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Via electronic mail (*RA-EPREGIONALPERMIT@pa.gov*)

Department of Environmental Protection
Regional Permit Coordination Office
Dominic Rocco, PE, Director
Rachel Carson State Office Building
400 Market Street, 10th Floor
Harrisburg, PA 17101

**Re: Comments on Transco Regional Energy Access Expansion Project's
Draft State Water Quality Certification and Applications for Permits for
Water Obstructions and Encroachments and for Erosion and Sediment
Control**

To whom it may concern:

Citizens for Pennsylvania's Future, Clean Air Council, and Delaware Riverkeeper Network ("Commenters") respectfully submit these comments on the draft state water quality certification under Section 401 of the Clean Water Act issued to the Transcontinental Gas Pipe Line Company, LLC ("Transco") for the Regional Energy Access Expansion Project ("the Project"), published in the Pennsylvania Bulletin on September 19, 2021. We also submit these comments on the applications for permits ESG02000160002, E40-780, E13-185, E48-435, and E09-998 ("Applications") sought by Transco in support of the Project.

PennFuture is a membership-based, non-profit, environmental organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture strives to protect our air, water and land, and to empower citizens to build sustainable communities for future generations. A main focus of PennFuture's work is to improve and protect water resources and water quality across Pennsylvania, with particular emphasis on the Delaware River Basin, through public outreach and education, advocacy, and litigation.

Clean Air Council is a member-supported, non-profit organization that has been working to protect everyone's right to a healthy environment for over 50 years. The Council works

throughout the Mid Atlantic region and achieves its mission through public education, community advocacy, and government oversight to ensure enforcement of environmental laws.

From the New York Highlands to the Delaware Bay, the Delaware Riverkeeper Network (DRN) gives voice to the River and all the communities that depend upon a healthy watershed. Since 1988, DRN has stood as a vigilant protector and defender of the Delaware River and its tributaries, committed to restoring the natural balance where it has been lost and ensuring its preservation where it still exists.

We appreciate your consideration of these comments and hope they are helpful as you continue your review of application materials. The waterways that this pipeline will cut across are among the highest quality streams in the Commonwealth and are entitled under the law to the highest protections. Even allegedly temporary impacts to these waters are still significant impacts to these resources - to the water quality, to the trout and other aquatic life that live there, and to the people who rely on these waters. This is especially true when temporary impacts from construction are repeated over time, such as when new pipeline loops are added in similar locations. Such impacts tend to become more like permanent impacts but fall through the cracks when it comes to oversight. The Department must prevent multiple small cuts to special protection waters that add up to impacts that substantially degrade these valuable resources.

Commenters had understood informally that the deadline for these comments was to be extended; however, commenters have not received a formal notice of the extension of this deadline and so submit the comments now. If the requested extension had been granted, Commenters would have had a greater opportunity to specifically review Transco's application materials and make more robust comments. If the comment period is extended after these comments are submitted, Commenters reserve the right to revise or supplement these comments.

I. The Department Must Hold a Hearing, and the Department Should Hold In-Person Hearings in Each County the Proposed Project Crosses When it is Safe to Do So.

As a preliminary matter, this project involves a number of crossings of Exceptional Value Waters. The Department, under Pa. Code 93.4c(b)(1)(ii), upon request, is required to hold a public hearing on any proposed new, additional, or increased discharge to Exceptional Value Waters. Commenters formally request such a hearing.

Additionally, the Department should hold in-person public hearings on the Project in each county it would cross, at a time and under a procedure by which it is safe to meet. The extensive reach of this Project, and the public interest in it, merit more than a virtual hearing where participants cannot meet each other, cannot present materials, and are limited to three minutes' speaking time. Furthermore, there are many residents who are unable to participate electronically, uncomfortable with that process, or lack the bandwidth to do so reliably. We ask the Department to utilize the conventional means of public hearing in a manner consistent with public safety and protection of the most vulnerable among us.

II. The Department's Issuance of the State Water Quality Certification, the Chapter 102 Authorizations, and the Chapter 105 Authorizations is Premature.

The Department's actions here are, at best, premature. The Department cannot certify yet that the state water quality standards will be met by this project because the scope of the project, and its full impact on human health and the environment, have not yet been determined. The Department should also not rush to issue approvals that will result in destruction of Pennsylvania's resources when the project might not ultimately be approved in other jurisdictions, leaving Pennsylvania's environment to suffer pointless harms for a defunct project.

First, the requirements of the National Environmental Policy Act have not yet been met. On March 26, 2021, Transco submitted an application to FERC pursuant to sections 7(b) and 7(c) of the federal Natural Gas Act¹ to construct, install, modify, operation and maintain the Regional Energy Access Expansion Project. The initial commenting period closed on April 30, 2021. FERC is still in the process of gathering environmental information from Transco,² and has not yet issued a Notice of Schedule for Environmental Review.³ Commenters on the REAE Project overwhelmingly urged FERC to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act ("NEPA"),⁴ in order to comprehensively and accurately evaluate the Project's impacts.

