

**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 12-1390

**IN RE MINISINK RESIDENTS FOR PRESERVATION
OF THE ENVIRONMENT AND SAFETY**

**ON PETITION FOR WRIT FOR EMERGENCY STAY OF A
FEDERAL ENERGY REGULATORY COMMISSION ORDER**

**OPPOSITION OF FEDERAL ENERGY REGULATORY COMMISSION
TO PETITION FOR STAY PENDING REVIEW**

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GLOSSARY

Commission or FERC	Federal Energy Regulatory Commission
Certificate Order	<i>Millennium Pipeline Co., L.L.C.</i> , 140 FERC ¶ 61,045 (July 17, 2012), <i>reh'g pending</i>
Certificate Policy Statement	<i>Certification of New Interstate Natural Gas Pipeline Facilities</i> , 88 FERC ¶ 61,227 (1999), <i>clarified</i> , 90 FERC ¶ 61,128, <i>further clarified</i> , 92 FERC ¶ 61,094 (2000)
EA	Environmental Assessment for the Minisink Compressor Project, issued March 2, 2012
Millennium	Millennium Pipeline Company, L.L.C., sponsor of the Minisink Compressor Project
Order Denying Stay	<i>Millennium Pipeline Co., L.L.C.</i> , 141 FERC ¶ 61,022 (Oct. 9, 2012)
Project	Minisink Compressor Project, a compressor station consisting of: (1) two 6,130-horsepower natural gas-fired compressor units; (2) approximately 545 feet of 36-inch diameter suction pipeline and 545 feet of 36-inch diameter discharge pipeline, which will connect the proposed compressor station to the existing Millennium pipeline; and (3) ancillary facilities
Residents	Minisink Residents for Preservation of the Environment and Safety
Wagoner Alternative	Alternative involving the relocation of the proposed compressor station to Millennium's existing Wagoner Meter Station. The alternative comprises: (1) a 5,100-horsepower compressor unit and (2) replacing the existing 7.2-mile 24-inch diameter Neversink pipeline with a 30-inch diameter pipeline.

INTRODUCTION

The petition for emergency relief filed by Minisink Residents for Environmental Preservation and Safety (“Residents”) is premised on their assertion of extraordinary facts. But there is nothing extraordinary here. All the Federal Energy Regulatory Commission (“Commission”) has done here – as it must do in all project siting cases – is to determine, after weighing findings such as the need for a particular project and its environmental effects, whether the project is required by the public convenience and necessity. In weighing appropriate considerations, and striking a balance that mitigates, through extensive environmental conditions, environmental (and landowner) effects, the Commission effectively has carried out its statutory responsibility to promote the public interest under the Natural Gas Act.

Residents seek to upset that balance. But the only claim they present in support of extraordinary relief is their belief that the Commission should have preferred one siting alternative over another. Again, there is nothing extraordinary here. The Commission selected the project site, in Minisink, New York, preferred by the staff’s Environmental Assessment. There are environmental consequences – mitigated to the extent possible by numerous environmental conditions – of this selection, just as there are environmental consequences to the alternative (the Wagoner Alternative) favored by Residents.

As long as the agency has justified and explained its choice of alternative, based upon record considerations, as the Commission did here, there is no legitimate reason for a reviewing court to second-guess that choice. This remains true even when FERC Commissioners disagree on the merits – there is no disagreement here in opposing stay – as to where to strike a balance between project benefits and effects. This is particularly true when the Commission’s decision presumes certain construction activities can be done only in certain months (here October to March) to protect threatened species; a stay threatens the pipeline’s ability to construct – on its own private property – during the relevant time window and to meet upcoming service commitments.

And the specific injuries claimed by Residents are inadequate to justify such an intrusion. They are either wholly speculative or effectively mitigated by conditions imposed by the agency (including after-the-fact monitoring, reporting and enforcement) or commitments made by the project applicant. In particular, the Commission agreed with its expert staff’s Environmental Assessment that Residents’ preferred Wagoner Alternative, while beneficial in certain respects (primarily noise), imposed its own environmental and landowner impacts (more tree clearing; more of a direct impact on landowner properties, endangered species and protected wetlands). A party, a dissenting Commissioner, or a court

reasonably might disagree with that assessment. But that does not mean that the extraordinary remedy of a court stay is necessary or appropriate.

In these circumstances, the Commission's balance is a reasonable one. It is just as reasonable as its balance in other recent pipeline siting and construction cases, where courts have refused to intervene. *See Coal. for Responsible Growth and Res. Conservation, et al. v. FERC*, No. 12-566 (2d Cir. Feb. 28, 2012) (order denying emergency motion for stay of tree clearing activities); *Summit Lake Paiute Tribe, et al. v. FERC*, Nos. 10-1389 and 10-1407 (D.C. Cir. Jan. 28, 2011 and Feb. 22, 2011) (orders denying emergency motions for stay of pipeline construction). Residents have not presented any legitimate reason why the Court should reach a different decision here.

BACKGROUND

This case concerns a proposal by Millennium Pipeline Company, L.L.C. ("Millennium") to construct a new compressor station located on 4.5 acres of land on a 73.4 acre lot owned outright by Millennium near the Town of Minisink, New York (the "Project"). *See Millennium Pipeline Co., L.L.C.*, 140 FERC ¶ 61,045 (July 17, 2012) ("Certificate Order"); *see also* Environmental Assessment for the Minisink Compressor Project at 6, FERC Docket No. CP11-515-000 (Mar. 2, 2012) ("EA") (attached). The Project consists of two 6,130-horsepower natural gas-fired compressor units connected to the existing Millennium pipeline with

approximately 1,090 feet of 36-inch diameter suction and discharge pipe.

Certificate Order P 3. The Project's ancillary facilities include a driveway, station control/auxiliary building, and intake and exhaust silencers. *Id.*

The Project will enable Millennium to transport an additional 225,000 dekatherms per day to the pipeline's interconnection with Algonquin Gas Transmission to meet customer demand in the Northeast. Certificate Order PP 4, 15 (Project capacity fully subscribed under three long-term contracts). In addition, the Commission examined the environmental impacts of the Project and analyzed several alternatives to the Project, including the Wagoner Alternative advocated by Residents. *Id.* PP 26-27; EA at 40-54. Ultimately, the Commission found that, based on the Project's benefits and the minimal adverse effect on existing shippers, other pipelines, their captive customers, and landowners and surrounding communities, the public convenience and necessity "requires approval" of the Project. Certificate Order P 15.

On August 15, 2012, Residents filed a request for rehearing of the Certificate Order, which is pending at the Commission. In addition, Residents filed with the Commission a motion to stay Project construction. On September, 18, 2012, the Commission, after confirming that Millennium had met all pre-construction conditions and had obtained necessary federal authorizations,

authorized Millennium to commence construction. *See* Letter from FERC’s Office of Energy Projects to Millennium, Docket No. CP11-515-000 (Sept. 18, 2012).

On October 4, 2012 – prior to receiving agency action on their requests for rehearing and stay – Residents petitioned this Court for a stay of pipeline construction. In support, Residents assert that the Commission misapplied its own Certificate Policy Statement, which guides the Commission’s evaluation of proposals for new natural gas facilities, and failed to respond to the concerns raised in the dissents to the Certificate Order. Petition at 20. Absent a stay, Residents assert that the Project’s tree-clearing will adversely impact endangered species and demolish the visual screen that stands between the compressor station and Residents’ homes. *Id.* at 14. In addition, the Residents allege harm from the “destruction of agricultural land.” *Id.* at 15.

Today, October 9, 2012, the Commission – by a unanimous vote of all five Commissioners (including the two who dissented from the Certificate Order) – denied Residents’ motion for an agency stay. *See Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022 (Oct. 9, 2012) (“Order Denying Stay”) (attached).

ARGUMENT

Residents have not justified the extraordinary remedy of a stay. A writ of mandamus under the All Writs Act “is an extraordinary remedy, to be reserved for extraordinary situations” where there is a “clear and indisputable right” to relief.

Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988); *see also Munaf v. Geren*, 553 U.S. 674, 691 (2008) (A stay pending appeal “is an extraordinary and drastic remedy; it is never awarded as of right.”).

In order to obtain such extraordinary relief, Residents must establish: (1) a strong showing that they are likely to prevail on the merits of their appeal; (2) that, without such relief, they will be irreparably injured; (3) a lack of substantial harm to other interested parties; and (4) that the public interest favors a stay.

Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). “The courts must balance the competing claims of injury and consider the effect of granting or withholding the requested relief, paying particular regard to the public consequences.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008).

Applying that balance, this Court and another circuit court recently declined to grant a stay in pipeline cases with much greater project impacts (and alleged harm) than here. This year, the Second Circuit (the home circuit of Residents and the Project) refused to halt construction of a Commission-certificated natural gas pipeline which required the clearing of hundreds of acres of trees (including 200,000 mature trees from undisturbed forest interiors) and numerous water crossings on public park land and other land not owned by the project applicant. *Coal. for Responsible Growth and Res. Conservation*, No. 12-566 (2d Cir. Feb. 28,

2012) (order denying emergency motion for stay pending review of petitioners' multiple claims of National Environmental Policy Act violations); *see also Coal. for Responsible Growth and Res. Conservation*, 2012 U.S. App LEXIS 11847 (2d Cir. June 12, 2012) (denying petition for review on the merits). Last year, this Court twice rejected motions to stay construction of a 40-mile segment of a 675-mile natural gas pipeline that crosses (1) an important ecosystem directly impacting the habitat for two sensitive species as well as (2) land considered by a Native American tribe to be a traditional cultural property that is sacred for worship and contains unmarked graves. *Summit Lake Paiute Tribe, et al. v. FERC*, Nos. 10-1389 and 10-1407 (D.C. Cir. Jan. 28, 2011 and Feb. 22, 2011) (orders denying emergency motions for stay of pipeline construction).

In contrast, the Project here entails clearing a couple dozen trees on less than a half acre of land that is owned in fee by the Project applicant. *See* EA at 14, 53 (no forest interiors and only 0.36 acre of forested habitat would be impacted by project construction). *See also* Petition at 14 (dozens of trees) and Rule 26.1 Disclosure Statement (tree clearing on site Millennium already owns). Millennium's construction activities will temporarily disturb a "fairly small area," 10.6 acres, mostly within agricultural land composed of hay and alfalfa fields which are routinely disturbed by mowing activities. EA at 13-14. This record, undisputed by Residents, supports the same result as in the recent cases.

I. Residents Fail To Show A Likelihood Of Success On The Merits

An emergency petition for a stay filed under the All Writs Act must satisfy the “normal” requirements for a stay. *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762-63 (D.C. Cir. 1985). *See also Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (explaining that “*Winter* at least . . . suggest[s] if not . . . hold[s] ‘that a likelihood of success is an independent, free-standing requirement’”) (quoting *Davis v. Pension Benefit Guaranty Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009) (Kavanaugh, J., concurring)).

Here, Residents fail to demonstrate a likelihood of success on the merits on appeal, one of the four factors necessary to obtain a stay. Residents allege that the Commission misapplied its Certificate Policy Statement in granting the Project a certificate. Residents also allege that the Commission failed to address the concerns raised in the two dissents to the Certificate Order. But, as explained below, these allegations are dispelled by the language and findings of the Certificate Order and the Environmental Assessment upon which it is based.

A. The Commission Properly Applied Its Certificate Policy Statement

As the Commission explained, its Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Certificate Order PP 10-11. Specifically, under the Certificate Policy Statement criteria, the Commission

“balances the public benefits against the potential adverse consequences.” *Id.*

P 10.

The Commission’s goal under the Certificate Policy Statement 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.

Id. “This is essentially an economic test.” *Florida Gas Transmission Co. v. FERC*, 604 F.3d 636, 649 (D.C. Cir. 2009) (Brown, J., concurring in part and dissenting in part) (detailing Certificate Policy Statement requirements).

The Commission’s analysis of the Project here included a straightforward application of the Certificate Policy Statement criteria. Certificate Order PP 12-15. The Commission first determined that the Project is financially supported by Millennium without any subsidization by existing customers. Next, the Commission found that the Project would have no adverse effects on either Millennium’s existing customers or existing pipelines in the market and their captive customers. *Id.* P 13. Last, the Commission considered the adverse effects on landowners and affected communities. The Commission found that Millennium completely avoided the need to exercise eminent domain by purchasing the necessary land from a willing seller. *Id.* P 14.

The Commission balanced the Project's benefits against the limited residual adverse effects to landowners and communities identified in the environmental section of the Commission's order and its earlier Environmental Assessment. The Commission found that Millennium "has taken steps to minimize any adverse impacts on landowners and surrounding communities." *Id.* P 14; *see also id.* P 28 (adopting the EA's conclusion that the Project would result in limited impacts on air quality, noise quality, safety, visual resources, and property values). The Commission-identified mitigation measures include: (1) landscaping and vegetative screening to minimize visual impacts (*id.* P 30); (2) modifying the exterior design of Project buildings to preserve the rural residential agricultural landscape (*id.* P 33); (3) considering a conservation easement to preserve 42.5 acres of the Project site (*id.* P 34); and (4) taking reasonable measures to ensure noise levels remain "barely noticeable, if noticeable at all, at nearby residences" (*id.* P 39). Accordingly, the Commission reasonably concluded, "[b]ased on the benefits the project will provide and the minimal adverse effect . . . we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public convenience and necessity requires approval of Millennium's proposal, as conditioned in this order." *Id.* P 15.

The Commission's balancing of the Project's benefits against residual adverse impacts under the Certificate Policy Statement is based upon its expertise and is entitled to deference from this Court. *See American Gas Ass'n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010) (the Court affords FERC "broad discretion to invoke its expertise in balancing competing interests and drawing administrative lines"). *See also B&J Oil & Gas v. FERC*, 353 F.3d 71, 76 (D.C. Cir. 2004) (noting the Court's reluctance to interfere with the agency's reasoned judgments involving complex scientific or technical questions). That Residents, two dissenting Commissioners, or even this Court may prefer an alternative to the Project does not render the Commission's analysis of the Project under the Certificate Policy Statement incorrect, unreasonable, or arbitrary and capricious. *See ExxonMobil Gas Marketing Co. v. FERC*, 297 F.3d 1071, 1083 (D.C. Cir. 2002) ("The court is not empowered to substitute its judgment for that of the agency.").

B. The Commission Considered The Wagoner Alternative

Residents' only other justification for their stay request is an alleged failure of the Certificate Order to respond to the concerns raised in the dissents regarding the Wagoner Alternative. Petition at 20 (citing *American Gas*, 593 F.3d at 20 (remanding rulemaking in which majority ignored the dissent's concern entirely)). In *American Gas*, this Court held that "while FERC is not required to agree with

arguments raised by a dissenting Commissioner, it must, at a minimum, acknowledge and consider them.” 593 F.3d at 20. In short, the Commission is required to consider reasonable alternatives raised by parties or dissenting Commissioners. *Id.* at 19 (citations omitted).

This is exactly what the Commission did here. Residents are completely wrong in alleging that the Commission issued its Certificate Order “with nary a mention” (Petition at 8) of the Wagoner Alternative favored by Residents and two dissenting Commissioners. To the contrary, the Certificate Order identified and fully discussed the environmental impacts and benefits of the Wagoner Alternative as identified in the Environmental Assessment and compared and contrasted that Alternative to the Project. *See* Certificate Order PP 26-27 (concurring with the EA’s detailed assessment of the Wagoner Alternative); *see also id.* PP 22-23 (noting supplemental notice of inquiry to solicit comments on the Wagoner Alternative, identified by landowners during scoping period).

Specifically, the Commission concluded that the primary advantage of the Wagoner Alternative is that the compressor would be located farther from noise sensitive areas and residences than the Project. *Id.* P 27 n.28. However, the Commission further explained that, because the Wagoner Alternative requires the replacement of the Neversink pipeline segment, it has substantial disadvantages as well: (1) significantly more tree clearing; (2) significantly more land clearing; (3)

direct encroachment on 58 residential properties; (4) crossing of wetlands and waterbodies; and (5) greater impact on protected species. *Id.* P 27. In these circumstances, the Commission was amply justified in agreeing with its Environmental Assessment that the Wagoner Alternative favored by Residents does not, on balance, provide an environmental advantage over the Project. *Id.*

Further, the Commission has the opportunity to address issues raised by Residents or the dissenting Commissioners on rehearing. *See, e.g., Save Our Sebasticook v. FERC*, 431 F.3d 379, 381-82 (D.C. Cir. 2005) (very purpose of rehearing is to allow the agency a chance to correct any mistakes). There is no compelling reason to rush to mandamus review by this Court prior to that time; rehearing has been pending before the Commission for less than two months, and Residents cannot claim that the agency has acted in an untimely manner deserving of the extraordinary remedy of mandamus. *See In re American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (mandamus for agency inaction measured in terms of years, not months or weeks).

II. The Alleged Harm Is Neither Certain Nor Irreparable

A claim of irreparable injury absent a stay must be “both certain and great; it must be actual and not theoretical.” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). *See also Reynolds Metals*, 777 F.2d at 764 (citing *Wisconsin Gas*). Implicit in this requirement is the “further requirement that the movant

substantiate the claim that irreparable injury is ‘likely’ to occur.” *Wisconsin Gas*, 758 F.2d at 674. “Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur. The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.” *Id.* An applicant for a stay cannot rely on unsupported assertions to meet this stringent standard, but must instead “justify the court’s exercise of such an extraordinary remedy.” *Cuomo v. NRC*, 772 F.2d 972, 978 (D.C. Cir. 1985).

Residents allege an array of possible injuries from Project construction and operation – lower property values, destruction of farmland, disruption of bald eagle nesting, and threatened health and safety. But Residents are not certain, as they acknowledge (Petition at 4, 17) that they do not know whether the Commission has the authority, following agency rehearing and appellate review on the merits, to terminate Project service and remove Project facilities. (For the record – the Commission can. *See* Order Denying Stay PP 17, 21 (under the Commission’s broad authority under the Natural Gas Act, if the Commission vacates the Project certificate on rehearing, the Commission could require Millennium to remove Project facilities).

In any event, the alleged injuries are unsupported by the underlying record. The Commission studied potential impacts extensively, and found them to be

limited or minimal; where necessary, the Commission developed measures to prevent or mitigate potential impacts. Specifically, the Commission's Environmental Assessment found that: (1) noise from the Project would be "barely noticeable, if noticeable at all" at nearby residences (EA at 35); (2) the Project would not be a major source of air emissions (Certificate Order P 43; EA at 28); (3) the Project would comply with air quality standards that would protect against damage to crops, vegetation, and animals, minimizing air quality-related impacts on organic and non-organic farms in the Project area (Certificate Order P 44; EA at 31); (4) federal and state wildlife agencies did not identify any bald eagle nests in the Project's vicinity (EA at 16); (5) recommended building design and landscaping would minimize the Project's visual impact on surrounding residential properties (*id.* at 23); and (6) the Project would not significantly reduce property or resale values (*id.*).

Further, Residents' claims are neither certain nor substantial. The footprint of the Project is limited. Project construction requires only 0.4 acre and 9.8 acres of forested and agricultural land, respectively. EA at 53. Overall, only 0.09 acre of forested land and 3.08 acres of open lands would be permanently converted for Project operation. *Id.* at 19. The Commission also found that existing forest land and topography would obstruct views of the compressor station from most of the surrounding residents. *Id.* Moreover, Millennium is required, following

construction, to restore and revegetate the disturbed areas and must consider putting 42.5 acres of its 73-acre parcel of land on which the Project is located into a conservation easement. *Id.*

Even if the Court finds an irreparable injury, that finding must be balanced against the other stay factors. A stay “is not a matter of right, even if irreparable injury might otherwise result” *Nken v. Holder*, 556 U.S. 418, 427 (2009). Rather, a stay is an exercise of judicial discretion dependent upon the circumstances of the particular case. *Id.* Here, Residents do not dispute that a thorough environmental analysis of the Project was conducted in full compliance with the National Environmental Policy Act. The Commission carefully balanced the Project’s significant public benefits (the increased capacity to move gas supplies to markets with high demand) against the limited residual adverse impacts identified in the Environmental Assessment, and determined that the Project was in the public interest.

III. A Stay Will Substantially Injure Other Parties

The Court must also consider whether “a stay would have a serious adverse effect on other interested persons.” *Virginia Petroleum Jobbers Ass’n. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). Here, a stay would likely render impossible the intended November 2012 in-service date. *See* Certificate Order P 65; EA at 1-2. This Court has recognized a substantial interest in continuing with approved

construction activities in light of the costly nature of interruptions. *See* 3883 *Connecticut LLC v. District of Columbia*, 336 F.3d 1068, 1074 (D.C. Cir. 2003) (“the permit holder has a substantial interest in the continued effect of the permit and in proceeding with a project without delay”); *Tri County Indus. v. District of Columbia*, 104 F.3d 455, 461 (D.C. Cir. 1997) (“The property interest here – the entitlement to continue construction without unfair interference – is substantial.”).

Halting construction of the pipeline at this point would seriously jeopardize the availability of the Project for the upcoming winter heating season, to the detriment of Millennium, Project shippers, and natural gas customers in the Northeast. *See* Millennium’s Answer to Motion for Stay at 7-8, FERC Docket No. CP11-515-000 (Aug. 30, 2012) (quoting the Project’s anchor shippers regarding the pressing need for the Project capacity and citing financial harm through lost revenues). *See also* Certificate Order at Environmental Condition 11 (construction can proceed only during fall and winter months to protect endangered species). The Project will provide substantial benefits to both gas producers and end-users by providing additional capacity to move natural gas produced in the area near Millennium’s pipeline to high-demand Northeast markets. *See* Order Denying Stay P 19. A delay would frustrate this objective.

IV. The Public Interest Does Not Favor A Stay

The public interest is a “crucial” factor in “litigation involving the administration of regulatory statutes designed to promote the public interest.”

