



July 25, 2015

Ms. Kimberly Bose
Federal Energy Regulatory Commission
Office of the Secretary
888 1st Street, NE
Washington, DC 20428

Re: Docket No. PF15-1-000: Comments Regarding PennEast Pipeline Project and the Scope of Applicable NEPA review.

Dear Ms. Bose,

In its June 4, 2015 monthly progress report PennEast dismissed an essential part of the NEPA review process by stating that it will not include a number of related projects identified in public comments in its environmental review. Specifically, it asserted that the impacts resulting from the Marc II project, New Jersey Natural Gas's Southern Reliability Link project, and Transco's Garden State project do not need to be considered in the environmental review for the PennEast Project.

PennEast's mischaracterization of which projects must be considered as part of a NEPA review is a recitation of the law that is flat out wrong. If FERC adopts PennEast's interpretation of the law it will have failed to fulfill its NEPA review requirements and will be the subject of a successful legal challenge, one most certainly to be brought by the Delaware Riverkeeper Network. By failing to include an analysis of the projects cited above, FERC will be improperly segmenting its review of the projects by limiting the scope of its review, which would be in direct contravention of the holding in *Delaware Riverkeeper Network, et al v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014).

NEPA requires an Environmental Impact Statement for proposed "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C)(i). An agency may avoid preparation of an Environmental Impact Statement by preparing an Environmental Assessment supporting a finding of no significant impact, or by determining the proposed action is not a major Federal action significantly affecting the environment. 40 C.F.R. §§ 1501.4(e)(1), 1508.9. NEPA requires federal agencies to take environmental considerations into account "to the fullest extent possible." 42 U.S.C. § 4332; 40 C.F.R. § 1500.2; *Bentsen*, 94 F.3d at 684.

In *Delaware Riverkeeper Network v FERC*, the D.C. Circuit court identified two tests to determine the proper scope of review in a segmentation analysis of natural gas pipeline projects. *Id.* at 1314-1315. The first test the court identified was to determine whether the scope of the NEPA review of the project was

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
dm@delawareriverkeeper.org
www.delawareriverkeeper.org

guided by the “governing regulations,” which are 40 C.F.R. § 1508.25(a). *Id.* The Court also cited the test in *Taxpayers Watchdog v. Stanley*, 819 F.2d 294 (D.C. Cir. 1987), as properly framing a segmentation review. *Id.*

In order to determine the scope of environmental review for the purposes of segmentation review, agencies “shall” consider 3 types of actions: those that are “connected,” “cumulative,” or “similar.” 40 C.F.R. § 1508.25 (a); *Delaware Riverkeeper Network*, 753 F.3d at 1314-1315.

- Actions are considered “connected” where they are “closely related” and, (i) automatically trigger other actions which may require environmental impact statements, (ii) cannot or will not proceed unless other actions are taken previously or simultaneously, (iii) are interdependent parts of a larger action and depend on the larger action for their justification. *Id.* at § 1508.25(a)(1).
- Actions are “cumulative” if, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” *Id.* § 1508.25(a)(2). NEPA requires “agencies to consider the cumulative impacts of proposed actions.” *NRDC v. Hodel*, 865 F.2d 288, 297 (D.C. Cir. 1988) (“Hodel”); *see also TOMAC v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006). A cumulative impact analysis requires consideration of the impact of a proposed project in light of that project’s interaction with the effects of “past, current, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7. “[A] meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions--past, present, and proposed, and reasonably foreseeable--that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.” *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002). NEPA requires such an analysis because “[e]ven a slight increase in adverse conditions . . . may sometimes threaten harm that is significant . . . may represent the straw that breaks the back of the environmental camel.” *Id.* at 343.
- Actions are “similar” if, “when viewed with other reasonably foreseeable or proposed agency actions, [they] have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” *Id.* § 1508.25(a)(3).

Therefore, when determining the contents of an environmental assessment/impact statement an agency must consider all “connected actions,” “cumulative actions,” and “similar actions.” 40 C.F.R. § 1508.25(a).

The second test identified by the D.C. Circuit to determine whether a project has been unlawfully segmented, “courts have considered such factors as whether the proposed segment (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives[.]” *Id.*

Guided by these tests, neither FERC nor PennEast can frame the parameters of its environmental review too narrowly, as was done in PennEast’s letter. The PennEast Pipeline will further facilitate the development of new gas drilling wells, access roads, gathering lines, compressor stations, and other supporting infrastructure, which will further degrade our environment. Therefore, FERC must consider the impacts of the Project in the context of existing and reasonably foreseeable shale development, including the Marcellus Shale and Utica Shale as well as other shales identified by the US Geological Survey, which

includes but is not limited to the hundreds of miles of gathering and transportation pipelines and associated infrastructure (such as valves and compressor stations) that have been and will need to be constructed to move the gas from the thousands of wells that have been and will be drilled to interstate markets. FERC will need to determine how many wells the capacity of the project supports, and model the environmental impact of the construction and operation of those wells. Such an estimate would also include an examination of the associated infrastructure supporting the identified wells. FERC will also need to consider other induced development such as the development of small-scale power generation facilities being developed along the pipeline.

