false. As the FEIS plainly and unmistakably concludes: "Consistency with Policy 7 is summarized below and discussed in greater detail in appendix J and the EFH Assessment and BA issued January 2001." FEIS at 5-132; see also FEIS at 5-70.

Millennium recognizes that the DOS must ultimately decide the consistency of the Millennium Project with the CMP policies, but the FERC's consistency determinations should obviously be accorded significant weight given that the FERC is the federal agency charged with the duty to determine the need for an interstate gas pipeline and the lead agency under NEPA for the purpose of evaluating the environmental impacts of the proposed project. Deference to the FERC's findings in this instance is particularly appropriate given the DOS's insistence that the FERC provide its analysis of the Project's consistency with CMP policies in the FEIS (See DOS letter to FERC dated October 21, 1999).

Kirkland & Ellis' further allegation that Millennium has understated the effects of any blasting that could be required reflects a profound misunderstanding of the pipeline construction method that Millennium has proposed. Kirkland & Ellis hypothesizes that lay barges would be used to store excavated material but might be unable to access the shallow

¹ Millennium's willingness to submit further information is subject to its reservation of rights concerning the timing of DOS review as is set forth in prior correspondence and submissions concerning the Millennium Project.

water area near the eastern shoreline, particularly during low tide, thus requiring Millennium to sidecast the excavated material on the riverbed. K&E Letter at 6. In fact, however, Millennium has not proposed to store excavated material on lay barges, which are, as you know, used to lay the pipeline. Instead, Millennium proposes to store the excavated material in separate shallow water storage barges, which will be positioned in the already excavated trench, thus ensuring adequate draft depth. In the event that there is any excavated material that cannot be stored in the shallow water barges, that material will be stored on the shore. In short, no excavated material will be sidecast on the riverbed, contrary to Kirkland & Ellis' conjecture.

In further support of its contention that the effects of blasting have been understated, Kirkland & Ellis claims that Millennium's estimate that blasting may be limited to less than 200 feet was "arbitrary" and surmises that "other buried outcroppings could be encountered." K&E Letter at 7. But Millennium's estimate of the area potentially impacted by blasting is clearly reasonable, based upon the data that has been obtained and submitted to the DOS. In fact, only one of the borings in the Hudson revealed any rock within the depth profile to be excavated. All of the other borings revealed significant sediment depth below the elevation of the proposed excavation refuting Kirkland and Ellis' speculation. In any event, the effects of any blasting would be very limited: Only 0.002% of the designated significant habitat and 0.0008% of the contiguous functional habitat would potentially be affected. A maximum of 260 cubic yards of rock -- just 20% of the total trench volume in this area -- may need to be blasted.

Kirkland & Ellis' claims that blasting would adversely affect aquatic plants, invertebrates, and fish (K&E Letter at 7-10) are premised on selective quotations from the Keevin & Hempen report that describe the potential worst-case effects of uncontrolled, unmitigated underwater blasting. In fact, no aquatic plants are located in the vicinity of the crossing as Millennium's underwater survey confirmed. See Millennium's March 2001 Coastal Zone Consistency Determination, Attachment A-3, Table 3, (confirming that no vegetation was observed in the area). As for potential effects of blasting on invertebrates, Kirkland & Ellis once again demonstrates a misunderstanding of the proposed plan and mitigation concepts. Because the sediments overlying the rock in the potential blast area will be removed first, the bottom area in the immediate vicinity of the blasting will be rendered unsuitable for invertebrates before blasting takes place. This change in habitat conditions would minimize the abundance of invertebrates in the area affected by the blast. Following backfilling of the trench with the excavated rock and the original overlying sediment, the benthic habitat would be rapidly recolonized from the nearby unaffected benthic community. These concepts were discussed at length in Millennium's March

Other technical aspects of Millennium's proposal are worth mentioning, which further underscore Kirkland & Ellis' misunderstanding of Millennium's proposal and misuse of the Keevin and Hempen Report. Blasting would take place in shallow water which minimizes the volume of water potentially affected by the blast, thereby minimizing the numbers of fish which could occupy the area in the vicinity of the blast. The older and larger individuals of many fish species, including the shortnose and Atlantic sturgeon, shad, and striped bass, do not occur in substantial numbers in the shallow, near-shore zone of Haverstraw Bay, which tends to isolate them from blast effects. Moreover, as Keevin and Hempen show in their review of techniques to mitigate the effects of underwater blasting, an air bubble curtain can be very effective in shallow water for minimizing pressure wave effects on fish, with the pressure wave attenuated by over 90% and fish mortality reduced to zero. See Keevin & Hempen Report, Table 8.6 and accompanying text (confirming the efficacy of a bubble curtain at shallow depths: "Mortality fell from 100%, without the bubble curtain, to 0% with the bubble curtain in operation, at all distances tested"). This is to be expected because there is a relatively small volume of water to be enclosed by the air curtain. The near-shore location of the blast does not expose the air bubble curtain to the strong currents of deep, swift water, which has minimized the effectiveness of this mitigation technique in some applications. Since Millennium has proposed to use an air bubble curtain and the area where blasting may be required is shallow, Kirkland and Ellis' concerns, which are based upon impact associated with blasting that is conducted without mitigation, is simply misplaced.