Virginia Petroleum Jobbers, 259 F.2d at 925. The Natural Gas Act charges FERC with regulating the interstate transportation and wholesale sale of natural gas in the public interest. *See, e.g., Columbia Gas Transmission Corp. v. FERC*, 750 F.3d 105, 112 (D.C. Cir. 1984). Because the Commission is the “presumptive[] guardian of the public interest,” its views “indicate[] the direction of the public interest” for purposes of deciding a request for stay pending appeal. *North Atlantic Westbound Freight Ass’n v. Federal Maritime Comm’n*, 397 F.2d 683, 685 (D.C. Cir. 1968).

Here, the public interest would not be served by a stay of construction. A stay would delay delivery of needed gas supplies to Northeast markets for this winter’s heating season, which would ultimately harm consumers. *See* Comments of the State of New York Dept. of Public Service Commission, FERC Docket No. CP11-515-000 (Feb. 6, 2012) (stating that “the Project offers a significant impact on reliability and cost of service within a demanding market”). In issuing the certificate of public convenience and necessity for the Project, the Commission found a strong showing of need for this Project. *See* Certificate Order P 15.

Further, based on the Commission's extensive environmental analysis, construction and operation of the Project in compliance with the conditions imposed in the Certificate Order would result in minimal adverse impacts upon environmental resources. *See* Certificate Order PP 15, 28; *see also id.* P 14 (noting that no landowner's property is directly impacted by the Project because Millennium acquired, from a willing seller, a 73.4 acre parcel for the 4.5 acre project). In response to concerns raised by Residents about Millennium's commitment and ability to protect environmental values and to honor landowner commitments, the Commission imposed additional reporting and monitoring requirements to ensure compliance. *Id.* P 83.

In these circumstances, the public interest does not support issuance of a stay.

CONCLUSION

For the foregoing reasons, Residents' petition should be denied.

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October 9, 2012

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), the Court's Administrative Order Regarding Electronic Case Filing, and the Court's Oct. 5, 2012 order in this case, I hereby certify that I have, this 9th day of October, 2012, filed the foregoing with the Court via the Court's CM/ECF system, with the paper copies hand-delivered to the Court by 4:00 p.m. as required by the Court, and served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system.

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**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 12-1390

**IN RE MINISINK RESIDENTS FOR PRESERVATION
OF THE ENVIRONMENT AND SAFETY**

**ON PETITION FOR WRIT FOR EMERGENCY STAY OF A
FEDERAL ENERGY REGULATORY COMMISSION ORDER**

**APPENDIX
IN SUPPORT OF
OPPOSITION OF FEDERAL ENERGY REGULATORY COMMISSION
TO PETITION FOR STAY PENDING REVIEW**

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**FOR RESPONDENT
FEDERAL ENERGY REGULATORY
COMMISSION
WASHINGTON, D.C. 20426**

OCTOBER 9, 2012

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Millennium Pipeline Co., L.L.C.,
141 FERC ¶ 61,022 (Oct. 9, 2012)
("Order Denying Stay")

141 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Millennium Pipeline Company, L.L.C.

Docket No. CP11-515-001

ORDER DENYING STAY

(Issued October 9, 2012)

1. Minisink Residents for Environmental Preservation and Safety (MREPS) has filed two motions for stay with respect to the authorization and construction of Millennium Pipeline Company's Minisink Compressor Project, to be located in the Town of Minisink, Orange County, New York. As discussed below, we deny the motions, because we conclude that justice does not require a stay.

Background

2. On July 14, 2011, Millennium filed an application, pursuant to section 7(c) of the Natural Gas Act¹ and Part 157 of the Commission's regulations,² seeking authorization to construct and operate a 12,260-horsepower compressor station and ancillary facilities. Millennium stated that the compressor station, which was to be constructed on a 75-acre tract of land already owned by the company, would allow Millennium to transport an additional 225,000 decatherms of natural gas to Millennium's Ramapo, New York interconnection with Algonquin Gas Transmission.³ From there, the gas would be delivered to Algonquin's customers in the northeast. The new facilities would also allow

¹ 15 U.S.C. § 717(c) (2006).

² 18 C.F.R. Part 157 (2012).

³ See *Millennium Pipeline Company, L.L.C.*, 140 FERC ¶ 61,045, at P 3-4 (2012).

Millennium to flow gas bi-directionally between its existing compressor station in Corning, New York and the new station,⁴ allowing Millennium additional flexibility to meet market demand.

3. In the course of the proceeding, some commenters, including MREPS, expressed a preference for an alternative to the proposed project. That option, referred to as the Wagoner Alternative, would involve, in lieu of building the Minisink Compressor Station, the construction of a smaller compressor station at Millennium's existing Wagoner Meter Station and the replacement of the 7.5-mile-long Neversink segment of the Millennium pipeline, located to west of Minisink.

4. On July 17, 2012, the Commission issued an order authorizing the construction and operation of the proposed Minisink Compressor Project.⁵ The order concluded that the project, if constructed and operated in accordance with Millennium's application and with the environmental conditions imposed by the Commission, would not constitute a major federal action affecting the quality of the human environment.⁶ As to the Wagoner alternative, the Commission held that the greater environmental impacts of replacing the Neversink pipeline segment outweighed the benefits of the alternative compressor station (primarily, its greater distance from the nearest noise-sensitive areas and residences).⁷

5. Chairman Wellinghoff and Commissioner LaFleur dissented. Chairman Wellinghoff concluded that Millennium should have considered the long-term benefits of the Wagoner Alternative as compared to the Minisink Compressor Project.⁸ Similarly, Commissioner LaFleur stated that the environmental assessment (EA) prepared by Commission staff in this proceeding⁹ was incorrect in concluding that the short-term environmental consequences of the Wagoner Alternative outweighed the long-term impacts of the Minisink Compressor Project.¹⁰ Commissioner Clark concurred with the Commission order, asserting that the Commission has appropriately selected a site that

⁴ *Id.* P 4.

⁵ *Millennium Pipeline Company, L.L.C.*, 140 FERC ¶ 61,045 (2012).

⁶ *Id.* P 83.

⁷ *Id.* P 27.

⁸ 140 FERC at 61,219.

⁹ Environmental Assessment for the Proposed Minisink Compressor Project (issued March 2, 2012).

¹⁰ 140 FERC at 61,220.

would produce minimal environmental impacts, and that it is not required to determine the site with the least impact.¹¹

6. MREPS filed a timely request for rehearing on August 15, 2012, as did four individuals. Those requests are pending before the Commission.

7. On August 24, 2012, Millennium filed a request that the Commission authorize it to commence project construction. The company appended documentation that it had satisfied all of the pre-construction requirements set forth in the July 17 order, including obtaining all authorizations required under federal law – i.e., meeting, among other things, Endangered Species Act (ESA) and National Historic Preservation Act requirements.

8. On August 28, 2012, MREPS filed an opposition to the request to commence construction and a motion for stay. MREPS asserted that Millennium had not completed ESA consultation regarding the federally listed Indiana bat and that the company's bald eagle nesting survey was cursory. MREPS also asserted that Millennium had not provided details regarding its plan to execute a conservation easement regarding 42.5 acres of the project site.¹² MREPS further argued that the Commission should stay construction because the clearance of dozens of trees would adversely impact the Indiana bat and permanently damage agricultural land.¹³ In addition, MREPS asserted that, if the certificate was vacated, it is not clear whether Millennium could be required to remove the compressor station from its property, and that community members might face reduced property values.¹⁴ MREPS stated that Millennium would not face any harm if a stay was granted and that MREPS has a strong likelihood of success on the merits because of the divided nature of the Commission's decision.¹⁵

9. On August 30, 2012, Millennium filed an answer opposing the motion for stay. Millennium asserted that the project will not result in irreparable harm to MREPS, given that the company owns the entire project site, and thus will be clearing its own trees. Millennium further stated that any impact on farming occurred when it obtained the land, not as a result of project construction, and that, while economic harm is generally insufficient to support a stay, MREPS has in any case shown no economic harm resulting

¹¹ *Id.* at 61,221.

¹² MREPS August 28 motion for stay at 4-5.

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 7-8

¹⁵ *Id.* at 8-9.

from construction.¹⁶ Millennium argues that a stay will harm it and its shippers, who are relying on the new gas supplies to be delivered as a result of the project.¹⁷ The company disputed MREPS contention that the group is likely to succeed on the merits.¹⁸ As to MREPS' contentions that the company has not satisfied pre-construction conditions, Millennium states that it has: performed all work necessary to complete ESA consultation; completed an appropriate bald eagle study, conducted by an expert, in areas where the birds are likely to nest; and kept the Commission apprised of its plans for the 42.5 acres.

10. On September 14, 2012, the United States Fish and Wildlife Service (FWS) sent a letter to Commission staff stating that FWS did not anticipate that the project would cause any measurable impacts to the Indiana bat and that no further coordination with FWS was required under the ESA. FWS also noted Commission staff's determination that the project would result in no impacts to the bald eagle, and recommended that, if eagles were found within the project area, Millennium follow guidelines found on FWS' website.¹⁹

11. On September 18, 2012, Commission staff issued a letter authorizing Millennium to commence construction, based on staff's verification that Millennium had met pre-construction requirements, and reminding the company that all construction activities must be consistent with the terms and conditions of the July 17 order.²⁰

12. On September 19, 2012, MREPS filed a renewed motion for stay. The group made no new arguments, but rather referred to, and appended, its August 28 motion.

Discussion

13. The Commission reviews requests for stay under the standard established by the Administrative Procedure Act,²¹ and grants a stay when "justice so requires."²² In

¹⁶ Millennium August 30 answer at 5-7.

¹⁷ *Id.* at 7-9.

¹⁸ *Id.* at 10.

¹⁹ Letter from David A. Stilwell (FWS) to Rich McGuire (Commission staff).

²⁰ *See* letter from J. Rich McGuire to Gary A. Kruse (Millennium).

²¹ 5 U.S.C. § 705 (2006).

²² *See, e.g., Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103 at P 17 (2011); *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18 (2009); *Columbia Gas*

assessing a request for stay, we consider several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest.²³ Our general policy is to refrain from granting stays in order to assure definiteness and finality in our proceedings.²⁴

14. In *Wisconsin Gas Co. v. FERC*,²⁵ the D.C. Circuit recognized that although the concept of irreparable harm does not readily lend itself to definition, courts have developed well-known principles to guide a determination, which include that the injury must be both certain and great, it must be actual and not theoretical; and injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time.²⁶ Implicit in these principles is the further requirement that the movant substantiate the claim that irreparable injury is “likely” to occur.²⁷ Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur.²⁸ The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.²⁹ Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.³⁰ If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.³¹

Transmission LLC, 129 FERC ¶ 61,021, at P 6 (2009); *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,869 (2001).

²³ *Id.*

²⁴ *See, e.g., Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

²⁵ 758 F.2d 669 (D.C. Cir. 1985).

²⁶ *Id.* at 674 (citation omitted).

²⁷ *Id.* (citation omitted).

²⁸ *Id.* (emphasis in original).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Supra* note 17.

15. MREPS has not demonstrated that justice requires a stay here. It argues that it will suffer irreparable harm in the absence of a stay because “Millennium will clear dozens of trees to make way for the compressor station, which will adversely impact the Indiana bat” and that “[c]onstruction will permanently damage agricultural land.”³² Yet, as noted above, FWS has concluded that the project will not have any measurable impacts on the Indiana bat. As to agricultural lands, the EA concluded that only 4.49 acres of land (4.05 acres which is currently agricultural) would be permanently affected by the project.³³ The loss of such a small amount of acreage does not constitute irreparable injury, particularly given that none of this land is held by MREPS or its members, but rather is owned by Millennium, which has no obligation to devote any part of the site to agricultural use. Moreover, MREPS has provided no evidence to show that, should the compressor station at some point be removed from service, the lands it occupies could not be returned to agricultural use.

16. MREPS also contends that if the certificate is vacated, the Commission would lack authority to require Millennium to remove an already-constructed compressor station from its property, such that the Minisink community “would remain saddled with a non-functioning compressor station and the concomitant reduced property values flowing from proximity to an industrial eyesore.”³⁴

17. We disagree with MREPS contentions in this regard. The Commission has broad authority under the Natural Gas Act,³⁵ sufficient to require Millennium to take whatever steps we deemed appropriate in the event that the certificate was vacated. In addition, the environmental assessment (EA) prepared by Commission staff in this proceeding concluded, and the Commission agreed, that Millennium will address visual impacts by, among other measures, planting 155 trees along the property boundary to minimize visual impacts over time.³⁶ Finally, while the Commission recognizes the general potential for property values to be negatively impacted by the construction of nearby energy infrastructure, such potential impacts are indicative of only economic harm, which,

³² MREPS August 28 motion for stay at 6-7.

³³ See EA at 18-19; 51.

³⁴ August 28 motion at 6-7.

³⁵ See 16 U.S.C. 717(o) (2006) (providing, in pertinent part that “the Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter”).

³⁶ See EA at 21-22; 140 FERC ¶ 61,040 at P 30-32.

without more, is not considered irreparable injury that is sufficient to support granting the extraordinary remedy of a stay.³⁷

18. MREPS also argues that it has a substantial chance of success on the merits, largely because two Commissioners dissented from the majority holding. The Commission generally does not consider a movant's likelihood of success on the merits in a pending judicial appeal as a relevant factor in determining whether to grant a stay.³⁸ We note, moreover, that the presence or absence of dissents is not necessarily a predictor of the result of appellate review, and MREPS does not point to any deficiency in the July 17 order that would make reversal likely.

19. MREPS contends that Millennium will not be adversely affected if a stay is granted, because, it says, the company will face no financial harm if it does not meet the in-service date set forth in its precedent agreements.³⁹ For its part, Millennium cites statements by shippers who need the capacity to be added by the project this winter to serve growing markets in the northeast, as well as a comment by the Public Service Commission of the State of New York to the effect that the project will improve the reliability of New York City's natural gas supply, which feeds electric generation, and that expansions on the Millennium system could lower both gas and electricity prices.⁴⁰ On balance, it appears that the public interest favors denying the stay.

20. As can be discerned from the July 17 order, we were not in accord as to the substantive result in this case. As explained in detail in P 5, Chairman Wellinghoff and Commissioner LaFleur dissented, based at least in part on their belief that the Wagoner Alternative was preferable to the selected route.

21. Nevertheless, the Commission here concludes unanimously that a stay is not required by the public interest. As noted above, the compressor station is being constructed on land that the company has owned for some time, so that no landowner's property is being directly affected. Further, the company has obtained all of the federal permits it needs, including ESA clearance from FWS, and has provided the Commission

³⁷ See, e.g., *Wisconsin Gas Company v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,254, at P 10 (2008); *FPL Energy Maine Hydro, LLC*, 124 FERC ¶ 61,037, at P 19 (2008); *Public Utility District No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 11 (2005).

³⁸ See *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,020, at P 16 (2011).

³⁹ MREPS August 28 motion at 8.

⁴⁰ Millennium August 30 answer at 7-9.

with details regarding its plans to establish a conservation easement covering 42.5 acres of the project site.⁴¹ Finally, we have not yet considered the merits of the petitions on rehearing, nor has the court reviewed our orders. Thus, to the extent that the company elects to proceed with construction, it may have some litigation risk. For example, if the Commission was to modify its decision on rehearing or if the court eventually remanded this matter to the Commission for further proceedings or otherwise ruled in favor of petitioners, the company would not be able to utilize the new facilities, and in the worst case could be required to remove them.

22. As a general matter, we do not favor stays, which can result in regulatory uncertainty. Given that MREPS has not demonstrated the likelihood of irreparable injury in the absence of a stay or that justice otherwise requires issuance of a stay, and that the group will have the opportunity to make its case at both the administrative and appellate levels, we conclude that a stay is not required here, and we therefore deny MREPS' motions.

The Commission orders:

The motions for stay filed on August 28, 2012, and September 19, 2012, by the Minisink Residents for Environmental Preservation and Safety are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ See Millennium August 24, 2012 compliance filing and request for authorization to construct at Appendix C.

Appendix Document A2

Millennium Pipeline Co., L.L.C.,
Notice to Proceed with Construction Activities,
FERC Docket No. CP11-515-000 (Sept. 18, 2012)

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:

OEP/DG2E/Gas 1

Millennium Pipeline Company, LLC

Minisink Compressor Project

Docket No. CP11-515-000

September 18, 2012

Gary A. Kruse
Vice President - General Counsel & Secretary
Millennium Pipeline Company, LLC
One Blue Hill Plaza, Seventh Floor
P.O. Box 1565
Pearl River, New York 10965

Re: Notice to Proceed with Construction Activities

Dear Mr. Kruse:

I grant your August 24, 2012 request for Millennium Pipeline Company, LLC (Millennium) to commence construction activities for the Minisink Compressor Project in Orange County, New York with the tree cutting provision noted below. In considering this notice to proceed, we reviewed Millennium's Implementation Plan, filed on July 30, 2012, and supplemented in filings on August 1, 2012, August 16, 2012, and August 24, 2012. Based on our review, Millennium has provided the information necessary to meet the pre-construction conditions of the Commission's July 17, 2012 *Order Issuing Certificate* (Order) in the above-referenced docket. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

We note, however, that Millennium can only remove trees on the compressor station site greater than 5-inch-diameter at breast height **between October 1 and March 31** in accordance with Environmental Condition 11 of the Order and our completed Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service.

I remind you that Millennium must comply with all applicable terms and conditions of the Commission's Order. If you have any questions regarding this approval, please contact Kareem Monib at (202) 502-6265.

Sincerely,

J. Rich McGuire
Chief, Gas Branch 1
Division of Gas – Environment
and Engineering

cc: Public File, Docket No. CP11-515-000

Appendix Document A3

Millennium Pipeline Co., L.L.C.,
Environmental Assessment for the Minisink Compressor Project,
FERC Docket No. CP11-515-000 (Mar. 2, 2012)
(appendices omitted) (“EA”)



USC 48 USC #12-1390

Document #1398730

Filed: 10/09/2012

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Federal Energy
Regulatory
Commission

Office of
Energy Project

March 2012

Millennium Pipeline Company, LLC

Docket No. CP11-515-000

Minisink Compressor Project

Environmental Assessment

Washington, DC 20426

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECT

In Reply Refer To:

OEP/DG2E/Gas 1

Millennium Pipeline Company, LLC

Minisink Compressor Project

Docket No. CP11-515-000

TO THE PARTY ADDRESSED:

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) for the Minisink Compressor Project proposed by Millennium Pipeline Company, LLC (Millennium) in the above-referenced docket. Millennium requests authorization to construct and operate a natural gas compressor station in Minisink, New York to increase deliveries to its interconnection with Algonquin Gas Transmission, LLC at Ramapo, New York, to approximately 675,000 dekatherms per day.

This EA assesses the potential environmental effects of the construction and operation of the Minisink Compressor Project in accordance with the requirements of the National Environmental Policy Act (NEPA). Staff concludes that the proposed project, with appropriate mitigation, would not constitute a major federal action significantly affecting the quality of the human environment.

Millennium's proposed Minisink Compressor Project consists of two 6,130-horsepower gas-fired compressor units that would be housed within a new building, as well as an access driveway, parking areas, a station control/auxiliary building, intake and exhaust silencers, turbine lube oil coolers, unit blowdown silencers, a filter-separator with a liquids tank, and an emergency electrical power generator. Pipeline facilities required for the project include approximately 545 feet of new 36-inch-diameter suction and discharge pipelines which would connect the compressor station to the existing mainline. A new mainline valve assembly would also be required on the existing pipeline located between the new suction and discharge pipelines.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's website (www.ferc.gov) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission
Public Reference Room
888 First Street NE, Room 2A
Washington, DC 20426
(202) 502-8371

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before **April 2, 2012**.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the project docket number (CP11-515-000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at 202-502-8258 or efiling@ferc.gov.

- (1) You can file your comments electronically using the [eComment](#) feature located on the Commission's website (www.ferc.gov) under the link to [Documents and Filings](#). This is an easy method for submitting brief, text-only comments on a project;
- (2) You can also file your comments electronically using the [eFiling](#) feature on the Commission's website (www.ferc.gov) under the link to [Documents and Filings](#). With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "[eRegister](#)." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or
- (3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18

CFR 385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. **Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.**

Additional information about the project is available from the Commission's Office of External Affairs, at **(866) 208-FERC**, or on the FERC website (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP11-515). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/esubscribenow.htm.

Kimberly D. Bose,
Secretary

¹ See the previous discussion on the methods for filing comments.

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ABBREVIATIONS AND ACRONYMS

$\mu\text{g}/\text{m}^3$	microgram per meter cubed
ACHP	Advisory Council of Historic Preservation
Algonquin	Algonquin Gas Transmission, LLC
AQCR	Air Quality Control Region
ATWS	Additional Temporary Workspace
ASME	American Society of Mechanical Engineers
bgs	below ground surface
CAA	Clean Air Act of 1970 and its amendments
Certificate	Certificate of Public Convenience and Necessity
CFR	Code of Federal Regulations
CO	carbon monoxide
CO ₂	carbon dioxide
CO _{2eq}	carbon dioxide equivalents
Columbia	Columbia Gas Transmission Corporation
Commission	Federal Energy Regulatory Commission
CWA	Clean Water Act
dB	decibel
dBA	A-weighted decibel
DOT	U.S. Department of Transportation
EA	environmental assessment
EI	environmental inspector
EIS	environmental impact statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FERC	Federal Energy Regulatory Commission
FWS	U.S. Fish and Wildlife Service
GHG	greenhouse gas
HAP	hazardous air pollutants
hp	horsepower
Iroquois	Iroquois Gas Transmission System, L.P.
L _{eq}	equivalent sound level
L _{dn}	day-night sound level
lbs	pounds
MAOP	maximum allowable operating pressure
MBTA	Migratory Bird Treaty Act
Memorandum	<i>Memorandum of Understanding on Natural Gas Transportation Facilities</i>
Millennium	Millennium Pipeline Company
MP	milepost
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act of 1969
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NGA	Natural Gas Act
NNSR	Nonattainment New Source Review

NOI	<i>Notice of Intent to Prepare an Environmental Assessment</i>
NO ₂	nitrogen dioxide
NO _x	nitrogen oxides
NRHP	National Register of Historic Places
NSA	noise-sensitive area
NSPS	New Source Performance Standards
NYCRR	New York Code, Rules and Regulations
NYSDEC	New York State Department of Environmental Conservation
O ₃	ozone
OEP	Office of Energy Projects
Pb	lead
PEM	palustrine emergent
PHMSA	Pipeline and Hazardous Materials Safety Administration
Plan	<i>Upland Erosion Control, Revegetation, and Maintenance Plan</i>
PM _{2.5}	particulate matter with an aerodynamic diameter less than or equal to 2.5 microns
PM ₁₀	particulate matter with an aerodynamic diameter less than or equal to 10 microns
ppb	parts per billion
ppm	parts per million
Procedures	<i>Wetland and Waterbody Construction and Mitigation Procedures</i>
PSD	Prevention of Significant Deterioration
PSS	palustrine scrub/shrub
PTE	potential-to-emit
Secretary	Secretary of the Commission
SHPO	State Historic Preservation Office
SIP	State Implementation Plan
SO ₂	sulfur dioxide
SPCC Plan	Spill Prevention Control and Containment Plan
SSA	Sole Source Aquifer
tpy	tons per year
VOC	volatile organic compounds

A. PROPOSED ACTION

1. INTRODUCTION

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared this environmental assessment (EA) to assess the environmental effects of the construction and operation of the Minisink Compressor Project proposed by Millennium Pipeline Company, LLC (Millennium). We¹ prepared this EA in compliance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations for implementing NEPA (Title 40 of the Code of Federal Regulations, Parts 1500-1508 [40 CFR 1500-1508]), and with the Commission's implementing regulations under 18 CFR 380.

