

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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**Transcontinental Gas Pipe Line Company, L.L.C.**

**Docket No. CP17-101-003**

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**REQUEST FOR REHEARING  
FILED ON BEHALF OF THE TOWNSHIP OF SOUTH BRUNSWICK  
LOCATED IN MIDDLESEX COUNTY, NEW JERSEY**

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Pursuant to 18 C.F.R. §385.713, the Township of South Brunswick (“South Brunswick” or “Township”) files this Request for Rehearing in the above-captioned proceeding. In support of this request, South Brunswick states the following:

Requestor

1. South Brunswick is a municipal corporation of the State of New Jersey with its principal offices located at 540 Ridge Road, Monmouth Junction, New Jersey 08852.

2. Donald J. Sears, Esq., is the Director of Law of South Brunswick. Accordingly, the following person is included on the official service list in this proceeding, and all communications concerning this request should be addressed to:

Donald J. Sears  
Director of Law  
Township of South Brunswick  
540 Ridge Road  
P.O. Box 190  
Monmouth Junction, NJ 08852  
E-mail: [dsears@sbtnj.net](mailto:dsears@sbtnj.net)

Application

3. On March 27, 2017, the Transcontinental Gas Pipe Line Company, L.L.C. (“Transco”), located at 2800 Post Oak Boulevard, Houston, Texas, 77251-1396, filed an

application with the Federal Energy Regulatory Commission (“FERC”) under Docket Number CP17-101-000. Transco was seeking a Certificate of Public Convenience and Necessity to construct and operate its Northeast Supply Enhancement Project, an expansion of Transco’s interstate natural gas transmission system between Pennsylvania and New Jersey and its offshore natural gas pipeline system in New Jersey and New York waters (“Project”).

4. According to Transco, the Project would enable Transco to provide an additional 400,000 dekatherms per day of incremental firm transportation capacity from Transco’s Compressor Station 195 in York County, Pennsylvania to Transco’s offshore Rockaway Transfer Point, an existing interconnection between the Lower New York Bay Lateral and the Rockaway Delivery Lateral in New York State waters. Significant to South Brunswick, the Project includes the construction of a new 32,000 horsepower compressor station in neighboring Franklin Township, New Jersey (“Compressor Station 206”).

5. On April 12, 2017, the Township filed a Motion to Intervene as a party in the proceeding under Docket Number CP17-101-000, pursuant to 18 C.F.R. §385.214(c)(1), which was subsequently granted by FERC.

6. On May 3, 2019, the Secretary of FERC filed an Order Issuing a Certificate of Public Convenience and Necessity, granting Transco’s application and authorizing Transco to construct and operate the proposed facilities.

7. On June 5, 2019, the New Jersey Department of Environmental Protection, Division of Land Use Regulation (“NJDEP”), denied Transco’s application for Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront In-Water Individual Permit, Waterfront Upland Individual Permit, Coastal Wetlands Permit and Water Quality

Certificate, due to Transco's failure to demonstrate compliance with the NJDEP's standards for issuance of such permits. (Exhibit A attached hereto).

8. On June 12 and October 28, 2019, Transco refiled applications for the necessary NJDEP permits required for the Project; however, on November 27, 2019, the NJDEP notified FERC that Transco had formally withdrawn each of the pending applications under review by the NJDEP. NJDEP advised FERC that, should Transco wish to pursue its application for the NESE Project, it must, at a minimum, meet the NJDEP requirements for compelling public need, impacts of the alternative access road for Compressor Station 206 and impacts of the new dredging proposed for the Project. (Exhibit B attached hereto).

9. On January 31, 2020, Transco filed under Docket No. CP20-49-000 an application pursuant to section 7(c) of the Natural Gas Act ("NGA") and Part 157(A) of the Commission's regulations for authorization to amend its certificate granted under Docket No. CP17-101-000 for its Project, seeking authorization to utilize and extend an existing road to access Compressor Station 206 in Somerset County, instead of the previously approved access route.

10. On February 5, 2020, the Secretary of FERC filed a Notice of Application, which stated that all motions to intervene to become a party in the proceeding under Docket Number CP20-49-000 must be filed by February 26, 2020, at 5:00 p.m. Eastern Time.

11. On February 24, 2020, the Township of South Brunswick filed a Motion to Intervene, and there being no objection, the Township of South Brunswick became a direct party in the matter.

12. On May 15, 2020, the New York State Department of Environmental Conservation, Division of Environmental Permits ("NYDEC"), denied Transco's application for a Water Quality Certification because of "Transco's inability to demonstrate the Project's compliance with all

applicable water quality standards.” The NYDEC further concluded “that the construction of the Project would have adverse water quality impacts in New York State.” (Exhibit C attached hereto).

13. On June 19, 2020, Transco advised landowners potentially affected by the Project that, despite the Certificate of Public Convenience and Necessity issued by FERC on May 3, 2019, “[b]ecause two state-level permits were not issued, Transco is not at this time actively pursuing the construction of the Project.” (Exhibit D attached hereto).

14. On July 16, 2020, FERC granted the request for an Amendment to the Certificate of Public Convenience and Necessity for Transco’s Project under Docket No. CP17-101-000, subject to the satisfaction of various Environmental Conditions as set forth in the Appendix to the Order.

15. On March 19, 2021, Transco filed a request for a two-year extension of time to obtain the required permits, construct and place into service the expansion facilities authorized by FERC.

16. On March 22, 2021, the Secretary of FERC filed a Notice of Application, which stated that all motions to intervene to become a party in the proceeding under Docket Number CP17-101-000 must be filed by April 6, 2021, at 5:00 p.m. Eastern Time.

17. On April 5, 2021, the Township of South Brunswick filed a Motion to Intervene, and there being no objection, the Township of South Brunswick became a direct party in the matter.

18. On May 20, 2021, FERC granted the request for a two-year extension of time until May 3, 2023, to construct and place into service the Northeast Supply Enhancement Project.

#### Requestor’s Interest

19. As demonstrated in its Motion to Intervene, pursuant to 18 C.F.R. §385.214(b)(2)(i)-(iii), South Brunswick has an interest in Transco’s application because proposed

Compressor Station 206 will be located within 500 feet of Route 27, which constitutes the jurisdictional boundary between Franklin Township and South Brunswick. As such, South Brunswick residents stand to be directly affected by adverse impacts from the proposed compressor station. Princeton Manor, a recently developed community comprised of 349 homes, housing almost 700 senior (55+) residents, is sited just to the east of Route 27. The development's only egress is onto Route 27, immediately to the east (downwind) of the proposed compressor installation. Thus, the only way to evacuate this development in the event of an emergency is to drive toward the compressor installation and turn onto Route 27. This point of egress is only 500 yards from the proposed site. Princeton Manor is only one of several residential communities, housing thousands of people, in the immediate environs of the proposed site.

Concise Statement of Issues and Errors in the Final Order

20. Without the numerous permits required to be obtained from the NJDEP and the NYDEC, the Project cannot be built. After full consideration of the applications, NJDEP and NYDEC have both denied Transco's applications for these permits. Although Transco refiled its applications with the NJDEP, same were withdrawn in November 2019.

21. Transco itself ceased the pursuit of the Project at least as of June 2020. Contrary to Transco's assertion that the Project was delayed because of the COVID-19 pandemic, Transco made the conscious decision to stop all work on the Project once the NJDEP and NYDEC denied its permit applications.

22. Transco has done nothing further to obtain the necessary NJDEP and NYDEC permits for the Project. Without these permits, the Project cannot be built. Accordingly, there is no purpose in extending the time within which to construct the Project.

23. The Township also relies upon the arguments and analysis set forth in the Request for Rehearing and Rescission of May 20, 2021 Order dated June 17, 2021, filed on behalf of NY/NJ Baykeeper, Food & Water Watch, Central Jersey Safe Energy Coalition and the Princeton Manor Homeowners Association by Eastern Environmental Law Center, incorporating same by reference as if fully set forth herein.

#### Conclusion

24. South Brunswick respectfully submits that grounds to grant its Request for Rehearing have been demonstrated and that FERC should grant the within Request for Rehearing of its decision dated May 20, 2021.

25. South Brunswick maintains that, upon Rehearing and Reconsideration, FERC should reverse its May 20, 2021, decision and determine that Transco should not be granted a two-year extension of time, until May 3, 2023, to construct and place into service the Northeast Supply Enhancement Project because: (a) Transco itself has created the delay; (b) it has not pursued the necessary permits from NJDEP and NYDEC, which are required prior to constructing the Project; and (c) it cannot mitigate the substantial adverse environmental and societal impacts that the Project will create.

THEREFORE, based on the foregoing, South Brunswick respectfully requests that  
FERC:

- a. Grant the within Request for Rehearing; and
- b. Reconsider and reverse its decision to grant a two-year extension of time, until May 3, 2023, to construct and place into service the Northeast Supply Enhancement Project.

Respectfully submitted,

TOWNSHIP OF SOUTH BRUNSWICK

Date: June 21, 2021

By: s/ Donald J. Sears  
Donald J. Sears, Esq.

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing South Brunswick Township's Request for Rehearing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Monmouth Junction, New Jersey, this 21 day of June, 2021.

s/ Donald J. Sears  
Donald J. Sears  
Director of Law  
Township of South Brunswick  
540 Ridge Road  
P.O. Box 190  
Monmouth Junction, NJ 08852  
(732) 329-4000 ext. 7311  
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# **EXHIBIT A**





PHIL MURPHY  
Governor  
SHEILA OLIVER  
Lt. Governor

**State of New Jersey**  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Land Use Regulation  
Mail Code 501-02A  
P.O. Box 420  
Trenton, New Jersey 08625-0420  
[www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)

CATHERINE R. McCABE  
Commissioner

June 5, 2019

Sara Mochrie, Principal-Project Manager  
Ecology and Environment, Inc.  
368 Pleasant View Drive  
Lancaster, NY 14086

RE: Denial of an Application for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront In-Water Individual Permit, Waterfront Upland Individual Permit, Coastal Wetlands Permit and Water Quality Certificate  
DLUR File No. 0000-01-1001.3 FWW180001, FHA 180001, CSW180001, WFD180001, WFD180002  
Applicant: Transcontinental Gas Pipeline Company  
Project: Transcontinental Gas Pipeline Northeast Supply Enhancement Project  
Project Location: Old Bridge Township, Sayreville Township, Middlesex County  
Franklin Township, Somerset County  
Block: Multiple  
Lot: Multiple

Dear Ms. Mochrie:

On June 30, 2018, Transcontinental Gas Pipe Line Co. (Transco) submitted an application for the above-referenced permits for its Northeast Supply Enhancement (NESE) Project, which includes the proposed construction of a new compressor station and two new 26-inch diameter pipelines through freshwater wetlands, transition areas, coastal wetlands, flood hazard areas, riparian zones, and under the Raritan Bay. The New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR) reviewed the NESE Project pursuant to the NJDEP's federal authority assumed under the Clean Water Act to issue permits for freshwater wetlands and impacts to coastal resources, the Freshwater Wetlands Protection Rules (N.J.A.C. 7:7A) and the Coastal Zone Management Rules (N.J.A.C. 7:7), which incorporate the NJDEP's consideration of water quality impacts and determination whether to issue a Water Quality Certificate pursuant to Section 401 of the federal Clean Water Act, and the Flood Hazard Control Act Rules (N.J.A.C. 7:13). The NJDEP hereby denies without prejudice the NESE Project application and the referenced permits due to the applicant's failure to demonstrate compliance as described herein.

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## **PROJECT DESCRIPTION**

The NESE Project is a proposed expansion of Transco's existing system from Pennsylvania through New Jersey to New York, to provide 400,000 dekatherms per day (Dth/d) of incremental capacity to National Grid at Transco's existing Rockaway Transfer Point located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York. According to Transco, the capacity of the existing Northeast Supply line is insufficient to provide the additional 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

The proposed NESE project would involve the construction and installation of three components in New Jersey: Compressor Station 206, the Madison Loop, and the Raritan Loop.

