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August 11, 2016

Secretary Kimberly D. Bose  
Federal Energy Regulatory Commission  
888 First St., NE  
Washington, DC 20426

Re: Objection to PennEast Pipeline Company, LLC's ("PennEast") Draft Environmental Impact Statement dated July 22, 2016, as supplemented three times by PennEast ("DEIS"), by the Ramapough Lenape Indian Nation ("Ramapough") on PennEast's Project CP15-558-000.

Dear Secretary Bose,

Please accept this letter as an objection to the DEIS, which DEIS is void of the necessary archaeological testing, resource investigation and reporting required under the National Historic Preservation Act (the "Act") relative to archaeological resources located on Mr. Thomas Sommo's property in Kingwood (the "Site") and frankly, the entire proposed route for the pipeline project.

The Ramapough have been working with Mr. Sommo to preserve the Site, and to date, despite numerous requests, written and oral, the Site has not been surveyed by PennEast for Phase I or Phase II evaluation. Instead, after fighting for months to secure a copy of the Phase I PennEast completed (which did not include Mr. Sommo's property), the only information the Ramapough has in order to understand the potential impact to a Native American site on Mr. Sommo's property (and other locations), is a short reference in the Phase I to the Site. We secured the Phase I not from the applicant PennEast, but from the State of New Jersey. Since that time, it has been months we have heard from their chief archaeologist and even then, at that last communication, she, Grace Ziesing, dismissed my request for information.

I have no less asked over a dozen times for a Phase II to be conducted on Mr. Sommo's property. Each time, we are met the same answer - it is under review.

The last time we wrote you, we argued PennEast was legally wrong for not considering the Ramapough eligible for consultation. PennEast refused to even acknowledge our letters, indicating the Ramapough were not a "federally recognized tribe".

You should know that in observing the FERC docket, I see no indigenous peoples' group regularly participant in this process other than the Ramapough. Is this the type of meaningful consultation with native peoples the FERC considers acceptable? What substantive justification will the FERC rely upon in checking the box for consultation with native peoples?

And respectfully, you, as the head of a federal agency, "... is the individual who has "approval authority for the undertaking and can commit the federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance" [36 CFR § 800.2(a)], and who makes the decisions in each step of the Section 106 review process, following consultation with the parties specified in the ACHP's [Advisory Council on Historic Preservation] regulations. The ACHP, State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) and other consulting parties advise and assist the federal agency official in this effort. In reaching decisions, a federal agency should seek to reconcile historic preservation with other important public values, such as its mission, objectives, costs and public benefits. The impact on archaeological resources is one of many considerations for an agency as it weighs its decisions."

<http://www.achp.gov/docs/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf>

The federal agency head, again respectfully, you, must: "make its interests and constraints clear at the outset; • make clear any rules, processes, or schedules applicable to consultation; • acknowledge the interests of others and seek to understand them; • develop and consider a full range of options; and • make an effort to identify solutions that will leave all parties satisfied." I have not been regularly contacted by your staff archaeologist or project head. Letters I have written to your project manager are ignored. I cannot recall the last time we have heard from any FERC official on this project, especially as we have been complaining loudly our resources are at risk as we have been ignored, marginalized and avoided by PennEast.

"It is important to note that the ACHP's regulations [36 CFR § 800.4(a)(3)] require federal agencies to seek information from certain parties, such as the SHPO/THPO, Indian tribes, or NHOs, before conducting an archaeological survey. It is imperative, therefore, that the agency initiate consultation prior to conducting any such archaeological fieldwork."

<http://www.achp.gov/docs/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf>

It seems PennEast is sticking to its original position that the Ramapough were not eligible for consultation as it is not a federally recognized tribe, despite what the New Jersey State Historic Preservation Office has directed PennEast to do, which is to consult with us.

The FERC has already recognized the Ramapough as consulting parties in two recent FERC regulated projects. Previously, you may recall, the Ramapough formally participated in the permitting process for the Kinder Morgan line project in New Jersey (CP11-56 and CP11-161) and in the Spectra Energy permitting process for its nearby line in New Jersey (PF13-16 and PF14-96) as well. We are currently working on the Spectra Access Northeast Expansion and I

must tell you, the experience, comparatively, is like night and day. We have regular and meaningful communication every few days with Spectra and its archaeological company PAL, we are invited on Phase II field work projects, we receive large amounts of data every week, and our questions are answered within a few days.