Commenters in the FERC proceeding raised several issues pertaining to water quality that must be addressed in an EIS. For example, the United States Environmental Protection Agency recommended "evaluation of water quality issues including surface water, groundwater, drinking water, stormwater management, wastewater management, wetlands and watersheds."⁵ EPA further recommended a comprehensive study of all types of waterbody crossing construction methods and their impacts, including a water body crossing plan with mitigation measures, full delineation and functional assessment of wetlands impacted by the Project, and consideration of both short-term and long-term stormwater impacts.⁶

Transco also applied in April 2021 for a Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permit from the United States Army Corps of Engineers ("Corps") in both the Baltimore and Philadelphia Districts.⁷ Those applications have not yet been publicly noticed by the Corps. Meanwhile, the Corps has agreed to be a cooperating federal agency in the

¹ 15 U.S.C. §§ 717f(b), (c).

² See Environmental Information Request, Doc. Accession No. 20210526-3020, Transcontinental Gas Pipe Line Company, LLC, FERC Docket No. CP21-94-000 (May 26, 2021); Environmental Information Request, Doc. Accession No. 20210720-3024, Transcontinental Gas Pipe Line Company, LLC, FERC Docket No. CP21-94-000 (July 20, 2021).

³ See 18 C.F.R. § 157.9(b).

⁴ 42 U.S.C. §§ 4321-4370h.

⁵ Comments of the U.S. Environmental Protection Agency, Doc. Accession No. 20210430-5433, Transcontinental Gas Pipe Line Company LLC, FERC Docket No. CP21-94-000 (Apr. 30, 2021).

⁶ *Id.*

⁷ See Supplemental Information, Doc. Accession No. 20210902-5154, Transcontinental Gas Pipe Line Company, LLC, FERC Docket No. CP21-94-000 (Sept. 2, 2021).

preparation of an EIS.⁸ The Corps submitted a comment to FERC recommending the inclusion of both the Clean Water Act Section 404(b)(1) alternatives analysis, an evaluation of any compensatory mitigation sites, an analysis of cumulative and direct secondary impacts from discharge of fill material into aquatic resources, and the inclusion of a restoration plan for impacted resources.⁹

As of September 24, 2021, Transco's REAE Project was identified by FERC Chairman Richard Glick in a letter to Senator John Barrasso, Ranking Member of the United States Senate Committee on Energy and Natural Resources as one of several natural gas projects currently under review for authorization under the Natural Gas Act.¹⁰ In that letter, Chairman Glick describes FERC's current approach to NEPA evaluation in connection with requests for Natural Gas Act authorization. First, an EIS is normally prepared for authorization under section 7 of the Natural Gas Act, unless FERC "can determine that the project either will not cause any significant adverse impacts or that such impacts will be mitigated."¹¹ According to Chairman Glick, "when there are any 'arguably significant' environmental impacts, the Commission must address those impacts in an EIS."¹² Given the size and scope of the Project, it is highly likely that FERC will issue a Notice of Intent to prepare an EIS, and through the process of drafting and finalizing the EIS, will address wide-ranging effects on water quality in Pennsylvania. DEP should not rush to issue the Chapters 105 and 102 permits or the Clean Water Act Section 401 Certificate until *after* the completion of the EIS. The EIS will provide additional information and analysis that may ultimately justify modification or denial of authorizations by either DEP or FERC.

Second, in addition to these federal issues, it is premature for the Department to issue these proposed authorizations because the project is still subject to evaluation in other states. The Department's authorizations at issue here are only one piece of a larger project that crosses state lines. As proposed, the project, in addition to all the components of the project in Pennsylvania, includes the installation of a new compressor station (Compressor Station 201) in Gloucester County, New Jersey, the installation of a gas turbine or electric motor-driven compressor unit at existing Compressor Station 505 in Somerset County, New Jersey, and also modifications at existing compressor stations, meter stations, interconnects, and ancillary facilities in Maryland and New Jersey. It is Commenters' understanding that none of these out-of-state facilities and/or modifications have received final approval.

The New Jersey Department of Environmental Protection has commented on the Resource Documents provided as part of the NEPA process (available in FERC Docket PF-20-3-000) and raised concerns regarding facilities proposed in flood hazard areas and the need for additional permitting from various divisions of NJDEP. NJDEP also identified multiple other

⁸ See Comments of US Army Corps of Engineers, Doc. Accession No. 20210528-5086, Transcontinental Gas Pipe Line Company, LLC, FERC Docket No. CP21-94-000 (May 28, 2021).

⁹ See *id.*

¹⁰ Letter from Chairman Glick to Sen. Barrasso, Doc. Accession No. 20210927-4002, Certification of New Interstate Natural Gas Facilities, FERC Docket No. PL18-1-000 (Sept. 27, 2021).