Proposed new Compressor Station 206 (CS 206) would be a 32,000-horsepower gas fired compressor station within Block 5.02, Lots 23 and 25 in Franklin Township, Somerset County. The proposed compressor station would occupy about 16.1 acres. Proposed new suction and discharge piping would connect CS 206 with Transco's existing Mainline, which is approximately 600 feet to the southeast of proposed CS 206. Access to CS 206 is proposed on lots 1.02, 9, 10, 11.02, 12, 16 and 17. The proposed access road, if approved as currently designed, would result in the disturbance of 2.862 acres of freshwater wetlands, 0.006 acre of state open waters, and 0.485 acres of riparian zones. In 2019, the Department received information that CS 206 was proposed in an area containing habitat for the State-listed Barred Owl. The Department investigated the information and confirmed the Barred Owl habitat, resulting in a reclassification of the onsite wetlands as exceptional resource value and increasing the associated wetland transition area from 50 to 150 feet. With these classification changes, the proposed construction for CS 206, the suction/discharge piping and a stormwater detention basin, if approved as currently designed, would result in disturbances to 1.02 acres of freshwater wetlands and 2.47 acres of exceptional resource value wetland transition areas.

The Madison Loop would be co-located within existing Transco right(s) of way in Sayreville and Old Bridge Townships, Middlesex County, and would consist of approximately 5.96 miles of new 26-inch diameter pipeline partially located within the upland waterfront development area. The Madison Loop would result in the disturbance of 1.968 acres of mapped coastal wetlands, 0.338 acres of freshwater wetlands, 1.143 acres of permanent impacts and 4.039 acres of temporary impacts to transition areas, and 0.46 acres of permanent disturbance and 0.597 acres of temporary impacts to riparian zones.

The Raritan Loop would begin within the upland waterfront development area in Middlesex County and extend into and under Raritan Bay. The Raritan Loop, as proposed, would consist of approximately six miles of new 26-inch diameter pipeline in New Jersey waters. Transco has proposed three (3) methods of installing the pipeline in Raritan Bay: horizontal directional drilling (HDD), clamshell bucket trenching and jet trenching. The HDD technique is proposed

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from a location onshore in Old Bridge Township (mile marker 12+00) and continues offshore in Raritan Bay to mile marker 12+50. From mile marker 12+50 to 14+02 the pipeline would be installed via clamshell bucket. At mile marker 14+02 the pipeline would then enter New York waters, continue for approximately 12 miles, and then reenter New Jersey waters at approximate mile marker 26+50. From that point, the pipeline would be installed via jet trenching except beginning at mile marker 29+50 where it would be installed via HDD under Ambrose Channel to an exit point at approximate mile marker 30+00. At that point the pipeline would reenter New York waters and continue to its terminus at mile marker 35+49 at the Rockaway Delivery Lateral in New York State waters. Construction of the Raritan Loop in New Jersey would result in the discharge of dredge or fill material into Waters of the United States or navigable waters, with potential water quality impacts and adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments).

On March 27, 2017, Transco applied to the Federal Energy Regulatory Commission (FERC) for a Certificate of Public Convenience and Necessity (Certificate) pursuant to the Natural Gas Act for approval of the NESE Project. FERC issued a Draft Environmental Impact Statement ("DEIS") for the NESE Project on March 23, 2018, and a Final Environmental Impact Statement ("FEIS") on January 25, 2019. The FEIS identified some of the various environmental impacts FERC anticipates from the construction and operation of the Project. On May 3, 2019, FERC issued Transco a Certificate for the Project subject to conditions to mitigate the anticipated environmental impacts.

### **ADMINISTRATIVE HISTORY**

- On March 27, 2017, Transco submitted an application to FERC for a Certificate pursuant to the Natural Gas Act for approval of the project.
- On July 26, 2017, Transco submitted an initial application to NJDEP for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development Individual In Water Permit, Waterfront Development Individual Upland Permit, and a Coastal Wetlands Permit (DLUR File No. 0000-01-1001.3.3 FWW170001, FHA170001, FHA170002, WFD170001, WFD170002, and CSW170001) for the NESE Project. The proposed activities included the construction of a new compressor station in Franklin Park, Somerset County and new 26-inch diameter gas pipelines for the proposed Madison Loop and Raritan Loop. Transco withdrew the application on June 15, 2018 due to technical deficiencies.
- On June 20, 2018, DLUR received the resubmission of the application for NESE Project for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development Individual In Water Permit, Waterfront Development Individual Upland Permit, and a Coastal Wetlands Permit (DLUR File No. 0000-01-1001.3.3 FWW180001, FHA180001, FHA180002, WF180001,

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WFD180002, and CSW180001).

- On July 18, 2018, the DLUR issued a deficiency letter, which informed Transco that among other deficiencies, its application did not include property owner consent to access work and construction areas outside the existing Transco Right of Way, failed to address stormwater management issues at the proposed compressor station, and did not include approval from the United States Army Corps of Engineers for Transco to dispose of dredge materials within the Historic Area Remediation Site (HARS) or any another suitable proposed upland disposal facility.
- On September 4, 2018, Transco submitted a response package to the July 18, 2018 deficiency letter. Information included updates to property owner certification, stormwater information, and dredge plan and spoils disposal information.
- On September 14, 2018, DLUR issued a second deficiency letter after determining the information submitted on September 4 was not complete.
- On September 26, 2018, Transco submitted a response package to the September 14, 2018 deficiency letter. Transco's response included the necessary property owner consents for all outstanding properties and an updated Sediment Sampling and Analysis Plan for the proposed Raritan Loop.
- On September 27, 2018 the Division issued a third deficiency letter advising Transco that although the Sediment Sampling and Analysis Plan was sufficient for dredge sampling to begin the application remained deficient until the results have been analyzed and a letter was provided from an upland dredge material disposal facility indicating that both storage and chemical composition was acceptable. The September 27 letter also identified outstanding stormwater deficiencies.
- On November 5, 2018, NJDEP held a public hearing in Franklin Township for the freshwater wetland components of proposed Compressor Station 206 and the Madison Loop. The public comment period for the public hearing was from November 5 through November 20.
- On November 8, 2018, DLUR requested that Transco provide an analysis of a potential alternative access road into CS 206 from the SUNCO utility right of way to determine if such an alternative would reduce or avoid impacts to wetlands. Transco provided responses on November 30, supplemental information on December 12, 2018, and follow up responses related to the access road width on December 21, 2018. The follow up information indicated that the SUNCO alternative would not reduce or avoid wetlands impacts.

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- On February 6, 2019, Transco provided information consisting of revisions and supplemental information for the CS 206 infiltration basin, results of pre-dredging sampling and analysis, and the acceptance letter from an upland dredge material disposal facility. The NESE Project application was declared complete for review February 6, 2019. The 90-day review period pursuant to the Coastal Zone Management Rules and the Flood Hazard Area Control Act Rules was set to end May 6, 2019.
- On March 18, 2019, NJDEP held a public hearing in East Brunswick Township for the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits and a pending Division of Water Allocation permit application for temporary dewatering activities for the NESE Project. The public comment period for the public hearing was from March 18 through April 2, but was subsequently extended to April 17, 2019, to allow the public additional time to provide comments on the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits for the NESE Project.
- On March 20, 2019, DLUR requested additional information from Transco regarding HDD failure contingency plans and proposed work in the Raritan Bay Superfund Slag Site as a result of comments received during the public hearing. Transco provided an HDD contingency plan memo on March 27, 2019.
- On March 20, 2019, DLUR asked Transco to revise the Madison Loop site plans to reflect that there were no exceptional resource value wetlands west of Gondek Drive. Revised plan sheets depicting this change were received on April 28, 2019.
- On March 25, 2019, DLUR received an email from Eastern Environmental Law Center concerning the sighting of a Barred Owl adjacent to the proposed CS 206 site by a local resident.
- On April 4, 2019, DLUR's Threatened and Endangered Species Unit conducted a site visit at the CS 206 site location to determine the suitability for Barred Owl habitat.
- On April 5, 2019, DLUR in consultation with Transco agreed to extend the 90-day review period for 30 days. The review period ends June 5, 2019. The public comment period was extended an additional 15 days to May 2, 2019.
- On April 11, 2019, DLUR asked Transco to revise the CS 206 site plans to account for the anticipated exceptional resource value wetland reclassification and update the freshwater wetland compliance report and alternative analysis to account for the Barred Owl habitat evaluation. On May 1, 2019, Transco provided revisions to the environmental report to address N.J.A.C. 7:7A-10.3 and 10.4 and DLUR received site plan revisions on May 2, 2019. On May 17, 2019, DLUR received further revisions to the

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CS 206 site plans to reflect the modified buffer and changes to the Stormwater Detention Basin.

- On April 29, 2019, the Barred Owl sighting record was accepted as valid by the NJDEP Division of Fish and Wildlife, Endangered and Non-Game Species Program. At that time, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owl and therefore, the wetlands surrounding the CS 206 were reclassified as exceptional resource value with a 150-foot buffer.

### **ANALYSIS**

The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1, et seq.) and Rules (N.J.A.C. 7:7A) require that a permit be obtained from the Department for regulated activities within freshwater wetlands and/or transition areas to freshwater wetlands. The Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) require that a permit be obtained from the Department for regulated activities within flood hazard areas and/or within the riparian zones of regulated waters. The Waterfront Development Law (N.J.S.A. 12:5-3) and the implementing Coastal Zone Management Rules (N.J.A.C. 7:7) require a Waterfront Development Permit be obtained from the Department for any regulated activity below the mean high-water line of any tidal water body and for any regulated activity within the upland 500 feet from the mean-high water line. The Wetland Act of 1970 (N.J.S.A. 13:9A) requires that a Coastal Wetlands Permit be obtained from the Department for any regulated activity within any wetland delineated and mapped pursuant to the Wetlands Act of 1970. Finally, Section 401 of the Clean Water Act requires an applicant for a federal license or permit to conduct any activity including, but not limited to, the discharge of dredge or fill material into Waters of the United States or navigable waters, to obtain a Water Quality Certificate from the State from which the discharge originates.

The Division of Land Use Regulation denies without prejudice the referenced permit applications for the NESE Project because the applicant has not demonstrated compliance with the applicable Rules as discussed below.

### **Proposed Compressor Station**

#### **Freshwater Wetlands Individual Permit**

##### **7:7A-10.2 Standard requirements for all individual permits**

*(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:*

- 1. Has no practicable alternative which would meet the requirements at (b)1i and ii below:*

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*i. The alternative would have a less adverse impact on the aquatic ecosystem or would not involve a freshwater wetland or State open water; and*

*ii. The alternative would not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal;*

Construction of and access to the CS 206 site, as proposed, would adversely impact freshwater wetlands, and Transco has failed to demonstrate that that no practicable alternatives exist. First, as set forth above, after receiving a sighting report of a Barred Owl adjacent to the proposed CS 206 site and subsequent investigation, including an inspection of the site and contiguous forested area by NJDEP biologists on April 29, 2019, NJDEP accepted as valid the sighting report of a Barred Owl adjacent to the proposed CS 206 site due to the presence of suitable forested habitat conditions on site and the larger contiguous forested area. As a result, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owls and wetlands surrounding the proposed compressor station were reclassified as exceptional resource value with a 150-foot buffer.

In anticipation that the wetlands would be reclassified from intermediate to exceptional resource value, DLUR asked Transco on April 11, 2019 to supplement its Freshwater Wetlands Individual Permit application to demonstrate compliance with N.J.A.C. 7:7A-10.2(b) and N.J.A.C. 7:7A-10.4. In response, Transco submitted additional information on May 1, 2019. On May 17, 2019, Transco submitted site plan revisions that depicted a 150-foot wetlands transition area as well as design changes to the proposed stormwater detention basin.

