

From: Mike Helbing [<mailto:helbing@pennfuture.org>]

Sent: Monday, August 01, 2016 11:48 AM

To: Buczynski, Joseph

Subject: PennFuture's Comment on Chapter 105 Application E40-769 (Atlantic Sunrise- Luzerne Co.)

Mr. Buczynski,

I am attaching PennFuture's comments about Transcontinental Gas Pipeline Company's Chapter 105 Permit Application for Luzerne County (E40-769), which was noticed in the Pennsylvania Bulletin on April 30, 2016 (46 Pa. Bull. 2212). I plan to deliver a hard copy of this letter to the Department's Northeast Regional Office later today. Please do not hesitate to contact me using the information below if you would like to discuss our comments.

Best regards,

Mike

Michael Helbing

Staff Attorney

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August 1, 2016

Via electronic mail (jbuczynski@pa.gov) and hand delivery

Mr. Joseph Buczynski
Northeast Region Waterways and Wetlands Program Manager
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**Re: Transcontinental Gas Pipe Line Company, LLC, Atlantic Sunrise Project
Water Obstructions and Encroachments Permit Application, E40-769
Luzerne County
46 Pa. Bull. 2212 (April 30, 2016); 46 Pa. Bull. 3000 (June 11, 2016)**

Mr. Buczynski:

Transcontinental Gas Pipeline Company, LLC (Transco) submitted a Water Obstruction and Encroachment permit application (the Application) to the Department of Environmental Protection (the Department or DEP) for its proposal to construct the Atlantic Sunrise pipeline and related facilities (the Project) in Luzerne County. 46 Pa. Bull. 2212 (April 30, 2016); 46 Pa. Bull. 3000 (June 11, 2016). The Department extended the public comment deadline on this application from May 31, 2016 to August 1, 2016. 46 Pa. Bull. 3000 (June 11, 2016). Citizens for Pennsylvania's Future (PennFuture) conducted an informal file review of the Application at DEP's Northeast Regional Office on June 1, 2016 and submits these comments based on materials made available during that review.

PennFuture is a membership-based public interest, environmental organization whose activities include advocating and advancing legislative action on a state and federal level; providing education for the public; and assisting citizens in public advocacy. PennFuture is concerned with the protection of Pennsylvania's waters and the conservation of its resources for future generations.

Based on our review of the Application, PennFuture believes that Transco has not satisfied all the requirements set forth in the Chapter 105 regulations. We request that the Department deny a Water Obstruction and Encroachment permit to Transco unless and until the regulatory requirements are fully satisfied.

1. Transco’s cumulative impacts analysis does not contain sufficient information for the Department to make an informed decision about the Application.

When evaluating a proposed project’s impact on health, safety, and the environment under 25 Pa. Code § 105.14, the Department must consider “the cumulative impact of this project and other potential or existing projects.” *Id.* § 105.14(b)(14). Nothing in the regulation limits the “other potential or existing projects” to those related to the project proposed in the application under review. A gas pipeline, a power line, a housing development, an industrial park, and a marina might have cumulative impacts that must be considered on water resources even though all of them are proposed by unrelated entities and none of them is engendered by any of the other projects or depends on any other project to go forward. As part of its analysis of cumulative impacts, the Department must consider the potential impacts of “numerous piecemeal changes” on wetland resources and recognize that each wetland site “is part of a complete and interrelated wetland area.” *Id.*

For water obstructions and encroachments that will affect non-Exceptional Value (EV) wetlands, the Department generally may issue a permit only if “[t]he cumulative effect of this project and other projects will not result in a *major impairment* of this Commonwealth’s wetland resources.” 25 Pa. Code § 105.18a(b)(6) (emphasis added). The term “major impairment” is not defined in Chapter 105; however, since wetlands are subject to the Department’s antidegradation requirements set forth at 25 Pa. Code Chapter 93, the Department may not allow any impairment so “major” that it prevents wetlands from attaining their existing uses, and the Department must protect the level of water quality necessary to protect those uses. 25 Pa. Code § 93.4a(b).¹ Moreover, any wetlands that are impaired must be replaced in accordance with 25 Pa. Code § 105.20a. *See* 25 Pa. Code § 105.18a(b)(7).

