

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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April 20, 2018

Mr. Joseph Dean
Manager, Environmental Health and Safety
Transcontinental Gas Pipe Line Company, LLC
2800 Post Oak Boulevard (77056)
P.O. Box 1396
Houston, TX 77251-1396

Re: Notice of Denial/Notice of Incomplete Application
Transcontinental Gas Pipe Line Company, LLC
Northeast Supply Enhancement Project
Joint Application
DEC ID: 2-9902-00109/00001 – Water Quality Certification
DEC ID: 2-9902-00109/00002 – Endangered/Threatened Species (Incidental Take)
DEC ID: 2-9902-00109/00003 – Excavation & Fill in Navigable Waters

Dear Mr. Dean:

On June 30, 2017, Transcontinental Gas Pipe Line Company, LLC (Transco) submitted to the New York State Department of Environmental Conservation (“NYSDEC” or “Department”) the above-referenced Joint Application (Joint Application) for the proposed Northeast Supply Enhancement Project (Project). As part of the Joint Application, Transco submitted an application for a federal Clean Water Act § 401 Water Quality Certification (WQC) for the Project (WQC Application). Based on its initial review of the Joint Application and supplemental information provided by Transco, as well as the record before the Federal Energy Regulatory Commission (FERC) regarding the Project, the Department hereby provides notice to Transco that the WQC Application is denied without prejudice due to incomplete information and an ongoing environmental review that may result in changes to the Project. As required by Title 6 of the New York Codes, Rules, and Regulations (6 NYCRR) § 621.10, a statement of the Department’s basis for this denial without prejudice is provided below.

In addition, the other portions of the above-referenced Joint Application¹ remain incomplete pending the receipt of specified additional information by the Department. Finally, while Transco has not applied to the Department for a State Pollutant Discharge Elimination System (SPDES) permit for anticipated discharges from hydrostatic testing associated with the

¹ As part of the Joint Application submitted to the Department, Transco also applied for the following permits: Endangered/Threatened Species (Part 182 Incidental Take) and Environmental Conservation Law Article 15 Excavation & Fill in Navigable Waters.

Project, the Department notes that based on available information such a permit is likely required for the Project.

Project Background and FERC Application

On March 27, 2017, Transco submitted to FERC an application for a Certificate of Public Convenience and Necessity (Certificate), under Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c), for the construction and operation of the Project. *See* FERC Docket No. CP 17-101. Among other components in Pennsylvania and New Jersey, the Project would involve the installation of approximately 17.4 miles of 26-inch diameter natural gas loop pipeline within New York State waters, to be known as the Raritan Bay Loop. The Raritan Bay Loop would be entirely underwater from New Jersey through Richmond and Queens counties, and would connect to the existing Rockaway Delivery Lateral in Queens.

On January 3, 2018, FERC issued a Notice of Schedule for Environmental Review of the Project (FERC Schedule). FERC issued a Draft Environmental Impact Statement (DEIS) for the Project on March 23, 2018, with comments due to FERC on May 14, 2018. Pursuant to the FERC Schedule, FERC intends to issue the Final Environmental Impact Statement (FEIS) for the Project on September 17, 2018. As a result, FERC's 90-day federal authorization decision deadline for the Project is December 16, 2018.

In addition to obtaining a Certificate from FERC, prior to commencing construction of the Raritan Bay Loop portion of the Project in New York State, Transco also must obtain a WQC from the Department. Pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, no federal license for the Project can be granted until a WQC is issued or waived by the Department. Likewise, no federal license for the Project can be granted if a WQC is denied.

Based on the Department's initial review of the available information regarding the Raritan Bay Loop portion of the Project, the construction of the Project could have significant water quality impacts in New York State. This includes potentially significant impacts from the resuspension of sediments and other contaminants, as well as to habitats due to the disturbance of shellfish beds and other benthic resources. In addition, the construction of the Project could potentially impact Atlantic sturgeon and other protected species, depending on the timing and methodology of construction. While these and other impacts from the Project could be significant, the precise nature and magnitude of such impacts is uncertain at this time and depends on additional details regarding the construction of the Project.

Basis for Denial

First, the Department denies the WQC Application without prejudice based on incomplete information. Under Section 401 of the Clean Water Act, as recently interpreted by the U.S. Court of Appeals for the Second Circuit, a certifying agency has one year from the date a WQC application is submitted to make a decision, regardless of the sufficiency or completeness of the application. *See NYSDEC v. FERC*, 884 F.3d 450 (2d Cir. Mar. 12, 2018). According to the Second Circuit, in order to avoid waiver, if a certifying agency "deems an application incomplete, it can simply deny the application without prejudice—which would

constitute ‘acting’ on the request under the language of Section 401.” *Id.* at 456. Here, Transco submitted the WQC Application to the Department on June 30, 2017, meaning that the Department is required to ‘act’ on the application by June 29, 2018, to avoid waiver.