Transco's revised site plans proposed to clear exceptional resource value forested wetland transition areas to construct 1) the compressor station and 2) the proposed stormwater detention basin. Transco also proposed to clear a large area to the west of the compressor station for "staging and laydown," with no permanent structures proposed following construction activities. Shifting the compressor station footprint to the west would avoid impacts to the exceptional resource value transition area. The transition area serves, among other functions, as a sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetland species, habitat area for breeding, spawning, nesting and wintering of endangered, commercially, and recreationally important wildlife, and a corridor area which facilitates the movement of wildlife to and from freshwater wetlands, streams, and uplands. The supplemental information submitted by Transco did not address why the proposed compressor station and stormwater detention basin could not be shifted to the west, with any associated reconfiguration of the proposed staging and laydown areas, to avoid the exceptional resource value transition area. In addition, there was no information submitted to address why the transition area disturbance for the project as proposed could not be reduced.

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Second, Transco's preferred alternative to access the proposed CS 206 site is from County Route 518 (Georgetown Franklin Turnpike), which would result in 2.862 acres of freshwater wetland disturbance. The submitted alternatives analysis identified an existing access road for the adjacent Higgins Farm Superfund Site (Higgins Farm access road) as an alternative point of accessing the CS 206 site. Utilizing the Higgins Farm access road would require the road to be extended 700 feet and widened in some areas resulting in 1.5 acres of disturbance to the Higgins Farm site. However, DLUR determined based upon a site inspection of the Compressor Station 206 site and the use of the NJDEP GIS wetland mapping that the Higgins Farm access road alternative would result in approximately 0.50 acres of wetland impact, compared to 2.862 acres under Transco's preferred alternative. Thus, the Higgins Farm access road alternative would reduce the wetland impacts by approximately 2.362 acres.

Transco asserted that this alternative is not practicable because the Higgins Farm is a Superfund site and there is a conservation easement on the property which prohibits non-agricultural development. In support of its position, Transco provided only an incomplete and unrecorded conservation easement between the property owner and Franklin Township. Additionally, Transco provided no information to demonstrate that the U.S. Environmental Protection Agency (USEPA) would prohibit use and extension of the Higgins Farm access road, or that the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 *et seq.*, pertains to this site and, if applicable, how the Act would prohibit use of the access road. Transco also cited Franklin Township's opposition to the project for rejecting the Higgins Farm access road as a practicable alternative. According to the information in the submitted application, Transco, through its local counsel, sent the Franklin Township attorney a letter dated May 26, 2017, requesting the opportunity to discuss temporarily delaying the adoption of any ordinance or resolution to allow time for negotiations to take place between Transco and the Higgins family. Transco did not provide DLUR with a copy of its letter to the township. According to Transco, the township attorney never responded to the letter. Transco apparently had no further follow up communication with the township. Therefore, Transco has not demonstrated either that it exhausted reasonable efforts to continue communication with the township, or otherwise made reasonable attempts to remove the encumbrance necessary to extend the access road.

As such, DLUR finds that Transco failed to demonstrate that no practicable alternative exists and therefore has not demonstrated compliance with N.J.A.C. 7:7A-10.2(b)1 and 2.

***7:7A-10.3 Additional requirements for a non-water dependent activity in a wetland or special aquatic site***

- (a) In addition to meeting the requirements of N.J.A.C. 7:7A-10.2, a non-water dependent activity in a freshwater wetland or special aquatic site shall meet the requirements of this section. If an activity is water-dependent, or if it disturbs only a State open water that is not a special aquatic site, this section does not apply to the activity.*
- (b) There shall be a rebuttable presumption that there is a practicable alternative to a nonwater dependent activity in a freshwater wetland or in a special aquatic site, which*



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*alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem.*

*(c) In order to rebut the presumption established in (b) above, an applicant must demonstrate all of the following:*

- 1. That the basic project purpose cannot reasonably be accomplished using one or more other sites in the general region that would avoid or reduce the adverse impact on an aquatic ecosystem;*
- 2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;*
- 3. That the basic project purpose cannot reasonably be accomplished by an alternative design that would avoid or reduce the adverse impact on an aquatic ecosystem;*
- 4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints; and*
- 5. If any portion of the proposed activity will take place in an exceptional resource value wetland or in trout production waters, that the requirements of N.J.A.C. 7:7A-10.4 are met.*

As discussed above, it has not been demonstrated that there are no practicable alternatives to the access road and that there is no alternative design for CS 206 and the proposed detention basin. Therefore, compliance with 7:7A-10.2(c) 1 through 4 has not been met because it has not been demonstrated that the project could not have been reconfigured, reduced in scope or relocated to avoid exceptional freshwater wetlands and their associated transition areas. Additionally, to the extent Transco has rejected alternatives due to alleged constraints, as discussed above, Transco has failed to show it made reasonable attempts to remove or accommodate such constraints.

***7:7A-10.4 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters***

*(a) If an applicant proposes a non-water dependent activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:*

- 1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland or trout production water, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or*
- 2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.*

As defined under N.J.A.C. 7:7A-1.3:

*"Compelling public need" means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the*

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*proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.*

To address the compelling public need requirement at 7:7A-10.4(a)1, Transco submitted supplemental information on May 1, 2019 to address the project purpose, the January 25, 2019 FERC issuance of its Final Environmental Impact Statement (EIS), the anticipated May 2019 issuance of the Certificate of Public Convenience and Necessity (which was issued on May 3, 2019), and National Grid's comment on the FERC Docket confirming its support for the project. According to Transco, this information demonstrates a public need for an increase in the capacity of the existing Northeast Supply line by 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

However, to satisfy N.J.A.C. 7:7A-10.4, Transco must demonstrate a compelling public need as defined by the applicable regulations or, alternatively, an extraordinary hardship. Transco has done neither. Specifically, Transco has not demonstrated, based on facts specific to its application, that the proposed regulated activity will serve an essential health or safety need of the municipality in which the activities are proposed, that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.

Furthermore, while Transco asserts that the vast majority of the wetlands impacts that will occur in connection with CS 206 are necessary for the NESE Project as a whole and therefore a denial of the Freshwater Wetlands Individual Permit would constitute an extraordinary hardship brought about by circumstances peculiar to the subject property, Transco has not, as discussed above, demonstrated that there are no practicable alternatives that would avoid the purported hardship.

Therefore, Transco has not demonstrated compliance with N.J.A.C. 7:7A-10.4.

#### **Flood Hazard Area Control Act Permit**

##### ***7:13-11.2 Requirements for a regulated activity in a riparian zone.***

*(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:*

*1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;*

*2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:*

*i. Situating the regulated activity or project as far from any regulated water as feasible;*  
*and*

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*ii. Limiting construction to actively disturbed areas and/or areas wherein the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:*

*(1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;*

*(2) Abandoned pavement that has partially revegetated;*

*(3) Areas of dirt and gravel that are primarily devoid of vegetation;*

*(4) Eroded embankments; and*

*(5) Landscape islands within a paved parking area;*

Pursuant to N.J.A.C. 7:13-11.2(b)2ii, Transco has not adequately demonstrated that the proposed access road to the CS 206 site from the Franklin Georgetown Turnpike that crosses Block 5.02, Lots 1.02, 9, 10, 11.02, 12, 16 and 17 could not be accomplished without clearing, cutting or removing riparian zone vegetation of three unnamed tributaries to Carters Brook. Transco has not fully explored utilizing the existing Higgins Farm access road, which would eliminate all disturbances to riparian zone vegetation.

### **Raritan Loop**

#### **Waterfront Development Individual Permit and Water Quality Certificate**

##### ***N.J.A.C. 7:7-12.7 New Dredging***

*10. The new dredging shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:*

*i. An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. 7:7-12.9, Dredged material disposal in water areas, and N.J.A.C. 7:7- 15.12, Dredged material placement on land.). The Department will make an acceptable use determination for the beneficial use of dredged material in accordance with Appendix G;*

*ii. Pre-dredging chemical and physical analysis of the dredged material, including water quality predictive analyses for surface water and ground water may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;*

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*iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and discharges from dredged material management areas (see N.J.A.C. 7:7-9.49) shall meet applicable Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may require the permittee to conduct biological, physical, and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;*

Due to suspected contamination of sediments along the proposed submerged pipeline route for the Raritan Loop, DLUR required Transco to provide pre-dredging chemical and physical analysis of the dredged material, as well as additional testing to determine potential impacts to surface water quality and benthic communities. The testing results were also necessary for NJDEP to determine if the proposed dredged material placement method and disposal site are acceptable. NJDEP's rules at N.J.A.C. 7:7-12.7(2) require compliance with Appendix G, regarding the management and regulation of dredging activities in state tidal waters, including required application information. As stated in Appendix G, a water quality certificate is required for any discharge of dredged material into navigable waters of the United States associated with the dredging operation.

Transco provided initial in-situ sediment sampling for bulk sediment chemical analysis, sediment grain size, and texture. However, the testing was insufficient for DLUR to determine if the proposed upland placement facility was acceptable or if surface water quality would be impacted due to resuspension of contaminants at the proposed dredging site.

NJDEP worked with Transco to create a sediment sampling and analysis plan (SSAP) for the upland placement of material. Transco conducted sediment sampling in fall/winter of 2018. Bulk sediment chemistry on raw dredged material samples results were screened against the *Ecological Saline Water Sediment Effects Range Medium (ER-M)* criteria. ER-Ms are measures of toxicity in marine sediment that are used in assessing toxicity hazards for trace metals and organic contaminants. Parameters that exceed the ER-M value indicate there is a greater than 50% incidence of adverse effects to benthic communities (*Guidance for Sediment Quality Evaluations – NJDEP – November 1998*). Transco's sampling results showed exceedances of the ER-M value for bis(2-ethylhexyl)phthalate, phenanthrene, arsenic, manganese, mercury, polychlorinated biphenyls (PCBs) and 4,4'-DDE (pesticides) at certain sample points, as follows:

**Bis(2-Ethylhexyl)phthalate (Semi-Volatile Organic Compounds):**

ER-M Screening Criteria	Sample ID	Result
2.64651	VC-214	4.98

**Phenanthrene (Semi-Volatile Organic Compounds):**

ER-M Screening Criteria	Sample ID	Result
1.5	VC-214	2.21

**Arsenic (Inorganic Compounds):**

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ER-M Screening Criteria	Sample ID	Result
70 (Non-res 19)	VC-208	63.8
70	VC-214	70.1

**Manganese (Inorganic Compounds):**

ER-M Screening Criteria	Sample ID	Result
260	VC-304	366
260	DEP-3	379
260	DEP-4	353
260	DEP-5	371

**Mercury (Inorganic Compounds):**

ER-M Screening Criteria	Sample ID	Result
0.71	VC-208	1.56
0.71	VC-214	2.17

**PCBs (Aroclors Sum):**

ER-M Screening Criteria	Sample ID	Result
0.18	VC-208	0.821
0.18	VC-214	0.869

**4,4'-DDE (Pesticides):**

ER-M Screening Criteria	Sample ID	Result
0.027	VC-208	0.0289
0.027	VC-214	0.0366

These results indicate that the proposed dredging could adversely impact surface water quality. Specifically, Transco's sampling results indicate the proposed dredging for the Raritan Loop may exceed the applicable surface water criteria for toxic substances at N.J.A.C. 7:9B (SWQS). Based on Transco's submission, the relevant contaminants are bis(2-ethylhexyl)phthalate, phenanthrene, arsenic, manganese, mercury, PCBs and 4,4'-DDE (pesticides). In support of its application, Transco provided a report entitled "*NESE Hydrodynamic & Sediment Transport Modeling*" dated August 2017 that analyzed various methods of dredging and potential total suspended solids (TSS) turbidity and sediment plumes. An analysis was provided for open bucket with barge overflow, jet sledging, jet trenching, and HDD dredging techniques. DLUR asked Transco to provide a more detailed analysis to compare different methods of bucket dredging and jet equipment. Additionally, DLUR required a comparison of different methods selected for the pipe installation. Transco provided information on the feasibility of the HDD method, mechanical dredging, and jet trenching and provided a modeling analysis of cumulative TSS, distance of TSS plume, production rates, maximum distance of deposition and confirmed it would implement appropriate best management practices to control TSS in a manner that complies with the surface water quality standards.