When a project will affect EV wetlands, as Transco’s Project will in several instances, the Department generally may not issue a water obstruction and encroachment permit unless “[t]he cumulative effect of this project and other projects *will not result in the impairment* of the Commonwealth’s exceptional value wetland resources.” 25 Pa. Code § 105.18a(a)(6) (emphasis added). Thus, as part of its review of the Applications, the Department must find in writing that Transco affirmatively demonstrated that EV resources would not be impaired by the cumulative impact of the Project and all other potential or existing projects. This is a significant burden – and one that Transco has not met in this case.

Transco states that it has evaluated “identified past, present, and reasonably foreseeable Projects and other human related activities occurring in the vicinity of the Project.” Application, Attachment L, Enclosure D at 40. Transco does not, however, list the projects it considered to allow the Department to evaluate cumulative impacts for itself. Instead, throughout its analysis, Transco seems to follow a format of: identifying (in qualitative terms) potential impacts that could result from the Project; describing actions Transco is taking to mitigate or minimize those impacts; and concluding summarily that there

¹ The Department’s antidegradation program applies to all “surface waters,” and the term “surface waters” is defined in Chapter 93 to include wetlands. *See* 25 Pa. Code 93.4a(a), 25 Pa. Code 93.1.

will not be a “significant measurable cumulative effect” on the resource in question. *See generally* Application, Attachment L, Enclosure D at 41-52.

Transco makes little attempt to discuss, except in the most basic terms, the impacts that can be expected from other human activity in the area. Transco’s limited discussion of impacts from other projects is marred by the following shortcomings:

- Transco does not appear to make any effort to quantify impacts of other projects in the vicinity of the Atlantic Sunrise pipeline. Considering that the purpose of a cumulative impacts analysis is to determine how the project contributes to the combined effect of multiple projects, the failure to even attempt to quantify the effects from other projects is a critical deficiency.
- Even when Transco acknowledges impacts from other activities, it does not explain how these effects will contribute to adverse impacts on resources. For example, in its discussion of impacts to surface water resources, Transco admits that natural gas drilling creates the “potential ... for cumulative effects on surface waters affected within the same watersheds crossed by the Project.” Application, Attachment L, Enclosure D at 44. Transco, however, does not provide any more information about these potential effects, because the information “was not readily available.” *Id.* Transco does not explain how it reconciles its acknowledgement of drilling’s potential, but unspecified, impacts on surface water resources with its conclusion that “there will be no significant measurable cumulative effects on these resources.” *Id.*
- When discussing the cumulative impacts of water body crossings, Transco dismisses impacts from other activities, because they will not “affect the same waterbodies in the same timeframe as the Project.” The timeframe of project activity should not be relevant to Transco’s cumulative impacts analysis. As the regulations make clear, the cumulative impacts analysis should include information about all “*potential or existing* projects.” 25 Pa. Code § 105.14(b)(14) (emphasis added). Many “existing” projects have permanent impacts that remain long after construction activity is complete,² and Chapter 105 specifically requires consideration of “potential” projects that have not yet begun, so Transco’s assertion that these activities are not taking place “in the same timeframe” as the Project is of little value.
- Many of Transco’s assertions of a lack of significant cumulative impacts are conclusory and not supported by fact or reasoning. For example, in discussing impacts to wildlife, Transco states,

Transco expects that similar restoration activities would be employed for the Projects identified in the cumulative effects analysis as well, along with the implementation of BMPs and other effect avoidance measures. Based on this, Transco believes there will be no significant measurable cumulative effects of the Project on wildlife.

Application, Attachment L, Enclosure D at 44. Transco provides no basis for its “expectation” that other projects would implement BMPs and avoidance measures sufficient to avoid cumulative impacts. Transco should: (1) identify the projects it believes could contribute to cumulative impacts; (2) explain with specificity the

² PennFuture notes that it is difficult to be more specific about the types of long-term impacts that can be expected, because Transco did not identify the projects it considered in its cumulative impacts analysis.

expected impacts and any mitigation measures in place to minimize those impacts; and (3) provide a quantification of the aggregate impacts expected from its Project in conjunction with other potential and existing projects in the vicinity. Only then can Transco – or the Department – make a reasonable conclusion about expected cumulative impacts and their effect on the Commonwealth’s resources.

