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Re: Transcontinental Pipe Line Company's Chapter 105 Water Obstruction and Encroachment Permit Applications E58-315, E40-769, E54-360, E66-160, E36-947, E38-195, E19-311, and E49-366.

Dear Program Managers:

The Allegheny Defense Project, Appalachian Mountain Advocates, Clean Air Council, Concerned Citizens of Lebanon County, Lebanon Pipeline Awareness, Lower Susquehanna Riverkeeper, and Sierra Club (collectively, "Commenters") respectfully submit the following comments in response to the Pennsylvania Department of Environmental Protection's ("DEP") June 11, 2016 Pennsylvania Bulletin notice soliciting public comments on Transcontinental Pipe Line Company's ("Transco") applications for Chapter 105 water obstruction and encroachment permits for its proposed Atlantic Sunrise Project. Commenters continue to believe that Transco has not satisfied all of the requirements set forth in the Chapter 105 regulations. We request that the DEP deny Water Obstruction and Encroachment permits for the Atlantic Sunrise Project unless and until Transco fully satisfies these regulatory requirements.

In addition, as will be explained below, DEP has not yet provided a meaningful public participation opportunity on the above-referenced applications and other related applications. Therefore, DEP should withdraw authorizations prematurely issued and comprehensively evaluate the direct, secondary, and cumulative effects of the *entire* Atlantic Sunrise Project. Commenters incorporate by reference previous comment submitted on May 31, 2016.¹

I. DEP has not coordinated the various permit processes for the Atlantic Sunrise Project.

A primary concern of Commenters' previous comments was DEP's failure to coordinate the various permit processes associated with the Atlantic Sunrise Project. DEP is required "to coordinate the application for and issuance of permits under [25 Pa. Code § 105] with permit processes conducted under other statutes and regulations administered by [DEP] and with permit processes administered by other Federal and State agencies." 25 Pa. Code § 105.24(a). In addition, the DEP is supposed to "facilitate the submission of information on related activities of a project regulated under statutes and regulations administered by the [DEP] and other Federal and State agencies[.]" *Id.* § 105.24(b).

Instead of a coordinated permitting process, however, the public has been forced to navigate an unwieldy permit process over the past year for the Atlantic Sunrise Project. As previously explained, there has been little to no coordination of the various DEP permits that Transco must obtain, let alone coordination with other Federal and State agencies. For example, while DEP is soliciting comments on the above-referenced applications, it has already issued the Chapter 105 permit for the Chapman Loop component of the Atlantic Sunrise Project. The Atlantic Sunrise Project is a single project. DEP should not issue water obstruction and encroachment permits for a single project in multiple separate authorizations that are not coordinated.

Commenters previously noted that DEP should utilize the FERC docket system to share information, such as Transco's applications for the Atlantic Sunrise Project, with the public. This could be accomplished by either DEP submitting the applications when it receives them from an applicant or by requiring the applicant to file the applications for state-based permits in the FERC docket when they are filed with DEP. This is in keeping with DEP's trustee obligations under Article I, Sec. 27 of the Pennsylvania Constitution, would better "coordinate" the various permit processes, and would "facilitate the submission of information on related activities of a project[.]" 25 Pa. Code § 105.24.

As a result of DEP's failure to coordinate permit processes and facilitate the flow of information to the public, DEP should withdraw authorizations prematurely issued and comprehensively evaluate the direct, secondary, and cumulative effects of the *entire* Atlantic Sunrise Project.

¹ These comments were submitted on behalf of Allegheny Defense Project, Appalachian Mountain Advocates, Clean Air Council, Lower Susquehanna Riverkeeper, and Sierra Club.

II. Transco’s cumulative impacts analysis does not contain sufficient information for the DEP to make an informed decision about Transco’s Applications.