Also, as discussed above, the area of the trench in which blasting may be needed is an extremely small portion of the available habitat in Haverstraw Bay and the adjacent similar habitat. Because the habitat of this area will be temporarily disturbed in preparation for the blast, the density of fish and crabs in the area will be very low. Since blue crabs prefer soft bottom habitat, it is unlikely that they will be attracted to the rocky bottom that will be exposed after the sediment is removed from the area prepared for the blast. The air bubble curtain may also serve to exclude fish and crabs from the area, and the pre-blast sonic surveys will ensure that no concentrations of fish are present at the time of the blast. These conditions and precautions will ensure that only an extremely small portion of any aquatic life population could be potentially impacted by the blast. As such, there is no conceivable way a single, shallow water blast could impact a significant portion of any of these populations. As with the excavation for the pipeline, the blasting effects on aquatic life and habitat will be small and temporary.

Kirkland & Ellis also claim that fish will be attracted to the blast area, thereby increasing adverse impacts from the blast. K&E Letter at 9. While it is true that fish have been attracted to the periphery of dredging operations to take advantage of food dislodged by the dredge, Kirkland & Ellis fail to apply this information to the proposed blast in a meaningful way. As stated clearly in the information provided in previous correspondence to the DOS and the DEC, the soft sediments overlying the rock will be removed first. This will be followed by a period of time to drill the blast holes and prepare for the blast. The turbidity from excavating the soft sediments, which is the mechanism which can attract fish to the area, will have dissipated long before the blast occurs. To the extent that any fish remain on the periphery of the blast area just prior to the blast, they would be isolated from the blast effects by the air bubble curtain.

Lastly, Kirkland & Ellis state that attempts to scare fish from a blast area have been unsuccessful and may cause fish mortality. This is true for the use of small explosive charges to scare fish, but Millennium will not use explosive charges to scare fish. Rather, Millennium will employ electronic noise generating devices to scare fish, if needed. Noise devices have been used extensively in attempts to control fish behavior with varied success, but they do not cause fish mortality.

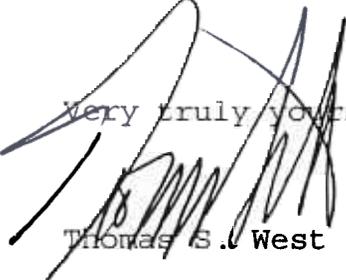
The rest of Kirkland & Ellis' arguments merit only a summary response. Because Millennium has previously explained in great detail why the Millennium Project is consistent with all applicable CMP policies, we see no need at this point to respond to Kirkland & Ellis' contrary, conclusory opinion. Similarly, Kirkland & Ellis' professed concerns that the September 1 - November 15 window for the river crossing provides insufficient time for rock removal and the development of a blasting plan have no foundation since Millennium's 10-week construction schedule includes the time required for any necessary rock removal activities, and a detailed blasting plan will be reviewed and approved by the federal and state agencies before construction commences.

On the other hand, Millennium cannot leave unchallenged Kirkland & Ellis' last assertion that the Millennium Project is not a "major energy facility" that is entitled to "priority consideration" under CMP Policy 27. K&E Letter at 15-16. To the contrary, the Coastal Zone Management Act ("CZMA") defines "energy facilities" to include facilities which will be used primarily for the "transportation" of "natural gas" (16 U.S.C. Section 1453(6)) and mandates that "priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities relating to...energy..." (Section 1452(2)(D)). Policy 27 of the New York CMP implements this statutory requirement, requiring decisions on the siting of major energy facilities to be based upon "public energy need, compatibility of such facilities with the environment, and the facility's need for

a shorefront location." The FERC, carrying out its Congressionally-mandated duties to review and route proposed interstate pipelines in the national interest, has concluded that the Millennium Project is needed by New York State and the Northeast, is compatible with the environment, and must be routed through New York's coastal zone across the Hudson River at Haverstraw Bay. In short, the FERC has concluded that each of the three requirements of CMP Policy 27 has been fully satisfied, and the Millennium Project is, therefore, entitled to priority consideration under the CZMA.

Finally, we want to briefly respond to your letter of March 1, 2002, wherein you indicate that DOS decision making may await the submission of a blasting plan. Simply put, there is no reason to hold off DOS decision making for a blasting plan. All of the salient mitigation measures to ensure that the impacts from any blasting that may be required are reduced to acceptable levels are set forth in our correspondence to the DOS, the DEC, and the Corps of Engineers concerning this issue. All of those commitments will be incorporated into the blasting plan when it is prepared and submitted for review. Accordingly, there is no need to withhold decision making for a blasting plan.

On the basis of the foregoing and all of the information that has been submitted to the DOS concerning this Project since November of 1998, Millennium respectfully requests that the DOS promptly complete its review of the Millennium Project and conclude that the Project is consistent with all applicable CMP policies.

Very truly yours

Thomas S. West

tsw/pmo 74908

cc: Millennium Pipeline Company, L.P.
Frank P. Milano, First Deputy Secretary of State
James King, Esq.
William Sharp, Esq., w/enc.