¹¹ *Id.* See also 18 C.F.R. § 380.6(a)(1).

¹² Letter from Chairman Glick to Sen. Barrasso, Doc. Accession No. 20210927-4002, Certification of New Interstate Natural Gas Facilities, FERC Docket No. PL18-1-000 (Sept. 27, 2021).

permits potentially required for these New Jersey portions of the project, including NJPDES Discharge to Surface Water permits and air emissions permits. Additionally, as Commenter Delaware Riverkeeper Network has pointed out in comments in the FERC docket for the Transco's application for a certificate of public convenience and necessity (available at FERC docket CP21-94-000), one of the proposed New Jersey facilities is at a site undergoing active remediation, and as a result this site may involve additional work, additional permitting, or may be found to be unsuitable for the proposed facility.

The Department should be particularly wary about granting any permits that would authorize construction to commence before the remainder of the applicable permits associated with the entire project are issued, given its recent experiences with the Constitution Pipeline and the now-abandoned PennEast Pipeline. In the case of the Constitution Pipeline, the Department issued Permit No. ESG0011514002(1) and Permit No. E58-300A to Williams for the Constitution Pipeline on February 24, 2016. The company immediately began felling trees and causing other environmental impacts. It violated the permits multiple times,¹³ required a series of modifications, and then ultimately closed out the permits without building the project in April of 2020.¹⁴ The reason Williams scrapped the project is because it lacked key approvals in New York State. In the case of PennEast, while the Department was evaluating PennEast's applications for its Chapter 102 and 105 permits, similar to what it is doing here with regard to Transco's Chapter 102 and 105 applications, PennEast decided not to go ahead with the project, which it indicated was the result of permitting delays in New Jersey.¹⁵ Fortunately, the Department had not yet issued the requested Chapter 102 and 105 permits, so the waste of natural resources as well as taxpayer resources that occurred along the Constitution Pipeline did not occur. The Department should not issue any permits for this project until the federal requirements, including the preparation of an EIS, as detailed above, and the remaining state permitting issues in the other adjoining states, are satisfactorily addressed.

III. The Department's Authorizations Neither Accurately Reflect Nor Protect Against the Proposed Project's Impacts on Special Protection Waters.

The Departments' authorizations in Monroe and Luzerne Counties should be denied or amended because they do not accurately reflect the proposed project's impacts on special protection waters.

¹³ See PADEP eFACTS, Site ID 776811, https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleSite.aspx?SiteID=776811.

¹⁴ See Constitution Pipeline PADEP Permit Withdrawal, April 13, 2020, available at http://files.dep.state.pa.us/RegionalResources/NERO/NEROPortalFiles/CommunityInformation/ConstitutionPipeline/Constitution_PADEP-105-102-WQC_Close-Out%20Letter_20200413.pdf.

¹⁵ See Scott Disavino, "PennEast Becomes the Latest to Scuttle a Natural Gas Pipeline Project, Reuters, Sept. 27, 2021, available at <https://www.reuters.com/business/energy/penneast-end-development-pennsylvania-new-jersey-natgas-pipe-2021-09-27/>.

A. The Authorizations Do Not Reflect the Correct Status of All Impacted Waters.

The Chapter 102 and 105 authorizations as noticed in the Bulletin do not reflect the correct status of some of these waters. The Bulletin seems to only include the designated aquatic life uses for the streams as is specified in Chapter 93. But in some cases, the aquatic life use listed in the Bulletin does not accurately reflect the High Quality (HQ) or Exceptional Value (EV) existing use of the stream or segment. Because existing uses must be protected when an activity which may affect surface water quality and which requires a DEP permit or approval is proposed, DEP must protect the higher of the existing or designated use. 25 Pa. Code § 93.4a(b); DEP Antidegradation Manual, at 8-9. This is the reason that the Department maintains a publicly accessible list of surface water segments where data has been evaluated which indicates an existing use classification for a stream that is more protective than the designated use. DEP's "Existing Use Classification" summary table is used by permitting staff in reviewing requests for permits and approvals. DEP Antidegradation Manual, at 7-8.

According to the DEP's Existing Use Classification summary table last revised on July 30, 2021, the following waterbodies, watersheds (e.g., basin), or waterbody segments appear to have a more protective existing use classification (bold below) than the designated use listed in the Bulletin notice:

- Luzerne County
 - Tributaries to Mill Creek (CWF-MF), **(HQ-CWF, MF)**
 - Mill Creek (CWF, MF), **(HQ-CWF, MF)**
- Monroe County
 - Tributary to Pohopoco Creek (CWF, MF), **(EV, MF)**
 - Sugar Hollow Creek (CWF, MF), **(HQ-CWF, MF)**
 - Tributaries to Tunkhannock Creek (HQ-CWF, MF), **(EV, MF)**

The antidegradation provisions of the Clean Streams Law require that these existing uses be protected and that the Department not permit any discharges that would have the effect of harming the existing use. Because of these discrepancies, the Department must go back and verify each stream against the Existing Use Classification summary table (available at <https://www.dep.pa.gov/Business/Water/CleanWater/WaterQuality/StreamRedesignations/Pages/Statewide-Existing-Use-Classifications.aspx>) to ensure that it is properly categorizing and protecting the existing uses of each waterway impacted by the proposed project.

