

145 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Millennium Pipeline Company, L.L.C.

Docket No. CP13-14-000

ORDER ISSUING CERTIFICATE

(Issued October 1, 2013)

1. On November 1, 2012, 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 authorization to construct and operate a new compressor station and related facilities in the Town of Hancock, Delaware County, New York (Hancock Compressor Project). The proposed project is designed to increase Millennium's firm transportation capacity to its interconnection with Algonquin Gas Transmission, L.L.C. (Algonquin) at Ramapo, New York by 107,500 dekatherms (Dth) per day and provide the flexibility to meet an anticipated need for 115,000 Dth per day of firm transportation capacity between an interconnect with the Laser Northeast Gathering System (Laser) at the Town of Windsor, Broome County, New York and Columbia Gas Transmission, L.L.C. (Columbia) in Deerpark, New York. For the reasons discussed below, the Commission will grant Millennium's requested authorization, subject to appropriate conditions.

I. Background and Proposal

2. Millennium is a natural gas company, as defined by section 2(6) of the NGA, engaged in the transportation of natural gas in interstate commerce. It is a Delaware limited liability company owned by subsidiaries of NiSource Inc., National Grid PLC, and DTE Energy Company. Millennium's natural gas transmission system extends across southern New York, from an interconnection with National Fuel Gas Supply Corporation at Independence, New York in the west to an interconnection with

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Part 157, Subpart A (2013).

Algonquin at Ramapo, New York in the east.³ The existing pipeline system consists of approximately 240 miles of mostly 30-inch-diameter pipeline and a 15,000 horsepower (hp) compressor unit at a compressor station owned by Columbia near Corning, New York.⁴

3. Millennium proposes to construct and operate a compressor station and ancillary facilities along Hungry Hill Road in Hancock, New York. Specifically, Millennium proposes to construct: (1) a single 15,900 hp natural gas-fired turbine compressor unit and new compressor building; (2) approximately 320 feet of 30-inch-diameter suction piping, 290 feet of 30-inch-diameter discharge piping and a new mainline valve assembly on the existing pipeline, located between the new suction and discharge lines, to connect the compressor station to Millennium's existing pipeline system; and (3) appurtenant facilities, including an access driveway, a parking area, and a station control and auxiliary building.⁵ The estimated cost of the proposed facilities is \$45.8 million.

4. Millennium states that the proposed project will enable it to transport an additional 107,500 Dth per day to its existing interconnection with Algonquin at Ramapo, New York. The proposed facilities will also permit Millennium to flow gas bi-directionally between the existing Corning Compressor Station and the proposed Hancock Compressor Station.

5. In addition, Millennium asserts that the proposed project, under certain circumstances, will provide Millennium with the flexibility to meet an anticipated need for an additional 115,000 Dth per day of firm transportation service from a recently completed interconnect with Laser at Windsor, New York to an existing interconnect

³ The Commission authorized Millennium to construct and operate its system in 2006. See *Millennium Pipeline Co., L.L.C.*, 117 FERC ¶ 61,319 (2006), *order on reh'g*, 119 FERC ¶ 61,173 (2007).

⁴ On July 17, 2012, the Commission authorized Millennium to construct and operate the Minisink Compressor Station, which will add a second compressor station to Millennium's system, near the Town of Minisink, New York. The Minisink Compressor Station was designed to add 225,000 Dth per day of capacity to Millennium's system. *Millennium Pipeline Company, L.L.C.*, 140 FERC ¶ 61,045, *stay of notice to proceed denied*, 141 FERC ¶ 61,022, *order on reh'g*, 141 FERC ¶ 61,198 (2012), *order on reh'g*, 142 FERC ¶ 61,077 (2013) (*Millennium*). The Minisink Compressor Station commenced service on June 1, 2013.

⁵ The project, including all appurtenant facilities, will be located on property owned by Millennium, as further described, *infra*.

with Columbia at the Wagoner receipt point in Deerpark, New York. Specifically, Millennium explains that if all of its existing firm transportation customers retain their current levels of primary firm service at the locations reflected in their current transportation service agreements after the proposed Hancock Compressor Station goes into service,⁶ Millennium will be able to transport only the incremental 107,500 Dth per day to Ramapo on a firm basis. However, Millennium asserts that if certain customers request changes to their primary receipt point rights, as it anticipates they will,⁷ Millennium will be able to meet the demand for an additional 115,000 Dth per day of incremental transportation service between the Laser and Wagoner receipt points, in addition to satisfying its contractual commitments to the Hancock Compressor Project shippers for 107,500 Dth per day of service to Ramapo.

6. Millennium will provide transportation service to project shippers under existing Rate Schedules FT-1 and BH-1. Millennium proposes to charge its existing system-wide Part 284 rates under Rate Schedules FT-1 and BH-1 as initial recourse rates for the transportation service and to apply its existing system-wide fuel retainage rates.

7. Prior to holding an open season for the Hancock Compressor Project, Millennium entered into precedent agreements with two anchor shippers for firm transportation to Ramapo at negotiated rates. Millennium then held an open season from April 1 through April 15, 2011, to solicit requests for additional firm service on a non-discriminatory basis.⁸ Bidders were permitted to elect a cost-of-service-based recourse rate or to propose a fixed negotiated rate. The open season also solicited turn-back capacity. Millennium received no bids for additional firm service or acceptable offers for the turn back of capacity.

8. Millennium executed binding precedent agreements with the two anchor shippers, Southwestern Energy Services Company (Southwestern) and WPX Energy Marketing,

⁶ Millennium indicates that most of its shippers have primary firm receipt point rights at the Corning and Stagecoach receipt points (near Corning and Owego, New York, respectively) on the western portion of Millennium's system.

⁷ Millennium states that it expects that the construction of interconnections with gathering systems on Millennium's system downstream of Inergy, L.P.'s Stagecoach storage facility, together with shifts in areas of natural gas production, make it likely that certain of Millennium's customers will change their primary receipt point rights.

⁸ 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.

LLC (WPX Energy), for the additional 107,500 Dth per day of incremental firm transportation service to Ramapo. Under the precedent agreements with Southwestern and WPX Energy, Millennium will provide firm service at negotiated rates pursuant to Millennium's negotiated rate authority set forth in section 34 of the General Terms and Conditions (GT&C) of its tariff. Millennium specifically states that it does not request a pre-determination that it may roll the project costs into system-wide rates and that it will bear the risk of any cost overruns associated with the proposed project.

II. Public Notice, Interventions, Protests, and Comments

9. Notice of Millennium's application was published in the *Federal Register* on November 15, 2012, with comments due by November 29, 2012.⁹ The parties listed in Appendix A of this order filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.¹⁰

10. WPX Energy, Robert Sanzoverino, an owner of several tracts of land in the vicinity of the proposed project, Jessica Kenyon, a year-round resident and one of the three landowners nearest to the proposed project, and Daniel and Donna Martinez and Shawn Cahill, also owners of property in the vicinity of the project,¹¹ filed untimely motions to intervene. These movants have demonstrated an interest in this proceeding and granting their untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, the Commission will grant the untimely motions to intervene.¹²

11. The motions to intervene of Jessica Kenyon, Robert Sanzoverino, Claire Marin, the Delaware Riverkeeper Network (Riverkeeper), the Catskill Mountainkeeper, and Minisink Residents for Environmental Preservation and Safety included comments in

⁹ 77 Fed. Reg. 68,115 (2013).

¹⁰ 18 C.F.R. § 385.214(c) (2013).

¹¹ The proposed project is located on the western side of Hungry Hill Road, which generally runs in a slightly northeast/southwest direction. On the eastern side of Hungry Hill Road, directly across from the project's proposed permanent and temporary access driveways to the project, are the residences of Daniel and Donna Martinez (the closest to the proposed compressor station), Jessica Kenyon and her family, and Cathy Leidersdorff.

¹² See 18 C.F.R. § 385.214(d) (2013).

opposition to the Hancock Compressor Project. Additional comments in opposition to the project were filed by Daniel and Donna Martinez, Cathy Leidersdorff, Craig English, Jeffrey Weil, Heather Carlisare, Stephen Sautner, Carole Marnier, Anthony DePalma, and Miriam (no last name given), all property owners in the vicinity of the project. Southwestern, one of the anchor shippers, intervened in support of Millennium's application. Millennium filed a response to comments of the National Park Service and the Upper Delaware Council, Inc.¹³

12. The comments raise issues regarding the existence of land use covenants and restrictions on the project site, the need for a conservation easement or buffer zone to prevent additional industrialization of the area, the adequacy of Hungry Hill Road to permit emergency evacuations and for construction traffic, the reliability of cell phone service for emergencies, noise and air pollution from truck traffic and operation of the compressor station, impacts on water quality and recreational and commercial activity in the Delaware River watershed, impacts on the water resources and aesthetics of the Catskill region, the multi-phase nature of the project and its potential to induce additional natural gas development; the suitability of the compressor station site, and the adequacy of landowner compensation in the event of groundwater contamination or damaged wells.

13. The issues raised in the comments were addressed in the Environmental Assessment (EA) prepared for the proposed project and are discussed further below.

III. Discussion

14. 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.¹⁴

A. Application of the Certificate Policy Statement

15. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁵ The Certificate Policy Statement established criteria for

¹³ Millennium April 10, 2013 Response to Comments of the National Park Service and Upper Delaware Council, Inc.

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

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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

16. Under this policy, 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. 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 of the new facilities. 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.

Subsidization

17. 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 Rate Schedules FT-1 and BH-1 rates as the initial recourse rates for service utilizing capacity created by the Hancock Compressor Project. An incremental monthly rate calculated to recover the projected costs of the proposed project would be \$5.946 per Dth,¹⁶ which is less than Millennium's existing Part 284 system-wide monthly rate under Rate Schedule FT-1 of \$19.769 per Dth. Therefore, the Commission finds that Millennium's proposal to charge its existing system-wide rates as initial recourse rates for service on the proposed facilities is appropriate and will avoid subsidization by existing customers.

¹⁶ This value is derived by dividing the first year cost-of-service (\$7,669,885) by annual firm capacity (39.2 million Dth).

Existing Customers and Other Pipelines and Their Customers

18. The Commission finds that the proposed project will not adversely affect service to Millennium's existing customers. In fact, existing customers may benefit from the increased compression and enhanced bi-directional capacity that the proposed project will provide between the proposed Hancock Compressor Station and the existing Corning Compressor Station.

19. The Hancock Compressor Project will not adversely impact other pipeline operators or their captive customers. The proposed facilities will serve incremental demand for transportation and will not replace existing service on other pipelines. The proposed project will permit natural gas supplies from upstream pipelines and production and storage fields interconnected to Millennium's system to access downstream markets in the Northeast. As a result, the Hancock Compressor Project will increase supply options for market participants and serve to increase competition in markets served by Millennium.

Landowners and Communities

20. Millennium has acquired 35.8 acres of rural property on Hungry Hill Road in Hancock, New York, comprising four individual parcels of land. The majority of the project facilities, including the compressor unit and building and suction and discharge pipelines, will be located on the southernmost parcel (Parcel 1), 10.8 acres of land on the west side of Hungry Hill Road that is already crossed by the existing Millennium mainline.¹⁷ Parcel 2, 6.6 acres of land, north of and abutting Parcel 1, will be used mainly for the permanent access driveway to the compressor station building, as well as for the septic system, while Parcel 3, 10.46 acres of land to the north of Parcel 2, largely will be used for temporary workspace and a temporary access driveway. The fourth and northernmost parcel comprises 8 acres of vacant land and no project facilities will be constructed there. Thus, as described, the project will impact only 7.9 acres of land, and only 3.5 acres of that, on Parcels 1 and 2, will be used for the permanent project facilities, including the compressor station, access driveway and suction and discharge piping.