On July 14, 2011, Millennium filed an application with the Commission in Docket No. CP11-515-000 under section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations. Millennium requests authorization to construct and operate a natural gas compressor station in Minisink, New York. The proposed project is referred to as the Minisink Compressor Project.

The EA is an important and integral part of the Commission's decision on whether to issue Millennium a Certificate of Public Convenience and Necessity (Certificate) to construct and operate the proposed facilities. Our principal purposes in preparing this EA are to:

- identify and assess potential impacts on the natural and human environment that could result from implementation of the proposed action;
- identify and recommend reasonable alternatives and specific mitigation measures, as necessary, to avoid or minimize project-related environmental impact; and
- facilitate public involvement in the environmental review process.

2. PURPOSE AND NEED

Millennium states that the purpose of the project is to increase deliveries to its interconnection with Algonquin Gas Transmission, LLC (Algonquin) at Ramapo, New York, to approximately 675,000 dekatherms per day in order to meet the demands of new customers who are producing gas in the area near Millennium's existing pipeline. Millennium anticipates an in-service date of November 2012.

3. PROPOSED FACILITIES

A general location map for the Minisink Compressor Project, Figure 1, is located on page 7. The project would consist of the following facilities near the Town of Minisink in Orange County, New York:

¹ "We," "us," and "our" refers to environmental staff of the Office of Energy Projects.

- A new compressor station with two 6,130-horsepower (hp) gas-fired compressor units that would be housed within a new building (Minisink Compressor Station);
- appurtenant facilities including an access driveway, parking areas, a station control/auxiliary building, intake and exhaust silencers, turbine lube oil coolers, unit blowdown silencers, a filter-separator with a liquids tank, and an emergency electrical power generator;
- approximately 545 feet of new 36-inch-diameter suction pipeline and 545 feet of new 36-inch-diameter discharge piping which would connect the compressor station to Millennium's existing mainline at milepost (MP) 160.5; and
- a new mainline valve (MLV) assembly on the existing pipeline located between the new suction and discharge lines.

The project would require minor electric utility facilities off the existing power supplies along Jacobs Road, near the access road to the compressor station site. The minor disturbance required for these facilities would occur entirely within the proposed site and the minor impacts of these facilities are addressed in the EA. No additional non-jurisdictional facilities are required by the proposed action.

Millennium anticipates that construction of the project would begin in spring 2012, with an in-service date of November 2012.

4. PUBLIC REVIEW AND COMMENT

On August 17, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Minisink Compressor Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting* (NOI). The NOI was mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners; environmental and public interest groups; newspapers and libraries in the project area; and parties to this proceeding. On September 6, 2011, Commission staff hosted a scoping meeting at the Minisink Town Hall in Westtown, New York in which approximately 210 people were present. We also participated in an open-house meeting sponsored by Millennium at the town hall on August 23, 2011, to explain our environmental review process to interested stakeholders.

On October 14, 2011 we issued a supplemental NOI to provide an opportunity to comment on the project to affected landowners that Millennium inadvertently left off its landowner list. On December 22, 2011 we issued an additional NOI to solicit environmental comments on an alternative to the project raised during the scoping period. The alternative to the proposed Minisink Compressor Stations, known as the Wagoner Alternative, involves the construction of a smaller 5,100-horsepower compressor station at a site adjacent to Millennium's existing Wagoner Meter Station facility in Sparrowbush, New York. The alternative site, which was previously used as a temporary compressor station, would also require replacement of a 7.2-mile-long segment of Millennium's existing pipeline, known as the Neversink Segment. The December 22, 2011 supplemental NOI was sent to the landowners along the Neversink Segment right-of-way and within 0.5 mile of the Wagoner Meter Station. This notice was also mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; environmental and public interest groups; newspapers and libraries; and parties to this proceeding.

This EA addresses the potential environmental impacts of the Minisink Compressor Station as proposed by Millennium and the concerns identified by the public during the public scoping period between August 2011 and January 2012. Over 600 written and oral comments were filed throughout the scoping periods. The overwhelming preponderance of commenters expressed opposition to the proposed project and indicate that they do not want the compressor station sited in their rural residential neighborhood. Many also expressed strong support for the Wagoner Alternative. The transcripts of the public meeting and written scoping comments are part of the public record for the project and are available for viewing on the FERC Internet website (<http://www.ferc.gov>)². The comments received that are within the scope of the environmental analysis are addressed in the appropriate areas within sections B and C of this EA. The primary concerns raised are:

- pollutant emissions could impact the health of residents living in proximity to the proposed compressor station;
- the associated emissions of the compressor station could negatively impact organic farms in the area;
- noise from the operation of the compressor units could annoy nearby residents, interfere with their activities, and could spoil the quiet rural character of the area;
- the compressor station could have a significantly adverse visual and aesthetic impact on nearby residents as there are no comparable industrial facilities in the general vicinity;
- the compressor station could result in the depression of nearby home values due to the perceived noise and visual disamenity;
- the safety of the community could be compromised by the existence of machinery that handles high-pressure natural gas; and
- economically viable alternatives to the proposed Minisink location that meet the project objectives should be evaluated thoroughly.

A number of commentors suggested that an environmental impact statement (EIS), rather than an EA, be published by Commission environmental staff. Pursuant to 18 CFR 380.6(a)(3) of the Commission's regulations, an EIS will normally be prepared first for "major pipeline construction projects under section 7 of the NGA using right-of-way in which there is no existing natural gas pipeline." The regulations continue on under 18 CFR 380.6(b) to state that "If the Commission believes that a proposed action... may not be a major federal action significantly affecting the quality of the human environment, an environmental assessment, rather than an environmental impact statement, will be prepared first. Depending on the outcome of the environmental assessment, an environmental impact statement may or may not be prepared." In preparing this EA, we are fulfilling our obligation under NEPA to consider and disclose the

² Using the "eLibrary" link, select "General Search" from the eLibrary menu and enter the docket number excluding the last three digits in the "Docket Number" field (i.e. CP11-515). Select an appropriate date range.

environmental impacts of the proposed project. As stated in section D, the EA supports a finding of no significant impact; therefore, an EIS is not required for this project.

5. PERMITS, APPROVALS, AND REGULATORY REQUIREMENTS

Millennium would obtain all necessary permits, licenses, clearances, and approvals related to construction and operation of the Minisink Compressor Project. Millennium would provide all relevant permits and approvals to the contractor, who would be required to adhere to applicable requirements. Table 1 displays the major anticipated federal and state permits for Millennium's project as well as any responses that have been received to date.

Table 1: Permits and Approvals for Millennium's Minisink Compressor Project		
Administrating Agency	Permit/Approval/Review	Status
Federal		
FERC	Certificate of Public Convenience and Necessity	Pending
U.S. Army Corps of Engineers - New York District	Clean Water Act, 33 U.S.C. 1251 et seq., Section 404	Application submitted in 3rd quarter 2011.
U.S. Fish & Wildlife Service - Endangered Species Unit, New York Field Office	Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., Section 7, Interagency Cooperation	Initial consultation submitted on 4-27-11. Response dated 6-20-11. Consultation ongoing.
New York		
New York State Department of Environmental Conservation (NYSDEC) Region 3	Air Pollution Control Act of Jan. 8, 1960, (P.L. 2119), as amended. Clean Air Act, 40 U.S.C. 1857 et seq.	Application submitted in 3rd quarter 2011.
NYSDEC Region 3	State Pollutant Discharge Elimination System Water Pollution Control Article 17 Title 8 Environmental Conservation Law Implementing Regulations - 6NYCRR Part 750 – General Permit and Notice of Intent	Application submitted in 3rd quarter 2011.
NYSDEC – Division of Fish, Wildlife and Marine Resources, New York Natural Heritage Program	NYS Environmental Conservation Law Section 11-0539	Initial consultation submitted on 4-27-11. Response dated 5-11-11.
New York State Historic Preservation Office	Section 106 of the National Historic Preservation Act	Phase 1 Cultural Resource Report submitted 6-14-11. Consultation ongoing.

6. CONSTRUCTION, OPERATION, AND MAINTENANCE PROCEDURES

Millennium would construct, operate, and maintain the proposed project in compliance with all applicable federal and state permit requirements, regulations, and environmental guidelines. The key relevant federal regulations are those of the U.S. Department of Transportation (DOT) under 49 CFR 192 - *Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards*. These regulations ensure adequate protection for the public and prevent natural gas facility accidents and failures. In addition, Millennium must comply with our regulations in 18 CFR 380.15, *Siting and Maintenance Requirements*.

Millennium would implement all the measures outlined in FERC's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures*³ for construction and operation of the project. During construction, Millennium would implement its Spill Prevention Control and Containment Plan (SPCC Plan) to ensure proper handling of lubricants, fuel, or other potentially toxic materials and prevent spills. We find Millennium's SPCC Plan acceptable.

During construction, Millennium would clear and grade the site for the aboveground facilities. Erosion control devices would be installed as needed to prevent erosion and offsite impacts in accordance with our Plan, and applicable state permit requirements. Access to the aboveground facilities would be provided by a new access road. After construction, all temporary workspace would be revegetated in accordance with our Plan. In addition, fencing would be placed around the aboveground facilities for security purposes.

Millennium would use at least one full-time environmental inspector (EI) during construction of the project. The EI would be on site during project construction activities to ensure Millennium's compliance with the measure contained in our Plan and Procedures. The EI's responsibilities include:

- assess and evaluate any construction related activity to confirm compliance to the environmental conditions of local, state or federal agency permits or certificates;
- observe and report on the day-to-day activities of the construction contractors that relate to or may affect a condition of an environmental permit or certificate. The EI would have stop-work authority during all phases of construction; and
- monitor and report on those activities designated within the environmental scope of work in the construction contracts, including erosion control, revegetation, wetland signage, environmental permit compliance, threatened and endangered species protection, and restoration.

³ Our Plan and Procedures may be accessed on the FERC's Website (<http://www.ferc.gov/industries/gas/enviro/guidelines.asp>) or copies may be obtained through the Commission's Office of External Affairs by calling 866-208-3372.

Millennium would conduct environmental training sessions in advance of construction to ensure that all individuals working on the project are familiar with the environmental mitigation measures appropriate to their jobs and the EI's authority.

7. LAND REQUIREMENTS

Construction of Millennium's Minisink Compressor Project would disturb a total of about 10.6 acres of land within a 73.4-acre parcel of land to be owned by Millennium. This acreage includes disturbance from the suction and discharge pipelines required to interconnect the station with Millennium's mainline. Approximately 4.5 acres of land would be permanently affected by operation of the proposed facility including the pipeline interconnection. Following construction, Millennium would restore and revegetate the disturbed areas not required for operational purposes. In addition, Millennium stated that it would consider entering approximately 42.5 acres of the 73.4-acre parcel of land into a conservation easement.

8. FUTURE PLANS

Millennium has not identified any plans for future expansion of the proposed facility and there is nothing in the record to suggest any such plans by Millennium. If Millennium proposes to expand the station in the future, it would need to file a new application with the Commission and it would be evaluated on its own merits.

During the scoping process we received numerous comments about Millennium's stated intention to make additional modifications to its system, including an additional compressor station upstream of the proposed Minisink Compressor Station. Millennium has acknowledged the need for a second compressor station which it anticipates placing in-service in November 2013. However, the planned location of that compressor station has not yet been determined and Millennium has not filed an application for such a project with the FERC. If and when an application or a request to start the pre-filing process is filed, the Commission will complete its review of the project on its own merits. However, the potential for this project to result in cumulative environmental impacts is addressed in Section B.9 of the EA.

As stated above, any future expansion by Millennium or other natural gas companies would require a separate review and approval from the Commission, as well as the appropriate authorizations/permits from applicable state and federal agencies.

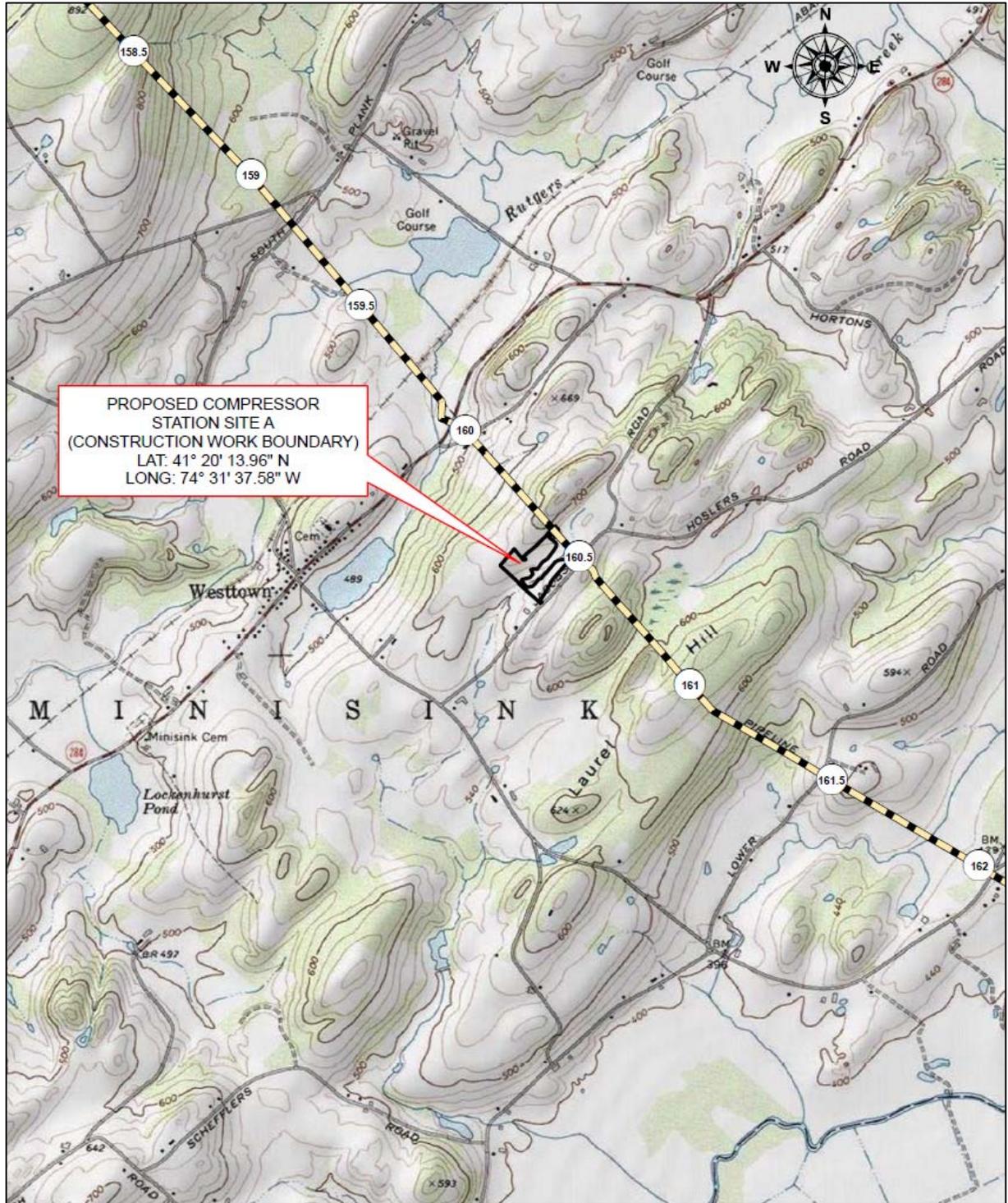


Figure 1: General location map for the Minsink Compressor Project

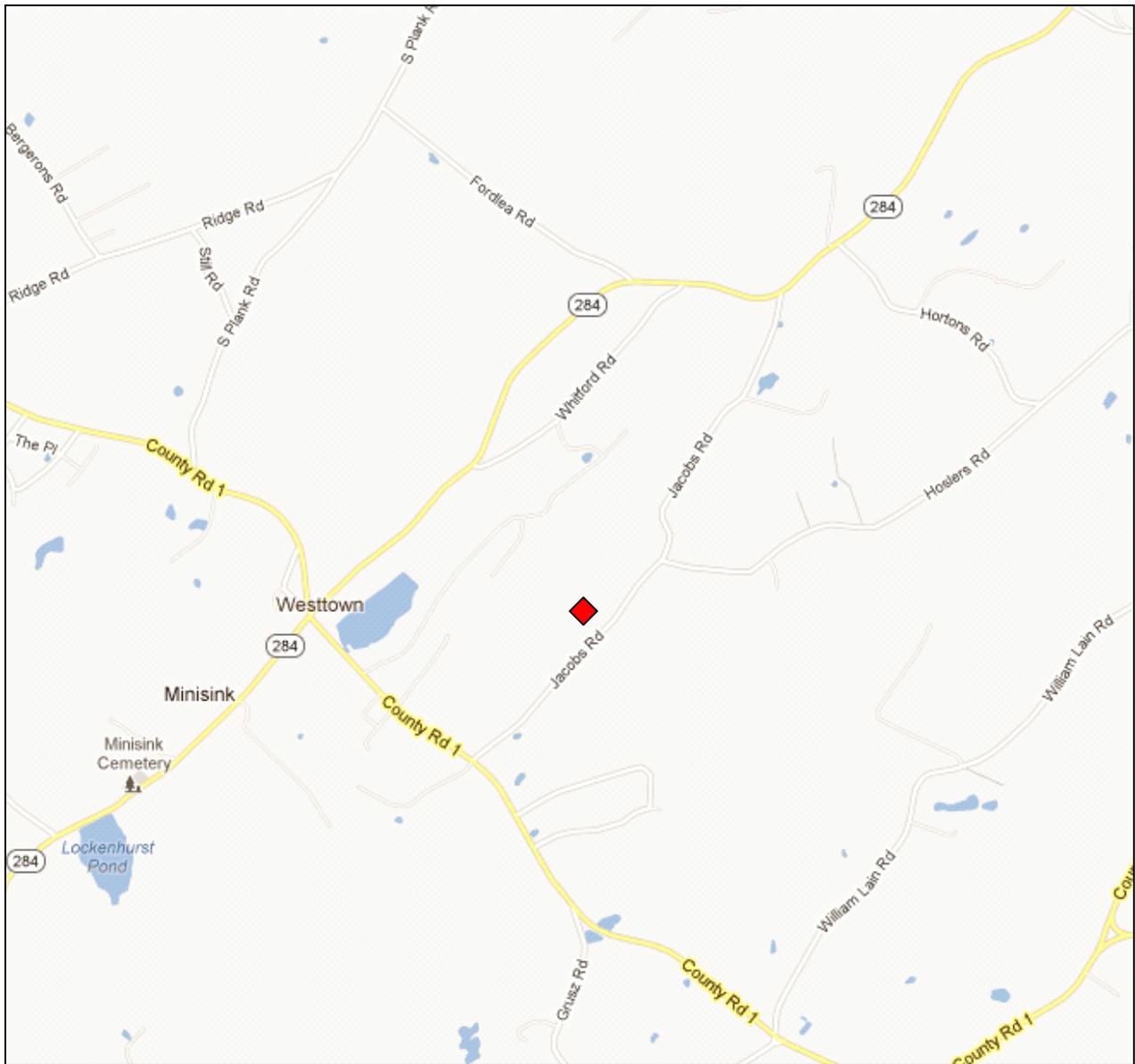


Figure 2: Road map showing the proposed compressor station site

B. ENVIRONMENTAL ANALYSIS

1. GEOLOGY AND SOILS

1.1. Geology

The proposed compressor station is located in the Great Valley sub-province of the Valley and Ridge physiographic province. The project site is predominantly glacial deposits and the overburden is thin relative to nearby sites. The topography is characterized by steep-sided, streamlined erosional remnants with relatively flat-lying hollows between them. Elevations at the project site range from 620 feet to 680 feet above sea level.

Bedrock is anticipated to be 5 to 10 feet below ground surface. Rock encountered during construction would be removed using one of the following techniques, depending on the relative hardness, fracture susceptibility, and expected volume of the material:

- conventional excavation with a backhoe;
- ripping with a dozer followed by backhoe excavation;
- hammering with a hydraulic hammer backhoe attachment followed by backhoe excavation; and
- blasting followed by excavation.

Blasting for the project would be conducted in accordance with Millennium's Blasting Plan which can be viewed on eLibrary under this docket (Docket No. CP11-515-000). All blasting would be performed by licensed professionals according to strict guidelines designed to control energy release. Proper safeguards would be taken to protect personnel and property in the area. Charges would be kept to a minimum required to break up the rock. Where appropriate, mats made of heavy steel mesh or other comparable material or trench spoil would be utilized to prevent the scattering of rock and debris. These activities would adhere to all local, state, and federal regulations that apply to controlled blasting and limiting blast vibration near structures and underground utilities.

