



August 4, 2017

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### **Re Millennium Eastern System Upgrade Pipeline Project**

Dear Mr. Brand, Mr. Klotz, and Ms. Gaidasz,

Delaware Riverkeeper Network urges you to reject the Millennium Pipeline Company's ("Millennium") Eastern System Upgrade project – to deny it all permits and approvals including Clean Water Act 401 Certification.

### **Millennium is misrepresenting the true size and scope of this project to the New York Department of Environmental Conservation ("NYSDEC").**

The misrepresentations are overwhelming and significant.

The Federal Energy Regulatory Commission ("FERC") has not done its job to ensure Millennium is being upfront and truthful about its intentions. In fact, we believe FERC may be intentionally allowing Millennium's misrepresentations.

Because you are not looking at the full project, the applications, assessments and materials you have before you for decisionmaking are false and misleading.

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That said, even the misrepresented version of the project demonstrates that its harmful impacts to water resources and the environment will be so significant that it warrants denying all permits and approvals by the state of New York.

Expert analysis provided by the Delaware Riverkeeper Network for the record confirms that Millennium has improperly split the Eastern system upgrade project from the overall planned expansion of its natural gas pipeline system in an attempt to avoid a more rigorous comprehensive environmental review of the project's construction, operation and maintenance.

Millennium is not only engaged in a deliberate deception as to the scope of its project today, but has, in the past, engaged in similar misleading behavior and as a result has been able to piecemeal together a series of NYSDEC approvals that it could not have received had the agency been aware of the full extent of the project plans the Company was seeking to pursue.

As made clear in the expert report submitted by the Delaware Riverkeeper Network, the oversized 36 inch segment of pipe at the Neversink Crossing signals that the Millennium ESU is one step in a much larger expansion plan. The oversized pipe is inconsistent and incompatible with the rest of Millennium's system. The oversized pipe alone, as well as in connection with the high level of compression being proposed over such a relatively short distance, demonstrates that Millennium is anticipating future expansions of the Millennium pipeline.

As described in the expert report submitted by the Delaware Riverkeeper Network from Accufacts Inc.:

“With the exception of the existing Neversink 24-inch segment restricted to an MAOP of 920 psig, the Millennium Pipeline gas transmission mainline was installed and designed to operate as a 30-inch pipeline with a MAOP of 1,200 psig (see purple dashed MAOP lines on all Exhibits). Installing the 36-inch segment at an MAOP of 1,350 overbuilds the Project for its stated purpose. Millennium has not adequately explained nor justified their request to install additional large diameter 36-inch pipeline at the MAOP of 1,350 psig. Installing much larger diameter pipe rated for much higher MAOP than the current major system's design signals further expansions are being anticipated or planned as a result of this Project. “

Further, according to Accufacts:

“The combination of requested horsepower addition along with the much larger diameter 36-inch higher 1,350 psig MAOP needs additional supporting analysis as these changes suggest additional project expansions are expected well beyond the needs stated in the Project application.”

As the Accufacts concludes: *“further expansion projects are likely or already planned in the future operation of Millennium Pipeline.”*

(MAOP = maximum allowable operating pressure)

It is clear from the evidence on the record that Millennium is planning for a mass expansion of the Millennium pipeline, including significant looping along its 220 mile length, to create a future second line along the length of the system. Laying parallel segments of looped pipeline to create second contiguous pipelines has become common practice amongst interstate fracked gas transmission lines.

The strategy to segment a larger planned project into smaller pieces to avoid proper environmental scrutiny, just as Millennium is doing here, was the subject of the Delaware Riverkeeper Network's successful lawsuit against the Federal Energy Regulatory Commission in 2014. They were doing it then, and as we have unfortunately experienced, they continue to do it now -- including with Millennium.

Furthermore, Millennium is engaged in a second form of misrepresentation and segmentation when it comes to the ESU. It is clear from the record, that the Valley Lateral Project, the CPV powerplant and the ESU are part of an integrated whole that should be presented to NYSDEC and reviewed as a single project for purposes Clean Water Act Certification and Clean Air Act approvals. This is a second form of illegal segmentation and misrepresentation that Millennium must not be allowed to get away with.

