

140 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Millennium Pipeline Company, L.L.C.

Docket No.CP11-515-000

ORDER ISSUING CERTIFICATE

(Issued July 17, 2012)

1. On July 14, 2011, Millennium Pipeline Company, L.L.C. (Millennium) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity authorizing it to construct and operate a new compressor station and related facilities in the Town of Minisink, Orange County, New York (Minisink Compressor Project). Millennium states that the proposed Minisink Compressor Project will enable it to transport an additional 225,000 dekatherms (Dth) per day to its interconnection with Algonquin Gas Transmission, LLC (Algonquin) at Ramapo, New York. For the reasons discussed below, the Commission will grant Millennium's requested authorization, with appropriate conditions.

I. Background and Proposal

2. Millennium is a Delaware limited liability company owned by subsidiaries of NiSource Inc., National Grid PLC, and DTE Energy Company. Millennium owns and operates a natural gas pipeline system extending across southern New York from an interconnection in the west with National Fuel Gas Supply Corporation at Independence, New York, to an interconnection in the east with Algonquin at Ramapo, New York.
3. Millennium requests authority to construct and operate a compressor station and ancillary facilities in the Town of Minisink, New York. Specifically, Millennium's proposed compressor station will consist of: (1) two 6,130-horsepower natural

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157, Subpart A (2011).

gas-fired Solar Centaur SoLoNOx compressor units (totaling 12,260 horsepower); (2) approximately 545 feet of 36-inch diameter suction pipeline and 545 feet of 36-inch diameter discharge pipeline, which will connect the proposed compressor station to the existing Millennium mainline; and (3) ancillary facilities, including a new mainline valve, access driveway, station control/auxiliary building, intake and exhaust silencers, and a filter-separator with liquids tank.³ The estimated cost of the proposed facilities is \$43,637,756.

4. Millennium states that the proposed Minisink Compressor Project will enable it to transport an additional 225,000 dekatherms (Dth) per day to Millennium's interconnection with Algonquin at Ramapo. Millennium also states that the facilities will permit it to flow gas bi-directionally between its existing compressor station at Corning, New York and the proposed Minisink Compressor Station.
5. Millennium proposes to charge as initial rates for transportation service to project shippers its existing systemwide Part 284 rates under Rate Schedules FT-1 and BH-1. Further, project shippers have agreed to negotiated rates pursuant to section 34 of the General Terms and Conditions (GT&C) of its tariff. Millennium is not proposing any tariff changes, new rate schedules, or new categories of services as part of the Minisink Compressor Project. Millennium also proposes to apply its existing systemwide fuel retainage rates to service using the expansion capacity.
6. Millennium conducted a binding open season from April 1 through April 15, 2011.⁴ The open season notice explained that Millennium had entered into precedent agreements with two anchor shippers⁵ and solicited requests for additional firm service on a non-discriminatory basis. Millennium's open-season notice allowed the shippers to elect service at tariff recourse rates or to propose a fixed negotiated rate. As a result of the open season, Millennium received an additional bid for expansion service from a non-anchor shipper. Millennium states the project is fully subscribed under firm agreements with primary terms of 10 years, at negotiated rates, with the two anchor shippers and one additional shipper.

³ The project, including all appurtenant facilities, will be located on land to be owned in fee by Millennium.

⁴ Millennium's open season notice solicited turn-back capacity for this expansion project consistent with Commission policy. *See Pine Prairie Energy Center, LLC*, 135 FERC ¶ 61,168, at P 36, *order on reh'g and compliance*, 137 FERC ¶ 61,060, at P 33 (2011).

⁵ Millennium's open-season notice provided that if a shipper subscribed to stated levels of capacity for a 10 year term, that shipper would qualify as an anchor shipper and would have the right to extend its contract and a contractual right of first refusal.

II. Notice, Interventions, and Comments

7. Notice of Millennium's application was published in the *Federal Register* on August 3, 2011 (76 Fed. Reg. 46,786). The parties listed in Appendix A filed timely, unopposed motions to intervene.⁶ The New York State Public Service Commission filed a timely notice of intervention. We also received numerous comments about the Minisink Compressor Project. The issues raised in these comments will be discussed below.
8. The parties listed in Appendix B filed late motions to intervene. These movants have demonstrated an interest in this proceeding. The untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the untimely motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.⁷

III. Discussion

9. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁸

A. Application of the Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.⁹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2011).

⁷ 18 C.F.R. § 385.214(d) (2011).

⁸ 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for an applicant proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.
12. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Millennium proposes to utilize its existing system rates under Rate Schedules FT-1 and BH-1 as the initial recourse rates for firm transportation service on the expansion. Since none of the costs of the project are in Millennium's currently-effective rates and because project revenues would exceed project costs, Millennium's proposal to charge its existing Part 284 rates will not result in subsidization by any existing customers and is consistent with the Policy Statement's threshold requirement.
13. We also find that the proposal will not degrade service to Millennium's existing customers. The project will allow bi-directional flow from the proposed Minisink Compressor Station to Millennium's existing Corning Compressor Station, while allowing Millennium to continue to meet its existing firm obligations. Further, the project creates capacity for the transportation of market area production and will make additional supply options available for shippers connected to Millennium's system. In addition, no pipeline company has protested Millennium's application. Thus, we find the proposed project will not result in any adverse impact on Millennium's existing customers, or on other existing pipelines or their captive customers.
14. As discussed in greater detail below, and in the EA, the proposed project will only disturb 10.6 acres of land on a 73.4-acre parcel of rural property that Millennium will acquire in fee from a local landowner. Millennium will be able to acquire all the property necessary for its project through negotiation from a willing seller; accordingly, for purposes of our consideration under the Certificate Policy

Statement, Millennium has taken steps to minimize any adverse impacts on landowners and surrounding communities.¹⁰

15. The proposed Minisink Compressor Project will increase the capacity of Millennium's system to its interconnection with Algonquin at Ramapo, New York, and allow Millennium to flow gas bi-directionally between the Corning and the Minisink Compressor Stations. All of the proposed capacity has been subscribed under long-term contracts, demonstrating the existence of a market for the project.¹¹ Based on the benefits the project will provide and the minimal adverse effect on existing shippers, other pipelines and their captive customers, landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public convenience and necessity requires approval of Millennium's proposal, as conditioned in this order.

B. Initial Recourse Rates

16. Millennium charges systemwide postage stamp transportation rates.¹² Millennium proposes to use its currently-effective firm and backhaul transportation monthly reservation rate of \$19.769 per Dth under Rate Schedules FT-1 and BH-1 as its

initial maximum recourse rates for service using the expansion capacity.¹³ (The rates under Rate Schedules FT-1 and BH-1 are the same.) Millennium estimates that the estimated project revenues will exceed project costs by approximately \$16 million per year.

¹⁰ Concerns raised by commentors regarding the potential impact of the project on property values are addressed below in the environmental section of the order.

¹¹ *Compare Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233 at P 33 (2011) (finding that applicant had not sufficiently demonstrated need for its particular project where the applicant did not conduct an open season or submit precedent or service agreements for the project's capacity, and provided only vague and generalized evidence of need for natural gas at the regional and national level; the Commission held that "vague assertions of public benefits are not sufficient to establish need for a particular project, especially in the face of identified adverse impacts" (citations omitted).

¹² See Currently Effective Rates, Section 1. FT-1 Rates, 2.0.0; and Currently Effective Rates, Section 3. BH-1 Rates, 2.0.0 to Millennium Tariffs, FERC NGA Gas Tariff.

¹³ Millennium indicates the three project shippers have elected to pay negotiated rates for service.

17. Millennium states that the Minisink Compressor Station will be an integrated part of its pipeline system. Millennium notes that under section 32 of the GT&C of its tariff, Millennium recovers compressor fuel, other company use gas, and lost and unaccounted for gas through a Retainage Adjustment Mechanism (RAM).¹⁴ Millennium states that it will include the fuel used to run the Minisink Compressor Station in the annual calculation of its RAM. Millennium anticipates that the additional gas to be transported by its project shippers will result in an overall reduction in the fuel rate associated with system compression.¹⁵
18. We will approve Millennium's proposal to use the existing maximum monthly reservation rates of \$19.769 per Dth under its existing Part 284 Rate Schedules FT-1 and BH-1 and its currently-effective systemwide forward and backhaul fuel retainage rates as initial recourse rates for the services using the expansion capacity. When Millennium files a future NGA section 4 rate proceeding to recover the costs associated with its project, the project costs will be compared to the revenues that would have been generated if Millennium were charging the maximum recourse rate for all services under contract, regardless of whether the contracted rate is less than or greater than the recourse rate. As discussed above, the anticipated revenues from the project would exceed the project cost of service. Thus, we find that it will be appropriate for Millennium to roll the costs of the Minisink Compressor Project into its system rates in its next section 4 rate case, absent a significant change in circumstances.
19. Millennium proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$2,447,416, as part of its Minisink Compressor Project.¹⁶ However, Millennium overstated the amount of AFUDC that it included in the estimated cost of the project because it took a full month's AFUDC on current month construction expenditures after the first month.¹⁷ Only one-half month's AFUDC should be accrued on current month's construction expenditures to reflect the fact that, on average, these expenditures are outstanding for only half the month, since current month construction expenditures occur throughout the month.¹⁸ In order to assure that its construction cost is not overstated, we will require Millennium to revise its procedures for calculating AFUDC to reflect that, on average, these expenditures are outstanding for only half the month.

¹⁴ See General Terms and Conditions, Section 32. Retainage, 0.0.0 to Millennium Tariffs, FERC NGA Gas Tariff.

¹⁵ See Millennium's September 30, 2011 Data Response.

¹⁶ See Exhibit K and Millennium's September 19, 2011 Data Response.

¹⁷ See Millennium's September 19, 2011 Responses to Data Request.

¹⁸ *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205, at 61,725 (2002).

C. Negotiated Rates

20. As indicated above, Millennium has entered into agreements with the project shippers to provide firm transportation service at negotiated rates. In certificate proceedings, the Commission establishes initial recourse rates, but does not make determinations regarding specific negotiated rates for proposed services.¹⁹ In accordance with the Alternative Rate Policy Statement²⁰ and the Commission's negotiated rate policies,²¹ Millennium must file any negotiated rate agreements or a tariff record describing the essential elements of the negotiated rate agreement associated with the project. Millennium shall file its negotiated rate agreement or a tariff record no less than 30 days, and not more than 60 days, prior to the commencement of service.