Along those same lines, and with these errors regarding the aquatic uses, the Fish and Boat Commission (FBC) designations also need to be cross checked to ensure that proper and accurate Wild Trout and Class A Trout streams are identified. Furthermore, in addition to simply cross checking to ensure all uses including FBC classifications are correct, the Department must ensure that thermal impacts (from increased light reaching the water column), sedimentation from disturbance of the streambed itself with open cuts and disturbed raw riparian buffer banks (often along steep slopes), increased eutrophic conditions, and changes in the benthic community, for example, do not impact trout populations both for the short and long term. Such

safeguards need to be addressed in any application and in any permit issued in order to protect these vital trout streams.

B. The Authorizations Do Not Demonstrate that the Requirements for Special Protection Waters Have Been Met.

After correcting the errors in the aquatic life use categorization of these waters, the Department must ensure that the project does not harm these special protection waters. Waters are classified for “special protection” under Pennsylvania law where the water quality is such that it meets certain criteria set forth in the Chapter 93 regulations. Critically, classification as a special protection water - either HQ or EV - brings about additional water quality and antidegradation protections.

For the EV streams that may be impacted by the Project, DEP must ensure, prior to issuing the permit or approval, that the water quality of the stream will not be degraded. 25 Pa. Code § 93.4a(c). There can be no lowering of water quality. As Commenters discuss below, this is a high burden for Transco and the Department to prove, especially for pipelines associated with open trenching, disturbance of riparian areas, and a state-wide history of leaks and water pollution. We are not convinced that Transco or the Department has met this high burden either through its Chapter 102 or 105 permits, or through the proposed certification that water quality standards will be protected under CWA Section 401.

For HQ streams, the water quality shall be maintained and protected, with one exception: where a person seeking a permit or approval that affects water quality is able to successfully demonstrate that a lower water quality is necessary to accommodate an important economic or social development. 25 Pa. Code § 93.4a(c). Thus, there is a litany of requirements that Transco must meet in order to be allowed to degrade the water quality of the stream. The Department has a duty to review these requirements and ensure, prior to issuing a permit or approval, that the Project conforms with the antidegradation protections for HQ streams. For those seeking permits to discharge to HQ waters, this means that prospective dischargers must do the following:

- Evaluate nondischarge alternatives to the proposed discharge. Examples of nondischarge alternatives would be the reuse or recycling of wastewater, infiltration of stormwater, or alternative site locations.
- Where no “environmentally sound or cost-effective” nondischarge alternatives are available:
 - Use the “best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies” (ABACT requirement); and
 - Prove that the discharge will “maintain and protect the existing quality of receiving surface waters.” This is often referred to as the “non-degrading discharge” requirement.
- Where neither nondischarge alternatives nor non-degrading discharges are found to be feasible, successfully demonstrate to DEP that “allowing lower water quality is necessary to accommodate important economic or social development in the

area in which the waters are located” (the “SEJ” requirement). 25 Pa. Code § 93.4c(b).

If Transco is unable to demonstrate a “nondischarge” alternative, is unable to show that using ABACT will protect and maintain water quality, is unable to show that the proposed discharge will maintain and protect existing water quality, and is unable to provide an SEJ for its discharge, DEP must deny the requested permit or approval. Again, Commenters are not convinced that Transco or the Department have met the requirements that allow for the Project to be permitted or certified in HQ waters. The water-related considerations must include, but are not limited to: sensitivity of water use, including recreational water uses or drinking water uses; nature of the proposed discharge pollutants and their potential impact; the proposed degree of change in water quality; the proximity to wetlands or floodplains; discharge characteristics, such as long-term potential impacts; reliability of the proposed discharge treatment technology; additional positive or negative environmental impacts; and the applicant’s prior compliance record. DEP Antidegradation Manual, at 76-77. The social and economic considerations must include, but are not limited to: the effect on public need or social services; the effect on public health or safety; the effect on quality of life; any potential employment opportunities; effect on tax revenues; and impacts on tourism. DEP Antidegradation Manual, at 78-79. These SEJ factors are limited “to the area in which the waters are located,” 25 Pa. Code § 93.4c(b), PADEP requires “[s]ite-specific cost calculations and documentation” to support a social and economic justification application.¹⁶

There is no indication that the Department has considered these antidegradation criteria for the HQ waters which may be impacted by the project. Moreover, a review of Transco’s application materials shows that Transco has failed to consider the unique, site-specific conditions at each individual proposed stream and wetland crossing, and the corresponding potential adverse water quality impacts associated with stream crossings, including open cut crossings. The application fails to comprehensively evaluate each stream crossing with regards to conditions such as water quality, erosive soils, existing land use and forested areas, existing slopes, riparian buffers, and the potential need for in-stream blasting. Lacking consideration of the site-specific conditions at each crossing, the application fails to require adequate location and construction recommendations to protect water quality, as well as construction techniques specific to conditions at each crossing. The proposed stream and wetland crossing locations, methods of construction, and long-term land use conditions appear to be based on the needs and preferences of Transco and not informed by site specific conditions.

