

BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, LLC
Minisink Compressor Station

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Docket No. CP11-515

**MREPS' MOTION TO SUPPLEMENT REQUEST FOR REHEARING OF ORDER
DENYING STAY REQUEST OR IN THE ALTERNATIVE, RENEWED MOTION
FOR STAY TO CONSIDER NEWLY SUBMITTED, PREVIOUSLY UNDISCLOSED
EVIDENCE**

Today, on November 30, 2012, the Minisink Residents for Environmental Preservation and Safety (MREPS), along with individual members Michael Mojica, Karen Gartenberg and Pramilla Malick filed a *Motion to Reopen the Record to Supplement With Expert Report Based on Previously Undisclosed CEII and FOIA Information and Millennium's Updated Conservation Easement Plans*. The expert report submitted by MREPS along with Millennium's recent admissions that it does not intend to create a legally enforceable conservation easement undermine many of the findings underlying the majority's decision granting a certificate for the Minisink Compressor Station in the above captioned proceeding,¹ thereby rendering the majority decision void of substantial evidence and arbitrary and capricious. Accordingly, based on this new evidence (along with the myriad of arguments already raised on rehearing), MREPS has asked the Commission to vacate the certificate.

Now, with this motion, MREPS urges the Commission to stay the proceeding to allow for time to consider the serious and highly technical issues raised in this case.

¹ *Order Issuing Certificate, Millennium Pipeline*, 140 FERC ¶61,045 (July 17, 2012).

Although MREPS' previous stay requests have not been yet successful,² the introduction of new evidence, combined with ongoing construction abuses cry out for a stay in the interest of justice, if nothing else. In support of this motion, MREPS states the following:

1. On November 30, 2012, MREPS moved to supplement the record with an expert report that evaluates previously undisclosed CEII and FOIA information. The expert report examines various complex engineering and operational issues and raises serious safety concerns not previously addressed. The expert report also calls into question whether the Minisink Compressor, as a stand-alone facility is actually capable, from an operational perspective of satisfying the stated project goals. The issues presented in the expert's report are technical and scientific in nature and deserve close review by the Commission and its engineering staff.

2. Meanwhile, Millennium continues to move forward with construction of the Minisink Compressor full speed ahead. Nearly daily filings from surrounding residences (several families with young children are directly across a narrow street from the compressor site) document the round-the-clock construction activity, persistent noise and careless work habits (including driving or walking across neighbors' Rob and Leanne Baum's lawn, causing considerable damage). Based on residents' description

² MREPS originally filed for a stay on August 28, 2012 following Millennium's request for approval to commence construction. On September 18, 2012, without addressing MREPS' stay request, the Commission's Office of Energy Projects gave Millennium the go-ahead to proceed. On September 25, 2012, just as Millennium began breaking ground, MREPS filed a renewed stay request. Subsequently, on October 4 2012, with construction moving at a rapid pace and no ruling from the Commission, MREPS filed a petition for stay at the D.C. Circuit under the All Writs Act. On October 9, 2012, the day that the Commission's response to MREPS was due at the D.C. Circuit, the Commission denied MREPS' stay request finding that MREPS failed to show irreparable harm. On November 8, 2012, MREPS filed a request for rehearing, which is currently pending. The pending rehearing request does not preclude MREPS from filing an additional motion for stay based on new information, since each motion represents an independent action.

of Millennium's frenzied activity at the site, it appears that Millennium is determined to complete the compressor station and commence service before the Commission can rule on rehearing in an effort to moot or undermine the MREPS' challenges on appeal.³

3. The rapid construction pace has caused serious hardship for residents. Unfortunately, the current procedural posture of the case precludes residents from obtaining the same level of relief accorded to other similarly situated landowners.

For example, on November 15, 2012, a group of Minisink residents traveled to Washington D.C. to attend the Commission's monthly meeting. A few days prior to the six-hour journey, counsel attempted to arrange face-to-face meetings for impacted residents to discuss the ongoing problems caused by Millennium's construction. The Office of Dispute Resolution declined to assist, explaining that the matter was pending rehearing and suggested that the Office of Energy Projects as a more appropriate forum. Meanwhile, the Office of Energy Projects likewise refused to meet, citing *ex parte* concerns. Thus, because of the current procedural posture of the case – rehearing languishing but construction blazing ahead – residents impacted by this aggressive construction cannot obtain relief.