21. At the time it filed its application, Millennium owned Parcel 1 and held an option from the landowner to purchase the additional 25 acres comprising Parcels 2, 3, and 4.¹⁸

¹⁷ As noted, *supra*, Hungry Hill Road generally runs in a northeast/southwest direction.

¹⁸ Millennium participated in the Commission's pre-filing process in an effort to address the concerns of surrounding landowners and other interested parties. As a result of comments received during the pre-filing process, Millennium modified the project to

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In a letter filed with the Commission on July 9, 2013, Millennium stated that it exercised this option and purchased Parcels 2, 3, and 4. Therefore, Millennium will not need to invoke eminent domain to obtain any necessary property rights.

22. Mr. Sanzoverino is the current owner of property along Hungry Hill Road and previously owned Parcels 3 and 4, which he sold to the Corcorans. Mr. Sanzoverino asserts that, as part of the prior sales of these two parcels,¹⁹ certain covenants and restrictions conveyed on the parcels prohibiting the use of the land for industrial or commercial purposes.²⁰ Mr. Sanzoverino asserts that these covenants and restrictions prevent Millennium from using Parcels 3 and 4 even on a temporary basis and, as a result, prevent Millennium from using any of the 35.8-acre site for a compressor station.²¹ Mr. Sanzoverino contends that due to the deed restrictions, the Corcorans, and

lessen not only environmental, but also economic, impacts on landowners. Specifically, Millennium negotiated the option to purchase Parcels 2, 3, and 4 to eliminate the need to negotiate easements with the owners of that property or acquire the properties through eminent domain. Millennium also moved the compressor station to the far western boundary of Parcel 1 to increase the distance to the residences east of Hungry Hill Road.

¹⁹ Mr. Sanzoverino sold Parcels 3 and 4 in 2006 and 2010, respectively, to Robert and Barbara Corcoran. Millennium subsequently purchased the parcels from the Corcorans.

²⁰ See Robert Sanzoverino November 30, 2012 and March 18, 2013 Motions to Intervene, and March 24, May 10, and July 16, 2013 Comments. In the attachment to his May 10, 2013 letter, Mr. Sanzoverino includes copies of a “Declaration of Covenants, Conditions, and Restrictions” (2007 Covenants) executed by Mr. Sanzoverino and the Corcorans in 2007, and an “Amended Declaration of Covenants, Conditions and Restrictions” (2010 Amended Covenants) executed by the same parties in 2010. Sections 2A of the 2007 Covenants limits construction on the land to one private dwelling house and garage, Section 5A limits the use of any constructed structure to residential purposes and prohibits any use of the parcels for a use that may be an annoyance or nuisance to the owners or occupants of neighboring land, and Section 5C prohibits the use of the land for trade or business.

²¹ The Commission notes that the 2007 Covenants state that they apply to land “described in Schedule A,” but no Schedule A to the 2007 Covenants was included in Mr. Sanzoverino’s May 10, 2013 filing. The 2010 Amended Covenants in Mr. Sanzoverino’s filing do include a Schedule A, but that Schedule A appears to apply only to Parcel 4 (identified as Lot 1 on Schedule A) and not Parcel 3. While the Commission accepts that Schedule A to the 2007 Covenants applied to Parcel 3, it could

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now Millennium, have “tainted titles” to the land,²² and therefore Millennium lacks the necessary property rights to construct the project. Mr. Sanzoverino further maintains that Millennium’s intention to violate the deed restrictions by constructing the proposed compressor station prevents the Commission from approving the project.

23. While the Commission takes seriously the concerns expressed by commenters that construction of natural gas infrastructure may have negative impacts on the existing nature of their community, the commenters fail to understand the nature of the Commission’s authority under the NGA. They essentially contend that a private contract can circumscribe the Commission’s authority to determine whether the construction of proposed pipeline facilities is required by the public convenience and necessity and to issue a certificate. However, private agreements, such as covenants and restrictions to the sale of real property, cannot limit or restrict the Commission’s authority or jurisdiction to act. Congress has given the Commission exclusive jurisdiction over matters involving the transportation and sale of natural gas in interstate commerce under the NGA.²³ Further, the Supreme Court determined that the NGA and its implementing regulations “preempt and wholly occupy the field concerning the transportation and sale of natural gas.”²⁴ Pursuant to section 7(c) of the NGA, the Commission is required to authorize

not have applied to Parcel 4, as that parcel did not convey from Mr. Sanzoverino to the Corcorans until 2010. Although the 2010 Amended Covenants do not specify the same residential use restrictions laid out in the 2007 Covenants, or refer to the 2007 Covenants, for purposes of the discussion in this order, the Commission will treat both Parcels 3 and 4 as being subject to the provisions of the 2007 Covenants.

²² Robert Sanzoverino July 16, 2013 Comment at 1. Mr. Sanzoverino attaches to this letter, among other things, the recorded deed between the Corcorans and Millennium for Millennium’s purchase of Parcels 3 and 4. Mr. Sanzoverino contends that Millennium’s and the Corcorans’ failure to attach or include the covenants and

restrictions to the recorded deed means that Millennium does not have clear title to the land and demonstrates Millennium’s intention to break the deed restrictions.

²³ See Natural Gas Act, 15 U.S.C. 717f. See *Williams v. City of Oklahoma City*, 890 F.2d 255 (10th Cir. 1989); see also, *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1958).

²⁴ *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988); *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold*, 524 F.3d 1090, 1097 (9th Cir. 2008) (NGA gives the Commission “comprehensive authority” over the control of natural gas companies’ facilities). See also, *National Fuel Gas Supply Corp. v. Public*

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pipeline facilities when it finds, as the Commission does below, that such facilities are required by the public convenience and necessity. This overriding comprehensive authority to determine the public interest as it relates to natural gas pipeline facilities or expansions of capacity takes precedence over and preempts, for instance, state and local regulations that might limit or prohibit a natural gas company's construction of needed facilities,²⁵ a pipeline's prior easement agreement with a landowner in which the pipeline allegedly bound itself to particular operating conditions that would act to prohibit current expansions,²⁶ or as in this case, covenants and restrictions to a private real estate sales contract ostensibly allowing only residential use of the property purchased by the pipeline.

Service Comm'n of NY, 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).

²⁵ *Dominion Transmission, Inc.*, 141 FERC ¶ 61,240, at P 68 (2012) (where the Commission rejected arguments that it must deny Dominion's application to construct a new compressor station because such use of the compressor site violated local zoning ordinances and the local town council had rejected Dominion's application to build the compressor station as "inconsistent with the Myersville Comprehensive Plan and applicable town codes." The Commission found that "state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by this Commission.").

²⁶ *Kern River Transmission Co.*, 127 FERC ¶ 61,223, *reh'g denied*, 129 FERC ¶ 61,115, at PP 17-18 (2009) (where the Commission held that an easement agreement between a land developer's predecessor and Kern River purporting to limit the maximum allowable operating pressure (MAOP) of a pipeline running through the developer's planned residential community to 1,200 pounds per square inch gauge (psig) did not prevent the Commission from approving Kern River's application to construct additional compression facilities to increase the pipeline's MAOP to 1,333 psig in order to expand the pipeline's firm capacity. The Commission found the issue of whether the easement agreement barred Kern River from increasing its MAOP irrelevant to its authority to act on Kern River's application and issue a certificate permitting the increase if required by the public convenience and necessity because the Commission has exclusive and preemptive jurisdiction over matters involving the transportation and sale of natural gas in interstate commerce under the NGA, stating, "[p]rivate parties, including the pipeline itself, cannot by agreement limit or restrict the Commission's jurisdiction." 129 FERC ¶ 61,115, at PP 17-18.

24. Moreover, the Commission rejects the argument that the Commission cannot approve the Hancock Compressor Project because Millennium lacks the necessary property rights due to the titles to Parcels 3 and 4 being “tainted” by usage restrictions, or due to the omission of the usage restrictions from the deeds Millennium received from the Corcorans. Section 7(h) of the NGA provides that if the holder of a section 7(c) certificate of public convenience and necessity cannot acquire the necessary property rights to construct its facilities by contract, or cannot agree with a property owner on the amount of compensation, it may acquire those rights by exercising the right of eminent domain in a court proceeding.²⁷ Thus, the Commission’s jurisdiction to issue a certificate of public convenience and necessity is not dependent on an applicant’s possession of the requisite property rights to develop the project before the Commission acts.²⁸

25. Mr. Sanzoverino and the other commenters also express concern that Millennium may sell Parcels 3 and 4, the two parcels without permanent facilities, once their use as staging areas is complete and they can be properly restored.²⁹ They contend that due to the proximity of the project facilities to Parcels 3 and 4, Millennium will be unable to find a residential purchaser and will thus sell these parcels for industrial or commercial uses. They allege that this could lead to additional violations of the residential use covenants and restrictions, further industrialization of the surrounding area, and decreases in property values.³⁰ These commenters request that the Commission require Millennium to retain ownership of Parcels 3 and 4 once the Hancock Compressor Station is operational, in order to serve as a conservation easement or buffer zone to protect the area of the project from being further burdened by additional development. In the alternative,

²⁷ 15 U.S.C. § 717f(h) (2006).

²⁸ See *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306, at PP 39- 40 (2008), *order on reh’g*, 128 FERC ¶ 61,261 (2009) (where the Commission found that the validity of a 1970 gas storage lease between Arlington’s predecessor and the family of the landowner of the storage site, upon which lease Arlington relied for the necessary property rights to develop its storage wells and compressor station, was irrelevant to the Commission’s jurisdiction to issue a certificate of public convenience and necessity and, therefore, denied a requested stay of Commission action in the proceeding pending resolution of the validity of the lease in state court).

²⁹ See Millennium December 21, 2012 Data Response to Question 11 of Staff’s December 5, 2012 Environmental Data Request.

³⁰ See, e.g., Robert Sanzoverino May 10, 2013 Comments at 1.

the commenters argue that Millennium should be permitted to sell the properties only for residential use or subject to the covenants and restrictions held by Mr. Sanzoverino.³¹

26. In response, Millennium states that if it were to sell either of the two properties, it would do so only after the compressor station has been constructed and is operational.³² Millennium asserts that the commenters' proposal that it retain the parcels is contrary to public policy in that limiting a certificate applicant's ability to sell its property to a willing and fully-informed purchaser and thereby mitigate the costs associated with acquiring additional property, would discourage future certificate applicants from voluntarily making such acquisitions to lessen the impacts on surrounding communities.³³ Millennium further contends that nothing in the record or in its experience suggests that it would be unable to sell the properties for use as residences or for recreation.

27. Since, as is discussed below, we find that the property is not necessary for the ongoing operation of the facilities authorized herein, the Commission will not require Millennium to retain ownership of Parcels 3 and 4 in order to prevent future development. While Parcel 3 will be used for temporary workspace and an access driveway during construction of the project facilities situated on Parcels 1 and 2, neither Parcels 3 nor 4 will contain permanent project facilities or a permanent right of way. Thus, once construction of the facilities is complete and the compressor station is operational, the two parcels will not be needed for the operation or maintenance of the Hancock Compressor Project, or part of the certificated project.³⁴ In any event, we note that to the extent Parcels 3 and 4 are not part of the certificated project, the covenants and restrictions retained by Mr. Sanzoverino may indeed serve to restrict the extent to which the subject property may be developed for non-NGA purposes. Millennium has

³¹ Miriam also suggests that Millennium sell the property development rights to the State of New York to further restrict use of the property.

