



May 30, 2016

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Re: DEP's Chapter 105 Water Obstruction and Encroachment Application – Williams/Transco Atlantic Sunrise Pipeline – FERC Docket No. CP15-138 (E58-315 (Susquehanna County), E40-769 (Luzerne County), E54-360 (Schuylkill County), E66-160 (Wyoming County), E36-947 (Lancaster County), E38-195 (Lebanon County), e-19-311 (Columbia County), E49-336 (Northumberland County)

Dear Mr. Buczynski:

Delaware Riverkeeper Network (DRN) is writing to request that the Pennsylvania Department of Environmental Protection (DEP) deny the Chapter 105 application for Transco's Atlantic Sunrise Pipeline project due to the irreparable harm it would cause to the state during construction and throughout its lifespan and beyond. This project would have significant adverse environmental impacts, safety issues, air and climate change impacts, economic ramifications, permanent impacts on scenery, and threaten drinking water sources, groundwater wells, water quality, and septic systems of the Commonwealth. Absent the permit denial to adequately protect the public and PA communities, like that of the recent 401 Water Quality Certification for the Constitution pipeline denial in New York by the DEC; at a minimum, DRN requests an extension of the public comment period for the Chapter 105 application for the linear proposed 195-mile long Atlantic Sunrise, (that was published in the April 30, 2016 Pennsylvania Bulletin) for at least 60 days beyond the point when all information for the application is determined complete by the DEP. To end the public comment period, as is proposed on May 31, 2016, and before the application is fully complete by

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Transco means that the public does not have all of the needed information nor adequate time to comment fully on the proposed impacts.

In addition to extending the public comment period, DRN also requests that multiple public hearings by the DEP be held along the 195-mile route (in addition and separate from the planned FERC EIS hearings scheduled in June) to allow for maximum participation by the impacted communities along the path and that the dates of the hearings are published multiple times and at least 30 days before-hand so the public can attend. According to the Draft FERC EIS, over 1,880 written comments were received by the public and 130 motions to intervene were filed on the FERC docket as of April 13, 2016 for this pipeline project – indicating a very strong concern for the impacts this project would cause. These public process steps are critical since this pipeline would impact large habitats and waterbodies across the state along its expansive 195-mile path.

DRN also requests that the DEP refer to and incorporate into the record DRN's past comments and filings pertaining to the Atlantic Sunrise Pipeline project and the Transco Leidy Pipeline that are related and have been submitted on the FERC Docket and the DEP dated 8/16/14, 2/9/15, 3/23/15, and 7/24/15, as well as the May 5, 2016 lawsuit against DEP for its issuance of the Clean Water Act 401 Water Quality Certificate for the Atlantic Sunrise project.

It is also critical that the DEP consider the full cumulative impacts along the entire pipeline path. This pipeline project if approved would span nine counties of the Commonwealth and parts of Virginia and cut across, according to the FERC Draft Environmental Impact Statement (EIS), 58 HQ-CWF, MF streams and a total of at least 331 waterbodies and 250 wetlands (approximately 50.4 wetland acres). DRN notes that it is odd that, according to the Draft EIS, there are no Exceptional Value (EV) streams listed to be proposed to be cut along this pipeline path and requests that that information be verified by the agencies especially considering various upgrades have been approved over the last year by PA agencies. Just last week an existing use table was updated by the DEP (May 16, 2016) that can be accessed here, for example as more streams are upgraded in the state:

<http://www.dep.pa.gov/Business/Water/PointNonPointMgmt/WaterQuality/Pages/ExistingUse.aspx#.VzXIhp3D92M> . Fish and Boat Commission has spent the last year designating hundreds of streams as Wild Trout and Class A waters which would require some upgrades to HQ designation. Cross verification between those designated and newly updated lists are needed to ensure no CWF streams in the pipeline path may in fact now be HQ waters. There is also another bundle of streams being considered by the FBC

currently for changes - The Commission is proposing the addition of 102 deserving stream segments to the wild trout or Class A Wild Trout List at their July meeting. These designations must help call for effective and timely protection of these diverse and important cold water habitats of the Commonwealth and the project and Chapter 105 review must consider these changes. Furthermore, with the extent of wetlands that are proposed to be cut by the pipeline, it is unclear which of these 250 wetlands are considered EV wetlands as they may be located within a HQ watershed where native brook trout thrive. Pursuant to Chapter 105.18a(a), is that the project encroachment will not have an “adverse impact on the wetland”. In order to determine if an adverse impact has occurred, the function and values of the wetlands are evaluated (PA Code 105.14.b(13)). As indicated in past comment and expert reports submitted by DRN, forested wetlands are especially vulnerable to thermal impacts and permanent changes with pipeline cuts.<sup>1</sup> EV and HQ streams and wetlands that remain in Pennsylvania should not be sacrificed for a gas pipeline project like the Atlantic Sunrise that exacerbates climate change and causes irreparable direct harm to streams that the path would cut.