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However, the chemical analysis for sample locations VC-208, VC-214, VC304, DEP-3, DEP-4, and DEP-5 resulted in exceedances to the *Ecological Saline Water Sediment ER-M criteria* which indicates there could be potential impact to water quality. Transco did not provide modeling to show that turbidity concentrations and water quality parameters for the identified chemicals of concern downstream and upstream of the dredging site will meet the SWQS.

Accordingly, the available information indicates that the proposed dredging could adversely impact surface water quality and that Transco has not sufficiently demonstrated how it would avoid adverse impacts to surface water quality. Any resubmittal of NESE Project application must include a modeling analysis for the above referenced parameters that demonstrates compliance with the SWQS, through the implementation of appropriate best management practices identified in Appendix G or otherwise, to avoid adverse water quality impacts.

### **RECOMMENDATIONS AND CONCLUSION**

Based on the above analysis, Transco has failed to demonstrate that the proposed NESE Project would comply with the Freshwater Wetland Protection Act Rules at N.J.A.C. 7:7A, the Flood Hazard Control Act Rules N.J.A.C. 7:13, and the Coastal Zone Management Rules at N.J.A.C. 7:7. Therefore, the NESE Project permit application, including for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront Development Individual In-water Permit, Upland Waterfront Development, Coastal Wetland Permits and Water Quality Certificate, is hereby denied without prejudice.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-28, Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-21, and the Flood Hazard Control Act Rules at N.J.A.C. 7:13-23.

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, 401 East State Street, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist. The Checklist is available through the Division's website at <http://www.nj.gov/dep/landuse/forms.html>. The DEP Bulletin is available through the Department's website at <http://www.nj.gov/dep/>.

I am sharing a copy of the denial with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources.

If you have any questions on this decision, please contact Matthew Resnick of my staff in

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writing at the above address, by telephone at (609) 777-3955, or via email at Matthew.resnick@dep.nj.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Dow", is written over a large, faint, circular watermark or stamp.

Diane Dow, Director  
Division of Land Use Regulation

cc: Bureau of Coastal and Land Use Enforcement, Toms River  
Sayreville Township, Municipal Clerk and Planning Board  
Old Bridge Township, Municipal Clerk and Planning Board  
Franklin Township Municipal Clerk and Planning Board

Transcontinental Gas Pipe Line Co. Attn: Joseph Dean, Manager, EH&S  
2800 Post Oak Road Blvd., Suite 900  
Houston, Texas 77056

FERC

# **EXHIBIT B**



**State of New Jersey****DEPARTMENT OF ENVIRONMENTAL PROTECTION**

PHIL MURPHY  
Governor  
SHEILA OLIVER  
Lt. Governor

Division of Land Use Regulation  
Mail Code 501-02A  
P.O. Box 420  
Trenton, New Jersey 08625-0420  
[www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)

CATHERINE R. McCABE  
Commissioner

November 27, 2019

Transcontinental Gas Pipe Line Co.  
c/o Mr. Tim Powell  
2800 Post Oak Blvd., Suite 900  
Houston, TX 77056

RE: Application for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront In-Water Individual Permit, Waterfront Upland Individual Permit, Coastal Wetlands Individual Permit, Water Quality Certificate and Coastal Zone Consistency Determination  
DLUR File No.: 0000-01-1001.3; LUP 190001 & 190003  
Applicant: Transcontinental Gas Pipe Line Company Co.  
Project: Northeast Supply Enhancement Project  
Block: 5.0 Lots: 1.02 (formerly 9, 10, 12, 16 & 17), 11.02, 20 (formerly 23) & 25  
Township of Franklin, Somerset County  
Transco R.O.W.s  
Township of Old Bridge and Borough of Sayreville, Middlesex County

Dear Mr. Powell:

On June 12, 2019 and on October 28, 2019 Transcontinental Gas Pipe Line Co. (Transco) submitted an application to the New Jersey Department of Environmental Protection (NJDEP) for the above-referenced permits for its Northeast Supply Enhancement (NESE) Project, which includes the proposed construction of a new compressor station and two new 26-inch diameter pipelines through freshwater wetlands, transition areas, coastal wetlands, flood hazard areas, riparian zones, and under the Raritan Bay under NJDEP's state authority and federally assumed authority under the Clean Water Act, specifically the Freshwater Wetlands Protection Rules (N.J.A.C. 7:7A), the Coastal Zone Management Rules (N.J.A.C. 7:7), which incorporate the NJDEP's consideration of water quality impacts and determination whether to issue a Water Quality Certificate pursuant to Section 401 of the federal Clean Water Act, and the Flood Hazard Control Act Rules (N.J.A.C. 7:13). By letter dated November 27, 2019, Transco requested withdrawal of each of the pending applications under review by this Department. This letter shall confirm that these applications are hereby considered withdrawn and that the Department shall take no further action on the NESE Project.

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Permittee: Transco  
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In addition, please be advised that in the event Transco submits a new application for the NESE Project under the aforementioned statutes and regulations, at a minimum, the following statutory and regulatory deficiencies associated with the withdrawn applications must be resolved to the Department's satisfaction:

Compelling Public Need. The NJDEP's governing rules, particularly N.J.A.C. 7:7A-10.4, require that the applicant demonstrate that there is a compelling public need for the proposed activity. To address the compelling public need requirement, Transco relies, in part, on the Federal Energy Regulatory Commission (FERC) May 3, 2019 Certificate of Public Convenience and Necessity and January 25, 2019 Final Environmental Impact Statement. According to Transco, this information demonstrates a public need for an increase in the capacity of the existing Northeast Supply line by 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory in order to serve National Grid's residential and commercial customers in the New York City area. While, in response to NJDEP's June 5, 2019 application denial, Transco provided additional information seeking to demonstrate the benefits of the project to New Jersey residents, such as increased reliability of the interconnected interstate gas delivery system, the primary recipient of the proposed capacity increase remains New York residents. In its latest application, Transco indicated that the NESE Project will support the growing demand for natural gas as a result of New York City's mandate requiring the conversion of buildings from heavy heating oils. According to Transco, in 2011, New York City began the planned phase-out of No. 4 heating oil by 2030. Transco states that the NESE Project will displace the use of No. 4 fuel oil in New York City and Long Island, resulting in significant reduction of ozone precursors of nitrogen oxides (NOx), sulfur dioxide (SO<sub>2</sub>), and particulate matter (PM). However, in order to fully establish a compelling public need, Transco must demonstrate concurrence from New York to confirm the purported public need, particularly in light of recent public statements by New York questioning that need, and to ensure that the project is not constructed in New Jersey without an endpoint for the proposed additional capacity.

Alternative Access Road for Compressor Station 206. The NJDEP's governing rules, particularly N.J.A.C. 7:7A-10.2, requires that the applicant demonstrate that there is no practicable alternative with less adverse environmental impacts. With respect to the site of the proposed compressor station (CS 206), Transco proposes to disturb or eliminate several acres of freshwater wetlands, transition area, open water and riparian zone vegetation. However, it appears that Transco has identified a means of accessing the site that could avoid or minimize these impacts. Transco's alternatives analysis identified an existing access road for the adjacent Higgins Farm Superfund Site, known as Block 5.20, Lot 26.01, as an alternative point for accessing the CS 206 site. Based upon an inspection of the site and the use of the NJDEP GIS wetland mapping, the NJDEP has determined that use or expansion of the existing Higgins Farm access road could avoid freshwater wetlands, State open waters and riparian zone vegetation. In the submitted application, Transco stated its expectation that it would not be able to pursue this alternative because of: (1) the status of Higgins Farm as a Superfund Site; (2) the existence of a conservation easement prohibiting non-agricultural development on the property; and (3) Transco's inability to obtain authorization from the FERC for use of the existing access road, including through condemnation. However, it appears that Transco has not taken steps necessary

DLUR File No.: 0000-01-1001.3; LUP 190001 &amp; 190003

Permittee: Transco


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to establish that the Higgins Farm access road does not represent a practicable alternative. To do so, Transco would be required to, at a minimum: (1) take further steps to acquire all property rights necessary for use of the existing Higgins Farm access road from the property owners and any easement holders, through negotiation and, if necessary, condemnation; (2) obtain authorization from FERC for use or expansion of the existing Higgins Farm access road to access the compressor station; and (3) coordinate with the Environmental Protection Agency to allow for the intended use, and any required extension, of the existing Higgins Farm access road.

New Dredging. The NJDEP's rules governing new dredging, particularly N.J.A.C. 7:7-12.7, requires that the applicant demonstrate, among other things, that adverse environmental impacts are minimized to the maximum extent feasible. Due to suspected contamination of sediments along the proposed submerged pipeline route within Raritan Bay, the NJDEP required Transco to provide pre-dredging chemical and physical analysis of the dredged material, as well as additional testing to determine potential impacts to surface water quality and benthic communities. The results indicated that the proposed dredging could potentially adversely impact surface water quality. In response to the NJDEP's June 5, 2019 application denial, Transco provided additional modeling for chemical fate transport of certain contaminants in order to predict potential effects on water quality. Transco's June 26, 2019 report entitled "*NESE Contaminant Transport Modeling Results For New Jersey Waters*" relied in part on the implementation of dredging best management practices (BMPs). However, Transco did not provide any information as to the means of monitoring the proposed dredging and jet plow operation to ensure that BMPs and operational procedures would be properly implemented to comply with Surface Water Quality Standards (SWQS). Nor did Transco set forth any adaptive management procedures that could be implemented in the event of an exceedance of the SWQS, which would be necessary to return any operation to compliance with the standards.

In conclusion, all the above referenced applications are withdrawn. Naturally, if Transco submits a new application for the NESE Project and addresses the above-referenced deficiencies, the Department will thoroughly review any new information submitted for consistency with its statutes and regulations. If you have any questions regarding this letter, please contact me at (609) 984-6216.

Sincerely,



Christopher Jones, Manger  
Division of Land Use Regulation  
Bureau of Urban Growth & Redevelopment

- c: Bureau of Coastal and Land Use Enforcement, Toms River  
Borough of Sayreville Clerk and Planning Board  
Township of Old Bridge Clerk and Planning Board  
Township of Franklin Clerk and Planning Board

DLUR File No.: 0000-01-1001.3; LUP 190001 & 190003

Permittee: Transco

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Mr. Joe Dean, Transco

# EXHIBIT C

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION****Division of Environmental Permits**

625 Broadway, 4th Floor, Albany, New York 12233-1750

P: (518) 402-9167 | F: (518) 402-9168 | [deppermitting@dec.ny.gov](mailto:deppermitting@dec.ny.gov)[www.dec.ny.gov](http://www.dec.ny.gov)

May 15, 2020

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 of Water Quality Certification  
Transcontinental Gas Pipe Line Company, LLC  
Northeast Supply Enhancement Project  
DEC ID: 2-9902-00109/00006 – Water Quality Certification

Dear Mr. Dean:

On May 17, 2019, Transcontinental Gas Pipe Line Company, LLC (“Transco”) submitted a federal Clean Water Act (“CWA”) Section 401<sup>1</sup> Water Quality Certification (“WQC”) application (“2019 WQC Application”) to the New York State Department of Environmental Conservation (“NYSDEC” or “Department”) for the proposed Northeast Supply Enhancement Project (“Project”).<sup>2</sup> Based on its review of the 2019 WQC Application and supplemental information provided by Transco, the record before the Federal Energy Regulatory Commission (“FERC”) regarding the Project,<sup>3</sup> and the over 16,000 public comments received from individuals or organizations during the Department’s public comment period,<sup>4</sup> the Department hereby provides notice to Transco that the 2019 WQC Application is denied.<sup>5</sup> As required by Title 6 of the New York Codes,

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<sup>1</sup> 33 U.S.C. § 1341.

