



State of New Jersey

STATE AGRICULTURE DEVELOPMENT COMMITTEE
HEALTH / AGRICULTURE BUILDING
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Douglas H. Fisher
Chairman

Celebrating 30 Years of Preserving Farmland

and

Protecting the Right to Farm

December 22, 2015

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

Re: SUPPLEMENTAL COMMENTS - Preparation of an Environmental Impact Statement/
Comments on Agricultural Impact Associated with the PennEast Pipeline Project
[PennEast Pipeline Company, LLC], Docket No. CP15-558-000

Via: "eFiling"

Dear Ms. Bose:

The State Agriculture Development Committee (SADC) has been advised that the Federal Energy Regulatory Commission (FERC) is engaged in the preparation of the Environmental Impact Statement as part of FERC's scoping process in connection with the proposal by PennEast Pipeline Company, LLC ("PennEast") to construct the PennEast Pipeline Project ("the project"). The SADC submitted initial comments via FERC's "eFiling" system on February 27, 2015 and the SADC reserves the right to submit additional comments as the project advances.

For consideration in your review of issues associated with the Environmental Impact Statement, the SADC repeats its February 27, 2015 comments as though set forth herein at length. A copy of the SADC's initial "eFiling" submission to FERC is attached hereto and incorporated herein by reference.

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The New Jersey Agriculture Retention and Development Act (N.J.S.A 4:1C-11, et seq., hereinafter “Act”) provides for the protection of farmland in Agricultural Development Areas (ADAs) to minimize impacts of non-agricultural development on the agricultural resources of the state. The Act provides even stronger protection for publicly-funded, permanently preserved farmland by requiring public bodies to demonstrate that there is no immediately apparent feasible alternative to condemnation of preserved lands for public use. While the SADC acknowledges that FERC has superseding federal authority that may enable PennEast to undertake construction activities on lands in ADAs, or preserved farms, the SADC believes FERC wherever feasible should respect the State’s interests and investment in protecting preserved farmland, and avoid and/or minimize project impacts to lands in ADAs to the greatest extent possible.

Based on a thorough review of the information provided in the “Application of PennEast Pipeline Company, LLC for Certificates of Public Convenience and Necessity and Related Authorizations,” dated September 24, 2015, the SADC offers the following comments and concerns to help focus the scoping process and the analysis in the Environmental Impact Statement on the important agricultural impacts associated with the proposed project alignment.

Project Alternatives

The SADC has reviewed the alternative routes under consideration by PennEast and FERC as described in Resource Report 10. The proposed alignment and alternatives presented make little attempt to avoid farmland, and preserved farmland in particular. Additionally, efforts to minimize the number of affected landowners and impacts on individual agricultural operations are not apparent in the routing. Additional alternatives that utilize existing roadways and otherwise minimize impacts to ADA properties and preserved farms have not been provided and given consideration. Justification for agricultural impacts should be provided via a thorough analysis of technical feasibility, environmental compromises, design waivers, safety considerations and cost estimates.

General Concerns

The SADC requests PennEast and FERC take the following specific concerns into account in the assessment of the current proposed alignment.

- 1. Preserved farmland should only be utilized if no feasible alternative exists.** This includes cases where a pre-existing utility right of way exists on preserved farmland. Use of a pre-existing utility easement area should not be the default routing where alternatives to preserved farmland exist. For illustrative purposes please consider Block 60, Lot 12 in Delaware Township (MP 98.6 to 99.1) where a minor route amendment could avoid this farm in its entirety.