When evaluating a proposed project’s impact on health, safety, and the environment under 25 Pa. Code § 105.14, DEP must consider “the cumulative impact of this project and other potential or existing projects.” *Id.* § 105.14(b)(14). Nothing in the regulation limits the “other potential or existing projects” to those related to the project proposed in the application under review. A gas pipeline, a power line, a housing development, an industrial park, and a marina might have cumulative impacts that must be considered on water resources even though all of them are proposed by unrelated entities and none of them is engendered by any of the other projects or depends on any other project to go forward. As part of its analysis of cumulative impacts, DEP must consider the potential impacts of “numerous piecemeal changes” on wetland resources and recognize that each wetland site “is part of a complete and interrelated wetland area.” *Id.*

For water obstructions and encroachments that will affect non-Exceptional Value (EV) wetlands, DEP generally may issue a permit only if “[t]he cumulative effect of this project and other projects will not result in a *major impairment* of this Commonwealth’s wetland resources.” 25 Pa. Code § 105.18a(b)(6) (emphasis added). The term “major impairment” is not defined in Chapter 105; however, since wetlands are subject to DEP’s antidegradation requirements set forth at 25 Pa. Code Chapter 93, the DEP may not allow any impairment so “major” that it prevents wetlands from attaining their existing uses, and DEP must protect the level of water quality necessary to protect those uses. 25 Pa. Code § 93.4a(b).² Moreover, any wetlands that are impaired must be replaced in accordance with 25 Pa. Code § 105.20a. *See* 25 Pa. Code § 105.18a(b)(7).

When a project will affect EV wetlands, as Transco’s Project will in several instances, DEP generally may not issue a water obstruction and encroachment permit unless “[t]he cumulative effect of this project and other projects *will not result in the impairment* of the Commonwealth’s exceptional value wetland resources.” 25 Pa. Code § 105.18a(a)(6) (emphasis added). Thus, as part of its review of the Applications, DEP must find in writing that Transco affirmatively demonstrated that EV resources would not be impaired by the cumulative impact of the Project and all other potential or existing projects. This is a significant burden – and one that Transco has not met in this case.

For example, in regards to its application for Luzerne County (E40-769), Transco states that it has evaluated “identified past, present, and reasonably foreseeable Projects and other human related activities occurring in the vicinity of the Project.” Transco Application for Luzerne County at 40. Transco does not, however, list the projects it considered to allow DEP to evaluate cumulative impacts for itself. Instead, throughout its analysis, Transco seems to follow a format of: identifying (in qualitative terms) potential impacts that could result from the Project; describing actions Transco is taking to mitigate or minimize those impacts; and concluding

² The Department’s antidegradation program applies to all “surface waters,” and the term “surface waters” is defined in Chapter 93 to include wetlands. *See* 25 Pa. Code 93.4a(a), 25 Pa. Code 93.1.

summarily that there will not be a “significant measurable cumulative effect” on the resource in question. *See generally id.* at 41-52.

Transco makes little attempt to discuss, except in the most basic terms, the impacts that can be expected from other human activity in the area. Transco’s limited discussion of impacts from other projects is marred by the following shortcomings:

- Transco fails to adequately quantify impacts of other projects in the vicinity of the Atlantic Sunrise pipeline. Considering that the purpose of a cumulative impacts analysis is to determine how the project contributes to the combined effect of multiple projects, the failure to even attempt to quantify the effects from other projects is a critical deficiency.
- Even when Transco acknowledges impacts from other activities, it does not explain how these effects will contribute to adverse impacts on resources. For example, in its discussion of impacts to surface water resources, Transco admits that natural gas drilling creates the “potential ... for cumulative effects on surface waters affected within the same watersheds crossed by the Project.” *Id.* at 44. Transco, however, does not provide any more information about these potential effects, because the information “was not readily available.” *Id.* If information is about a major potential impact like gas drilling is “not readily available,” Transco cannot reasonably conclude that “there will be no significant measurable cumulative effects on these resources.” *Id.*
- When discussing the cumulative impacts of water body crossings, Transco dismisses impacts from other activities, because they will not “affect the same waterbodies in the same timeframe as the Project.” The timeframe of project activity should not be relevant to Transco’s cumulative impacts analysis. As the regulations make clear, the cumulative impacts analysis should include information about all “*potential* or *existing* projects.” 25 Pa. Code § 105.14(b)(14) (emphasis added). Many “existing” projects have permanent impacts that remain long after construction activity is complete, and Chapter 105 specifically requires consideration of “potential” projects that have not yet begun, so Transco’s assertion that these activities are not taking place “in the same timeframe” as the Project is of little value.
- Many of Transco’s assertions of a lack of significant cumulative impacts are conclusory and not supported by fact or reasoning. For example, in discussing impacts to wildlife, Transco states:

