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**Via electronic filing**

Secretary Kimberly D. Bose  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

Re: PennEast Pipeline Company LLC  
PennEast Pipeline Project  
Docket # CP15-558-000

Dear Ms. Bose:

On behalf of our clients, Intervenor New Jersey Conservation Foundation and Stony Brook Millstone Watershed Association, we urge the Federal Energy Regulatory Commission ("FERC") to suspend the preparation of a draft Environmental Impact Statement ("DEIS") for the above-referenced application. The FERC still does not have key information that would allow it to take the hard look required by the National Environmental Policy Act ("NEPA"). PennEast's most recent failure to provide a complete response to the FERC's attempts to acquire necessary environmental data follows months of similar disregard for the FERC's NEPA obligations.

Almost two years have passed since PennEast began the pre-application process for a Certificate of Public Convenience and Necessity, and yet PennEast admits in its response to the FERC's latest environmental information request that information is *still* missing -- even in cases where PennEast has survey access. Importantly, PennEast has also failed to provide other critical environmental data, such as that requested by the New Jersey Department of Environmental Protection ("NJDEP"). In short, PennEast's response is woefully inadequate.

We have begun our analysis of PennEast's May 16<sup>th</sup> submission, and set out below major failures or omissions in that submission. We are also in the process of preparing more detailed comments, and anticipate submitting such analyses in the near future. In the meantime, however, we respectfully request that the FERC suspend its preparation of the DEIS and withdraw its Notice Of Schedule For Environmental Review.

## 1. PennEast Fails to Collect Adequate Data

PennEast's collection of field survey data is deficient. The FERC does not have an accurate measure of the environmental, historic or aesthetic values of the vast majority of the resources that will be damaged or destroyed by the pipeline, including multiple crossings of 32 high value streams ("antidegradation," "Category 1" or "C-1" streams) in New Jersey and other impacts to hundreds of acres of Federal, State, County, Municipal Lands, and Public Conservation Areas. Without an accurate measure of resource values, it is impossible for the FERC to fulfill its statutorily mandated hard look at pipeline construction impacts under NEPA.

PennEast acknowledges it has a significant amount of surveying to complete on areas to which they have been granted survey access. In fact, of this accessible project area, only 7% of migratory bird surveys are complete; only 10% of forest raptor callback surveys are complete; and, only 12% of breeding bird surveys are complete.<sup>1</sup> The FERC cannot prepare a thorough and complete DEIS until PennEast provides these outstanding data. Thereafter, the FERC and the public must have an opportunity to vet the PennEast's submission for completeness and accuracy before the DEIS is issued.

Furthermore, PennEast admits that the vast majority of its New Jersey environmental<sup>2</sup>, historic and archeological surveys were *not* conducted in the field. Instead of field surveys, PennEast attempts to rely on so-called "desktop surveys." Desktop surveys cannot accurately capture the habitats, historic and archaeological resources that will be impacted or destroyed by the pipeline. PennEast's method of data collection does not provide the best available data as required by NEPA. It also conflicts with the United States Army Corps of Engineers' ("USACOE") comments to the FERC that required a waterbody by waterbody crossing analysis to be performed by PennEast and the FERC.<sup>3</sup> The USACOE specifically requested an alternative analysis addressing "practicable alternatives to the discharge of dredged and fill material for each individual crossing of a wetland and/or waterbody."<sup>4</sup>

Finally, this region's economy is dependent on tourism, much of which revolves around scenic and visual natural resources. PennEast has not completed the visual resources survey required under the Natural Gas Act that has been consistently demanded by stakeholders. A complete visual resources survey is

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<sup>1</sup> PennEast May 17, 2016 Response, p. 68.

<sup>2</sup> Streams, wetlands, as well as rare, threatened and endangered animal and plant species.

<sup>3</sup> Letter from Army Corps of Engineers, Philadelphia District December 9, 2015.

<sup>4</sup> Id.

necessary to measure the visual impacts caused by the proposed construction and operation of the PennEast pipeline.<sup>5</sup>

## **2. PennEast Fails To Provide A Complete Alternatives Analysis**

The FERC requested numerous corrections and explanations on alternatives to PennEast's proposed route. One fundamental problem is that PennEast chose the major points of the route, including the pipeline's southern terminus with the Transco pipeline in Mercer County New Jersey *before* collecting any environmental data. The September 2015 Resource Reports, and much of the subsequent PennEast submissions, have attempted to justify the predetermined route without site-specific environmental findings.