In addition to sensitive waterbodies, impaired streams would also be further impacted by this project, adding injury from pipeline cuts to at least 42 streams of which many are already polluted and on the 303(d) list already due to siltation problems which is often a direct impact from pipeline cuts with open trench wet crossings (8 waterbodies proposed) and dry crossings – dam and pump or flume methods (274 waterbodies proposed) as well as blasting streams (20 waterbodies proposed but it appears that this analysis of blasting is based on USDA soils data and/or field surveys so it is not fully complete since not all areas have not been field verified). Abandoned mine drainage, sink holes, possible dewatering of streams, mine subsidence, mine fires, and other hazards are also concerns in areas the pipeline would cut where anthracite mining has been conducted – according to the FERC Draft EIS, 3.9 miles of the proposed pipeline could be in a high, moderate or low risk for subsidence which could cause potential and irreparable harm to streams, wetlands and groundwater resources.

Stream science clearly indicates that when forests (and forested streams) are cut for a pipeline and soils compacted etc - those impacts must be considered fully by the DEP for its Chapter 105 since this impact on the land impacts watershed health. FERC’s EIS notes that 45 interior forests in the Commonwealth would be cut by this pipeline across an estimated 19.3 miles of the pipeline path through these last remaining areas of interior forest. Science and reports submitted to the DEP by Delaware Riverkeeper Network shows that

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<sup>1</sup> The Effects of Converting Forest or Scrub Wetlands to Herbaceous Wetlands in Pennsylvania, Schmid & Company Inc. 2014.

with these pipeline cuts through forests comes an additional 300 feet on either side of the pipeline cut that impacts that sensitive interior forested habitat. DRN does not believe these numbers are fully nor adequately reflected or included in the current application – the FERC Draft EIS estimates 270.4 acres of habitat would be affected during construction to these interior forests.

DRN has submitted in the past various considerations to take into account about this project in regard to segmentation and related pipeline projects, like the Leidy Transco Pipeline that would interconnect with sections of the proposed Atlantic Sunrise pipeline. The Atlantic Sunrise project is at least one of three applications and pipelines FERC has certified or is reviewing that Transco has filed that will impact Pennsylvania since the Leidy Southeast Expansion. Each of these projects leap-frog on the Leidy Pipeline system and the planned Atlantic Sunrise project would add looping sections of pipeline filling in gaps along Transco's Leidy line system, which would be located along some of the same geographic corridor as the Project. DRN's scoping comments for Atlantic Sunrise (dated August 16, 2014) requested that FERC include a consideration of impacts resulting from all inter-related projects, including Cove Point, and their potential overlapping zones of impact, in its review of the Atlantic Sunrise Project. By considering the environmental impacts of these five inter-related and functionally inter-dependent projects in separate NEPA documents, rather than completing a full Environmental Impact statement to review upgrading the Leidy line system as a whole that includes the Atlantic Sunrise Project, FERC is unlawfully segmenting its analysis in violation of its obligations under NEPA. It is important and critical with such a proposed build out of pipelines in the Commonwealth to move natural gas abroad and to other markets, and with FERC's track record of this improper segmentation as evidenced in successful litigation brought by Delaware Riverkeeper Network, that DEP also consider these other pipeline projects and the environmental impacts they will cause cumulatively as part of the state's permitting and certification process in order to best protect the Commonwealth from the rampant gas pipeline projects that are being considered, already built, or being built in the state. The court held that the Commission (FERC) violated NEPA by: "(1) segmenting its environmental review of the Northeast Upgrade Project – i.e., failing to consider the Northeast Upgrade Project in conjunction with three other connected, contemporaneous, closely related, and interdependent Tennessee Gas pipeline projects – and (2) failing to provide a meaningful analysis of the cumulative impacts of these projects to show that the impacts would be insignificant" (Delaware Riverkeeper Network, et. al. v. Federal Energy Regulatory Commission, Tennessee Gas Pipeline Company). DRN argues that FERC has continued its practice of segmenting its environmental reviews of pipeline projects, including the Leidy Southeast Expansion Project and the Atlantic Sunrise Pipeline Project. It is critical with this lack of thorough oversight at the federal level and segmentation continuing, that DEP use all regulatory measures in

its authority to consider the wetlands and stormwater impacts through, Chapter 105 and Chapter 102 regulations.

Because the Commonwealth has permitted 8,191 unconventional gas wells (since Jan 30, 2015) and the scientific community has published, since April 2015 over 400 peer reviewed papers indicating harm, it is also critical that DEP use its authority and consider these beginning of pipe and end of pipe impacts that fracking and related infrastructure is causing and will exacerbate if these additional pipelines are permitted by DEP. According to Physicians for Safe Energy, 72% of these original research studies on water quality indicate potential, positive association, or actual incidence of water contamination; and 95% of all original research studies on air quality indicate elevated concentrations of air pollutants. Air pollution impacts water so all of these cumulative impacts must be considered by the DEP as part of its 404 and Chapter 105 review. And air pollution in the state already is ailing on many levels, causing harm to our waterways and the public. For example, just last week two of the five consecutive days (5/25 and 5/26/16 for Bristol, PA DEP air station) had ozone way above the 70 ppb ozone standard (90 ppb and 85 ppb). In Tioga County, three of the five consecutive days (5/24, 25, 26/16) last week were in exceedance for ozone (73, 77, and 74 ppm). These exceedances were detected by DEP's ambient air quality monitoring program.

