



June 30, 2017

Ed Muzic
Section Chief
Waterways & Wetlands Program
Southcentral Region
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110

By email to emuzic@pa.gov

RE: Water Obstruction and Encroachment Applications:

- 1. E06-716: Birdsboro Power, LLC, Chapter 105 (Berks County, and***
- 2. E06-717: DTE Midstream Appalachia, LLC, Chapter 105 (Berks County)***

Dear Mr. Muzic:

Birdsboro Power, LLC, is applying for water obstructions and encroachment permitting to construct and maintain stormwater structures and aerial electric transmission line in Birdsboro Borough and Robeson, Union, and Exeter Townships, Berks County. DTE Midstream Appalachia, LLC, is applying for water obstructions and encroachment permitting to install and maintain approximately a 13.2 mile long, 12 inch pipeline and appurtenant structures in Birdsboro Borough and Union, Amity, Oley, and Rockland Townships, Berks County.

Both of these applications are for structures proposed in support of a 485 megawatt (MW) power plant proposed for Birdsboro Borough. The Delaware Riverkeeper Network objects to issuance of these permits and requests the Pennsylvania Department of Environmental Protection (DEP) deny the application outright.

The Delaware Riverkeeper Network (DRN), a private non-profit organization, champions the rights of our communities to a Delaware River and tributary streams that are free-flowing, clean, healthy, and abundant with a diversity of life. DRN is writing to comment on the proposed transmission line on behalf of our 19,000 members throughout the Delaware River Watershed including residents of Birdsboro and Berks County.

Floodplain Management

The proposed 485 MW power plant is located within the 100-year regulatory floodplain, specifically in the flood fringe. A Chapter 106 Floodplain Management Permit is needed to undertake any construct type of

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
drn@delawareriverkeeper.org
www.delawareriverkeeper.org

activity in a floodplain. However, it appears that no Chapter 106 permit has been granted for this power plant, the construction of which is made possible only through filling of the floodplain at the proposed project site with compacted fill to raise the land surface by 4 feet for the entire footprint of the power plant. The final grade is intended to be at least 1 foot above the regulatory flood elevation.

Given the footprint of the proposed power plant facilities (estimated to be in the range of 200,000 to 400,000 square feet), this floodplain filling would displace at minimum of 600,000 cubic feet of floodwaters when inundated by the regulatory flood. This development within the 100-year regulatory floodplain will exacerbate flooding in the vicinity of the project site as well as downstream. Past flooding in Birdsboro has been attributed to backup of the Hay Creek from high stages of the Schuylkill River. The proposed fill on this site will only exacerbate the issue of Hay Creek backup during high Schuylkill flows.

DEP has requested the applicant provide “plans and cross sections depicting the existing and proposed structures, fills, etc. and whether the structures are permanent or temporary for the proposed access road crossings of streams,” in connection with the obstruction and encroachment associated with the structures listed in his application, but the more significant filling of the floodplain associated with the power plant appears to have been allowed without the appropriate scrutiny.

Shouldn't a Chapter 106 Floodplain Management Permit have been the first permit for which Birdsboro Power, LLC (BP) applied in its quest to build this power plant? Advertisement of the proposed floodplain impact, followed by a clear and open public participation process, would have given those who will be affected by the power plant and its appurtenant structures (associated water lines to connect with the Reading Area Water Authority, or RAWA, the electric transmission line to connect with a 230 kV power line in Robeson Township, and a natural gas supply pipeline) an early opportunity to investigate and comment on the full environmental and community impacts. Instead, this power plant and its structures have been rushed through every phase of permitting with, to date, no public hearing held on this significant community impact. As a result, the community remains poorly informed about the power plant and its appurtenant structures and their impacts.

Need for Single and Complete Project Review

DEP should be comprehensively considering all phases of construction of the power plant and its appurtenant structures, as well as their environmental impacts, as a single and complete project. Instead, this project had been segmented, even though those segments depend upon other phases and do not have independent utility. All phases of this project and their impacts should be considered together and cumulatively. DRN believes that the impacts from the power plant, water line, natural gas pipeline, and transmission will be significant, negatively affecting communities and endangering environmental, scenic, aesthetic, recreational, historical, and agricultural resources.

DRN has submitted in the past various considerations to take into account about these projects in regard to segmentation and related pipeline projects. It is important and critical with such a proposed build out of pipelines in the Commonwealth to move natural gas abroad and to other markets, and with FERC's track record of this improper segmentation as evidenced in successful litigation brought by DRN, that DEP also consider cumulative environmental impact of the power plant and its appurtenant infrastructure as part of the state's permitting and certification process. The court held that the FERC violated NEPA by: “(1) segmenting its environmental review of the Northeast Upgrade Project – i.e., failing to consider the Northeast Upgrade Project in conjunction with three other connected, contemporaneous, closely related, and interdependent Tennessee Gas pipeline projects – and (2) failing to provide a meaningful analysis of the cumulative impacts of these projects to show that the impacts would be insignificant” (*Delaware Riverkeeper Network, et. al. v. Federal Energy Regulatory Commission, Tennessee Gas Pipeline Company*). It is critical that DEP use all regulatory measures in its authority to consider the wetlands and stormwater impacts through Chapter 102, Chapter 105 and Chapter 106 regulations.

PADEP trustee obligations under Article I Section 27

Articulated in Article I Section 27 of the Pennsylvania Constitution, the Environmental Rights Amendment, the people of Pennsylvania have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. PADEP has trustee obligations under Article I Section 27, now and for generations to come. These obligations demand that PADEP reject this application. Approval of this permit infringes on those rights. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come.