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- 2. Preserved farmland should not be used for temporary storage and staging areas for construction equipment and materials and other ADA lands in production should be avoided to the extent practicable.** Typically projects that require FERC approval are designed to avoid farmland preserved using federal farmland protection funds (via the United States Department of Agriculture – “USDA”) due to the high degree of scrutiny required to achieve approvals of such projects. The same consideration should be extended to farmland that has been permanently protected through New Jersey’s Farmland Preservation Program. Such uses, even on a temporary basis, are a violation of the deed of easement necessitating condemnation. As an example, the SADC is particularly concerned with the proposed use of a preserved farm for 15.6 acres of temporary workspace (proposed Pipeyard #7, MP 101.3) on Block 8, Lot 20 in West Amwell Township, Hunterdon County).
- 3. Final pipeline alignments should minimize the number of affected landowners and follow existing property lines to reduce individual property impacts.** For example, at present, the alignment between MP 94.4 to 96.7 in Delaware Township impacts 9 ADA parcels of which 6 are contiguous preserved farms. Efforts must be made to avoid this core agriculture preservation area with an alignment that minimizes individual landowner impacts.
- 4. Where necessary, pipelines crossing farm fields should utilize the edge of tillable areas whenever possible, and never cross fields on a diagonal, in order to minimize impacts to agricultural operations, field drainage and siting of future agricultural infrastructure.** Examples of where impact could be minimized include Block 24, Lots 8 & 8.01 and Block 23, Lot 17 in Kingwood Township (MP 91.6 to 92.6) and Block 15, Lots 3 & 7 (MP 82.4 to 83.1) and Block 18, Lots 9 & 9.01 (MP 85.7 to 86.7) in Holland Township.
- 5. Impacts to farm infrastructure such as wells, irrigation and drainage systems, fencing, farm markets, farm lanes, and agricultural buildings should be avoided and/or minimized to the greatest extent possible and scheduled to avoid peak season impacts.**
- 6. To minimize loss of prioritized agricultural resources, any future wetland mitigation sites associated with the project must be prohibited on preserved farmland and avoid ADA lands in production to the extent practicable.**

The SADC believes that natural gas pipelines can significantly limit a farm’s agricultural use (no nurseries or orchards) and farm infrastructure (buildings and roads/farm lanes). Further, the agricultural industry is continually evolving and it is not possible to anticipate the extent of future limitations. It is therefore critical that farmland and ADA impacts be avoided and/or

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minimized whenever possible, and preserved farmland should be avoided if there are reasonably feasible alternatives available.

Thank you for the opportunity to comment and engage with FERC staff during the scoping process. The SADC looks forward to continuing to work with FERC, PennEast, NJDEP, Hunterdon and Mercer Counties, the Townships and the agricultural community to ensure that agricultural interests are represented in the review and construction process.

Sincerely,

A handwritten signature in blue ink that reads "Susan E. Payne". The signature is written in a cursive style with a large initial 'S'.

Susan E. Payne, AICP/PP
Executive Director, SADC

c: Brian D. Smith, Esq., SADC Chief of Legal Affairs
Allison Reynolds, Esq., SADC Legal Specialist
Ruth Foster, NJDEP Office of Permit Coordination and Environmental Review
Rick Steffey, Hunterdon CADB Administrator
Daniel Pace, Mercer CADB Administrator



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February 27, 2015

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

Re: COMMENTS - Notice of Intent to Prepare an Environmental Impact Statement for the
Planned PennEast Pipeline Project [PennEast Pipeline Company, LLC (PennEast)],
Docket No. PF15-1-000

Via: "eFiling"

Dear Ms. Bose:

The State Agriculture Development Committee (SADC) has been advised that the Federal Energy Regulatory Commission (FERC) invited comments on the above Notice of Intent as part of FERC's scoping process in connection with the proposal by PennEast Pipeline Company, LLC (PennEast) to construct the planned PennEast Pipeline Project in Hunterdon and Mercer Counties, New Jersey ("the project"). The SADC reserves the right to submit additional comments as the project advances.

The project may involve construction activities on New Jersey farmland either preserved pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-1, et seq. (ARDA), or lands identified for inclusion in an agricultural development area (ADA) by a county agriculture development board (CADB or board). Accordingly, please accept these comments addressing relevant state statutes, regulations and SADC policies governing the eminent domain takings of preserved farms and of properties within an ADA necessitated by the construction of

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power generating or distribution projects within and outside of preexisting utility company easements. Please note that these statutes, regulations and policies also apply to public bodies or public utilities that intend to advance grants, loans, interest subsidies or other funds within an ADA for the construction of dwellings, commercial or industrial facilities, transportation facilities or water or sewer facilities to serve nonfarm structures.

While the SADC understands that there may be superseding Federal authority providing PennEast with the ability to undertake construction activities on ADA lands or preserved farms, we believe it is important to bring to FERC's attention the following matters as part of the scoping process.