Transco expects that similar restoration activities would be employed for the Projects identified in the cumulative effects analysis as well, along with the implementation of BMPs and other effect avoidance measures. Based on this, Transco believes there will be no significant measurable cumulative effects of the Project on wildlife.

Transco Application for Luzerne County at 44. Transco provides no basis for its “expectation” that other projects would implement BMPs and avoidance measures sufficient to avoid cumulative impacts. Transco should: (1) identify the projects it believes could contribute to cumulative impacts; (2) explain with specificity the expected impacts and any mitigation measures in place to minimize those impacts; and (3) provide a quantification of the aggregate

impacts expected from its Project in conjunction with other potential and existing projects in the vicinity. Only then can Transco – or DEP – make a reasonable conclusion about expected cumulative impacts and their effect on the Commonwealth’s resources.

Despite Transco’s conclusions, it is likely that cumulative impacts will be significant. On behalf of the Clean Air Council, CNA Analysis and Solutions recently performed an analysis of the expected impacts on the nearby Delaware River Basin that would result from the completion of just eight proposed transmission pipelines. Just from these pipelines and just in Pennsylvania alone, CNA projected a loss of over 400 acres of forest, and permanent impacts on over 15 acres of wetlands. Lars Hanson and Steven Habicht, “Cumulative Land Cover Impacts of Proposed Transmission Pipelines in the Delaware River Basin” at 39, available at https://www.cna.org/CNA_files/PDF/IRM-2016-U-013158.pdf (last accessed: August 1, 2016). Although the Atlantic Sunrise pipeline is not included in this analysis, it is likely that it and the many other pipelines proposed in the Susquehanna River Basin will have comparable effects. When these effects are added to the many other projects, like natural gas well pads, electricity transmission lines, housing developments, industrial facilities, etc., the cumulative impact is likely to be considerable.

A. Chesapeake Bay Total Maximum Daily Load

Commenters are concerned the cumulative impacts of the Atlantic Sunrise Project and other projects will impact the Chesapeake Bay clean-up plan by developing “high-value” lands that are supposed to be permanently protected from development. In response to high levels of pollution in the Chesapeake Bay, the federal government has developed a comprehensive plan to clean up and protect the watersheds that feed the Bay. That plan relies heavily on permanently protecting certain lands from pollution-generating development. Construction of the Atlantic Sunrise Project would have significant impact on many of these high value lands and would thus interfere with the federal clean-up plan for the Chesapeake Bay. DEP must address this through, not only to comply with its statutory and constitutional obligations, but as a practical matter: It is unconscionable to spend billions³ of dollars on Chesapeake Bay clean up only to turn around and allow new forms of industrial pipeline pollution to undermine that investment.

1. Authority for the Chesapeake Bay Clean-Up Plan

The Chesapeake Bay was designated a national treasure by Executive Order in 2009. The Order also established a federally-led Program tasked with cleaning up the Bay by 2025. Exec. Order No. 13508 (May 12, 2009). To comply with this Order, EPA established the Bay clean-up plan, known as the “Total Maximum Daily Load” (TMDL). The TMDL identifies the necessary pollution reductions of nitrogen, phosphorus, and sediment across Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia and sets pollution limits necessary to meet applicable water quality standards in the Bay and its tidal rivers. The applicable water quality standards vary depending on the particular water body. When setting the standard, a state must first designate the use of the water body (fishing or recreation, for

³ See Chesapeake Bay Foundation, *The Economic Benefits of Cleaning Up The Chesapeake*, p. 3 (Oct. 2014), available at <http://www.cbf.org/document.doc?id=2258>.

example) and then establish criteria necessary to protect that use. 40 C.F.R. § 131.6. Under the TMDL, all pollution control measures needed to fully restore the Bay must be in place by 2025, with at least 60 percent of the actions completed by 2017. *Am. Farm Bureau Fed., v. EPA*, 984 F. Supp. 2d 289, 305 (Pa. 2013).

