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By Electronic and First Class Mail

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**Re: Transcontinental Gas Pipe Line Company, LLC
Applications for Chapter 105 Permits for the Atlantic Sunrise Pipeline Project
Nos. E58-315, E40-769, E54-360, E66-160, E36-947, E38-195, E19-311 & E49-336**

Dear Program Managers:

Clean Air Council (the "Council") hereby submits the following comments on behalf of itself and its members in response to the Pennsylvania Department of Environmental Protection's (the "Department") notification of its receipt of Transcontinental Gas Pipe Line Company, LLC's ("Williams") applications for Chapter 105 water obstruction and encroachment permits for the proposed Atlantic Sunrise Pipeline Project ("ASP" or "Project"). Because of the common issues across multiple applications, the Council has consolidated its comments into this single document.

The Council is a non-profit environmental organization headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103, with more than 8,000 members in Pennsylvania. For more than 40 years, the Council has fought to improve the air quality across Pennsylvania. The Council's mission is to protect everyone's right to breathe clean air.

Williams is requesting authorization to construct, operate, and maintain an interstate natural gas pipeline largely in Pennsylvania, but with construction also in Virginia, North Carolina, and South Carolina. The pipeline would span 197.7 miles and cross 247 waterbodies, including 8

major waterways. Crossing methods include dry and wet crossings, open-cut methods, and trenchless methods. The pipeline would also cross through miles of wetlands.

The Project as currently proposed would violate 25 Pa. Code § 105 for adverse impact on wetlands by removing smaller wetlands and compensating with consolidated replacement wetlands, as well as by harming exceptional value wetlands without meeting the requirements to do so. The plan may also violate the Endangered Species Act and would violate 25 Pa. Code § 93 by impairing high-quality streams, using potentially harmful water divergent methods, and blasting where migratory fish and endangered species reside. Protection of the Chesapeake Bay should be taken into account in considering the water impacts of this Project. The Council also asks the Department to do its own independent analyses of Williams's application, and respectfully requests extended public participation opportunities given the significance of the Project and the many other overlapping public comment periods for the Project.

The Council appreciates the opportunity to submit these comments.

Comments

1. Approval of Williams's permit applications for destruction of exceptional value and other wetlands would violate Chapter 105.

Between the European colonization of Pennsylvania and the mid-1980s, the Commonwealth lost over half of its wetlands.¹ Wetlands are now protected, with higher protections granted to more valuable wetlands. Exceptional value wetlands receive the greatest protections.

25 Pa. Code §§ 105.18a(a) and (b) state that the Department cannot grant permits for obstruction of and encroachment on exceptional value wetlands and other wetlands unless the "applicant affirmatively demonstrates in writing...that the following requirements are met: (1) the dam, water obstruction or encroachment will not have an adverse impact on the wetland, as determined in accordance with § § 105.14(b) and 105.15..." 25 Pa. Code § 105.14 states that the agency must consider the impact on the property and wildlife when determining whether or not to issue a permit.

Williams plans to remove smaller wetlands along the right-of-way for construction of the pipeline. It proposes as mitigation for the loss of these small wetlands rehabilitating land into new wetlands in four consolidated large sites. First Pennsylvania Resource, LLC, *Permittee-Responsible Mitigation Master Plan for the Atlantic Sunrise Project*, 2 (April 2015) ("Mitigation

¹ Thomas E. Dahl & Gregory J. Allord, U.S Geological Survey, *National Water Summary--Wetland Resources: Technical Aspects*, "History of Wetlands in the Conterminous United States," available at <https://www.fws.gov/wetlands/Documents/History-of-Wetlands-in-the-Conterminous-United-States.pdf>.

Master Plan”). Williams believes this is ideal because the rehabilitation of smaller wetlands have a “higher rate of failure and are generally not sustainable in the long-term.” *Id.*

Smaller wetlands play a critical role in reducing flooding, and wetlands in general work best as spatially distributed systems.² A wetland’s value is not solely determined by its size; its importance is also based on its location and relations to hydrologic and biological fluxes with other landscapes. *Id.* The destruction of a series of wetlands along a linear path, many of which are naturally distributed due to their location in wild areas, cannot be compensated by the enlargement of other wetlands. Therefore, given the importance of the smaller wetlands and the high rate of failure for rehabilitation, the project is likely have an adverse impact on the wetlands and violate 25 Pa. Code §§ 105.18(a) and/or (b).