D. Environmental Analysis

21. On August 17, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners; environmental and public interest groups; newspapers and libraries in the project area; and parties to this proceeding. Staff participated in an open-house meeting sponsored by Millennium at the Minisink Town Hall in Westtown, New York, on August 23, 2011, to explain our environmental review process to interested stakeholders. On September 6, 2011, the Commission staff hosted a scoping meeting at the Town Hall, at which approximately 210 people were present.
22. On October 14, 2011, staff re-issued the NOI in response to Millennium's filing an updated list of affected landowners and corrected addresses. Staff issued a supplemental NOI on December 22, 2011, to solicit environmental comments on the Wagoner Alternative, an alternative to the project certain landowners suggested

¹⁹ *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 97 (2008); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at P 38 n.19 (2002).

²⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, reh'g denied, 75 FERC ¶ 61,024 (1996).

²¹ See, e.g., *Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220 (2010).

during the scoping period. The Wagoner Alternative would involve the construction of a smaller 5,100-horsepower compressor station at a site adjacent to the existing Wagoner Meter Station facility²² and the replacement of a 7.5-mile-long segment of Millennium's existing 24-inch diameter pipeline, known as the Neversink Segment,²³ both in Orange County, New York. The supplemental NOI was sent to the affected landowners along the alternative pipeline route.

23. The Commission received over 600 verbal and written comments in response to the NOIs and during the public scoping meeting from the Town of Minisink Planning Board, various non-governmental groups, and residents in Minisink and surrounding towns. The primary issues raised during public scoping included potential impacts on air quality and noise (including blowdowns), potential health impacts, safety, potential impacts on visual resources, and property values. Commentors also recommended alternative sites for the Minisink Compressor Station and maintained the Commission was required to analyze cumulative impacts from planned natural gas production and transmission projects in the area. The environmental assessment's treatment of the comments is summarized below.
24. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an environmental assessment (EA) for the Minisink Compressor Project. The analysis in the EA addressed geology, soils, water resources, wetlands, vegetation, wildlife, federally listed species, cultural resources, land use, recreation, visual resources, socioeconomics, air quality and noise, safety, cumulative impacts, alternatives, and all substantive scoping comments.
25. Numerous scoping comments concerned other projects in the area and how they would relate to Millennium's plans for other system modifications. The EA disclosed what was known about Millennium's plans, including possible construction of a new compressor station upstream of the proposed Minisink Compressor Station and possible interconnections with the proposed Wawayanda Power Plant and Iroquois Gas Transmission Company's (Iroquois) contemplated

²² Columbia Gas Transmission Corp. (Columbia) operated a temporary compressor station adjacent to the Wagoner Meter Station between November 2008 and June 2011.

²³ Millennium's system includes 250 miles of 30-inch diameter pipe constructed in 2007, and the Neversink Segment, which crosses the Neversink River and was constructed by Columbia in 1987. *See Columbia Gas Transmission Corp.*, 37 FERC ¶ 61,228 (1986). In 2006, the Commission authorized Millennium to acquire and operate the Neversink Segment rather than constructing a new 30-inch diameter pipeline segment. *Millennium Pipeline Co., L.L.C.*, 117 FERC ¶ 61,319, at P 242 (2006).

NY Marc Project.²⁴ While the EA briefly discussed these potential projects, staff had no means to assess additional impacts from these projects in the EA. The EA recognizes that Millennium has acknowledged the need for a second compressor station, which Millennium indicates it anticipates placing in-service in November 2013.²⁵ The EA notes that, if and when applications for these or other projects are filed, the Commission will review the impacts of the projects on their own merits.

26. Numerous comments received during scoping also requested that the Commission evaluate alternatives to the proposed action, and identified a preference for a specific alternative (identified in the EA as the Wagoner Alternative) to the Minisink Compressor Station. The EA evaluated several system and aboveground site alternatives, and thoroughly compared the Wagoner Alternative to Millennium's proposed Minisink Compressor Station.²⁶
27. Under the Wagoner Alternative, Millennium would construct a smaller compressor station adjacent to its existing Wagoner Meter Station and replace the Neversink Segment of pipeline located west of the proposed Minisink Compressor Station site. The EA identified that the Wagoner Alternative would impact more than ten times more land (112.4 acres) than construction of the Minisink Compressor Station (10.6 acres). The bulk of the land use impacts associated with the Wagoner Alternative would be in forest and agricultural lands and along utility corridors. While the Wagoner Alternative would generally be able to follow the existing right-of-way, Millennium would still need to clear approximately 47.61 acres of trees²⁷ and use approximately 22 acres of cleared agricultural land for its construction, compared to impacting 0.4 and 9.8 acres of forested and agricultural land, respectively, for construction of the proposed Minisink Compressor Station. As described in the EA, the Wagoner Alternative would

²⁴ Iroquois held an open season to determine interest in the NY Marc Project, but to date has not made any filings with the Commission.

²⁵ On April 20, 2012, Millennium filed a request to begin the pre-filing process for its planned second compressor station, designated as the Hancock Compressor Project. Millennium states it anticipates filing an application for the project in the fall of 2012. On May 1, 2012, the Director of the Office of Energy Projects (OEP) accepted the request in PF12-10 to begin pre-filing.

²⁶ EA at 40-54.

²⁷ EA at 51 (Table 13). MREPS and several residents, including Karen Gartenberg and Michael Mojica, filed comments questioning the accuracy of this number in the EA. We clarify that the 47.61 acres of trees includes the tree clearing for the nominal construction right-of-way width together with tree clearing that would be necessary for the additional temporary workspaces, such as staging areas and waterbody and utility crossings.

directly impact 58 properties with residences (as opposed to none for the proposed compressor station), and the Neversink Segment replacement pipeline would cross eleven wetlands and twelve waterbodies. Additionally, the Wagoner Alternative has the potential to impact five special status species, as opposed to one for the proposed project. The EA also identifies and compares the temporary construction and permanent operation impacts associated with the Wagoner Alternative with those of the proposed project. Ultimately, the EA concludes that although there are certain advantages to the Wagoner Alternative (primarily, its greater distance from the nearest noise-sensitive areas and the lack of residences within 0.5 mile of the compressor site), the greater environmental issues and landowner impacts of replacing the Neversink Segment outweigh those advantages, and as a whole result in the Wagoner Alternative not providing a significant environmental advantage over the proposed project.²⁸ The Commission concurs with this assessment.²⁹

28. On March 2, 2012, the EA was issued for a 30-day comment period and placed into the public record of this proceeding.³⁰ The EA concluded that the construction and operation of the proposed Minisink Compressor Station would result in limited impacts on the air quality, noise quality, safety, visual resources, and property values. The EA appropriately considers and discloses the environmental impacts of the project, and supports a finding of no significant impact. Therefore an environmental impact statement (EIS) is not required for this project.³¹
29. The Commission received over 130 comments on the EA from local residents in Minisink and the surrounding towns, the Minisink Residents for Environmental

²⁸ The advantages of the Wagoner Alternative identified in the EA lie solely in the construction of compression at the Wagoner site, which is further from noise sensitive areas and residences than the Minisink site. However, as the EA explains, a new compressor at that site would not meet the project objective, requiring replacement of the Neversink Segment. EA at 52.

²⁹ In addition, we note that Millennium has demonstrated market need for this particular project. *See supra* P 15. *Compare Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233 at P 33 (2011) (rejecting a proposed gas storage project where the project would directly impact significant property rights of existing landowners, and where the applicant had not demonstrated market need for its particular project).

³⁰ A notice announcing the availability of the EA was published in the *Federal Register* on March 8, 2012 (77 Fed. Reg. 14,010).

³¹ The CEQ regulations state, where an EA concludes in a finding of no significant impact, an agency may proceed without preparing an EIS. *See* 40 C.F.R. §§ 1501.4(e), 1508.13 (2011).

Preservation and Safety (MREPS), Representative Nan Hayworth, the Town of Minisink, the Orange County Department of Planning (OCDP), the U.S. Environmental Protection Agency (EPA), Millennium, and other interested parties. Many of the comments on the EA revisited matters previously raised in scoping comments that were fully addressed in the EA. Substantive comments received in response to the EA which raised issues not addressed in the EA are addressed in this order.

30. Numerous landowners filed comments about the potential negative visual impact of the proposed compressor station on nearby residences along Jacobs Road. On October 5, 2011, Millennium filed a visual simulation³² which we believe provides a reasonable representation of the visual impact of the compressor station from specific vantage points during times of the year when tree foliage is most abundant. In addition, prior to issuance of the EA, Commission staff made several independent visits to the project area to assess visual impacts. The EA concludes that vegetative screening proposed in the landscaping plan filed by Millennium would, over time, minimize the visual impacts of the project. However, to ensure that Millennium's landscaping plan considered the surrounding community's concerns, Environmental Condition 14 of the EA required Millennium specifically to take comments made by the Town of Minisink into consideration in developing the final landscaping plan.
31. On May 18, 2012, Millennium filed the Town of Minisink's comments on its building design and landscaping plans. While the Town is generally satisfied with Millennium's landscaping plan, the OCDP and the EPA recommend that Millennium rework its plan to define a natural looking mock-up of a hedge row and to include trees native to the project area, including the white pine (*Pinus strobus*), red pine (*Pinus resinosa*), and red spruce (*Picea rubens*). We agree with the EPA's recommendation and have modified Environmental Condition 14 to address this concern. The EPA also recommends that Millennium provide the Commission with an invasive species management plan for the entire compressor station site. In accordance with our *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan), Millennium is required to consult the appropriate agencies during its preconstruction planning to prevent the introduction and spread of noxious weeds. We believe this requirement addresses the EPA's invasive species concern. Millennium will address this issue in its implementation plan required by Environmental Condition 6.
32. The Town stated that Millennium's proposed exterior design and color for the buildings are acceptable, but requested that the Commission prohibit Millennium

³² The simulation is available in the Commission's eLibrary under Accession # 20111005-5081.

from building any permanent aboveground structures outside of the boundaries described in the letter. Millennium's May 18, 2012 filing also indicated that the Minisink town officials requested that the Commission prohibit Millennium from selling off any of the property. Regarding the Town's request for a prohibition against new aboveground structures and the future sale of property, we do not find it appropriate to impose such prohibitions in this order. The Commission already has in place regulations governing the construction and/or disposition of jurisdictional facilities. Any future actions of Millennium will have to be in compliance with these regulations and the Town of Minisink will have the opportunity to participate in any proceedings filed with the Commission. Moreover, to the extent Millennium proposes to construct non-jurisdictional structures requiring the issuance of Town building or other permits, the Town would have an opportunity to review such proposals at that time.