2. Development is a Main Stressor to the Chesapeake Bay

Population growth and land development continue to be top stressors to the Chesapeake Bay ecosystem and a threat to the goal of remediating the Chesapeake Bay. CHESAPEAKE BAY PROGRAM: PROTECTED LANDS - ANALYSIS AND METHODS DOCUMENTATION 3 (2013), available at http://www.chesapeakebay.net/indicators/indicator/preserving_lands. Converting land from forests and open lands to urbanized and industrial uses increases pollution by removing the ecosystem services responsible for capturing rainfall and reducing runoff, filtering nutrients and sediment, and stabilizing soils. Margaret Walls & Virginia McConnell, *Incentive-Based Land Use Policies and Water Quality in the Chesapeake Bay*, Discussion Paper 04–20, 4 (March 2004), available at <http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-04-20.pdf>. An 18 percent increase in impervious surfaces results in an 80 percent increase in runoff volume. Stephen J Gaffield, *Public Health Effects of Inadequately Managed Stormwater Runoff*, 93 AM. J. PUB. HEALTH. 1527, 1528 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448005/pdf/0931527.pdf>. By contrast, natural groundcover undisturbed by development generally results in only 10 percent of the precipitation traveling as runoff. PRINCE GEORGE’S COUNTY, LOW IMPACT DEVELOPMENT HYDROLOGIC ANALYSIS 4 (1999), available at http://www.lowimpactdevelopment.org/pubs/LID_Hydrology_National_Manual.pdf. The remaining precipitation is soaked up and filtered by the land.

Stormwater runoff is one of the “non-point” sources of pollution that have become the dominant water quality problem in the Bay, dwarfing all other sources of nutrients and sediments. *Am. Farm Bureau*, 984 F. Supp. 2d at 296. Increased land disturbance increases the discharge of sediments into streams, raising total suspended solids concentrations. P.J. Drohan & M. Brittingham, *Topographic and Soil Constraints to Shale-Gas Development in the North Central Appalachians*, 76 SOIL SCI. SOC. AM. J. 1696, 1706 (2012). In addition, removing vegetation for construction can cause excess runoff and sedimentation that are harmful to river ecosystems, especially in sensitive headwater streams. Susan L. Brantley et al., *Water Resource Impacts during Unconventional Shale Gas Development: the Pennsylvania Experience*, 126 INT’L J. OF COAL GEOLOGY 140, 153 (2014). Within the watershed, these rivers and all the pollutants contained within ultimately end up in the Chesapeake Bay.

3. A Key Strategy to Meet the Chesapeake Bay Clean-Up Plan is to “Permanently Protect Lands from Development”

To meet the TMDL, the Chesapeake Bay Program has identified and set aside specific high-value land. This action is part of the Bay Program’s strategy to clean up the Bay. On June 16, 2014, representatives from all seven jurisdictions in the Bay watershed signed a new Chesapeake Bay Watershed Agreement. CHESAPEAKE BAY PROGRAM, WATERSHED AGREEMENT (2014), available at

<http://www.chesapeakebay.net/documents/ChesapeakeBayWatershedAgreementFINAL.pdf>.

Pennsylvania is a signatory jurisdiction to this agreement. *Id.* To achieve the goal of restoring the Bay by 2025, the jurisdictions identified protecting lands as a top priority. Since signing the Watershed Agreement, the Chesapeake Bay Program has been crafting “management strategies” that describe the steps necessary to achieve the goals of the Agreement. Among the steps, jurisdictions committed to protecting an additional two million acres of lands throughout the watershed—currently identified as high-conservation priorities at the federal, state or local level—by 2025. *Management Strategies, Chesapeake Bay Program, available at* http://www.chesapeakebay.net/managementstrategies/strategy/protected_lands.