The Delaware Riverkeeper Network Accufacts report confirms this connection:

"The 24-inch Neversink segment has become an increasing bottleneck as gas rates have increased in recent years on the Millennium system. The serious impact of much higher gas rates and actual gas velocities, can be easily demonstrated by reviewing the steep slope (more vertical nature) of the pressure plots on Exhibit 1 and 3 for the existing Neversink segment. These steep slopes, higher pressure loss per mile, suggest that the Neversink 24-inch pipeline is destined for a different service, such as to serve as a much lower gas flow delivery supply gas line to the proposed CPV power plant. Once the Neversink is looped with a 30-inch 1,200 psig MAOP pipeline, the smaller diameter weaker MAOP Neversink pipeline segment is of little value to the mainline Millennium Pipeline system except to serve as a delivery supply line to customers on that segment, essentially the proposed CPV power plant. "

In addition to the Accufacts Report, the US Environmental Project Agency (EPA) is on record stating their concerns over the interdependency of the Valley Lateral Project and the ESU in comments on the FERC dockets for both projects. In a June 10, 2016 letter to FERC, EPA Region 2 states:

"EPA is also concerned that the proposed Eastern System Upgrade is connecting into the Valley Lateral Project (CP16-17) now under review by FERC. The EA must discuss this interconnect and its purpose in detail, and whether the Eastern System Upgrade would be constructed and meet the purpose and need with or without the Valley Lateral being completed."<sup>1</sup>

Similarly, in a June 8, 2016 letter to FERC regarding the Valley Lateral Project, EPA Region 2 states:

"EPA also requests that the document more fully discuss the proposed interconnect to the Valley Lateral by the proposed Eastern Systems Upgrade project. It should be stated clearly whether this interconnect would be providing more natural gas to the Valley Lateral, and whether the Eastern Systems Upgrade requires this interconnect to function."

The Valley Lateral Project is also currently under review by the NYSDEC for a federal CWA 401 Water Quality Certificate. Given the interconnect between the two projects and Millennium's failure to provide

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<sup>1</sup> Letter from Grace Musumeci, Chief, Environmental Review Section. EPA Region 2, to FERC Re Millennium Eastern System Upgrade Project, FERC Docket no. PF16-13 on June 10, 2016.

full information about the interconnect and cumulative impacts of both projects, the Valley Lateral Project application should similarly be rejected until the full extent of the larger project at play is fully understood.

NYSDEC needs to deny all permits and approvals for the ESU because Millennium, with FERC support, has engaged in illegal segmentation and failed to represent the truthful size and scope of the project. As a result, NYSDEC does not have the full information required by law or needed for an informed decision to be made.

FERC cannot be relied upon by New York to honestly ensure Millennium is accurately representing its intentions with regards to pipeline expansion or its interconnection with the Valley Lateral project and the CPV powerplant.

The Delaware Riverkeeper Network recently exposed FERC's intentional and blatant efforts to hide critical facts from a state in a clearly designed effort to help a pipeline company get the state decision it wanted.

In the case of the Tennessee Gas Pipeline Company LLC's ("Tennessee") Orion Project ("Orion") in Pennsylvania, FERC deliberately concealed information from the Pennsylvania Department of Environmental Protection ("PADEP") on a project alternative that would have greatly reduced the project footprint and its impact on water resources, and therefore could have had a substantial influence on the public and state perspective regarding Clean Water Act ("CWA") Section 401 Certification.

The Delaware Riverkeeper Network was involved in two legal challenges to the project, one regarding the state 401 Certification, the second challenging US Army Corps wetlands permitting for the Orion project. As a result of our Army Corps challenge we were able to secure documents through discovery that were not otherwise revealed by FERC or the Tennessee Gas Pipeline Company to the public or the State.