Condemnation of property within an ADA

N.J.S.A. 4:1C-19a. requires a "public body or public utility" to file a notice of intent (NOI) with the CADB and SADC *prior to* exercising the power of eminent domain for acquisition of land in an ADA "for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures. . ." The statute also requires the public body or public utility to file the NOI with the CADB and SADC *prior to* "advanc[ing] a grant, loan, interest subsidy or other funds within an [ADA] for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures. . ." Therefore, even if PennEast intends to construct the project completely within existing rights-of-way, PennEast's activities still fall within the statute's ambit due to the company's expenditure of funds within an ADA. The notice of intent includes a statement of reasons for the proposed project; an alternatives analysis; and information about the project and its impacts on agricultural activities within the ADA. See N.J.A.C. 2:76-7.3 and 7.4.

Within 30 days of receiving a complete NOI, the CADB and SADC review the project "to determine its effect upon the preservation and enhancement of agriculture in the [ADA], the municipally approved eight-year program, and upon overall State agricultural preservation and development policies." N.J.S.A. 4:1C-19b. If the CADB or SADC find that the proposed project will cause unreasonably adverse effects on the ADA or on statewide preservation and development policies, then the CADB or SADC may direct that no action be taken by the public body or public utility for 60 days, during which time a public hearing is held, and a report for public distribution is prepared, by the board and/or SADC.

In a municipally approved eight-year program, landowners can voluntarily restrict development on their land for a period of eight years. Although landowners receive no payment for the restriction, they are eligible to apply for cost-sharing grants for soil and water conservation projects and for other benefits and protections afforded permanently preserved farms under the ARDA.

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Condemnation of preserved farms

N.J.S.A. 4:1C-25 recognizes the right of a “public body” to exercise eminent domain authority for the taking of preserved farmland or farms in a municipally-approved eight year program to construct “dwellings, commercial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures,” but only upon a written declaration by the Governor “that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative.”

That the Legislature did not include utility companies within the contemplation of “public body” in section 25 of the ARDA is apparent in N.J.S.A. 4:1C-19, which allows a “public body *or public utility*” to exercise eminent domain authority, under certain circumstances, in ADAs [emphasis added].

Accordingly, no utility company can enter upon any preserved farms or farms enrolled in a municipally approved eight-year program from outside that company’s existing rights-of-way for the purpose of its proposed energy generation or distribution expansion plan.

Temporary entry onto properties within an ADA

The ARDA’s condemnation process furthers the strong public policy, expressed in the legislative findings accompanying enactment of the statute, of encouraging the maintenance of agricultural production and a positive agricultural business climate. The ARDA’s pre-condemnation notice and hearing requirements also recognize that ADA lands, eligible for preservation by purchase of a development easement with substantial public funds, should remain inviolate except under the limited circumstance in which clear proof exists of another overriding public purpose.

Therefore, the SADC considers the temporary use of an ADA-designated parcel in connection with the above-described construction activities to be an “acquisition of land” triggering the notice and hearing requirements of Section 19 of the ARDA. Acquisition occurs even if the utility project involves a traffic detour onto roadways within a subject farm, and regardless of the temporary and/or emergent nature of the project.

Identification of affected farmland

The SADC strongly recommends that PennEast identify, by lot and block number, all properties that will be affected by the expansion project and proposed construction activities that are located on preserved farms or ADA-designated lands so that eminent domain issues can be addressed comprehensively.

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Use of environmental impact statements

Should PennEast decide to submit a draft environmental impact statement in conjunction with the NOI requirements, it must pay close attention to N.J.A.C. 2:76-7.4.

CADB contacts

A current list of CADB administrators and their telephone and email contact information may be found on the SADC website at:

<http://www.nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html>.

The New Jersey Agriculture Retention and Development Act (N.J.S.A 4:1C-11, et seq.) provides for the protection of farmland in ADAs similar to the consideration given to the protection of environmental resources such as wetlands and endangered species habitat. The ARDA provides even stronger protection for publicly-funded, permanently protected farmland by requiring public bodies to demonstrate that there is no immediately apparent feasible alternative. While the SADC acknowledges that FERC has superseding federal authority providing PennEast with the ability to undertake construction activities on lands in ADAs or preserved farms, the SADC believes FERC should respect the interests of the State in protecting preserved farmland in perpetuity and avoiding or minimizing project impacts to lands in ADAs to the greatest extent possible.

Based on a thorough review of the information provided in the PennEast Resource Reports 1 and 10 – Alternatives, dated November 2014 and numerous meetings and discussions with FERC staff, PennEast representatives, Hunterdon and Mercer County officials, representatives from Holland, Alexandria, Kingwood, Delaware, West Amwell and Hopewell Townships, landowners and farmers in recent months, the SADC offers the following comments and concerns to help focus the scoping process and the analysis in the Environmental Assessment on the important agricultural and environmental issues.