³² Millennium December 21, 2012 Data Response to Question 11 of Staff's December 5, 2012 Environmental Data Request.

³³ Millennium March 22, 2013 Letter at 2. While the Commission does not necessarily agree with Millennium's public policy argument, it is moot because, as discussed below, the Commission will not require Millennium to retain the two parcels as a buffer zone.

³⁴ Millennium has not stated definitively that it will sell Parcels 3 and 4. Indeed, Millennium has indicated that it may decide to retain the house on Parcel 3 to allow one of the operational employees who will be working at the compressor station to use it as a residence.

acknowledged this, stating that the covenants and restrictions would prohibit the use of the land for industrial and commercial purposes, and that its intention is not to take any action to modify or eliminate the covenants and restrictions.³⁵ However, such questions are beyond the jurisdiction of this Commission and can be addressed by the parties, as necessary, in an appropriate forum.

28. Millennium represents that it has purchased all of the property rights necessary for its project from willing sellers and will not need to exercise eminent domain to acquire any of the property rights it will need for the project. The Commission finds that for purposes of our consideration under the Certificate Policy Statement, Millennium has taken steps to minimize adverse economic impacts on landowners and surrounding communities.³⁶

Conclusion

29. The proposed Hancock Compressor Project will increase the capacity of Millennium's system to its interconnection with Algonquin at Ramapo and allow Millennium to flow gas bi-directionally between the Corning and the Hancock Compressor Stations. In addition, if certain customers request changes to their primary receipt point rights, Millennium will be able to meet the demand for additional capacity between its interconnections with Laser at Windsor and Columbia at Deerpark. Based on the benefits the project will provide and the minimal adverse effect on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the

³⁵ See Millennium March 22, 2013 Letter at 2.

³⁶ As described above, Millennium is not proposing, and the Commission is not authorizing, the construction of any facilities on Parcel 4. In addition, Millennium is proposing, and the Commission is authorizing, the use of Parcel 3 only for temporary workspace and a temporary access driveway. Thus, to the extent that Millennium is mistaken in its belief that it has clear title to these properties and the covenants and restrictions to the sales contracts between Mr. Sanzoverino and the Corcorans actually encumber Millennium's title, Millennium will have the ability to seek the right to use Parcel 3 on a temporary basis as authorized by its certificate of public convenience and necessity through eminent domain. See, e.g., *Californians for Renewable Energy, Inc. v. Williams Northwest Pipeline*, 133 FERC ¶ 61,194 at P 27 (2010), *reh'g denied*, 135 FERC ¶ 61,158 at PP 14-17 (2011).

public convenience and necessity requires approval of Millennium's proposal, as conditioned in this order.

A. Rates

30. As noted above, Millennium proposes to use its existing rates under Rate Schedules FT-1 and BH-1 as initial recourse rates for transportation using the capacity created by the Hancock Compressor Project. Millennium calculates an incremental annual cost of service for the project of \$7,669,885.³⁷ This cost of service is based on the estimated capital cost of \$45,784,730 for the project facilities, engineering estimates for operation and maintenance expenses based on estimates for similar facilities, a depreciation rate of 3.3 percent, and a pre-tax rate of return of 11.51 percent.³⁸ An incremental rate calculated to recover these costs would be approximately \$5.95 per Dth per month.³⁹ Where, as here, an incremental rate calculated to recover only the costs of the project would be lower than the existing system rates, the Commission has found that it is appropriate to establish the existing system rates as initial recourse rates for expansion services.⁴⁰ Millennium also proposes to charge its existing system-wide fuel retainage rates for service using the expansion capacity. The Commission will approve this request as well.

31. While Millennium's agreements with its project shippers call for their service to be provided at negotiated rates, looking forward, the Commission has generally compared project costs with the revenues that would be generated if all project services were provided at the maximum recourse rates. Based on the currently effective maximum reservation rate under Rate Schedules FT-1 and BH-1 of \$19.769 per Dth per month, Millennium's recourse rates for the capacity commitments relating to the project would produce approximately \$17.8 million in revenues in excess of the project's cost of service in year one. Moreover, information provided by Millennium in Exhibit N to its application demonstrates that the negotiated rate contracts should produce revenues exceeding \$18 million a year for the first 5 years following the in-service date of the project and just under \$11 million per year for the 5 years following that. Thus, even at

³⁷ Millennium Application at Exhibit N.

³⁸ Millennium Application at Exhibits K and N. Depreciation rates and the rate of return were established in Millennium's rate case in Docket No. RP98-150-000.

³⁹ $\$7,669,885 / (107,500 \text{ Dth per day}) * 365 \text{ days per year} / 12 \text{ months per year}$.

⁴⁰ *Southern Natural Gas Company*, 124 FERC ¶ 61,058 (2008); *Trunkline Gas Company*, 119 FERC ¶ 61,331 (2007).

the negotiated rates, Millennium's projected revenues are expected to exceed the incremental annual cost of service of \$7.7 million each year for the first 10 years of operation. We find, absent changed circumstances, rolled-in treatment of the proposed costs would not require subsidies from existing customers.⁴¹ To ensure that all parties have full knowledge of the costs and revenues attributable to the project, the Commission requires the applicant to keep separate books and accounting of costs attributable to the new facilities. Further, the books should be maintained with applicable cross-reference as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.

32. Millennium proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$2,184,729. Millennium states that it is aware of the Commission's revised policy with respect to AFUDC collection.⁴² As part of the revised policy, the Commission stated that natural gas pipelines must be prepared to demonstrate that they have met several conditions in order to accrue AFUDC prior or subsequent to the initiation of pre-filing. However, Millennium states that it proposes to calculate AFUDC associated with the project commencing after the filing of the application herein consistent with the Commission's previous policy. Millennium states that the AFUDC accruals are otherwise calculated in accordance with the Commission's rules and regulations. The Commission will approve Millennium's proposal for recording AFUDC accruals.⁴³

33. Millennium must file its negotiated rate agreement or tariff record describing the negotiated rate agreements associated with this project in accordance with the Alternative

⁴¹ Although Millennium chose not to request a pre-determination that it may roll the costs of the project into its system-wide rates in its next section 4 rate case, the Certificate Policy Statement contemplates that as a general matter, issues of future rate treatment will be addressed in advance, before new facilities are constructed. Certificate Policy Statement, 88 FERC at 61,746.

⁴² See *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010) (*Southern*) and *Florida Gas Transmission Co., L.L.C.*, 130 FERC ¶ 61,194 (2010).

⁴³ The Commission finds that it is unnecessary to establish a bright line for when natural gas pipelines may begin to accrue AFUDC. *Southern*, 130 FERC ¶ 61,193 at P 39.

Rate Policy Statement⁴⁴ and the Commission's negotiated rate policies.⁴⁵ Consistent with Commission policy and GT&C section 34.11 of Millennium's Tariff, Millennium must either file the project shippers' negotiated rate agreements, or a tariff record setting forth the essential terms of these agreements, at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

B. Environmental Analysis

34. Commission staff began its review of the Hancock Compressor Project following the grant of approval for Millennium to use the pre-filing process on May 1, 2012, in Docket No. PF12-10-000. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) on July 10, 2012. The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners, which included landowners within 0.5 mile of Millennium's proposed compressor station site, as well as landowners within 0.5 mile of alternative sites.

35. On May 29, 2012, Commission staff participated in an open house sponsored by Millennium in Hancock, New York to explain the Commission's environmental review process to interested stakeholders. In addition, on August 2, 2012, staff held a public scoping meeting in Hancock to provide the public with an opportunity to comment on the proposed action and identify issues that should be addressed in the EA. Approximately 50 people attended the scoping meeting.

36. In response to the NOI, the Commission received over 125 comments from owners of land in proximity to the project, as well as from the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service, the Delaware County Department of Public Works, and Riverkeeper. The primary issues raised concerned pollutant emissions and operational noise impacts; traffic impacts and damage to roads; impacts on rural residential properties, local farms, and home values; impacts on tourism and recreation; safety; evacuation routes and access for emergency responders; visual

⁴⁴ *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 (1996).

⁴⁵ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

impacts; impacts on wetlands, water resources, vegetation, and wildlife; cumulative impacts; and alternatives to the proposed site.

37. To satisfy the requirements of the National Environmental Policy Act (NEPA), Commission staff prepared an EA for Millennium's proposal, in cooperation with the EPA. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

38. The EA concludes that the construction and operation of the Hancock Compressor Station would result in limited impacts on air quality, noise, visual resources, property values, and safety. In response to comments received during the pre-filing process requesting that the Commission evaluate alternatives to the proposed project, the EA evaluates in detail five compressor station site alternatives, each located along Millennium's existing pipeline, and compares several environmental and engineering criteria of each site alternative to the proposed site. The EA concludes that none of the alternative sites offer any significant advantages over the proposed project site.

39. The EA also considers seven recently completed, ongoing, and planned projects near the proposed compressor station, and evaluates the cumulative environmental impacts of these projects with the impacts of the proposed project. The EA concludes that due to the variable timing, duration and location of construction activities associated with the other projects, and the limited impacts the proposal herein would have, there would not be any significant cumulative impacts from the combined effects of these projects.

40. The Commission issued the EA for a 30-day comment period and placed it into the public record on March 1, 2013. The Commission received comments on the EA from the EPA, the National Park Service (NPS), the Upper Delaware Council, Riverkeeper, and Millennium, as well as several individuals.⁴⁶ The majority of the comments on the EA revisited matters previously raised in scoping comments that were fully addressed in the EA. Millennium provided minor corrections and updates to information in the EA. The Commission does not believe that any of these changes are

⁴⁶ The individuals are: Carole Marnier, Kate Ryan, Miriam [no last name given], Cathy Leidersdorff, Claire Marin, Stephen Sautner, Craig English, Robert Sanzoverino, Heather Carlare, Daniel and Donna Martinez, Jessica Kenyon, Jeffrey Weil, Kathleen Bowers, Anthony DePalma, and James Birch.

significant, nor do they alter our conclusions with respect to the environmental impacts resulting from the project. Millennium also provided documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof) per Environmental Recommendation 8 of the EA. Thus, this recommendation is not included as a condition herein. Substantive comments on the EA are addressed below.

Significant Impacts

41. Ms. Marin and Mr. and Mrs. Martinez question the definition of “significant impact” as it is used in the EA and assert that, for many residents of the area, any impact, particularly to groundwater resources, could be considered “significant.” The Commission appreciates that any undesired impact of a project may be viewed as “significant” by some. However, the phrase “significant impact” as used in the EA and applied by the Commission is a term of art for NEPA purposes.

42. Though the Council on Environmental Quality (CEQ) regulations do not provide an explicit definition of the term “significant impacts,” they do provide that whether a project’s impacts on the environment will be considered “significant” depends on both “context” and “intensity.”⁴⁷ Context means that the “significance of an action must be analyzed in several contexts,” including “the affected region, the affected interest, and the locality.”⁴⁸ With regard to “intensity,” the CEQ regulations set forth 10 factors agencies should consider, including: the unique characteristics of the geographic area, the degree to which the effects are highly controversial or highly uncertain or unknown, the degree to which the action may establish a precedent for future actions, whether the action is related to other actions with insignificant but cumulatively significant impacts, and the degree to which the action may adversely affect threatened and endangered species.⁴⁹

43. Here, the Hancock Compressor Project would disturb a limited area (about 7.9 acres of land during construction and 3.5 acres maintained during operation), avoids sensitive areas, complies with air and noise regulations, and does not adversely affect any endangered species’ critical habitat. Further, Millennium proposed measures to mitigate those impacts that would result from the project.