- ⇒ On or about July 10, 2016 FERC generated an internal Draft Environmental Assessment for Tennessee's Orion Project.
- ⇒ In the Draft Environmental Assessment (EA) FERC identified and evaluated alternatives to the Orion Pipeline proposal.
- ⇒ As a result, the Draft EA included a detailed analysis regarding an Alternative.
- ⇒ The Draft EA included a detailed description of the alternative and concluded that this alternative "meets the purpose and need" of the Orion Project, and "is technically feasible."
- ⇒ The Draft EA also concluded that the alternative "would eliminate the need for 12.9 miles of new pipeline construction, which would eliminate 30 waterbody crossings, 13 road crossings, and impacts on wetlands and other land use impacts along the pipeline route."
- ⇒ The internal Draft EA included a table showing the different impacts resulting from the alternative in comparison to the proposed looping pipeline project. The analysis showed that there would be no aquatic impacts from the Alternative. The analysis also showed that the pipeline alternative would, by comparison, impact the 30 waterbody crossings and have significant wetland impacts, as well as result in 222.6 more acres of total disturbed land, over 100 more acres of impact to agricultural lands, would traverse 2,100 feet of steep slopes, and would necessitate the long-term deforestation of between 9 and 19 more acres of upland forests.
- ⇒ Therefore, not only did the Draft EA conclude that the Alternative was technically feasible and would meet the purpose and need of the Orion Project, but that its environmental impacts would be significantly smaller thereby obviously making it the environmentally preferred option.
- ⇒ However, without reason or any explanation, FERC scrubbed this entire section from its final Environmental Assessment for the Orion project that was eventually released to the public, to other agencies and to the State of Pennsylvania.

- ⇒ The public and agencies got the scrubbed Final EA, but were never made aware of the analysis scrubbed from the Draft EA.
- ⇒ As such, both the public and state were obstructed from obtaining critical information regarding the scope and breadth of potential alternatives to the proposed Orion Pipeline Project, and were specifically prevented from obtaining information regarding the Alternative.

FERC's decision to insulate this information from the state and the public was particularly egregious because the central issues PADEP was required to review as part of its 401 Certification analysis were:

- 1) whether the project was "water dependent," and
- 2) whether there were any practicable alternatives that would not impact aquatic resources.

Had PADEP been provided access to draft Environmental Assessment and/or the analysis and conclusions regarding the Alternative, it is likely PADEP would have been legally bound to choose the Alternative as opposed to the pipeline looping Project.

In the case of Orion, it is clear that FERC:

- deliberately and intentionally excised an analysis of a viable, technically feasible, and environmentally preferable alternative, which involved substantive issues that materially implicated the Pennsylvania's legal permitting obligations for the Orion Project,
- without providing any reason or explanation,
- and that through this action, FERC was intentionally seeking to inappropriately influence permitting decisions in order to secure the outcome sought by the Pipeline company, as opposed to the outcome that was best for the environment or the state.

To be clear, it is obvious that the pipeline company and FERC were involved in an intentional effort, individually and jointly, to withhold critical information and facts from the public and the state so as to inappropriately drive the outcome of decisionmaking to the outcome preferred by the Pipeline company as opposed to the outcome that was best for the environment or the state.

FERC's demonstrated ability and willingness to conceal vital and pertinent information from a permitting state agency supports the Delaware Riverkeeper Network's concern that FERC and Millennium are using the same tactics in New York, advancing significant misrepresentations of the ESU project in an effort to secure permits and other authorizations from the NYSDEC under false pretenses.

In light of these facts, in addition to the evidence that the Delaware Riverkeeper Network has previously submitted to your office regarding the significant environmental and community impacts of this project, NYSDEC should reject, outright, any permits and/or approvals for the Millennium ESU and the Valley Lateral Project.

In addition, we urge you to use your position on the Delaware River Basin Commission to urge them to reverse their decision not to exercise jurisdiction over this project, and to, once that decision is reversed, to reject the project out of hand as being a total misrepresentation of the project and its impacts to the water resources of the basin.