The Bay Program defines “protected lands” as those “permanently protected from development, whether by purchase or donation, through a perpetual conservation or open space easement or fee ownership . . . including transfer of development rights programs.” *Chesapeake Bay Program, Protected Lands: Additional Information, available at* http://www.chesapeakebay.net/indicators/indicator/preserving_lands. Protected lands may be held in private ownership as working farms or forests; designated open space and recreational land such as a county, town, city, state or federal park; publicly owned forests or wetlands; or historically significant properties held as battlefields, colonial towns and farms or military-owned parks. *Analysis and Methods Documentation* at 1.

The Chesapeake Bay Program recommends forest and farm land be targeted for conservation because they are the land covers with the greatest water-pollution-reduction factor. *Chesapeake Bay Program, Protected Lands, available at* http://www.chesapeakebay.net/indicators/indicator/preserving_lands. These lands protect water quality, sustain fish and wildlife, maintain working farms and forests, preserve our history, and provide opportunities for outdoor recreation.

These protected lands are meant to be “permanently protected from development.” *Chesapeake Bay Program, Protected Lands*. The Chesapeake Bay Program’s Watershed Model, which is used to analyze the impact on the watershed of various pollution-reducing actions, assumes that these lands are permanently protected from development. CHESAPEAKE BAY PROGRAM, PHASE 5.3 WATERSHED MODEL Section 4.7.3, at p.4-40, *available at* ftp://ftp.chesapeakebay.net/modeling/P5Documentation/SECTION_4.pdf. The model helps guide decision-making for reducing pollution and meeting water quality standards and cannot accurately predict impacts to the Bay if it is based on false assumptions.

The state of Pennsylvania is also invested in protecting these lands. As the largest agricultural state in the watershed, Pennsylvania has been working to preserve prime farmland since the 1980s to help slow the loss to non-agricultural uses. PA. DEP’T OF ENVTL. PROTECTION, PA. CHESAPEAKE WATERSHED IMPLEMENTATION PLAN: PHASE I, at 76. To date, the state has invested more than \$1 billion to permanently protect land within the watershed from development. CHESAPEAKE BAY PROGRAM: ANALYSIS AND METHODS DOCUMENTATION 2–3, *available at* http://www.chesapeakebay.net/indicators/indicator/preserving_lands.

4. The Atlantic Sunrise Project will Set Back Efforts to Clean Up Chesapeake Bay

Despite Pennsylvania's financial commitment to protecting lands in the Chesapeake Bay watershed and all the resulting water quality, public health, and other gains these protected lands have achieved, the state is supporting the proposed Atlantic Sunrise Project, which threatens to permanently set back efforts to protect the Bay. The Project will disturb 3,905.8 acres of land in connection with the installation and operation of 195.2 new miles of pipeline in Pennsylvania. During construction, temporary right-of-ways will require trees and vegetation to be removed from a 90- to 150-foot swath over the path of the pipeline. FERC DEIS at 2-15 & 2-23. The construction process involves digging trenches deep enough to submerge 30- and 42-inch pipes a minimum of three feet below the surface. *Id.* at table 2.3.1-1. Upon completion of the trenching phase, the construction zone will be allowed to start the decades-long process of reversion back to its natural state. Permanent right-of-ways between 50 and 75 feet wide along which trees will never be allowed to grow will remain along the entire stretch of the project. *Williams, Atlantic Sunrise, What Size Will the Easement Be?*, <http://atlanticsunriseexpansion.com/faq/size-will-easement/>.