44. For an action to qualify as “highly controversial,” a factor that contributes to a project’s “intensity” under the CEQ regulations, there must be a “dispute over the size,

⁴⁷ 40 C.F.R. § 1508.27 (2013).

⁴⁸ *Id.*

⁴⁹ 40 C.F.R. §1508.27(b) (2013).

nature or effect of the action, rather than the existence of opposition to it.”⁵⁰ Thus, a “controversy” does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action, nor does a controversy exist simply because there are conflicting views among experts. Accordingly, and for reasons more fully discussed below, we find that the project does not qualify as “highly controversial” for the purpose of determining significance.

Segmentation

45. Riverkeeper contends that Millennium improperly “segmented” the construction and NEPA review of the Hancock Compressor Station, the Minisink Compressor Station (which was recently placed into service), and the replacement of the Neversink segment of Millennium’s pipeline system (which, to date, Millennium has not proposed).⁵¹ Riverkeeper asserts that because Millennium had plans to construct both compressor station projects at the time it submitted the application for the earlier Minisink project to the Commission, the two projects were required to have been included in a single NEPA document. Riverkeeper further contends that since the Neversink segment “will likely need to be replaced when Millennium adds any additional volume of gas to its system,” the Commission should consider this potential future expansion in the same NEPA document with the two compressor station projects.

46. We disagree with Riverkeeper’s conclusion that simply because Millennium has chosen to construct two compressor stations within a short period of time, the projects are so inextricably linked as to require consideration in the same NEPA document. Although not cited by Riverkeeper in its comments, the question of whether two or more projects are “connected” and must therefore be considered together is governed by CEQ regulations.⁵² As defined in these regulations, connected actions are “closely related” because they “automatically trigger other actions” that may require environmental review, cannot or will not proceed “unless other actions are taken previously or simultaneously, and are “interdependent parts of a larger action and depend on the larger action for their justification.” In the proceedings approving the Minisink Compressor Station, the Commission stated that the Minisink Compressor Station had independent utility that warranted its own environmental review and that the Minisink and Hancock Compressor Stations, and the potential, future replacement of the Neversink Segment are not connected actions under the CEQ regulations because the Minisink Compressor

⁵⁰ *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992).

⁵¹ Riverkeeper April 1, 2013 Comments.

⁵² 40 C.F.R. § 158.25(a) (2013).

Project is separable from the proposed Hancock Compressor Project and any potential replacement of the Neversink Segment.⁵³ The order concluded that each project could proceed independently of the others, especially since Millennium has not yet proposed to replace the Neversink Segment.⁵⁴ These findings are equally applicable here.

Air Emissions/Health

47. Ms. Marner, Ms. Leidersdorff, Mr. Cahill, Mr. Martinez, Ms. Bowers, and Ms. Ryan reiterate their contention made in scoping comments that the compressor station should not be located near populated areas because emissions from the compressor station may result in health concerns. Riverkeeper asserts that the EA should have included a cumulative, aggregate emissions review of the Minisink and Hancock Projects, as well as a public health analysis.

48. Air emissions from the compressor station are required to comply with all applicable state and federal air quality standards, including the Clean Air Act (CAA). As discussed in the EA, the Hancock Compressor Station would not be a major source of air emissions for either criteria pollutants or hazardous air pollutants under federal air quality permitting programs. In addition, the total potential emissions from the station would comply with the National Ambient Air Quality Standards, in accordance with the CAA and its amendments. These standards were established to protect human health and public welfare and take into account the protection of sensitive populations such as asthmatics, children, and the elderly. The New York State Department of Environmental Conservation (NYSDEC), which is charged with carrying out both the state and federal air pollution control and monitoring programs throughout New York State, issued the requisite CAA permit to Millennium for the Hancock Compressor Station on March 18, 2013.

49. Ms. Marner suggests that the project's air emissions of formaldehyde, which is categorized under the CAA as a hazardous air pollutant, have the potential to cause a range of medical conditions and adversely affect the health of nearby residents. As indicated in the EA,⁵⁵ the estimated operation emissions of all hazardous air pollutants, including formaldehyde, from operation of the compressor station are expected to be only

⁵³ *Millennium Pipeline Company, L.L.C.*, 141 FERC ¶ 61,198 at P 33.

⁵⁴ *Id.* As of the date of this order, there is no proposal by Millennium to replace the Neversink Segment. Speculation about a future proposal cannot be considered a connected action with the Hancock Compressor Project.

⁵⁵ EA at 50.

1.25 tons per year (tpy), well below the major source threshold of 25 tpy under the EPA's Prevention of Significant Deterioration program.⁵⁶ We conclude that the EA properly determined that air emissions of formaldehyde from operation of the compressor station will occur only at very small concentrations that will not result in significant health concerns, even in the most sensitive individuals in the population.

50. Riverkeeper claims that the EA's use of the global warming potential of 21 for methane over a 100-year period is incorrect because the Intergovernmental Panel on Climate Change revised this value and the correct global warming potential for methane over a 100-year period is now 25. Under the CAA and its amendments, the EPA is vested with primary authority to implement and enforce regulations to reduce air pollution. The current EPA guidelines state that 21 is the accepted value for the global warming potential for methane.⁵⁷ On April 2, 2013, the EPA proposed a rule to change the global warming potential of methane from 21 to 25,⁵⁸ and the global warming potential of N₂O from 310 to 298, as part of its changes to the Greenhouse Gas Reporting Rule. If and when the EPA finalizes this rule and it becomes effective, the Commission will use the revised values prospectively.

51. Riverkeeper also states that the EA did not consider the effect that an increase in natural gas transportation capacity could have on system-wide leaks and, consequently, greenhouse gas emissions. The EA states that Millennium must construct and operate its facilities in accordance with the U.S. Department of Transportation's (DOT) regulations, which require the performance of system leakage surveys and repairs.⁵⁹ Based on the limited scope of this project there is no basis to conclude that the proposed compressor station construction will increase pipeline system-wide leaks.

⁵⁶ Prevention of Significant Deterioration applies to new major sources or major modifications at existing sources for pollutants where the area the source is located in is in attainment. Since the estimated emission level of hazardous air pollutants from the Hancock Compressor Station falls below the "major source threshold," the station will not be considered a "major source" of hazardous air pollutants under the CAA. See <http://www.epa.gov/NSR/psd.html>.

⁵⁷ Intergovernmental Panel on Climate Change, *Direct Global Warming Potentials*, http://www.ipcc.ch/publications_and_data/ar4/wg1/en/ch2s2-10-2.html.

⁵⁸ 2013 Technical Corrections for the Greenhouse Gas Reporting Rule, 78 Fed. Reg. 19,801 (proposed Apr. 2, 2013) (to be codified at 40 C.F.R. pt. 98).

⁵⁹ 49 C.F.R. § 192.614 (2013).

52. Riverkeeper alleges that the EA failed to analyze the cumulative air impacts of increased gas throughput and greenhouse gas (GHG) emissions on climate change and the environment, as a result of the completion of the Minisink and Hancock Compressor Projects. Contrary to the Riverkeeper's assertions, the EA considered the cumulative air impacts of both the Minisink and Hancock Projects together. Dispersion modeling conducted for both compressor stations prior to air permitting indicated that the maximum expected air quality impacts of each compressor station were predicted to occur at the fence line of each facility and would be well below levels set by the EPA to protect health and welfare of even the most sensitive populations.⁶⁰ Dispersion modeling also showed that impacts to air quality would drop to very low levels at a distance of approximately 15 miles from each facility. Since the Minisink Project site is more than 50 miles from the Hancock Project site, the EA determined that the overlap of air quality impacts from the two projects would be negligible because at that distance, dispersion and atmospheric dilution will reduce air concentrations even more.⁶¹

53. Riverkeeper asserts that the EA failed to adequately discuss the impacts that GHG emissions from the Hancock Compressor Project will have on climate change. The EA identified the GHG emissions that are expected to result from the Hancock Compressor Project based on the EPA's GHG inventory regulations, which take into account climate change. The EA correctly states that the project will produce approximately 70,438 tpy of GHG. In February 2012, the CEQ released guidance on the determination of GHGs and climate change impacts. While the total project emissions of carbon dioxide equivalents⁶² are greater than the 25,000 tpy level identified as being presumed insignificant, they are lower than 100,000 tpy, the level identified within the Prevention of Significant Deterioration rules at which mitigation measures are required. Thus, the GHG emissions do not rise to a level that would cause the station to be subject to regulation for Prevention of Significant Deterioration or under Title V as a major source of air pollution.

⁶⁰ EA at 62.

⁶¹ *Id.*

⁶² A CO₂ equivalent is a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential. Carbon dioxide equivalents are commonly expressed as "million metric tons of carbon dioxide equivalents (MMTCO₂Eq)." The carbon dioxide equivalent for a gas is derived by multiplying the tons of the gas by the associated global warming potential. *See* www.epa.gov/climatechange/glossary.html#C.

54. Riverkeeper claims that the EA should have performed an aggregation analysis of all of the “sources” on Millennium’s and Columbia’s systems for the air quality analysis. As part of CAA permitting, an aggregation analysis involves analyzing the impacts of multiple facilities together instead of individually. In *Summit Petroleum Corp. v. the EPA*, the Sixth Circuit clarified the EPA’s aggregation regulations, holding that aggregated activities must be “located on contiguous or adjacent properties” and vacated the EPA’s determination that Summit’s facilities spread over forty-three square miles constituted a single stationary source for CAA permitting purposes.⁶³ In the present case, Columbia’s natural gas facilities include a 12,000-mile long pipeline network and over 100 compressor stations, and Millennium’s facilities include approximately 240 miles of pipeline. Under the Sixth Circuit’s analysis of the EPA’s regulations, Millennium’s and Columbia’s facilities, spread throughout the northeastern United States, may not be aggregated together for purposes of an air quality analysis. Also, as previously discussed, the NYSDEC, the agency responsible for issuing permits under the CAA for this project, issued the required CAA permit for the Hancock Compressor Station in March 2013.

Cumulative Impacts of Natural Gas Production

55. NPS requests a cumulative impacts analysis for non-jurisdictional natural gas production, claiming that Millennium must have estimated the potential for additional gas well development based on its existing contracts for pipeline use, in addition to projections for filling available remaining capacity.

56. CEQ regulations require agency consideration of three types of impacts: direct, indirect, and cumulative.⁶⁴ The regulations state that “direct effects” of a proposed action are caused by the action and occur at the same time and place,⁶⁵ while “indirect effects” are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁶⁶ “Cumulative impacts” are defined as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁶⁷

⁶³ *Summit Petroleum Corp. v. EPA*, 690 F.3d 733 (6th Cir. 2012).

⁶⁴ 40 C.F.R. § 1508.25 (2013).

⁶⁵ 40 C.F.R. § 1508.8(a) (2013).

⁶⁶ 40 C.F.R. § 1508.8(b) (2013).

⁶⁷ 40 C.F.R. § 1508.7 (2013).

57. NEPA requires a “reasonably close causal relationship” between an environmental effect and its alleged cause.⁶⁸ In order to be sufficiently causally-connected, the environmental impact must be both caused by the proposed action and reasonably foreseeable. In this case, NPS contends that a cumulative impacts analysis is necessary because the EA discusses the predicted need for the Hancock Compressor Station in the future, stating that the project is needed to meet the demands of existing customers who are producing gas near Millennium for transportation capacity to Ramapo and for capacity between Laser and Columbia in Deerpark.⁶⁹ Thus, NPS asserts that the Commission should consider the cumulative impacts of natural gas drilling and production because the gas produced from those activities may eventually reach the Hancock Compressor Station.

