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FEDERAL ENERGY
REGULATORY COMMISSION

June 27, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

RE: Transcontinental Gas Pipeline Company
Atlantic Sunrise Project
Comments on May 5, 2016 Draft Environmental Impact Statement
Docket No. CP-15-138-000
OEP/DG2E/Gas2

Dear Secretary Bose:

The Pennsylvania Department of Environmental Protection (PADEP) has reviewed and is providing comments on the Federal Energy Regulatory Commission's (FERC) draft Environmental Impact Statement (EIS) for the Transcontinental Gas Pipeline Company (Transco) Atlantic Sunrise Project issued on May 5, 2016. PADEP's primary concern with the draft EIS is that it does not fully acknowledge the State law requirements that Transco must fulfill to meet its obligations under Section 401 of the Clean Water Act (33 U.S.C. § 1341).

As you know, Transco is required under the Section 401 of the Clean Water Act to obtain a certification from Pennsylvania that discharges from its proposed project within the State will comply with State law requirements necessary to ensure compliance with applicable provisions of the Clean Water Act.¹ Pennsylvania is rich in water resources, which PADEP protects pursuant to State law authority to fulfill both State and Federal law. Specifically, Pennsylvania has a long history of regulating discharges to its waters through the Pennsylvania Clean Streams Law enacted in 1937, and of regulating stream and wetland crossings and encroachments through the Pennsylvania Dam Safety and Encroachments Act, enacted in 1978. PADEP is the agency responsible for ensuring the quality of Pennsylvania's water resources through regulatory permitting programs that implement these statutes.

PADEP issued its State Water Quality Certification for the Atlantic Sunrise Project on April 5, 2016, and published notice of this certification in the *Pennsylvania Bulletin* on April 23, 2016 (46 Pa. B. 2132; copy enclosed). PADEP's State Water Quality Certification for this project is

¹ Specifically, the discharge must achieve applicable State law requirements related to the following sections of the Clean Water Act: the effluent limitations in Section 301 (33 U.S.C. § 1311), the water quality related effluent limitations in Section 302 (33 U.S.C. § 1312), the water quality standards and implementation plans in Section 303 (33 U.S.C. § 1313); the national standards of performance in Section 306 (33 U.S.C. § 1316); and the toxic and pretreatment effluent standards in Section 307 (U.S.C. § 1317).

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conditioned upon Transco obtaining and complying with State permits necessary to ensure that Pennsylvania's water quality standards are achieved. Specifically, Transco is required to obtain:

- State permits for erosion and sediment control required by State regulations at 25 Pa. Code Chapter 102;
- State permits for water obstruction and encroachments required by State regulations at 25 Pa. Code Chapter 105; and
- State permits for the discharge of hydrostatic test water under State regulations at 25 Pa. Code Chapter 92a.

Table 1.5-1 of the draft EIS acknowledges that Transco has obtained a State Water Quality Certification from PADEP and identifies State law permits that must be obtained from PADEP for this project. FERC includes the State law authorizations as part of its draft EIS to support its conclusion that the Atlantic Sunrise Project will not result in any significant adverse environmental impacts.

While these State law authorizations are identified in the draft EIS, FERC does not expressly require Transco to obtain these State law authorizations prior to construction. For example, Section 5.2 of the draft EIS identifies the "FERC Staff Recommended Mitigation" for inclusion in the FERC Order granting the Certificate of Public Convenience and Necessity for the project. None of FERC's conditions expressly require Transco to obtain the State law authorizations identified by and required under Pennsylvania's State Water Quality Certification prior to the commencement of construction in Pennsylvania. PADEP requests that FERC include in Section 5.2 of the final EIS a condition requiring Transco to obtain these State law authorizations pursuant to Pennsylvania's State Water Quality Certification.

PADEP also requests that FERC clarify the role of Pennsylvania's State law permitting programs in other relevant discussion when it finalizes the EIS. For example, the water obstruction and encroachments permits issued pursuant to 25 Pa. Code Chapter 105 will include wetland mitigation requirements. The draft EIS incorrectly identifies these and other State law permits required under Pennsylvania's State Water Quality Certification as permits issued under Section 401 of the Clean Water Act (*e.g.*, page ES-6 describing mitigation of construction and operation-related impacts on wetlands). That characterization is incorrect.