Additionally, before a permit may issue allowing obstruction of or encroachment on exceptional value wetlands, the applicant must affirmatively demonstrate in writing that, among other things:

(2) The project is water-dependent. A project is water-dependent when the project requires access or proximity to or siting within the wetland to fulfill the basic purposes of the project.

(3) There is no practicable alternative to the proposed project that would not involve a wetland or that would have less effect on the wetland, and not have other significant adverse effects on the environment....

(6) The 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). Williams has not affirmatively demonstrated in its applications that the Project is water-dependent. To the contrary, Williams can reroute the pipeline around exceptional value wetlands, but has not. Nor has Williams demonstrated that there is no practicable alternative to the Project that would satisfy the third requirement.

The sixth requirement is worth elaborating on. Williams does a cumulative impact analysis for the project, including for water resources.³ Williams does not, however, specifically analyze the cumulative impact on exceptional value wetland resources. Williams does state: “Based on the above analysis, Transco believes there will be no significant measurable cumulative effects from

² James G. Gosselink and William J. Mitsch, *The Values of Wetlands: Landscapes and Institutional Perspectives*, ECO. ECON. 25 (2000), available at https://www.researchgate.net/publication/4839953_Valuation_of_wetlands_in_a_landscape_and_institutional_perspective

³ Application, Attachment L, Enclosure D, Section D.

the Project on wetlands.”⁴ This conclusion does not follow from its analysis, which showed, among other things, the measurable permanent conversion of forested wetlands to unforested wetlands and the ongoing artificial stunting of a wider swath of forested wetlands through selective tree cutting. Also, Williams failed to consider not just the cumulative impact from the many wetlands through which the pipeline would cross, but also from other projects.

Williams has failed to demonstrate that it has met the requirements to obstruct or encroach upon the at least 51 exceptional value wetlands it plans to obstruct or encroach upon. Therefore, its applications must be denied.

2. The Project may cause harm to endangered species and will destroy their habitat.

According to the Mitigation Master Plan, there will be 2.66 acres of exceptional value wetlands permanently impacted by the proposed pipeline project, which are specifically protected by 25 Pa. Code §§ 105.17-18a. (Mitigation Master Plan, 7).

Even though Williams proposes to replace exceptional value wetlands at a ratio of 2.5:1 with palustrine forested wetlands, this project still likely constitutes a violation of 25 Pa. Code § 105.18a, which states that a permit will be granted when the applicant can affirmatively show that the obstruction will not have an adverse impact on the wetlands. The Department determines impact by looking at, for one, the effect on the fish and wildlife, and aquatic habitat. 25 Pa. Code § 105.14(b)(4).

The Council is greatly concerned that the safety of the federally-threatened, Commonwealth-endangered bog turtle cannot be guaranteed, as the exceptional value wetlands through which the Atlantic Sunrise pipeline would run are the bog turtle’s preferred natural habitat. Williams’s surveys for the bog turtle are not yet complete, but Williams still intends to route the pipeline through a wetland with a known bog turtle population, destroying a portion of that wetland. Federal Energy Regulatory Commission (“FERC”), Draft Environmental Impact Statement, Volume I, Atlantic Sunrise Project, EIS-0269D, 4-112 (2016) (“ASP DEIS”). There are also at least 18 identified wetlands that are suitable bog turtle habitat along the Project route.

Permitting Williams to destroy the habitat of this threatened species would be highly inappropriate. Destruction and fragmentation of bog turtle habitat is the principal threat to the turtle. (ASP DEIS, 4-111). The Council respectfully requests the Department to consider the effects to the bog turtles’ critical habitat, and refrain from permitting any activity which would destroy its habitat.

⁴ *Id.*

3. Project construction is likely to cause harm to migratory birds.

There is a high likelihood that the Atlantic Sunrise pipeline would cause significant harm to both permanent and migratory bird populations that are protected under the Migratory Bird Treaty Act (“MBTA”). (ASP DEIS, M-7). MBTA makes it unlawful for anyone to take the protected birds or to alter their habitat in a way that could effect a take. The greatest potential for impact to migratory birds from Project construction is in Pennsylvania.

Bald eagles and 17 other birds of conservation concern are known to live and breed in the project area. (ASP DEIS, M-18). Two birds of conservation concern use the wetlands that Williams proposes to cross as habitat: the short-eared owl and the rusty blackbird. (ASP DEIS, M-23). The project will thus destroy a significant amount of habitat of the protected birds and it is in violation of MBTA to take the birds or disrupt their habitat. While the U.S. Fish and Wildlife Service encourages industry to use best practices to protect migratory birds, the cumulative impacts of removing so much migratory bird habitat, even if Williams does its best to avoid direct takings, is of major concern.