58. We disagree. As an initial matter, Millennium is not engaged in natural gas production or gathering activities, which are outside of the Commission’s jurisdiction. Even so, the EA included information on oil and gas drilling permits in Delaware County, New York and found that, while 23 entities have filed applications to drill, no permits or authorizations to construct have been issued. Thus, the timing and development of future natural gas production is uncertain at this time.⁷⁰ As stated in the EA, natural gas production and gathering that may or may not take place at an uncertain time in the future, and its associated potential environmental impacts, are not sufficiently causally-related to the Hancock Compressor Project to warrant a more comprehensive cumulative impacts analysis at this time.

59. Mr. Sanzoverino refers to the EA’s mention of “a power plant at the end of a jurisdictional pipeline,” as an indication of a future industrial complex on Hungry Hill Road.⁷¹ The referenced language was merely an example of a non-jurisdictional facility

⁶⁸ *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752 (2004).

⁶⁹ NPS April 1, 2013 Comments at 4-5.

⁷⁰ EA at 59. *See Central New York Oil and Gas Company, LLC*, 137 FERC ¶ 61,121(2011) (The Commission found that the “widespread nature and uncertain timing” of Marcellus Shale development in the project area were too uncertain to perform a cumulative impacts analysis, even where drilling permits had been issued and active drilling was occurring in the proposed project right-of-way).

⁷¹ EA at 7.

which might be considered integral to the need for a proposed jurisdictional project. There is no power plant related to the Hancock Compressor Station.⁷²

Noise

60. Citing an article from the World Health Organization (WHO) and various internet articles, Ms. Marnier and Ms. Bowers express concern that the EA does not adequately address the extent that noise from the proposed compressor station could result in a range of medical conditions. It is well-known that machinery noise in excess of 85 decibels (dB) can induce hearing loss and other negative health effects.⁷³ However, such prolonged exposure to high noise levels is primarily an occupational health hazard for workers using industrial machinery. The EA explains that the Commission has adopted a standard of 55 decibels on the A-weighted frequency scale (dBA) at the nearest noise sensitive area (NSA), based on data from the EPA, to protect the public from indoor and outdoor activity interference.⁷⁴ The estimated noise levels from the proposed project are predicted to be below 55 dBA, but admittedly are likely to be noticeable. Thus, as recommended in the EA, we will require Millennium to make all reasonable efforts not to exceed its predicted noise levels (see Environmental Condition 11).

61. Mr. English and Mr. Sanzoverino question the methods and results of Millennium's sound measurements referenced in the EA. Millennium's report on Ambient Sound Survey and Noise Impact, summarized in the EA, provides the methodology and data of the sound survey.⁷⁵ Commission staff evaluated Millennium's protocols and found them to be acceptable. Mr. DePalma and Mr. Martinez ask whether the Commission would accept independent noise analyses. All future noise surveys performed by Millennium and the survey methodology filed by Millennium would be available for public review and comment. Any independent analyses conducted on noise that are filed in this docket will be reviewed and considered by Commission staff.

62. Mr. English requests that the Commission clarify whether the noise from operation of the compressor station would be detectable at the nearest NSA. The EA states that the noticeable noise increase threshold for humans is about 3 dB, with 5 dB as a clearly

⁷² *Id.*

⁷³ The cited WHO article mentioned noise levels of 105 dBA.

⁷⁴ EA at 51.

⁷⁵ See Millennium November 1, 2012 application, Accession Number 20121101-5171, Resource Report 9, Appendix 9-B.

noticeable increase in noise and that a 10 dB change is perceived as a doubling of sound level. The EA states that the potential increase in noise at the nearest NSA (800 feet away) would be 4.9 dB.⁷⁶ Thus, there may well be a noticeable noise increase at the nearest NSA, especially given the low level of ambient noise in the project area.⁷⁷ As previously stated, we require in Environmental Condition 11 that Millennium make all reasonable efforts to ensure its predicted noise levels from the compressor station are not exceeded at the nearby NSAs and further require operational noise surveys to confirm the effectiveness of the noise mitigation measures. In addition, we will add new Environmental Condition 8 to provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction and operation of the project.

63. Millennium filed a request that Environmental Condition 11 be revised to require additional mitigation only if noise attributable to operation exceeds 55 dBA, rather than if it exceeds Millennium's predicted levels. Millennium claims that the requirement as currently structured is not consistent with the Commission's review of other projects and was not satisfactorily justified.

64. As indicated above, the existing low ambient noise in the project area would make noise produced by the compressor station more noticeable at lower levels than at many other locations. The project design submitted by Millennium and reviewed by staff predicts noise levels below the standard of 55 dBA. Millennium's comments do not suggest that it will be unable to meet its predicted noise levels or that Millennium considers those levels unachievable. The Commission has previously imposed such a requirement in similar circumstances.⁷⁸ As described in the EA, if Millennium is unable to meet its predicted noise levels and the Hancock 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. Thus, we will reject Millennium's request to modify the condition.

65. Millennium also requests that if the Commission does not modify the language in Environmental Condition 11, the Commission should clarify that the condition does not pre-determine that additional modifications to the Hancock Compressor Station would be required under all circumstances. The Commission clarifies that there is no pre-

⁷⁶ EA at 52.

⁷⁷ EA at 52, 54.

⁷⁸ *Millennium*, 140 FERC ¶ 61,045, at P 78, *reh'g denied*, 141 FERC ¶ 61,198 (2012).

determined outcome. We will assess whether “reasonable efforts” have been taken and determine the need for any additional mitigation measures after the compressor station has gone into operation and the sound levels attributable to the compressor station have been accurately measured. The situation at each new compressor station is unique, based on site-specific circumstances such as location, proximity to NSAs, geography, land use, and vegetation.

66. Mr. Sanzoverino objects to the one-year time period recommended 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. Mr. Sanzoverino states that this time frame should be shortened to 30 days to limit the time noise exceeds Millennium’s predicted levels. We believe that a 30 day period is unreasonable. However, based on the Commission’s experience with compressor station noise emissions, we find that six months is a reasonable time frame to allow Millennium to work up to operating at full load, identify the causes of any unpredicted noise, and to propose corrective actions. Environmental Condition 11 to this order reflects this change.

67. Mr. English questions how often blowdown events would occur, how loud they would be at the nearest NSAs, and how effective the silencers, a device to lessen sound impact, would be. Blowdown sound levels are loudest at the beginning of the blowdown event and they decrease as the blowdown pressure decreases. The Noise Impact Analysis provided by Millennium indicates that the initial sound level for a scheduled blowdown, such as would occur during the start-up or shut-down of the facility, would be 51 dBA at the nearest NSA with the use of the silencers. This sound level is below the Commission’s standard of 55 dBA.

68. Millennium filed comments requesting clarification on the definition of “operating at full load,” as used in Environmental Condition 11. Millennium states that “full load” should be limited to 13,600hp of compression, which reflects the maximum amount of compression that Millennium has projected would be required from the station with existing contract demand, rather than the entire nameplate compression of 15,900 hp. Millennium indicates that while the compressor unit may be capable of running at 15,900 hp, operation at that level exceeds the horsepower necessary to meet its contract demand and would result in Millennium’s exceeding the maximum allowable operation pressure of its downstream pipeline. We agree that “full load” should be defined as operation at 13,600 hp, because Millennium has demonstrated that this reflects the most strenuous operating circumstances needed to meet contract demand.⁷⁹

⁷⁹ Millennium November 15, 2012, supplement to Exhibits G and G-II.

Wildlife/Vegetation

69. Mr. Sautner requests an additional noise analysis to specifically measure noise impacts on wildlife and Ms. Carlasare questions the effect of noise on special status species near the project area. Ms. Marin claims that the EA fails to adequately analyze how the noise from the compressor station is capable of affecting honeybees in the surrounding area.

70. Given the limited noise increase identified in the EA, and the distance and vegetative buffer between the nearby habitat areas and the project, we conclude that construction and operational noise will not substantially impact nearby wildlife species. Over time, animals become habituated to the noise of compressor stations and return to the general project area. We note that the Hancock Compressor Station is comparable to many other natural gas compressor stations located in agricultural and rural areas of the country. There is no evidence that those existing stations have had negative impacts on honeybees. Thus, we find this suggested potential impact to be speculative. The EA correctly concluded that the project's impacts on wildlife will not be significant.

71. Mr. Weil is concerned that construction activities and increased truck traffic will potentially impact the timber rattlesnake. Mr. English indicates that bald eagles could be closer than 2.5 miles from the project area and should be protected from noise. As indicated in section 2.9 of the EA, Millennium consulted with the Fish and Wildlife Service and the NYSDEC regarding potential impacts on special status species. Through consultation with these agencies, appropriate mitigation measures were developed to minimize disturbance on the timber rattlesnake during construction activities.⁸⁰ For bald eagles, protective buffers are generally developed to restrict construction activities within 660 feet of a nest.⁸¹ Since no bald eagle nests were identified within this range, we agree with the conclusion in the EA that the project would not adversely affect the bald eagle.⁸²

72. The EPA requests that Millennium replant trees to replace the 3.5 acres of forested area that will be cleared for the operation of the project. Millennium maximized use of the cleared areas on its site for the compressor station and will only remove a limited

⁸⁰ Page 29 of the EA presents the mitigation measures that Millennium would implement to reduce encounters with timber rattlesnakes and includes training and reporting requirements that were found acceptable to the NYSDEC.

⁸¹ <http://www.fws.gov/northeast/eagleguidelines.gov>

⁸² Impacts on bald eagles and nests are discussed in the Migratory Birds discussion in the EA. EA at 31.

amount of forest habitat. We believe that an adequate buffer remains for use by wildlife and as noise mitigation. Thus, we have determined that it is not necessary to require Millennium to replant trees at the site.

Need for a Buffer Zone or Conservation Easement

73. As described earlier, Millennium proposes to construct the Hancock Compressor Project on 35.8 acres of property that comprises four parcels. Parcel 1 is a 10.8-acre site owned by Millennium on which it proposes to construct and operate the compressor station and associated pipelines. Millennium purchased Parcels 2, 3, and 4 to the north, totaling 25.0 acres, partly to serve as construction workspace. Since Millennium requires only Parcels 1 and 2 for the permanent operation of the project, it has indicated that it may sell Parcels 3 and 4 in the future after construction and restoration is complete and the project is operational.

74. In scoping comments several commenters asked that Parcels 3 and 4 be established as a conservation easement or buffer zone. The EA determined that doing so would not further reduce the impact of the proposed Hancock Compressor Project on adjacent property owners beyond the buffer that would be provided by the 10.8 acres of Parcel 1.⁸³ In their comments on the EA, Mr. Sanzoverino, Mr. DePalma, Ms. Leidersdorff, Mr. English, Ms. Ryan, Mr. Weil, and Miriam continue to express concern over the potential sale of Parcels 3 and 4, and reiterate their requests that Millennium be required to keep the properties as a permanent buffer zone or conservation easement.⁸⁴

75. With the exception of Mr. English, as noted below, these commenters request that the Commission require Millennium to retain ownership of Parcels 3 and 4 in order to prevent further development on the land, rather than to prevent or minimize noise or other adverse impacts directly associated with the operation of from Millennium's

⁸³ EA at 36.

