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May 31, 2016

Scott Williamson
Program Manager, Waterways and Wetlands Program
Southcentral Region
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110
Sent via email: scwilliams@pa.gov

**RE: Comment on Proposed Chapter 105 Permit Applications – Atlantic Sunrise Project
Lancaster County – E36-947
Noticed in 46 Pa.B. 2191 (April 30, 2016)**

Dear Mr. Williamson,

Lancaster Against Pipelines respectfully submits this comment on its own behalf and on behalf of its members regarding the proposed Atlantic Sunrise pipeline project, and specifically the proposed Chapter 105 permit applications for Lancaster County.

Lancaster Against Pipelines (“LAP”) is a grassroots coalition of local residents, business owners, church communities, and non-profits committed to protecting their home county against the proposed Atlantic Sunrise gas pipeline. LAP is a registered 501(c)(3) organization. LAP and its members seek to preserve and protect what they most love and cherish about Lancaster County: their farmland, their woods, their scenic waterways, their rural way of life, their Amish neighbors, their Native American heritage, and the well-being of their tight-knit communities.

The relevant Pennsylvania Bulletin notice for Lancaster County appeared substantially as follows:

E36-947, Atlantic Sunrise, Transcontinental Gas Pipe Line Company, LLC, 2800 Post Oak Boulevard, Level 6, Houston, TX 77056. Atlantic Sunrise Pipeline in Conestoga, Drumore, Manor,

Martic, Mount Joy, Rapho, Pequea, Eden, East Donegal, and West Hempfield Townships, Borough of Mount Joy, Lancaster County, ACOE Baltimore District. The proposed project starts at Lebanon County Lancaster County border Elizabethtown, PA Quadrangle N: 40°, 12', 30"; W: -76°, 31', 49" and ends at CPL south, southern tie-in Holtwood, PA Quadrangle N: 39°, 50', 9"; W: -76°, 15', 15".

The project consists of the installation and maintenance of approximately 36.8 miles long, 42 inch pipeline and appurtenant structures. The proposed project impacts in Lancaster County include a total of 4,416 linear feet of temporary impacts to Back Run TSF, MF, Brubaker Run TSF, MF, Chiques Creek WWF, MF, Climbers Run CWF, MF, Indian Run WWF, MF, Little Chiques Creek TSF, MF, Muddy Run TSF, MF, Pequea Creek WWF, MF, Shawnee Run WWF, MF, Shells Run TSF, MF, Stamans Run WWF, MF, Strickler Run WWF, MF, Tucquan Creek HQ-CWF, MF, Four UNTs to Back Run TSF, MF, UNT to Brubaker Run WWF, MF, Two UNTs to Chiques Creek WWF, MF, UNT to Climbers Run CWF, MF, Two UNTs to Conestoga River WWF, MF, Two UNTs to Fishing Creek CWF, MF, UNT to Indian Run WWF, MF, Four UNTs to Little Chiques Creek TSF, MF, Seven UNTs to Pequea Creek WWF MF, UNT Stamans Run WWF, Two UNTs to Strickler Run WWF, MF, Nine UNTs to Witmers Run WWF, MF, Witmers Run WWF, MF, a total of 505 linear feet of permanent impacts to Back Run TSF, MF, Brubaker Run TSF, MF, Chiques Creek WWF, MF, Climbers Run CWF, MF, Indian Run WWF, MF, Little Chiques Creek TSF, MF, Pequea Creek WWF, MF, Shawnee Run WWF, MF, Shells Run TSF, MF, Stamans Run WWF, MF, Strickler Run WWF, MF, Tucquan Creek HQ-CWF, MF, Four UNTs to Back Run TSF, MF, UNT to Brubaker Run WWF, MF, Two UNTs to Chiques Creek WWF, MF, UNT to Climbers Run CWF, MF, Two UNTs to Conestoga River WWF, MF, Two UNTs to Fishing Creek CWF, MF, UNT to Indian Run WWF, MF, Three UNTs to Little Chiques Creek TSF, MF, Six UNTs to Pequea Creek WWF MF, UNT Stamans Run WWF, Two UNTs to Strickler Run WWF, MF, four UNTs to Witmers Run WWF, MF, Witmers Run WWF, MF and 2.02 acres of floodway impacts, 1.42 acre of temporary impacts to PEM, PSS and PFO wetlands and 0.28 acre of permanent impacts to PEM, PSS and PFO wetlands. To compensate for the proposed permanent project impacts in Lancaster County, the applicant is proposing the creation of a compensatory wetland mitigation project located on the Hibred Farms property along State Route 897 (Latitude: 40° 17' 02.38"N; Longitude: 76° 10' 34.03"W) in

West Cocalico Township, Lancaster County. The proposed project impacts in this permit application are associated with a proposed transmission pipeline project extending approximately 195 miles in Pennsylvania between Lennox Township, Susquehanna County and Drumore Township, Lancaster County, PA.

For more detailed information regarding the Lancaster County Chapter 105 permit application related to this proposed project, which is available in the DEP regional office, please contact Scott Williamson 717-705-4799 to request a file review.

This comment and request for public hearing are timely filed within thirty (30) days of the April 30, 2016 Pennsylvania Bulletin notice.

LAP previously submitted a request for extension of comment deadline and a request for a public hearing. This letter is filed without prejudice to LAP's right to submit further comments on the proposed Chapter 105 applications after a full and fair opportunity to review the application material.

LAP offers the following objections to the proposed permits, which are detailed below.

I. Incorrect Designated Uses Provided by Transco

A brief review of the listed streams in the notice reveals that Transco has incorrectly identified the designated use of certain impacted streams in Lancaster County.

