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Peter J. Fontaine

Direct Phone 856-910-5043
Direct Fax 866-850-7491
pfontaine@cozen.com

FEDERAL ENERGY
REGULATORY COMMISSION

Mr. John Loos
Vice Chairman
Delaware and Raritan Canal Commission (DRCC)
Prallsville Mills 33 Risler Street
P.O. Box 539
Stockton, NJ 08559-0539

Re: Response to DRCC Comments on the Proposed PennEast Pipeline Project

Dear Mr. Loos:

We are writing on behalf of our client, PennEast Pipeline Company, LLC ("PennEast"), in response to your July 14, 2015 letter requesting PennEast to appear before the DRCC at a monthly meeting, as well as to reply to the DRCC's February 27, 2015, "Scoping Period Comments Regarding Proposed PennEast Pipeline Project" submitted to the Federal Energy Regulatory Commission (FERC).

For the approximately one year in which PennEast engaged in the FERC pre-filing process, the public and other stakeholders have had ample opportunity to provide input and feedback on the proposed project and still have options to submit comments and questions. As such, while PennEast would be willing to brief the DRCC staff on the Project, at this juncture, PennEast is not participating in public meetings.

Additionally, PennEast values and appreciates the DRCC's input during the FERC scoping process and hopes that DRCC will continue to be an interested stakeholder as PennEast continues through the FERC process; however, we must respectfully disagree with the DRCC's apparent conclusion that the DRCC has jurisdiction over the Project.

Under its enabling statute, the Delaware and Raritan Canal State Park Law of 1974, the DRCC has jurisdiction to review any "project" within the DRCC Review Zone. The statute defines a "project" to mean "any structure, land use change, or public improvements for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits." N.J.S.A. 13:13A-14.

DRCC's implementing regulations further distinguish between "government projects" and "private projects." A government project is defined as "the undertaking of a public improvement, disturbance, development, construction or land-use change by a State department or agency, county, municipality or any other governmental entity except interior alterations to an existing structure that involves no change of use." N.J.A.C. 745-1.3. A "private project" is defined as

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“any proposed development, structure, or land-use change requiring any municipal approval or permit, except interior alterations to an existing structure.” Id.

The PennEast Pipeline Project is not being undertaken by a government agency and thus cannot be considered a “government project.” The Project also does not require any municipal approval or permit. PennEast submitted an Application September 24, 2015, seeking a certificate of public convenience and necessity from FERC pursuant to the Natural Gas Act (“NGA”). See 15 U.S.C. § 717. The FERC approval process, authorized by Congress in the NGA, preempts local approvals occupying the same regulatory field as FERC under the NGA, including local approvals that could delay or encumber a federally approved natural gas pipeline. See Dominion Transmission, Inc. v. Town of Myersville Town Council, 982 F.Supp.2d 570 (D. Md. 2013) (local zoning laws and town code directly affecting the siting, construction, or operation of a natural gas compressor station were preempted by the NGA, and thus null and void); Kern River Gas Transmission Co. v. Clark County Nev., 75 F. Supp. 1110 (D. Nev. 1990) (gas company was not required to apply for and acquire permits from local governments that conflicted with federal requirements or unduly delayed or encumbered a federally approved interstate natural gas pipeline); Northern Nat. Gas Co. v. Munns, 254 F.Supp.2d 1103, 1111 (S.D.Iowa 2003) (finding that state soil erosion standards are within the field of preemption); Algonquin LNG v. Loga, 79 F.Supp.2d 49, 53 (D.R.I. 2000) (“It is hereby declared that any provisions of the Providence Zoning Ordinance, any building or other codes administered by the City of Providence, and any licensing or certification requirements that are contingent upon approval pursuant to them are preempted insofar as they purport to apply to the FERC— approved modifications to Algonquin's natural gas facility.”)

Because PennEast will obtain siting and land-use approvals from FERC, the Project is not subject to municipal approvals or authorizations, such as building permits, zoning variances, or excavation permits. DRCC's Jurisdictional Determination provision unequivocally exempts from Commission review and approval “[a]ny project that is not a governmental project, and that does not require a municipal permit or approval.” N.J.A.C. 7:45-2.2(b)(3). Finally, we note that the Commission's staff previously has confirmed that “commission regulations do not prohibit pipelines, and that the commission does not review projects for which no local approval is required.” See Minutes of the Meeting Delaware and Raritan Canal Commission, November 19, 2014, p. 5.

Nevertheless, please understand that PennEast will obtain all necessary New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation permits and approvals, which protect the cultural, historical, and recreational resources identified in your letter. We are confident that the project will not have adverse impacts on these valuable resources.

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We are looking forward to the opportunity to work cooperatively with the DRCC, within the confines of the FERC approval process. Should the DRCC have any questions, please feel free to contact us.

Sincerely,

COZEN O'CONNOR



By: Peter J. Fontaine

PJF:kn

cc: Kimberly D. Bose, Secretary, FERC
Medha Kochhar, Environmental Project Manager, FERC
Ms. Marlen Dooley, Executive Director, DRCC
Anthony C. Cox, PennEast
Bernard Holcomb, AECOM
Marilyn Lennon, PP, AICP, CFM, Paulus, Sokolowski & Sartor
Dr. Ruth Foster, DEP, Office of Permits Coordination