Based on the Department’s review of the WQC Application, including supplemental material submitted by Transco to date, the WQC Application remains incomplete. Attached to this letter as Attachment A is a list of Items of Deficiency regarding the Joint Application. Each of these items is necessary in order for the Department to make the required determinations, including pursuant to 6 NYCRR § 608.9, regarding the Project’s compliance with New York State water quality standards. In addition, because the Department’s review of the DEIS and other Project information is ongoing, the Department may subsequently identify additional information necessary to make a determination. Pursuant to 6 NYCRR § 621.14(b), the Department may request any information which is reasonably necessary to make any determinations required by law. Moreover, failure to provide such information may be grounds for a permit denial.

Second, the environmental review of the Project is ongoing and may result in changes to the Project. Here, FERC’s environmental review of the Project, conducted pursuant to the National Environmental Policy Act (NEPA), takes the place of an environmental review conducted under the State Environmental Quality Review Act (Environmental Conservation Law Article 8). FERC’s NEPA review of the Project is incomplete.

In particular, as described above, FERC issued a DEIS for the Project on March 23, 2018. The Department and other interested parties have until May 14, 2018, to complete review of the approximately 800-page DEIS and provide comments to FERC. Based on such input from the Department and other interested parties, as well as any other changes to the Project, the FEIS may reflect updates regarding the nature of the Project’s water quality and other environmental impacts.

Because the FEIS will not be issued by FERC until September 17, 2018, the Department will not have the benefit of this additional information until well after the impending WQC one-year deadline. Furthermore, given the current stage of the proceeding before FERC, additional changes may be made to the Project. For example, details regarding the Project’s construction methods or schedule may be altered by Transco or in response to FERC’s DEIS. Any such changes may impact the nature, extent, and significance of water quality and other environmental impacts from the Project. Consequently, the Department cannot make a final decision on the merits regarding the WQC application until the full scope and nature of the Project is made certain through FERC’s NEPA process.

Third, pursuant to 6 NYCRR § 621.7, once the Department determines that the WQC Application is complete, it must provide public notice and an opportunity to comment before making a final decision. Moreover, pursuant to § 621.10(e), the Department must issue a responsiveness summary to relevant comments received during the public comment period. Given the impending June 29, 2018, WQC waiver deadline, the Department lacks sufficient time to complete its review and complete this necessary public process.

For all of these reasons, the Department denies the WQC Application without prejudice.

Incompleteness of Joint Application

In addition to being necessary for purposes of determining compliance with State water quality standards, the Items of Deficiency in Attachment A are also necessary in order for the Department to determine that the remaining portions of the Joint Application are complete. Therefore, these applications remain incomplete pending the Department's receipt of the information specified in Attachment A.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman
Deputy Commissioner and
General Counsel

cc: FERC (Docket No. CP17-101)

J. Binder, DEC
K. Gaidasz, DEC

Attachment A
Items of Deficiency
Transco NESE Joint Application for Permits
NYSDEC Facility ID: 2-9902-00109

On June 30, 2017, Transcontinental Gas Pipe Line Company, LLC (Transco) submitted to the New York State Department of Environmental Conservation (NYSDEC) an application for a federal Clean Water Act (CWA) § 401 Water Quality Certification (WQC)¹ for the proposed Northeast Supply Enhancement (NESE) Project. Transco subsequently submitted supplemental information on September 29, 2017, December 22, 2017 and February 2, 2018. The original application and subsequent supplemental information submissions are hereafter referred to collectively as, “the application”. On March 23, 2018, the Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement (DEIS) for NESE.

Project Description

Transco proposes to construct and operate an expanded natural gas pipeline system in Pennsylvania, New Jersey and New York to provide incremental firm transportation capacity to meet National Grid’s long-term supply and reliability needs. The project in New York involves the installation of approximately 17.4 miles of a new 26-inch diameter loop pipeline within New York waters known as the Raritan Bay Loop (“the project”).

Items of Deficiency

Handling of Class C Sediments (Areas of High Contamination – Acute Toxicity to Aquatic Life)

Class C sediments are highly contaminated and are expected to be acutely toxic to aquatic biota. The project will impact areas containing Class C sediment.

