

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, L.L.C.

Docket No. CP16-17-000

SUBMISSION BY INTERVENORS BURNS AND KING OF
PRELIMINARY BIODIVERSITY AND WETLAND STUDY
OF BURNS-KING PROPERTY IN OPPOSITION TO
FERC PROPOSED ENVIRONMENTAL ASSESSMENT

In response to FERC's proposed Environmental Assessment, Intervenors Burns and King submit the attached preliminary biodiversity and wetland study of the Burns-King property sited for Millennium's Preferred Route, entitled "Potential Impacts of the Proposed Valley Lateral Gas Pipeline on Catlin Creek, Associated Wetlands, and Vicinity, Town of Wawayanda, Orange County, New York."

On the strength of this report and the Brunn expert report, Intervenors assert that a credible and meaningful assessment cannot be made of Millennium's Preferred Route as against alternate routes suggested by New York State DEC professionals unless and until a formal NY State wetland mapping of Millennium's Proposed Route is completed and publically available for consideration. For FERC to issue a final environmental assessment in the absence of such information would render FERC's evaluation unfair and inadequate.

The study being submitted today by Intervenors Burns-King was performed by Dr. Erik Kiviat of Hudsonia, a non-profit that collects observations and data in the field and from extant sources to assess biodiversity and the impacts of land use. Hudsonia neither opposes nor supports land use proposals. In other words, the information supplied in the Kiviat report represents a neutral assessment – which,

on the science, demonstrates extensive wetland and biodiversity presence on the pipeline-sited Burns-King land.

Intervenors Burns and King engaged this neutral assessment and undertook the substantial cost and trouble of obtaining it in the belief that the public interest in wetland and biodiversity preservation is not being adequately served by the process pursued by FERC to date.

The low-lying wet lands through which Millennium proposes to place the pipeline on Burns-King land constitute a system of stream, flood plain, swamp and wet meadow punctuated with steep upland rock outcroppings. These features collectively cover approximately one-half of the Burns-King 74 acre property. The low-lying wet portions of those 37 acres could easily exceed 12.4 acres. Moreover these wetlands are interconnected with the even larger acreage of the Brunn property to the south and with other wet areas to the north. It is fair to conclude from this Burns-King, as well as the Brunn, information that Millennium's submissions have grossly underestimated the acreage of wetland covered in its Preferred Route.

Dr. Kiviat provides detail confirming that the Burns-King land, already designated federal wetland, sited for the pipeline qualifies for New York State wetland designation. He confirms the hydric soil classifications throughout the property as well as the upland rock outcropping that would have to be blasted or broken should Millennium partially follow that route instead of passing through the actual wet meadow, swamp, stream and stream flood plain.

Dr. Kiviat confirms the currently observable presence of rare and potentially threatened or endangered flora and fauna, as well as the potential of the land as habitat to support other yet-to-be observed rare and endangered lifeforms. He notes the risks of siltation and pollution attendant even on horizontal directional drilling (HDD) in such land.

Millennium has two choices to pass through the Burns-King land. One choice is to directly invade richly biodiverse wetland habitats and waterways by laying the pipeline on the flood plain, wet meadow, swamp and across the stream for the entire route. The other choice for part, but not the entire, route is to blast or break through upland rock outcroppings, which are also richly biodiverse, to pass over a hill immediately adjacent to the wetland. Disturbance to that upland will initiate erosion contaminating the adjacent waterways from the steep hill that will be virtually impossible to forestall. Moreover, the upland route will ultimately not avoid passing through and under wetlands in certain portions of the property.

Millennium's analysis and comparison of the State's proposed less invasive routes along the railway or Interstate Route 84 to their Preferred Route is inadequate and dismissive. By counting stream crossings and supposed designated wetland acreage, they make a case that is solely mindful of cost to them not impact on actual quality wetland in the Preferred Route the full extent of which has not yet been formally designated by government mapping.

Until Millennium picked the "Preferred Route" land for its proposed intrusion, the public interest did not impel the use of government resources for that

particularly mapping. The public interest was protected by local landowner wetland-compatible uses – for farming and as undisturbed woodlands, meadows and streams as on the Burns-King property. In effect, Millennium is opportunistically siting the pipeline on land that has gone unattended for government mapping because doing so enables it to avoid already-officially-mapped locations where their compliance with wetland regulations is mandatory and unavoidable for them. This, in effect, has Millennium arguing that the apples of other, already industrialized and developed routes deserve favor over the delicate, vulnerable, unattended and undefended rarer and more diverse and valuable fruits that lie in the Preferred Route.

In short the upshot of the Burns-King and Brunn expert submissions is that FERC should not move forward on its EA without a request to New York State for a formal wetland mapping of the Preferred Route and only after that information is completed and made publically for all to comment. To proceed otherwise would be arbitrary and contrary to the public interest. Landowners like Brunn and Burns-King can only demonstrate the extent of wetlands on their own lands – not the entire route. Given that they have demonstrated through scientific reports of extensive wetland and biodiverse habitat on their own lands sufficient to conclude that the proposed pipeline poses highly significant unacknowledged threat to important public resources in the commons, it is in the public interest that the impact of the entire route be fully assessed by neutral government analysis before

any further action is taken. To proceed otherwise would be arbitrary and capricious.

Finally, Intervenors draw the Commission's attention again to their motion to dismiss for lack of jurisdiction, filed March 23, 2016. Land use and local water and habitat impacts, which is the essence of this assessment, are essentially local concerns. The Natural Gas Act, Section 1(b), specifically excluded FERC from jurisdiction over local facilities, which the Valley Lateral Pipeline most certainly is. No law has developed to alter that stricture, which FERC has an affirmative duty to observe.

Respectfully submitted,

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“Potential Impacts of the Proposed Valley Lateral Gas Pipeline on Catlin Creek, Associated Wetlands, and Vicinity, Town of Wawayanda, Orange County, New York” by Dr. Erik Kiviat, Hudsonia, submitted herewith.

¹ Admitted to the practice of law in the State of New York and the District of Columbia.