

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PennEast Pipeline Company, LLC

:

Docket No. CP15-558-000

**COMMENT OF SOURLAND CONSERVANCY
REQUESTING REHEARING AND RESCISSION OF CPC
AND REQUESTING A STAY PENDING REHEARING**

Intervenor, Sourland Conservancy, a non-profit corporation, hereby submits its comment requesting rehearing and rescission of the Commission’s January 19, 2018 Order (“Order”) granting a conditional Certificate of Public Necessity and Convenience (“Certificate” or “CPC”) to PennEast Pipeline Company, LLC. (“PennEast”) to construct the PennEast Pipeline Project (“Project”) and requesting a stay pending rehearing.

I. FERC SHOULD GRANT REHEARING AND RESCIND THE CPC

Statement of Facts

Sourland Conservancy adopts the Statement of Facts set forth in the Request for Rehearing and Motion for Stay on Behalf of New Jersey Conservation Foundation and Stony Brook-Millstone Watershed Association, Accession No. 20180213-5082, pp. 3-18.

Statement of Errors

(1) The Order is based upon an erroneous and incomplete environmental review that fails to meet the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq. (2006), its implementing regulations, 40 C.F.R. Parts 1500-08, and the Commission’s own NEPA regulations at 18 C.F.R. Part 380. Based on this flawed and incomplete environmental review, the Commission improperly determined that the public benefits of the Project outweigh its adverse impacts, thus violating the Natural Gas Act, 15 U.S.C. §§ 717f (2006) and its implementing regulations, 18 C.F.R. Part 157 (2011);

(2) The Commission’s purported reliance on its *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (“Certificate Policy Statement”) and on affiliate precedent agreements as a basis to determine whether there is a need for a proposed project and whether the proposed project is required by the public convenience and necessity and is in the public interest is flawed, contrary to law, unreasonable, and arbitrary and capricious in the circumstances here. There is no need for this project. *See*, Order, R. Glick dissenting);

(3) Disregarding evidence of bias and conflicts of interest, FERC employed the services of Tetra Tech to prepare the Project Environmental Impact Statement (“EIS”), which resulted in a substantively flawed, erroneous, and incomplete EIS (See, e.g., *Comments Of Lower Saucon Township, Northampton County, Pennsylvania On Environmental Issues And The Scope Of The*

Draft Environmental Impact Statement (hereafter, “Township Scoping Comments”), Accession No. 20150225-5312, pp. 3-10);

(4) The Order depends upon FERC’s unlawful and flawed approach to National Historic Preservation Act (“NHPA”) issues; FERC’s Issuance of the Certificate Order Prior to Completing the Section 106 process violates the NHPA. (See, e.g., *Comments of Lower Saucon Township, Northampton County, Pennsylvania On the Draft Environmental Impact Statement FERC\EIS: 0271D* (hereafter, “Township DEIS Comments”), Accession No. 20160912-5515, pp. 6-15);

(5) The EIS failed to properly disclose and consider the project’s public safety, accident, and terrorism risks, including meaningful disclosure of consequences (see, e.g., Township DEIS comments, pp. 69-71; FEIS, pp. to 4-301 to 4-311);

(6) The EIS failed to acknowledge the permanent loss of conservation values of conservation easement forested lands, and incorrectly concluded that “[a]fter construction, all disturbed areas, including forested areas, would be restored in compliance with PennEast’s E&SCP and Plan; federal, state, and local permits; landowner agreements; and easement requirements.” (See, e.g., Township DEIS comments, p. 74; FEIS, pp. ES-12, 5-13);

(7) The Order was issued prematurely, prior to the issuance of applicable federal and state authorizations including New Jersey CWA section 401 water quality certifications and permits required to be issued by the Delaware River Basin Commission. (See, e.g., Township Scoping Comments, p. 25; Township DEIS Comments, pp. 57-60).

Support of and joinder in requests for rehearing of the Delaware Riverkeeper Network, the New Jersey Conservation Foundation, Stony Brook – Millstone Watershed Association, and Lower Saucon Township Pennsylvania

The Sourland Conservancy supports and joins in each of the “Statement of Alleged Errors” and “Statement of Issues” in support of rehearing and stay set forth in: the “Request for Rehearing of the Delaware Riverkeeper Network” (“DNR Request”) (Accession No. 20180124-5153); the “Request for Rehearing And Motion For Stay On Behalf of the New Jersey Conservation Foundation and Stony Brook-Millstone Watershed Association”, Accession No. 20180213-5082, filed 2/12/18 (“NJCF/SBMWA Request”); and the “Request for Rehearing of Lower Saucon Township Pennsylvania” (Lower Saucon Request) (filed 2/19/2018). In particular, Sourland Conservancy adopts the following as a further “Statement of Alleged Errors” and “Statement of Issues” set forth in the referenced Requests for Rehearing:

DNR Request

“The Commission erred because the EIS is unable to support its conclusion that construction of PennEast as proposed by the company and FERC will not have significant adverse environmental impacts” (DNR Request, pp. 7-13);