As noted above, the Section 401 of the Clean Water Act imposes an obligation on Transco to obtain a certification from Pennsylvania that the discharges from the project will protect the quality of Pennsylvania's water resources. In Pennsylvania, that protection is assured through State law permits that PADEP has identified as conditions of the State Water Quality Certification. FERC's short-hand method of describing Pennsylvania's State Water Quality Certification and its State law permits required thereunder as permits issued under Section 401 of the Clean Water Act is misleading and should be corrected to accurately describe these requirements as applicable State law authorizations.

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Finally, Section 5.2 of the draft EIS identifies numerous instances in which Transco needs to provide additional information to FERC prior to the end of the draft EIS comment period or prior to construction. PADEP requests that FERC direct Transco to ensure that all pending applications for State permits and authorizations be updated with the current project data and information to ensure actions taken by PADEP are consistent with the project as authorized by FERC, including the State Water Quality Certification. PADEP also requests that FERC require Transco to provide copies of its weekly status reports required under condition 8 concurrently to PADEP.

PADEP appreciates the opportunity to comment on the draft EIS. Should you have any questions or need additional information regarding the comments and recommendations on the draft EIS, please contact Alexandra Chiaruttini, PADEP Chief Counsel by e-mail at achiarutti@pa.gov or by telephone at 717.787.4449.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Aunkst', written over a horizontal line.

Dana K. Aunkst
Deputy Secretary

Enclosure

cc: Alexandra Chiaruttini

treatment and control (and related appurtenances) which are installed to achieve compliance with the terms and conditions of this State Water Quality Certification and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

6. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of the Department to determine compliance with this State Water Quality Certification, including all required State water quality permits and State water quality standards. A copy of this certification shall be available for inspection by the Department during such inspections of the Project.

7. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project which is affected by this State Water Quality Certification, Applicant shall serve a copy of this certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Department Regional Office of such intent. Notice to the Department shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of certification responsibility, coverage, and liability between them.

8. *Correspondence*—All correspondence with and submittals to the Department concerning this State Water Quality Certification shall be addressed to: Department of Environmental Protection, Northcentral Regional Office, Mr. David W. Garg, P.E., Environmental Program Manager, Waterways and Wetlands, 201 West Third Street, Suite 101, Williamsport, PA 17701

9. *Reservation of Rights*—The Department may suspend or revoke this State Water Quality Certification if it determines that Applicant has not complied with the terms and conditions of this certification. The Department may require additional measures to achieve compliance with applicable law, subject to Applicant's applicable procedural and substantive rights.

10. *Other Laws*—Nothing in this State Water Quality Certification shall be construed to preclude the institution of any legal action or relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable federal or state law or regulation.

11. *Severability*—The provisions of this State Water Quality Certification are severable and should any provision of this certification be declared invalid or unenforceable, the remainder of the certification shall not be affected thereby.

Prior to issuance of the final state water quality certification, the Department will consider all relevant and timely comments, suggestions or objections submitted to the Department within 30 days of this notice. Comments should be directed to Mr. David W. Garg, P.E., Environmental Program Manager, Waterways and Wetlands at the above address or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

Water Quality Certification under Section 401 of the Federal Clean Water Act for the Atlantic Sunrise Pipeline Project

Natural Gas Pipeline Project and Related Mitigation; FERC Docket No. CP15-138-000; PADEP File No. WQ02-001

Northeast Region: Waterways & Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18711, Joseph Buczynski, Program Manager 570-826-2511

On April 5, 2016, the DEP issued Section 401 Water Quality Certification to Transcontinental Gas Pipe Line Company, LLC for the Atlantic Sunrise Pipeline Project. The Pennsylvania Department of Environmental Protection (Department) certifies that the construction, operation and maintenance of the Project complies with the applicable provisions of sections 301–303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311–1313, 1316 and 1317). The Department further certifies that the construction, operation and maintenance of the projects complies with Commonwealth water quality standards and that the construction, operation and maintenance of the projects does not violate applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the projects complies with the conditions for this certification, including the criteria and conditions of the following permits:

1. *Discharge Permit*—Transcontinental Gas Pipe Line Company, LLC shall obtain and comply with a Department National Pollutant Discharge Elimination System (NPDES) permit for the discharge of water from the hydrostatic testing of the pipeline pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1–691.1001) and all applicable implementing regulations (25 Pa. Code Chapter 92a).