Mineral/Geologic Resources

The principal resources mined in the project area include sand and gravel. The nearest commercial quarry is approximately 2 miles north of the project site. Movable thicknesses of sand and gravel are not located on site. The project would not impact existing or future extraction of mineral resources. There are no areas of paleontological significance within the vicinity of the compressor site.

Geologic Hazards

No active faults are known to exist in the vicinity of the project area. The closest fault is the Ramapo Fault in Rockland County approximately 40 miles to the east. Based on U.S.

Geological Survey seismic hazard mapping and lack of active faults near the project area, the seismic risk to the proposed compressor station is expected to be low.

The compressor station site is not at a high risk for flooding. According to the Federal Emergency Management Agency flood insurance rate maps, the project site is outside the area that has the lowest probability of flooding. There is one intermittent stream located on the property. Given the location and topography of the site, the stream does not have a large watershed and is not prone to flooding.

The project site has low landslide susceptibility and a low landslide incidence (less than 1.5 percent). Therefore, the proposed compressor station is not at risk from landslides. The soils at the proposed site are not susceptible to liquefaction. Due to the soil characteristics and the low probability of seismic activity, soil liquefaction is not considered a potential hazard to the project.

The bedrock at the project site is not subject to further consolidation or to dissolution, no dewatering is planned, and there is no history of underground mining in the project area. Therefore, there is very low potential for ground subsidence. There is no known karst terrain in the project area.

In conclusion, construction and operation of the project would not result in significant adverse effects on any geologic resources, nor do we anticipate any geologic hazard impacts on the project facilities.

1.2. Soils

There are three soil types affected by the project. The soils are classified as moderately well drained to somewhat excessively drained, with slight to moderate erosion hazard, and moderate revegetation and compaction potential. None of the soils are classified as hydric or prime farmland.

Approximately 4.05 acres of active agricultural land would be permanently impacted by the proposed compressor station and access driveway. As the landowner of the project site, Millennium does not anticipate returning any disturbed areas to agricultural production.

Millennium would implement the measures described in its Plan to minimize the potential for soil impacts. This includes installation of temporary erosion controls, including interceptor diversions and sediment filter devices (e.g., hay bales and silt fences) would be installed, as needed, after clearing but prior to initial grading. Millennium would regularly inspect and ensure that these devices are maintained until restoration and revegetation are complete.

Following completion of construction, Millennium would stabilize the site by installing permanent erosion control and the re-establishment of vegetative cover to prevent erosion and sedimentation of the areas outside the aboveground facility. The revegetation of the construction workspace would be done in accordance with our Plan. Additionally, Millennium has initiated consultation with the local Natural Resources Conservation Service to obtain recommended seed mixes, application rates, and planting dates. Once stabilization has been achieved, Millennium would remove temporary erosion control devices. Millennium would monitor the effectiveness of

revegetation and permanent erosion control devices during facility operation. Through adherence to our Plan, we believe the project would not significantly impact soils.

2. WATER RESOURCES

2.1. Groundwater Resources

Millennium proposes to construct its Minisink Compressor Station over the Northwest New Jersey 15 Basin Sole Source Aquifer (SSA), as mapped by the U.S. Environmental Protection Agency (EPA). A SSA is an aquifer that supplies at least 50 percent of the drinking water consumed in an area for which there are no alternative drinking water sources which could physically, legally, and economically supply water to all who depend on the aquifer.

Groundwater in the project area ranges from 5 to 15 feet below ground surface (bgs). This SSA is susceptible to contamination because of the thin or permeable soils and fractured bedrock. The EPA stated in a November 1, 2011 letter to Millennium that this project is not subject to a SSA review under Section 1424(e) of the Safe Drinking Water Act because there is no federal funding.

No private water supply wells occur within 150 feet of the disturbed site, nor do any public water supply wells occur within 1.5 miles of the project area. Millennium would drill a drinking water well and dispose of sewage through an underground septic system constructed according to state and local requirements. The well and septic system would be similar to that of residential systems.

The greatest risk of groundwater contamination from construction or operation of the project would be from potential spills or leaks of hazardous materials. Millennium would construct its project according to our Plan, our Procedures, and its SPCC Plan. Millennium's SPCC Plan ensures proper inspection and maintenance of equipment; fuel and material storage; spill response; and notification of appropriate federal, state, and local agencies should a spill occur.

We received several comments from concerned landowners adjacent to the project regarding groundwater impacts from project construction and operation. As commented on by concerned landowners, Millennium's SPCC Plan would only require them to report spills above a government stated reportable quantity. Millennium would, however, be required to contain and clean any spill of hazardous materials at its site, regardless of spill size in accordance with its SPCC Plan. Because no wells are within the immediate area and it would implement its SPCC Plan, we believe Millennium would adequately minimize and eliminate impacts on groundwater.

Millennium identified a leaking underground storage tank about 0.25 mile from the proposed site. This site is listed as closed by the New York State Department of Environmental Conservation (NYSDEC). We believe the limited scope of this project would have no effect on the listed site.

Millennium would hydrostatically test its facilities with about 85,000 gallons of water from off-site sources delivered to the site in tanker trucks. This water would be discharged in accordance with its National Pollution Discharge Elimination System permit and our Procedures to minimize the likelihood of any erosion.

2.2. Surface Water and Wetlands

One 2-foot-wide intermittent stream would be crossed with equipment mats during construction and Millennium would install a culvert for the stream crossing of the permanent access road. No other waterbodies, springs, or seeps would be impacted by the project.

Wetlands are areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and normally do support, a prevalence of wetland vegetation adapted for life in saturated soil conditions. Wetlands are a source of substantial biodiversity and serve a variety of functions that include providing habitat for wildlife, recreational opportunities, flood control, and naturally improving water quality.

Wetlands are regulated at the federal and state levels. On the federal level, the U.S Army Corps of Engineers has authority under Section 404 of the Clean Water Act (CWA) to review and issue permits for activities that would result in the discharge of dredge or fill material into waters of the United States, including wetlands. Section 401 of the CWA requires that proposed dredge or fill activities under Section 404 be reviewed and certified by the designated state agency (NYSDEC) to ensure that the proposed project would meet state water quality standards.

Millennium would impact one palustrine emergent (PEM) wetland and one palustrine scrub/shrub (PSS) wetland, associated with the intermittent stream crossing, during construction of the access road. PEM wetlands are characterized by herbaceous vegetation, while PSS wetlands are dominated by woody vegetation less than 20 feet tall. Construction and operation of the project would impact and fill a total of 0.09 acre of PEM and PSS wetlands from installation of a paved access driveway with a culvert. No other wetlands would be impacted by the project.

Millennium would implement our Procedures to minimize impacts on wetlands and waterbodies. Measures contained in the Procedures include:

- limiting the time equipment and construction activities occur within wetlands to minimize soil disturbance;
- installing temporary erosion and sediment control barriers;
- stabilizing upland areas near wetlands with permanent erosion control measures and vegetative cover; and
- repairing any erosion control features as needed until permanent revegetation is successful.

We believe Millennium's proposed project location and implementation of our Procedures would adequately minimize construction impacts on wetlands and waterbodies. In addition, we believe that the minor wetland impacts associated with the permanent access road would be minimized and/or compensated for by implementing the construction, restoration, and mitigation measures within Millennium's Procedures and as included in any Section 404 permit.

3. VEGETATION AND WILDLIFE

3.1. Vegetation

The Project would impact about 10.6 acres of vegetation during construction and about 4.5 acres during operation. Table 2 depicts the vegetation uses and acreage that would be affected by the project.

Table 2: Vegetation Affected by the Project		
Habitat Type	Construction (acres)	Operation (acres)
Agricultural land	9.83	4.05
Woodland	0.36	0.27
Utility Corridor/Open Space	0.28	0.08
Upland Scrub/Shrub	0.08	0.0
Palustrine Scrub/Shrub Wetlands	0.06	0.06
Palustrine Emergent Wetlands	0.03	0.03
Total	10.64	4.49 ¹
1 Millennium would allow the remaining 6.15 acres of land to revert to open space.		

The majority of vegetation impacts would be on agricultural land composed of hay and alfalfa fields. Millennium has minimized impacts on the the forested areas at the site and it would revegetate about 6 acres of the disturbed area in accordance with Natural Resource Conservation Service seeding guidelines. While Millennium would permanently convert about 4.5 acres of upland vegetation to industrial use, these vegetative species are plentiful in the project area. Therefore, we believe impacts on upland vegetation would not be significant.

3.2. Wildlife

Wildlife species inhabiting the project area are characteristic of the vegetation communities, which is predominantly agricultural land. Representative wildlife species include song and game birds, deer, bear, fox, raccoons, skunks, voles, turtles, and snakes.

Migratory raptor, game, and songbird species are protected under the Migratory Bird Treaty Act (MBTA) and Executive Order 13186 (section 66 of the Federal Register, part 3853). The MBTA protects species or families of birds that live, reproduce, or migrate within or across international borders during their life cycle. Under authority of the MBTA, it is unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. The executive order was enacted, in part, to ensure that environmental analysis of federal actions evaluate the impacts of actions and agency plans on migratory birds. It also states that emphasis should be placed on species of concern, priority habitats, and key risk factors and it prohibits the take of any migratory bird

without authorization from the U.S. Fish and Wildlife Service (FWS). The destruction or disturbance of a migratory bird nest that results in the loss of eggs or young is also a violation of the MBTA.

Millennium's construction timing could disrupt breeding of bird species on or adjacent to the proposed site. Habitat change caused by construction and operation of the project facilities may directly impact individuals of migratory bird species if construction were to occur during a species' nesting period. However, Millennium would limit construction activities to a fairly small area, and its Minisink Compressor Station would mostly be constructed within agricultural land, which is routinely disturbed by mowing activities. No forest interiors and only 0.36 acre of forested habitat would be impacted by project construction. Although some migratory birds could be affected during project construction, we believe that Millennium's proposed project location would have minimal impacts on migratory birds. Further, our Indiana bat recommendation below could further minimize the likelihood of tree nesting birds being directly impacted. Additionally, Millennium would implement our Plan during operation of the project, which would prohibit vegetation maintenance of the project area during typical breeding seasons (i.e., between April 15 and August 1). Therefore, we believe Millennium's construction and operation measures would meet the intent of Executive Order 13186 and minimize any disruption of migratory birds.

We anticipate minor impacts on wildlife species in the project area from construction and operation, and would not expect any project impacts on wildlife at a community or population level.

3.3. Special Status Species

Special status species are those species for which state or federal agencies afford an additional level of protection by law, regulation, or policy. Included in this category are federally listed species that are protected under the Endangered Species Act (ESA), as amended, federal candidate species, and state sensitive species. Millennium, acting as the FERC's non-federal representative for the purpose of complying with Section 7(a)(2) of the ESA, initiated informal consultation with the FWS and NYSDEC's Division of Fish, Wildlife and Marine Resources, and it reviewed the New York State National Heritage Program's database regarding federal and state-listed species within the potential project area.

Section 7 of the ESA requires the lead federal agency (i.e., FERC) to ensure that any action authorized, funded, or carried out by the agency does not jeopardize the continued existence of a federally listed endangered or threatened species, or result in the destruction or adverse modification of the designated critical habitat of a federally listed species. The agency is required to consult with the FWS to determine whether any federally listed endangered or threatened species or any of their designated critical habitats are located in the vicinity of the project, and to determine the proposed action's potential effects on those species or critical habitats.

Based on Millennium's consultation, the federally endangered Indiana bat, federally threatened bog turtle, and federally threatened small whorled pogonia have the potential to occur in the project area. However, Millennium did not identify any suitable habitat for the bog turtle (2006 Phase I Survey) or the small whorled pogonia (March and April, 2011 field surveys). Based on our independent review of the survey reports, we believe the project would have *no effect* on the bog turtle or small whorled pogonia.

The Indiana bat was listed as federally endangered throughout its range on March 11, 1967. It is a medium-sized bat closely resembling the little brown bat, but differing in coloration, and hind foot size; and the calcar (heel of the foot) is strongly keeled on the Indiana bat. The Indiana bat occurs in the Midwest and eastern United States from the western edge of the Ozark region in Oklahoma, to southern Wisconsin, east to Vermont, and as far south as northern Florida.

Indiana bats hibernate during the winter in caves or abandoned mines. After hibernation, Indiana bats migrate to their summer habitat in wooded areas where they usually roost under loose tree bark on dead or dying trees. The decline of the Indiana bat is attributed to commercialization of roosting caves, wanton destruction by vandals, disturbances caused by increased numbers of spelunkers and bat banding programs, use of bats as laboratory experimental animals, and possibly insecticide poisoning. The Indiana bat is nearly extinct over most of its former range in the northeastern states.

No abandoned mines or caves occur in the immediate vicinity of Millennium's project. Further, Millennium would impact only 0.36 acre of forest during construction and no significant stands of dead or dying trees were observed in its surveys. In a letter dated June 20, 2011, the FWS stated that because there are known Indiana bat roosts within 0.75 mile of the proposed site, any project related tree removal should occur between October 1 and March 31 to avoid potential direct effects with Indiana bats. Millennium requested a waiver from this restriction to allow construction until April 15; however, the FWS did not agree with this request. Millennium's proposed construction schedule could conflict with the FWS treeclearing timeframe requirement. In order to comply with our responsibilities under Section 7 of the ESA, **we recommend that Millennium conduct all tree removal greater than 5-inch-diameter breast height between October 1 and March 31 and not begin construction of facilities and/or use of any work areas until:**

- a. **the staff completes ESA Section 7 consultation with the FWS relating to the Indiana bat; and**
- b. **Millennium has received written notification from the Director of the Office of Energy Projects (OEP) that construction or use of mitigation may begin.**

Millennium's project would result in operational noise, which could impact Indiana bats in the project vicinity. Millennium's project would result in a noise increase of about 2.5 decibels on the A-weighted scale (dBA), from 39.1 dBA day-night average sound level (L_{dn}) to 41.6 dBA, at about 0.25 mile (less than a 3 decibel increase is not perceptible to the human ear). Millennium's compressor station noise would be less perceptible at the nearest Indiana bat roost (about 0.5 mile from the project). Therefore, we believe that potential noise impacts on the Indiana bat from compressor station operations would be negligible. Further, we believe the project is *not likely to adversely affect* Indiana bats because of the minimal impacts on forested acreage and our recommendation for Millennium to conduct tree clearing in accordance with FWS guidelines and outside of the time of year when Indiana bats would be present.

Local residents have identified bald eagles in the project area. Although no longer on the federal threatened and endangered species list, bald eagles are protected under the Bald and Golden Eagle Protection Act, and the MBTA. Further, bald eagles are listed as threatened by the NYSDEC (NYSDEC a). Bald eagles typically hunt in aquatic habitats where their primary food

source is fish, although they can opportunistically supplement their diet with turtles, birds, and mammals (FWS a). Because of this, they are generally found in coastal areas, bays, estuaries, or near large freshwater lakes and rivers.

According to the National Bald Eagle Management Guidelines (FWS, 2007), eagles exhibit variable individual sensitivity to human disturbing activity. However, bald eagles are most sensitive to disturbance during the breeding season. Potential direct effects on bald eagles include temporary displacement from possible foraging habitats during construction and operation activities, and the disturbance of roosting or foraging birds near the project due to noise and activity of construction. If construction were to occur near active nests, noise and visible activity has the potential to cause nest abandonment, or increased mortality of young if parental care and feeding would be frequently interrupted.

Preferred nest sites for bald eagles are the tops of tall pine trees, usually overlooking or near a large waterbody (NYSDEC b). Bald eagle nests are typically at least 5 feet in diameter, 3 feet tall, and weigh between 500 and 4,000 pounds. The same pair will return to a nest year after year. Bald eagle territories can contain both active nests and alternate constructed nests that are not being actively used.

The lack of large bodies of water capable of supporting a bald eagle in the project's vicinity indicates that the bald eagle sightings in the project area are likely transient eagles (between wintering and nesting habitats). Further, neither the FWS, nor the NYSDEC have identified bald eagle nests in the Minisink area during their annual winter bald eagle surveys and no nests were identified during Millennium's biological survey of the project area. Noise from construction of the project would be temporary, while noise from project operations would be minimized to the extent practicable. Further, air quality impacts associated with construction and operation would be within the state's legal limits (noise and air quality impacts are further discussed in section B.7). Additionally, it is unlawful to take, harm, or harass any bald or golden eagles.

Direct mortality of adults is highly unlikely, but could occur due to impact with vehicles or equipment. Bald eagles are occasionally known to feed on carrion, including roadkill, and are therefore at higher risk of impact from increased vehicle traffic than many other birds. However, Millennium would use existing roadways and the project would result in minor increases in vehicle traffic.

Construction and operation of the proposed project would not destroy or remove any known bald eagle nests or roost trees, but may disrupt foraging activities of individual bald eagles. Additionally, given the distance of the proposed project from known nest locations (7 miles according to the FWS), minimal forested disturbance, no disturbance of perennial waterbodies, and minimal wetlands impacts, we believe the project's impacts on bald eagles would be minimized to the extent practicable. However, if a bald eagle nest be spotted prior to or during construction, Millennium is required to comply with the National Bald Eagle Management Guidelines.

4. CULTURAL RESOURCES

Section 106 of the National Historic Preservation Act, as amended, requires the FERC to take into account the effect of its undertakings on properties listed, or eligible for listing, on the National Register of Historic Places (NRHP), and to afford the Advisory Council on Historic

Preservation (ACHP) an opportunity to comment. Millennium, as a non-federal party, is assisting the FERC in meeting our obligations under Section 106 and its implementing regulations at 36 CFR Part 800.

Millennium completed a cultural resources survey for the proposed project. A 31.2-acre parcel was surveyed for the compressor station site. Survey methodology included surface reconnaissance and excavation of 396 shovel tests. The survey also included a viewshed analysis for aboveground resources. A survey report, which included a literature search and review of historic maps, the NRHP, and files at the State Historic Preservation Office (SHPO) and New York State Museum, was provided to the FERC and the New York SHPO.

As a result of the survey, no artifacts were recovered and no archaeological sites were identified, but a modern springhouse was located within the surveyed parcel. In addition, a historic farm complex consisting of a house, barn, privy, several outbuildings, and the foundation of a razed structure, was identified immediately adjacent to the project area. The survey recorded, described, and photo-documented the farm complex, and the report included a SHPO Historic Resource Inventory Form for the complex. Both the springhouse and the farm complex were recommended as not eligible for the NRHP. The SHPO had initially indicated that the project would have “no effect upon cultural resources in or eligible for inclusion in the National Register of Historic Places.” However, upon receipt of additional information from a concerned citizen (see below comment regarding the “Lewis Lee House”), the SHPO (letter dated December 13, 2011) has indicted that the property is significant under NRHP criterion “A”, and the farmhouse under criterion “C”. Further, the SHPO requested additional information from Millennium regarding the station arrangement and characteristics, and potential physical and visual effects. Millennium has not yet provided this information to the SHPO. **Therefore, we recommend that Millennium not begin construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads until:**

- a. **Millennium provides the New York SHPO with the information requested in the SHPO’s December 13, 2011 letter;**
- b. **Millennium files with the Secretary of the Commission (Secretary) the information and the SHPO’s comments on the information;**
- c. **Millennium files any required avoidance, treatment, or mitigation plan, and the SHPO’s comments on the plan;**
- d. **The ACHP is afforded an opportunity to comment if historic properties would be adversely affected; and**
- e. **The staff reviews, and the Director of OEP approves the cultural resources report and any plan, and notifies Millennium in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.**

All materials filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant

pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE."

Millennium provided a plan to deal with the unanticipated discovery of historic properties and human remains during construction. We requested minor revisions to the plan. Millennium provided a revised plan which we find acceptable.

Millennium contacted the Delaware Nation, Delaware Tribe of Indians of Oklahoma, Stockbridge-Munsee Band of the Mohican Nation of Wisconsin, and the St. Regis Mohawk Tribe regarding the project. The Stockbridge-Munsee Band of the Mohican Nation of Wisconsin responded and requested additional information and a copy of the survey report, which Millennium provided, and also requested to be notified in the event of inadvertent discoveries. In a subsequent letter, the Stockbridge-Munsee concurred that there were no NRHP properties within the project area. The Delaware Tribe of Indians of Oklahoma indicated "that there are no religious or culturally significant sites in the project area", wished to continue as a consulting party, requested a copy of the survey report, and asked to be informed of any inadvertent discovery of human remains. Millennium provided the tribe a copy of the survey report. The unanticipated discoveries plan provides for notification of Native American tribes. No other responses have been received to date. We sent our NOIs to each of the tribes. No responses to our NOIs have been received.

We received a comment concerning the historic farm (which the commenter referred to as the "Lewis Lee House") identified by the survey. The commenter indicated that the farm was locally significant and nominated to the New York State Historic Register, was concerned about impacts to the farm, and also inquired about the survey methods employed. The farmstead and survey methods are discussed above.

We received public comments regarding the historic nature of the Kezialain Farm, visual impacts to the farm, and potential effects on the stone house at the farm from low-frequency noise. The commenters indicate the farm is on New York State's "register of historic buildings". The farm is located about 1.5 miles (according to a commenter) from the proposed compressor station site and would not be impacted by construction. Due to the distance and intervening topography, the compressor station would not be visible from the Kezialain Farm. Low frequency noise is discussed in section 7 of the EA.

5. LAND USE, RECREATION, AND VISUAL RESOURCES

5.1. Land Use

Construction of Millennium's Minisink Compressor Project would disturb a total of about 10.6 acres of land within a 73.4-acre parcel of land for which Millennium has an option to purchase from the current landowner. The parcel primarily consists of agricultural hayfields, but also includes forested land along the northern section of the parcel. This acreage includes disturbance from the suction and discharge pipelines required to interconnect the station with Millennium's mainline. Approximately 4.49 acres of land would be permanently affected by operation of the proposed facility including the pipeline interconnection. Millennium would construct an 830-foot-long private, paved driveway to provide access to the compressor station facility. The proposed access driveway would have a paved width of 16 feet and would be located

within the 4.49-acre area designated for permanent disturbance for operation of the compressor station. Overall, 0.09 acre of forested lands and 3.08 acres of open lands would be converted to permanent industrial land use. Following construction, Millennium would restore and revegetate the disturbed areas not required for operational purposes. In addition, Millennium stated that it would consider entering approximately 42.5 acres of the 73.4-acre parcel of land into a conservation easement. A summary of the impacts on land use are outlined in section 3.1, Table 2.