Construction of the pipeline will impact agricultural lands the most at 51 percent of the acreage, followed by upland forest at 30 percent and open space at 11 percent. FERC DEIS at 4-125. Already-developed land with the least ecological value accounts for less than five percent of the total lands affected by the pipeline. *Id.*

Pennsylvania is already failing to meet the land-use and water-quality goals set forth in the Bay TMDL. "Without . . . changes, compliance rates will remain low and the commonwealth will fail on its clean water commitments at a huge cost to society. Don Hopey, *EPA Gives Poor Marks to Pa. on Protecting Chesapeake Bay Watershed*, PITT. POST-GAZETTE, Mar. 23, 2015, available at <http://www.post-gazette.com/news/environment/2015/03/23/EPA-gives-poor-marks-to-Pa-on-protecting-Chesapeake-Bay-watershed/stories/201503230007>. In June 2015, the EPA deemed Pennsylvania's progress insufficient to meet water quality expectations for the 2017 midpoint goal, with a remaining reduction of 648 million pounds of sediment still necessary to meet the TMDL's 2025 target. PA DEP'T OF ENVTL. PROTECTION, STRATEGY TO ENHANCE PENNSYLVANIA'S CHESAPEAKE BAY RESTORATION EFFORT, ES-1 (Jan. 21, 2016).

Pennsylvania's inability to meet the TMDL has triggered EPA backstops: \$2,896,723 in federal funding was withheld for Chesapeake Bay-related pollutant reduction projects, and the EPA will consider additional federal action against the state if it becomes necessary to address further restoration shortfalls. EPA INTERIM EVALUATION OF PENNSYLVANIA'S 2014-2015 MILESTONES 3 (June 10, 2015). EPA estimates that in order to reach the sediment goals, Pennsylvania will have to set aside an additional 22,000 acres of forest cover per year, among other practices. An average of 44,000 acres, however, are lost to development annually. PA DEP'T OF ENVTL. PROTECTION, PA. CHESAPEAKE WATERSHED IMPLEMENTATION PLAN: PHASE I 164 (2011). This loss does not account for the impacts of pipeline projects such as the Atlantic Sunrise Project, which are allowed to undermine conservation easement restrictions and develop protected land.

Of specific concern to the Bay clean-up plan, the proposed Atlantic Sunrise Project will intersect 52 private, federal, or state "protected lands"—lands that have supposedly been

permanently protected from development. *Chesapeake Climate Action Network et al., Easement to Industry: Mapping the Proposed Path of the Atlantic Sunrise Pipeline*, available at <http://chesapeakecommons.org/gists/pipeline/asp/index.html>. Four environmental nonprofits⁴ used open-source geographic information systems to calculate the total protected land acreage intersected by the Atlantic Sunrise Project. *See Easement to Industry*, at 4 (describing analytical methods used). Those 52 intersections will directly impact 177.4 acres of private land that an owner chose to protect indefinitely; 63.1 acres of state land that cost taxpayer money to acquire and maintain; 8.2 acres of federally owned lands; and 1.3 acres of non-profit owned lands.

In total, the pipeline will develop a total of 250 acres that the Chesapeake Bay Program Watershed Model assumes are permanently protected lands that are untouchable by development. Volume I of the DEIS mentions the Chesapeake Bay a mere nine times in the 472-page document. It does not mention protected lands even once. This is testament to the fact that neither FERC nor DEP are giving due attention to impacts on Chesapeake Bay.

FERC's DEIS acknowledges that "the Project would cross a number of areas enrolled in a variety of federal and Commonwealth of Pennsylvania conservation programs." FERC DEIS at 4-152. This acknowledgement does not cover the full breadth of protected lands, however, as Chesapeake Bay's definition of protected lands encompasses more than federal and state conservation programs. Neither FERC nor DEP makes any effort to account for this unexpected development. The DEIS concludes that "construction across land enrolled in [conservation] programs with provisions for tree plantings on the proposed permanent right-of-way would have a permanent effect." *Id.* at 4-153. Yet, despite acknowledging a permanent effect, the DEIS places no conditions on these crossings. Instead it accepts Transco's claim that it "has not yet determined where all of the [conservation] lands involving tree planting are located," despite the fact that the four environmental groups mentioned above created a website showing the exact location of forest and other protected land crossings. FERC concludes this already abbreviated section by allowing "Transco to develop restoration measures [to] ensure enrolled properties remain eligible to participate in the [conservation] programs" at some future time and with no formal conditions in place.