Hunterdon and Mercer County Context

The six (6) municipalities and the two (2) counties in the New Jersey portion of the PennEast project corridor have for many decades developed an exceptional commitment to the preservation of agricultural, environmental and historic resources that includes extraordinary investments in the preservation of the land base, the agricultural industry, tourism and the rural character of the region. A total of 195 farms comprising nearly 15,000 acres of land in Holland, Alexandria, Kingwood, Delaware, West Amwell and Hopewell Townships have been permanently preserved through the State Farmland Preservation Program over the last 30 years at

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a total cost of over \$122 million, including a State cost share of more than \$83 million. Another 4,400 acres of agricultural land in these six (6) municipalities have been protected through the preservation of more than 21,000 acres of important open spaces and parks. In addition to the substantial public expenditures for open space and recreational lands in this region, many communities have worked tirelessly to preserve the area's historic resources and districts, many of which are on the State and National Registers of Historic Places. Collectively, 31.9% of the acres in active agricultural production in these six (6) municipalities has been permanently preserved to date.

In response to significant development pressures, both Hunterdon and Mercer Counties developed aggressive farmland and open space preservation programs. Dedicating a portion of their property tax revenues to provide millions of dollars each year for preservation investments, Hunterdon and Mercer Counties and all six (6) of the New Jersey municipalities in the project corridor leveraged federal, state, county, municipal and non-profit resources to acquire lands for parks and open spaces as well as to purchase development rights to thousands of acres of highly productive farmland.

In 2008, both Hunterdon and Mercer Counties adopted Comprehensive Farmland Preservation Plans, pursuant to N.J.S.A. 4:1C-43.1 and the SADC regulations at N.J.A.C. 2:76-17, to help preserve agriculture as an industry, to strategically target the most important farmlands and to coordinate farmland preservation investments.

http://www.co.hunterdon.nj.us/pdf/cadb/FarmlandPlan/FARMLAND_PLAN_08_12_12.pdf

<http://www.nj.gov/agriculture/sadc/home/genpub/MercerRedraft.pdf>

In recent years, all six (6) of the municipalities in the project corridor have similarly adopted Comprehensive Farmland Preservation Plans as optional elements of their master plans and have participated in the SADC Municipal Planning Incentive Grant Program, pursuant to N.J.S.A. 4:1C-43.1 and the SADC Regulations at N.J.A.C. 2:76-17A.

<http://www.nj.gov/agriculture/sadc/home/genpub/Holland%20Hunterdon.pdf>

<http://www.nj.gov/agriculture/sadc/home/genpub/Alexandria%20Hunterdon.pdf>

<http://www.nj.gov/agriculture/sadc/home/genpub/Kingwood,%20Hunterdon.pdf>

<http://www.nj.gov/agriculture/sadc/home/genpub/Delaware,%20Hunterdon.pdf>

<http://www.nj.gov/agriculture/sadc/home/genpub/West%20Amwell%20Hunterdon%20plan.pdf>

<http://www.nj.gov/agriculture/sadc/home/genpub/Hopewell,%20Mercer.pdf>

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Pursuant to N.J.S.A. 4:1C-18 and the SADC regulations at N.J.A.C. 2:76-1, the SADC worked closely with the Hunterdon and Mercer County Agriculture Development Boards (HCADB and MCADB) to identify and periodically update ADAs where agriculture shall be the preferred, but not necessarily the exclusive, use of land. As indicated in the maps in the Hunterdon and Mercer County Comprehensive Farmland Preservation Plans, the HCADB and the MCADB identified extensive ADAs in all six (6) of the municipalities in the project corridor, designating lands that have the potential for long-term agricultural viability. The agricultural productivity of the soils in these areas are regarded as mostly prime or of statewide importance, supporting a wide variety of high-value vegetable and fruit crops.

Under the County and Municipal Planning Incentive Grant Program, Hunterdon and Mercer Counties and Holland, Alexandria, Kingwood, Delaware, West Amwell and Hopewell Townships have collectively established 27 Program Project Areas, targeting 347 farms for preservation representing more than 21,000 additional acres in their respective areas. Together, these two (2) counties and the six (6) municipalities have established a one-year goal of preserving an additional 3,388 acres, a five-year goal of 13,809 acres and a 10-year goal of permanently preserving an additional 24,856 acres of farmland.