The project site is located in a rural residential area that is zoned as agricultural/residential by the Town of Minisink. There are about 86 residences within 0.5 mile of the compressor station and there are no industrial facilities comparable to a compressor station in the vicinity of the project area. Millennium's proposed aboveground facility would introduce a new industrial facility into a rural residential area and is incompatible with the current zoning ordinance. Figure 3 shows the location of the compressor station and the surrounding residences (note that a residential development 0.25 miles northwest of the proposed site is currently under construction and would increase the number of residents living in proximity to the proposed compressor station). While existing forest land and topography would obstruct views of the station from most of the surrounding residents, the station would be visible by several residents in close proximity to the station along Jacobs Road (see Visual Resource section below).

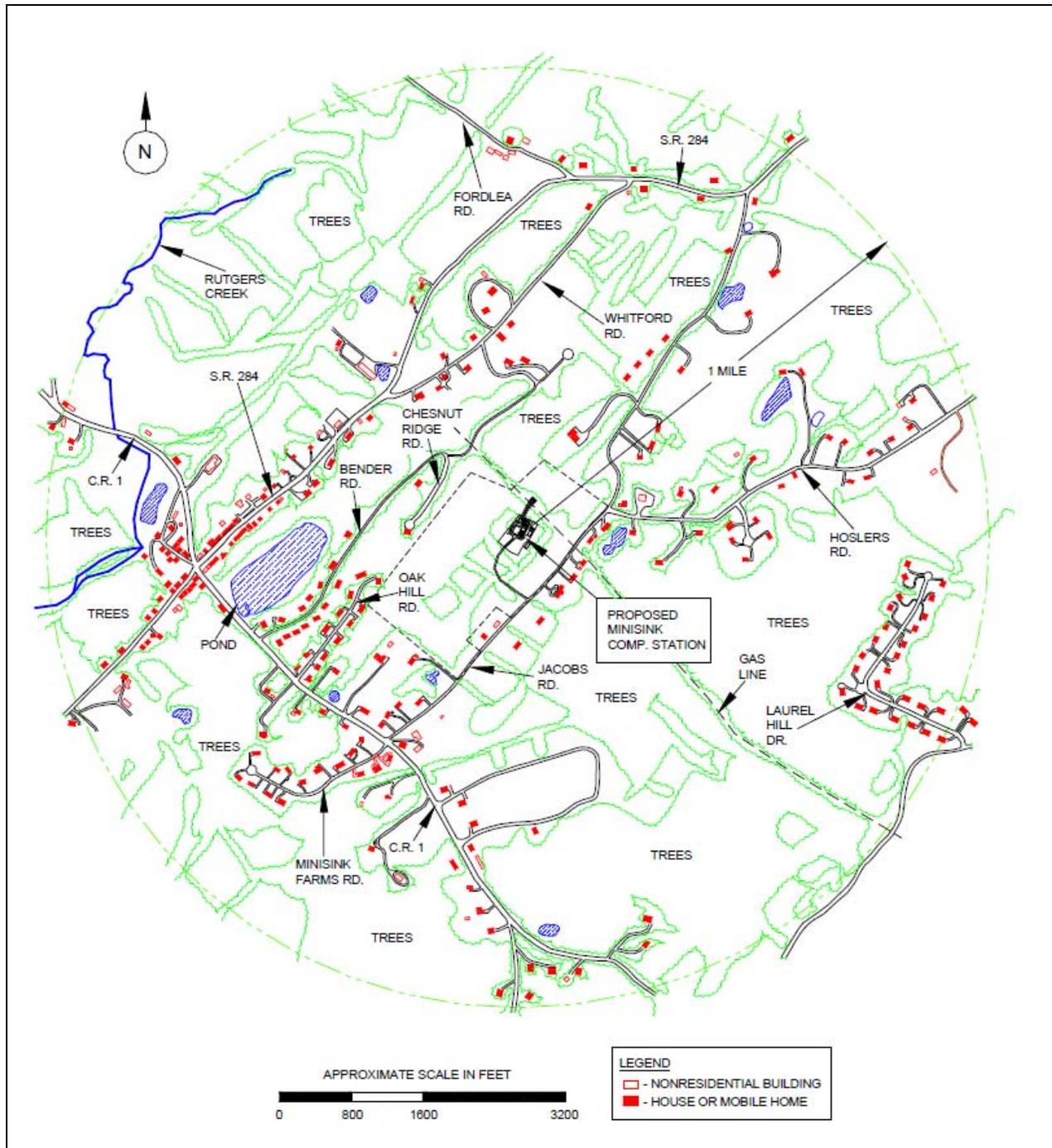


Figure 3: Proposed Compressor Station and Surrounding Residences

Millennium states that under the Minisink Zoning Ordinance there is no zoning district in which the Minisink Compressor Station would be considered as either a permitted use or a conditional use. The Town of Minisink also filed comments indicating that the project does not meet town zoning laws. However, Millennium has informed the Town's representatives that it is prepared to work cooperatively with them in an effort to reach reasonable accommodations.

There are no recreation or conservation areas on or within the immediate vicinity of the project site.

Millennium estimates that between 75 and 100 workers would be required for the construction of the project. These workers would increase the amount of traffic on local roads during the construction period which is expected to last 6 to 8 months. The minor and temporary increase in traffic would return to normal levels once construction is complete. Commentors were also concerned about potential damage to road surfaces. Jacobs Road has a weight limit of 20 ton (40,000 pounds) and the approximate package shipping weight for each of the compressor units is 32.5 ton (65,000 pounds), so transportation of each compressor unit would exceed the weight limit of the road. Millennium stated that the two uses of Jacobs Road would not result in any material damage to that road. Millennium also stated that it intends to apply for all local and state road permits required to take delivery of the compressor units and that such permits usually require posting of a bond to insure that any damage to the road caused by the permitted use will be repaired. We agree with Millennium's conclusion.

5.2. Visual Resources

The aboveground facilities (compressor building, fencing, and aboveground piping) associated with the project would result in a permanent change in the visual appearance of the project areas and result in long-term impacts on visual resources. The magnitude of these impacts depends on factors such as the existing landscape, the remoteness of the location, and the number of viewpoints from which the facility could be seen. About 5 residences are within the viewshed of the project site. Existing vegetation and topography shield the remaining residences from any direct views of the compressor station site. Several landowners filed general comments about the potential negative visual impact, particularly from those residences along Jacobs Road and within the viewshed of the compressor station site. While existing vegetation partially obstructs views of the site from these residences during the summer and early fall, the aboveground facilities would be clearly seen during the remaining seasons.

Construction would result in temporary visual impacts including increased numbers of company personnel, presence/storage of additional equipment and materials, removal of vegetative and woody cover, and disturbance of soils. These impacts would generally cease following the completion of construction and successful restoration.

Millennium states that it would preserve as many of the existing trees and as much of the vegetation along the compressor station property boundary in order to aid in screening views of the site from points along the roadway and adjacent residences. The facility buildings would look like metal pole barn buildings with green vertical siding and metal roofs. Lights would be designed to minimize visual effects at night and be as non-intrusive as possible. No lights would be installed on Jacobs Road to illuminate the station access driveway. While Millennium states that its building design and coloration that would blend in with the surrounding landscape, staff believes that Millennium could improve the design of the facility to remain consistent with a rural residential agricultural landscape and structures. We encourage Millennium's ongoing consultation with the Town of Minisink regarding the facility's design. Therefore, **we recommend that:**

Prior to construction, Millennium should file a copy of the final building design and any comments received from the Town of Minisink for review and written approval by the Director of OEP. The final design should include specific measures to blend in with surrounding rural residential agricultural landscape and structures.

Millennium provided a visual simulation depicting the compressor station from various points around the property and from a nearby residential area. During most of the year, the Minisink Compressor Station would be slightly visible from points along Jacobs Road and perhaps from surrounding vantage points in the vicinity of the facility. In the winter, however, the absence of foliage on the trees would make significant portions of the project facilities visible from Jacobs Road and nearby residences resulting in a negative aesthetic impact. Millennium developed a visual screening plan for the compressor station. As part of its plan, Millennium would plant about 127 Norway Spruce and about 28 Colorado Blue Spruce trees along the property boundary adjacent to Jacobs Road and the access road to the compressor station. The trees would provide additional screening of the facility and supplement the existing wooded area along Jacobs Road. A drawing of the visual screening plan is included in appendix A. While we find that the measures detailed in the plan would eventually minimize visual impacts over time, **we are specifically seeking comments from the Town of Minisink on this plan.** Therefore, **we recommend that:**

Prior to construction, Millennium should file a copy of its final landscaping and site screening plan, and any comments received from the Town of Minisink, for review and written approval by the Director of OEP.

If Millennium implements the mitigations recommended above, we conclude that there will be no significant impact on visual resources.

6. SOCIOECONOMICS

Construction would occur over a 6 to 8 month period and would require approximately 75 to 100 total on-site workers. Millennium would not hire any additional permanent employees. Overall, the project may result in short-term, beneficial impacts in terms of employment and local material purchases.

Several commentors expressed concern over the impact of the Minisink Compressor Station on their property values as a result of noise levels or reduced aesthetic appeal. As referenced in the Appraisal Institute's *The Appraisal of Real Estate* (Appraisal Institute 1992), environmental conditions are one of four basic forces which may influence value by impacting the neighborhood of a property or its geographic location, and may be either natural or man-made. Nuisances and hazards are listed as important environmental considerations to be taken into account when performing a real estate appraisal, and may otherwise be referred to as environmental liabilities or environmental impairments. Such factors could likely decrease a home's sales price but it is difficult to precisely quantify the extent of this effect. To our knowledge, there are limited studies specifically evaluating the effect of natural gas compressor stations on property values. However, studies have shown that just as a home's value will be increased if a high-quality scenic vista is enjoyed from the property (e.g., Seiler et al., 2001), the converse is true. Specifically, studies have shown that if a home's scenic vista overlaps with a view of a disamenity, the home might be devalued, as is the case for high-voltage transmission lines (Kroll and Priestley, 1992; Des-Rosiers, 2002). Proximity to the proposed compressor station

could also have an impact on property values if various nuisance effects are prominent, such as noise, health or safety concerns, or other impacts, real or perceived. This could impact property values in the same way as homes near roads might be devalued (Bateman et al., 2001).

Certain prospective home-buyers may find the new compressor station to be a significant detractor and it could influence a potential buyer to not purchase a property in proximity to the Minisink Compressor Station. The compressor station would be located on land owned by Millennium and would not preclude any existing or future use of nearby properties.

Millennium would enclose the facility in a fenced 2.4-acre site on the 72.4-acre parcel. Millennium would hold the remaining acres of land purchased at the compressor station site as a buffer. To further address visual impacts, we recommend in section 5.2 that Millennium file a final building design plan and a final landscaping plan for the Minisink Compressor Station to help screen the station and improve the appearance of the station from nearby roads and residences. We believe that the recommended building design and landscaping plans would eventually minimize the visual impact from the station on the surrounding residential properties and would not significantly reduce property values or resale values.

7. AIR QUALITY AND NOISE

7.1. Air Quality

We received several comments regarding air quality impacts associated with Millennium's Minisink Compressor Station. These are addressed in the following section.

Air quality would be affected by both construction and operation of the proposed facilities. The EPA has established National Ambient Air Quality Standards (NAAQS) for criteria pollutants for the purpose of protecting human health (primary standards) and public welfare (secondary standards). The EPA set NAAQS for the following air contaminants designated as "criteria pollutants": nitrogen dioxide (NO₂), carbon monoxide (CO), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀), and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns (PM_{2.5}). These NAAQS reflect the relationship between pollutant concentrations and health and welfare effects, and are supported by sound scientific evidence. The state of New York has adopted the NAAQS but maintains a more stringent standard of 0.050 parts per million (ppm) for the annual averaging period for NO₂. New York also regulates non-methane hydrocarbons, where 0.24 ppm is not to be exceeded more than once per calendar year. The states implement and enforce the NAAQS through State Implementation Plans (SIP), which must be approved by the EPA. The state of New York implements its SIP through the NYSDEC.

Air quality control regions (AQCR) are areas established for air quality planning purposes in which SIPs describe how ambient air quality standards would be achieved and maintained. AQCRs were established by the EPA and local agencies, in accordance with section 107 of the Clean Air Act of 1970 and its amendments (CAA), as a means to implement the CAA and comply with the NAAQS through SIPs. The CAA is the basic federal statute governing air pollution. AQCRs are intra- and interstate regions such as large metropolitan areas where improvement of the air quality in one portion of the AQCR requires emission reductions throughout the AQCR. Each AQCR, or portion thereof, is designated based on compliance with the NAAQS. AQCR

designations fall under three categories as follows: “attainment” (areas in compliance with the NAAQS), “nonattainment” (areas not in compliance with the NAAQS), or “unclassifiable/attainment” (areas that cannot be classified on the basis of available information as meeting or not meeting the NAAQS). Areas in nonattainment with the NAAQS for any criteria pollutant are held to more restrictive air emissions limits when determining whether the facility is a major source under federal programs. Table 3 shows the area designations for each criteria pollutant in the AQCR where the project is located.

Pollutant	Attainment Status
SO ₂	Attainment/ Unclassified
PM ₁₀	Attainment/ Unclassified
PM _{2.5}	Nonattainment
NO ₂	Attainment/ Unclassified
CO	Attainment/ Unclassified
O ₃	Nonattainment (moderate)
Pb	Attainment/ Unclassified

New York is also part of the Northeast Ozone Transport Region, a region comprising eleven northeastern states. States in this region are required to submit a SIP and install a certain level of controls for the pollutants that form ozone, even if they meet the O₃ standards.⁴

Existing Air Quality

Air quality data in the project area meets all of the NAAQS with the exception of O₃. Table 4 depicts air quality at various monitors in the regional vicinity of the project area from 2007 to 2009. The data was compiled from the New York State Ambient Air Quality Report for 2009 and the EPA Aerometric Information Retrieval System Database.

⁴ O₃ forms from the reaction between nitrogen oxides (NO_x) and volatile organic compounds (VOC); as a result, controlling O₃ levels in the air depends on limiting NO_x and VOC.

Table 4: Ambient Air Quality Data for the Minisink Compressor Project Area						
Pollutant	Monitor	Averaging Period	Units	2007	2008	2009
CO	Schenectady, NY	1-hour	ppm	2.4	2.7	1.7
		8-hour	ppm	1.7	1.8	1.2
NO ₂	Botanical Gardens, Bronx, NY	1-hour	ppm	0.084	0.083	0.086
		Annual	ppm	0.024	0.023	0.022
PM ₁₀	Scranton, PA	24-hour	µg/m ³	49	42	n/a
		Annual	µg/m ³	17	17	n/a
PM _{2.5}	Newburgh, NY	24-hour	µg/m ³	30.4	26	20.6
		Annual	µg/m ³	10.6	9.6	7.9
O ₃	Valley Central, Region 3, NY	8-hour	ppm	0.083	0.080	0.066
SO ₂	Mt. Ninham, Region 3, NY	1-hour	ppm	0.026	0.018	0.024
		3-hour	ppb	17	13	15
		24-hour	ppb	9	7	8
		Annual	ppb	1.5	1.3	1.1
Pb	Wallkill/Scotchtown, Region 3, NY	Calendar quarter	µg/m ³	0.060	0.086	0.069
n/a: Data not presently available on either of the above listed websites.						

Air Quality Construction Impacts and Mitigation

Construction of the project would last approximately 6 to 8 months. Air quality impacts associated with construction of the project would result from mobile source emissions from fossil-fueled construction equipment and fugitive dust. The earth moving and other construction equipment would be powered by diesel or gasoline engines that emit a number of pollutants including nitrogen oxides (NO_x), CO, volatile organic compounds (VOC), SO₂, PM₁₀, and PM_{2.5}. Fuel consumption and combustion-related emissions during construction would depend on the type of construction activity and terrain. In addition, many construction activities, such as land clearing, grading, excavation, and vehicle traffic on paved and unpaved, would also generate fugitive dust and impact air quality in the vicinity of the construction sites. The amount of fugitive

dust depends greatly on the type of material being moved, its moisture content, and the wind speed. Estimates of the potential combustion and fugitive dust emissions from construction of the project are detailed in Table 5. The pollutant emissions are shown in tons per year (tpy).

Table 5: Estimated Construction Air Emissions								
Construction Activity	Tons per Year							
	NO _x	CO	SO ₂	PM ₁₀	PM _{2.5}	VOC	GHG	HAPs
Diesel Construction Equipment Exhaust	6.2	0.5	0.3	0.6	0.6	0.5	909	0.1
On-Road Vehicle Exhaust	0.3	4.7	0.0	0.0	0.0	0.2	629	0.0
Construction Activity Fugitive Dust	0	0	0	65.9	9.9	0	0	0
Surface Preparation Abrasive Blasting	0	0	0	0.3	0.0	0	0	0
TOTAL	6.6	5.2	0.3	66.8	10.5	0.8	1,538	0.1

In order to minimize fugitive dust emissions, Millennium committed to implementing mitigation measures such as: using paved roadways to the extent possible, watering soil surfaces and dirt roads, covering haul trucks, minimizing construction vehicle speed, stabilizing disturbed areas, and inspecting and cleaning construction equipment when necessary. Idling of construction vehicles' engines would be minimized to reduce the impact of exhaust emissions.

Emissions from construction equipment exhaust would be temporary in nature. Once construction activities in the project area are completed, fugitive dust and construction vehicle/equipment emissions associated with the facilities would subside. Therefore, we believe that emissions associated with the construction phase of the project would not result in a significant impact on local air quality.

Air Quality Operation Impacts and Mitigation

Long-term air emissions would result from operation of the two proposed 6,130-hp gas-fired compressor units, the emergency generator, and the fuel gas heater at the Minisink Compressor Station. Table 6 displays the potential-to-emit (PTE) emissions of criteria pollutants and hazardous air pollutants (HAP) for the station. The PTE emissions represent the maximum capacity of a stationary source to emit criteria pollutants, although actual operational emissions may be less.

Table 6: Estimated PTE Operation Emissions								
Pollutant	Tons per Year							
	NO_x	CO	SO₂	PM₁₀	PM_{2.5}	VOC	GHG	HAPs
Proposed Turbines	28.3	28.7	7.2	11.0	11.0	3.3	61,066	0.52
Emergency Generator	0.2	0.4	0.0002	0.004	0.004	0.1	44	0.10
Fuel Gas Heater	0.3	0.5	0.003	0.04	0.04	0.03	641	0.01
TOTAL	28.8	29.6	7.20	11.04	11.04	3.43	61,751	0.63
Major Source Thresholds (NNSR/PSD)	50/250	NA/250	NA/250	NA/250	100/250	50/NA	NA/100,000	NA/25
NNSR/PSD - Non-attainment New Source Review/Prevention of Significant Deterioration								

Federal and State Air Quality Regulations

During operation, the proposed project facilities would emit quantities of regulated air pollutants and would be subject to federal and state air quality regulations that are driven by the CAA. Air emission sources in New York are regulated at the federal level by the EPA, and at the state level by NYSDEC. The federal and state regulations established as a result of the CAA that are potentially applicable to the project are as follows:

- Nonattainment New Source Review/Prevention of Significant Deterioration;
- Federal Class I Area Protection;
- Title V Operating Permits;
- New Source Performance Standards;
- Greenhouse Gas Mandatory Reporting Rule and Tailoring Rule;
- General Conformity;
- National Emission Standards for Hazardous Air Pollutants; and
- State regulations.

Nonattainment New Source Review and Prevention of Significant Deterioration

New Source Review refers to the pre-construction permitting programs under Parts C and D of the CAA that must be satisfied before construction can begin on new major sources or major modifications are made to existing major sources located in attainment or unclassified areas. This review may include a Prevention of Significant Deterioration (PSD) review. This review process

is intended to prevent new air emission sources from causing existing air quality to deteriorate beyond acceptable levels as codified in the federal regulations. For sources located in non-attainment areas, the Nonattainment New Source Review (NNSR) program is implemented for the pollutants for which the area is classified as non-attainment with the NAAQS.

The PSD review regulations are intended to preserve the air quality in areas where criteria pollutant levels are below the NAAQS that major new or modified stationary sources may contribute to. The PSD regulations apply to new major sources or major modifications of existing major sources located in an attainment area. The PSD regulations (40 CFR 52.21) define a "major source" as any source type belonging to a list of named source categories that emit, or have the PTE, 100 tpy or more of any regulated criteria pollutant. A major source under PSD can also be defined as any source not on the list of named source categories with a PTE equal to or greater than 250 tpy for criteria pollutants. Natural gas transmission compressor stations are not on the list of named categories; therefore, the major source threshold is 250 tpy.

The proposed Minisink Compressor Station would not be a major source; therefore, NNSR and PSD permitting requirements do not apply.

Federal Class I Area Protection

Congress designated certain lands as Class I areas in 1977. Class I areas were designated because the air quality was considered a special feature of the area (e.g., national parks or wilderness areas). These Class I areas are given special protection under the PSD program. The PSD program establishes air pollution increment increases that are allowed by new or modified air pollution sources. If the new source is required to demonstrate compliance with the PSD program requirements and is near a Class I area, the facility is required to demonstrate compliance with the PSD Class I increments. The source is also required to notify the appropriate federal land managers for the nearby Class I areas. The nearest Class I area to the proposed Minisink Compressor Station is the Lye Brook Wilderness Area which is approximately 225 kilometers away. Because the proposed station is more than 100 kilometers from the nearest Class I area and would be a minor source, Millennium is not be required to demonstrate compliance with the PSD Class I increments.