4. MREPS welcomes the Commission's close consideration of the arguments raised on rehearing. Likewise, MREPS hopes that the Commission will duly evaluate

³ There is a line of cases that suggest that issues on appeal are moot where the challenged action is completed by the time the appeal is heard, and the costs associated with relief are high. See, e.g., *Weeks Woodlands Association v. Dormitory Authority of the State of New York*, 95 A.D. 3d 747 (1st Dept. 2012)(finding appeal moot where petitioners did not seek stay and where cost of removal is high); *Weiss v. Department of Interior*, Docket No. 10-1313 (W.D. Mich. 2012)(rejecting appeal as moot where challenged golf course has been completed). Though MREPS contends that these cases are distinguishable, there is very real concern that the Commission's delay in resolving MREPS' claims may deprive it of relief even if it prevails on appeal.

the complex technical issues raised in the expert report. However, as the Commission deliberates, MREPS and its members should not be forced to shoulder the burden of continuing construction and the risk of losing the ability to seek relief on appeal.

5. A stay solves all of the concerns just described. Once a stay issues and construction halts, the Commission will not have to deal with the *ex parte* problems that staff has invoked in declining to meet face-to-face with aggrieved residents. Likewise, if construction ceases even at this late juncture, the Commission can still easily order Millennium to remove the compressor station and remediate the site if MREPS prevails on appeal (though sadly, the loss of trees are irreparable and new plantings will take years to regenerate). By contrast, if Millennium continues to move forward and complete the compressor station and put it into service, the reality is that the Commission, despite its best intentions,⁴ will face multiple challenges in terminating service and forcing MREPS to remove a fully operational unit.

6. MREPS faces irreparable harm by the ongoing construction, particularly in light of the just-filed expert report and ongoing construction abuses. MREPS will lose its due process rights to challenge the Commission decision if construction and/or completion of the project renders the appeal moot, while neighbors will continue to suffer trespass, nuisance and loss of constitutionally-protected property rights each day that this contested project moves forward.

7. A stay is in the interest of justice and vital to preserve the integrity of the Commission's process. In denying MREPS' stay, the Commission focused on the primacy of ensuring the finality of its orders, which MREPS agrees is necessary to

⁴ In the October 9, 2012 order denying stay, the Commission assured MREPS that it has full authority to terminate service and order Millennium to remove the compressor station in the event that a court so orders. MREPS intends to hold the Commission to its word. *See Order Denying Stay*, 140 FERC ¶61,045 at para. 17.

afford certainty and avoid undue delay. But the integrity of the Commission's process deserves equal consideration. As the Commission will soon discover, the expert report upsets every assumption underlying the majority's opinion this case. Had MREPS been able to access CEII data and retain an expert earlier in the process instead of after the certificate had issued, we are confident that the Commission would never have approved the Minisink Compressor to begin with.

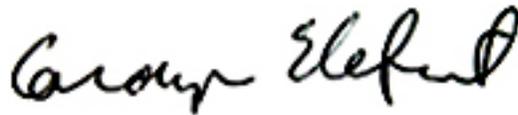
But instead, MREPS spent eight months in an effort to access the CEII and FOIA information vital to its challenges. In any type of adjudicative hearing, this type of information would have been disclosed in discovery within ten days. By contrast, Commission staff needed eight months to process MREPS member Laurie Arias' CEII request, and four months to process John Odland's request (and the disclosure came only after a letter from MREPS' counsel and two phone calls with attorneys in the Commission's CEII/FOIA office). Moreover, even though Millennium permitted counsel to access the CEII information upon execution of an NDA, she was barred from sharing it with her clients (even if they executed an NDA), thus forcing another round of CEII requests. These requests took two months to process because of a "technical glitch" that resulted in loss of the requests – which was only revealed when an MREPS member called to check the status. Meanwhile, the Commission did not issue a final response on FOIA requests filed by John Odland in March 2012 and Michael Mojica in August 2012 until November 2012.

MREPS understands that Commission must often make hard and controversial siting decisions under Section 7 of the Natural Gas Act that impact the environment, landowners and the surrounding community. Financially, these stakeholders stand at a significant disadvantage to gas companies -- a reality that the Commission cannot change nor does MREPS expect it to. But what the Commission *can* and *must* do is

uphold the integrity of its process by ensuring that at a minimum, those parties aggrieved by its decisions are not deprived of their due process rights to meaningfully participate in a Commission proceeding or to challenge an adverse result and obtain real relief. A stay will accomplish these goals and as such, is required in the interest of justice.

WHEREFORE, for the foregoing reasons, MREPS asks the Commission to GRANT this request for a stay and order Millennium to cease construction until MREPS' challenges are resolved on rehearing and, if necessary, judicial review.

Respectfully submitted,



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