FERC, however, cannot reasonably conclude that the impacts to protected lands can somehow be adequately mitigated if it has not even identified the location and nature of those lands nor the mitigation measures to protect them. Neither can DEP. Protected lands play a key role in the federal government's—and Pennsylvania's—plan to meet the Bay TDML. The proposed Atlantic Sunrise Project will impact 250 acres of protected lands that are supposed to be permanently protected from development, including 75-foot swaths of currently forested land upon which trees can never be planted if this pipeline is built.

DEP should request that Transco conduct a more comprehensive cumulative impacts analysis that includes – at a minimum – a list of projects considered, the expected impacts of those projects, and a quantification of aggregated impacts, including impacts on Chesapeake Bay

⁴ These groups are the Chesapeake Climate Action Network, Chesapeake Commons, Chesapeake Legal Alliance, and FracTracker.

and Pennsylvania's ability to comply with established clean-up goals, before making a determination on Transco's applications.

III. The Atlantic Sunrise Project would have impermissible adverse effects on exceptional value wetlands.

An application for a project that may affect an exceptional value wetland or one or more acres of non-EV wetland must include an assessment of wetland functions and values using a methodology accepted by DEP. 25 Pa. Code §105.13(e)(3). DEP may not permit a water obstruction or encroachment in a non-EV wetland unless the applicant affirmatively demonstrates (among other things) that “[a]dverse environmental impacts on the wetland will be avoided or reduced to the maximum extent possible.” 25 Pa. Code §105.18a(b). For projects in exceptional value wetlands, DEP may not issue a permit unless the project “will *not* have an adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15 (relating to review of applications; and environmental assessment).” 25 Pa. Code §105.18a(a)(1) (emphasis added).

In its application for Luzerne County, Transco acknowledges that it will permanently convert 0.85 acres of palustrine forested (PFO) wetlands to either palustrine scrub-shrub (PSS) or palustrine emergent wetlands (PEM), thus permanently impairing the functions and values of those EV PFO wetlands. *See* Application for Luzerne County, “Permittee-Responsible Mitigation Master Plan for the Atlantic Sunrise Project” at 5 (August 2015); Impact Table for Individual Permit Application (Luzerne). With respect to general habitat and natural biological functions (subsection (i) of section 105.1 definition), conversion will, among other things, decrease aboveground biomass, habitat for shade-loving plant species, the production of mast (e.g., acorns) for wildlife, and increase exposure to the elements and to localized effects of global warming. Schmid & Company, Inc., *The Effects of Converting Forest or Scrub Wetlands to Herbaceous Wetlands, Prepared for the Delaware Riverkeeper Network* (2014) at 16-17, available at http://www.schmidco.com/Leidy_Conversion_Final_Report.pdf. Concerning natural drainage patterns and water quality (subsection (3)), conversion will decrease soil stabilization, streambank anchoring, and capacity for nutrient storage. *Id.*, at 19-20. Conversion will increase the volume of groundwater discharge and reduce transpiration (subsection (6)), and decrease the capacity for erosion and sediment control (subsections (3) and (7)). *Id.*, at 21-22. With regard to human recreation (subsection (9)), conversion will impair landscape aesthetics, decrease interior forest and habitat for plants and animals, and impair the maintenance of cold water temperature for trout. *Id.*, at 22. This conversion is clearly an “adverse impact” on PFO wetlands.

Under the clear language of 25 Pa. Code § 105.18(a)(1), these impacts should be prohibited. DEP should not approve Transco's Applications unless and until these adverse effects on EV wetlands are eliminated from the Project plans.

IV. DEP's history of allowing impacts to occur to sensitive aquatic resources.

Commenters are concerned about the impacts of the Atlantic Sunrise Project, in part, because of DEP's track record of enforcing environmental protections during pipeline construction. For

example, in December 2014, the DEP announced that it had reached an \$800,000 settlement agreement with Tennessee Gas Pipeline Company (“Tennessee”) for “multiple violations of the [Pennsylvania] Clean Streams Law during the construction of [the 300 Line Project] in 2011 and 2012 through four counties in northeast and north-central Pennsylvania.” DEP, DEP Announces \$800,000 Settlement against Tennessee Gas Pipeline Company for Violations in Pipeline Construction (Dec. 22, 2014), *available at* <http://www.ahs.dep.pa.gov/NewsRoomPublic/SearchResults.aspx?id=20661&typeid=1>.