Title V Operating Permit

The Title V Operating Permit Program, as described in 40 CFR 70, requires major sources of air emissions and certain affected non-major sources to obtain a federal operating permit. If a facility's PTE exceeds the criteria pollutant or HAP thresholds, the facility is considered a major source. The major source threshold level for an air emission source is 100 tpy for criteria pollutants. The major source HAP thresholds for a source are 10 tpy of any single HAP or 25 tpy of all HAPs in aggregate. The Minisink Compressor Project would have a potential to emit less than the Title V major source thresholds. Therefore, the project is not be subject to Title V permit requirements.

New Source Performance Standards

New Source Performance Standards (NSPS), codified at 40 CFR 60, establish emission limits and requirements for monitoring, reporting, and record keeping for specific emission source

categories. NSPS apply to new, modified, or reconstructed sources. NSPS regulations are issued for categories of sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Subpart KKKK, *Standards of Performance for Stationary Combustion Turbines*, would apply to the proposed two new compressor units at the Minisink Compressor Station because the heat input at peak load would be greater than 10 million British thermal units per hour. The turbines would be required to meet specific emission limits, and performance testing, monitoring, recordkeeping, and reporting requirements would apply. The proposed Minisink Compressor Station would also include the installation of one 625-kilowatt lean-burn natural gas emergency generator. Subpart JJJJ of the NSPS, which deals with internal combustion engines, would apply to this unit and would require certain emission limits. Millennium would be required to comply with the applicable NSPS requirements.

Greenhouse Gases

On September 22, 2009, the EPA issued the final Mandatory Reporting of Greenhouse Gases Rule. It requires monitoring, reporting, and recordkeeping of greenhouse gas (GHG) emissions from suppliers of fossil fuels and facilities that emit greater than or equal to 25,000 metric tons⁵ of GHG per year and greater than 30 million British thermal units per hour.

GHGs occur in the atmosphere both naturally and as a result of human activities, such as the burning of fossil fuels. These gases are the integral components of the atmosphere's greenhouse effect that warms the earth's surface and moderates day/night temperature variation. The primary GHGs produced by fossil fuel combustion are water vapor, carbon dioxide (CO₂), methane, and nitrous oxide. During construction and operation of this project, these GHGs would be emitted from non-electrical construction equipment and any compressors, line heaters, and generators. Emissions of GHGs are typically expressed in terms of CO₂ equivalents (CO_{2eq}), where the potential of each gas to increase heating in the atmosphere is expressed as a multiple of the heating potential of CO₂, or its global warming potential.

Emissions of GHG pollutants associated with the operation of the project were calculated. In addition, GHG emissions were converted to total CO_{2eq} emissions based on the global warming potential of each pollutant. The combustion-related PTE GHG emissions for the proposed equipment at the Minisink Compressor Station would be 61,751 metric tons of CO_{2eq} per year. As such, Millennium would be required to calculate GHG emissions from the combustion sources using the Tier 1 approach, as outlined in the rule, and would submit its GHG report by March 31 of each calendar year, as required.

The EPA has also promulgated the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule.⁶ The first phase-in step of the tailoring rule began on January 2, 2011, and required application of PSD or Title V requirements for GHG emissions only if the sources are already subject to PSD or Title V due to their non-GHG pollutants. The second phase-in, which began on July 1, 2011, includes new sources and existing sources not previously subject to Title V that emit at least 100,000 tpy CO_{2eq}. The emissions from the Minisink Compressor

⁵ A metric ton is 2,205 pounds, or approximately 1.1 tons.

⁶ See volume 75 of the federal Register, page 31,514 (June 3, 2010).

Station would not exceed this limit and PSD or Title V permitting requirements would therefore not apply.

General Conformity

The General Conformity Rule, as codified in 40 CFR 93.153, requires a federal agency to demonstrate that every action that it undertakes, approves, permits, or supports will conform to the appropriate SIP. The federal actions would be subject to general conformity if the total direct and indirect emissions of NO_x and VOC, both precursors for O₃, exceeded 100 and 50 tpy, respectively, as specified in 40 CFR 93.153(b)1. The permanent emissions associated with the Minisink Compressor Station would need to be evaluated for applicability of General Conformity program requirements. In addition, the emissions during construction would need to be evaluated for General Conformity applicability. As shown in Table 5 and Table 6, the total NO_x and VOC emissions for the project would be below the thresholds for General Conformity; therefore, a General Conformity determination is not required.

National Emissions Standards for Hazardous Air Pollutants

National Emission Standard for Hazardous Air Pollutants (NESHAP), codified in 40 CFR 61 and 63, regulates HAP emissions. Part 61 defines requirements for industries that emit specific HAPs. Part 61 was promulgated prior to the 1990 CAA Amendments and may be superseded in Part 63. Natural gas transmission and compressor stations are not among the industries listed in Part 61 and do not emit any pollutants listed in Part 61. Therefore, the proposed compressor station is not subject to 40 CFR 61 of the NESHAP requirements.

The 1990 CAA Amendments established a list of 189 HAPs (currently 187 HAPs), resulting in the promulgation of Part 63. Part 63, also known as Maximum Achievable Control Technology standards, defines major source categories that emit HAPs above Title V major source thresholds. A major source under NESHAP is defined as a source with PTE emissions exceeding 25 tpy for all HAPs or 10 tpy for individual HAPs. The Minisink Compressor Station would not be a major source of HAPs and would not be subject to NESHAPs.

State Air Quality Regulations

Title 6, Chapter III, Subchapter B, Part 257 of the New York Codes, Rules and Regulations (NYCRR) outlines air quality standards that are applicable to the proposed project.

Air Quality Impacts

Millennium conducted dispersion modeling for the permanent air emission sources including two combustion turbine stacks, an emergency generator stack, and a fuel gas heater stack. The modeling was conducted with the EPA's AERMOD dispersion model in accordance with NYSDEC's *Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis* (NYSDEC, 2006), and EPA's *Guideline on Air Quality Models* (EPA, 2008). The results are presented in Table 7 below.

Table 7: Air Quality Impact Analysis					
Pollutant	Averaging Period	Modeled Impact Minisink Compressor Station ($\mu\text{g}/\text{m}^3$)	Ambient Background ($\mu\text{g}/\text{m}^3$)	Total Modeled Plus Ambient Background ($\mu\text{g}/\text{m}^3$)	NAAQS ($\mu\text{g}/\text{m}^3$)
SO ₂	Annual	0.3	3.9	4	80
	24-hour	6.3	23.6	30	365
	3-hour	10.0	44.5	55	1300
	1-hour	10.2	46.5	57	196
PM ₁₀	24-hour	9.7	49.0	59	150
PM _{2.5}	Annual	0.5	10.6	11	15
	24-hour	7.5	25.7	33	35
NO ₂	Annual	3.5	45.1	49	100
	1-hour	64.2	97.2	161	188
CO	8-hour	153.3	2,070	2,223	10,000
	1-hour	373.6	3,105	3,479	40,000

Several commentors expressed concern about the effect of air emissions from the proposed compressor station on individuals in nearby homes with existing health conditions such as asthma. Other commentors also suggested that we should undertake a health impact analysis. As discussed earlier, the Minisink Compressor Station would not be a major source of air emissions under federal air quality permitting programs. In addition, the total potential emissions from the proposed station would comply with the EPA's NAAQS, in accordance with the CAA. These standards were established to protect human health and public welfare and take into account "sensitive" populations such as asthmatics, children, and the elderly.⁷

Commentors were also concerned that air emissions could adversely impact organic farms in the area. As previously stated, however, the emissions from the proposed project would comply with the NAAQS which provides protection against damage to crops, vegetation, and animals.⁸

In conclusion, we find that potential impacts on air quality associated with construction and operation of the project would be minimized by strict adherence to all applicable federal and state regulations. Based on the analysis presented above, we believe that the Minisink Compressor Project would not have a significant impact on local or regional air quality.

⁷ <http://www.epa.gov/air/criteria.html>

⁸ <http://www.epa.gov/air/criteria.html>

7.2. Noise

The ambient sound level of a region is defined by the total noise generated within the specific environment and is usually comprised of natural and artificial sounds. At any location, both the magnitude and frequency of environmental noise may vary considerably over the course of a day and throughout the week. This variation is caused in part by changing weather conditions, the effect of seasonal vegetative cover, and human activities.

We received several comments regarding noise impacts of the Minisink Compressor Project. These are addressed in the following section. Construction and operation of the new compressor station would affect overall noise levels in the project area. Two measurements used by federal agencies to relate the time-varying quality of environmental noise to its known effects on people are the equivalent sound level (L_{eq}) and the L_{dn} . The L_{eq} is an A-weighted sound level containing the same sound energy as instantaneous sound levels measured over a specific time period. Noise levels are perceived differently, depending on length of exposure and time of day. The L_{dn} takes into account the duration and time the noise is encountered. Late night through early morning (10:00 p.m. to 7:00 a.m.) noise exposures are penalized +10 decibels (dB) to account for people's greater sensitivity to sound during nighttime hours.

The EPA has indicated that an L_{dn} of 55 dBA protects the public from indoor and outdoor activity interference. We have adopted this criterion and use it to evaluate the potential noise impact from operation of compressor facilities. An L_{dn} of 55 dBA is equivalent to a continuous L_{eq} noise level of 48.6 dBA.

Impacts are determined at receptors known as noise-sensitive areas (NSA). NSAs include residences, schools and day-care facilities, hospitals, long-term care facilities, places of worship, libraries, and parks and recreational areas (e.g., wilderness areas) valued specifically for their solitude and tranquility. Project proponents are required by the Commission to meet an L_{dn} of 55 dBA at the nearest NSAs. It is presumed that NSAs further from the compressor station than the nearest NSA would experience noise levels less than 55 dBA.

There are no state noise ordinances applicable to the proposed project. The Town of Minisink Zoning Law, Section 3.5.1.4 (C), contains a noise ordinance and Millennium stated that the predicted noise levels from the compressor station would meet all but the 4,000 and 8,000 hertz octave band sound pressure levels specified in that ordinance.

Construction Activities

Noise would be generated during construction of the proposed project facilities. While individuals in the immediate vicinity of the construction activities would experience an increase in noise, this effect would be temporary and local. The changing number and type of construction equipment at the site would result in varying levels of noise. Construction activities associated with the project would be performed with standard heavy equipment such as track-excavators, backhoes, bulldozers, dump trucks, and cement trucks. The most prevalent sound source during construction would be the internal combustion engines used to power the construction equipment. Millennium estimated the peak noise level for construction activities at the closest NSA to be approximately 64 dBA. Construction would not affect nighttime noise levels as it would be limited to daylight hours. Although construction noise would exceed 55 dBA at the nearest NSA,

it would be temporary and limited to the daytime; therefore, we conclude that the noise impact from construction would not be significant.

Compressor Station Operation

The land surrounding the Minisink Compressor Station is rural residential and the nearest NSAs are residences. Millennium conducted an acoustical analysis for the proposed compressor station. During the noise survey, audible noise sources at the NSAs included insects, birds, the sound of wind, several aircrafts, and distant traffic noise. The estimated noise attributable to operation of the proposed Minisink Compressor Station at the nearby NSAs is displayed in Table 8. A map of the NSAs is shown in Figure 4.

Table 8: Noise Quality Analysis						
NSA	Distance to Compressor Station (feet)	Direction	Ambient L_{dn} (dBA)	Estimated L_{dn} of Compressor Station (dBA)	Station L_{dn} + Ambient L_{dn} (dBA)	Potential Increase Above Ambient (dB)
1	650	E to SE	42.2	39.0	43.9	1.7
2	1,125	N/NE	41.2	34.0	41.9	0.8
3	1,125	S to SW	39.9	34.0	40.9	1.0
4	1,175	W to NW	39.1	33.7	40.2	1.1

Note: NSA 1 includes 6 residences; NSA 2 includes 1 residence; NSA 3 includes 3 residences; and NSA 4 includes 3 residences.

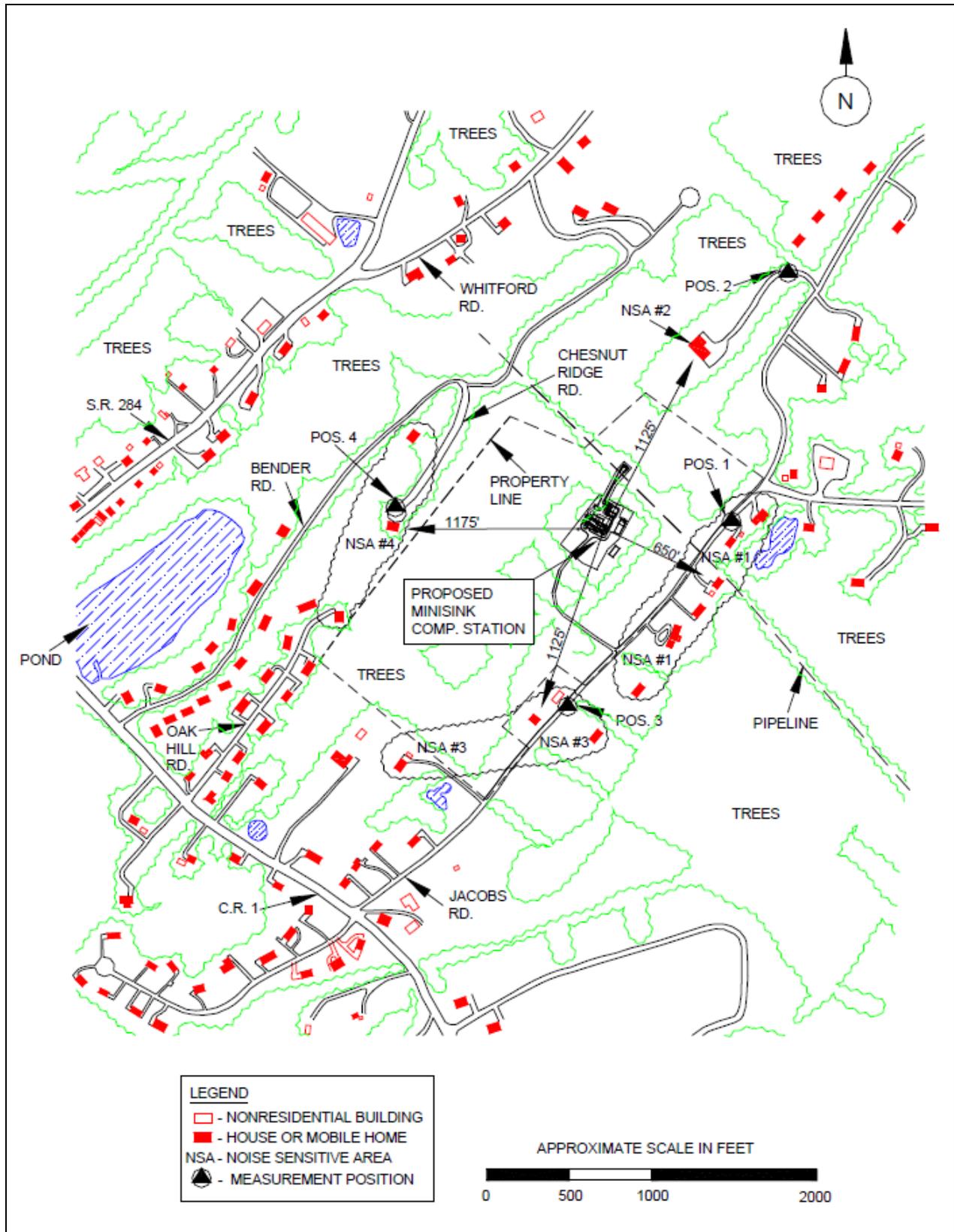


Figure 4: NSAs surrounding the proposed site

The noticeable noise increase threshold for humans is about 3 dB; 5 dB is a clearly noticeable different increase in noise, while an increase of 10 dB is perceived to be a doubling of noise. As shown in Table 8, noise from the proposed Minisink Compressor Station is estimated to be below our noise criterion of 55 dBA, potentially increasing the ambient noise by about 1.7 dB (at the nearest NSA), which would be barely noticeable, if noticeable at all.

In its *Updated Noise Impact Analysis* filed on September 30, 2011, Millennium committed to implementing the following noise-abatement measures to meet the predicted noise levels: addition of internal mass septum layer for the compressor building walls and roof; additional baffle length for the first and second stage exhaust silencers; high performance turbine exhaust and air inlet systems; low noise turbine lube oil coolers; and unit blowdown silencers. Although Millennium's predicted noise levels are well below our standard threshold of 55 dBA, the unusually 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. As described above, a 5 dB noise increase is clearly noticeable for humans. In this instance, the noise attributable to the station may exceed Millennium's design-predicted noise level by more than 15 dB, more than doubling the existing noise at the NSAs, and still be below the 55 dBA threshold. Millennium's commitment to a station design that would limit the resulting noise levels at the NSAs to such a low level is very important. However, due to the potential for a large change to the low ambient noise levels at the NSAs in the vicinity of the station, **we recommend that:**

Millennium should make all reasonable efforts to ensure its predicted noise levels from the Minisink Compressor Station are not exceeded at the nearby NSAs and file noise surveys showing this with the Secretary no later than 60 days after placing the Minisink Compressor Station in service. If the noise attributable to the operation of the Minisink Compressor Station at full load exceeds the predicted noise level at any nearby NSAs, Millennium should file a report identifying what modifications it intends to make in order to meet the predicted level within 1 year of the in-service date. Millennium should confirm compliance with this requirement by filing a second noise survey with the Secretary no later than 60 days after it installs any additional noise controls.

Commentors expressed concern about the possible health and nuisance impacts of vibration emanating from the compressor station while it is in operation. It is possible that mechanical vibrations could potentially affect nearby residences because of their proximity to the new compressor station. To address this concern, **we recommend that:**

Millennium shall file a vibration survey with the Secretary no later than 60 days after placing the Minisink Compressor Station in service. If vibration attributable to the operation of the Minisink Compressor Station is perceptible at any nearby NSAs, Millennium should install/implement additional vibration control mitigation measures within 1 year of the in-service date. Millennium should confirm compliance with this requirement by filing a second vibration survey with the Secretary no later than 60 days after it installs the additional vibration controls.

Landowners near the proposed Minisink Compressor Station expressed concern with the noise levels resulting from compressor station blowdowns. Millennium would incorporate blowdown silencers to minimize noise during planned blowdowns and would notify landowners of

planned blowdowns. To this effect, it has agreed to purchase a licensing agreement with the emergency notification company, CodeRED in which reverse 911 capabilities would be enabled in the area of the proposed compressor station. To ensure landowners receive notification prior to a planned blowdown, **we recommend that:**

Prior to construction, Millennium should develop a landowner notification plan for planned blowdowns of the Minisink Compressor Station in consultation with the Town of Minsink. The plan should include notification procedures for landowners within a 0.5-mile radius of the proposed station at least two business days prior to performing a planned station blowdown. Millennium should file a copy of the plan, and any comments received from the Town of Minisink, with the Secretary.

Based on the estimated sound levels and our recommendations, we believe that the noise attributable to operation of the Minisink Compressor Station would not cause a significant impact on the noise environment in the project area.

8. RELIABILITY AND SAFETY

The transportation of natural gas by pipeline involves some incremental risk to the public due to the potential for release of natural gas. The greatest hazard is a fire or explosion following a major pipeline rupture. During the scoping period, we received several comments regarding the general safety of natural gas compressor stations. These comments are addressed in this section of the EA.

Methane, the primary component of natural gas, is colorless, odorless, and tasteless. It is not toxic, but is classified as a simple asphyxiate, possessing a slight inhalation hazard. If breathed in high concentration, oxygen deficiency can result in serious injury or death. Methane has an auto-ignition temperature of 1,000 degrees Fahrenheit and is flammable at concentrations between 5.0 percent and 15.0 percent in air. An unconfined mixture of methane and air are not explosive; however, it may ignite if there is an ignition source. A flammable concentration within an enclosed space in the presence of an ignition source can explode. It is buoyant at atmospheric temperatures and disperses rapidly in air.

The DOT is mandated to provide pipeline safety under Title 49, U.S.C. Chapter 601. The DOT's Pipeline and Hazardous Materials Safety Administration's (PHMSA) administers the national regulatory program to ensure the safe transportation of natural gas and other hazardous materials by pipeline. It develops safety regulations and other approaches to risk management that ensure safety in the design, construction, testing, operation, maintenance, and emergency response of pipeline facilities. Many of the regulations are written as performance standards which set the level of safety to be attained and allow the pipeline operator to use various technologies to achieve safety. PHMSA ensures that people and the environment are protected from the risk of pipeline incidents. This work is shared with state agency partners and others at the federal, state, and local level. Section 5(a) of the Natural Gas Pipeline Safety Act provides for a state agency to assume all aspects of the safety program for intrastate facilities by adopting and enforcing the federal standards, while section 5(b) permits a state agency that does not qualify under section 5(a) to perform certain inspection and monitoring functions. A state may also act as DOT's agent to inspect interstate facilities within its boundaries; however, the DOT is responsible for enforcement actions. New York State has 5(a) certification.

Under a *Memorandum of Understanding on Natural Gas Transportation Facilities* (Memorandum) dated January 15, 1993, between the DOT and the FERC, the DOT has the exclusive authority to promulgate federal safety standards used in the transportation of natural gas. Section 157.14(a)(9)(vi) of the FERC's regulations require that an applicant certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facility for which a Certificate is requested in accordance with federal safety standards and plans for maintenance and inspection, or shall certify that it has been granted a waiver of the requirements of the safety standards by the DOT in accordance with section 3(e) of the Natural Gas Pipeline Safety Act. The FERC accepts this certification and does not impose additional safety standards other than the DOT standards. If the Commission becomes aware of an existing or potential safety problem, there is a provision in the Memorandum to promptly alert DOT. The Memorandum also provides for referring complaints and inquiries made by state and local governments and the general public involving safety matters related to pipelines under the Commission's jurisdiction.

The FERC also participates as a member of the DOT's Technical Pipeline Safety Standards Committee which determines if proposed safety regulations are reasonable, feasible, and practicable.