With respect to antidegradation requirements, it is unclear how the Department would ensure that benthic macroinvertebrate communities for these special protection waters will be evaluated and will not be degraded due to potential project impacts. There appear to be no more requirements than Transco stating that it would return the site to previous conditions. Ensuring that the benthic community will not be degraded should require strict monitoring requirements for each stream cut proposed, both pre- and post- construction. Past evidence and monitoring of

¹⁶ *Social or Economic Justification Request Review*, PADEP, SOP No. BMP-007 (Oct. 23, 2017), available at: <http://files.dep.state.pa.us/ProgramIntegration/PermitDecisionGuaranteePortalFiles/SOPs/AAMO/BMP-007%20SEJ.pdf>.

other similar pipeline projects using similar engineering techniques with similar characteristics has shown changes in benthic community, changes in hydrology, changes in water quality chemistry such as thermal impacts/increased temperatures from deforestation to existing forested riparian buffers, sedimentation and smothering of benthic community habitat, and changes in vegetative quality and cover (where often invasive species move in). These detrimental impacts can cause cascading impacts to water quality further downstream, especially in sensitive headwater areas and small streams that are so critical to the larger watershed - this is the death by a thousand cuts that the rules for special protection waters are supposed to prevent.

C. The Applications and Authorizations Do Not Show The Proper Consideration of Cumulative Impacts on Different Ecological Systems.

Cumulative impacts of the pipeline construction, operation, and maintenance on impacted ecological systems must also be considered. The Department should evaluate the cumulative impacts to key ecological systems such as forests and wetlands, over the lifetime of the pipeline, from construction through operation and including maintenance activities. For example, forest ecological systems would experience enduring but also fresh impacts throughout the operational life of the pipeline and even afterwards.

The initial impact would include the removal of the forest and understory vegetation, coupled with the changes in light, moisture, wind, etc. impacting 300 feet into the forest on either side of the ROW footprint. There will be enduring compacted soils, and dramatically altered vegetative composition along the ROW and along the forest edge that will increase volume and alter the timing of stormwater runoff, reduce groundwater recharge, change/take habitats for species of all kinds. There will be an influx of invasive plant and animal species that will have cascading impacts on the forest ecosystem. This influx additionally could spread along the ROW and back into the core of the adjacent forest and may introduce invasives into a region that could spread to other intact forest systems in the area but not directly on the Transco pipeline route. Additionally, it is important to factor in not just the impacts of the fragmentation of the forest by Transco for these particular pipeline segments but also by other cuts in the same region, either by Transco on its other pipeline pieces or by other pipeline/linear projects.

Over the life of the pipeline, it is expected that there will be the maintenance of the ROW, which will include the prevention of tree growth and maintenance of low growing vegetation only – this will be accomplished by periodic mowing and the use of herbicides. The mowing will disturb the vegetation, habitats, and species along and nearby the ROW. The herbicides will include impacts for non-target species and could have implications for soil microbes and nearby wetland, vernal pool and stream ecosystems. Maintenance activities will involve periodic trimming, pruning, cutting back and removal of trees and woody vegetation growing along the perimeter of the ROW. “The inspection and maintenance of the ROW means the repetitive access and traverse of the ROW by inspection vehicles and maintenance equipment. This increases overall soil compaction and because there are no stabilized accessways, it also creates repeated opportunity for soil erosion.” Transco will only be required to “ensure that the soils are stable and is under no regulatory obligation to restore soil to pre-construction conditions.” “[T]hese changes in the properties of the soils along the pipeline and within the pipeline ROW will contribute to the predicted increases in the volume and rate of

runoff.” Along the entire length of the proposed pipeline, these changes in the post-construction hydrology of the affected lands (especially the steeper sloped areas) will invariably alter runoff properties. The end result will be impacts to the streams, wetlands and riparian areas traversed by the pipeline and pipeline ROW and increased opportunity for erosion along the steeper segments of the pipeline and pipeline ROW. Because Transco is not required to implement any of the conventionally utilized best management measures to collect, treat and control ROW runoff, there is no way to mitigate for these changes other than to revegetate.

In addition to these known and anticipated impacts along the ROW, Transco proposes many cuts to the streams its pipeline will transect that are wider than is standard.¹⁷ The justifications given for these wider stream crossings are minimal. Many are justified because of “steep terrain” and “rocky soils.” Again, given the special protection status of these waters, the Department should look very closely at these extra-wide proposed cuts, from which stream health recovery, if there is any, will be even more difficult and take even longer.