33. While Millennium's May 18, 2012 filing indicates that the Town of Minisink is satisfied with Millennium's design for the compressor station buildings, the OCDP filed comments and detailed recommendations regarding the building design. Based on the OCDP's recommendations and the numerous comments we received regarding the siting a new industrial facility in a rural residential community, we agree that Millennium should modify its facility design as practicable to help preserve the rural residential agricultural landscape. Therefore, we have modified Environmental Condition 13 to require Millennium to provide a revised design plan that better addresses the aesthetic concerns raised by the commentors.
34. The OCDP recommends that the Commission require Millennium to finalize plans to reserve 42.5 acres of the project site as a conservation easement. As discussed in the EA, Millennium stated that it would consider such an easement. In general, the Commission believes it is appropriate for applicants to purchase additional land surrounding compressor stations to serve as a buffer between residences and such stations. In its May 3, 2012 comments on the EA, Millennium states that pursuant to input from Minisink town officials, including the Minisink Planning Board, the town did not want the excess acreage to be subjected to a conservation easement because such easements would reduce the tax value and tax revenue of the property. However, we believe that such a conservation easement would provide important environmental benefits, such as preserving existing vegetation and maintaining a sufficient buffer for noise and visual impacts. For these reasons, we have added Environmental Condition 18 to require Millennium to provide the Commission with information on its efforts to develop a conservation easement for the unused portion of its property.
35. Ms. Preuss contends that increased gas deliveries from the proposed Minisink Compressor Station will increase safety risks at the Ramapo Station, which she

states lacks adequate emergency access in the Town of Ramapo. We note that Millennium must operate the Ramapo and Minisink Compressor Stations in accordance with PHMSA's safety regulations, which include emergency response plans and measures. Millennium's proposed deliveries at the Ramapo and Minisink Compressor Stations are within the maximum allowable operating pressures of its pipeline system. Thus, we conclude that the safety of the Ramapo Station will not be adversely affected by operation of the Minisink Compressor Station.

36. The OCDP comments that Millennium should monitor water wells within a minimum of 2,500 feet of the proposed facility and should periodically test residents' wells to ensure no contamination occurs in the event of a hazardous material spill. As stated in the EA, Millennium will implement its Spill Prevention, Control, and Countermeasure Plan (SPCC Plan), which will minimize Millennium's response time in the event of a spill. Also, under the SPCC Plan, Millennium will notify the appropriate agency contacts should a spill occur. In addition, Millennium's SPCC Plan provides that it will comply with all appropriate federal, state, and local regulations. We have determined that Millennium's SPCC plan is adequate. However, if local regulations require Millennium to test all wells within a minimum of 2,500 feet of a spill, the local government agency can enforce this regulation.
37. The OCDP recommends that Millennium's hydrostatic testing activities be included in Millennium's submittal to the New York State Department of Environmental Conservation's (NYSDEC) State Pollutant Discharge Elimination System (SPDES) General Permit. The EA describes Millennium's construction methods and protective measures, including the required National Pollution Discharge Elimination System permit, and concludes that the project will not cause significant erosion and sedimentation associated with hydrostatic test water discharges. The NYSDEC will issue the SPDES permit, which could include additional terms and conditions.
38. The OCDP questions the appropriateness of the EA's use of decibels on the A-weighted scale when considering noise effects on the Indiana bat. Although the A-weighted scale is related to noise effects on the human ear and not necessarily transferable to Indiana bats, the EA identifies that there will be only a slight increase in noise 0.25 mile from the proposed compressor station. We believe that the perceived noise should be even less at 0.5 mile, which is the nearest known Indiana bat nesting location. The OCDP also states that the Commission should evaluate potential effects of noise on bat migration routes. The EA that such an evaluation is not necessary as Indiana bats typically forage along streams in search of insects and no perennial streams will be directly or indirectly impacted by construction of the project. Thus, impacts on foraging Indiana bats are unlikely.

We conclude that any impacts on Indiana bats will be minimal and that the project is not likely to adversely affect this species.

39. The OCDP and many commentors expressed concern that noise and vibration from the compressor station would be a significant nuisance to nearby residences. Based on noise surveys and Millennium's proposed noise mitigation measures, the EA determined that noise from the Minisink Compressor Station would be "barely noticeable," if noticeable at all, at nearby residences.³³ Millennium predicted noise levels would range from 33.7 to 39 dBA at the nearest noise-sensitive (NSA), which is significantly below the Commission's standard noise criterion of a day-night noise level of 55 dBA. Millennium's predicted noise level represents a potential increase in ambient noise of about 1.7 decibel.³⁴ Further, Environmental Conditions 15 and 16 in the EA require Millennium to take all reasonable measures to ensure that its predicted noise levels are not exceeded at the nearby NSAs and that vibration from the compressor units does not reach perceptible levels at nearby residences.
40. The OCDP objects to the one-year time period established in Environmental Condition 15 in the EA for Millennium to file a report identifying the modifications it intends to make to the compressor station to meet its predicted noise levels. The OCDP states that this time frame should be shortened to limit the time noise exceeds Millennium's predicted levels. Based on the Commission's experience with compressor station noise issues, we believe one-year is a reasonable time frame to identify the causes of unpredicted noise or vibrations and to propose corrective actions. Further, as stated previously, we believe that the noise level is likely to be imperceptible.
41. The OCDP states that the EA did not address low frequency noise (LFN). Ms. Canalos and Ms. Lain also provided comments regarding LFN from the compressor station potentially affecting honeybees and their ability to pollinate crops on the nearby farms. The Commission's regulations do address the potential impact of perceptible vibration from compressor station on humans (LFN is perceived by humans as vibration). We believe that the design of the Minisink Compressor Station, in conjunction with the requirements in Environmental Condition 16 concerning implementation of vibration elimination measures as necessary, will ensure that Millennium adequately mitigates the impact of LFN on residents of the area. Moreover, regarding the potential effects of LFN on bees as opposed to humans, there is no evidence in the record establishing that facilities such as the Minisink Compressor Station will emit low frequencies that are

³³ EA at 35.

³⁴ The EA explains that the noticeable noise increase threshold for humans is about 3 dB, while 5 dB is a clearly noticeable increase in noise. *Id.*

capable of affecting honeybees in the surrounding area; we note that the Minisink Compressor Station is comparable to many other natural gas compressor stations in the agricultural areas of the country and there is no evidence that those stations have had impacts on honeybees. Therefore, we find this suggested potential indirect impact to be speculative.

42. Various residents in Minisink expressed concern about the effect of air emissions from the proposed Minisink Compressor Station on individuals in nearby homes with existing health conditions, such as asthma, and on the general health in the community. Roc Solo filed comments contending that pollutants emitted during blowdown events would harm the community and environment.³⁵
43. As discussed in the EA, the Minisink Compressor Station would not be a major source of air emissions under federal air quality permitting programs. In addition, the total potential emissions from the station would comply with the EPA's National Ambient Air Quality Standards (NAAQS), in accordance with the Clean Air Act of 1970 and its amendments. The EA explains that these standards were established to protect human health and public welfare and take into account sensitive populations such as asthmatics, children, and the elderly. The NYSDEC is charged with carrying out both the state and federal air pollution control and monitoring programs, which help control emissions of pollutants, as well as measure and monitor ambient pollutant levels in New York. On May 2, 2012, the NYSDEC issued the required Clean Air Act permit to Millennium for the Minisink Compressor Station.
44. Ms. Canalos and Ms. Lain request that Millennium be required to prove that the compressor station's emissions would not harm the town's agricultural economy, including impacts on the black-dirt regions in Minisink, crops (organic or otherwise), and livestock, including horses. The EA states that the emissions from the Minisink Compressor Station would comply with the NAAQS which would provide protection against damage to crops, vegetation, and animals, minimizing air quality-related impacts on organic or non-organic farms in the project area. Ms. Canalos and Ms. Lain doubted that the NAAQS corresponded with specific regulations or guidelines adhered to by farmers and other agricultural employers. The landowners, however, do not identify specific air quality regulations or guidelines for agricultural uses. We solicited environmental comments regarding the project from the public and federal, state, and local agencies, including the New York State Department of Agriculture and Markets Division of Agricultural Development (NYSDAM). The NYSDAM administers its Organic Farming and Development/Assistance program dealing with organic agriculture and organically

³⁵ In its air permit application to the NYSDEC, Millennium assumed four blowdown events per year.

produced foods. The NYSDAM provided comments during the scoping period in support of the Wagoner Alternative; however, no comments from NYSDAM concerned adverse impacts on organic farms in the project area.

45. Several commentors express concern that Millennium's April 4, 2012 filing to reflect the information in its New York State Air Facility Permit application contained substantial corrections to the air emissions figures described in the EA. We acknowledge that the potential-to-emit numbers for certain criteria pollutants in the EA are lower than those in Millennium's air permit application, but that does not change the analysis or conclusions in the EA. Our review of the numbers included in the permit application does not place the project above any federal air permitting threshold.
46. Ms. Gartenberg filed comments claiming that the Clean Air Act and the NAAQS are outdated and questioned their applicability to today's industry. Ms. Gartenberg contends that the Clean Air Act was written over 40 years ago and could not have envisioned the current effects of energy infrastructure on public health and the environment. The Commission notes that the EPA regularly updates and modifies its rules and regulations to meet its mandate to protect public health and the environment. The Commission has no grounds to presume the EPA's standards are not satisfactory for maintaining the quality of human life and environment in the project area.
47. Various landowners commented that noise and air emissions from the project would impact wildlife and recreational opportunities within Laurel Hill Preserve (0.5 to 0.6 mile from the project), William Lain Park (less than one mile from the project), and Wallkill National Wildlife Refuge (about 2.5 miles from the project). Given the limited noise increase directly adjacent to the project area as identified in the EA, and the spatial distance and vegetative buffer between these public use areas and the proposed project, we conclude that construction and operational noise will not impact these public use areas. Air emission impacts in the immediate vicinity of the project will also be within allowable limits under the federal standards. Thus, we agree with the EA's conclusion that the project's impacts on wildlife and recreation will not be significant.
48. Karen Gartenberg filed comments to the EA concerning toxins from the compressor unit stacks entering the groundwater supply in the form of acid rain. According to the EPA's Acid Rain Program, the nation's largest contributors to acid rain are sulfur dioxide and nitrogen oxides with the largest known sources of acid deposition being automobiles and power plants. As stated, emissions from the compressor station will be below major source levels designed by the EPA's regulations. Given the minor amount of emissions from the compressor station, any contribution to acid rain will not be significant.