The compressor station and aboveground facilities associated with the project must be designed, constructed, operated, and maintained in accordance with the DOT *Minimum Federal Safety Standards* in 49 CFR Part 192. The regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures. For example, Part 192 of 49 CFR specifically addresses natural gas pipeline safety issues, prescribes the minimum standards for operating and maintaining pipeline facilities, and incorporates compressor station design, including emergency shutdowns and safety equipment. Part 192 also requires a pipeline operator to establish a written emergency plan that includes procedures to minimize the hazards in a natural gas pipeline emergency. Key elements of the plan include procedures for:

- receiving, identifying, and classifying emergency events, gas leakage, fires, explosions, and natural disasters;
- establishing and maintaining communications with local fire, police, and public officials, and coordinating emergency response;
- emergency system shutdown and safe restoration of service;
- making personnel, equipment, tools, and materials available at the scene of an emergency; and
- protecting people first and then property, and making them safe from actual or potential hazards.

The DOT also requires that each operator establish and 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. The operator must also establish a continuing education program to enable customers, the public, government officials, and those engaged in excavation activities to recognize a gas pipeline emergency and report it to appropriate public officials. Millennium would provide the appropriate training to local emergency service personnel before the facilities are placed in service.

Comments from the public drew attention to a natural gas leak that was discovered on January 11, 2011 in a section of Millennium's pipeline that transports natural gas from Corning to Ramapo, New York. The leak resulted in the release of 1,328 million cubic feet of natural gas, which did not ignite and there were no injuries, fatalities, or property damage resulting from the leak. On July 6, 2011, PHMSA issued a Notice of Proposed Safety Order proposing that Millennium take certain measures with respect to their pipeline to ensure pipeline safety. October 13, 2011, PHMSA issued a letter recognizing that the proposed engineering analysis and integrity assessment work on the affected segment of the pipeline had been completed and that no actionable anomalies or weld defects were found at any of the excavated locations.

Based on DOT safety regulations and emergency planning requirements described above, we believe that operation of Millennium's compressor station would represent a minimum increase in risk to the public.

9. CUMULATIVE IMPACTS

Cumulative impacts associated with the project would be the result of multiple project impacts on the resources located near the project areas. Although the individual impact of the separate project might be minor, the additive or synergistic effects from multiple projects could be significant. Cumulative impact is the incremental impact on the environment of past, present, and reasonably-foreseeable future projects occurring within the same timeframe and vicinity as the proposed action. The only projects we identified that meet the criteria for this cumulative impact analysis are: an additional compressor station on Millennium's system, the proposed Wayawanda power plant, and nearby residential development. We received comments asking about a 2009 Iroquois Gas Transmission plan for an interconnect with Millennium in Minisink, NY and held an open season. However, to date, FERC has not received an application from Iroquois for the planned NYMarc Project. Therefore, staff has no means to assess additional impacts from the NYMarc Project.

During the scoping process we received numerous comments that Millennium has publically stated its intention to make additional modifications to its system, including an additional compressor station upstream of the proposed Minisink Compressor Station. As stated in Section A.8 of the EA, Millennium has acknowledged its intent to construct a second compressor station by November 2013. At this time, Millennium has not filed an application for such a project with the FERC; therefore, we have very little information about the project. Even so, the potential for significant cumulative impacts would likely be limited to air quality because the stations may be in the same airshed. Given the typical distances between compressor stations (70 miles) and the difference in construction timing, it is unlikely that there would be any cumulative effect on other resources.

We also received comments regarding the possible expansion of the Minisink Compressor Station to provide gas to a proposed CPV Valley LLC Wawayanda Power Plant. According to the February 2009 draft Environmental Impact Statement completed for the CPV Valley Energy Center, two options are available for gas transportation service to the power plant. Millennium could build a 7- or 8-mile pipeline or Orange and Rockland Utilities, Inc. could build a 2- or 3-mile pipeline to the power plant. Although there is no information on a supply pipeline for the power plant, which would be about 6 miles from the Minisink Compressor Station, they may be

within the same geographic area. While the timeframe is unclear when these power plant facilities may be built, they would likely result in some level of disturbance to soils and vegetation, and impact the air, noise, and visual resources in the project area. The extent to which environmental resources would be affected by the developments cannot be quantified without additional development details. Because our analysis of Millennium's facilities indicates that impacts of this proposed project on these resources would be avoided or result in minimal impacts, we believe that cumulative impacts attributable to the compressor station would not be significant.

Residential development within 0.25 miles of the proposed site, along Bender Road and Chestnut Ridge Road, is currently under construction and the expected completion date is unknown since there are still parcels available for purchase. Given the limited scope of the proposed Minisink Compressor Station, staff finds that the cumulative impacts attributable to the compressor station would not be significant.

We did not identify any other projects in the vicinity that would result in cumulative impacts when combined with the Minisink Compressor Project.

C. ALTERNATIVES

The FERC has two possible courses of action in processing a Certificate application. It may grant the application with or without conditions, or deny the application. The FERC will decide among these courses of action, depending on which would best serve the public convenience and necessity.

We considered several alternatives to the proposed action to determine if any were reasonable and preferable to the proposed action. Alternatives discussed in this section include the No-Action Alternative, Systems Alternatives, and Aboveground Facility Alternatives. The evaluation criteria we used for our alternatives analysis are:

- significant environmental advantages over the proposed project;
- technical and/or economic feasibility and practicability; and
- meeting the objective of the project: increase natural gas delivery capacity to Algonquin at Ramapo, New York, to about 675,000 dekatherms per day.

1. NO ACTION ALTERNATIVE

The no-action alternative would result in not implementing the proposed action and would avoid the potential environmental impacts that would be associated with the project; however, the project objectives would not be met. Millennium's customers would likely seek other sources of energy and/or alternative proposals, such as pipelines, to transport the requested volumes of natural gas.

Although a Commission decision to deny the proposed action would avoid the environmental impacts addressed in this EA, other natural gas projects could be constructed to provide a substitute for the natural gas supplies offered by Millennium. Such alternative projects could require the construction of additional and/or new facilities in the same or other locations to transport the gas volumes proposed by the Minisink Compressor Project. These alternatives would

result in their own set of specific environmental impacts that could be greater than those associated with the current proposal.

If the project is postponed or not constructed, the energy needs could possibly be met by alternative energy sources other than natural gas. Alternative energy forms such as coal and oil are available and could be used to meet increased demands for energy. However, natural gas is a much cleaner-burning fuel. Other fossil fuels emit greater amounts of particulate matter, SO₂, CO, hydrocarbons, and non-criteria pollutants. Energy generated from the burning of coal is considered a major contributor to acid rain. The use of nuclear energy as replacement of other fuel sources also carries undesirable consequences such as negative public perception of the safety of electric generation through nuclear plants and the disposal of waste products created. Renewable energies, such as solar, and wind are not always reliable or available in sufficient quantities to support most baseload market requirements, and would therefore not, necessarily be appropriate substitutes for natural gas in all applications. It would be purely speculative and beyond the scope of this EA to attempt to predict what actions may be taken by policy makers, suppliers, or end users in response to the no action alternative. Therefore, the assessment of impacts associated with these scenarios would also be speculative.

2. SYSTEM ALTERNATIVES

System alternatives make use of existing or modified natural gas transmission systems to meet the stated objective of the proposed project. The point of identifying and evaluating system alternatives is to determine if the potential environmental impact associated with the construction and operation of the proposed facilities could be avoided or minimized by using an existing pipeline system. Environmental considerations with system alternatives include, but are not limited to, new right-of-way requirements, land use effects, and stream and wetland disturbances. A system alternative could make it unnecessary to construct Millennium's Minisink Compressor Project; although modifications or additions to its system or another system may be required. While modifications or additions to existing systems could result in environmental impact, this impact may be less, the same, or more than the impact associated with the proposed project.

Although we did not identify any other pipeline systems capable of providing the additional natural gas volumes at the Algonquin interconnect at Ramapo, New York, we evaluated four system alternatives that make use of Millennium's pipeline system. Because Millennium's system is fully subscribed, these system alternatives would either relocate the proposed compressor station to an existing aboveground site along Millennium's system, expand its system through pipeline replacement or looping⁹, or a combination of both looping and additional compression.

Millennium's existing system consists of 250 miles of 30-inch-diameter built in 2007, with the exception of a 7.5-mile-long segment of 24-inch-diameter pipeline built in 1987. The 7.5-mile segment, known as the Neversink Segment, is located in Orange County, New York, just upstream of the proposed Minisink Compressor Station site. The Neversink Segment currently limits

⁹ A loop is a segment of pipe that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

expansion of Millennium's system due to its smaller diameter and lower maximum allowable operating pressure (MAOP)¹⁰ which constrains the 30-inch-diameter system upstream of the Ramapo interconnect with Algonquin. Table 9 describes the system alternatives and whether these alternatives locations and designs could hydraulically meet the project objective of increasing Millennium's transportation capacity to Ramapo to about 675,000 dekatherms per day. Hydraulically feasible means that the alternative facilities could provide the same level of proposed transportation service while maintaining all existing services and required delivery pressures.

Table 9: Summary of Millennium System Alternatives for the Minisink Compressor Station Project			
System Alternative	Description	Hydraulic Feasibility	Meets Project Objective
1	Install 22.5 miles of 30-inch-diameter pipeline loop in Sullivan County, New York, including a 7.5-mile 36-inch-diameter pipeline loop of the Neversink Segment in Orange County.	Yes	Yes
2	Replace 24 miles of 30-inch-diameter pipeline in Delaware and Sullivan Counties, New York with 36-inch-diameter pipe and replace the approximately 7.5-mile Neversink Segment with 36-inch-diameter pipe in Orange County.	Yes	Yes
3	Install about 50 miles of 30-inch-diameter pipeline parallel to the existing pipeline in Delaware, Sullivan, and Orange Counties including a new parallel pipeline throughout the Town of Minisink, without replacing the Neversink Segment.	Yes	Yes
4	Relocate the Minisink Compressor Station to Millennium's existing Wagoner Meter Station and increase the MAOP of the Neversink Segment.	No	No

As shown in the table above, System Alternatives 1, 2, and 3 could meet the project objectives of increasing Millennium's transportation capacity to Ramapo to about 675,000 dekatherms per day. While Millennium provided an initial analysis of these system alternatives, we independently confirmed the hydraulic feasibility of all of the system alternatives. System Alternatives 1-3 would require extensive pipeline replacement or looping to make up for the lower MAOP of the Neversink Segment. Due to the additional disturbance of the pipeline construction, these alternatives do not offer any clear environmental advantages over the proposed project. Therefore, we eliminated System Alternatives 1-3 from further consideration.

¹⁰ The MAOP of pipeline is based upon the physical characteristics of the pipeline as well as its location. The methodology for determining the MAOP of a pipeline is set forth by the PHMSA of the DOT in 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

System Alternative 4 is not hydraulically feasible because the downstream pressure at the terminus of Millennium's pipeline system would be too low, due to the Neversink Segment constraint, for Millennium to meet its proposed delivery obligations at the Algonquin interconnect. The Neversink Segment is operating at a MAOP below the rest of the system and, according to DOT standards, cannot be increased further. Therefore, this system alternative would not meet the project objective.

3. ABOVEGROUND FACILITY ALTERNATIVES

We examined alternative sites along Millennium's pipeline system in proximity to the proposed location of the Minisink Compressor Station to determine whether environmental impacts could be reduced or mitigated. We limited sites to locations on or immediately adjacent to Millennium's pipeline to minimize the need for suction/discharge pipeline to connect the compressor station to Millennium's system and the additional environmental impact associated with pipeline construction. In addition, the site must be within a 2-mile range on Millennium's system for optimum efficiency of the compressor station to meet the required volume at the Ramapo interconnection with Algonquin. In order to limit the horsepower needed, the compressor station would need to be at a point as close to the eastern end of the Neversink Segment as reasonably possible. Increasing the distance further downstream would increase the horsepower required to meet the capacity demands (i.e., an increase by about 25 percent horsepower for a move of only ten miles).

Site criteria used to conduct our alternative site analysis included the following:

- Compressor station footprint (size): Based on typical facility design, construction of a compressor station would require about 10.5 acres, and operation would require about 5 acres. The remaining land purchased at the compressor station site would be held as a buffer and would return to its previous use.
- Reasonable availability: For a site to be selected, we believe there should be some indication that the property could be reasonably obtained from the current landowners. Although section 7(h) of the NGA grants the Certificate holder the right to exercise eminent domain, it would be desirable for the site to be available (such as by purchase, lease, or restrictive easement), to minimize the use of eminent domain to secure land for aboveground project facilities.
- Various environmental issues: Environmental issues that were considered in site selection include: loss of prime farmland; wetland disturbance; land use compatibility; forest clearing; waterbodies and floodplains; presence of endangered or threatened species or their critical habitat; cultural and recreational resources; and proximity to NSAs.

Our evaluation involved inspection of aerial photographs and maps, public comments, as well as site visits along Millennium's pipeline system. Our evaluation of alternative sites included five sites within the optimum efficiency range noted above, an alternative station configuration on the proposed site, and an existing meter station site that would require replacement of the Neversink Segment.

3.1. Alternative Compressor Station Sites

Five sites were considered as potential alternative sites within Minisink, New York. The following provides a summary of the alternative site locations:

- Site A: abuts the proposed station site to the northeast;
- Site B: located 0.5 mile southeast of the proposed site on Jacobs Road;
- Site C: located 1.1 miles southeast of the proposed site on William Lain Road;
- Site D: located 1.5 miles southeast of the proposed site and is bounded by County Route 1 to the west and Rutgers Creek and Wallkill Creek to the east and south, respectively; and
- Site E: located about 0.75 mile to the northwest of the proposed site and between County Road 284 to the southeast, Fordlea Road to the Northwest, and South Plank Road to the northeast.

The general location of the alternative sites in relation to the proposed compressor station location are shown in Figure 5. Table 10 presents the comparison of the proposed site to the alternate sites specific to land use types, distance to the nearest NSAs and surrounding residences, and other areas of concern.

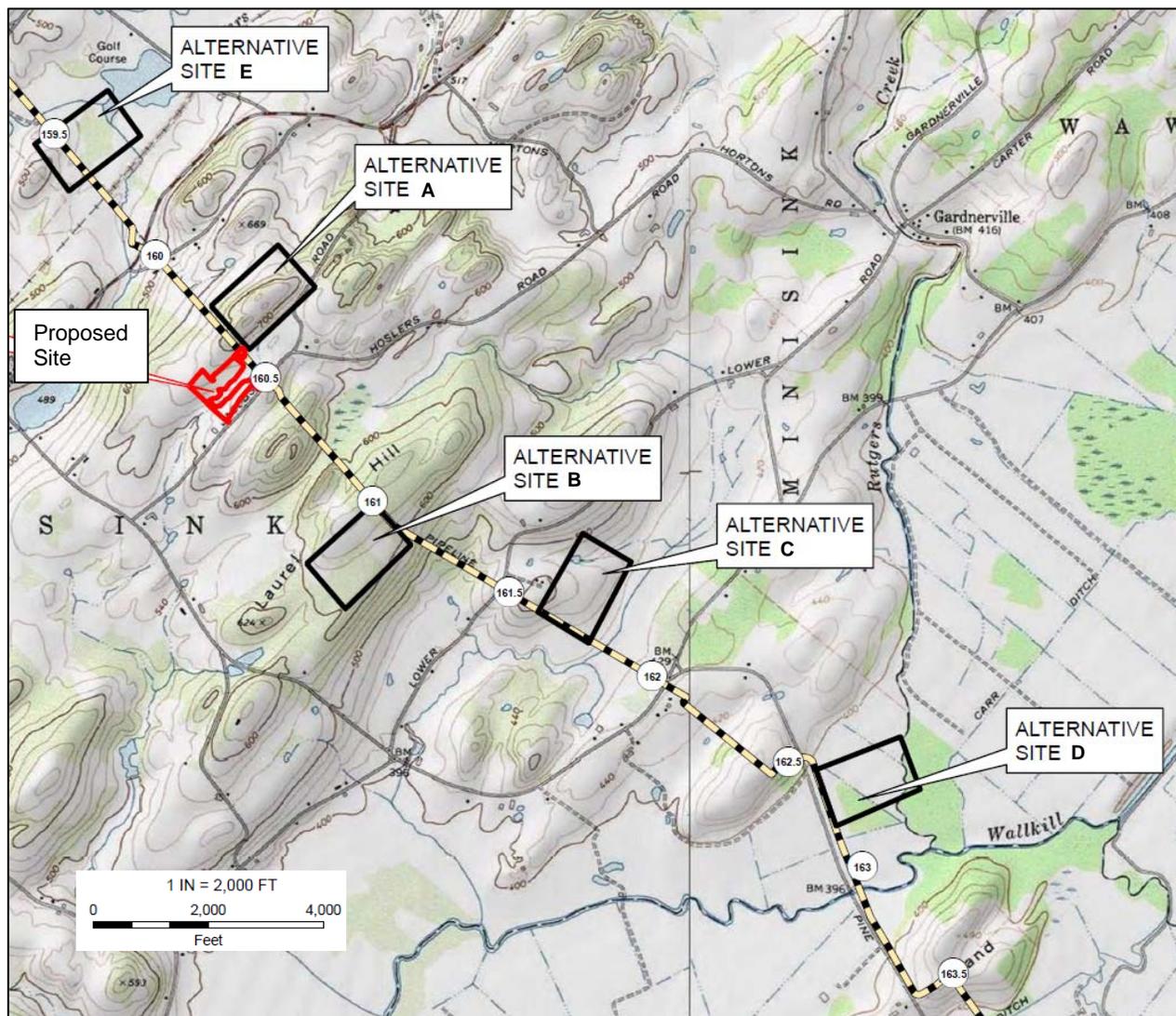


Figure 5: Alternative compressor station sites in relation to the proposed compressor station (shown in red)

Table 10: Alternative Aboveground Compressor Sites Analysis						
Environmental Parameter	Proposed Site	Site A	Site B	Site C	Site D	Site E
Site large enough for compressor station	Y	Y	Y	Y	Y	Y
Suitable temporary workspace	Y	N	Y	N	Y	Y
Current land use	Agricultural	Residential (house would be demolished)	Agricultural/ Forest	Certified Organic Farm	Agricultural	Agricultural/ Forest
Cultural resources concerns	N	N	N	Y	N	N
Wetland impacts (acres)	0.09	0.00	0.34	0.00	0.00	1.00
Land subject to flooding	N	N	N	N	Y	Y
Suitable soils	Y	Y	Y	Y	N	N
Access driveway length (approx. footage)	830	825	2,700	1,200	350	3,300
Mainline replacement required	N	N	N	N	N	Y
Distance to nearest NSA (approx. footage)	650	825	1,300	850	1,100	1,300
Number of surrounding residences (within 0.5 mile)	84	66	37	32	14	26
3-phase electric power available	Y	Y	Y	Y	N	Y
Topography	Flat to Rolling	Rolling	Flat to Rolling	Rolling	Flat	Flat to Rolling
Tree clearing required (approx. acreage)	0.4	1.0	2.5	0.0	0.0	1.0
Visual/noise screening	Y	N	Y	N	N	N

We evaluated potential compressor station locations based on gas flow hydraulics, engineering/construction issue, availability of electrical power, proximity to Millennium's existing mainline, and various other factors. We considered the relative potential impacts on the natural and human environment at each of the five alternate sites in relation to the proposed site. We were unable to determine the availability of these sites. For the reasons stated below, we do not find that any of the five alternative sites are environmentally preferable to the proposed site.

- Site A: a residence would be displaced by the construction of the compressor station and there would be insufficient workspace available to support construction of a compressor station;
- Site B: about 2.5 acres of tree clearing would be required to support the access driveway and station site and this parcel has a significant population of shagbark hickory which is a preferred habitat for the endangered Indiana bat;
- Site C: currently an active, U. S. Department of Agriculture-certified, organic farm and the original farm homestead is listed on the NRHP;
- Site D: soils on the site are subject to seasonal saturation requiring extensive excavation and a three-phase electric power is not available at this location; and
- Site E: requires filling a 1.0 acre wetland to minimize the chances of flooding and an access driveway about 3,300 feet long would need to be constructed.

Based on our analysis of alternative site locations in proximity to the proposed site, we found no reason to analyze the sites further or recommend them as an alternative that offers a significant environmental advantage over Millennium's proposed site.

3.2. Alternative Station Location on Proposed Site

We evaluated an alternate location for the project facilities on Millennium's 73.4-acre site on Jacobs Road in an effort to minimize the visual and noise impacts on the surrounding environment. Figure 6 shows the general location of the alternate compressor station location. Table 11 presents the comparison of the proposed site in comparison to the alternate location on the 73.4-acre site specific to land use types, distance to the nearest NSAs and surrounding residences, and other areas of concern.