For example, PennEast's proposed route cuts through two properties in the Gravel Hill Preserve in Hunterdon County (NJ), managed by the New Jersey Natural Lands Trust ("NJNLT"), a New Jersey state agency tasked with preserving natural lands and protecting natural diversity.<sup>6</sup> In March 2015, NJNLT determined that the pipeline would destroy the habitats of the bobcat, a state-endangered animal, and the wild comfrey, a rare perennial flowering plant. NJNLT therefore requested that PennEast reroute the pipeline to avoid harming these species. PennEast assured NJNLT that it would do so. However, PennEast has not fulfilled this promise, and continues to propose a pipeline route that presents a grave danger to a critical habitat.

Additionally, the FERC requested further information about alternatives to avoid a Tier 1 public water supply drinking well along Everittstown Road, Frenchtown, Hunterdon County. Rather than provide alternatives that avoid the well, PennEast simply relies on professed contractor adherence to spill control plans to prevent contaminating the drinking water. The only other alternatives PennEast mentions would result in impacts to forested wetlands, as well as impacts to a commercial structure, a horse farm and a Green Acres parcel. PennEast's so-called alternatives are designed to make the proposed route appear reasonable.<sup>7</sup>

PennEast has failed to consider alternatives that address the findings of the geophysical investigation work completed to date: the data strongly suggests numerous karst formations of varying sizes at shallow depths along the preferred

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<sup>5</sup> 18 CFR 380.12(j) requires a description of the present uses of land and the "aesthetic value of the land and its features".

<sup>6</sup> NJNLT 12.17.15 letter. Accession # 20151218-5061.

<sup>7</sup> FERC Data Request 7 and PennEast response, May 17, 2016 Response, Accession # 20160516-5382, pp. 141-142.

route. In these karst areas, there is a high risk of subsidence, including sinkhole collapse leading to catastrophic pipeline rupture and compromising the surrounding ecosystems. Increased pipeline failure rates due to karst geology present unacceptable health and safety risks. These geologically unstable areas should be avoided, not fitted with PennEast's questionable mitigation measures. Alternate routing options should be explored that avoid shallow karst formations.

Finally, PennEast has also failed to adequately consider the following no-action and no-build alternatives:

- Energy efficiency and demand response, which are: (1) cheaper; (2) less carbon intensive; and (3) less risky for captive ratepayers than a new natural gas pipeline.<sup>8</sup>
- Renewables, which the U.S. Energy Information Administration has concluded are competitive with natural gas, despite PennEast's unsubstantiated assertion to the contrary.<sup>9</sup><sup>10</sup>
- LNG storage to meet peak demand: incredibly and inaccurately, PennEast has dismissed LNG storage as being in a "developmental stage," notwithstanding the fact that NJNG, a PennEast consortium member, already uses LNG to satisfy twenty percent of its peak demand design.

### **3. PennEast Fails To Complete A Stream-By-Stream Analysis**

Without any site-specific justification, as the FERC has expressly noted, PennEast proposes to place temporary workspaces and equipment storage areas within fifty feet of numerous high value antidegradation streams.<sup>11</sup> In order to protect these extremely valuable ecosystems and protect water quality, New Jersey law regulates disturbances within these streams's 300-foot buffer.<sup>12</sup> Moreover, due to the geology of Hunterdon and Mercer County's many of the encroachments in these areas occur on steep slopes. PennEast acknowledges, "[t]he disturbance of areas containing steep slopes can trigger increased erosion and sedimentation, which could result in a degradation of surface water quality".<sup>13</sup>

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<sup>8</sup> "Power System Reliability in New England: Meeting Electric Resource Needs in an Era of Growing Dependence on Natural Gas", Analysis Group, Inc. November 2015. <http://www.mass.gov/ago/docs/energy-utilities/teros-study-final.pdf>

<sup>9</sup> EIA Annual Energy Outlook 2015, p. 9.

<sup>10</sup> PennEast Resource Report 10, Accession # 20150925-5028, p. 10-6.

<sup>11</sup> PennEast May 17, 2016 Attachment G-2.

<sup>12</sup> N.J.A.C. 7:8-5.5(h)(1)(i)

<sup>13</sup> PennEast Resource Report 2.

In addition, PennEast proposes temporary workspaces within fifty feet of several wetlands that are regulated under New Jersey law<sup>14</sup> and the FERC's policy.<sup>15</sup> PennEast is required to provide site-specific justifications for these variances from FERC policy. PennEast's failure to provide any site-specific information precludes the FERC from discharging its duties.