Despite Transco’s conclusions, it is likely that cumulative impacts will be significant. On behalf of the Clean Air Council, CNA Analysis and Solutions recently performed an analysis of the expected impacts on the nearby Delaware River Basin that would result from the completion of just eight proposed transmission pipelines. Just from these pipelines and just in Pennsylvania alone, CNA projected a loss of over 400 acres of forest, and permanent impacts on over 15 acres of wetlands. Lars Hanson and Steven Habicht, “Cumulative Land Cover Impacts of Proposed Transmission Pipelines in the Delaware River Basin” at 39, available at https://www.cna.org/CNA_files/PDF/IRM-2016-U-013158.pdf (last accessed: July 28, 2016). Although the Atlantic Sunrise pipeline is not included in this analysis, it is likely that it and the many other pipelines proposed in the Susquehanna River Basin will have comparable effects. When these effects are added to the many other projects, like natural gas well pads, electricity transmission lines, housing developments, industrial facilities, etc., the cumulative impact is likely to be considerable.

The Department should request that Transco conduct a more comprehensive cumulative impacts analysis that includes – at a minimum – a list of projects considered, the expected impacts of those projects, and a quantification of aggregated impacts before making a determination as to whether the cumulative impact will result in an impairment of the state’s wetland resources.

2. The Project would have impermissible adverse effects on exceptional value wetlands.

By law, an application for a project that may affect an exceptional value wetland or one or more acres of non-EV wetland, must include an assessment of wetland functions and values using a methodology accepted by the Department. 25 Pa. Code §105.13(e)(3). The Department may not issue a permit for a water obstruction or encroachment in a non-EV wetland unless the applicant affirmatively demonstrates (among other things) that “[a]dverse environmental impacts on the wetland will be avoided or reduced to the maximum extent possible.” 25 Pa. Code §105.18a(b). For projects in exceptional value wetlands, the Department may not issue a permit unless the project “will *not* have an adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15 (relating to review of applications; and environmental assessment).” 25 Pa. Code §105.18a(a)(1) (emphasis added).

In its application, Transco acknowledges that it will permanently convert 0.85 acres of palustrine forested (PFO) wetlands to either palustrine scrub-shrub (PSS) or palustrine emergent wetlands (PEM), thus permanently impairing the functions and values of those EV PFO wetlands. See Application, “Permittee-Responsible Mitigation Master Plan for the Atlantic Sunrise Project” at 5 (August 2015); Impact Table for Individual Permit Application (Luzerne). With respect to general habitat and natural biological functions (subsection (i) of

section 105.1 definition), conversion will, among other things, decrease aboveground biomass, habitat for shade-loving plant species, the production of mast (e.g., acorns) for wildlife, and increase exposure to the elements and to localized effects of global warming. Schmid & Company, Inc., *The Effects of Converting Forest or Scrub Wetlands to Herbaceous Wetlands, Prepared for the Delaware Riverkeeper Network* (2014) at 16-17.³ Concerning natural drainage patterns and water quality (subsection (3)), conversion will decrease soil stabilization, streambank anchoring, and capacity for nutrient storage. *Id.*, at 19-20. Conversion will increase the volume of groundwater discharge and reduce transpiration (subsection (6)), and decrease the capacity for erosion and sediment control (subsections (3) and (7)). *Id.*, at 21-22. With regard to human recreation (subsection (9)), conversion will impair landscape aesthetics, decrease interior forest and habitat for plants and animals, and impair the maintenance of cold water temperature for trout. *Id.*, at 22. This conversion is clearly an “adverse impact” on PFO wetlands.

Under the clear language of 25 Pa. Code § 105.18(a)(1), these impacts should be prohibited. The Department should not approve Transco’s Application unless and until these adverse effects on EV wetlands are eliminated from the Project plans.

Thank you for your time and consideration of PennFuture’s comments.

Sincerely,



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³ Schmid & Company’s report is available at http://www.schmidco.com/Leidy_Conversion_Final_Report.pdf.