



July 12, 2017

WATERWAYS & WETLANDS PROGRAM
COUNTY _____

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PERMIT # _____

Waterways & Wetlands Program Manager
PA Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915

Waterways and Wetlands Program Manager
PA Department of Environmental Protection
Northcentral Regional Office
208 West Third Street
Williamsport, PA 17701

Re: Transcontinental Pipe Line Company's Notice of Intent for Coverage Under the Chapter 102 ESCGP-2 (NPDES Permit No. ESG0300015001) and Chapter 105 Water Obstruction and Encroachment Permit Applications E58-315, E40-769, E54-360, E66-160, E36-947, E38-195, E19-311, and E49-336.

Dear Program Managers:

Seneca Resources Corporation ("Seneca") submits these comments on the above-referenced applications in response to comments submitted to the Department on or about June 26, 2017 by the Allegheny Defense Project, Citizens for Water, Clean Air Council, Concerned Citizens of Lebanon County, Damascus Citizens for Sustainability, Lancaster Against Pipelines, Lebanon Pipeline Awareness, Nature Abounds, NYH2O, Sierra Club, and Waterkeepers Chesapeake (collectively referred to herein as the "Commenters") regarding Seneca's operations in its Eastern Development Area on acreage leased to Seneca by the PA Department of Conservation & Natural Resources ("DCNR").

Seneca is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is the exploration and production subsidiary of National Fuel Gas Company. Seneca explores for, develops and produces natural gas and oil reserves in California, New York and Pennsylvania, including the Marcellus and Utica Shales and is a customer of Transcontinental Gas

Pipe Line Company, LLC ("Transco"). Seneca owns/leases approximately 780,000 net acres of oil and natural gas interests in the Commonwealth of Pennsylvania and will be a Shipper on the Atlantic Sunrise Project. By managing the project as described in its FERC application, Transco will minimize environmental impacts by maximizing use of existing facilities and right of way corridors, avoiding duplication of facilities, limiting impacts on landowners, and limiting the earth disturbance necessary to accomplish this increased pipeline capacity in Appalachia.

In response to the lengthy comments of the Commenters, Seneca refers the Department to its comments previously submitted on or about July 18, 2016, in response to the nearly identical comments submitted on or about May 31, 2016 regarding the above-referenced applications by Allegheny Defense Project, Appalachian Mountain Advocates, Clean Air Council, Lower Susquehanna Riverkeeper, and Sierra Club. (see copy attached) The substantial similarity between these 2 sets of comments is a fair indication that no new and relevant information or documentation has been raised by the Commenters in the last year, during which time the Federal Energy Regulatory Commission ("FERC") approved Transco's application for its Atlantic Sunrise Project.

One new argument raised by the Commenters is that somehow Pennsylvania has veto power over decisions made by the US government via the FERC. They mistakenly infer in their opening paragraph that the Wolf Administration, as expressed in its PA Pipeline Infrastructure Task Force Final Report, has the authority to "plan site and route pipelines to avoid/reduce environmental community impacts." While that may be true for certain local intrastate pipelines, that is certainly not the case with an interstate pipeline project such as Atlantic Sunrise. FERC determines the need for, and the location of, interstate pipelines. *See* 15 U.S.C. § 717f(c); *Schneidewind*, 485 U.S. at 300-02, 305, 308; *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1600

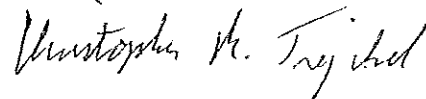
(2015); *Nat'l Fuel Gas Supply Corp. v. Pub. Serv. Comm'n*, 894 F.2d 571, 579 (2d Cir. 1990). It is also the FERC's role, as established via the National Environmental Policy Act and the Natural Gas Act, to evaluate the environmental impacts of a proposed pipeline project. 15 U.S.C. § 717n(b)(1). Although the Commenters wish it were not so, neither state laws and regulations nor Article I, Section 27 of the Pennsylvania Constitution, override federal law where Congress has established preemptive federal control as with interstate gas pipelines. If this were not the case, the door would be opened for states to exercise unilateral veto-power over matters of interstate commerce that could negatively impact other states and are exclusively governed by the federal government.

The Commenters repeatedly reference and discuss Article I, Section 27 of the Pennsylvania Constitution and the PA Supreme Court's analyses of the same in *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality) and *Pa. Env'tl. Defense Found. v. Commonwealth*, Slip Opinion J-35-2016 (Pa., June 20, 2017). The Commenters assert on page 5 of their comments that, based on these decisions, it is now "crystal clear" that the Department must deny Transco's applications if it finds that the project will degrade, diminish or deplete public natural resources. Unfortunately for the Commenters, nothing was made crystal clear by either of these decisions. The Commenters presumably would like to interpret these cases as precluding any future oil and gas development of any kind on or related to public lands. However, as aptly noted by Judge Baer in his *Concurring & Dissenting Opinion* in the *Pa. Environmental Defense Foundation* case, "Section 27's language did not intend to freeze the current status of the natural resources nor to prevent the Commonwealth's ability to utilize the resources." *Id.* at 14 (*Concurring & Dissenting Opinion*). Hence, even if the Department could usurp the authority of the FERC regarding

analysis of the environmental impacts of the Atlantic Sunrise project, the Commenters would still be faced with the significant legal hurdle of proving to the Department that the water crossings applied for will degrade, diminish or deplete those waterways. This would require substantially more than the mere conjecture, assumptions and bald predictions stated in the Commenters' comments.

Seneca thanks the Department for its diligent efforts regarding this important matter and respectfully requests that the Department enter these comments into the record for the above-referenced permit applications and that the Department approve, without modification or delay, the permit applications.

Best regards,

A handwritten signature in cursive script that reads "Christopher M. Trejchel".

Christopher M. Trejchel
Assistant General Counsel