It was absolutely correct for the New Jersey State Historic Preservation Office to include the Ramapough in both the Kinder Morgan and the Spectra Energy projects referred to above, and it is absolutely correct for the FERC to require PennEast to include the Ramapough now. As set forth in California's guidelines to the 106 process: "Non-federally recognized tribes may participate as "additional consulting parties" because they have a demonstrated interest in the undertaking due to their relation to the affected properties. Some Agencies may use the NEPA process to solicit input because they do not understand that **Tribes should not be treated as members of the general public.**"

Further, the Advisory Council on Historic Preservation warn that excluding non-federally recognized tribes from the consulting process is a mistake, as is excluding state recognized tribes who reside currently in an area "distant" to the project (as Penn East complains):

*Even when there are no federally recognized Indian tribes with tribal lands in the state where the project is located, the agency must still make a reasonable and good faith effort to identify **and consult** with any Indian tribes that attach religious and cultural significance to historic properties that may be affected by the undertaking. The circumstances of history may have resulted in an Indian tribe now being located a great distance from its ancestral homelands and places of importance. Therefore, agencies are required to identify Indian tribes that may attach religious and cultural significance to historic properties in the area of the undertaking, even if there are no tribes near the area of the undertaking or within the state.*

*The question of inviting non-federally recognized tribes to participate in consultation can be both complicated and sensitive and thus deserves careful consideration. For example, some tribes may not be federally recognized but may have ancestral ties to an area. Other non-federally recognized tribes may have lost their recognition as a result of federal government actions in the 1950s to terminate relationships with certain tribes.*

<http://www.achp.gov/nap.html>

We support the Eastern Environmental Law Center's objection filed August 1, 2016, in which its counsel opined the DEIS, in its current form, violates NEPA. I can tell you that an impoverished, downtrodden group of indigenous people will not be able to digest 4,000 acres of yet to be reviewed property for archaeological and cultural resources at the last minute especially as we have no funding for our review. To date, PennEast has not offered to fund any expert reports and assistance, transportation for tribal members to review the Site, website hosting, postage, meeting cost, printing, telephone or the like for me and tribal leadership to be able to communicate with 5,000 tribal members.

There is substantial evidence of a large historic Site on Mr. Sommo's property, along with numerous other Lenape sites in the area. As the website for the Ramapough provides, the Ramapough were and are a Lenape tribe: "Most of the Europeans that came to Scheyichbi didn't understand that the different bands of natives that lived throughout New Jersey, New York, and Pennsylvania were all part of the whole Lenape Nation. The bands were known by the places they resided, therefore Europeans thought they were different Tribes. Each band had their own chief or Sachem, who represented them."

Finally, we do not have any specific plan for avoidance of the site, this after Alan Mounier has opined in his recent registration with the State of New Jersey for the Site, as has AECOM in their reference to the Site in the Phase I, that the Site is potentially eligible for listing on the National Register of Historic Places. We frankly are not even sure that HDD is proposed, as the maps have been filed with incorrect and inconsistent numbers. We have not been presented with any plan.

If a Phase II study is not well-underway by September 11 for the Site, we plan on filing a complaint with the ACHP. I encourage your project manager to seek advice from ACHP on the scarcity of archaeological work reported in the DEIS and in the treatment of the Ramapough to date. "Federal agencies should seek the advice, guidance, and assistance of the ACHP in resolving disputes with other consulting parties on its level of effort to identify and evaluate historic properties [36 CFR § 800.2(b)(2)]. Since the ACHP established this standard, its views on what constitutes an appropriate level of effort to identify eligible archaeological sites deserves careful consideration in the Section 18 106 process."

Alternatively, if PennEast refuses to conduct the surveys, we respectfully request the FERC direct PennEast to pay for the cost of the Ramapough to do the survey, also by September 11, as soon thereafter, the ground will not yield to field work.

Sincerely,

*Judith Sullivan*

Judith Sullivan

cc: Chief Dwaine Perry, Chief of the Ramapough Lenape Indian Nation  
Mr. Vincent Maresca, New Jersey State Historic Preservation Office  
Chief Vincent Mann, Chief, Turtle Clan, Ramapough Lenape Indian Nation  
Chief Charlene DeFreese, Chief, Wolf Clan, Ramapough Lenape Indian Nation  
Ms. Jesse West-Rosenthal, NJ State Historic Preservation Office  
Mr. Thomas Sommo, Landowner