**The impact of the Millennium ESU even as proposed, mandates NYSDEC denial of Clean Water Act 401 Certification.**

As discussed and documented in the Delaware Riverkeeper Network's comments for the record, Millennium will have serious and unacceptable impacts on water quality and the Dwarf Wedgemussel in the Neversink River. The staging, drilling, and permanent removal of mature riparian forest on the steep slopes to

accommodate the pipeline ROW and HDD will directly cause increases in suspended sediments and turbidity, water temperature, and nutrients, all in violation of New York State water quality standards.

In addition, the staging, drilling and permanent removal of riparian forest on the steep slopes will exacerbate violations of pH water quality standards.

The risks from HDD in terms of bentonite drilling fluids surfacing within the Neversink River, which would cause direct and immediate violations of turbidity water quality standards, are too great to be accepted. The HDD drilling itself could be a cause of water quality violations for the Neversink River and poses threats to the Dwarf Wedgemussel population in the River. Indeed, the concerns of frac-outs from HDD construction activity under the Neversink River were so great that NYSDEC insisted that Millennium use an existing pipeline that already traversed under the river when it first installed its system. The conclusion was drawn then, and it must be true now, that construction activity under this stretch of the river represents too great a risk to the Neversink River.

Impacts to the Neversink River and the Neversink River Floodplain Preserve are inevitable, and these impacts will translate to significant harm to the only population of the State and Federally Endangered Dwarf Wedgemussel wholly within New York State waters. This population already has been decimated in recent years, with the current population estimated at approximately 10% of the population size identified in the 1990s.<sup>2</sup> The Neversink population of Dwarf Wedgemussel once was estimated to be the single largest or second largest extant population of this endangered species range-wide.<sup>3</sup> The recent declines in population, however, have reduced the population so severely that relatively small tributary populations are now estimated to exceed the size of the once-preeminent Neversink River population.<sup>4</sup> The tenuous existence of this last remaining New York State population of Dwarf Wedgemussel is already in jeopardy and must not be threatened with new impairments to water quality and habitat that threaten its survival and propagation.

Millennium's use of trenching construction strategies that pose serious adverse impacts to the health and quality of the Neversink and three tributaries is unacceptable to the people of New York and should be unacceptable to the NYSDEC.

### **Millennium did not provide the data and details regarding air emissions necessary to support permitting.**

Millennium failed to provide clear proof in the Environmental Assessment and materials provided to NYSDEC that this project meets required federal and state environmental regulations. Its materials and assessments fail to provide any of the assumptions used with regards to load factors, emission factors, models used for mobile sources, sample calculations, the setup parameters used in AERMOD, etc necessary to support its air emission and air impact claims. Significantly higher potential emissions than those presented in Table B-17 have been independently estimated for the Highland Compressor Station's Solar Titan 130E gas-fired compressor, using manufacturer's published information about the system's energy consumption and using AP-42 emission factors for lean burn natural gas turbines. There is no possible way to independently validate the claims being made by Millennium regarding air impacts, and there is evidence to suggest what is asserted is untrue.

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<sup>2</sup> Strayer, D.L., S.J. Sprague, S. Claypool. 1996. A range-wide assessment of populations of *Alasmidonta heterodon*, an endangered freshwater mussel (Bivalvia:Unionidae). *J North Am. Benth. Soc.* 15(3): 208-317.

<sup>3</sup> USFWS (U.S. Fish & Wildlife Service). 1993. Dwarf wedge mussel (*Alasmidonta heterodon*) recovery plan. U.S.Fish & Wildlife Service, Hadley, Massachusetts. 48 pp.

<sup>4</sup> Galbraith, H.S., W.A. Lellis, J.C. Cole, C.J. Blakeslee, B. St. John White. 2016. Population demographics for the federally endangered dwarf wedgemussel. *Journal of Fish and Wildlife Management* 7(2): 377-387.

Given that we have provided significant evidence of false and misleading information with regards to water quality impacts and the true size and scope of this project, there is no reason that NYSDEC can or should accept as true Millennium's or FERC's assertions regarding air or associated impacts.

**We urge NYSDEC to reject all permits and approvals for the Millennium ESU – air permits and water approvals alike.**

Respectfully,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is written in a cursive, flowing style.

Maya K. van Rossum  
the Delaware Riverkeeper