⁸⁴ Robert Sanzoverino March 24 and 30, 2013 Comments; Anthony DePalma March 10, 2013 Comments; Cathy Leidersdorff April 1, 2013 Comments; Craig English March 25, 2013 Comments; Jeffrey Weil March 31, 2013 Comments; and Miriam March 21, 2013 Comments. In addition, Mr. DePalma and Miriam contend that Millennium, in stating it was purchasing the three additional properties to create a buffer between the compressor and residences, and then proposing to sell two of the parcels, broke its "promise" to establish a buffer zone, "misled" property owners, and engaged in "bait and switch" and "sleight of hand" tactics. See Anthony DePalma March 10, 2013 Comments; Miriam March 21, 2013 Comments.

proposed project. The overriding concern expressed by the majority of these commenters is that the properties will be sold for industrial or commercial use, which they claim will transform a bucolic, rural, mountain environment into a commercial and industrial zone and destroy property values. However, as discussed above, the Commission will not require Millennium to retain the two parcels for the purpose of preventing potential commercialization of the area to the extent the land is not otherwise necessary to be included as part of the certificated project.

76. As noted in the EA, Millennium determined that a 10-acre site for the Hancock Compressor Station was necessary to provide an adequate buffer to reduce noise and aesthetic impacts to nearby landowners. Specifically, Millennium stated that the minimum sized site for the Hancock Compressor Station site should be “at least 10 acres to reduce potential visual and aesthetic impacts, increase the distance of the station from noise sensitive receptors, and provide a buffer against outside development and future encroachment.”⁸⁵ Parcel 1 met these requirements. Moreover, the modification Millennium made to the site design during the pre-filing process by relocating the compressor station to the western edge of Parcel 1 further increased the distances to the nearest residents, who reside east and northeast of Parcel 1, and created a large wooded buffer between the compressor station and those neighboring residences. This buffer area will serve to further minimize landowner impacts, such as visual impacts from Hungry Hill Road.

77. While Parcel 1 by itself acts as a wooded buffer between the compressor station and the nearest residences, Millennium purchased Parcels 2, 3, and 4 “in an effort to eliminate any impacts on the current occupants of the closest residences, create a larger buffer between the station and the remaining residences, and to provide additional workspace for the [p]roject during construction.”⁸⁶ Millennium will retain Parcel 2 for permanent project operations,⁸⁷ expanding the permanent buffer created by Parcel 1 by an additional 6.5 acres. In addition, Parcels 3 and 4 not only provide additional workspace for project construction, but also act as a temporary buffer against the impacts of

⁸⁵ Millennium Application at Resource Report 10 and Millennium December 21, 2012 Data Response to Question 11 of Staff’s December 5, 2012 Environmental Data Request. *See* EA at 36.

⁸⁶ Millennium December 21, 2012 Response to the December 5, 2012 Environmental Data Request at 12.

⁸⁷ The permanent access driveway, septic system, water well, and a portion of the auxiliary building is on Parcel 2.

construction. These benefits from the purchase of Parcels 3 and 4 would not be negated by any subsequent sale.

78. With respect to the question whether a buffer zone is required for the Hancock Compressor Project, Mr. English contends that Parcels 3 and 4 are needed to protect surrounding residents from the impacts of the compressor station or to minimize such impacts. Mr. English is concerned that if the local environment changes as a result of a sale of Parcels 3 and 4, such as from the removal of trees on those parcels, the noise levels in the surrounding area from the operation of the compressor station could increase. He claims that this would result in the creation of additional noise not identified or analyzed in the EA and further adversely affect the rural and recreational nature of the community. Mr. English also questions why Millennium is not required to establish a conservation easement for the Hancock Compressor Station when a conservation easement was established for the Minisink Compressor Station.

79. The closest residences to the proposed project are located along the opposite side (east side) of Hungry Hill Road, and are 800 feet from the compressor station, to the east and northeast of Parcels 1 and 2.⁸⁸ The EA found that the only part of the facility that would be visible from these adjacent residences would be the access driveway entrance off of Hungry Hill Road on Parcel 2, and that no part of the compressor station, including the 60-foot-high stack, would be visible.⁸⁹ The EA concludes that the topography and maintenance of vegetative screening along Hungry Hill Road and at the project site should aid in screening views of the site from points along the roadway and at existing adjacent residences.⁹⁰ The EA also determines that noise from the operation of the compressor station at the adjacent residences described above, which are the nearest NSA (NSA No. 1), will meet the noise criterion of 55 dBA that the EPA has established to protect the public from indoor and outdoor activity interference.⁹¹ Since the trees that

⁸⁸ Mr. and Mrs. Martinez, the Kenyons, and Ms. Leidersdorf are the three closest residents to the project, just east and slightly north of the proposed access driveway for the project on Parcel 2.

⁸⁹ EA at 37.

⁹⁰ *Id.*

⁹¹ Figure 2.13-1 at page 53 of the EA provides a map of the nearest noise sensitive areas in the vicinity of the project. While the noise from the compressor's operation will represent a noticeable increase at NSA No. 1 due to the very low ambient noise in the project area, it will fall just below the level defined as a "clearly noticeable" increase in noise. The Commission will require that Millennium implement the noise-abatement

(continued...)

provide the visual and noise screening for these neighboring residences are located on Parcels 1 and 2, the conclusions of the EA are based on the topography of Parcels 1 and 2, as well as on the station design and the proposed mitigation at the site during operation of the facility, and do not rely on Millennium's retention of Parcels 3 and 4.

80. Thus, the Commission concludes that the impacts on adjacent property owners have been sufficiently minimized without the need for an additional buffer zone on Parcels 3 and 4. In fact, the location of Parcels 3 and 4 relative to the residences nearest to the station would prevent the parcels from having any real value as a buffer to these residences. Parcels 3 and 4 are situated directly north of Parcel 2 on the west side of Hungry Hill Road, and are generally northwest of these residences. Thus, as Parcels 3 and 4 do not lie between the closest residences and the compressor station to the southwest of the residences, they are not positioned to act as a buffer.⁹²

81. In addition, Parcels 3 and 4 would not act as a buffer to help minimize project impacts on other landowners further from the compressor station site than the adjacent residents. With respect to visual impacts, the only vantage point analyzed in the EA from which the compressor exhaust stack and 6 feet of the compressor building would be visible is Vantage Point No. 2, located 1,800 feet to the southwest of the compressor station. Thus, Parcels 3 and 4 to the north of the compressor station cannot serve as a buffer against visual impacts for Vantage Point No. 2. As there are no visual impacts at the other vantage points, there is no need for Parcels 3 and 4 to buffer visual impacts for those locations. With respect to noise impacts, the next closest residences to the compressor station (NSA No. 2) are 1,400 feet to the southwest of the compressor station, for which Parcels 3 and 4 would also be irrelevant. The next closest residences located to the north or east of the compressor station, after NSA No. 1, are between 2,250 (NSA No. 3) to 3,600 feet (NSA No. 5) from the compressor station. However, they are not

measures recommended in the EA to ensure that Millennium meets its predicted noise levels.

⁹² Although Ms. Kenyon, one of the three adjacent landowners to the project, does not suggest that Parcels 3 and 4 could act as a buffer for her property, which is almost due east of the proposed access driveway for the project on the east side of Hungry Hill Road, she believes that Millennium should implement an additional buffer for her home. The close proximity of her home to Parcel 2 does not allow for an additional buffer area to be established. However, as the EA has determined, the maintenance of vegetative screening will aid in minimizing adverse impacts. The Commission notes that Millennium does not intend to disturb most of the wooded vegetation on Parcel 2.

expected to perceive a noticeable noise increase from station operations.⁹³ Thus, these residences would receive no benefit from Parcels 3 and 4 being designated a buffer zone.

82. Mr. English is concerned that if Millennium sells Parcels 3 and 4, and the new owner cuts down the trees on the parcels, “an important part of the vegetative sound barrier will be lost” which could change the predicted noise levels to residents as determined in the EA. Noise from the operation of the compressor station will meet the required noise threshold of 55 dBA at the nearest NSA based on the vegetative buffer of the permanent project site, the project design, and mitigation measures, without consideration of the existence of trees or other vegetation on Parcels 3 and 4. Further, as presumed by the EA, NSAs further from the compressor station than the nearest NSA would experience noise levels less than 55 dBA. Finally, and most important, in the event the vegetation on Parcels 3 or 4 is disturbed or eliminated after any sale of the properties, and noise levels do increase above those predicted, Millennium will still be required to meet the day-night noise level of 55 dBA at the NSAs near the compressor station site, and its other predicted noise levels, using mitigation measures if necessary.⁹⁴ Environmental Condition 11 requires that Millennium describe to the Commission in its noise survey report the modifications it will make in order to reduce noise levels exceeding the predicted noise level at any nearby NSA.

83. In response to Mr. English’s query why a conservation easement was appropriate for Millennium’s Minisink Compressor Project, but is not being required or implemented for the Hancock Compressor Project, the Commission clarifies that it did not require Millennium to establish a conservation easement for the Minisink Project. Rather, in response to a request by the Orange County Department of Planning, Millennium was willing to consider reserving 42.5 acres of the project site as a conservation easement. Thus, noting that it generally believes it appropriate for an applicant to purchase additional land surrounding compressor stations to serve as a buffer between residences and compressor stations, the Commission required Millennium only to update the Commission on its efforts to develop a conservation easement.

84. While located on the same pipeline, the impacts of the Minisink Compressor Project differ from those of the Hancock Compressor Project. Notably, the Minisink Project, unlike the project here, will be more visible to surrounding residents and drivers, and it will require more time for the visual screening plan at Minisink to become effective. In recognition of this, Millennium agreed to limit its rights with respect to the

⁹³ EA at 52 - 54.

⁹⁴ See *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at P 36, n.14 (2005).

future use of the land on which the compressor station is located, committing to avoid development on specific portions of the site and to allow farming to continue in certain other areas. However, no formal conservation easement was established⁹⁵ and the Commission denied the request by the Town of Minisink that Millennium be prohibited from constructing new above-ground structures on the unused portion of the project site or from selling any of the property.⁹⁶

85. For the reasons discussed above, the Commission finds that it is not necessary to require Millennium to use Parcels 3 and 4 as a buffer zone to protect surrounding landowners from the effects of the project, as the additional land will not provide increased protection beyond that provided by the project design and Parcels 1 and 2, which the EA determined adequately minimize potential adverse impacts.

Road Access

86. The Commission received several comments on the EA concerning the adequacy of Hungry Hill Road for safe use during construction and operation of the compressor station. Specifically, Ms. Ryan and Ms. Carlsare filed comments regarding the quality of Hungry Hill Road and the lack of a second egress along the road during winter months when the north end of the road is not passable. Ms. Marin, Ms. Kenyon, and Mr. Sanzoverino question the ability of the roadway to handle an emergency evacuation and Ms. Kenyon states that recent modifications to the road by the Town of Hancock have left the north end of Hungry Hill Road in worse condition. Mr. Sanzoverino, Ms. Marin, and Ms. Kenyon question whether Hungry Hill Road and State Route 97 can safely be used during construction and suggest that Hungry Hill Road needs to be brought up to Town of Hancock specifications and New York State Department of Transportation specifications. Mr. Sanzoverino questions whether a traffic light would be installed at the intersection of Route 97 and Hungry Hill Road and whether truck loads would exceed 80,000 pounds.⁹⁷ Mr. Martinez questions how the increase in construction traffic would affect his quality of life.