<sup>2</sup> Transco originally submitted a Joint Application for Permits on June 30, 2017, which included applications for Endangered/Threatened Species (Part 182 Incidental Take Permit), Environmental Conservation Law (“ECL”) Article 15 Excavation & Fill in Navigable Waters permit, and a WQC (“Joint Application”). The Department denied the original June 30, 2017 WQC application without prejudice on April 20, 2018. Transco subsequently submitted a new WQC application on May 16, 2018, which the Department denied without prejudice on May 15, 2019 (“2019 Denial”). See Notice of Denial, May 15, 2019, *available at*: [https://www.dec.ny.gov/docs/administration\\_pdf/nodtgp.pdf](https://www.dec.ny.gov/docs/administration_pdf/nodtgp.pdf). The 2019 WQC Application is the subject of this Notice of Denial letter. The Part 182 Incidental Take Permit and ECL Article 15 Excavation & Fill in Navigable Waters applications remain pending before the Department and are not the subject of this letter.

<sup>3</sup> See FERC Docket No. CP17-101.

<sup>4</sup> The Department received over 16,000 written public comments during the public comment period on the 2019 WQC Application from May 29, 2019 to July 13, 2019.

<sup>5</sup> Separate from the Joint Application for Permits, Transco applied on June 21, 2018 for a State Pollutant Discharge Elimination System (“SPDES”) to discharge hydrostatic test discharge water into the Atlantic Ocean. The SPDES permit application remains pending before the Department and is not the subject of this letter.

Department of  
Environmental  
Conservation

Rules, and Regulations (“6 NYCRR”) Section 621.10, a statement of the Department’s basis for this denial is provided below.

### **Project Background and FERC Application**

Along with other components located 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, New York. The Project would provide 400,000 dekatherms per day of incremental natural gas capacity to National Grid to serve customers in Brooklyn, Queens, and Long Island.

On March 27, 2017, Transco submitted an application for a Certificate of Public Convenience and Necessity (“Certificate”) to FERC under Section 7(c) of the Natural Gas Act<sup>6</sup> for construction and operation of the Project.<sup>7</sup> FERC issued a Draft Environmental Impact Statement (“DEIS”) on March 23, 2018. The Department submitted comments to FERC regarding the DEIS on May 14, 2018. FERC issued a Final Environmental Impact Statement (“FEIS”) for the Project on January 25, 2019. The FEIS outlined some of the numerous environmental impacts FERC anticipates from the construction and operation of the Project and recommended certain conditions to mitigate some of the impacts. On May 3, 2019, FERC issued Transco a Certificate for the Project,<sup>8</sup> subject to certain environmental conditions recommended in the FEIS. According to FERC, these conditions would mitigate many of the environmental impacts associated with the Project.

### **2019 WQC Application and Procedural Background**

In addition to FERC’s issuance of a Certificate for the Project, Transco must obtain a WQC from the Department prior to commencing construction of the Raritan Bay Loop portion of the Project in New York State. Pursuant to Section 401 of the CWA, no federal license for a project can be granted until a WQC is issued or waived by the relevant state agency, which, in this case, is the Department.<sup>9</sup> Likewise, pursuant to Section 401 of the CWA, no federal license for a project can be granted if a WQC is denied.<sup>10</sup>

For the Project, the Certificate issued by FERC recognizes the need for a WQC from the Department. For example, to obtain authorization to commence construction of the Project, Transco must provide FERC with “documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).”<sup>11</sup>

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<sup>6</sup> 15 U.S.C. § 717f(c).

<sup>7</sup> See FERC Docket No. CP17-101.

<sup>8</sup> FERC Order Issuing Certificate, 167 FERC ¶ 61,110 (May 3, 2019) (“FERC Order”).

<sup>9</sup> 33 U.S.C. § 1341.

<sup>10</sup> *Id.*

<sup>11</sup> FERC Order at 41, Appx. A, Environmental Conditions at ¶ 10.



The FEIS issued by FERC expressly acknowledges that among such authorizations is a WQC from the Department.<sup>12</sup>

As cited above, on June 30, 2017, Transco originally submitted a Joint Application to the Department for the Project. The Department denied the original June 30, 2017 WQC application without prejudice on April 20, 2018, due to incomplete information and the ongoing environmental review by FERC.<sup>13</sup> On May 16, 2018, Transco submitted to the Department a new WQC application for the Project that included additional information ("2018 WQC Application"). The 2018 WQC Application was supplemented on multiple occasions with further additional information, including in response to requests from NYSDEC. A public comment period and public statement hearings were held in early 2019<sup>14</sup> and the Department subsequently denied the 2018 WQC Application without prejudice on May 15, 2019.<sup>15</sup>

On May 17, 2019, Transco submitted to the Department a new WQC application ("2019 WQC Application") for the Project, which is the subject of this Notice of Denial letter. The 2019 WQC Application included changes from the 2018 WQC Application in response to the 2019 Denial and otherwise. Transco supplemented the 2019 WQC Application on May 23, 2019 and June 19, 2019. As previously mentioned, over 16,000 public comments were received from individuals or organizations during a public comment period held between May 29, 2019 through July 13, 2019.

### **Basis for Denial**

The Department denies the 2019 WQC Application based on Transco's inability to demonstrate the Project's compliance with all applicable water quality standards. To obtain a WQC from the Department, an applicant must, among other requirements, demonstrate compliance with State water quality standards. See 6 NYCRR § 608.9. Transco has not demonstrated that construction and operation of the Project would comply with applicable water quality standards. Because the Department lacks

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<sup>12</sup> FEIS at 1-19, Table 1.5-1.

<sup>13</sup> See Notice of Denial/Notice of Incomplete Application, April 20, 2018 ("2018 Denial"), available at [https://www.dec.ny.gov/docs/water\\_pdf/transcodenial42018.pdf](https://www.dec.ny.gov/docs/water_pdf/transcodenial42018.pdf). As stated in the 2018 Denial, FERC's environmental review of the Project, conducted pursuant to the National Environmental Policy Act ("NEPA"), takes the place of an environmental review that would otherwise be conducted under the State Environmental Quality Review Act (ECL Article 8). FERC's NEPA review of the Project was incomplete at the time of the 2018 Denial. As mentioned above, notwithstanding the sufficiency or lack thereof of FERC's environmental review, FERC has since issued an FEIS for the Project and issued the Certificate for the Project.

<sup>14</sup> During a public comment period from January 30, 2019 to March 15, 2019, the Department received over 14,000 public comments on behalf of over 45,000 individuals or organizations. Pursuant to 6 NYCRR Section 621.8, legislative public comment hearings were held on February 26, 2019 in Brooklyn, and March 6, 2019 in Rockaway Park.

<sup>15</sup> See 2019 Denial. As stated in the 2019 Denial, the Department determined that Transco had not demonstrated that the Project would comply with all applicable water quality standards and that the construction of the Project would likely have significant water quality impacts in New York State. Most notably, according to Transco's own submissions and as acknowledged by FERC [FEIS at 4-123, Table 4.5.2-8], water quality standards for both mercury and copper were projected to be exceeded in certain areas in New York State waters.



reasonable assurances that the Project would comply with applicable water quality standards, particularly without the use of a default 500-foot mixing zone for mercury and copper, the Department hereby denies the 2019 WQC Application.

Transco's projections in the 2019 WQC Application are based on the presumed use of a default 500-foot mixing zone. But as the Department noted in its 2019 Denial, the Department maintains discretion to assign a smaller mixing zone or no mixing zone, based on its assessment of relevant factors including the nature of sediment contamination, the proximity of sensitive habitats, and other qualitative assessments. The Department has considered the Project in light of these criteria and has determined that the default 500-foot mixing zone is not appropriate at all locations proposed to be crossed by the Project. Without the use of a default mixing zone at all locations, the Project would not comply with all applicable water quality standards, and therefore, the Department is denying the 2019 WQC Application.

Based on the Department's review of the 2019 WQC Application for the Raritan Bay Loop portion of the Project, including all supplemental materials, review of the over 16,000 public comments received on the 2019 WQC Application for the Project, and review of the FEIS and other record materials associated with the Project, the Department has determined that the construction of the Project would have adverse water quality impacts in New York State. This includes significant water quality impacts from the resuspension of sediments and other contaminants, including mercury and copper, particularly without the use of a default 500-foot mixing zone in certain areas. The Project would cause impacts to habitats due to the disturbance of shellfish beds and other benthic resources. The water quality impacts would be especially problematic within the productive hard clam area in Raritan Bay located between milepost ("MP") 14 and MP 20, which is considered both a "sensitive habitat"<sup>16</sup> and a "critical resource area"<sup>17</sup> (the "hard clam critical resource area").

Given the nature of anticipated sediment contamination, the importance of the hard clam critical resource area that would be crossed by the Project, along with the overall nature and need for the Project, the use of a default 500-foot mixing zone is not appropriate in all Project areas, particularly in the hard clam critical resource area. Furthermore, in some locations, Transco proposes to bury the Project only four feet under the seafloor, rather than the minimum six-foot burial depth more recently sought by the Department for other offshore projects. Were Transco to maintain a minimum six-foot burial depth throughout the entire Project route, it would also need to propose construction methods that would address any water quality impacts from such a burial depth.

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<sup>16</sup> "Sensitive habitat" as referenced in the Technical & Operational Guidance Series ("TOGS") 5.1.9, In-Water and Riparian Management of Sediment and Dredged Material, November 2004 – available at [https://www.dec.ny.gov/docs/water\\_pdf/togs519.pdf](https://www.dec.ny.gov/docs/water_pdf/togs519.pdf)

<sup>17</sup> "Critical resource areas" as referenced in the United States Environmental Protection Agency ("EPA") 820-B-14-004 September 2014 Water Quality Standards Handbook, include breeding or spawning grounds, habitat for threatened or endangered species areas with sensitive biota shellfish beds, fisheries, drinking water intakes and sources and recreational areas.

### ***Statutory and Regulatory Basis***

The Department, in accordance with CWA Section 401, is required to certify that a facility meets State water quality standards prior to a federal agency issuing a federal license or permit in conjunction with its proposed operation.<sup>18</sup> An applicant for a WQC must provide the Department sufficient information to demonstrate compliance with the State's water quality regulations found at 6 NYCRR Section 608.9 (Water Quality Certifications). Pursuant to this regulation, an applicant must demonstrate compliance with Sections 301, 302, 303, 306 and 307 of the CWA, as implemented by applicable water quality standards set forth in 6 NYCRR Parts 701, 702, 703, 704, and 750, and State statutes, regulations and criteria otherwise applicable to such activities. Denial of a WQC may occur, for example, when an application fails to contain sufficient information to demonstrate compliance with the above-referenced State water quality standards and other applicable State statutes and regulations, or when an application contains information that construction and operation of a project may violate or exceed an applicable water quality standard.

### ***Applicable Water Quality Standards for Mercury and Copper***

As described above, and pursuant to 6 NYCRR Section 608.9, Transco must demonstrate that the Project will comply with all applicable water quality standards in order for the Department to issue a WQC for the Project. Among these water quality standards are both narrative and numerical standards, which in turn depend on the regulatory classification of the particular waterbody or waterbodies at issue. *See generally* 6 NYCRR Part 703. The waters that would be crossed by the Project are primarily classified by the Department as either Class SA or Class SB saline surface waters. *See* 6 NYCRR § 890.6.<sup>19</sup> The best usages of Class SA saline surface waters "are shellfishing for market purposes, primary and secondary contract recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival." 6 NYCRR § 701.10.<sup>20</sup> The best usages of Class SB saline surface waters "are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival." 6 NYCRR § 701.11.<sup>21</sup>

Numerical water quality standards are established by the Department for particular substances and waterbody classifications. For copper, the aquatic chronic standard for SA and SB waters is 3.4 ug/L dissolved, except in the New York/New Jersey harbor where it is 5.6 ug/L dissolved. *See* 6 NYCRR § 703.5. For mercury, the regulatory Health (Fish Consumption) water quality standard is 0.70 ng/L or  $7 \times 10^{-4}$  ug/L (dissolved). *See* 6 NYCRR § 703.5, Table 1. The applicable standard for mercury relevant to the Project, however, is higher and is based on a multiple discharge variance procedure developed

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<sup>18</sup> 33 U.S.C. § 1341.