In addition to cumulative impacts and segmentation concerns that jeopardize Commonwealth resources, the process DEP appears to be using with this proposed certification and notice to certify that the construction, operation and maintenance of the Atlantic Sunrise Project complies with the applicable provisions of the Federal Clean Water Act puts the cart-before-the horse since DEP appears to be relying on Transco's future actions – actions and permit applications that have not been completed, submitted, reviewed and approved by the DEP and other regulatory agencies. Standard procedure in granting Section 401 water quality certifications in Pennsylvania is for PADEP to issue the Section 401 water quality certification as part of the permitting process under the Dam Safety and Encroachments Act, which is Chapter 105 of the Pennsylvania Code. *See Pennsylvania Environmental Law and Practice*, ch. 6-4.4 (8th ed. 2015) (“DEP issues its section 401 certifications as part of the permits given under the Dam Safety and Encroachments Act”). To the extent PADEP issues a Section 401 Certification for a proposed pipeline project prior to issuing a Chapter 105 Water Obstruction and Encroachment permit, PADEP is acting in direct contravention of its own procedures. Indeed, there is no procedure recognized in the Pennsylvania Code that allows for separate review of a Section 401 water quality certification and Chapter 105 and/or Chapter 102 permits. As such, it is unlawful for PADEP to issue the Section 401 Certification before receiving final plans and other critical information necessary to ensure that Pennsylvania's water quality standards have been complied with

pursuant to Chapter 105 and Chapter 102. DRN filed a lawsuit against DEP's issuance of the 401 Water Quality Certification for the Atlantic Sunrise on May 5, 2016 and filed a prior suit against the DEP on May 5, 2015 alleging the DEP improperly issued a Clean Water Act Section 401 Water Quality Certification for the Leidy Southeast Pipeline – another Williams-Transco large scale natural gas pipeline project. Similar suits were also submitted by other concerned groups on the Atlantic Sunrise 401 Water Quality Certification.

We urge the DEP, in light of the large impacts and fragmenting nature of this extensive project that would cut through 9 counties of the state, a much longer and broader comment period for the public to be able to weigh in on the record is needed before DEP 's Chapter 105 permitting. Furthermore, the application materials submitted by Williams has significant data and resources with only remote sensed data which means the application is far from complete. For example, in accession # 20160505-4005 appendix K-1 water bodies crossed by the Atlantic Sunrise Pipeline , there are at least 23 streams along CPL North that are designated as being surveyed with remote sensing and for CPL South another 39 streams that appear to only be remote sensed. As indicated by PA DEP on the proposed Penn East Pipeline docket, another large pressure gas line that is proposed, these non-verified remote sensed resources need to be field verified by the applicant since a state cannot issue a permit based on remote sensed data. In multiple times in the past, DRN has also documented and field verified where resources or impacts on the ground do not match the pipeline companies' observations showing the real need for scrutiny and complete information and field verification conducted by the agencies of the applicant's information (March 12, 2013 DRN letter submitted to the USACE Re: TGP NEUP and others).

Furthermore, pipeline route variations and alternate pipeline routes and even landowners who will be greatly impacted by this project, still have many questions and have yet to have all the information they need to adequately respond and comment to the full impacts this pipeline is proposing to inflict on residents of Pennsylvania. Supplemental data packages and information is still being filed by Transco and agencies are still requesting additional information from Transco, which means again, the public does not have all the information they need to adequately comment on this project.

DEP's own "Pipeline Taskforce" called for better and more meaningful public participation was needed with pipelines. "Pennsylvania will see as many as 30,000 miles of new pipeline built over the next 20 years to take...gas resources of the Marcellus and Utica Shales to market," the Department of Environmental Protection Secretary, John Quigley, said. Secretary Quigley stated he expects the industry to add 20,000-25,000 miles of gathering lines, smaller pipelines that connect gas wells to processing plants or main

transmission lines. He said an additional 4,000 to 5,000 miles of interstate pipelines will be built over the next 20 years. According to StateImpact, the panel includes industry representatives, federal, state and local government officials, end-users, state lawmakers, farmers, and emergency preparedness officials. All of this gas development infrastructure would bring irreparable harm to our water resources for an unsustainable and heat trapping methane source that will exacerbate the impacts of climate change.

For these reasons, DRN objects to DEP's issuance of the Chapter 105 permit for the Atlantic Sunrise pipeline project. We also urge the DEP issue more time for the public to contribute important and meaningful information for the DEP to consider as Williams -Transco continues to submit applications and supplemental information on the record on the harm it plans to inflict to the Commonwealth and hold a series of public meetings up and down the 195 mile pipeline path so the impacted landowners have the opportunity to comment. Thank you for your time and consideration.

Sincerely,



Maya K. van Rossum  
the Delaware Riverkeeper  
Delaware Riverkeeper Network

cc. Federal Energy Regulatory Commission  
US Army Corps of Engineers  
US Fish and Wildlife Service  
PA DCNR  
PA Fish and Boat Commission