According to PADEP’s press release:

During 73 inspections of the “300 Line Project,” inspectors with the Potter, Susquehanna, Wayne and Pike County Conservation Districts discovered violations including the discharge of sediment pollution into the waters of the commonwealth, some of which are protected as “High Quality” or “Exceptional Value Waters,” and failure to implement required construction best management practices to protect water quality.

Id. Had DEP adequately enforced its permits issued to Tennessee for the 300 Line Project, it may have prevented damage to High Quality and Exceptional Value Waters. While Tennessee was ultimately held accountable for the damage it caused, the goal must be to prevent this kind of damage from occurring in the first place. Unfortunately, this was not the first time that construction along Tennessee’s 300 Line caused impacts to aquatic resources.

In documents filed by Tennessee in support of its Susquehanna West Project (FERC Docket No. CP15-148-000), it acknowledged that construction of its original 300 Line ROW “highly impacted” a stream that flowed from a wetland complex. *See* Tennessee, Susquehanna West Project, Resource Report 2, App. 2-A, Fig. 4 at 11 (available in FERC Docket CP15-148-000, Accession No. 20150402-5213). In fact, the impacts were so severe that the stream is now a “former stream” that consists of “barely discernable, sheet flow on [the] ROW.” *Id.* When DEP issued the permits for this construction, it is unlikely that destruction of this stream was intended. Nevertheless, this stream was “highly impacted” and substantially disrupted the hydrological connectivity with its associated wetland.

Similarly, construction of a pipeline through the Tamarack Swamp Natural Area caused significant impacts to this natural area, “one of the few examples of a black spruce-tamarack palustrine woodland community in Pennsylvania.” Western Pennsylvania Conservancy, Clinton County Heritage Review at 79 (2002), *available at* http://www.clintoncountypa.com/departments/county_departments/planning/pdfs/Natural%20Heritage%20Inventory.pdf. According to the Western Pennsylvania Conservancy:

Selective logging, fire and most recently, *laying of gas pipelines* have altered and compromised the natural community at Tamarack Swamp. ***Construction of the gas pipeline appears to have been particularly disruptive, physically separating contiguous sections of wetland, altering hydrological patterns and introducing strips of highly altered substrate that will not easily recover.*** The present natural area falls short in providing substantial protection to even the area contained within its boundaries. Part of the uniqueness and viability of this wetland is related to its size and low fertility. Runoff from lawns and roads, and channelized flow along pipeline ROW’s introduces water and nutrients into interior sections of the swamp. Long-term protection must address these

inputs.

Id. (emphasis added). Had DEP adequately performed its obligations when reviewing the proposal to construct a pipeline in large wetland that is also a state-designated natural area, perhaps it could have convinced the company to consider an alternative location and the natural community of Tamarack Swamp would not have been so compromised.

The impacts to aquatic resources from the Atlantic Sunrise Project could be just as damaging. Transco proposes at least 329 water body crossings, including 204 perennial waterbody crossings, 79 intermittent waterbody crossings, 40 ephemeral waterbody crossings and 6 open waterbody crossings. *See* U.S. Army Corps of Engineers, Baltimore District, PN-16-30 at 8 (May 16, 2016). A total of at least 32,529.56 linear feet (over 6 miles) of waterbodies would be impacted by the Atlantic Sunrise Project. *Id.* at 9. Transco also proposes to impact a total of at least 48.24 acres of wetlands, including 41.72 acres that would be temporarily impacted and 6.52 acres that would be permanently impacted and converted to lower quality wetland habitat. *Id.* at 11-12.

DEP should deny Transco's applications for water obstruction and encroachment permits. At a minimum, DEP should extend the comment period an additional 30 days to provide the public more time to fully understand the scale and potential environmental impact of the Atlantic Sunrise Project. During that time, DEP should seek better coordination of its permit processes with those of other Federal and State agencies. 25 Pa. Code § 105.24.

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Respectfully submitted,

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