4. Dry crossing methods for major rivers have the potential to damage high-quality streams and wildlife.

Williams plans to dry-cross 274 waterbodies. (ASP DEIS, 4-60). A majority of these waterbodies are high-quality, cold water fisheries, and/or migratory fisheries. (“HQ-CWF, MF”) 46 Pa. Bull. 2191 (April 30, 2016). Dry crossing involves either flume pipes or a dam-and-pump method to divert water flow around the construction. (ASP DEIS, 4-60). Dry crossing causes harm to aquatic life by causing temporary and permanent modification to stream banks and aquatic habitat. (ASP DEIS, 4-61). These modifications are caused by the resuspension of sediments, increased turbulence, and from blocking access to migratory pathways for aquatic life. (ASP DEIS, 4-61). Williams plans to reduce harm to wildlife by placing a screen on the pipes. (ASP DEIS, 4-100). That is not enough to ensure adequate protection of aquatic life.

A project of this magnitude, using these methods, is likely to cause significant harm to fish, and incidental takes to endangered aquatic life within the waterbody and surrounding habitat. (ASP DEIS, 5-10). Section 9 of the Endangered Species Act prohibits the taking of a listed species. 18 U.S.C.A. § 1538(a)(1)(A). Taking “means to harass, harm, pursue, hunt, shoot, wound kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 18 U.S.C.A. § 1532(19). Within the waterbody, aquatic organisms can get caught against the screens causing injury, death, or extreme stress.⁵ Endangered plant species may be harmed through the construction of the pipeline by disturbing their soil, trampling the plant, or by uprooting the plants and

⁵ NOAA, Northeast Fisheries Service Center, *Impacts to Marine Fisheries Habitat from Nonfishing Activities in the Northeastern United States* 221-2 (2008), available at <http://www.nefsc.noaa.gov/publications/tm/tm209/pdfs/ch8.pdf>

transferring them from the intended construction site. Williams plans to transfer all protected species in order to avoid direct harm to the plants. (ASP DEIS, 5-10). Even if Williams can properly transfer the plants, the plants will further be harmed if they are not properly maintained after transplantation. Williams cannot guarantee that proper care that is needed when transferring the protected flora will occur.

Furthermore, HQ streams are subject to special antidegradation protections to maintain their quality. For example, 25 Pa. Code §§ 93.4a(c) and 93.4c(b)(1)(iii) do not allow for degradation of HQ streams from point source discharges unless the Department finds that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. For nonpoint sources, such as the pollution created by dry-crossing a stream, the Pennsylvania Code requires the use of best management practices. 25 Pa. Code § 93.4c(b)(2). Trenchless crossings generally are one of the best management practices for protection of HQ waters. Williams has nowhere justified its proposed use of highly destructive trenching methods in HQ waters. There may be circumstances justifying case-by-case use of such methods in certain waters here, but if there are, they are not to be found in the applications.

Of particular note among the waterbodies that Williams intends to cross using dry methods are two crossings of greater than 100 feet: at Tunkhannock Creek, using dam-and-pump, and Swatara Creek, using the flume method. (ASP DEIS, 4-49). Absent unusual circumstances not apparent here, it is inappropriate to do dry crossings of major waterbodies, as opposed to trenchless methods. The Governor's Pipeline Infrastructure Task Force report noted that "Crossings that employ trenchless technologies such as horizontal directional drilling (HDD) and micro-tunneling under the streambed are preferred for larger crossing and those with forested riparian buffers." (Environmental Protection Workgroup Recommendation #34).

A reduction in water quality also will not be allowed under 25 Pa. Code § 93.4a(b) unless the discharger demonstrates that the HQ stream will support applicable existing and designated water uses. Williams has to prove that the screens and methods used to protect wildlife would not interrupt the uses of the streams, which include habitat to cold water and migratory fish. Williams cannot meet this burden because of the known damage to the species caused by the chosen screening method for fish and replanting method for flora mentioned above. Clean Air Council cautions the Department to use this exception carefully and to fully consider the ramifications to the 247 waterbodies.

5. HDD crossings, though preferable, still can harm water bodies.

Williams plans to use trenchless, or Horizontal Directional Drilling ("HDD"), for eight of the waterbodies. Most of these are major water bodies including, for example, the Susquehanna and Conestoga Rivers. HDD crossings, while often preferred over crossings which trench the water body, still have the potential to leak chemical byproducts, including lubricants, that can injure or

kill aquatic life. (ASP DEIS, 4-101). The preparation for a HDD crossing may involve the removal of habitat of crucial species, including the bald eagle. (ASP DEIS, ES-9).