49. Ms. Gartenberg states that the Commission did not take a “hard look” under NEPA at the environmental and human consequences of Millennium’s plan to construct a compressor station directly on top of a highly permeable sole source aquifer (Northwest New Jersey 15 Basin Sole Source Aquifer (SSA)). She also comments on the potential risk that Millennium’s disposal of toxins within the station liquids tank could enter the groundwater supply. The EA identifies the risk of spills or leaks of hazardous materials during construction and operation of the facility as the greatest risks of groundwater contamination.³⁶ The EA also addresses how Millennium would deal with spills at the compressor station in accordance with its SPCC Plan.³⁷ Moreover, Millennium will be required to dispose of all hazardous substances at a state approved disposal facility. We affirm the EA’s conclusion that impacts on groundwater will be minimized and/or eliminated with Millennium’s implementation of the measures within its SPCC plan (e.g., immediate cleanup, notification of appropriate agencies, and disposal at a state approved facility).
50. The EA identifies the nearest public water well to be about 1.5 miles from the project site. Ms. Gartenberg states, however, that the Pheasant Hill development in Minisink has a water well that is closer. The Pheasant Hill development is slightly over one mile northwest of the proposed project site. With Millennium’s implementation of the erosion control measures in our Plan and Procedures and Millennium’s SPCC Plan, we conclude that the project will not have any impacts on this water well.
51. Several residents (John Odland, Leanne Baum, Asha Canalos, and Yorke Flynn) submitted comments to the EA concerning the project’s potential impacts on bald eagles and the possibility of eagles nesting in the vicinity of the project. They also raised questions about Millennium’s surveys for nests in the project area. The EA indicates that Millennium conducted field surveys of the project site and did not identify any nests during those surveys (bald eagle nests weigh between 500 and 4,000 pounds³⁸), and would be easily identifiable from the ground.
52. Mr. Odland commented that there is a large body of water, known as Art Fords Lake, within 0.25 mile of the project site that he believes is a likely site for nesting eagles.³⁹ Mr. Odland also questioned the EA’s statement that the nearest known bald eagle nests are at least seven miles away. Other commentators state that bald

³⁶ EA at 11.

³⁷ *Id.*

³⁸ EA at 16.

³⁹ Art Fords Lake is approximately 0.25 mile long by 0.13 mile wide and is surrounded by roads and houses on three sides.

eagles nest near the Liberty Loop Trail of the Wallkill River National Wildlife Refuge (approximately three miles from the project site). The EA states that the nearest “known” nest is at least seven miles from the project area, as identified by the U.S. Fish and Wildlife Service (FWS).⁴⁰ The EA found that given the agricultural/residential nature of the project area, any nesting eagles greater than 0.5 mile from the compressor station will likely not be disturbed during construction. However, to address these concerns and confirm whether any eagle nests are in the property vicinity, we are including Environmental Condition 19 requiring Millennium to conduct new surveys within 0.5 mile of the project area to determine, prior to construction, if any bald eagles are nesting. Should any nests be identified by Millennium, the condition requires Millennium to consult with the FWS to determine appropriate construction timing to minimize disturbance to the bald eagle nest(s).

53. Mr. Odland comments that Millennium’s use of Jacobs Road to construct and operate the project would subject any scavenging eagles on the road to a greater threat of being hit. The EA acknowledges this possibility but concludes that Millennium’s use of existing roads would result in only minor traffic increases in the project area.⁴¹ Should an eagle be hit by construction or operational vehicles, the Bald and Golden Eagle Protection Act requires Millennium to immediately notify the FWS, as well as the NYSDEC. The FWS will then determine whether further action is required.
54. The OCDP states that Millennium’s Blasting Plan does not adequately lay out protection measures. The OCDP recommends that Millennium develop a fully detailed Blasting Plan that incorporates, at least by reference, Chapter 58A of the State of New York Code of Rules and Regulations, 12 NYCRR Part 39, and the Code of Federal Regulations, 29 C.F.R. § 1926.90. The OCDP also states that the blasting contractor should be a licensed blaster in New York and should provide Minisink with a current Certificate of Insurance naming Minisink as an additionally insured party.
55. As stated in section B.1.1 of the EA, Millennium anticipates that it will find bedrock five to 10 feet below the ground surface. Millennium proposes to remove rock encountered during construction using one of the following techniques: (1) conventional excavation with a backhoe; (2) ripping with a dozer, followed by backhoe excavation; (3) hammering with a hydraulic hammer backhoe attachment, followed by backhoe excavation; and (4) blasting, followed by excavation. If blasting is required, Millennium will follow all local, state, and federal regulations

⁴⁰ EA at 16.

⁴¹ *Id.*

that apply to controlled blasting and limit blast vibration near structures and underground utilities.

56. The OCDP recommends that Millennium conduct pre-blast surveys of the adjoining properties and, at a minimum, Millennium should provide mitigation in the event that blasting causes damage to wells, structures, and any other personal property. Millennium's Blasting Plan (appendix 6-E of Millennium's environmental resource reports) states that if blasting is necessary within 150 feet of residential or commercial buildings, it would hire an independent contractor to perform pre- and post-blast structural inspections and, if necessary, seismographic monitoring. The plan also states that if blasting is necessary within 150 feet of domestic or agricultural wells or springs, Millennium would conduct pre- and post-blast testing (within two months of construction work restoration) of such wells with landowner permission. Based on Millennium's current project design, however, no water wells or residences are within 150 feet of the proposed disturbance. Section B.1.1 of the EA also states that all blasting activity would be performed by licensed professionals according to strict guidelines designed to control energy release. In the event that blasting is required, we have added Environmental Condition 20, which requires Millennium to revise its Blasting Plan to specifically reference the regulations that they will follow. Millennium shall file the revised Blasting Plan prior to construction for our review and approval. We conclude that this condition sufficiently addresses the OCDP's concern.
57. The OCDP also recommends that Millennium perform test blasts with seismic readings along property lines to determine maximum charge size; ensure blast areas are covered by steel mats; notify all adjoining property owners within 400 feet, the Minisink Police, and the Building Inspector's office no less than 72 hours prior to blasting; and ensure blasts would limit peak particle velocity to one inch per second. Section B.1.1 of our EA states that Millennium would keep charges to the minimum required to break up the rock and, where appropriate, Millennium would use mats made of heavy steel mesh or other comparable material or trench spoil to prevent the scattering of rock and debris. Environmental Condition 20 requires Millennium, prior to construction to file a revised Blasting Plan for Commission review and approval that specifies blast charge size and justifies that selection on a site-specific basis, and describes its notification procedures.
58. The OCDP also recommends that the Blasting Plan be included as an appendix to the EA and be available to Minisink, emergency services, and residents in the vicinity of the project area. Millennium's original Blasting Plan is available on eLibrary under Docket No. CP11-515-000 (appendix 6-E of Millennium's environmental resource reports filed in July 2011). Environmental Condition 20 requires Millennium to file a revised Blasting Plan, which will be available on

eLibrary in this proceeding. There is no need to re-issue the EA with the plan as an appendix.

59. The OCDP recommends that Millennium demonstrate compliance with the *New York Standards and Specification for Erosion and Sediment Control* and the *New York State Stormwater Management Design Manual*, in the event New York State regulations require mitigation procedures stricter than federal regulations. Millennium developed Environmental Construction Standards (ECS) (see appendix 1-G of its environmental resource reports), which incorporates our Plan and Procedures. Prior to construction, Millennium would also develop a site-specific Stormwater Pollution Prevention Plan. In section 7.3 of its environmental resource reports, Millennium states that the design of its ECS and Stormwater Pollution Prevention Plan follows specifications in our Plan and Procedures and, as applicable, *New York Standards and Specifications for Erosion and Sediment Control*. The *New York State Stormwater Management Design Manual* is a component of the SPDES general permit for stormwater runoff from construction activities (<http://www.dec.ny.gov/chemical/29072.html>). As stated in the EA, Millennium will obtain all necessary permits, licenses, clearances, and approvals related to construction and operation of the Minisink Compressor Project, including the SPDES general permit. Millennium submitted its SPDES application to the NYSDEC in the third quarter of 2011.
60. Mrs. Freund, an abutting landowner, and other commentors expressed concerns that the proposed Minisink Compressor Station would be located in an area serviced primarily by a volunteer Fire Department. A number of people filed comments expressing concern about recent explosions at compressor stations or pipelines in the United States. As discussed in section B.8 of the EA, the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) has jurisdiction over pipeline safety under Title 49, U.S.C. Chapter 601. In accordance with DOT's regulations, Millennium is required to establish a written emergency plan that includes procedures to minimize hazards in a natural gas pipeline emergency. Millennium is also required to maintain liaison with appropriate, fire, police, and public officials to learn the resources and responsibilities of each organization that may respond to a natural gas pipeline emergency, and to coordinate mutual assistance. Included in the information pipeline operators⁴² must provide to emergency responders are emergency contact information for each pipeline; information about the products carried and their hazards; location of emergency response plans with respect to the subject pipeline; how to contact the pipeline operator regarding questions,

⁴² Columbia currently provides operation and maintenance services to Millennium and will operate the proposed project facilities with Millennium's existing facilities in accordance with Columbia's operating procedures.

concerns, or an emergency; how to safely respond to a pipeline emergency; and an overview of what operators need to do to prevent accidents and mitigate the consequences of accidents when they occur.

61. PHMSA also provides several tools for emergency responders, such as the Pipeline Emergencies training manual and the Emergency Response Guidebook. The Pipeline Emergencies training manual was produced through a cooperative agreement between PHMSA and the National Association of State Fire Marshals and was released in May 2011. PHMSA's Emergency Response Guidebook is updated every four years and intended to be used by firefighters, police, and other emergency services personnel who may be the first to arrive at the scene of a transportation incident involving hazardous material. Additionally, PHMSA has held recent public forums and conferences regarding the need to improve the efficiency and effectiveness of communication and cooperation between emergency responders and pipeline operators. Based on the DOT requirements for pipeline operators and PHMSA's continual outreach and coordination with emergency responders, we conclude that operation of the Minisink Compressor Station will represent a minimum increase in risk to the public.
62. We received comments regarding recent construction activity at Millennium's Westtown Meter Station, which is within 0.5 mile of the proposed Minisink Compressor Station site. The comments questioned the need for the Westtown Station construction activity, the timing and regulatory oversight of such activity, and the notification given to the public. In an April 9, 2012 filing, Millennium explained that Columbia was performing pigging⁴³ activities on a segment of its mainline and was modifying its pig launcher/receiver for future maintenance of the pipeline. Millennium states that DOT pipeline safety regulations in 49 C.F.R. Part 192 require periodic pigging for cleaning and inspection of a pipeline. Millennium states that it performed associated maintenance to accommodate Columbia's activities under its blanket certificate authority and 18 C.F.R. § 157.203 of the Commission regulations. Section 157.203 of our regulations outlines the type of activities that can be performed under a pipeline's blanket certificate as well as landowner notification and reporting requirements. We find the activities at the Westtown Meter Station are not related to the proposed construction of the Minisink Compressor Station and are consistent with Millennium's blanket certificate authority.
63. Congresswoman Nan Hayworth requests that the Commission identify the state and federal agencies responsible for regulating compliance with public health and

⁴³ A pipeline "pig" is a device used to clean or inspect the pipeline. A pig launcher or receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

environmental requirements. Table 1 in the EA lists these federal and state administrative agencies. Regarding the Commission's compliance responsibilities, Environmental Condition 1 requires Millennium to implement all of its mitigation measures as outlined in its application, any supplements, and the EA unless modified by this order. Section A.6 of the EA describes Millennium's environmental inspection and compliance program. Our staff will also inspect the project during construction and restoration of the compressor station site.

