



Delaware River Basin Commission

25 Cosey Road

PO Box 7360

West Trenton, New Jersey

08628-0360

Phone: (609) 883-9500 Fax: (609) 883-9522

Web Site: <http://www.drbc.gov>

Steven J. Tambini, P.E.
Executive Director

June 1, 2020

Via eFile

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

SUBJECT: PennEast Pipeline Company, LLC, Docket No. CP20-47-000
PennEast's Response to Data Request 5 of FERC's April 1, 2020 Environmental Information Request, regarding review and approval by the Delaware River Basin Commission

Dear Ms. Bose:

I am writing you to correct erroneous statements and inaccurate interpretations regarding the review authority of the Delaware River Basin Commission ("DRBC") that are contained in a letter to you from Frank H. Markle, Senior Counsel, PennEast Pipeline Company, LLC, dated April 21, 2020. The letter includes responses to environmental information requests concerning the PennEast Pipeline Phase 1 Project (the "Phase 1 Project" or "Project"), which is located partially 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 (the "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 with the Comprehensive Plan. For this reason, DRBC's regulations classify natural gas and petroleum

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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 have no substantial effect. These projects are not subject to Section 3.8 review.

To determine whether PennEast’s Phase I Project is reviewable under Section 3.8, the DRBC staff examined the information submitted to the FERC by PennEast and its consultants under FERC Docket No. CP20-47-000. DRBC summarized the results of that review in a letter to you dated March 30, 2020.

According to its submissions to FERC, PennEast 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 PennEast 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 a project may have a substantial effect on the water resources of the Basin. As described in our March 30 letter to FERC, the Project meets at least one of DRBC’s regulatory thresholds. For this reason, the Project is subject to DRBC review and approval.

In conclusion, with the exception of those portions of the Project located outside of the Delaware River Basin, PennEast’s planned Phase 1 natural gas transmission main meets the Compact’s definition of “project.” In addition, that portion of the Phase 1 Project located within the Basin clearly meets thresholds set forth in DRBC’s longstanding regulations implementing Section 3.8 of the Compact, which indicate the Project will have a substantial effect on the Basin’s water resources. PennEast’s information and response to Data Request 5 are thus inaccurate. FERC’s environmental requirements should include approval of the Phase 1 project by the Delaware River Basin Commission.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Stambini", with a large, sweeping flourish on the left side.

Steven J. Tambini
Executive Director

c: DRBC Commissioners