Williams also expects blasting to occur to install the pipeline. Blasting can cause permanent changes to the waterbody and allow chemical byproduct leakage. (ASP DEIS, 4-101). The changes include turbidity, lower dissolved oxygen levels, and modification of riparian and aquatic habitat. (ASP DEIS, 4-61).

The Council respectfully requests the Department to ensure that these dangers are adequately addressed before it issues the Chapter 105 permits, should it issue the permits.

6. Protection of the Chesapeake Bay should take priority.

In coordination with other Commonwealth agencies, and partly in response to the U.S. Environmental Protection Agency withholding \$3 million from Pennsylvania, the Department has launched a Chesapeake Bay restoration strategy, or “reboot.” The strategy rightly focuses on agriculture in order to reduce nutrient load in the Susquehanna River Watershed and, ultimately, the Bay. The Department, however, should not ignore the role that pipelines such as the Atlantic Sunrise can play in destroying riparian buffers at water crossings, creating linear pathways for increased sediment load in waterways, and reducing the efficacy of wetlands in cleaning and storing water that makes its way into the Bay.

25 Pa. Code § 105.21(a)(3) provides that “a permit application will not be approved unless the applicant demonstrates that ... [t]he proposed project or action will adequately protect public health, safety and the environment.” As explained elsewhere in this comment, Williams proposes to build the Atlantic Sunrise pipeline in a manner that causes needless harm to wetlands and waterways. The pipeline as planned would snake through nearly 200 miles of the Chesapeake Bay Watershed. The pipeline’s impacts would be substantial, and would threaten the safety and sanctity of the Chesapeake Bay.

7. The Department should extend the comment deadline and provide public hearings.

Clean Air Council respectfully requests that the Department provide public hearings in each region on Williams’s Chapter 105 applications. The Atlantic Sunrise pipeline would be a massive project if built, affecting communities across nearly the entire North-South breadth of Pennsylvania. As FERC noted in the DEIS at page 1-6, “In addition to the comments received at the public scoping meetings, over 1,880 written comments and 130 motions to intervene were filed with FERC and placed in the public record for the Project as of April 13, 2016.” Clearly this is a project of major public import, deserving of commensurate public engagement opportunities.

Yet while interested citizens and public interest organizations are working to digest and respond to the information available relating to Williams’s Chapter 105 permit applications, they are also

scrambling to digest and respond to a number of other regulatory approvals or intents to approve at the same time:

- Multiple organizations have just filed challenges to the Department's issuance of the Section 401 water quality certification for Atlantic Sunrise;
- The period for comments to the Army Corps of Engineers for Section 404 of the Clean Water Act for Atlantic Sunrise closes June 30, 2016;
- The appeal deadline for the Atlantic Sunrise Chapman Loop Section 401 approval closes June 13, 2016; and
- The comment deadline for the FERC's DEIS for Atlantic Sunrise closes June 27, 2016.

This all has come as a flood of information and deadlines. Those who would be harmed by the building of the pipeline are Pennsylvanians from all walks of life, most of whom have not had adequate time to pore over the literally thousands of pages of technical documents agencies review and produce in consideration of Williams's applications. It is overwhelming. The DEIS alone is 1342 pages with its appendices, and the applications for the Chapter 105 permits are collectively thousands of pages. Yet what other option do regular Pennsylvanians have to protect their lives and their livelihoods?

So that everyone has a fair chance to provide input on a major project that is projected to do great harm to the waters of this Commonwealth, Clean Air Council respectfully requests that the Department extend the deadline to comment on Williams's applications for Chapter 105 permits.

8. The Department should not rely on FERC conclusions in its decision making.

As the Department is aware, Williams is pursuing a parallel approval process before FERC. The Council does not believe the Department would rely on FERC's conclusions in its own review process, but out of an abundance of caution asks the Department not to do so. To put it plainly, FERC does not conduct a balanced assessment of the environmental impacts of pipelines. Rather, for reasons which are irrelevant here, FERC has concluded that the environmental impacts of *every single pipeline project* that has sought its approval are acceptable.

Accepting conclusions on environmental matters from an agency which considers environmental concerns always subservient to market conditions would be inappropriate for the Department, which conducts a far fairer review process.

Thank you for the opportunity to comment. Please keep us apprised of any future actions related to Williams's applications for these Chapter 105 permits.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph Otis Minott", written over a horizontal line.

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