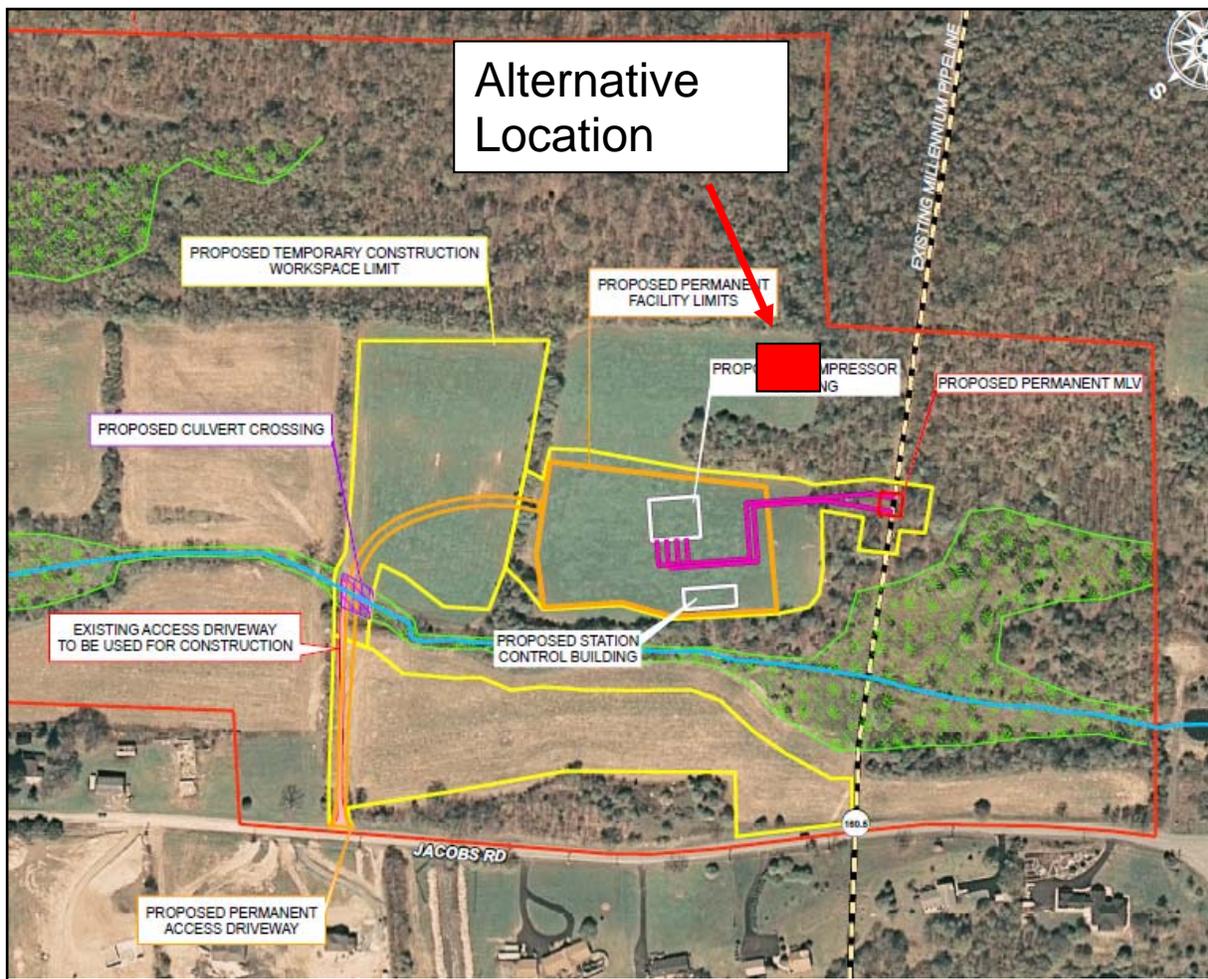


Figure 6: Alternative Station Location on Proposed Site

Table 11: Alternate Location Analysis				
Environmental Parameter	Proposed Location		Alternate Location	
The size of each station footprint	2.4 acres		2.2 acres	
Additional Temporary Workspace	6.2 acres		7.9 acres	
Length of Suction and Discharge Pipelines	Suction Pipeline	536 feet	Suction Pipeline	565 feet
	Discharge Pipeline	513 feet	Discharge Pipeline	663 feet
Distance and Direction to the nearest NSAs	NSA #1	650 feet ESE	NSA #1	1,000 feet SE
	NSA #2	1,125 feet NE	NSA #2	1,000 feet NE
	NSA #3	1,125 feet SW	NSA #3	1,350 feet SW
	NSA #4	1,175 feet NW	NSA #4	850 feet NW
Wetlands	0.1 acre		0.1 acre	
Land Use	Construction	Operation	Construction	Operation
Forest	0.4 acre	0.3 acre	1.3 acres	1.3 acres
Agricultural	9.8 acres	4.1 acres	12.6 acres	4.9 acres
Upland	0.08 acre	0.0 acre	0.1 acre	0.1 acre
Utility Corridor	0.3 acre	0.1 acre	0.3 acre	0.1 acre

When comparing the proposed station location and the alternative location on the 73.4-acre site, the environmental impacts appear to be similar. However, the amount of tree clearing necessary for the alternative location is about 0.9 acre greater than the proposed location. The forest impact is due largely to the two retaining walls that Millennium would need for construction at the alternative location. The trees on the south side of the alternative location would be removed to install the retaining walls, also removing the existing visual screening for the residents on Jacobs Road. For either location, Millennium would install visual screening that would provide a visual buffer from Jacobs Road. The rate of woodland reestablishment in the area between the station and Jacobs Road would depend upon the type of vegetation, length of growing season, and natural fertility of the soils. Any trees or shrubs planted would most likely require years to achieve the same amount of woodland/visual screening that exists today adjacent to the alternative location.

The alternative station configuration would be further away from NSA #1, by about 350 feet, than the proposed station location. However, this favorable increase in distance to NSA #1 is

canceled by the decrease in distance by about 325 feet from the alternative location to NSA #4. In addition, the noise impacts associated with the alternative station location when compared to the proposed location merely shifts the noise increases at the affected NSAs. Table 12 illustrates the comparative noise impacts on the nearest NSAs to the proposed station location compared to the alternative location.

Table 12: Noise Impacts Comparison Associated with the Proposed Station Location and Alternative Station Location							
		Proposed Station Location			Alternative Station Location		
NSA	Calculated Ambient L_{dn} (dBA)	Distance and Direction to Compressors	Calculated L_{dn} of Station (dBA)	Potential Increase (dB)	Distance and Direction to Compressors	Calculated L_{dn} of Station (dBA)	Potential Increase (dB)
1	42.2	650 ft. (E to SE)	39.0	1.7	1,000 ft. (E to SE)	35.1	0.8
2	41.2	1,125 ft. (N-NE)	34.0	0.8	1,000 ft. (N-NE)	35.1	1.0
3	39.9	1,125 ft. (S to SW)	34.0	1.0	1,350 ft. (S to SW)	32.4	0.7
4	39.1	1,175 ft. (W to NW)	33.7	1.1	850 ft. (SW to W-NW)	36.6	1.9

As shown in Table 12, the noise attributable to either location would be very low. However, the noise impact associated with the alternative station location would be slightly greater at NSAs #2 and #4 when compared to the noise from the proposed location at these same NSAs.

For the reasons discussed above, we concluded that the alternative station location did not offer any significant environmental advantages over the proposed station location. Therefore, we did not analyze the alternative location on Millennium's 72.4-acre site further.

3.3. Wagoner Alternative

Some residents in the Town of Minisink requested in comments that we evaluate an alternative that would involve moving the new compressor station from the Town of Minisink to Millennium's existing Wagoner Meter Station and the replacement of its Neversink Segment. Because this alternative, hereinafter referred to as the Wagoner Alternative, would site the compressor station outside the 2-mile range described in our site criteria above, it must include replacing the existing constrained segment of pipeline in order to meet the hydraulic feasibility requirements. Millennium would have to replace the existing 7.2-mile 24-inch-diameter pipeline with a 30-inch-diameter pipeline. This would require constructing a new parallel pipeline before

removing or abandoning in place the existing pipeline because taking the Neversink Segment out of service would result in Millennium not being able to meet existing delivery obligations. Millennium states that the Wagoner Alternative would cost at least 50 percent more than its proposed project.

The Wagoner Meter Station is located in the Town of Deerpark, Orange County, New York, near Millennium's MP 150, and is the interconnect point between Millennium and Columbia Gas Transmission Corporation (Columbia)¹¹. The west end of the Neversink Segment begins at the Huguenot Meter Station and the east end terminates at the Westtown Meter Station, all in Orange County, New York. A general map of the Wagoner Meter Station and aerial alignment sheets showing the the Neversink Segment are provided in appendix B.

Because the Wagoner Alternative would affect a large number of additional landowners who previously did not have the opportunity to participate in our review process, we issued a second public scoping notice seeking comment. We received several comments from local business organizations opposed to the Wagoner Alternative based on local workforce and economic interests. The Deerpark Town Board filed a resolution that it adopted in January 2012 opposing the alternative citing "far greater environmental impact on the residents of Orange County", the replacement pipeline would cross "very steep and rugged portion of the Town", and the lack of revenue received as a result of this alternative. Mr. and Mrs. Landrio, who own property adjacent to the Wagoner Meter Station, filed a comment letter concerning construction-related issues during construction of the Wagoner Meter Station, subsequent property discrepancies with Millennium and Columbia during operation of the meter station, and perceived wildlife impacts. The substantive comments received are addressed in the discussion below.

We also received comments in support of the alternative from landowners along the Neversink Segment, residents in Minisink, the State of New York Department of Agriculture and Markets, and the Town of Minisink. The residents provided comments in favor of the alternative because it would eliminate the need for an aboveground facility in their rural residential/agricultural community. The State of New York Department of Agriculture and Markets filed in favor of the alternative because the proposed project would result in the permanent loss of agricultural land. The Town of Minisink reiterated issues brought up by the residents of Minisink and pointed to the proposed location's noncompliance with the Town Zoning Laws. The issue of zoning in Minisink is discussed in section A.5. Millennium contends, however, that the compression facility at the Wagoner Meter Station would not comply with the Town of Deerpark's zoning laws.

Table 13 compares the impacts associated with the Minisink Compressor Station versus the Wagoner Alternative.

¹¹ Columbia operated a temporary compressor station adjacent to the Wagoner Meter Station between November 2008 and June 2011 under Columbia's blanket certificate authority (Docket No. CP83-76-000); therefore, this system would make use of a site that was previously used for compression.

Table 13: Comparison of Wagoner Alternative to the Minisink Compressor Station

Environmental Parameter	Proposed Compressor Station		Wagoner Alternative¹	
Horsepower required	12,260 hp		5,100 hp	
Total Land Requirement (acres): Construction / Operation	10.6 / 4.5		Compressor Station: 8.9 / 2.8 Pipeline: 103.5 / 42.5	
Distance and Direction of the new compression to the nearest NSA	650 feet SE		5,450 feet SE	
Residences within 0.5 mile of the compressor station	86		0	
Residences directly impacted by pipeline construction and operation	0		58	
Potential Threatened and Endangered Species Impacts	1		5	
Number of Wetlands	1		Compressor Station: 0 Neversink Segment: 11	
Number of Waterbodies	1		Compressor Station: 0 Neversink Segment: 12	
Land Use (acres)	Construction	Operation	Construction	Operation
Forest	0.36	0.27	47.61	16.50
Agricultural	9.83	4.05	22.0	7.17
Wetlands	0.09	0.09	2.68	1.68
Open Water	0	0	0.43	0.41
Upland Scrub/Shrub	0.08	0	0	0
Utility Corridor/Open Space	0.28	0.08	27.50	16.00
Open Land	0	0	12.16	4.89
Industrial	0.00	0.00	2.02	0.17
Residential	0.00	0.00	0.74	0.22

Table 13: Comparison of Wagoner Alternative to the Minisink Compressor Station

¹ Data for the project alternatives obtained from the following sources:

- a. Engineering calculations;
- b. Conceptual Site Plans;
- c. Publicly available Geographic Information System (GIS) data and/or photo interpretation of aerial imagery;
- d. FWS Threatened and Endangered Species List for Orange County, NY and NYSDEC Environmental Resource Mapper;
- e. National Park Service (NPS) on-line database of NRHP and NRHP GIS data;
- f. National Wetland Inventory GIS data and NYSDEC Environmental Resource Mapper state wetland data; and
- g. NPS National Rivers Inventory online listing.

Compared to the Millennium's proposal, the horsepower required at the Wagoner Compressor Station would be 7,160 hp lower than that required at the Minisink Compressor Station. The decreased compression would be possible due to replacing the existing Neversink Segment. Air emissions from both the proposed and alternative compressor stations would impact the local air quality for as long as the station was operational. The smaller alternative compressor station would result in lower emissions, thereby reducing the effects on the local air quality. However, either station would be a minor source with regards to the Title V Operating Permit Program and PSD regulations.

Although building the alternative compressor station would eliminate the noise concerns associated with the proposed site, as described in section B.7.2, the noise emitted from either the Minisink Compressor Station or the Wagoner site would be barely noticeable.

The acreage of land used to construct each compression facility would be similar at either site. The impacts on visual resources, on the other hand, are far from similar when comparing the Wagoner Compressor Station to the Minisink Compressor Station. The Minisink Compressor Station could result in a substantial visual impact on viewers in the Minisink area by introducing a new industrial feature into the rural residential/agricultural landscape and alter the landscape of the existing view on Jacobs Road. To address visual impacts, Millennium developed a visual screening plan to help screen the station and improve the appearance of the facility from nearby roads and residences. To further minimize visual impacts associated with the Minisink Compressor Station, we included recommendations in section B.5 that require Millennium to finalize the station design and its visual screening plan so that the exterior of the facility would be more harmonious with the surroundings and other buildings in the area. We conclude that with implementation of our recommendations, the visual impacts of the Minisink Compressor Station would be minimized to the extent practical and would not be significant. The visual impacts associated with the compressor facility at the Wagoner Compressor Station would be negligible considering the dense forested area surrounding the meter station and the lack of residences within 0.5 mile of the existing meter station.

For the reasons stated above, the environmental impacts associated with siting a compressor station at Millennium's existing Wagoner Meter Station would be slightly less in comparison to the proposed site. However, as mentioned previously, building a compressor at that site would not meet the project objective of delivering the additional natural gas capacity without replacement of the smaller diameter Neversink Segment.

Due to replacing the pipeline, the Wagoner Alternative would impact more than ten times more land (112.4 acres) than construction of the Minisink Compressor Station (10.6 acres). The bulk of the land use impacts associated with the Wagoner Alternative would be forest, agricultural, and utility corridor. Although the replacement pipeline would generally follow the existing Neversink Segment, utilizing about 27 acres of existing pipeline right-of-way, and minimizing the forested impacts of the replacement to the extent practical. Millennium would still need to clear about 47.61 acres of trees and use about 22 acres of cleared agricultural land, compared to 0.4 and 9.8 acres of forested and agricultural land, respectively, for the Minisink Compressor Station. The primary impact on agricultural land would be the temporary loss of crops within the work area and adjacent areas, since this land would be taken out of production for one growing season. Following construction, most agricultural land uses would revert to previous uses within the permanent right-of-way.

Residents of Minisink filed comments expressing concern that Millennium's calculations of forested impacts were incorrect and misleading. As stated by Millennium, the acreage of impacts along the Neversink Segment replacement includes both replacement and excavation of the existing Neversink Segment, requiring additional space for the excavation. In addition, Millennium would need additional temporary workspace (21.4 acres) required for road, railroad, wetland and utility crossings, horizontal directional drills, rock removal, timber stockpiling, and topsoil segregation that are over and above the typical construction corridor. We find that the width of construction right-of-way and the temporary workspaces that Millennium would use for replacement of the Neversink Segment are similar in size and purpose for typical pipeline installation and replacements. In standard industry practice, the construction area used for the alignment would not be centered on the existing pipeline but would extend about 85 feet on the working side to avoid safety hazards associated with operating heavy equipment over the active pipeline.

As part of the Wagoner Alternative, the pipeline replacement would also result in visual impacts. Due to the clearing of trees and shrubs, however, the replacement would be collocated adjacent to the existing Neversink Segment where feasible, which is preferable to clearing and creating an entirely new right-of-way as the visual impacts are confined to a known, existing corridor. The forested impacts associated with the Neversink Segment account for about 38 percent of the total construction impact of the Wagoner Alternative.

Although the Minisink Compressor Station would permanently alter the visual landscape of the surrounding area, the site itself would not have a direct impact on the nearby residents. Indirect impacts such as property values, air quality, and noise are discussed in section B. The Wagoner Alternative would impact about 0.7 acre of residential land use and directly impact 58 landowners by way of an additional easement for the replacement right-of-way on their property. Millennium would need to acquire the additional right-of-way from these landowners including 10 landowners whose land is not currently crossed by the current Neversink Segment. Millennium's negotiations for such easement could require use of eminent domain. Temporary construction impacts on residential areas could include inconveniences caused by some increased construction-related traffic on local roads; noise and dust generated by construction equipment; the presence of on-site construction personnel; trenching through roads or driveways; ground disturbance of lawns; removal of trees, landscaped shrubs, or other vegetative screening between residences and

adjacent rights-of-way; and removal of aboveground structures such as sheds from within the existing right-of-way. Millennium identified 10 residences within 50 feet of the construction area along the Neversink Segment replacement.

The Minisink Compressor Station would impact a minimal amount of wetlands on the site, whereas, the Wagoner Alternative would require 11 wetland crossings and would impact about 2.7 acres of wetlands with about 0.3 acres of permanent impact on forested wetlands. The Neversink Segment replacement would require 12 waterbody crossings, including the Neversink River, compared to the one intermittent stream crossed by the proposed Minisink Compressor Station access road.

The Minisink Compressor Project would only potentially impact one special status species, the Indiana bat for which we came to a determination of *not likely to adversely affect* regarding this species in section B.3.3. The Wagoner Alternative has the potential to impact five special status species: the Indiana bat, bog turtle, dwarf wedge mussel, small whorled pogonia, and the spreading globeflower. Although no known hibernacula occur within the Neversink Segment area, some potential Indiana bat roosting habitat would be removed during construction. The proposed project and alternative are both within the range of the bog turtle. The wetlands along the Neversink Segment are in an area of Orange County where no known bog turtle populations occur and are lacking suitable surrounding habitat. Therefore, we believe that it is unlikely that this alternative would impact bog turtles. The dwarf wedge mussel is a federally-listed and New York state-listed endangered freshwater mussel that inhabits large streams and rivers that drain into the Atlantic Ocean. The dwarf wedge mussel occurs in the Neversink River that would be crossed by this alternative and could be impacted by the replacement. The small whorled pogonia is a federally threatened plant species in the region. However, the lack of documented occurrences of this species within the project area indicate that this species is not likely present. The spreading globeflower is a rare New York state species and could occur within the wetlands along the Neversink Segment replacement.

The Wagoner Alternative is not simply an alternative that would eliminate the siting of the Minisink Compressor Station in the Town of Minisink. By the elimination of the bottleneck created by the existing lower MAOP Neversink Segment, it could enhance the reliability of Millennium's system and could allow Millennium wider options for expansion of its system. Although the Wagoner Alternative would meet the project objective, our analysis shows that the proposed Minisink Compressor Project would impact considerably less wetlands, waterbodies, special status species, and forested and residential land. The alternative's impact on these resources would be greater during construction than operation. Conversely, there would be more impacts on air quality and visual resources associated with the Minisink Compressor Project than the Wagoner Alternative because the location of the Wagoner Compressor Station is more remote than the Minisink Compressor Station. While it is apparent that the Wagoner Compressor Station site has some advantages over the proposed location, the greater environmental issues and landowner impacts of replacing the Neversink Segment cause us to conclude that the Wagoner Alternative does not provide a significant environmental advantage over the proposed project.

D. CONCLUSIONS AND RECOMENDATIONS

Based on the analysis in this EA, we have determined that if Millennium constructs and operates the proposed facilities in accordance with its application and supplements, and the staff's recommended mitigation measures, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. We recommend that the Commission's Order contain a finding of no significant impact and include the mitigation measures listed below as conditions to any Certificate the Commission may issue.

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 EA, unless modified by the Order. Millennium must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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 OEP before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Millennium shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, EIs, and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Millennium shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.
5. Millennium shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that

would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

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

6. **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 the Order;
- b. how Millennium will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- e. the location and dates of the environmental compliance training and instructions Millennium will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
- f. the company personnel (if known) and specific portion of Millennium's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Millennium will follow if noncompliance occurs; and

- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
- (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Millennium shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Millennium's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Millennium from other federal, state, or local permitting agencies concerning instances of noncompliance, and Millennium's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of the project facilities**, Millennium shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Millennium must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing their respective authorized facilities in service**, Millennium shall each file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Millennium/Millennium has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Millennium shall conduct all tree removal greater than 5-inch-diameter breast height **between October 1 and March 31 and not begin construction** of facilities and/or use of any work areas until:
- a. the staff completes ESA Section 7 consultation with the FWS relating to the Indiana bat; and
 - b. Millennium has received written notification from the Director of the Office of Energy Projects (OEP) that construction or use of mitigation may begin.
12. Millennium **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Millennium provides the New York SHPO with the information requested in the SHPO's December 13, 2011 letter;
 - b. Millennium files with the Secretary the information and the SHPO's comments on the information;
 - c. Millennium files any required avoidance, treatment, or mitigation plan, and the SHPO's comments on the plan;
 - d. The ACHP is afforded an opportunity to comment if historic properties would be adversely affected; and
 - e. The FERC staff reviews and the Director of OEP approves the cultural resources report and any plan, and notifies Millennium in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

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

13. **Prior to construction**, Millennium shall file a copy of the final building design and any comments received from the Town of Minisink for review and written approval by the Director of OEP. The final design should include specific measures to blend in with surrounding rural residential agricultural landscape and structures.
14. **Prior to construction**, Millennium shall file a copy of its final landscaping and site screening plan, and any comments received from the Town of Minisink, for review and written approval by the Director of OEP.

15. Millennium shall make all reasonable efforts to ensure its predicted noise levels from the Minisink Compressor Station are not exceeded at the nearby NSAs and file noise surveys showing this with the Secretary **no later than 60 days** after placing the Minisink Compressor Station in service. If the noise attributable to the operation of the Minisink Compressor Station at full load exceeds the predicted noise level at any nearby NSAs, Millennium shall file a report identifying what modifications it intends to make in order to meet the predicted level **within 1 year** of the in-service date. Millennium shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs any additional noise controls.
16. Millennium shall file a vibration survey with the Secretary **no later than 60 days** after placing the Minisink Compressor Station in service. If vibration attributable to the operation of the Minisink Compressor Station is perceptible at any nearby NSAs, Millennium shall install/implement additional vibration control mitigation measures **within 1 year** of the in-service date. Millennium shall confirm compliance with this requirement by filing a second vibration survey with the Secretary **no later than 60 days** after it installs the additional vibration controls.
17. **Prior to construction**, Millennium shall develop a landowner notification plan for planned blowdowns of the Minisink Compressor Station in consultation with the Town of Minsink. The plan shall include notification procedures for landowners within a 0.5-mile radius of the proposed station **at least two business days prior to** performing a planned station blowdown. Millennium shall file a copy of the plan, and any comments received from the Town of Minisink, with the Secretary.

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