87. The EA states that Hungry Hill Road would be improved to allow for year-round access, affording a second egress during winter months.⁹⁸ During and after construction,

⁹⁵ *Millennium*, 141 FERC ¶ 61,198 at P 60.

⁹⁶ *Millennium*, 140 FERC ¶ 61,045 at P 32.

⁹⁷ The intersection of Hungry Hill Road and State Route 97 is 1.6 miles from the proposed site of the Hancock Compressor Project.

⁹⁸ EA at 41.

the road conditions would be subject to inspection by the Town of Hancock to ensure that they meet town standards, including requirements for access by emergency responders. Regarding the safety of Hungry Hill Road and Route 97, the EA states that Millennium prepared Traffic Management Plans to address the movement of large vehicles along Hungry Hill Road and ensure that other users of the road do not unexpectedly meet an oversized vehicle.⁹⁹ The Traffic Management Plans include the use of flaggers at road intersections and signage to identify construction activity and access points. In addition, the EA states that Millennium entered into a roadway use agreement with the Town of Hancock to discuss the scope of use for the road such as weight restrictions, upgrades to the road, and ensure compliance with traffic control measures and regulations.¹⁰⁰ Thus, the EA properly concludes that the project would not significantly impact traffic, the local roadways, or the safety of the roadway users.

Safety

88. Ms. Leidersdorff, Ms. Bowers, Ms. Kenyon, and Mr. Sanzoverino claim the EA did not adequately address safety, pointing to recent explosions at compressor stations or pipelines in the United States. Ms. Kenyon claims that the EA failed to fully address her previous concerns regarding the safety of her family, due to their close proximity to the project. As discussed in the EA, the DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) has jurisdiction over pipeline safety under Title 49, U.S.C. Chapter 601. The EA also notes that the compressor station and related facilities must be constructed in accordance with DOT safety standards.¹⁰¹ In accordance with DOT's regulations, Millennium is required to have a written emergency plan that includes procedures to minimize hazards in a natural gas emergency. 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; the Emergency Response Guidebook was revised in 2012. Based on the DOT requirements for pipeline operators and PHMSA's continual outreach and coordination with emergency responders, we conclude that construction and operation of the Hancock Compressor Station will represent a minimum increase in risk to the public.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ EA at 55, 58.

89. Ms. Leidersdorff, Mr. Ryan, and Ms. Bowers reiterate that the Hancock Compressor Station would be located in an area serviced primarily by a volunteer fire department that may not have the necessary equipment or training. The EA indicates that Millennium, as part of its emergency plan, would provide the appropriate training to local emergency service personnel before the facility would be placed in service.¹⁰² 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. Pipeline operators must also provide emergency responders with 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, 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 if they occur.

90. Mr. Sanzoverino questions the specific source of water for fighting fires at the compressor station and requests a one-mile evacuation zone around the station. Ms. Marin, Ms. Kenyon, and Mr. Sanzoverino state that the phone lines would not be reliable in the event of an emergency. The EA indicates that Millennium's emergency plan would include procedures for making personnel, equipment, tools, and materials available at the scene of an emergency.¹⁰³ This may include site-specific measures for determining the source of water to put out fires, establishing an evacuation zone, and ensuring the ability to contact the operators at all times.

91. Mr. Sanzoverino also questions the safety of exposing the existing pipeline and tapping into it in order to connect the compressor station to Millennium's pipeline system and Ms. Marin is concerned over the potential failure and rupture of the pipeline. The procedures for connecting the compressor station piping to Millennium's pipeline are routine practices. The EA states that Millennium would construct, operate, and maintain the project in accordance with all applicable federal and state permit requirements, regulations, and environmental guidelines in order to ensure adequate protection to the public.¹⁰⁴ We conclude that the EA adequately addresses the issue of safety during construction and operation.

¹⁰² EA at 57 and 58.

¹⁰³ EA at 57.

¹⁰⁴ EA at 7.

92. Mr. DePalma suggests that the vacant homes identified in the EA on the station property be removed or razed to prevent vandalism and the risk of fire. Millennium responded to Mr. DePalma's comments in its March 22, 2013 filing, stating that it would not be opposed to removing the house on Parcel 1, as well as the mobile home on Parcel 2. Millennium also indicates in its response that it would not remove the house on Parcel 3 because the house is in good condition and would be used as an office during construction. During operation of the compressor station, Millennium indicates it may choose to keep the house as a residence for an operational employee or sell it for residential use, subject to appropriate disclosures and easements.

Surrounding Property Values and Local Tax Base

93. Commenters raise concerns about the impact of the project on the property values of nearby residences and other land in the surrounding community. While the Commission recognizes the general potential for property values to be negatively affected by the construction of nearby energy infrastructure, the impact of a project on property values in the general area of the project is dependent on the existence and level of nuisance effects created by the project, such as increased noise or air emissions, or negative impacts on area aesthetics. Even where such nuisance effects exist or are substantial, their impact on property values at a specific location are subjective and speculative and, therefore, difficult to quantify. However, as discussed below and in the EA, any nuisance effects on permanent air quality, noise levels, or aesthetics from the Hancock Compressor Project are likely to be relatively minor for a compressor project and thus, not sufficient to impact property values to a significant degree in the overall community, or to impact the determination below that the project is required by the public convenience and necessity.

94. In addressing the project's impact on property values, the EA states that Millennium and its predecessor in interest have had a pipeline that crosses the proposed location and Hungry Hill Road since the 1950s.¹⁰⁵ The EA found that there could be an additional reduction in property values if various nuisance effects are prominent, such as effects on noise, aesthetics or air quality, but that because the Hancock Compressor Station is unlikely to be visible from any adjoining properties, and would meet the Commission's noise standards and applicable air emission standards, "it is unlikely that the station would notably reduce property values or resale values."¹⁰⁶

¹⁰⁵ EA at 42.

¹⁰⁶ *Id.* at 43.

95. Ms. Leidersdorff, Mr. DePalma, and Mr. English claim that the EA's analysis of property value impacts is insufficient because it minimizes residents' concerns and fails to acknowledge the certainty that the compressor station will affect property values and the financial burden that nearby property owners will incur. Mr. DePalma also claims it is inappropriate for the EA to compare the impacts from a buried pipeline to the impacts from the construction and operation of a compressor station, asserting that the latter, with its noise and generation of air emissions, will create more serious impacts on property values. Mr. and Mrs. Martinez, Ms. Kenyon, and Ms. Marin also take issue with the EA's conclusions regarding impacts on property values.

96. The Commission acknowledges that an above-ground facility, such as a compressor station, by its very nature of being exposed and creating sound, is more intrusive than a buried pipeline and restored pipeline right-of-way. The Commission also acknowledges that it is a possibility that the Hancock Compressor Project likely could impact the property values of nearby residents, particularly those of the three property owners closest to the project just across Hungry Hill Road. However, the Commission cannot quantify with any degree of certainty the impact on or decrease in property values that may be experienced. A project's impact on land values depends on many factors, including the entire project size, the existence of other energy projects and infrastructure, the current value of the land, and current land use. Each potential purchaser will have varying criteria, considerations, and capabilities for purchasing land and the existence of a compressor station, especially one not visible to the surrounding community, may be irrelevant to a prospective purchaser.

97. Moreover, as the EA stated, any decrease in property values that may occur is unlikely to be significant, since the impacts from the project on aesthetics, noise levels, and air quality are unlikely to be significant. As noted, the compressor station will not be visible to surrounding landowners. The EA determined that the topography and maintenance of vegetative screening along Hungry Hill Road and at the project site will aide in screening views of the facilities from points along the roadway and at existing adjacent residences.¹⁰⁷ The air emissions generated by the compressor station meet all applicable federal and state air emissions standards, which are designed to protect against harm to human health, as well as to animals, vegetation, and crops.¹⁰⁸ The project is also designed to meet the noise standards set by the EPA and adopted by the Commission to protect the public from indoor and outdoor activity interference. As stated in the EA, while Millennium's predicted noise levels are well below the 55 dBA standard threshold

¹⁰⁷ *Id.* at 37.

¹⁰⁸ *Id.* at 51.

with the noise abatement mitigation measures Millennium has committed to implement, there may be a noticeable increase in ambient noise at the three closest residences. Thus, in Environmental Condition No. 11, the Commission will require Millennium to submit noise surveys and, if necessary, to make noise control modifications, to ensure the predicted noise levels are met. The Commission believes that the mitigation measures to minimize the visual impacts of the facilities, as well as the impacts associated with air quality and noise, will serve to mitigate both the potential for decreases in property values and the size of any such decrease.¹⁰⁹

98. The Commission is sensitive to the fact that impacts on property values determined by an environmental review to be insignificant, or minimal, represent additional undesired impacts and may seem significant and burdensome to those in the immediate vicinity of a project. However, on balance, the Commission does not find the potential for the above-described impact on surrounding property values to be sufficient to alter the determination in this order that the Hancock Compressor Project is required by the public convenience and necessity.

99. Mr. Sanzoverino claims that the proposed project would negatively affect the town's tax base because of the reduction in surrounding residents' property values. The Commission disagrees. As indicated in the EA, project operation should result in long-term benefits from property taxes paid by Millennium over the life of the project.¹¹⁰

Construction/operation working hours

100. Mr. English, Ms. Kenyon, and Ms. Marin expressed concern over the daily hours of construction activities and suggested limiting construction activities to weekdays between 8 a.m. and 4 p.m. The EA defines "nighttime hours" as occurring between 10:00 p.m. and 7:00 a.m. for the purposes of noise calculations.¹¹¹ However, this definition of nighttime hours does not conversely mean that daytime construction hours would fall between 7:00 a.m. and 10:00 p.m., as suggested by the commenters. The EA states that the majority of the noise impacts would be limited to working hours, which are

¹⁰⁹ The Commission notes that property owners who believe that their property values have been negatively impacted could appeal to the local tax agency for reappraisal and a potential reduction of taxes.

¹¹⁰ EA at 42. Millennium would pay approximately \$13.7 million to the local government over the next 21 years.

¹¹¹ EA at 52.

generally anticipated to be between 7:00 a.m. and 5:30 p.m.¹¹² The hours of construction stated in the EA are standard construction hours for projects of this nature and we find them acceptable. The EA also indicates that projects of this type typically require some construction activity at night, but it is expected to be infrequent and minor. In any event, we have added Environmental Condition 8 to provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction and operation of the project.

101. Mr. Sanzoverino questions how many hours per day the compressor station would be manned. The EA states that the station would be manned on a full-time basis,¹¹³ but did not provide the expected full-time hours of operation. The EA states that the compressor station would be linked to Columbia's Supervisory Control and Data Acquisition system, which would remotely monitor the station 24 hours per day, 365 days per year and be able to immediately dispatch additional personnel to the site should any safety related alarm be triggered. In addition, Columbia's control center has the ability to start and stop the station remotely as needed, regardless of the physical presence of staff at the station.

Upper Delaware Scenic River

102. The NPS and the Upper Delaware Council contend that the EA failed to analyze potential impacts on the Upper Delaware Scenic and Recreational River (UPDE), a unit of the National Parks System, which is located about 4,200 feet from the project area. The NPS expresses concern over noise impacts, the effects of lighting during operation, water quality impacts associated with construction, and visual resources on the UPDE. In addition, the NPS requests a noise analysis at the UPDE boundary. In response to the NPS comments on the EA, on April 10, 2013, Millennium provided an additional noise and visual impact discussion for the UPDE.¹¹⁴ We have reviewed this data, find it acceptable, and include it in our analysis below.