64. MREPS and residents of Minisink assert that the proposed Minisink Compressor Project lacks independent utility and contend it is part of a larger three-phase expansion plan which includes the installation of additional compression and replacement of the Neversink Segment. They assert the Commission should not allow these projects to be submitted and considered independent of one another. MREPS also contends that if considered as part of a broader, three-phase expansion plan, the Commission would find construction of the Wagoner Alternative to be environmentally preferable to building the proposed Minisink Compressor Station.
65. Contrary to the commentors' characterization of the Minisink Compressor Project, we find that Millennium has demonstrated that the project has independent utility and constitutes a stand-alone project intended to provide an additional 225,000 Dth of firm transportation service per day beginning November 2012 to specific customers under long-term agreements. The service to be provided by the proposal addressed in this order is not dependent on construction and operation of the Hancock Compressor Project, which recently entered into the Commission's pre-filing process, nor does it require or contemplate replacement of the Neversink Segment, a proposal for which is not before the Commission in any forum. Should Millennium ultimately file an application for the Hancock Compressor Project, the impacts of the Minisink Compressor Project will be included in the discussion of cumulative impacts in the EA for that project.
66. Karen Gartenberg and others contend that Millennium chose Minisink as the site of its proposed compressor station in order to accommodate future natural gas service to a planned CPV Valley LLC (CPV Valley) power plant in Wawayanda, New York. MREPS contends that Millennium also plans in the future to replace the Neversink Segment in order to meet the demands of that plant. The Town of Wawayanda Planning Board issued a Final Environmental Impact Statement for the power plant in February 2012, and included correspondence with Millennium regarding a precedent agreement with CPV Valley to provide natural gas transportation service to the power plant. The EA in this proceeding stated that Millennium would need to construct a seven- to eight-mile lateral pipeline to provide service to the power plant. Millennium has stated that such a lateral

would intersect Millennium's mainline upstream of the Minisink Compressor Station.⁴⁴

67. The EA observed that the extent to which environmental resources would be affected by construction related to the CPV Valley power plant cannot be quantified without additional development details and an indication of when the power plant facilities may be built.⁴⁵ It is possible, but not a certainty, that the smaller diameter Neversink Segment may need to be modified to meet the potential demands of the contemplated power plant. Without supplemental information, we cannot conclude that any possible pipeline route to the power plant would require a Neversink Segment upgrade. Millennium has the option to choose other start points for the lateral pipeline that do not include the Neversink Segment. In any event, a proposal to construct facilities to serve the CPV Valley power plant is not before us. As stated above, the proposed Minisink Compressor Project comprises a valid, stand-alone project to provide transportation service to identified customers who have demonstrated a need for the service by signing long-term agreements with Millennium. If Millennium decides in the future to file an application to construct facilities to serve the CPV Valley facility, we will review and consider the application on its own merits.
68. MREPS contends that authorizing the construction of the Minisink Compressor Project would create a dire threat to the integrity of the Neversink Segment, forcing the Commission to approve an upgrade of the Neversink Segment in an expedited fashion in the near future. Similarly, Ms. Malick asserts that if Millennium installed its proposed mainline valve at the Minisink Compressor Station, the Neversink Segment would not be able to safely transport natural gas from east to west because the line would not be able to withstand pressure from bi-directional flow. Ms. Malick also contends that the Neversink Segment is "not up to modern code" and that the Neversink Segment will eventually have to be replaced. We disagree. Staff independently evaluated the hydraulic feasibility of the Minisink Compressor Station and completed an engineering analysis of Millennium's pipeline system to conclude that Millennium's pipeline system, with the inclusion of the Minisink Compressor Station, is capable of providing the capacity required by the project's shippers. Millennium currently operates the Neversink Segment in compliance with PHMSA safety regulations, and there is nothing in the record to suggest that the operation of the Minisink Compressor Station will compromise the safety of the Neversink Segment.
69. Further, Millennium's existing system, including the Neversink Segment, currently has bi-directional flow capabilities; therefore, the proposed bi-directional flow

⁴⁴ EA at 31-32 and Responses to data requests dated November 23, 2011.

⁴⁵ EA at 39.

valve at the Minisink Compressor Station simply allows the compressor station to be compatible with the operational capabilities of the rest of the system. There is no indication in the record that the existing Neversink Segment is incapable of accommodating the pressures that would be associated with reversal of flow. The only limitation on the Neversink Segment is the Maximum Allowable Operating Pressure (MAOP) of 900 psig, which is several hundred pounds less than the rest of Millennium's mainline. It is the reduced MAOP on the Neversink Segment that necessitates compression at Minisink to maintain delivery pressures to Algonquin at Ramapo.

70. MREPS and landowners near the proposed compressor station contend that the EA's recommendations that Millennium minimize the visual impacts of the compressor station do not adequately address the community's issues with property values, pollution, and noise. The comment letters also assert that the EA used outdated data to evaluate the project's impacts on property values. The Commission recognizes the general potential for property values to be negatively impacted by the construction of nearby energy infrastructure. Indeed, the EA acknowledges that proximity to the proposed compressor station could have an impact on property values. On balance, we do not find the potential for such an impact sufficient to alter our determination that the Minisink Compressor Project is required by the public convenience and necessity.⁴⁶ Further, we believe that the visual and noise mitigation measures recommended in the EA and included as conditions in this order, will mitigate the potential for decreases in property values. We are aware that the Minisink Compressor Station will be visible to residents across the street or drivers along Jacobs Road and that it will likely be some time before the measures detailed in Millennium's visual screening plan such as tree planting will be effective. However, the EA's recommendations and the environmental conditions in this order will promote communication between the Town of Minisink and Millennium to determine the most effective approach to blending the compressor station site with the surrounding environment.
71. MREPS refers to comments filed by Asha Canalos, Deborah Lain, and other Minisink residents regarding the potential adverse visual impacts of the project on the agricultural vista in Minisink and agri-tourism. The EA describes the project area as zoned residential/agricultural and describes the proposed Minisink Compressor Station as an industrial facility. As mentioned previously, Environmental Conditions 13 and 14 will minimize the visual impacts of the facility's buildings on Jacobs Road and the impacts of the compressor units stacks on the viewshed around Jacobs Road.

⁴⁶ We note that Millennium's mainline is located in the Town of Minisink, and there is an above-ground meter station in neighboring Westtown.

72. Mr. and Mrs. Robert Baum filed comments, disputing the EA's assertion that there are 86 residences located within one-half mile of the proposed Minisink Compressor Station. The Baums contend that there are 190 currently occupied residences within about a 0.7-mile radius from the compressors, with 49 more planned in the area. The EA uses a one half-mile radius for counting the number of residences, which is consistent with Commission regulations.⁴⁷ The Baums' wider radius resulted in a higher count of residences. The commentors did not provide any reason why the Commission should depart in this proceeding from the standards set forth in its regulations. We believe the EA accurately represented the number of residences within one-half mile of the proposed compressor station.⁴⁸ The impacts disclosed in the EA would clearly be less on those residences at a greater distance.
73. MREPS contends that the EA should have analyzed other types of compressor units, particularly electric compressors, which are quieter and produce fewer emissions. During the environmental review, staff requested information from Millennium regarding the feasibility of electric-driven compressor units on several occasions. According to Millennium, the medium voltage electrical service currently provided in the project area is unreliable for supporting electric-driven compressor units. Millennium states that it considered installing dual lateral transmission lines to supply the proposed compressor station with two separately fed sources of power, but rejected the concept because dual feed capabilities are not currently available at the proposed compressor station site, and connecting the compressor station to two separate substations could require construction of mile-long electric power lines, imposition of additional right-of-way easements on private properties, and a potential two years for the electric utility to complete the project. Based on the timing needed to meet Millennium's project demand and the fact that emissions from the proposed compressor station will be below allowable thresholds, we conclude that installing electric-driven compressor units is not a reasonable alternative.
74. In its comments, MREPS states that the EA should have studied the viability of smaller compressor stations to further reduce adverse impacts. The EA evaluated a number of above-ground facility alternatives and system alternatives that included pipeline replacement/looping only and a combination of pipeline replacement and compression. Staff also independently confirmed the hydraulic feasibility of all of the system alternatives. We find that the EA thoroughly evaluated appropriate alternatives to the Minisink Compressor Station and that the

⁴⁷ 18 C.F.R. § 157.6(d)(2)(iii) (2011).

⁴⁸ The EA mentions the planned housing development within 0.25 mile of the compressor station site, although it does not go into detail regarding the number of houses proposed to be included within this community.

EA included the necessary recommendations to minimize and/or eliminate adverse impacts.

75. MREPS requests modifications to Environmental Condition 1 to give landowners the authority to deny proposed construction and mitigation procedures. We reject that approach, which would unduly undermine the Commission's authority and interfere with Millennium's construction activities. However, because Millennium must file a request and receive approval before implementing such changes, landowners can review Millennium's requests and submit comments as they deem necessary.
76. As required by Environmental Condition 17, Millennium must consult with the Town of Minisink regarding its landowner notification plan for blowdowns at the Minisink Compressor Station. MREPS requests that the Commission modify Environmental Condition 17 to allow for landowner comment on Millennium's plan. We believe that the Minisink Town Board can appropriately communicate its constituents' concerns in any consultation with Millennium on the required plans. On May 18, 2012, Millennium filed the Town's comments on the landowner notification plan, including recommendations from the Town on the plan. In its filing, Millennium concurred with the Town's comments. We expect that Millennium will file its revised landowner notification plan, addressing its concurrence with the Town's comments, with its Implementation Plan.
77. Millennium filed comments expressing concerns about Environmental Condition 15 in the EA, which requires the proposed Minisink Compressor Station to meet the noise levels that Millennium predicted in its application. Specifically, Millennium states that the condition deviates from the Commission's longstanding practice of requiring that the noise attributable to a new compressor station must not exceed day-night average sound level of 55 decibels on the A-weighted scale (dBA) at nearby NSAs.
78. Millennium's comments do not suggest that it will be unable to meet its predicted noise levels (ranging from 33.7 to 39 dBA) or that Millennium considers those levels burdensome. In its April 9, 2012 filing, Millennium states that it remains committed to the special noise-abatement measures it proposed as part of the October 2011 study and to constructing a facility that incorporates a number of noise mitigation measures that will help maintain the quiet rural residential character of the surrounding area. In other cases, the Commission has required applicants "make all reasonable efforts" to meet the predicted noise levels, but has only required additional mitigation if the post-construction noise surveys register levels above 55 dBA. However, the project design submitted by Millennium and studied by staff predicts noise levels significantly below the standard 55 dBA. The existing noise levels in the project area are very low. As described in the EA, if Millennium is unable to meet its predicted noise levels and the Minisink

Compressor Station is found to produce noise levels closer to 55 dBA at the NSAs, it would represent an effective doubling of the current noise in the area.