Project Alternatives

The SADC has reviewed the project alternatives contained in Resource Report 10 under consideration by PennEast. The SADC requests additional details associated with the various alternatives, including the “no-action” alternative. The preliminary data indicate that the alternatives have very different agricultural (and environmental) impacts that should be taken into consideration by FERC and PennEast in selecting and approving a preferred alignment for the pipeline. On January 16, 2015, the SADC learned that a significant portion of the preferred pipeline route was modified to parallel existing power line rights-of-way as closely as possible for roughly half of the project’s New Jersey alignment. Because of the limited details associated with the new route, the SADC strongly recommends that the FERC Scoping Process be extended at least another 90 to 120 days to allow for comments on the entire route alternative.

General Concerns

The SADC has worked closely with the HCADB and the MCADB, the six (6) municipalities in the project corridor and a number of area farmers and landowners to identify the following preliminary list of concerns and recommendations that should be incorporated into the project’s final design, regardless of which alignment is selected. SADC staff will continue to work with PennEast and FERC to ensure that agricultural interests are respected in the construction and operation of this pipeline.

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1. A comprehensive Agricultural Impact Minimization Plan should be prepared in conjunction with the New Jersey agricultural community to identify measures that PennEast will implement to avoid, minimize, mitigate or provide compensation for agricultural impacts that may result from pipeline construction activities.
2. Final pipeline alignments should stay as close to public roadway or other utility rights of way to the greatest extent possible.
3. Where necessary, pipelines crossing farm fields should utilize the edge of tillable areas whenever possible, never crossing fields on a diagonal.
4. When crossing tilled fields, pipelines should be buried at least five feet below the surface to avoid the possibility of impacts by farmers engaged in deep soil aeration and rototilling, or maintenance of irrigation or drainage infrastructure.
5. Farmer access to fields should be uninterrupted during construction.
6. Impacts to farm infrastructure such as wells, irrigation and drainage systems, fencing, farm markets, farm lanes, and agricultural buildings should be avoided and/or minimized to the greatest extent possible and scheduled to avoid peak season impacts.
7. Restoration of affected areas and infrastructure should be as swift as possible.
8. Topsoil should be carefully segregated and restored during the trenching process.
9. Soil compaction should be minimized and affected areas including temporary workspaces should be treated to eliminate compacted soils.
10. Temporary storage and staging areas for construction equipment and materials should avoid ADA lands in production.
11. Should they be absolutely necessary, unavoidable agricultural impacts should be justified in a thorough analysis of alternatives including technical feasibility, environmental compromises, design waivers, safety considerations and cost estimates.
12. Farmland owners as well as all agencies contributing to the preservation of parcels impacted by the pipeline on a temporary or permanent basis should be compensated for the taking, including crop damages.
13. Pipeline construction in ADAs and especially through tilled fields should be carefully monitored by independent inspectors paid for, but not employed by, PennEast to assure that agricultural standards are consistently adhered to.
14. PennEast should provide a detailed description of the process they will use to respond to farmer and landowner complaints about project impacts on agricultural lands immediately following restoration and in the years that follow.

For the record, the notion that farmland can continue to be kept in production after pipeline construction needs to be clarified. The SADC believes that farmlands with natural gas pipelines are significantly limited with respect to agricultural use (no nurseries or orchards) and farm infrastructure (buildings and roads / farm lanes). Farmland and ADA impacts should be avoided and / or minimized to the greatest extent possible and preserved farmland should be avoided if there are reasonably feasible alternatives available.

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Thank you for the opportunity to comment and engage with FERC staff during the scoping process. The SADC looks forward to continuing to work with FERC, PennEast, NJDEP, Hunterdon and Mercer Counties, all six (6) of the Townships in the project corridor and the agricultural community to ensure that agricultural interests are represented in the review process.

Sincerely,

A handwritten signature in blue ink that reads "Susan E. Payne". The signature is written in a cursive style.

Susan E. Payne
Executive Director, SADC

c: Kerstin Sundstrom, Governor's Authorities Unit
Timothy Brill, SADC Agricultural Retention Program Manager
Brian D. Smith, Esq., SADC Chief of Legal Affairs
Ruth Foster, NJDEP Office of Permit Coordination and Environmental Review
Rick Steffey, Administrator, Hunterdon CADB
Daniel Pace, Administrator, Mercer CADB

Document Content(s)

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