The FERC acknowledges that the USACOE and NJDEP have responsibility to issue permits under the federal Clean Water Act ("CWA"), for stream and wetland crossings in Pennsylvania and New Jersey, respectively. The Pennsylvania Department of Environmental Protection ("PADEP") and NJDEP also have the duty to consider the seriousness of the impacts to their respective surface waters when evaluating CWA section 401 applications for water quality certifications. While the FERC's NEPA review of these impacts is not as demanding as the aforementioned CWA obligations, the USACOE and NJDEP has specifically requested that the DEIS include "site specific impacts"<sup>16</sup> and "comprehensively evaluate... each individual crossing."<sup>17</sup> Furthermore, the FERC is obligated not to "affect the [states] rights" under the CWA.<sup>18</sup>

Issuing a DEIS based on PennEast's desktop surveys would neither be an efficient use of the FERC's resources, nor defensible under NEPA. PennEast should submit site-specific environmental analysis for workstation, boring and horizontal direct boring placement tailored to each site's unique characteristics -- which cannot be ascertained from desktop surveys. Once the FERC has this information, it can take a hard look under NEPA.

#### **4. PennEast's Arsenic Study is Flawed**

PennEast relies on a biased arsenic study that leaves open the disturbing possibility that the pipeline will exacerbate the documented unsafe levels of arsenic contamination in drinking water wells.<sup>19</sup> The study analyzes large grain particle size distribution (PSD) but *ignores* the grain sizes that common scientific protocol requires to be used for this type of analysis. The fine material, not the larger grain sizes, governs the total arsenic leachability. Thus, PennEast's arsenic study asks and answers the wrong question. This alone invalidates the study.

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<sup>14</sup> New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-16(b)

<sup>15</sup> FERC Policy on Wetland and Waterbody Construction and Mitigation Procedures II(A)(1), <http://www.ferc.gov/industries/gas/enviro/procedures.pdf>

<sup>16</sup> Letter from NJDEP to PennEast, November 28, 2015, Accession # 20151104-0045.

<sup>17</sup> Letter from Army Corps of Engineers, Philadelphia District December 9, 2015.

<sup>18</sup> 15 U.S.C. § 717b(d)

<sup>19</sup> PennEast May 17, 2016 Attachment 2-1.

## **5. PennEast Fails to Address Greenhouse Gas (GHG) emissions**

Since PennEast has made public assertions in the media that its project will have positive benefits by reducing GHG emissions, the company should be required to provide the FERC and the public with a lifecycle assessment measuring the GHG emissions of the pipeline.<sup>20</sup> Moreover, the EPA has indicated that it believes the FERC's environmental analysis must include such analysis.<sup>21</sup> PennEast is familiar with conducting GHG emission lifecycle assessments, having done one for the natural gas powered compressors to be installed at the Kidder Compression Station.<sup>22</sup>

## **6. PennEast Has Refused to Cooperate with Government Agencies**

New Jersey Historic Preservation Office ("NJ SHPO") wrote to PennEast on March 18, 2016. NJ SHPO repeatedly stated that they do not concur with PennEast's findings and methodologies and asked for further consultation. The NJ SHPO letter included a long list of sites that PennEast had failed to investigate properly. Also, Delaware Township Historic Commission has repeatedly asked to be a consulting party: the FERC's letter of May 17, 2016 confirmed that PennEast's December 14, 2015 representation to the FERC that PennEast had consulted with Delaware Twp. is not true.<sup>23</sup>

In October 2015, NJDEP sent correspondence to PennEast, stating that the agency considered PennEast's application to be grossly incomplete:

...the Department's comments on the Final Resource Reports is limited because of the lack of specific, technical information for this project... The Department has not been presented with information detailing site-specific impacts, mitigation and restoration plans.<sup>24</sup>

The public record does reflect PennEast's response to NJDEP. We presume that data gaps still exist.

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<sup>20</sup> PennEast's website states that "Electricity generated through natural gas means cleaner air through reduced carbon emissions". <http://penneastpipeline.com/faq/>  
A PennEast radio ad states "'As more clean burning natural gas generates our electricity, carbon emissions are dropping to their lowest levels in two decades", and alleges that PennEast will lead to "cleaner air."

<sup>21</sup> EPA Comment on FERC Draft Guidance Manual For Environmental Report Preparation For Applications Filed Under the Natural Gas Act, Docket #

<sup>22</sup> PennEast February 22, 2016 correspondence, Accession # 20160222-5257, pp. 30-32.

<sup>23</sup> See FERC letter dated May 17, 2016 to Mayor Lockwood.