Therefore, we are including Environmental Condition 15 in this order to require that Millennium makes every effort to ensure the project operates as the company represented to the Commission that it would.

79. Millennium also commented on Environmental Condition 11 of the EA, requesting clarification that tree clearing may proceed upon completion of consultation with the FWS and written notification from the Director of OEP that clearing may begin. The intent of this condition is to protect the Indiana bat and to ensure that Millennium complies with the Endangered Species Act. The EA concludes that the project is not likely to adversely affect the Indiana bat based on the minimal project impacts on forest land and implementation of the EA's recommended Environmental Condition 11 that requires Millennium to conduct tree clearing at a time of year when bats are not present. We clarify here that Millennium's request is consistent with the intent of the EA's recommended condition. Thus, we could approve tree clearing prior to any notice to proceed with construction at the compressor station, if the tree clearing occurs within the FWS' approved timeframe and the appropriate consultation with the FWS is complete pursuant to Environmental Condition 11 of this order.
80. The Town of Minisink's Planning Board Chairman filed comments asserting that the Town could not grant Millennium's site plan and special use approval because the proposed compressor station is not a permitted or special use within the relevant zoning district. The Town's engineer asserts that before construction can commence, Millennium would require a zoning variance or the creation of a floating industrial zone. Millennium states that there appears to be no procedure in the Town's ordinances for Millennium to obtain approval to construct the Minisink Compressor Station within the Town and that it would not qualify for a use variance.
81. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and operation of facilities approved by this Commission.⁴⁹ In *Algonquin LNG v. Loqa*,

⁴⁹See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

the Court held that the NGA preempted a Providence, Rhode Island Zoning Ordinance and enjoined Providence officials from interfering with the facility modification or operation approved by the Commission.⁵⁰ The court observed that:

Because the federal regulatory scheme comprehensively regulates the location, construction, and modification of natural gas facilities, there is no room for local zoning or building code regulations on the same subjects. In short, Congress clearly has manifested an intent to occupy the field and has preempted local zoning ordinances and building codes to the extent that they purport to regulate matters addressed by federal law.

The Providence Zoning Ordinance [requiring a zoning variance] and building code [requiring a building permit] also are preempted because they directly conflict with the federal regulatory provisions.⁵¹

82. Millennium also provided minor corrections and updates to information in the EA. We do not believe that any of these changes are significant, nor do they alter our conclusions with respect to the environmental impacts resulting from the project.
83. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effects of Millennium's proposed project. Based on the consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Millennium's application and supplements, and the environmental conditions imposed herein, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment. We also recognize that many of the stakeholders in this proceeding remain concerned about Millennium's commitment and ability to successfully implement the mitigation which underlay the Commission's finding of no significant impact. However, the reporting requirements included in the environmental conditions imposed by this order together with the inspections that our staff will conduct during construction and restoration will enable the Commission to monitor and ensure Millennium's compliance with this order. Moreover, we are adding an additional condition requiring Millennium to file reports documenting the implementation and progress of its final landscaping and site screening plan (Environmental Condition 21).

E. Request for an Evidentiary Hearing

⁵⁰ See 79 F. Supp. 2d 49 (D.R.I. 2000).

⁵¹ *Id.* at 52.

84. MREPS requests an evidentiary hearing, oral argument, conference, or some other on-the-record, in-person forum to resolve material issues of disputed facts in this proceeding. MREPS claims that an evidentiary hearing is necessary “because of serious questions regarding Millennium’s credibility and candor,” particularly in regard to the Wagoner Alternative. MREPS asserts that a hearing would offer parties the opportunity to file data requests and would subject Millennium’s proposals to cross-examination and questioning under oath. To support its request, MREPS cites *Florida Gas Transmission Co.*⁵²
85. Section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. An evidentiary trial-type hearing is necessary only when there are material issues of fact in dispute that cannot be resolved on the basis of the written record.⁵³
86. The issues raised by all parties in this proceeding have been adequately argued, and a determination can be made, on the basis of the existing record in this proceeding. All interested parties have been afforded a full and complete opportunity to present their views to the Commission through numerous written submissions. We find that there is no material issue of fact that we cannot resolve on the basis of the written record in the proceeding. Therefore, we will deny the request for a hearing.⁵⁴

F. Request the Proceeding be Held in Abeyance

⁵² 99 FERC ¶ 61,314 (2002).

⁵³ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

⁵⁴ The Florida Gas Transmission Co. case cited by MREPS does not provide support for its request for an evidentiary hearing. In an earlier proceeding, the Commission had authorized Florida Gas to construct and operate a pipeline project, including construction of a proposed compressor station, over objections from landowners and local officials. Subsequent to receiving authorization, but prior to commencing construction, Florida Gas filed an amendment, proposing a new location for the compressor “to accommodate the wishes of residents located in the area of the previously approved site.” *Id.* P 5. There were allegations by protestors in the underlying proceeding that Florida Gas had submitted “misleading” information; MREPS seems to suggest that holding an evidentiary hearing in that proceeding would have avoided the “waste [of] valuable staff resources.” However, there is no indication in the record of the *Florida Gas* proceeding that the Commission accepted the allegations as true, and we note that the case was decided on the basis of a written record.

87. On May 9, 2012, a letter was filed on behalf of John Odland and MREPS requesting the Millennium proceeding be held in abeyance until the Freedom of Information Act (FOIA)⁵⁵ request filed by Mr. Odland has been satisfied. Specifically, Mr. Odland had requested access under FOIA to a broad range of documents including, as is most pertinent here, all hydraulic analyses and models submitted by Millennium. On April 25, 2012, an initial determination letter regarding Mr. Odland's FOIA request was issued, releasing forty-seven documents in their entirety. A second determination letter was issued on June 4, 2012, informing Mr. Odland that the system models, flow diagrams, and flow models submitted by Millennium were exempt from mandatory disclosure under FOIA and would not be released. Thus, we find the request to hold this proceeding in abeyance is moot.⁵⁶
88. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits

⁵⁵ 5 U.S.C. § 552 (2006), *amended* by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 25245; 18 C.F.R. § 388.108 (2011).

⁵⁶ In its May 9, 2012 request, MREPS contends that "Millennium's entire justification for the Minisink Compressor Station rests on its assertion that the Minisink Compressor Station is the only viable alternative that does not require an upgrade of the Neversink Segment," and that MREPS must have access to Millennium's hydraulic models to meaningfully challenge Millennium's proposal. However, we believe this is a mischaracterization of the proceeding before us. Millennium has proposed to construct the Minisink Compressor Station in order to provide an additional 225,000 Dth/d of transportation service to its interconnect with Algonquin at Ramapo. Three customers have agreed to enter into long-term service agreements for the full capacity of the project and Millennium has committed to providing service to these customers on a firm basis. No customer of Millennium, either existing or prospective, has questioned the sufficiency of the proposed facilities to provide the service contemplated. Moreover, as described above, Commission staff has independently confirmed that the project as proposed will enable Millennium to provide the contemplated service without negatively impacting existing customers. There is no basis for MREPS' suggestion that the "hydraulic studies may show that the Minisink Compressor will in fact require an upgrade to Neversink." Moreover, in satisfying the NEPA requirement that the Commission take a "hard look" at the environmental impacts of its action here, Commission staff analyzed a number of alternatives to the proposed Minisink Compressor location, including alternatives proposed by MREPS and other commentors. The Commission did not require the commentors to provide engineering support for their proposed alternatives. Rather, Commission staff independently verified the engineering requirements of each alternative studied. Thus, the fact that MREPS did not have access to Millennium's hydraulic models did not negatively impact MREPS.

thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Millennium to construct and operate the Minisink Compressor Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Millennium's:

(1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions in Appendix C to this order;

(4) execution of firm service agreements equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to commencing construction.

(C) Millennium's request to charge existing systemwide rates for firm and interruptible transportation services, and the forward haul and backhaul retainage percentages is approved, subject to the conditions in this order.

(D) Millennium must roll-in its project costs and revenues in its next general rate proceeding barring a significant change in circumstances.

(E) Millennium is directed to file its negotiated rate agreements or a tariff record describing the essential elements of the agreements not less than 30 days, and not more than 60 days, prior to the commencement of service.

(F) Millennium shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state or local agencies on the same day that such agency notifies Millennium. Millennium shall file written confirmation of such notification with the Secretary of the Commission with 24 hours.

(G) MREPS and Mr. Odland's request to hold the proceeding in abeyance is denied as discussed in the body of this order.

(H) The untimely motions to intervene listed in Appendix B are granted pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

By the Commission. Chairman Wellinghoff and Commissioner LaFleur dissenting with separate statements attached.
Commissioner Clark concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely Motions to Intervene

MMGS, Inc.
New York Public Service Commission
National Fuel Gas Distribution Corporation
National Grid Delivery Companies
Southwestern Energy Services Company
Stand Energy Corporation
WPX Energy Marketing, LLC
Haynes Currie
Frank DiMarco
Ibrahim Malick
Shawna Swaine
Thomas B. Wilinsky on behalf of Catskill Citizens for Safe Energy

Timely Comments on EA

Robert Baum
Asha A. Canalos
Peter Freund
Robin Freund
Richard J. Koprowski
Deborah Lain
Diana LaKeal
Elias Marvinney
Laina Mason
Michael Mojica
John P. Odland
Carolyn Petschler
Nicholas J. Russo
Thomas Salamone
Christina E. Sirico
Daniel E. Stafford

Appendix B**Untimely Motions to Intervene**

Central Hudson Gas & Electric Corporation
 Consolidated Edison Company of New York, Inc.
 Damascus Citizens for Sustainability
 Lakeland Unitarian Universalist Fellowship
 Minisink Residents for Environmental
 Preservation and Safety (MREPS)
 Orange County, New York
 Ridgeview Partners, LLC
 Town of Minisink