- The application indicates that Class C sediment will be dredged using an environmental bucket and no barge overflow. Dredging without barge overflow causes water to accumulate on the barge. The application lacks information on dredge water handling methods and where the dredged material will be dewatered prior to disposal. Additionally, the application lacks information on where contaminated dredge material will be disposed of.
- Class C sediment contaminants of concern have not been modelled for water column concentration at the edge of the mixing zone. The model should be run to determine the predicted water column concentration of any resuspended Class C sediment contaminants at the edge of the mixing zone.
- According to NYSDEC’s Technical & Operational Guidance Series (TOGS) 5.1.9 for In-Water and Riparian Management of Sediment and Dredged Material, dredging of Class C

¹ In addition to the § 401 Water Quality Certification, Transco applied for the following permits on June 30, 2017: Endangered/Threatened Species (Part 182 Incidental Take) and Article 15 Excavation & Fill in Navigable Waters.

material shall be conducted using an environmental bucket and no barge overflow (Table 3 of TOGS 5.1.9). For the majority of Class C sediment areas, Transco proposes to use these best management practices. However, a jet trench installation is proposed in the area of Class C sediment at Milepost (MP) 25.4 where mercury concentrations exceed Class C in the 3 to 6-foot layer. Since the pipeline will be installed deeper than 3 feet, installation by a jet trencher is not acceptable in this Class C contaminant area and an alternative installation method needs to be provided.

Total Suspended Solids (TSS)

- The application lacks a final determination as to how or whether or not the mixing zone requirement for TSS in the NYSDEC Special Permit Harvest Area for Hard Clams will be met.
- In the December 2017 submission (Updates to the Analysis for Compliance with Clean Water Act Section 404 (B)(1) Guidelines), the model summary of backfill simulation (Table 2.1-5) indicates that TSS plumes will exceed 100 ppm over ambient concentrations at many feet past the mixing zone and could take up to three hours to return to background levels. This model predicted exceedance has not been resolved.

Sidecasting / Wet-Storage of Sediment

- In comments on Resource Report 1 (comment No. 3) NYSDEC stated that “The proposed wet-storage (wet-dumping) is unlikely to be approved in New York State waters, especially in areas of high hard clam density, such as western Raritan Bay and in areas with Class C sediments.” From the DEIS, Section 2.3.3.4 page 2-44, there is a statement that from mile-point (M.P.) 12.5 to 16.6, in waters less than 15 feet deep, no side-casting will occur. This material will be dredged and barged for disposal. However, in the deeper water at the channel crossing areas (M.P. 17.3 to M.P. 17.9 and M.P. 24.9 to M.P. 25.2), the DEIS states that Transco proposes to temporarily store the trench spoil adjacent to the channels and then use the material for backfill after the pipeline is installed. The Raritan Bay Channel (M.P. 17.3 to M.P. 17.9) falls within the high hard clam density area that NYSDEC previously noted was unlikely to be approved for wet storage (wet-dumping/ side-casting). In addition, the material on either side of both of these channels is Class C material which would need to be dredged, dewatered and disposed of upland. This issue, regarding side-casting material, has not been adequately resolved.

Backfilling

- The application lacks information on backfilling for areas where the pipeline will be installed via jet trencher. Impacts from backfilling in jet trencher installation areas need to be considered and included in the application. Backfill materials need to be in-situ materials or acceptable sediment brought in from other sources.

Hydrostatic Testing

- Section 2.3.3.8 of the DEIS indicates that an oxygen scavenger, non-oxidizing biocide and non-toxic florescent dye would be added to the hydrostatic test water in the pipeline and then discharged into the ocean following the completion of the hydrostatic testing. The discharge of hydrostatic test water may require a State Pollutant Discharge Elimination System (SPDES) permit from New York State. A SPDES application needs to be submitted to the NYSDEC.
- Chemical additives must be reported to the NYSDEC on a Water Treatment Chemical Forms (WTC). WTC Forms have not been provided.

Benthic Resources Impacts and Mitigation Plan

- The project will unavoidably impact soft-bottom benthic habitats, including areas within the NYSDEC Special Permit Harvest Area for Hard Clams. Impacts to benthic resources, including shellfish, need to be fully assessed and mitigated for. The application provides only a draft mitigation framework for proposed compensatory mitigation. The application lacks detail on the extent of the proposed impacts to benthic resources, including shellfish; proposed compensatory mitigation measures; and performance measures for ensuring mitigation measures are successful.

Impacts to Fisheries Resources

- The application lacks sufficient detail to discuss how impacts to Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and winter flounder (*Pseudopleuronectes americanus*) will be avoided. Activities including pre-lay dredge, hand jetting, pile driving, and use of a vibratory hammer are proposed during aggregation, migration and spawning periods. Additional information is needed to determine if these activities will adversely impact these species and result in an incidental take.