



Delaware River Basin Commission

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Steven J. Tambini, P.E.

Executive Director

Via eFile

March 30, 2020

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

SUBJECT: PennEast Natural Gas Transmission Pipeline Project
Pending DRBC Docket D-2016-001-1
FERC Docket No. CP-15-58-000, CP-19-78-000 and CP-20-47-000
Luzerne, Carbon, Northampton, and Pike Counties, Pennsylvania

Dear Ms. Bose:

I am writing to advise you that the Delaware River Basin Commission staff have examined recent submissions by the PennEast Pipeline Company, LLC ("PennEast") to the Federal Energy Regulatory Commission (FERC), and on the basis of these submissions, have determined that the PennEast Natural Gas Transmission Pipeline Phase 1 Project ("Phase 1") is subject to review under Section 3.8 of the Delaware River Basin Compact¹ and implementing regulations to ensure compatibility with the Commission's Comprehensive Plan.²

Phase 1 Components

The Commission staff have reviewed PennEast's submissions, captioned, "Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity of PennEast Pipeline Company, LLC under CP20-47," dated January 1, 2020; and "Notice of Intent to Prepare an Environmental Assessment for the Proposed PennEast 2020 Amendment Project and Request for Comments on Environmental Issues," dated February 28, 2020.

These materials indicate that Phase 1 involves the mainline pipeline and aboveground facilities for the Certificated Route between MP 0.0R1 and MP 68.2R2, including two of the compressor

¹ The federal law enacting the Delaware River Basin Compact, Public Law 87-328 ("Compact"), is set forth in 75 Stat. 688. The laws of the Basin states enacting the Compact are 53 Delaware Laws, Chapter 71; New Jersey Laws of 1961, Chapter 13, New York Laws of 1961, Chapter 148; Pennsylvania Acts of 1961, Act No. 268. The Compact and DRBC regulations are available at: <http://www.nj.gov/drbc/about/regulations/>.

² The Comprehensive Plan consists of the rules, projects and policies the Commission has adopted "for the optimum planning, development, conservation, utilization, management and control of the water resources of the basin to meet present and future needs." Compact § 13.1.

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units at the Kidder Compressor Station and the Church Road Interconnect. The Phase 1 route includes construction of approximately 68 miles of 36-inch diameter mainline pipeline, originating near Dallas, Luzerne County, Pennsylvania, and terminating at the new Church Road Interconnect and metering and regulation station at approximate milepost (MP) 68.2 in Bethlehem Township, Northampton County, Pennsylvania.

Applicable DRBC Review Threshold

The Commission's Rules of Practice and Procedure, codified at 18 CFR Part 401 ("RPP"), provide that natural gas transmission lines are subject to Section 3.8 review and approval by the Commission when they pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Commission's Comprehensive Plan. See RPP § 2.3.5.A 12 (18 CFR 401.35(a)(12)). Also see, Comprehensive Plan (July 2001), Sections II and III at: http://www.state.nj.us/drbc/library/documents/comprehensive_plan.pdf.

Phase 1 would cross the following reservoirs and recreation areas designated in the Comprehensive Plan:

- Beltzville Reservoir (Towamensing Twp., PA)
- Francis E. Walter Reservoir (Bear Creek Twp. and Kidder Twp., PA)
- Hickory Run State Park (Kidder Twp., PA)
- Beltzville State Park (Towamensing Twp., PA).

Water Use

Section 2.3 of the Certificate Amendment Application Exhibit F-I: Environmental Report Submitted January 30, 2020 indicates that PennEast will obtain water for hydrostatic testing and dust suppression from approved sources (e.g. commercial and municipal suppliers), and that no chemicals will be added to hydrostatic test waters. In accordance with Environmental Condition No. 28 of the Certificate Order, PennEast has indicated it will submit a final hydrostatic test plan that identifies test water sources, discharge locations, and volumes to FERC some time prior to construction.

PennEast's recent submissions have not identified its sources of horizontal directional drilling ("HDD") water or the points of discharge of its used HDD water.

The Commission has advised PennEast that:

- a. The RPP provides that Section 3.8 review and approval are required for daily average gross water withdrawals – whether from surface water or groundwater – of more than 100,000 gpd during any 30 consecutive day period. See RPP §§ 2.3.5 A 2. and 3 (18 CFR 401.35(a)(2) and (3)).
- b. If 100,000 gpd or more of water is to be imported – i.e. drawn from a source (or sources)

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outside the Delaware River Basin for any use within the basin – or exported – i.e., drawn from a source (or sources) within the basin for any use outside it, then DRBC review and approval are required in accordance with the Delaware River Basin Water Code (“WC”) (incorporated by reference at 18 CFR 410) and the RPP. See WC § 2.30 and RPP §§ 2.3.4 A.16. and 17 (18 CFR 401.35(a)(16) and (17)). The Commission’s regulations are available on the DRBC website at:

<https://www.state.nj.us/drbc/about/regulations/>.

- c. Facilities for the direct discharge of industrial wastewater to surface or ground waters of the basin are subject to Section 3.8 review and approval. The RPP exempts from this requirement such facilities with design capacities of less than 10,000 gpd within the drainage area of the Commission’s Special Protection Waters, and less than 50,000 gpd elsewhere in the basin. See RPP § 2.3.5 A.5 (18 CFR 401.35(a)(5)).

If HDD water is drawn from sources that have a current DRBC docket (or dockets) and if no increase in an approved DRBC allocation is needed, then the use of basin water for HDD does not require separate DRBC approval. In accordance with the RPP (18 CFR 401.35(a)(2) and (3)), no approval is required for a daily average gross withdrawal that does not exceed 100,000 gallons over any 30 consecutive-day period. Above that threshold, or if transfers of water into the basin are undertaken, then DRBC review may be required in accordance with the provisions noted above.