<sup>19</sup> *See also* FEIS at 4-50.

<sup>20</sup> *See also id.*

<sup>21</sup> *See also id.*

according to 6 NYCRR Section 702.17(h).<sup>22</sup> The resulting mercury water quality standard variance concentration is 50 ng/L or 0.05 ug/L total mercury. Along with other applicable water standards, the construction and operation of the Project must comply with these numerical standards for copper and mercury.

### ***Transco's Contaminant Modeling***

Transco conducted contaminant modeling for various compounds, including copper and mercury. This modeling projected concentrations of compounds at the edge of a default 500-foot mixing zone at various locations. As acknowledged by FERC in both the FEIS and the FERC Order, based on a review of the modeling information submitted by Transco itself, “[f]or some of the modeled scenarios, water quality standards for mercury and copper would not be met at the edge of the mixing zone.”<sup>23</sup>

Transco's earlier models projected exceedances of the numerical water quality standard variance concentration for mercury at the edge of a default 500-foot mixing zone within the hard clam critical resource area at Vibracore sites VC6, VC16, and VC17.<sup>24</sup> Within this hard clam critical resource area, the highest projected concentration for mercury was 0.1 ug/L, which would have been double the variance-based water quality standard of 0.05 ug/L.<sup>25</sup> In addition to the modeling results within the hard clam critical resource area, Transco's earlier modeling projected exceedances for mercury by as much as more than double the variance-based water quality standard of 0.05 ug/L, with a maximum projected concentration of 0.12 ug/L.<sup>26</sup> As described above, and as was described in the 2019 Denial, the variance concentration is already significantly higher than the regulatory water quality standards for mercury in 6 NYCRR Section 703.5. Similarly, exceedances of the numerical water quality standards for copper were projected in Transco's original modeling to occur at the edge of a default 500-foot mixing zone within the hard clam critical resource area at Vibracore sites VC7 and VC16.<sup>27</sup>

Transco submitted Addendum B to its Contaminant Transport Modeling Results as part of the 2019 WQC Application that included additional pollutant dispersion calculations for Vibracore sites VC7, VC37 and VC42. Addendum B modified the rate of dredging for each of the segments around VC7 to 4,800 cubic feet per hour, and for segments around VC37 and VC42 to 4,500 cubic feet per hour. For segments around VC37 and VC42, Addendum B also incorporated a “slack-tide pause.” On June 19, 2019, Transco submitted Addendum C to its Contaminant Transport Modeling Results that included additional pollutant dispersion calculations for Vibracore sites VC6, VC16, VC17, and VC38. Addendum C modified the rate of dredging for each of the segments around

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<sup>22</sup> See NYSDEC TOGS 1.3.10 Mercury - available at: [https://www.dec.ny.gov/docs/water\\_pdf/tog1310final.pdf](https://www.dec.ny.gov/docs/water_pdf/tog1310final.pdf).

<sup>23</sup> FEIS at ES-12; FERC Order at p.19, ¶ 49.

<sup>24</sup> Supplemental Informational Filing #A-2, Table 3-3 “Summary of Addendum A Contaminant Modeling Results – October 2018.” See also FEIS at ES-12, 4-122 to 4-123, Table 4.5.2-8; FERC Order at 19, 49.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> FEIS at 4-123, Table 4.5.2-8; Supplemental Informational Filing #A-2, Table 3-3 “Summary of Addendum A Contaminant Modeling Results – October 2018.”

VC6, VC16, VC17, and VC37 from 11,250 cubic feet per hour to 4,800 cubic feet per hour. Addendum C notes that the reduced dredging rate lengthens the time necessary to complete the proposed Project. As a result of the reduction in dredging rates and implementation of selective “slack-tide pause,” Transco’s revised modeling results (Addendum B and Addendum C) now project no exceedances of the variance-based water quality standard of 0.05 ug/L for mercury or the standard of 5.6 ug/L for copper at the edge of a presumed default 500-foot mixing zone. This analysis improperly assumes application of a default 500-foot mixing zone at all locations. As explained below, however, the use of the default 500-foot mixing zone has not been established at all locations and is not appropriate in certain areas along the proposed Project route.

Finally, without further documentation, the Department cannot accept the modeled sediment loss rate of 5%, which was used to project sediment loss due to jet trencher activities. The 5% loss rate is applied in the hard clam critical resource area (MP 16.6 to MP 17.3 and MP 17.9 to MP 19.7) where jetting installation is proposed. From the FEIS, in Table 3.6-1, the percent dispersed rate from the jet trencher is listed as 5% whereas the dispersed rate from a jet sled is listed as 90%, with a 10% dispersed rate for a mechanical plough. The footnotes to the Table indicate that the jet sled equipment dispersed rate is based on information received from LL&G Construction Company and the mechanical plough equipment dispersed rate is based on information received from Royal IHC. However, there is no basis for the jet trencher dispersed rate listed in this table. Contained in Transco’s submission dated May 16, 2019, is Addendum 5 - February 15, 2019 Regarding: NESE Modeling Results (Addendum). In this Addendum, Transco assumes losses from the jet trencher to be 5% of the total disturbance volume. Modeling results from other comparable jetting installation projects that NYSDEC has reviewed have assumed a 25% to 30% sediment loss rate for jetting installation activities. Without a reference to the basis for the 5% loss rate assumed for jet trenching, it is not possible to verify this 5% loss rate assumption. This loss rate is likely to affect the water quality projections contained in Transco’s Contaminant Transport Modeling Results and associated addenda.

### ***Use of Default Mixing Zone of 500 feet***

All of the water quality standard exceedances previously projected by Transco were based on the presumed use of a default 500-foot mixing zone, as explained in the 2019 Denial. Similarly, as explained above, Transco’s updated projections in the 2019 WQC Application – which projected no exceedances for applicable mercury or copper standards – were all based on the use of a default 500-foot mixing zone. Without the use of a 500-foot mixing zone in certain locations along the proposed Project route, Transco’s projections do not provide reasonable assurances that construction and operation of the Project would meet all applicable water quality standards.<sup>28</sup>

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<sup>28</sup> The Department’s discretion to apply a mixing zone other than the default 500-foot mixing zone is consistent with guidance by EPA Office of Water EPA 820-B-14-004 September 2014 Water Quality Standards Handbook Chapter 5: General Policies.

As noted in the 2019 Denial, the Department has discretion to reduce the size of a mixing zone from the default 500-foot size, or eliminate a mixing zone altogether, based upon a case-by-case analysis of the facts particular to each application and location. While the Department previously noted the default 500-foot mixing zone value, the Department has made no final discretionary determination regarding the appropriate mixing zone at all locations for the Project. In fact, the Department noted in the 2019 Denial that, in this case, the Department could assign a mixing zone of less than 500 feet. Neither the 2019 Denial nor any other previous document with Transco assigned a particular mixing zone for the Project because it was not necessary to do so at that time. That is, based on the previous application that was before the Department at the time, Transco had projected exceedances for mercury and copper even with the use of a default 500-foot mixing zone.

The Department's discretion in determining the size and shape of a mixing zone allows the Department to ensure that natural resources are protected by minimizing the suspension of contaminated sediment during permitted activities. As outlined in TOGS 5.1.9 - *In-Water and Riparian Management of Sediment and Dredged Material*, this case-by-case analysis examines the following factors: (1) the nature of the sediment contamination; (2) proximity of sensitive habitats or water use areas; (3) proximity of sensitive life stages of important biological resources; and (4) other qualitative assessment factors relevant to the project, including a comparison of the proposed project to similar projects.<sup>29</sup> This approach is consistent with the EPA's guidance on mixing zones, which provides: "States and tribes should conclude that mixing zones are not appropriate ... where they may endanger critical areas such as breeding and spawning grounds, habitat for threatened or endangered species, areas with sensitive biota, *shellfish beds*, fisheries, drinking water intakes and sources, and recreational areas."<sup>30</sup> Transco's sediment sampling indicates the presence of a water quality limiting substance (mercury) and analytes detected in the sediment at greater than Class A threshold values (metals and polychlorinated biphenyls ("PCBs")). Based on a consideration of these factors, as described below, the Department concludes that the use of a default 500-foot mixing zone is inappropriate in certain locations proposed to be crossed by the Project, namely, the hard clam critical resource area of Raritan Bay.

### 1. *Nature of the Sediment Contamination*

As mentioned above, sediment sampling in the Project area has identified both mercury and copper as well as arsenic, silver, nickel, lead, zinc, PCB and dioxin/furan sediment contamination buried in the hard clam critical resource area (VC6, VC7, VC16, VC17). As part of its review of the 2019 WQC Application, the Department considered the historical background contaminant concentrations in the area proposed to be crossed by the Project, including for mercury and copper. In particular, NYSDEC asked Transco for ambient water column concentration information.<sup>31</sup> Transco supplied historical water

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<sup>29</sup> TOGS 5.1.9, Section V. Permit Conditions for Dredging and Dredged Material Management at 35-37.

<sup>30</sup> See EPA 820-B-14-004, September 2014 Water Quality Standards Handbook, Chapter 5 (emphasis added).

<sup>31</sup> See Supplemental Informational Filing #A-2, at 12.

column monitoring data, including historical background contaminant concentrations in the water column.<sup>32</sup> Resuspension of contaminated sediment caused by the construction of the Project will release contaminants into the water column and these contaminant concentrations will exceed background levels. Consequently, construction activities are projected to cause the exceedances for mercury and copper.

Copper is a critical contaminant that is closely regulated in the environment due to its potential to have drastic and immediate effect on aquatic life. Suspending copper-laden sediments may adversely affect and harm aquatic life, inhibit reproduction, or kill aquatic life. Similarly, mercury is a metal that contaminates the environment from human activities, and suspension of mercury-laden sediments may adversely affect aquatic life, including harming, inhibiting reproduction, or killing aquatic life.

Due to the bioaccumulative effect of mercury, there is also potential for such adverse effects to migrate up the food chain, adversely affecting other organisms. Although analysis of contaminant transport has thus far utilized the variance-based water quality standard of 0.05 ug/L for mercury, the Department notes that the Health (Fish Consumption) standard for dissolved mercury is 0.0007 ug/L, due to mercury's bioaccumulative properties. See 6 NYCRR § 703.5, Table 1. Increased scrutiny of mixing zone usage for such bioaccumulative pollutants is consistent with EPA guidance, which goes further and "recommends that state and tribal mixing zone policies do not allow mixing zones for discharges of bioaccumulative pollutants."<sup>33</sup> Bioaccumulation is particularly a concern in areas designated as Class SA waterbodies where shellfishing is a best use. See 6 NYCRR § 701.10.

Copper and mercury, as well as other heavy metals such as silver, zinc, and nickel, can have negative impacts on metamorphosis, growth and survival of larval clams, which are at a critical life stage and are more susceptible to impacts from metals and contaminants than their adult counterparts. Larval stage hard clams are more vulnerable to the negative impacts of exposure to heavy metals during this critical life stage that results in increased mortality and impacts to growth and successful metamorphosis to the "setting" stage. In addition to the impact of such exposure on the mortality of hard clam larvae when exposed to toxic levels of copper or mercury, these and other heavy metals in seawater, particulate matter and algae would be filtered by larvae, juvenile, and adult clams. The vulnerability of hard clams to such pollutants is of particular concern to the Department because the proposed Project is located in an important area for shellfish propagation and survival, as is discussed in greater detail below.

## 2. *Proximity of Sensitive Habitats*

The Project is proposed to be located in an important area for shellfish propagation and survival. Currently, Raritan Bay supports a healthy abundance of diverse resident and migratory marine species and specifically a valuable hard clam critical resource area. In particular, Raritan Bay is one of last known highly productive hard clam beds in the

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<sup>32</sup> See *id.* at 14-15.

<sup>33</sup> See EPA 820-B-14-004, September 2014 Water Quality Standards Handbook, Chapter 5.