D. Proposed Alternatives Analyses Are Deficient and Flawed.

Transco’s Alternatives Analyses appears flawed on multiple fronts and deserve significant scrutiny by the Department.¹⁸

Transco states that the compression intensive alternative over the proposed Effort looping project is not the feasible option. Yet its own Table 3.2-1, on quick review, shows significant harmful impacts for the looping project over the compressor intensive option. (It may also be possible for Transco to add compression at existing stations rather than build an entirely new compressor station.) According to Transco’s own info, the Effort loop alone would lead to significant forest, stream and wetland impacts with significant impact to 224 landowners that would have yet another pipe added to the already expanded ROW running on their properties. Transco states in the narrative how the Effort Loop would be collocated, yet Table 3.2-1 lists 162.6 acres for construction ROW would be needed as compared to 54.4 acres for a new compressor alternative. Furthermore, 71.8 acres of forest, 1.9 acres of wetlands, and 4 streams would be impacted by the Effort Loop alone (not including the other proposed expansion pipeline in Luzerne County). Transco then goes on to assert that the permanent ROW would only impact 31 acres over the long term during operation of the pipeline. However, the Department must consider the history and evidence readily available from past pipeline projects. Temporary work spaces, especially if built by cutting mature forests over a significant area—as is proposed here—cause long term harms to the land and the water. Compacted soils and clear cut swaths of forests take decades to recover, if ever, causing changes in hydrology, increased runoff, thermal impacts, sediment impacts, invasive species colonization, loss of habitat and native plant

¹⁷ See Table 5.1-1, https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/REAEP/Ch105-Luzerne_County/REQUIREMENT-S---ALTERNATIVES-ANALYSIS.PDF.pdf; Table 5.1-1, https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/REAEP/Ch105-Monroe_County/REQUIREMENT-S---ALTERNATIVES-ANALYSIS.PDF.pdf.

¹⁸ See https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/REAEP/Ch105-Luzerne_County/REQUIREMENT-S---ALTERNATIVES-ANALYSIS.PDF.pdf; https://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/REAEP/Ch105-Monroe_County/REQUIREMENT-S---ALTERNATIVES-ANALYSIS.PDF.pdf.

diversity and more. In short, these so-called “temporary work spaces” located in mature forests and other habitats are not at all temporary and cause long term impacts.¹⁹

The Department is currently undergoing a long-anticipated review of its Chapter 105 program as well as a specific issuance of guidance for the alternatives analysis process. These program revisions and revised guidance result in part from the egregious water pollution impacts from other pipelines being constructed in the Commonwealth that were permitted under current regulations. The Department, in the Chapter 105 revisions, as well as the stakeholders involved in the Alternatives Analysis guidance, have provided many suggestions regarding these issues. The Department should take into consideration the thoughtful improvements that will be implemented through those revised processes.

E. The Proposed Project Will Impact Threatened and Endangered Species.

The Transco REAE project is proposed to be constructed within the habitat of several threatened and endangered plant and animal species. Many of the surveys detailed in the permit application were incomplete and scheduled to be conducted in 2021. However, most of the 2021 field survey results provided as supplemental information in September 2021 were marked “privileged and confidential information” so we are unable to comment at this time. Furthermore, Transco has previously changed the route of the pipeline without communicating this to the agencies involved in the PNDI coordination process. An email from the PGC to WHM Consulting (the consultant retained by Transco) dated September 8, 2020 states that, “. . .it appears that the pipeline route has changed while the study area remained the same.” The email also states that Transco never specified whether blasting would be required, when in fact it would be required. While this information was later clarified, it is unclear why Transco did not initially communicate this vital information that substantially affects the potential impacts of the project to the proper agencies.

Completed surveys have revealed the presence of several threatened and endangered plant and animal species. Two DCNR listed plants, blunt-manna grass (*Glyceria obtusa*) and white-fringed orchid (*Platanthera blephariglottis*), were found within the project area. It is important that these plants are not removed or disturbed and that the hydrology and sunlight exposure in their habitat are not altered. Acoustic surveys determined the probable presence of the federally and state endangered Indiana bat (*Myotis sodalis*) at one location, as well as the probable presence of the northern long-eared bat (*Myotis septentrionalis*) at two survey sites associated with the Effort Loop and three survey sites associated with the Regional Energy Lateral. In addition, the autoclassifier used to conduct the acoustic surveys determined the probable presence of two Pennsylvania state endangered bat species, the little brown bat (*Myotis lucifugus*) and the tri-colored bat (*Perimyotis subflavus*). Finally, acoustic sampling also determined the probable presence of the state-threatened eastern small-footed bat (*Myotis leibii*) at eight locations.