2. *Erosion and Sediment Control Permit*—Transcontinental Gas Pipe Line Company, LLC shall obtain and comply with the Department's Chapter 102 Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1–680.17) and all applicable implementing regulations (25 Pa. Code Chapter 102).

3. *Water Obstruction and Encroachment Permits*—Transcontinental Gas Pipe Line Company, LLC shall obtain and comply with a Department Chapter 105 Water Obstruction and Encroachment Permits for the construction, operation and maintenance of all water obstructions and encroachments associated with the project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1–693.27), and Flood Plain Management Act (32 P.S. §§ 679.101–679.601.) and all applicable implementing regulations (25 Pa. Code Chapter 105).

4. *Water Quality Monitoring*—The Department retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any operational and construction process that may be employed by Transcontinental Gas Pipe Line Company, LLC.

5. *Operation*—For each Project under this certification, Transcontinental Gas Pipe Line Company, LLC shall at all times properly operate and maintain all Project facilities and systems of treatment and control (and related

appurtenances) which are installed to achieve compliance with the terms and conditions of this Certification and all required permits. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Transcontinental Gas Pipe Line Company, LLC.

6. *Inspection*—The Projects, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of the Department to determine compliance with this Certification, including all required permits required, and Pennsylvania's Water Quality Standards. A copy of this Certification shall be available for inspection by the Department during such inspections of the Projects.

7. *Transfer of Projects*—If Transcontinental Gas Pipe Line Company, LLC intends to transfer any legal or equitable interest in the Projects which is affected by this Certification, Transcontinental Gas Pipe Line Company, LLC shall serve a copy of this Certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Department Regional Office of such intent. Notice to the Department shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of Certification responsibility, coverage, and liability between them.

8. *Correspondence*—All correspondence with and submittals to the Department concerning this Certification shall be addressed to the Department of Environmental Protection, Northeast Regional Office, Waterways and Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915.

9. *Reservation of Rights*—The Department may suspend or revoke this Certification if it determines that Transcontinental Gas Pipe Line Company, LLC has not complied with the terms and conditions of this Certification. The Department may require additional measures to achieve compliance with applicable law, subject to Transcontinental Gas Pipe Line Company, LLC's applicable procedural and substantive rights.

10. *Other Laws*—Nothing in this Certification shall be construed to preclude the institution of any legal action or relieve Transcontinental Gas Pipe Line Company, LLC from any responsibilities, liabilities, or penalties established pursuant to any applicable federal or state law or regulation.

11. *Severability*—The provisions of this Certification are severable and should any provision of this Certification be declared invalid or unenforceable, the remainder of the Certification shall not be affected thereby.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a

different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the board within 30 days. You do not need a lawyer to file an appeal with the board.

Important legal rights are at stake, however, so you should show this document to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the secretary to the board (717-787-3483) for more information.

DAM SAFETY

Central Office: Bureau of Waterways Engineering and Wetlands, Rachel Carson State Office Building, Floor 3, 400 Market Street, P. O. Box 8460, Harrisburg, PA 17105-8460

D51-012. East Park Reservoir Dam, Aramark Tower, 2nd Floor, 1101 Market Street, Philadelphia, PA 19103. Permit issued to modify, operate, and maintain East Park Reservoir Dam within Schuylkill River Watershed, for the purpose of meeting the Commonwealth's regulations (Philadelphia, PA Quadrangle Latitude: 35.985833; Longitude: -75.188333) in Philadelphia City, Philadelphia County.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Southwest Region: Waterways & Wetlands Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

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