State, and its benthic habitat is particularly critical and sensitive. Specifically, the hard clam critical resource area in Raritan Bay is located between MP 14.0 and MP 20. Transco estimated that the hard clam density between MP 14.4 and MP 21.6 to be approximately 69.6 individuals per square foot. The majority (approximately 74%) of hard clam individuals collected in this area were less than one inch (25 millimeters) in size.<sup>34</sup> Part of this area is currently an uncertified shellfish area, meaning that shellfish harvest is currently prohibited except pursuant to a Department-managed transplant program. Due in large part to high-quality habitat with no current harvest, there is currently a thriving hard clam population in these areas.

Overall, the construction of the Project would likely have significant adverse impacts to shellfish propagation and survival.<sup>35</sup> As stated by FERC in the FEIS, “the primary impacts associated with construction of the Raritan Bay Loop would be the potential adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments).”<sup>36</sup> In particular, seabed disturbance from the construction of the Project would have direct impacts including “mortality, injury, or temporary displacement of the organisms living on, in, or near the 87.8 acres of seafloor directly affected by the Project.”<sup>37</sup> Moreover, indirect impacts from construction of the Project “would include suspension of sediments in the water column, which could clog fish gills and obscure visual stimuli, and the redistribution of sediments that fall out of suspension, which could bury benthic and demersal species, resulting in mortality of eggs and other life stages. Benthic invertebrates and demersal (bottom-dwelling) fish species in or near areas directly impacted by construction would be most affected.”<sup>38</sup> The Project would disrupt early life stages of hard clams settled on the bottom sediments that would be buried by sediment deposition with an expected high rate of mortality. Smaller clams might experience as high a mortality rate as 100%. Adult clams may also experience mortality but to a lesser degree than juvenile clams.

As described above, and as acknowledged by both Transco and FERC, if construction of the Raritan Bay Loop portion of the Project were to proceed, there would be various environmental impacts, including to water quality, shellfish beds, and other benthic resources. Based on information contained in Transco’s Contaminant Transport Modeling Results (including Addenda B and C), the Project would result in a 1,000-foot-wide corridor along which water quality standards for copper and mercury are projected to be exceeded. This corridor is currently proposed to cut directly through the Raritan Bay hard clam critical resource area. As noted above, the Health (Fish Consumption) standard for dissolved mercury is 0.0007 ug/L, due to the bioaccumulative effect of mercury. See 6 NYCRR § 703.5, Table 1. Given the Project proposes to create a 1,000-foot-wide

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<sup>34</sup> FEIS at 4-101 to 4-102.

<sup>35</sup> As mentioned above, pursuant to 6 NYCRR Section 701.10, the best usages of Class SA saline surface waters are shellfishing for market purposes, primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival. And pursuant to 6 NYCRR Section 701.11, the best usages of Class SB saline surface waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival.

<sup>36</sup> FEIS at ES-10.

<sup>37</sup> FEIS at ES-11. See also FERC Order at 17-18, ¶ 46.

<sup>38</sup> FEIS at ES-11.

corridor through the hard clam critical resource area where mercury-laden sediment is suspended at levels roughly 100 times more concentrated than the Health (Fish Consumption) standard, the application of a default 500-foot mixing zone is not appropriate.

Given the severity of the potential adverse impact to the unique natural resource of the hard clam critical resource area, Transco's proposed use of a default 500-foot mixing zone is not appropriate in this location. Furthermore, because the model predicts only achieving the water quality standard concentration for copper and mercury at the edge of the default mixing zone, the concentrations of these contaminants within the confines of the default mixing zone would be expected to exceed the water quality standards. This will be especially true closer to the source of resuspension. Therefore, reducing the size of the default mixing zone in a specific area would likely lead to additional and greater exceedances of mercury and copper water quality standards in that area and may also lead to exceedances of other applicable standards. None of the material submitted by Transco to the Department or to FERC appears to address Transco's ability to reduce the size of the mixing zone, nor does Transco address what actions could be taken to avoid the hard clam critical resource area or minimize the likely adverse effects of the Project on the hard clam critical resource area (beyond the Best Management Practices ("BMPs") already proposed, such as the use of an environmental bucket or elimination of barge overflow). Therefore, given the proximity of sensitive habitats to certain areas along the proposed Project route, the application of this factor also weighs towards the use of a smaller or no mixing zone.

### 3. *Proximity of Sensitive Life Stages of Important Biological Resources*

Based on the requirements in TOGS 5.1.9, Table 3, for Class C sediment, Transco is already implementing the BMPs of no barge overflow and the use of an environmental bucket for dredging. Transco also proposes to slow its proposed rate of dredging as a means of addressing compliance with water quality standards. Further slowing the rate of dredging, however, would also potentially interfere with the required no work windows for important biological species because there is already minimal buffer, or float, built into the schedule.

Transco would be subject to various construction work windows for the Project, including to protect certain threatened and endangered species such as Atlantic Sturgeon and species in decline such as Winter Flounder.<sup>39</sup> Applicable work windows in locations that would be crossed by the Project already result in a relatively tight construction schedule due to the presence of these and other species. As part of the Joint Application, Transco applied for a Part 182 Incidental Take Permit from the Department. As an example of an applicable construction work window, if Transco cannot comply with the

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<sup>39</sup> See Species-related Time-of-year (TOYR) Flexibility Requests – revised December 14, 2018 Northeast Supply Enhancement Project. See also FERC Order at 42, Appx. A Environmental Conditions, ¶ 14 (addressing requirement for Transco to provide, prior to commencing construction of the Raritan Bay Loop portion of the Project, documentation of timing restriction commitments and allowable work within these periods).



following conditions for MP 30 to MP 35.5, then an incidental take of Atlantic Sturgeon may occur:

- No work May 1st through June 30th and no work October 1st through November 30th, with the exception of limited low-impact activities (hand jetting, spool installation, hydrotesting and drying), only.
- From March 1st through April 30th, work can occur provided that no sturgeon are present. Absence of sturgeon must be confirmed with acoustic monitoring prior to work being conducted.

Transco's construction schedule does not appear to provide any buffers to avoid impacts to or take of important biological species. As a result, even if a reduced construction rate would ensure compliance with water quality standards, it may not be possible for Transco to employ such a reduced rate while still complying with applicable construction work windows to protect species. Thus, Transco has not provided sufficient documentation to the Department that any identified need to reduce the rate of dredging to comply with water quality standards would be possible within applicable work windows to protect important biological species.

#### *4. Other Qualitative Assessments*

In determining whether to assign the default 500-foot mixing zone or a different value, the Department may also consider "[q]ualitative assessments which compare the proposed project to similar projects . . . ." <sup>40</sup> Based on the factors discussed above related to the sensitive hard clam area that would be crossed by the Project, it is not necessary to reach this factor to determine the appropriate mixing zone. While the application of this factor is not necessary for the Department to determine that the default 500-foot mixing is inappropriate in the hard clam critical resource area, consideration of this criterion is consistent with the application of the other factors. As discussed further below, this includes qualitative assessments of the Project's greenhouse gas ("GHG") emissions and climate change impacts, especially given the State's recently-enacted Climate Leadership and Community Protection Act ("Climate Act"), <sup>41</sup> as well as the need for the Project in light of anticipated natural gas supply and demand in the downstate region. The assessment of these additional qualitative factors provides further supplemental support for the Department's determination that the default 500-foot mixing zone is inappropriate for the hard clam critical resource area.

Overall, based on a consideration of the factors explained above, the Department concludes that the use of the default 500-foot mixing zone is not appropriate at certain locations for the proposed Project, including the hard clam critical resource area.

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<sup>40</sup> TOGS 5.1.9 at 37.

<sup>41</sup> Chapter 106 of the Laws of 2019.

### ***Compliance with Water Quality Standards without Default Mixing Zone***

Given NYSDEC's case-specific determination that the assignment of the default mixing zone of 500 feet is not appropriate in all locations for this Project, particularly at the hard clam critical resource area, NYSDEC must assess the Project's projected compliance with applicable water quality standards without the use of the default mixing zone. Based on its review of the 2019 WQC Application and other materials outlined above, the Department does not have reasonable assurances that construction of the Project would comply with applicable water quality standards once the default 500-foot mixing zone is removed from the analysis.

During review of the 2019 WQC Application, NYSDEC also considered Transco's proposal to bury the pipeline only four feet under the seafloor in some locations. This burial depth is less than the six feet minimum depth sought by the Department in other contexts, such as newly proposed underwater electric transmission lines within the New York Bight. A six-foot burial depth is generally aimed at providing additional protection from a fishing and fisheries perspective, to avoid exposing or snagging the line and to minimize risk of vessel or gear impact that might compromise the pipeline.<sup>42</sup> Additionally, the Project is proposed in an area where transmission cables may be sited in the future to transmit renewable energy generated by offshore wind projects to both New York and New Jersey. As such, the design of any new offshore cable or pipeline must consider and avoid potential conflicts with future projects, including installation at a minimum depth of six feet.<sup>43</sup> An evaluation of a deeper burial depth to avoid gear interaction and conflicts with future projects in the Raritan Bay and more broadly, the New York Bight, was not considered in the 2019 WQC Application. However, absent an evaluation by Transco, the Department cannot make a determination regarding water quality impact of the more appropriate six-foot burial depth.

### **Additional Impacts and Qualitative Assessment**

In addition to the water quality standard exceedances for mercury and copper projected to be caused by the construction of the Project without the application of a default mixing zone that are the basis for this denial, the construction and operation of the Project would cause numerous other significant adverse environmental impacts. This includes impacts to shellfish propagation and survival, as well as impacts to other

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<sup>42</sup> For example, in a letter to the Bureau of Ocean Energy Management on November 19, 2018, New York State agencies recommended a six-foot burial depth for offshore wind transmission lines: <https://www.regulations.gov/document?D=BOEM-2018-0010-0085>. The letter cites to conflicts with, "vessel anchorage, effective fishing bottom-gear deployment, finfish and shellfish stocks, and related habitat that may be harmed or inaccessible to fishing due to transmission cable protection measures and [inadequate] cable burial depth." New York State agencies requested, "a focused cumulative impacts analysis that considers planned offshore wind development in sites in the same geographic region over the next 5 years." Additionally, New York State agencies recommended removal of cable and protective measures when projects are decommissioned.

<sup>43</sup> NYSDEC submitted a comment letter to the New York State Public Service Commission ("PSC") for Case 18-T-0604 on July 12, 2019, indicating that offshore wind transmission cables should be buried at least six feet to avoid interactions with fishing gear and to prevent potential exposure of the cable.

important biological species. Moreover, the Project would result in GHG emissions, which cause climate change and thus indirectly impact water and coastal resources, including from the construction and operation of the Project, and from reasonably foreseeable upstream and downstream GHG emissions.<sup>44</sup> The Project's climate change impacts due to GHG emissions are especially important in light of the State's recently-enacted Climate Act. Finally, recent trends in the supply and demand of natural gas do not necessarily demonstrate the need for the Project and suggest at least one other alternative to meeting any projected supply shortages or reliability concerns. While none of these additional impacts are necessary for the Department to determine the inappropriateness of the default mixing zone within the hard clam critical resource area, the following qualitative assessment of these impacts is consistent with NYSDEC's determination to deny the 2019 WQC Application.

Because of these impacts from the construction and operation of the Project, mitigation would be required if the Project were to proceed and should adequately address them. Indeed, pursuant to the FERC Order, prior to commencing construction of the Raritan Bay Loop, Transco must provide FERC with "documentation of consultation with [the Department and other agencies] regarding its final proposed mitigation for fisheries and aquatic resources."<sup>45</sup>

### ***Greenhouse Gas Emissions and Climate Impacts***

While the 2019 WQC Application was pending before the Department, the State enacted the Climate Act. Among other things, as described further below, the Climate Act codifies the State's energy policy and goals, requires Statewide reductions in GHG emissions, and necessitates a transition away from the use of natural gas to produce electricity. Particularly without the identification of alternatives or GHG mitigation measures, the Project appears to be inconsistent with these requirements, as set forth below.