Transco has Fishing Creek listed as a Cold Water Fishes ("CWF") stream. This is incorrect. 25 Pa. Code 93.9(o) lists Fishing Creek as the following:

- Fishing Creek (basin (i.e. the main stream and all tributaries, wetlands, etc.)): source to UNT 07256 (near T434 Bridge) = HQ-CWF
- Fishing Creek (basin): UNT 07256 (near T434 Bridge) to Mouth = EV
- UNT 07256 (basin) = EV

Also, LAP requests that the Department confirm whether UNT 07792 to the Conestoga River (at RM 43.05) is crossed by the proposed pipeline, as this stream is designated as CWF, not Warm Water Fishes ("WWF").¹

¹ LAP also notes that Transco has misidentified a watershed in Luzerne/Wyoming Counties. Specifically, Transco has "Marsh Run" listed as a Cold Water Fishes ("CWF") stream. This is incorrect. First, there is no Marsh Run listed in Chapter 93 for Luzerne and Wyoming Counties. There is a Marsh Creek. Second, 25 Pa. Code § 93.9(i) lists Marsh Creek as: Basin (i.e. the main stream and all tributaries, wetlands, etc.): = HQ-CWF.

II. Existing Use Protection Required; Antidegradation Analysis under Chapter 93 Required Beyond What Chapter 105 Requires

Under Chapter 93, the Department is required to give existing use protection to surface waters “when the Department’s evaluation of information (including data gathered at the Department’s own initiative . . . , or data considered in the context of a Department permit or approval action) indicates that a surface water attains or has attained an existing use.” 25 Pa. Code § 93.4c; see also 25 Pa. Code § 93.4a. To the extent Transco, the Department, or any commenters have such information, it must be taken into account in analyzing the proposed project’s impacts on local watersheds, and what avoidance, minimization, and mitigation of harm Transco must undertake.

Relatedly, the Department must apply Chapter 93 antidegradation criteria regardless of what Chapter 105 requires. Blue Mtn. Preservation Assocs. v. DEP, 2006 EHB 589. Chapter 105 does not contain the same step-by-step analysis, or have the entirely identical scope of concerns as Chapter 93. Thus, the Department must apply Chapter 93 criteria and ensure that Transco has appropriately analyzed impacts under the Chapter 93 framework.

III. Mitigation of Impacts Not Occurring in Most of the Impacted Watersheds

Transco has proposed wetlands mitigation as part of the Atlantic Sunrise project in the counties at the start and end of the pipeline route. However, there are both temporary and permanent wetlands and waterways impacts all along the proposed route, for which mitigation is not being proposed despite the impacts that are proposed to occur. The Department must ensure, both under Chapter 93 and Article I, Section 27 of the Pennsylvania Constitution, that the applicant has absolutely avoided and then minimized impacts as much as possible (“Section 27”), before considering mitigation. Without scrutiny of proposed impacts, an applicant could propose a significant amount of degradation of water quality in one area under the premise that the water quality will be improved in another. Chapter 93 requires that *all* waterways be protected.

Further, under Section 27, as a trustee of public natural resources, the Department has a fiduciary duty of impartiality, meaning it must treat all beneficiaries equitably in light of the purposes of the trust. The purpose of the trust under Section 27 is that both present *and* future generations have a constitutionally-protected right to enjoy and benefit from public natural resources, including clean streams, their scenic and aesthetic qualities, and the aquatic life in those streams. “Equity” is concerned with what is fair and just, whereas “equal” means sameness or uniformity. Thus, the Department does not have to *treat* all beneficiaries exactly the same, but what it *must* do is ensure that, as the *outcome* of its actions, the Department treats all citizens of the Commonwealth fairly and justly in, for example, their ability to enjoy clean streams and the aquatic life therein. Thus, merely allowing permittees to degrade stream quality in one area under the guise of improving it another – without more – is contrary to this duty in part because it relies on decreasing some citizens’ access to clean streams and healthy aquatic life without ensuring that the degradation is reasonable. It also would allow “death by a thousand cuts” to stream quality, also contrary to Section 27.

IV. Unduly Narrow Limits of Biological and Other Investigation (e.g. Archeological)

The limits of Transco's biological and other types (e.g. historical and archeological) investigation are far too narrow to adequately judge potential impacts. Limiting investigation to the limit of disturbance ("LOD") or a short distance beyond the LOD leaves an incomplete picture, hindering the applicant and the Department's ability to assess, and to require Transco to avoid, minimize, and mitigate (in that order) the impacts of the proposed project. For example, if there are archeological features or artifacts just outside the limit of disturbance, those could be damaged by pipeline work, including any blasting that may be used.² Blasting or other heavy directional drilling or other work could damage or significantly disturb the integrity of archeological resources nearby. Likewise, similar concerns apply to biological investigations.

For the Department to meet its obligations under Article I, Section 27 of the Pennsylvania Constitution, it must ensure that it has sufficient information from Transco to determine whether the proposed pipeline project will unreasonably infringe on the people's constitutionally-protected rights to, *inter alia*, the "natural, scenic, historic and esthetic values of the environment." The Department also needs sufficient information to be able to assess whether the proposed project will unreasonably cause degradation, diminution, or depletion of public natural resources such as wildlife, aquatic life, plants, and the healthy habitat on which those species depend. The analysis Transco has undertaken thus far is too narrow to provide the Department with the information it must have to properly carry out its Section 27 obligations.

Thank you for your consideration of this matter.

Very truly yours,



Mark L. Freed, Esquire
For CURTIN & HEEFNER LLP

cc: Joseph S. Cigan, III (via email at jcigan@pa.gov)

² Based on an initial review of the draft Environmental Impact Statement, Transco has not stated specifically when and where it plans to use blasting.