To minimize direct human contact with bats, the PGC imposed a temporary moratorium on the 2019-2020 bat mist net survey season to minimize potential disease transmission to bat

¹⁹ See Meliora, Soil Compaction of Temporary Work Spaces, 2/9/13 Memo.

populations. It is unclear if this moratorium was lifted in 2021, but mist net surveys (provided that equipment is properly sanitized to avoid disease spread) would be beneficial given the number of sensitive bat species detected by acoustic sampling. While acoustic sampling is effective, it does not account for bats that are not vocalizing during the sampling window and therefore many individual bats can potentially remain undetected. Approximately 250 acres of trees are proposed for removal during construction of the project. Land clearing, especially of forested areas, may adversely affect these bat species by killing, injuring or disturbing roosting bats, and by removing or reducing the quality of foraging and roosting habitat. With the number of state and federally listed bat species documented, tree clearing can significantly harm local populations.

According to correspondence with the PFBC, the portion of the Regional Energy Lateral east of I-476 is in close proximity to known critical timber rattlesnake (*Crotalus horridus*) habitat. Potential denning and gestational habitat were identified in the study area during Phase I Habitat Assessment surveys. A Phase II presence/absence survey was scheduled in 2021 in habitat areas where potential denning habitat was identified, but as previously stated the results of this survey have not been revealed to the public. Transco proposes to re-construct rock habitat identified as gestation habitat during the project construction restoration. Timber rattlesnakes do not breed every year and surveys conducted during non-breeding years may not detect gestation habitat as a result. Furthermore, timber rattlesnakes utilize many rock outcroppings throughout the year, many of which are significantly far from their winter denning habitat. It would be beneficial for timber rattlesnakes confirmed in the project area to be radio tracked in order to document their spatial ecology and the exact areas they utilize throughout the year. Blasting and rock removal could kill any timber rattlesnake hiding within the rocks at the time. Re-constructing the rock habitat after the fact would not be beneficial to dead snakes.

Finally, bog turtle (*Glyptemys mühlenbergii*) field surveys were completed in April and July 2020, and one potential site was found. As a result, further consultation with the USFWS regarding the potential site took place. Since disturbance is located adjacent to the wetland at the one location, and there will be no disturbance or hydrologic impacts to the potential bog turtle habitat, the USFWS concluded that Phase 2 surveys did not need to be conducted at the location. However, Transco is proposing wetland mitigation at an off-site location in Northampton County. The mitigation site, known as the Perin Mitigation Site, is located southeast of Pen Argyl eight miles away from the project area. The PNDI review indicated a potential occurrence of the bog turtle at the Perin Mitigation Site. A Phase 1 survey was completed at the site in September 2020, and it was determined that potentially suitable bog turtle habitat is present. A Phase 2 presence/absence survey was proposed in the spring of 2021, but again the results are unclear as they are not publically available.

In addition to being potentially suitable bog turtle habitat, the wetlands at the Perin Mitigation Site are hydrologically connected to Waltz Creek, a naturally reproducing trout stream. Therefore, these wetlands are considered Exceptional Value (EV) regardless of bog turtle presence. Approximately 8.7 acres of the site are Palustrine-emergent wetlands (PEM), the preferred wetland type of the bog turtle. According to the DCNR, emergent wetlands are the least abundant wetland type in Pennsylvania, being one-third as abundant as forested wetlands and only one-half as common as the scrub-shrub types. About 14 percent of Pennsylvania's

wetlands are emergent wetlands.²⁰ The wetland enhancement plan for the Perin Mitigation Site involves planting several species of trees, including pin oak (*Quercus palustris*) and silver maple (*Acer saccharinum*). Planting trees within an emergent wetland may accelerate succession into a scrub-shrub or forested wetland and eventually degrade its suitability as bog turtle habitat. Given that the wetlands at the site are EV and suitable bog turtle habitat, it is inappropriate to utilize it as a mitigation site. Attempting to enhance it may actually do more harm than good and leaving it in a natural state would be the most beneficial for its ecological function.

F. Accurate Wetland Jurisdictional Determinations Are Required.

In Pennsylvania, the Army Corps of Engineers provides, in response to landowner requests, formal written Jurisdictional Determinations (JDs) that confirm, and accurately map, the extent of wetlands and other bodies of surface water eligible for regulation at the federal, state, and municipal level on specific tracts of land. Absent the issuance of a valid JD, landowners and public are generally unable to accurately ascertain the limits of a regulated wetland. Topographic maps, National Wetland Inventory maps, floodplain maps, soil survey maps, and planning maps of many kinds can provide useful technical information, but do not identify in detail the limits of regulated wetlands (or streams) that need to be considered by the sponsors of construction projects. Consultants typically document sites on behalf of landowners and prepare paperwork for agency review. Careful documentation of wetlands whose proffered boundaries are superimposed onto a land ownership survey is required as part of a request for a JD, and Corps staff typically inspect each property in the field prior to approving a JD.