103. The UPDE boundaries are about 4,200 feet away from the proposed project site, with the Delaware River itself located about 8,600 feet away, and State Highway 97 situated between the river and the project area. Because the Delaware River is beyond both the scope of the project and the expected area of impact analyzed in the EA and no

¹¹² EA at 35.

¹¹³ EA at 13.

¹¹⁴ This document can be found in Docket No. CP13-14-000 at accession number 20130410-5110.

comments were received on it during project scoping, the EA did not address the UPDE. In response to the NPS comments, we will provide an analysis of impacts to the UPDE here.

104. Millennium estimated the noise impact attributable to the Hancock Compressor Station at the UPDE boundary and the Delaware River, without accounting for natural attenuation and shielding from ground and vegetation effects. The estimated noise impacts on these resource areas were 23 and 17 dBA, respectively. Based on this data, potential noise impacts would be lower than existing ambient sound levels at the UPDE and the Delaware River, which were estimated at 32.4 dBA at night. As such, we have determined that it would be impossible for the Hancock Compressor Station noise impacts at the UPDE and Delaware River to result in significant noise impacts without triggering a violation of the Commission's requirements at the closest NSA at a distance of 800 feet. Thus, with our noise survey condition to ensure compliance, the EA correctly concludes that the project's impacts on the noise environment will not be significant.

105. In response to the NPS comments regarding station lighting and visual impacts, Millennium provided a cross sectional diagram of the topography between the Delaware River and the project site. We reviewed this diagram and conclude that visual impacts would be similar to those discussed in the EA for Jensen's Ledge.¹¹⁵ Impacts on visual resources and station lighting on the UPDE would be consistent with the impacts analyzed in the EA at land adjacent to the project area. Thus, the EA's conclusions of no significant impacts for these resources will hold true for the UPDE, as well.

106. The NPS contends that the EA does not analyze the potential impacts on water quality or describe measures to control the release of hazardous materials that could affect the UPDE. The EA clearly details the protective measures Millennium would adhere to in order to minimize any potential impacts on water resources,¹¹⁶ in compliance with its Spill Prevention Control and Containment Plan (SPCCP) and the requirements of its water quality permits.¹¹⁷ We conclude that operation of the project will not have any significant impact on water quality or the UPDE.

¹¹⁵ EA at 37.

¹¹⁶ EA at 23- 24.

¹¹⁷ In a letter dated February 15, 2013, the U.S. Army Corps of Engineers determined that the proposed stream work activities for this project may be authorized under Nationwide Permits 14 and 33. On April 1, 2013, Millennium filed its stream disturbance permit from the NYSDEC.

Water Resources

107. Mr. Sanzoverino asserts that there are more water wells in the area than cited in the EA and questions the impacts on spring-fed ponds at nearby properties. The three wells referenced in the EA are all greater than 800 feet away from the project, far beyond the 150-foot standard for identifying groundwater supply wells in the resource reports that are to be filed in connection with applications for construction of natural gas facilities.¹¹⁸ With implementation of Millennium's SPCCP, impacts on water resources, including springs and ponds, are not expected to extend beyond the property boundaries to affect water resources on adjacent properties. The EA accurately describes that impacts on these resources will be minimized or avoided.

108. Mr. and Mrs. Martinez question the need to test their water well pre- and post-construction, if blasting is proposed. Ms. Marin questions the measures that would be implemented in the event a water well is damaged from blasting activities, where temporary water would be sourced, and who would decide the value of any well damages. As indicated in the EA, Millennium would conduct pre-and post-blast testing of the three wells across the road from the project site with landowner permission.¹¹⁹ The offer for well testing does not indicate a specific potential for impact, but is provided as a best management practice suggested by Commission staff to protect the resources. The EA states that none of the residences, wells, or springs in the project area would be located within 150 feet of the compressor station site, which is the distance generally used by the Commission to define the scope of well testing. The source of temporary water or the value of a damaged well should be addressed through negotiations between the landowner and Millennium, with recourse to a court of competent jurisdiction if the need arises. We conclude that the EA adequately addresses blasting and impacts on groundwater resources.

109. Mr. Martinez questions whether blasting could damage the foundation of his house and whether Millennium would take responsibility for any damages that may occur. Millennium would be responsible for any damages associate with blasting activities. However, as the EA states, Millennium has developed an acceptable Blasting Plan that requires all blasting activities to be performed by state-licensed professionals according

¹¹⁸ Specifically, under section 380.12(d)(9) of the Commission's regulations, 18 C.F.R. § 380.12(d)(9) (2013), the project applicant's resource report for water use and quality must "[i]dentify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas."

¹¹⁹ EA at 22

to strict guidelines designed to control energy release.¹²⁰ Generally, if blasting is necessary within 150 feet of residential or commercial buildings, the Blasting Plan indicates that Millennium would hire an independent contractor to perform pre- and post-blast structural inspections and, if necessary, seismographic monitoring. In this case, Mr. Martinez's house, the nearest residence, is 800 feet from the potential blasting areas. Mr. Martinez may consult with Millennium to determine if pre-construction foundation surveys would be advantageous in his situation. In addition, Environmental Condition 8 provides landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction and restoration of the project.

Alternatives

110. Ms. Carlasare requests additional review of the alternative project sites that Millennium considered. Mr. Weil and Mr. Sanzoverino request a further analysis of Alternative Site B in the Town of Deposit, New York. Mr. English filed comments concerning Millennium's statement that use of Alternative Site B would require the addition of compression at the Minisink Compressor Station and questions why this site was included in the EA as an alternative. The EA states that Alternative Site B was included as an alternative because it would be accessible from an existing access driveway, there are fewer NSAs within 0.5 mile, and it would require slightly less tree clearing than at the proposed site. The EA then goes on to discuss the disadvantages of the Alternative Site B, including the need for additional compression at the Minisink Compressor Station, its steep topography, proximity to a stream, and the presence of a known archeological site on the property. The EA concludes that for these reasons, Alternative Site B provides no significant environmental advantage over the Hancock Compressor Station site.¹²¹

111. Mr. Sanzoverino claims that the Commission over-emphasized the cost of the alternatives in comparing them to the proposed action. However, in reviewing the alternatives, the EA focuses on the environmental issues summarized in Table 3.3-2 of the EA¹²² and does not consider the cost of facilities as a factor in this review.

112. Ms. Leidersdorff stated in her March 2013 comment on the EA that the Hancock Golf Course was now available for sale and suggested that it would be farther from

¹²⁰ EA at 16.

¹²¹ EA at 71.

¹²² EA at 73.

residences than the proposed site.¹²³ We note, however, that because the town received funds to construct the golf course through the Works Progress Administration program for federal recreation, any future use of the site would be limited to recreational use. Due to this land use conflict, we do not see a significant environmental advantage over the proposed site.

113. Riverkeeper contends that the EA should have analyzed alternative compressor components, including modifications to the electric grid to accommodate electric compressors and use of Selective Catalytic Reduction systems to reduce emissions. The EA discusses the upgrades from the existing 200 amp, 240-volt single-phase power line to an 800 amp, 480-volt, three-phase power line that would be constructed to provide electric service to the new station.¹²⁴ The EA states that the local distribution grid does not have sufficient capacity to provide a dual feed from the transmission and sub-transmission systems in order to operate electric compressors and concludes that an electric driven compressor is not a practical alternative to the project.¹²⁵ 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 additional measures to reduce emissions are not further warranted.

Conclusions

114. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Millennium's application and supplements, and in compliance with the environmental conditions imposed herein, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

¹²³ Ms. Leidersdorff's suggested alternative is not to be confused with an alternative near the Hancock Golf Course that was referenced in table 3.3-1 of the EA as "Bear Brook Road (adjacent to the Hancock Golf Course)." The site mentioned in the EA was located on a small portion of land owned by the Town of Hancock adjacent to the operating golf course, but not affecting operation of the golf course. The site was considered and eliminated from consideration by Millennium early in the project development phase (before the start of the pre-filing process) due to its topographic constraints and the presence of overhead powerlines that would interfere with the placement of the compressor station facilities. Staff concurred with this determination and did not carry the analysis of this alternative further.

¹²⁴ EA at 7.

¹²⁵ EA at 69.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages 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.¹²⁶

The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

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

(B) The certificate issued in Ordering Paragraph (A) is conditioned on:

(1) Millennium's facilities being made available for service within 2 years of the date of the order in this proceeding, as required by section 147.20(b) of the Commission's regulations;

(2) Millennium's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations; and

(3) Millennium's compliance with the environmental conditions listed in Appendix B to this order.

(C) Millennium's proposed treatment of AFUDC is hereby approved, as more fully discussed above.

¹²⁶ See, 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Millennium's request for authority to provide service under existing rate schedules is approved, as more fully discussed above.

(E) Millennium shall file either its negotiated rate agreement or tariff records describing the transaction for each shipper paying a negotiated rate at least 30 days, and not more than 60 days, prior to the commencement of service.

(F) Mr. Sanzoverino, Mr. Cahill, and Ms. Kenyon's motions to intervene out of time are granted.

(G) 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 within 24 hours.

(H) Prior to the commencement of construction, Millennium shall execute contracts for service at levels and under terms and conditions equivalent to those it represented was subscribed under its precedent agreements.

(I) Millennium shall maintain separate books and accounting of costs attributable to the new facilities, with applicable cross-reference as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Motions to Intervene

Catskill Mountainkeeper

Central Hudson Gas & Electric Corporation

Claire Marin

Consolidated Edison Company of New York, Inc.

Delaware Riverkeeper Network

Michael Mojica

Minisink Residents for Environmental Preservation and Safety (MREPS)

Myersville Citizens for a Rural Community

National Grid Gas Delivery Companies, et. al.

New Jersey Natural Gas Company

NJR Energy Services Company

Robert Sanzoverino

Southwestern Energy Services Company

Appendix B

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 this 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 this 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 this Order. All requests for modifications of environmental conditions of this 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 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. Within 60 days of the acceptance of the Certificate and before construction begins, 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 this 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 biweekly 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 this 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. Millennium shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for

identifying and resolving their environmental mitigation problems/concerns during construction and operation of the project. Prior to construction, Millennium shall mail the complaint procedures to each landowner whose property would be located within 0.5 mile of the Project.

- a. In its letter to affected landowners, Millennium shall:
 1. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 2. instruct the landowners that if they are not satisfied with the response, they should call Millennium's Hotline; and
 3. instruct the landowners that if they are still not satisfied with the response from Millennium's Hotline, they should contact the Commission's Dispute Resolution Service Helpline at 877-337-2237 or at ferc.adr@ferc.gov.
- b. In addition, Millennium shall include in its biweekly status report a copy of a table that contains the following information for each problem/concern:
 1. the identity of the caller and date of the call;
 2. the location by address of the affected property;
 3. a description of the problem/concern; and
 4. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
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 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 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 make all reasonable efforts to ensure its predicted noise levels from the Hancock Compressor Station are not exceeded at nearby noise-sensitive areas (NSAs) and file a full power load noise survey showing this with the Secretary no later than 60 days after placing the Hancock Compressor Station in service. If a full power load condition noise survey is not possible, Millennium shall provide an interim survey at the maximum possible power load and provide the full power load survey within 6 months. If the noise attributable to the operation of all the equipment of the Hancock Compressor Station at interim or full horsepower load conditions exceeds predicted levels at any nearby NSAs, Millennium shall file a report on what changes are needed and shall install additional noise controls to meet the level within 6 months of the in-service date. Millennium shall confirm compliance with this requirement by filing a second full power noise survey with the Secretary no later than 60 days after it installs the additional noise controls.