Additionally, FERC should examine the cumulative impact of the multiple utility and other linear projects that are being proposed or constructed in the Delaware River watershed and other watersheds, environments and communities in the region. For example, there are significant concerns related to the cumulative impacts of the continuous water crossings and wetlands disturbance that pipeline construction activity has on the health and vitality of the Delaware River basin and its tributaries. This is particularly a concern with the PennEast Pipeline, as many of the same subwatersheds subject to development as a result of PennEast were recently, or could be in the future, impacted by construction activity from other pipelines.

Among the pipeline projects that are, will, or have impacted the same subwatersheds as PennEast, are the following:

- Transco's Leidy line system upgrade projects which include the Northeast Supply Link project, the Southeast Leidy Expansion project, the Atlantic Sunrise project, and the Diamond East project. These projects all upgrade portions of Transco's Leidy line system, which parallels PennEast's proposed project.
- The several other pipeline projects that have been concentrated in the same sub watersheds as the PennEast line, including but not limited to: Texas Eastern's TEAM 2014 Project and Columbia's East Side Expansion Project.
- As articulated in public comment submitted for the record and referred to by PennEast in their flawed definition of the NEPA analysis required for its project: "Transco's Garden State project involves the construction of a new compressor station and delivery point on Transco's Trenton Woodbury Lateral in Burlington County, New Jersey and uprates to and replacements of compressor units at an existing compressor station on the Trenton Woodbury Lateral in Mercer County, New Jersey. NJNG's SRL project extends from Transco's Trenton Woodbury Lateral in Burlington County, New Jersey to NJNG's existing transmission system in Ocean County, New Jersey. Neither Transco's Garden State project nor NJNG's SRL project interconnects with the PennEast Project. CYNOC's Marc II project is proposed to extend from existing points on its system to delivery points with PennEast and Transco in Luzerne County, Pennsylvania."

These projects do not occur in a vacuum. Each project individually depletes the natural and scenic resources of the region as well as adversely affecting the human communities and environments they directly or indirectly impact, and the combined impact becomes increasingly more severe, unavoidable, unmitigatable, and irreversible. As such, the Commission must carefully examine these projects holistically in order to satisfy the requirements of NEPA.

The direct, cumulative, and foreseeable impacts resulting from the exportation of the PennEast transported gas must also be considered. PennEast will interconnect with a pipeline system that could transport its shale gas to the recently approved Cove Point LNG export facility. Specifically, PennEast will have an interconnect with Transco's mainline in Mercer County, NJ, a pipeline that intersects with the

Pleasant Valley interconnect in Fairfax County Virginia, which in turn could deliver the gas to Dominion's Cove Point Pipeline. Given that natural gas can sell for as much as four times the price overseas as compared to domestically, it is both reasonable and foreseeable that PennEast transported gas will be transported to Cove Point for export.

Furthermore, by creating an entirely new ROW for this Project (whether or not some portions are collocated with other infrastructure such as powerlines) the PennEast pipeline would be creating a new industrial corridor that will foreseeably be used by future PennEast pipeline upgrades and/or other projects seeking to pass through the region. A quick review of other major pipeline corridors in the region support this assertion as natural gas pipeline operators including Columbia, Tennessee Gas Pipeline, Texas Eastern, and Transcontinental have, all within the last three years, added looping segments to their pipelines. As such, the NEPA document must account for the potential expansion of the ROW to accommodate future upgrades.

In *Delaware Riverkeeper Network v FERC*, the D.C. Circuit made abundantly clear that the breadth of NEPA review requires much more than the very limited scope of consideration PennEast seeks to assert. PennEast is very obviously trying to mislead the public, agencies with regulatory authority over its project, politicians and other community leaders who are paying attention to the project and docket, and FERC itself.

Indeed, in addition to mischaracterizing the tests for cumulative and connected actions in its response letter, PennEast fails to even mention – let alone provide any explanation – as to why the projects cited above as well as in other comment letters, are not similar actions pursuant to 40 C.F.R. § 1508.25(a), which they undoubtedly are. As the DC Circuit court made clear, a cumulative impacts analysis pursuant to NEPA requires greater consideration than just the impacts of the proposed project, and must include the all of the projects and impacts cited above and in other comments on the docket. PennEast's mischaracterization of the NEPA analysis required for its proposed pipeline project must be corrected for the record.



Maya K. van Rossum
the Delaware Riverkeeper