JDs remain valid for five years, in recognition of the fact that wetland boundaries can change over time through natural changes as well as through unregulated human activities nearby. Only the Natural Resources Conservation Service (NRCS), an arm of the US Department of Agriculture, issues permanent wetland identifications for purposes of eligibility for federal programs that support crop production. Such NRCS determinations apply only to farming, not to general construction activities. Therefore, it is important for Transco to have updated JDs for all wetlands as opposed to relying on old ones. Applicant-proffered wetland boundaries are often inaccurate and continue to warrant detailed scrutiny by the Army Corps of Engineers and other regulators. In one 2010 mining application in Greene County, National Wetland Inventory maps disclosed four wetlands on a 642-acre site. The applicant's consultant submitted a proposed delineation to PADEP showing ten wetlands. After field inspection by the Corps, the JD drawing of the same tract of land showed 27 wetlands.²¹ Wetland classifications from consultants can also be inaccurate (for example PSS wetland labeled as a PFO wetland, etc.) further underlining the importance of up-to-date JDs.

²⁰ See DEP Fact Sheet, An Introduction to Wetlands, https://mdw.srb.net/pwsap/Spring2016Workshops/assets/docs/0845%20-%20PADEP%20-%20Safe%20Drinking%20Water%20Program/PADEP%20References/3930-FS-DEP1436_An%20Introduction%20to%20Wetlands.pdf

²¹ Schmid, J. (2014). The Effects of Converting Forest or Scrub Habitat to Herbaceous Wetlands in Pennsylvania. Schmid & Company, Inc. Consulting Ecologists.

IV. The Department Should Deny These Authorizations Because Permitting Additional Fossil Fuel Infrastructure, Given the Escalating Climate Crisis, Violates the Environmental Rights Amendment.

Pennsylvania's constitution provides that the Commonwealth's natural resources are held in a public trust. The Commonwealth, as the trustee caring for this trust, "shall conserve and maintain them for the benefit of all the people." Art. 1 Sec. 27 (1971). As trustee, the Commonwealth "is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct." *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 655, 83 A.3d 901, 957 (2013). A trustee has a fiduciary obligation, to manage the trust prudently, including maintaining and conserving the corpus of the trust. A trustee is required to exercise "common skill, common prudence and common caution" in managing trust resources. *In re Mendenhall*, 484 Pa. 77, 81, 398 A.2d 951, 953 (1979). A prudent trustee would not waste the trust, diminishing the corpus of the trust without any accompanying benefit for the beneficiaries.

While we acknowledge that Transco indicates that it has tried to collocate new pipeline where possible in existing right of ways, collocation usually still cuts a new path adjacent to the old. This is especially important in the forested areas where much of this pipeline will be constructed. In these scenarios, minimizing the impacts by creating the smallest possible disturbance and using the best management practices are critical. Additionally, regardless of any attempts to minimize the environmental impacts of this project on the water resources of the Commonwealth, it is undisputed that the gas flowing through the proposed pipeline, when used, will add substantial amounts of carbon dioxide into the atmosphere.

Transco proposes to provide an incremental 829,400 Dth/d of year-round firm transportation capacity. The cumulative greenhouse emissions resulting from the construction and operation of the proposed project, of other connected projects, and of upstream and downstream development that would be spurred by the approval of the Project, would be even greater. According to the Resource Reports Transco created, reviewed as part of the scoping process, Transco estimates operational greenhouse gas (GHG) emissions for Compressor Station 201 to be 59,949 tons per year; the operational greenhouse gas emissions for Compressor Station 515 to be 126,857 tons per year; and the greenhouse gas emissions from the pigging operations along the pipeline (including both the Regional Energy Lateral and the Effort Loop) to be 817.24 tons per year. Transco did not provide estimates of the GHG emissions from burning of the delivered gas (downstream emission), nor did it provide estimates for the upstream GHG emissions from the increased shale gas production resulting from the Project. The reality is, of course, that these activities will result in increased GHG emissions.

DEP recently produced a Climate Action Plan outlining the Commonwealth's GHG reduction goals: 26 percent by 2025 and 80 percent by 2050 from 2005 levels.²² Adding additional significant emissions from constructing an additional pipeline, building additional compressor stations, and transporting additional fracked gas sabotages these reduction goals.

²² See <https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx>.

V. Conclusion

For these reasons, the Department should not issue the Chapter 102 and 105 permits or the State Water Quality Certification under Section 401.

Sincerely,

Jessica R. O'Neill
Senior Attorney
Citizens for Pennsylvania's Future
(PennFuture)
1429 Walnut Street, Suite 400
Philadelphia, PA 19102
oneill@pennfuture.org

Joseph Otis Minott
Executive Director & Chief Counsel
Clean Air Council
135 S. 19th Street, Suite 300
Philadelphia, PA 19103
(215) 567-4004
joe_minott@cleanair.org

Maya K. Van Rossum
The Delaware Riverkeeper, Delaware
Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007
maya@delawareriverkeeper.org