Jared Albert
 Kristina Albert
 Lisa Alliegro
 Laurie Arias
 Ricardo A. Arias
 Leanne Baum
 James Beck
 Vincent Biondollilo
 Elaina Burton
 Shawn Cahill
 Yin Cahill
 Melanie Candra
 Jeff Chiochi
 Marie Coluccio
 Vincent Coluccio
 Peter J. Cuccovia
 Jenice Cuccovia
 Denise M. Davis
 Jordan Davis
 Emily L. Donleavy
 Leonora Fallon
 Yorke E. Flynn
 Karen S. Gartenberg
 Nicholas J. Giordano
 Gail T. Grove
 John J. Huldie
 Michael Keenan

Amy Koprowski
 Richard Koprowski
 Stacey L. Kroposki
 Paul C. Kraengel
 Deborah Lain
 Thomas G. Lieber
 Barbara Liedtke
 Pamilla Malik
 Shaheen Malick
 Dawn M. Manta
 Philip Manta
 Elaine McCann
 Cara C. McGinnis
 Joseph R. McGinnis
 Michael Mojica
 Janice Okeeffe
 Kevin Okeeffe
 Annamarie Odland
 Teresa M. Orton
 Brian Pattay
 Eric M. Petschler
 Antonio C. Pinheiro
 Madeline Power
 Evelyn Preuss
 Laura M. Putnam
 George Racz
 Maria Racz

Michael J. Ruzukiewicz
 Ety Salamone
 Salvatore Salamone
 John A. Salvato
 Suzanne Samse
 Brittany P. Schaum
 Roc Solo
 Erica Stafford
 Ernest F. Stonick
 Michelle Stoveken
 David Varjan
 Margaret Wood
 Janet Zimmerman
 Jerry Zimmerman

Appendix C

Environmental Conditions

This order is subject to the following environmental conditions:

1. Millennium shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the Environmental Assessment (EA), unless modified by the Order. Millennium must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Millennium shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Millennium shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Millennium shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **At least 60 days prior to construction**, Millennium shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Millennium must file revisions to the plan as schedules change. The plan shall identify:

- a. how Millennium will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
- b. how Millennium will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;

- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- e. the location and dates of the environmental compliance training and instructions Millennium will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
- f. the company personnel (if known) and specific portion of Millennium's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Millennium will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.

7. Beginning with the filing of its Implementation Plan, Millennium shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Millennium's efforts to obtain the necessary federal authorizations;
- b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
- c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
- e. the effectiveness of all corrective actions implemented;
- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
- g. copies of any correspondence received by Millennium from other federal, state, or local permitting agencies concerning instances of noncompliance, and Millennium's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of the project facilities**, Millennium shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Millennium must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing their respective authorized facilities in service**, Millennium shall each file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Millennium/Millennium has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Millennium shall conduct all tree removal greater than 5-inch-diameter breast height **between October 1 and March 31 and not begin construction** of facilities and/or use of any work areas until:
- a. the staff completes Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service (FWS) relating to the Indiana bat; and
 - b. Millennium has received written notification from the Director of OEP that construction or use of mitigation may begin.
12. Millennium **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Millennium provides the New York State Historic Preservation Office (SHPO) with the information requested in the SHPO's December 13, 2011 letter;
 - b. Millennium files with the Secretary the information and the SHPO's comments on the information;
 - c. Millennium files any required avoidance, treatment, or mitigation plan, and the SHPO's comments on the plan;
 - d. The Advisory Council of Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and

- e. The FERC staff reviews and the Director of OEP approves the cultural resources report and any plan, and notifies Millennium in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE.**"

13. **Prior to construction**, Millennium shall file a copy of the final building design for review and written approval by the Director of OEP. The final design shall include specific elements designed to blend the buildings and equipment with surrounding rural residential agricultural landscape and structures, such as designing the building façade to resemble a historic farm structure and the exhaust stacks to resemble dome-topped silos.
14. **Prior to construction**, Millennium shall file a copy of its final landscaping and site screening plan for review and written approval by the Director of OEP. Millennium shall revise the plan to include trees native to the project area including the white pine, red pine, and red spruce.
15. Millennium shall make all reasonable efforts to ensure its predicted noise levels from the Minisink Compressor Station are not exceeded at the nearby noise-sensitive areas (NSA) and file noise surveys showing this with the Secretary **no later than 60 days** after placing the Minisink Compressor Station in service. If the noise attributable to the operation of the Minisink Compressor Station at full load exceeds the predicted noise level at any nearby NSAs, Millennium shall file a report identifying what modifications it intends to make in order to meet the predicted level **within one year** of the in-service date. Millennium shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs any additional noise controls.
16. Millennium shall file a vibration survey with the Secretary **no later than 60 days** after placing the Minisink Compressor Station in service. If vibration attributable to the operation of the Minisink Compressor Station is perceptible at any nearby NSAs, Millennium shall install/implement additional vibration control mitigation measures **within one year** of the in-service date. Millennium shall confirm compliance with this requirement by filing a second vibration survey with the Secretary **no later than 60 days** after it installs the additional vibration controls.
17. **Prior to construction**, Millennium shall develop a landowner notification plan for planned blowdowns of the Minisink Compressor Station in consultation with the

Town of Minsink. The plan shall include notification procedures for landowners within a 0.5-mile radius of the proposed station **at least two business days prior to** performing a planned station blowdown. Millennium shall file a copy of the plan, and any comments received from the Town of Minisink, with the Secretary.

18. **Prior to construction**, Millennium shall update the Commission on the status of its plans to enter 42.5 acres of the project site into a conservation easement.
19. **Prior to construction**, Millennium shall conduct surveys within a 0.5-mile radius of the project area to determine if any bald eagles would be nesting during construction. Further, should any nests be identified by Millennium, it shall consult with the FWS to determine appropriate construction timing to minimize disturbance to the bald eagle nest(s).
20. **Prior to construction**, Millennium shall file a revised Blasting Plan for our review and approval. The revised plan shall include the following:
 - a. specific reference to the local, state, and federal regulations that Millennium would adhere to that apply to controlled blasting and limiting blast vibration near structures and underground utilities;
 - b. mitigation in the event that a structure is damaged as a result of Millennium's activities;
 - c. specific blast charge size and justification for that selection on a site-specific basis; and
 - d. notification procedures, describing who would be notified and when this notice would be given.
21. Millennium shall file quarterly reports, including photographs, documenting the implementation and progress of its landscaping and site screening plan at the Minisink Compressor Station for a period of five (5) years after the compressor station is placed into service.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, L.L.C.

Docket No.CP11-515-000

(Issued July 17, 2012)

WELLINGHOFF, Chairman, *dissenting*:

The majority today grants Millennium Pipeline a certificate of public convenience and necessity to construct and operate a new 12,260 horsepower compressor station and related facilities in the Town of Minisink, in New York. However, in light of the preferable alternatives to the Minisink proposal, I dissent from today's order.

The Minisink proposal would consist of two 6,130 horsepower natural gas-fired compressor units, totaling 12,260 horsepower and related facilities. As noted in the order, the Wagoner Alternative would result in construction of a smaller, 5,100 horsepower compressor station adjacent to its existing Wagoner Meter Station, and replacement of the existing Neversink segment of pipeline, a 7.2 mile 24-inch pipeline, with a 30-inch diameter pipeline. Millennium's system is comprised of 250 miles of 30-inch diameter pipe, which was constructed in 2007, and the 7.2-mile Neversink Segment, a 24-inch pipe constructed by Columbia Pipeline in 1987 and acquired by Millennium in 2006.

Construction of the Wagoner Alternative would provide numerous benefits beyond those provided by the Minisink proposal, with significantly fewer emissions. Moreover, because the fuel requirements of the two options were not considered, the cost estimates used to compare the two proposals were not fully realized. A full evaluation of the long-term benefits and costs of the two options shows that the Wagoner Alternative is the most efficient proposal for expanding capacity on the Millennium system.

Due to the difference in size of the compressors, the smaller compressor station at Wagoner would likely release approximately 44 percent of the emissions related with the operation of the new Minisink compressor station. The EA notes that the smaller alternative compressor station at Wagoner would result in lower emissions than the Minisink proposal, thereby reducing the effects on the local air

quality.⁵⁷ The EA further notes that Millennium's proposed compressor station

⁵⁷ EA at 52.

would have greater impacts on air quality and visual resources than the Wagoner Alternative due to the less desirable location of the Minisink station.⁵⁸

Further, comparison of the two options indicates that the smaller compressor station at Wagoner would consume about 44 percent of the natural gas required to fuel the station. A compressor station at Wagoner would require roughly 438,000 Mcf in comparison to 1,000,100 Mcf in annual fuel consumption at the proposed Minisink compressor station, based on the amount of fuel required to operate the Minisink station in accordance with Clean Air Act permit issued by the State of New York. At a price of \$2.89 per MMBtu,⁵⁹ it would cost approximately \$1,261,502 to provide fuel for the Wagoner Alternative, compared to \$2,890,289 in fuel per year for the Minisink station.

The EA notes that, although the Wagoner Alternative “has some advantages” over the Minisink proposal, “the greater environmental issues and landowner impacts of replacing the Neversink Segment cause us to conclude that the Wagoner Alternative does not provide a significant environmental advantage over the” Minisink proposal.⁶⁰ Again, I disagree that the upgrades to the Neversink Segment should be viewed in a negative light.

Not only does upgrading the Neversink Segment result in the need for decreased compression, and the corresponding decreased emissions and fuel requirements,⁶¹ it will also provide for greater capacity on the Millennium system in the long term. In evaluating the alternatives, the EA notes that in replacing the Neversink segment, the effect on agricultural land would consist of a temporary loss of crops for one growing season, and after construction is completed, most agricultural land uses would revert to previous uses within the permanent rights-of-way. It is also noteworthy that, the State of New York Department of Agriculture and Markets commented in support of the Wagoner Alternative because the Minisink proposal would result in the permanent loss of agricultural land. Moreover, the EA states that eliminating the bottleneck created by the Neversink Segment could enhance the reliability of the Millennium pipeline system and allow Millennium wider options for expansion of its system.⁶²

Based on a review of all of the evidence, I believe that Millennium Pipeline

⁵⁸ EA at 54.

⁵⁹ Daily cost of fuel at the Henry Hub, as reported in the July 16, 2012 edition of Platt’s Gas Daily.

⁶⁰ EA at 54.

⁶¹ EA at 52.

⁶² EA at 54.

should have considered the long-term effects of improved reliability, greater impact on capacity, reduced emissions, and reduced fuel costs offered by the Wagoner Alternative, and proposed that comprehensive solution in lieu of the short-term fix presented by the Minisink proposal.

For these reasons, I respectfully dissent from today's order.

Jon Wellinghoff
Chairman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, LLC

Docket No. CP11-515-000

(Issued July 17, 2012)

LaFLEUR, Commissioner, *dissenting*:

The United States is currently experiencing a substantial increase in the supply of domestic natural gas and a sharp increase in demand for that gas, particularly for electric generation. These developments are creating an acute need for new natural gas infrastructure to transport gas to serve customers. Siting that infrastructure is frequently difficult, and requires a careful balancing of the need for a proposed project and its environmental and community impacts.