<sup>24</sup> NJDEP October 28, 2015 correspondence, Accession # 20151104-0045

In April 2016, the Pennsylvania Department of Environmental Protection (“PADEP”) sent correspondence to PennEast listing fifty-six deficiencies in PennEast’s application. PADEP further stated that PennEast’s application would be further delayed by the company’s failure to submit complete and accurate information: “Since you did not submit a complete and/or technically adequate application, DEP’s Permit Decision Guarantee is no longer applicable to your application.”<sup>25</sup>

#### **7. PennEast Proposes to Destroy Habitats With Irreplaceable Environmental Value and Fails to Protect Preserved Lands Saved by Millions of Taxpayer Dollars.**

Under the best of construction conditions, even implementing “best management practices,” impacts occur throughout the construction site and propagate downstream. Inevitably, with at least 61 stream crossings (32 C-1 crossings), rainfall events will cause additional, unexpected, and overwhelming high water flow rates and erosion conditions at many of the stream crossings. No construction practices are capable of successfully controlling the sediment loads that will occur at many of these stream locations especially those on steep slopes. Stream and wetland habitat degradation through soil compaction, increased stormwater runoff volume, erosion, and siltation will be permanent and irreversible. Such impacts cannot be successfully mitigated, either on or off-site.

Contrary to PennEast’s assertion that there will be no permanent wetland loss from construction of the Project, conversion of palustrine forested wetlands and palustrine scrub/shrub wetlands into palustrine emergent wetlands represents a significant loss -- and the environmental reality of ‘temporary disturbances’ is that they become permanent.<sup>26</sup>

New Jersey has a number of interior forest habitat species that have suffered steep decline over the last decade, leading to their listing as rare (state special concern, threatened or endangered). These listings have increased as more pipelines have been built because the type of harm from these linear projects -- loss of forest interior -- simply cannot be mitigated, either on-site or off-site. Once these forests are opened to sunlight, increased invasive species, increased predation and temperature changes will alter their fundamental

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<sup>25</sup> Accession # 20160516-0079.

<sup>26</sup> See PennEast Resource Report 2, (“For temporarily disturbed wetlands, restoration and revegetation following completion of construction will be performed in place, in kind with the appropriate wetland plantings.”)

ecological characteristics.<sup>27</sup> Importantly, many of these forested areas that will be impacted by the pipeline are unique or significant in that they are either old growth or possess high floristic quality, rare plants or rare wildlife habitats.

PennEast fails to provide measures to avoid impacts to preserved lands. The parcels that the pipeline proposes to traverse will lose environmental functions and conservation values. These properties were preserved because they had essential ecosystem functions and services as well as irreplaceable conservation values associated with the uniqueness of habitat, special waterbodies and/or rare species. The preservation process ranks and evaluates property for its conservation and environmental values. The construction and operation of the pipeline will compromise these values because the ecosystems and habitats these properties were preserved to protect will be irreparably harmed. Mitigation or compensation cannot replace these values. Just as importantly PennEast's proposed construction through these properties violates the restrictions on further development imposed by the Green Acres or Farmland Preservation programs. These restrictions are at the heart of the preservation program and were agreed to and welcomed by the property owners. Ignoring these restrictions violates the intent of these programs. Buying replacement lands at any ratio does not mitigate these harms for the loss of rare ecosystems, communities or habitats.

## **8. PennEast Failed to Address Cumulative Impacts**

One example of PennEast's failure to address cumulative impacts involves habitat fragmentation at the Ted Stiles Preserve at Baldpate Mountain (the "Preserve"). PennEast states that "the Project will be collocated with existing, previously disturbed, and maintained ROWs for significant forested portions of the route..." However, PennEast fails to account for the clearing of a 150 to 160 foot right of way through a mature forest parallel but not directly adjacent to the existing powerline corridor over the Preserve. This is a significant cumulative impact to the population of several neotropical migrant birds, Kentucky warbler and the hooded warbler. Both of these species currently nest at the Preserve.

The Kentucky warbler and the hooded warbler are both species of special concern and have undergone a dramatic decline in population in recent years due to a number of factors including forest fragmentation, brood parasitism by cowbirds, loss of understory due to overgrazing by deer, and predation of nests.

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<sup>27</sup> Both the long-tailed salamander and the red shouldered hawk are included in the listed of "New Jersey's wildlife species of greatest conservation need that depend upon forests." See New Jersey Department of Environmental Protection, New Jersey Statewide Forest Resource and Assessment Strategies (2010), <http://www.state.nj.us/dep/parksandforests/forest/docs/NJFSassessment.pdf>.

The PennEast pipeline will impact these species in several ways including direct impact, facilitating the spread of invasive species and increasing the reach of cowbird parasitism into the forest. This is an example where past use has already impacted these species and that additional forest impact will further jeopardize the existence of these species. This warrants a thorough cumulative impact analysis to determine its breeding status in Mercer County and to objectively assess the impacts that further loss of forest habitat will have on these species.

### **Conclusion**

We are in the process of preparing a complete comment on the environmental impact of the proposed pipeline. At this juncture, however, we respectfully urge the Commission to suspend preparation of the DEIS and withdraw its Notice Of Schedule For Environmental Review until PennEast provides complete and accurate answers to the questions that the FERC and the public has been asking since September 2014.

Sincerely,



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