First, the Project will result in GHG emissions, which cause and contribute to climate change. GHG emissions associated with the Project include those from the full lifecycle of natural gas that will be transported through the Project. This includes upstream emissions, GHG emissions associated with the construction and operation of the Project, and downstream emissions. Upstream GHG emissions from the Project include those associated with the extraction and transmission of natural gas, including the extraction or production of the natural gas that is transported through the pipeline. This would include GHG emissions associated with the extraction of natural gas in Pennsylvania through high-volume hydraulic fracturing, provided such gas is ultimately transported for consumption in the State through the Project. GHG emissions associated with the operation of the Project would include leakage and other losses of gas transported through the pipeline. Downstream GHG emissions from the Project include those caused

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<sup>44</sup> See FERC Order at 33-34, ¶ 90; Opinion of LaFleur, Commissioner, Concurring; and Opinion of Glick, Commissioner, Dissenting in Part. See also Order Denying Rehearing and Stay, April 16, 2020, 171 FERC ¶ 61,031; Opinion of Glick, Commissioner, Dissenting in Part.

<sup>47</sup> FERC Order at 42, Appx. A Environmental Conditions, ¶ 14.

by the combustion, by end-users in the National Grid service territory in New York City and Long Island, of the natural gas that is transported through the pipeline.

Second, in order to achieve the State's critical and ambitious climate change and clean energy policies, the State needs to continue its ongoing transition away from natural gas and other fossil fuels. While the Department recognizes that many building assets in the State currently rely on natural gas for heating and other energy uses, the continued long-term use of fossil fuels is inconsistent with the State's laws and objectives and with the actions necessary to prevent the most severe impacts from climate change. Therefore, the State must continue to support the ongoing transition to renewable and other clean sources of energy, as it works to ultimately eliminate all fossil fuel combustion sources that cannot be counterbalanced by guaranteed permanent carbon sequestration. Without appropriate alternatives or GHG mitigation measures, the Project could extend the amount of time that natural gas may be relied upon to produce energy, which could in turn delay, frustrate, or increase the cost of the necessary transition away from natural gas and other fossil fuels.

Third, the Climate Act requires a reduction of GHG emissions, a transition to renewable and other clean sources of energy, and a pathway for the ultimate achievement of net zero GHG emissions in all sectors of the economy. The Project would be inconsistent with or interfere with the Statewide GHG emission limits and other requirements established in the Climate Act, without the identification of additional alternatives or GHG mitigation measures.

In particular, the Climate Act adds a new Article 75 to the ECL. ECL Article 75 establishes Statewide GHG emission limits, requiring a 40 percent reduction in Statewide GHG emissions from 1990 levels by 2030, and an 85 percent reduction in Statewide GHG emissions from 1990 levels by 2050.<sup>46</sup> Moreover, as set forth in the Climate Act, Statewide GHG emissions include all emissions of GHGs from sources within the State, as well as GHGs "produced outside of the State associated with either the generation of electricity imported into the State or the extraction and transmission of fossil fuels imported into the State."<sup>47</sup> Thus, because natural gas that is extracted outside of the State would be transmitted through the Project to serve National Grid customers in New York City and Long Island, upstream GHG emissions associated with the Project would be considered part of Statewide GHG emissions under the Climate Act, in addition to the remaining portion of lifecycle GHG emissions associated with the Project. In addition, the Climate Act specifies that Statewide GHG emission limits be measured on a carbon dioxide equivalent basis, using a 20-year global warming potential.<sup>48</sup> The methane emissions associated with the Project are more impactful in terms of carbon dioxide equivalents when measured on this shorter-term basis, as specified in the Climate Act.

Moreover, the Climate Act includes the addition of Section 66-p to the Public Service Law ("PSL"). Among other things, PSL Section 66-p requires the PSC to establish

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<sup>46</sup> ECL § 75-0107(1).

<sup>47</sup> ECL § 75-0101(13).

<sup>48</sup> ECL § 75-0101(2) and (8).

a program to ensure that 70 percent of the State's electricity is generated by renewable energy sources by 2030, and that 100 percent of the State's electricity is generated by carbon-free energy by 2040. The use of natural gas, such as that transported through the Project, to produce electricity would be inconsistent with these renewable and carbon-free energy generation requirements.

Furthermore, the Climate Act establishes a Climate Action Council, which among other things will be required to develop a Scoping Plan. The Scoping Plan must outline recommendations for attaining the Statewide GHG emission limits established pursuant to ECL Section 75-0107, including regulatory measures to be implemented by NYSDEC.<sup>49</sup> The Scoping Plan to be developed by the Climate Action Council must also include recommendations for the reduction of GHG emissions beyond the 85 percent by 2050 reduction requirement, to achieve net zero emissions in all sectors of the economy.<sup>50</sup> Many details regarding implementation of the Climate Act will be determined by the Climate Action Council in the Scoping Plan, and during the regulatory process by NYSDEC and other agencies, with substantial input from environmental justice and other stakeholders. Notwithstanding these important processes, it is already clear that achievement of the Statewide GHG emission limits established pursuant to ECL Section 75-0107, as well as achievement of net zero emissions in all sectors of the economy, will ultimately require a transition away from natural gas and other fossil fuels to produce energy. As this Project would facilitate the use of natural gas for an extended period of time, and may frustrate or delay the necessary transition away from natural gas to renewable and other clean sources of energy, it is clear that the Project as it is currently envisioned is inconsistent with the energy and climate policies, laws, and goals of the State. While not necessary for the Department's determination, this inconsistency further supports the Department's determination that the default mixing zone is inappropriate at all locations of the Project. This is especially true given that the State should not sacrifice its water quality, sensitive habitats, and important biological resources for a project that would have adverse climate impacts and one that runs counter to the State's policy to significantly reduce GHGs by transitioning away from the use of natural gas to produce electricity.

### ***Need for and Alternatives to Project***

The Department focused its review of the 2019 WQC Application on assessing whether the construction and operation of the Project would comply with applicable water quality standards. Whether the Project is needed, and whether alternatives to the Project are available to supply natural gas and meet long-term demand in the downstate region, are questions not directly at issue in the Department's review of the 2019 WQC Application. Thus, this denial does not represent a determination by the Department regarding whether the Project is necessary to meet long-term demand for natural gas in the downstate region. However, as part of its consideration of the appropriateness of applying the discretionary default mixing zone of 500 feet, the Department may review the overall impacts of the project as compared to alternatives in assessing the impacts to

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<sup>49</sup> ECL § 75-0103(11)-(14).

<sup>50</sup> ECL § 75-0103(11).

the nature of the sediment contamination, the proximity of sensitive habitats or water use areas, and proximity of sensitive life stages of important biological resources. As discussed above, Transco's sampling indicating the presence of a water quality limiting substance (mercury) and analytes detected in the sediment at greater than Class A threshold values (metals and PCBs), are grounds to withhold providing the default 500-foot mixing zone. The availability of a less impactful alternative is relevant and provides further support to the Department to fully protect its natural resources and water quality.

While not necessary for the Department in determining the inappropriateness of the default mixing zone, the Department recognizes consideration by the public, National Grid, the PSC, and other entities regarding the need for and potential alternatives to the Project. For example, this issue is part of an ongoing proceeding instituted by the PSC to address and investigate denials of service requests by National Grid.<sup>51</sup> On February 23, 2020, National Grid released its Natural Gas Long-Term Capacity Report for Brooklyn, Queens, Staten Island, and Long Island ("Capacity Report").<sup>52</sup> National Grid issued a Supplemental Report on May 8, 2020, taking into account additional input from the public and other sources, as well as the potential economic impacts in the State from the COVID-19 pandemic ("Supplemental Report").<sup>53</sup>

National Grid's Supplemental Report found natural gas demand reductions in the downstate region due to the impact of COVID-19 and identified additional incremental supply. Based on this updated analysis, the Supplemental Report forecasts a smaller gap between gas demand and supply than previously estimated by National Grid in the Capacity Report. The Supplemental Report also identifies an additional option to close the future gap between demand and supply, as projected by National Grid. Finally, the Supplemental Report includes additional analyses of various options in terms of their potential environmental impacts, GHG emissions, and consistency with the Climate Act.

Based on this updated analysis, National Grid's Supplemental Report identifies and recommends at least one alternative to the Project. This alternative would include enhancements to existing infrastructure combined with incremental energy efficiency and demand response measures. While the precise details of this alternative are not relevant to this denial, according to National Grid, this alternative would meet the projected gap between demand and supply of natural gas even without the installation of the Project. Critically, as compared to the Project, National Grid concludes that this alternative is less environmentally impactful, in terms of water quality, GHG emissions and otherwise, and more consistent with the requirements of the Climate Act.

Therefore, while 100 percent of the natural gas to be transported through the Project would be provided to National Grid to serve customers in the downstate region, National Grid itself has identified at least one potential alternative to the Project that could

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<sup>51</sup> See PSC Case No. 19-G-0678.

<sup>52</sup> National Grid, Natural Gas Long-Term Capacity Report, PSC Case No. 19-G-0678 (filed Feb. 24, 2020).

<sup>53</sup> National Grid, Natural Gas Long-Term Capacity Supplemental Report, PSC Case No. 19-G-0678 (filed May 8, 2020).

meet the same demand. Moreover, National Grid's analysis concludes that this alternative would have less of an environmental impact and be more in line with the long-term energy policies of the State as set forth in the Climate Act. Thus, in assessing the appropriate mixing zone for the Project, the apparent lack of need for the Project, as well as its increased impacts to water quality as compared to identified alternatives, provides further support of the Department's determination that the default 500-foot mixing zone is inappropriate at certain locations.

### **Conclusion**

For the reasons described above, the Department denies the 2019 WQC Application.

Pursuant to 6 NYCRR Section 621.10(a)(2), Transco has the right to an adjudicatory hearing regarding this denial of the 2019 WQC Application. Any such request for a hearing must be made in writing to me within 30 days of the date of this letter.

If you have any questions regarding this letter or the Project, you may contact me or Karen Gaidasz in my office, or Jonathan Binder in the Office of General Counsel.

Sincerely,



Daniel Whitehead, Director  
Division of Environmental Permits

cc: FERC (Docket No. CP17-101)  
J. Binder, NYSDEC OGC  
K. Gaidasz, NYSDEC DEP  
T. King, NYSDEC OGC  
K. Woodfield, NYSDEC DOW

# **EXHIBIT D**





Transco  
2800 Post Oak Blvd.  
Houston, Texas 77056

June 19, 2020

Re: Transcontinental Gas Pipe Line Company, LLC (Transco)  
Proposed Northeast Supply Enhancement Project (Project)  
Federal Energy Regulatory Commission (FERC) Docket Number: CP17-101  
Project Update

Dear Landowner,

We are writing to provide a Project update. As you may be aware, Transco received a certificate of public convenience and necessity from the Federal Energy Regulatory Commission ("FERC") on May 3, 2019. The certificate authorized Transco to construct and operate the proposed Project facilities, subject to the receipt of several additional permits. Because two state-level permits were not issued, Transco is not at this time actively pursuing the construction of the Project. Should this situation change at any time in the future we will promptly provide you with further information.

The decision to pause this important infrastructure project is unfortunate for the region as the design and construction would have generated valuable economic activity in Pennsylvania, New Jersey and New York, and would have directly and indirectly supported more than 3,000 jobs during the construction period. The Project would have further provided access to low-cost, clean natural gas, displacing dirtier fuels in the greater New York City air shed.

Natural gas remains a critical part of our country's energy mix that creates affordability for utility customers and ensures reliability while renewables scale. Williams is committed to meeting the demand for a clean alternative to heating oil and diesel, and we are prepared to deliver reliable and affordable natural gas to meet the energy needs in the areas which we operate.

Please feel free to contact me should you have any questions or concerns. Thank you again for your patience and cooperation.

Sincerely,

A handwritten signature in black ink that reads "Patrick J. McClusky". The signature is written in a cursive, flowing style.

Patrick J. McClusky  
Land Lead  
609-285-2424

[Patrick.j.mcclusky@williams.com](mailto:Patrick.j.mcclusky@williams.com)

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