

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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August 30, 2017

Ms. Georgia Carter
Vice President and General Counsel
Millennium Pipeline Company LLC
One Blue Hill Plaza, 7th Floor
PO Box 1565
Pearl River, NY 10965

Mr. John Zimmer
Pipeline / LNG Market Director
TRC Environmental Corp.
650 Suffolk St., Suite 200
Lowell, MA 01854

Re: 3-3399-00071/00001 – Valley Lateral Project
Notice of Decision

Dear Ms. Carter and Mr. Zimmer:

On November 23, 2015, Millennium Pipeline Company LLC (Millennium) submitted to the New York State Department of Environmental Conservation (Department) the above-referenced Joint Application for the Valley Lateral Project (Project). The Joint Application was for a Water Quality Certificate (WQC) pursuant to Section 401 of the Clean Water Act, as well as permits pursuant to Environmental Conservation Law (ECL) Article 15, Protection of Waters and Article 24, Freshwater Wetlands.

On August 30, 2017, the Department submitted to the Federal Energy Regulatory Commission (FERC) a Motion for Reopening and Stay or, in the Alternative, Request for Rehearing and Stay with regard to the Project (Request) in relation to FERC Docket No. CP 16-17. A copy of the Request is attached to this Notice as Exhibit A. In accordance with 6 NYCRR Part 621, the Department provides this Notice to Millennium that Millennium's Joint Application for the Project is deemed denied as of the date of this Notice, consistent with the Department's Request to FERC. As required by 6 NYCRR § 621.10, a statement of the Department's basis for this Decision is provided below.

Pursuant to 6 NYCRR § 621.10(f), "[a]n application for a permit may be denied for failure to meet any of the standards or criteria applicable under any statute or regulation pursuant to which it is sought, including applicable findings required by article 8 of the ECL and its implementing regulations in Part 617 of this Title" Here, FERC's environmental review of the Project, conducted pursuant to the National Environmental Policy Act (NEPA), takes the place of an

environmental review conducted under the State Environmental Quality Review Act (ECL Article 8). Based on the recent decision by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Sierra Club, et al. v. FERC*, -- F.3d--, 2017 WL 3597014 (D.C. Cir., Aug. 22, 2017), as described in more detail in Exhibit A, FERC's environmental review of the Project is inadequate and deficient.

In addition, pursuant to 6 NYCRR § 621.10(f), an application for a permit may be denied "for any of the reasons set forth in section 621.13(a)(1)-(6) of this Part." Among these reasons is "newly discovered material information or a material change in environmental conditions, relevant technology or *applicable law or regulations*" (emphasis added). Here, as described in the attached Request (Exhibit A), there has been a material change in applicable law during the course of the Department's review of the Joint Application. Namely, as further explained in Exhibit A, the *Sierra Club* decision found that FERC failed to consider or quantify the downstream greenhouse gas emissions from the combustion of the natural gas transported by the Project as part of NEPA review. Here, just as in *Sierra Club*, FERC failed to consider or quantify the indirect effects of downstream GHG emissions in its environmental review of the Project that will result from burning the natural gas that the Project will transport to CPV Valley Energy Center.

For the foregoing reasons, and in the event that FERC denies the Department's Request, Millennium's Joint Application for the Project is deemed denied as of the date of this Notice due to (i) the lack of a complete environmental review for the Project and (ii) a material change in applicable law (the D.C. Circuit's decision in *Sierra Club*). The Department reminds Millennium that, during the pendency of FERC's review of the Department's Request, commencement of any and all activities related to the construction of the Project are currently prohibited.

Sincerely,



Thomas Berkman
Deputy Commissioner and General
Counsel

cc: FERC
Karen Gaidasz, NYSDEC