



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

OCT 4 2002

Mark P. McIntyre  
Assistant Corporation Counsel  
The City of New York  
100 Church Street  
New York, NY 10007

Re: New York City's Request for *Amicus* Status in the CZMA Consistency Appeal  
of Millennium Pipeline Company, L.P.

Dear Mr. McIntyre:

This responds to your letter dated September 20, 2002, requesting that the City of New York (the City) be granted *amicus* status in the above-captioned proceeding. The parties, Millennium Pipeline Company, L.P., (Millennium) and the State of New York (State) were provided an opportunity to comment on your request. Millennium submitted a written response opposing the City's request. The State of New York responded in support of the City's position.

The City seeks *amicus* status to explain its unique water supply system and the threat posed by Millennium's proposed pipeline. Millennium asserts that the City has no legally cognizable interest in this proceeding because the proposed pipeline crossing of the Catskill Aqueduct is situated outside the State's coastal zone boundaries. Millennium also argues that the City may present its views and information during the public comment period and has not provided justification for a grant of *amicus* status.

The grant of *amicus* status is a wholly discretionary authority used to facilitate obtaining information for the administrative record on issues germane to an appeal.<sup>1</sup> *Amicus* status has been conferred to entities with unique access to information and an unusual or compelling perspective that warrants a distinct opportunity to contribute materials to the administrative record.<sup>2</sup>

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<sup>1</sup>See, Decision and Findings in the Consistency Appeal of Amoco Production Company from an Objection by the Division of Governmental Coordination of the State of Alaska, July 20, 1990, at ii.

<sup>2</sup>See, Letter to Neil L. Levy from James R. Walpole, dated July 17, 2002, granting *amicus* status to the Village of Croton-on-Hudson, at 3. See also, Letter to Daniel Riesel from James R. Walpole, dated August 20, 2002, granting *amicus* status to the Town of Cortlandt, at 3-4.



The City of New York's responsibilities as a municipality, which include providing its residents adequate water and ensuring public safety, give rise to a compelling perspective and interest in providing potentially unique information related to the water supply system which may be relevant to the development of the administrative record. The City also has a compelling perspective concerning the proposed aqueduct crossing due to the potential direct and widespread adverse effects on the City's residents and resources that could result if the pipeline damaged the water supply system in the vicinity of the Bryn Mawr Siphon.

Although the State has yet to file its initial brief, it appears that the relevance of issues related to the aqueduct will likely be considered by the Secretary as an issue in this appeal, if only as a threshold matter.<sup>3</sup> Consequently, at this stage in the appeal, information concerning the Catskill Aqueduct cannot be considered to be outside the scope of issues relevant to the Secretary's decision and is therefore germane to the appeal.

For these reasons, and in the interest of providing the Secretary with a thorough administrative record on which to base a decision, the City may act as a "friend of the Secretary" or *amicus* in this proceeding. The City may file a brief and supplementary data and information no later than seven days after the date the State's brief is due. By letter dated September 26, 2002, the State was granted an extension of time to file its initial brief until October 16, 2002. The City's brief is now due within seven days of that date or no later than October 23, 2002. These dates are identical to deadlines set for other *amici* in this appeal. The decision to grant *amicus* status, therefore, should not affect the timing of the Secretary's consideration of Millennium's appeal.

The City may also file comments during the public comment period which closes December 2, 2002, or at the public hearing on November 13, 2002. See, 67 *Federal Register* 57220 (September 9, 2002). Through the public comment process, entities may provide the same information as is typically submitted by an *amicus*. Equally important, information submitted as a public comment, whether in the form of a legal brief or otherwise, is given equal weight to submissions from *amici*.

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<sup>3</sup> The State, in objecting to Millennium's project as inconsistent with the New York State Coastal Management Program, cited concerns about risks to the New York City water supply and the water supply infrastructure which serves the City and other municipalities. Letter from George R. Stafford to Thomas S. West, dated May 9, 2002, at 4-6. In its initial brief, Millennium argues that the aqueduct is not a legitimate consideration in the coastal zone consistency determination and that Millennium's proposal adequately protects the aqueduct from possible adverse impacts associated with the pipeline. Millennium initial brief, dated August 12, 2002, at 83 and 92-94. The State of New York's letter concerning the New York City *amicus* request, received by this office on September 27, 2002, indicates the State's initial brief will discuss Millennium's arguments concerning the aqueduct. Letter from Glen T. Bruening to Molly G. Holt, dated September 26, 2002, at 1.

The City may seek permission to file a reply brief as an *amicus* when the time is appropriate. Since the City is not a party, the City will not participate in conferences among the parties nor be copied on future communications among the parties. Its access to the administrative record will be the same as all members of the public. This office has established an Internet site for consistency appeals, <http://www.ogc.doc.gov/czma.htm>, and will make every effort to post all of the documents entered into the record in a timely manner.

The grant of *amicus* status to the City is made without any comment or determination of the relevance of the Catskill Aqueduct and the City's water supply to the decision of the Secretary of Commerce in this appeal. Similarly, the grant of *amicus* status does not confer any particular importance or significance on any study or finding referenced in the City's letter of September 20, 2002.

If you have any questions concerning this decision or other aspects of this proceeding, please contact Karl D. Gleaves, Assistant General Counsel for Ocean Services, 301-713-2967, extension 204.

Sincerely,



James R. Walpole  
General Counsel

cc: Frederic G. Berner, Jr.  
Attorney for Millennium

Glen T. Bruening  
General Counsel  
New York Department of State

Theodore W. Kassinger  
General Counsel  
Department of Commerce