This balancing is reflected in the Commission's Certificate Policy Statement, which has long governed the Commission's consideration of proposed projects under Section 7 of the Natural Gas Act.⁶³ The Certificate Policy Statement requires an applicant to demonstrate that a specific proposal is in the public convenience and necessity by showing that the project's public benefits are proportional to its adverse impacts.⁶⁴

Once an applicant has satisfied the threshold requirement of showing that its project is financially viable without subsidies, the Certificate Policy Statement directs the Commission to consider the effects of the project on three major interests that may be adversely affected by approval of the project: the interests of the applicants' existing customers, the interests of competing existing facilities and their captive customers, and the interests of landowners and surrounding communities.⁶⁵ As the Commission has stated, this is a proportional approach, where the amount of evidence required to establish need will depend on the potential adverse

⁶³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000); 15 U.S.C. 717h (Section 7(c) of the Natural Gas Act provides that no natural gas company shall transport natural gas or construct any facilities for such transportation without a certificate of public convenience and necessity.).

⁶⁴ Certificate Policy Statement, 88 FERC ¶ 61,227 at ¶ 61,747.

⁶⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at ¶ 61,747 (1999) (Certificate Policy Statement) (emphasis added), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

I am dissenting in this case because I do not believe the majority has correctly applied the standards set forth in the Certificate Policy Statement to the facts in the record before us. Based upon that record, I believe that the serious adverse consequences of the Minisink compressor facility outweigh its public benefits, particularly given the existence of the environmentally preferable Wagoner Alternative.

The majority rests its approval of the Minisink facility on the Environmental Assessment's conclusion that the residual impacts of the Minisink project, after required mitigation, would not be significant. These residual impacts include the effects of visual impacts,⁶⁷ noise,⁶⁸ and vibration,⁶⁹ as well as the impact on the value of residences located in close proximity to the facility.⁷⁰

The residual impacts of the Millennium facility must, under the Certificate Policy Statement, be balanced against the need for the project. However, the record does not demonstrate that the "specific project"⁷¹ is needed in light of the availability of an

⁶⁶ *Turtle Bayou Gas Storage Company, LLC*, 135 FERC ¶ 61,233, at P 28 (2011) (*Turtle Bayou*) (citing *Arlington Storage Co., LLC*, 128 FERC ¶ 61, 261, at P 7 (2009), *Transcontinental Gas Pipe Line Corp.*, 120 FERC ¶ 61,181, at P 90 (2007); *Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182, at P 37 (2006)).

⁶⁷ The EA acknowledges that, during most of the year, the Minisink Compressor Station would be slightly visible, and in the winter, significant portions of the facility would be visible from nearby residences. The EA concludes that with the measures included in the visual screening plan, it would eventually minimize visual impacts over time. EA at 22.

⁶⁸ The EA acknowledges that the low ambient noise in the project area would make noise produced by the compressor station more noticeable than at many other locations. EA at 35. The EA also acknowledges noise associated with blowdown events and requires advanced notification prior to a blowdown event. EA at 35-36. In its air permit application to the NYSDEC, Millennium assumed four blowdown events per year.

⁶⁹ The EA states that "it is possible that mechanical vibrations could potentially affect nearby residences because of their proximity to the new compressor station." EA at 35.

⁷⁰ The EA acknowledges that proximity to the proposed compressor station could have an impact on property values if various nuisance effects are prominent, such as noise, health or safety concerns, or other impacts, real or perceived. EA at 22-23.

⁷¹ *Turtle Bayou*, 135 FERC ¶ 61,233 at P 33 ("Turtle Bayou has not shown that its specific project is needed.").

environmentally and operationally preferable alternative, the Wagoner Alternative.⁷² As the EA acknowledges, the Wagoner Alternative involves construction of a smaller compressor station adjacent to an existing Wagoner Meter Station that was previously used as a site for natural gas compression activities⁷³ and replacement of the Neversink segment (7.2 miles of 24-inch-diameter pipeline with a 30-inch-diameter pipeline) to remove a bottleneck on the system. The EA concedes that the smaller compressor needed under the Wagoner Alternative would result in lower emissions in comparison to the proposed site, thereby reducing the effects on local air quality.⁷⁴ The EA also concedes that the visual impacts of the Wagoner Compressor Station would be negligible considering the dense forested area surrounding the meter station and the lack of residences within a half mile of the existing Wagoner Meter Station.⁷⁵

I believe the EA's finding that the Wagoner Alternative "does not provide a significant environmental advantage over the proposed project,"⁷⁶ is incorrect. This conclusion incorrectly equates temporary environmental impacts due to construction of the Wagoner Alternative with permanent residual impacts of the Minisink proposal, and therefore makes an invalid comparison. The EA also ignores that, during initial scoping of the Wagoner Alternative, none of the 58 landowners directly impacted by the project opposed it. In fact, two supported the Wagoner Alternative over the proposed project. These omissions from the environmental analysis are inconsistent with previous environmental analyses performed by Commission staff.⁷⁷ When these findings are corrected, the Wagoner Alternative demonstrates a significant environmental advantage over the proposed project, and the EA should have

⁷² The Wagoner Alternative, by eliminating the bottleneck created by the existing lower MAOP Neversink segment, could enhance the reliability of Millennium's system and could allow Millennium wider options for expansion of its system. EA at 54.

⁷³ EA at 50, n. 11.

⁷⁴ Due to the replacement of the Neversink segment, significant less compression is needed resulting in less than half the air emissions of the Minisink project based on the relative size of compression needed. EA at 52.

⁷⁵ EA at 52.

⁷⁶ EA at 54.

⁷⁷ Allegheny Storage Project, Docket No. CP12-72-000, Environmental Assessment, at 96, June 14, 2012 (recognizing the appropriateness of the local zoning, visual impacts, number of residences within 0.5 mile, impact on prime farmland soils, and land use as determinative of the environmentally preferable location); Mid-South Expansion Project, Docket Nos. CP11-18-000, PF10-13-000, Environmental Assessment, at 110, June 20, 2011 (rejecting compression as an alternative because, although resulting in less land disturbance and environmental impacts during construction, it would be less reliable, require the use of fuel, and result in significantly higher air emissions than the proposed project).

I do not lightly question the conclusions of an Environmental Assessment prepared by Commission Staff. In particular, I recognize that any decision to reject a proposed project can lead to delay as alternative projects are considered. However, the prospect of delay does not relieve the Commission of its obligation to carefully carry out its responsibilities under the Natural Gas Act, and to reject projects whose adverse impacts are not outweighed by public benefits. In addition, it is not only legally required but prudent to consider carefully issues raised by a project prior to construction, given the long-term nature of infrastructure projects and the greater difficulty of addressing adverse impacts once they are created.

I also note that the Commission's ongoing application of its Certificate Policy Statement will continue to require case-by-case analysis of the facts and alternatives presented in each case. I fully expect that there will be instances where it may be appropriate, and indeed imperative, to approve a natural gas facility with characteristics and residual adverse impacts similar to the Minisink facility because those impacts are outweighed by the public benefits of the project. However, that is not the case here.

Accordingly, I respectfully dissent.

Cheryl A. LaFleur
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, LLC

Docket No.CP11-515-000

(Issued July 17, 2012)

Clark, Commissioner, *concurring*:

I concur with the decision to grant Millenium's requested authorization. The Commission's review of applications for certificates of convenience and necessity by natural gas pipelines must be guided by our jurisdiction under section 7 of the Natural Gas Act. In addition, the Certificate Policy Statement provides guidance for applying our statutory authority, thereby assisting us in determining whether there is a need for the project. As a general matter, I believe that it is necessary to review an application based on the appropriate standards and, if the application meets those standards, to approve the certificate.

Additionally, under the National Environmental Policy Act, we perform a comparative review, under which we examine reasonable alternatives to the proposed action, including a no action alternative. But that review is intended to supplement our evaluation of the environmental impacts of the *proposed project*, not to create a test by which we compare the full costs and benefits of every alternative. We do perform a balancing test, but that balancing is primarily one of balancing the public benefits of the project against the economic and environmental impacts of the project.

To deviate from these principles could create a precedent wherein the Commission is asked to serially consider alternate sites for a project, and applicants are expected to file applications under a constantly moving target of requirements.⁷⁸ The question is whether the Commission is required to determine *the* minimum impact site, or whether it is required to approve an acceptable site that produces minimal adverse impacts. I find that the latter interpretation most closely hews to the statute.

I am concerned that to choose otherwise could also result in an unfortunate public

⁷⁸ This is not to suggest that applicants should be unconcerned about accommodating reasonable landowner requests for modifications. It is my expectation and admonition that project developers take reasonable steps to address legitimate landowner concerns and preferences expressed during the siting process.

policy outcome. Consumers who would benefit from a needed project could be denied those benefits indefinitely. Applicants may be held to ever changing standards. And local communities might become pitted against one another in an ongoing, perhaps vain, attempt to determine the minimum impact site, as opposed to a site that meets all standards for minimal adverse impact.⁷⁹

In this case, our review leads to the conclusion that this project satisfies the criteria established under the Certificate Policy Statement for determining that there is a need for the proposed project and that the project will serve the public interest. In addition, our review of the potential environmental effects of Millennium's proposed project, including a review of the Environmental Assessment and the entire record leads to the conclusion that if constructed and operated in accordance with the application and the conditions imposed in our order, the applicant will have met all standards required by law and rule.⁸⁰

⁷⁹ This case itself illustrates the point. The record reflects local government and interests impacted by the Wagoner alternative lining up in opposition to that proposal as well (EA at 50). Were the Commission to deny the application before us, it would not equate to an approval of the Wagoner alternative, but rather simply a rejection of the site before us. That would set in motion another filing for a different alternative, which would then in turn have to be compared to various other alternatives. In the meantime, the public interest is harmed as a needed project finds itself in regulatory purgatory.

⁸⁰ There appears to be little factual dispute in the record regarding the applicant having met or exceeded all objective standards for review. Noise, emissions, impacts on wildlife, etc. are shown to be below acceptable limits. The only substantial dispute is whether there exists somewhere else an even more minimally impactful site for the project. The record indicates this is a debatable point, but at the very least I do not believe one could conclude that Wagoner is a definitively better site. In any event, I do not find such comparative analysis to be dispositive without some deficiency in a given application.

Based on the applicable standards and the outcome of our review, I concur with the result of granting a certificate of public convenience and necessity authorizing Millennium to construct and operate the Minisink Compressor Project, consistent with the order.

Accordingly, I respectfully concur.

Tony T. Clark
Commissioner