“The Commission erred because the EIS assertion of need is contradicted by the preponderance of the evidence and is largely a statement of industry desires rather than public need” (DNR Request, pp. 13-25);

“The Commission erred because the EIS fails to consider cumulative impacts across the Project and across multiple other projects, including the source and end use of the natural gas” (DNR Request, pp. 25-50);

“The Commission erred because the induced shale gas production and impacts must be considered by the EIS” (DNR Request, pp. 50-60);

“The Commission erred because the economic benefits asserted in the EIS are indefensible and unsupported, and the economic harms are entirely overlooked” (DNR Request, pp. 60-68);

“The Commission erred because the EIS fails in its legal obligation to consider greenhouse gas emissions and climate change implications of the PennEast Pipeline”, (DNR Request, pp. 68-79);

“The Commission erred because the EIS Alternatives Analysis is Fundamentally Flawed” (DNR Request, pp. 99-101);

“The Commission erred because of the continued Use of Segmentation in this EIS is Improper” (DNR Request, pp. 102-108);

“The Commission erred because the EIS fails to address comments and experience that shows use of standard constructions practices will result in environmental violations and degradation” (DNR Request, pp. 108-111);

“The Commission erred because the EIS Data and Information Gaps Makes the Document Legally Deficient and Incomplete – a New and Complete Supplemental EIS is Required” (DNR Request, pp. 114-131);

“The Commission erred because the EIS is filled with assertions that are false, inaccurate, misleading and/or deficient – these failings ensure this EIS cannot be said to fulfill the requirements of NEPA” (DNR Request, pp. 132-136);

“The Commission erred because the EIS is legally inadequate in its failure to consider alternative routes or construction practices that could avoid and/or mitigate harm” (DNR Request, pp. 146-154);

“The Commission erred because the Commission regularly issues letter orders to proceed with tree felling construction activity prior to the issuance of the Clean Water Act Section 401 water quality certifications” (DNR Request, pp.157-158).

NJCF/SBMWA Request

“The Order Fails to Demonstrate that the Project Is Required by the Public Convenience and Necessity Under the NGA. The Certificate Order states in conclusory fashion that precedent agreements are evidence of the public convenience and necessity when this is not actually true. The Order also fails to evaluate the environmental impacts of the project in its public convenience and necessity evaluation, as required by the NGA.” (NJCF/SBMWA Request, pp. 19; 21-54);

“Because FERC’s determination of public convenience and necessity is flawed, as set forth...above, the Order, which FERC regards as triggering an automatic conferral of eminent domain authority, violates the Constitution. FERC’s deficient determination of public convenience and necessity renders the conferral of eminent domain authority unconstitutional.” (NJCF/SBMWA Request, pp.19; 54-56);

“The Order Violates the Clean Water Act by Issuing a Section 7 Certificate Prior to New Jersey Water Quality Certification. The CWA clearly prohibits FERC from issuing the Order in advance of the grant of the required Section 401 certification.” (NJCF/SBMWA Request, pp. 19-20; 56-60);

“The Order Violates the National Historic Preservation Act by Preceding the Completion of Section 106 Consultation. The NHPA clearly prohibits FERC from issuing the Order in advance of the completion of the Section 106 process.” (NJCF/SBMWA Request, pp. 20; 60-61);

“Because FERC Failed to Ensure That the Route it Certified Would be Granted Necessary Approvals for the Construction of the Pipeline, FERC’s Order Violates the NGA and the Constitution. The NGA allows exercise of eminent domain only over land that is “necessary” for the pipeline’s construction, but there is no way to know for sure if land will be “necessary” if the route is likely to change. The Constitution similarly requires that land may only be taken for the public use, and any land that is taken that cannot be used for the pipeline due to a change in route will not have been taken for the public use.” (NJCF/SBMWA Request, pp. 20; 61-64); 3

“FERC’s Order violates NEPA because it rests on an FEIS that is Wholly Deficient” (NJCF/SBMWA Request, pp. 20; 64-84), inasmuch as: FERC Violated NEPA By Failing to Engage in a Robust Alternatives Analysis. As a result of the impermissibly narrow purpose and need statement, the FEIS failed to conduct a rigorous evaluation of the no action alternative, as required by NEPA. FERC primarily based its rejection of the no action alternative on PennEast’s objectives (the construction of a new natural gas pipeline) without considering what the new pipeline was meant to accomplish, and whether another alternative could accomplish that goal better. (NJCF/SBMWA Request, pp. 20; 70-77)

Material Information Gaps in the FEIS Precluded FERC From Engaging in Informed Decision-making Required by NEPA. FERC erred in issuing the FEIS prior to PennEast furnishing reasonably available information necessary to informed decision-making under NEPA. (NJCF/SBMWA Request, pp. 20-21; 77-81)

FERC Failed To Properly Analyze and Assess Cumulative Impacts (NJCF/SBMWA Request, pp. 21; 81-83) FERC violated NEPA's public participation requirements. By issuing a low quality, deficient Draft EIS, the public was unable to scrutinize the proposed project and meaningfully comment on it. (NJCF/SBMWA Request, pp. 21; 83-84)

FERC Improperly Denied an Evidentiary Hearing During its Consideration of the Proposal. Intervenors submitted evidence into the record that showed there were questions of material facts and relevant questions of credibility. FERC improperly denied an evidentiary hearing to resolve these issues. (NJCF/SBMWA Request, pp. 21; 84-87).