While it appears that HDD discharges for the Phase 1 project will be disposed of at approved wastewater treatment facilities, DRBC review in accordance with 18 CFR 401.35(a)(5) may be required for discharges of used HDD directly to basin waters. We note that Phase 1 is located entirely within the drainage are of the Commission’s Special Protection Waters, where the applicable threshold for review is 10,000 gpd of discharge design capacity.

Design Changes; Scope of Review

The DRBC staff recognize that the alignment and other aspects of Phase 1 may change. As details are finalized, other thresholds for Commission review and approval may become applicable. Regardless of the number or nature of applicable review thresholds, the Commission will issue a single decision instrument (a “docket”), containing any conditions the Commission deems necessary to ensure that Phase 1 does not impair or conflict with the Comprehensive Plan.

Conclusion

Based on PennEast’s submission`s to the FERC, DRBC review and approval are required prior to the commencement of any substantial construction activity or related preparation of land. Please see DRBC’s letter of September 27, 2018 (copy attached) concerning tree felling.

I can be reached at 609-477-7264 or by email at david.kovach@drbc.gov with any questions or

Kimberly D. Bose, Secretary
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concerns regarding DRBC review of PennEast's Phase 1 project.

Sincerely,

A handwritten signature in black ink, appearing to read "David Kovach". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Kovach".

David Kovach, P.G.
Project Review Manager

c: DRBC Commissioners
Jeffrey D. England, PennEast Pipeline Company, LLC

Enclosure



Delaware River Basin Commission
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UNITED STATES OF AMERICA

Delaware River Basin Commission

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Steven J. Tambini, P.E.
Executive Director

January 22, 2019

Via eFile

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

SUBJECT: Adelpia Gateway LLC – Adelpia Gateway Pipeline Project
Federal Energy Regulatory Commission (FERC) Docket No. CP18-46
Delaware, Chester, Montgomery, Berks and Northampton Counties,
Pennsylvania and New Castle County, Delaware

Dear Ms. Bose:

I am writing you to correct erroneous statements regarding the review authority of the Delaware River Basin Commission (“DRBC”) that are contained in a letter to you from William P. Sharfenberg of NJR Service Corporation on behalf of Adelpia Gateway, LLC (“Adelpia”), dated October 5, 2018. The letter concerns the Adelpia Gateway Pipeline Project (“the Project”), which is located entirely within the Delaware River Basin (“Basin”).

By way of background, the DRBC is a federal-interstate compact agency created in 1961 to provide a unified and comprehensive approach to the management and development of the water resources of the Basin. It was formed by concurrent enactment of the Delaware River Basin Compact (“Compact”) by the states of New York, New Jersey, Pennsylvania and Delaware and the federal government. DRBC’s members are the governors of the four Basin states, and on behalf of the President and federal agencies, the Commander, North Atlantic Division, United States Army Corps of Engineers.

The Compact requires the DRBC to develop, adopt and maintain a comprehensive plan for the immediate and long-range development and use of the water resources of the Basin. Compact §§ 3.2, 13.1. To help effectuate the Comprehensive Plan, Section 3.8 of the Compact prohibits any person from undertaking a project having a substantial effect on the water resources of the Basin unless the DRBC first approves the project based on a determination that it would not substantially impair or conflict with the Comprehensive Plan.

Consistent with the Compact’s goal of implementing the Comprehensive Plan, the Compact broadly defines a “project” as an activity or facility for the utilization or management of water resources. See Compact § 1.2(g). In the DRBC’s experience, the construction of a pipeline involves the planned utilization and management of water resources in multiple ways and in some circumstances may impair or conflict

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January 22, 2019

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with the Comprehensive Plan. For this reason, DRBC's regulations classify natural gas and petroleum pipelines as "projects" under the Compact. See 18 CFR § 401.35(a) and (b). And DRBC has been reviewing pipeline projects for many years.

Nevertheless, only projects having a substantial effect on the water resources of the Basin are reviewable under Section 3.8. DRBC's regulations establish thresholds below which pipeline projects will be deemed to not have a substantial effect. These projects are not subject to Section 3.8 review.

To determine whether Adelphia intends to undertake a project reviewable under Section 3.8, the DRBC staff examined the information submitted to the FERC by Adelphia and its consultants under FERC Docket No. CP-18-46, including Adelphia's responses to the FERC's various information requests. According to its submissions to FERC, Adelphia plans to construct and install a natural gas transmission line. The planned route for the line traverses streams, wetlands, floodplains and other water resources and involves related uses of land. These facts, among others, confirm that Adelphia plans to utilize water resources and is undertaking one or more projects as defined in the Compact.

DRBC staff also examined whether the Project's planned activities or facilities exceed the thresholds in the regulations for determining when the project may have a substantial effect on the water resources of the Basin. As described in Adelphia's submissions to FERC, the Project falls below DRBC's thresholds. See 18 CFR § 401.35(a)(12). For this reason Adelphia need not seek DRBC review for its Project as currently planned.

In conclusion, Adelphia's planned natural gas transmission main meets the Compact's definition of "project." But because Adelphia's Project falls within a "project" classification that under the Commission's regulations is not subject to review by the DRBC, it is not a reviewable project.

If you have any questions about this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Stambini", is written over a light blue horizontal line.

Steven J. Tambini
Executive Director

c: DRBC Commissioners

Document Content(s)

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