Lower Saucon Township Request

The Order is based upon an erroneous and incomplete environmental review that fails to meet the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq. (2006), its implementing regulations, 40 C.F.R. Parts 1500-08, and the Commission's own regulations at 18 C.F.R. Part 380. Based on this flawed and incomplete environmental review, the Commission improperly determined that the public benefits of the Project outweigh its adverse impacts, thus violating the Natural Gas Act, 15 U.S.C. §§ 717f (2006) and its implementing regulations, 18 C.F.R. Part 157 (2011) (Lower Saucon Twp. Request, p.6)

The Commission's purported reliance on its *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) ("Certificate Policy Statement") and on affiliate precedent agreements as a basis to determine whether there is a need for a proposed project and whether the proposed project is required by the public convenience and necessity and is in the public interest is flawed, contrary to law, unreasonable, and arbitrary and capricious in the circumstances here. There is no need for this project. *See*, Order, R. Glick dissenting). (Lower Saucon Twp. Request, p.10)

FERC's Use Of Tetra Tech As Its Third-Party Contractor Was Improper, As The Firm Is Patently Biased, Has A Cognizable Interest In The Outcome Of The Project, And Federal Courts Have Found Evidence Of Misconduct And Document Destruction By Tetra Tech In Its Environmental Review Services. (Lower Saucon Twp. Request, p.12)

FERC's and PennEast's Approach to Compliance with the National Historic Preservation Act Is Flawed; FERC's Issuance of the Certificate Order Prior to Completing the Section 106 process violates the NHPA. (Lower Saucon Twp. Request, p.24)

The EIS Fails to Explain the Purpose or Need for the Hellertown, or to Consider Alternatives, Including the "No-Action" Alternative, with respect to the Hellertown Lateral. (Saucon Twp. Request, p.34)

The EIS failed to properly disclose and consider the project's public safety, accident, and terrorism risks. (Lower Saucon Twp. Request, p.37)

The EIS failed to acknowledge the permanent loss of conservation values of conservation easement forested lands, and arbitrarily and without substantial evidence concluded that “[a]fter construction, all disturbed areas, including forested areas, would be restored in compliance with PennEast’s E&SCP and Plan; federal, state, and local permits; landowner agreements; and easement requirements.” (DEIS comments, p. 74, FEIS, p. ES-12, p. 5-13). (Lower Saucon Twp. Request, p.43)

The Order was issued prematurely, prior to the issuance of applicable federal and state authorizations including New Jersey CWA section 401 water quality certifications and permits required to be issued by the Delaware River Basin Commission. (Lower Saucon Twp. Request, p.46)

II. FERC SHOULD GRANT A STAY PENDING REHEARING

Motions for a Stay of the Certificate Order pending rehearing have been filed by the Delaware Riverkeeper Network (Accession No. 20180124-5130), the New Jersey Conservation Foundation (Accession No. 20180213-5082, pp. 88-92), the New Jersey Department of Environmental Protection and The Delaware And Raritan Canal Commission (Accession No. 20180216-5160), and Lower Saucon Township Pennsylvania. Sourland Conservancy hereby supports and joins in those Motions, including their analysis showing that absent a stay, intervenors will be irreparably harmed, that the applicant will not be irreparably harmed by a stay, and that a stay is in the public interest. Sourland Conservancy requests that the Commission stay its Order pending rehearing, and during the pendency of any tolling order issued by FERC, for the reasons set forth in those Motions and the reasons set forth herein and in the Sourland Conservancy Request for Rehearing.

In particular, absent a stay, PennEast will continue to pursue condemnation proceedings to acquire a permanent pipeline easement and right of way, even though the route is subject to change, and despite the unlawful nature of the Certificate Order.

Sourland Conservancy requests a stay of the authority to preliminarily and/or permanently condemn property interests. Acquisition of a permanent pipeline easement over environmentally sensitive lands will cause irreparable harm. Moreover, the acquisition of the pipeline easement would permit PennEast to commence clear-cutting of all of the trees within the easement and construction area. The removal of mature trees constitutes irreparable harm. *Comm. of 100 on Fed. City v. Foxx*, 87 F. Supp. 3d 191, 204–05 (D.D.C. 2015).

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Sourland Conservancy requests that the Commission GRANT a stay, GRANT rehearing, and RESCIND the Order and CPC.

Respectfully submitted,

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