Since this power plant, transmission line, and pipeline would operate for decades in the state and require continual company oversight for safety and health and the environment and wellbeing of Pennsylvania's waterways and wetlands, it's important that the DEP consider the long term health of the operators of each and consider their long term viability as businesses.

DEP should also consider the need for the power plant and these appurtenant structures. Pennsylvania is already the largest exporter of electricity in the nation, so the electricity to be generated in Birdsboro is not needed in Pennsylvania, yet Pennsylvanians and Pennsylvania's environment will bear the harm from these impacts. Moreover, given that the costs of shipping electricity make it impractical to move long distances, building the power plant and constructing these appurtenant structures in Berks County, where the electricity is not needed does not make sense.

Because the Commonwealth has permitted over 8,000 unconventional gas wells (since Jan 30, 2015) and the scientific community has published, since April 2015 over 400 peer reviewed papers indicating harm, it is also critical that DEP use its authority and consider these beginning of pipe and end of pipe impacts that fracking and related infrastructure is causing and will exacerbate if these structures are permitted by DEP. According to Physicians for Safe Energy, 72% of these original research studies on water quality indicate potential, positive association, or actual incidence of water contamination; and 95% of all original research studies on air quality indicate elevated concentrations of air pollutants. Air pollution impacts water so all of these cumulative impacts must be considered by the DEP as part of its 404 and Chapter 105 review. And air pollution in the state already is ailing on many levels, causing harm to our waterways and the public. For example, in May, two of the five consecutive days (5/25 and 5/26/16 for Bristol, PA DEP air station) had ozone above the 70 ppb ozone standard (90 ppb and 85 ppb). In Tioga County, three of the five consecutive days (5/24, 25, 26/16) during the same week had exceedance for ozone (73, 77, and 74 ppm). These exceedances were detected by DEP's ambient air quality monitoring program.

Approval of these Water Obstruction and Encroachment Applications, E06-716 and E06-717, because they are necessary for the power plant to operate, will worsen air quality issues for those living in and around Birdsboro. DRN notes that, on EJSCREEN, the USEPA Environmental Justice Screening and Mapping Tool,¹ Birdsboro ranks in the 78th percentile in Pennsylvania for traffic proximity and volume (70th in the EPA Region Percentile and 59th in the U.S. Percentile). The USEPA's EJ Index for traffic is derived by combining the following factors for populations residing a given census block: the traffic indicator, the low-income population, and the minority population.²

The EJ Index is higher in block groups with large numbers of mainly low-income and/or minority residents with a higher environmental indicator value.³

¹ U.S. Environmental Protection Agency. (2016) *EJSCREEN*. Retrieved from <https://ejscreen.epa.gov/mapper/>

² U.S. Environmental Protection Agency. (2016) *Environmental Justice Indexes in EJSCREEN*. Retrieved from <https://www.epa.gov/ejscreen/environmental-justice-indexes-ejscreen>

³ U.S. Environmental Protection Agency. (2016) *Environmental Justice Indexes in EJSCREEN*. Retrieved from <https://www.epa.gov/ejscreen/environmental-justice-indexes-ejscreen>

This data suggests that Birdsboro residents are currently at risk for adverse health outcomes associated with exposure to traffic-related air pollution. Traffic exposure is associated with asthma in children and decreased lung function in adults with asthma,⁴ and even elevated risk for rheumatoid arthritis.⁵ Other near roadway health risks include: cardiovascular disease, pre-term and low-birthweight infants, childhood leukemia, and premature death.⁶

These existing health risks will be compounded by negative air quality impacts from the proposed power plant, and the impacts will be borne by local residents and local environment. The proposed power plant will emit 56.7 ton per year of fine particulate matter (PM_{2.5}), extremely small particles 2.5 microns or less in width. Despite their small size, PM_{2.5} can have serious health effects:

Particles in the PM_{2.5} size range are able to travel deeply into the respiratory tract, reaching the lungs. Exposure to fine particles can cause short-term health effects such as eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Exposure to fine particles can also affect lung function and worsen medical conditions such as asthma and heart disease. Scientific studies have linked increases in daily PM_{2.5} exposure with increased respiratory and cardiovascular hospital admissions, emergency department visits and deaths. Studies also suggest that long term exposure to fine particulate matter may be associated with increased rates of chronic bronchitis, reduced lung function and increased mortality from lung cancer and heart disease. People with breathing and heart problems, children and the elderly may be particularly sensitive to PM_{2.5}.⁷

Environmental impacts that can be expected to result from the increased emissions of PM_{2.5} include acid deposition, impaired visibility, and ozone.⁸

The particulates emitted into the air from the power plant will likely be triggers for Birdsboro residents with asthma, with those living closest suffering the most. Asthma prevalence is looked at using two measures: Lifetime Prevalence and Current Prevalence. Lifetime Prevalence means that a person has been told at some point in their lives that they have asthma. Current Prevalence refers to a person who currently has asthma (Current Prevalence figures are usually lower).

The US Census has Birdsboro's 2010 population as 5,163 with 26.7% of those residents being children under age 18, making Birdsboro's population under 18 approximately 1,379. Going by the lower figure for Current Prevalence of asthma in children under 18 (10%) mean the approximately 138 children in Birdsboro currently have asthma. For the adult population over 18 (3,784), the Current Prevalence rate is just a touch lower at 9% which means approximately 341 Birdsboro residents over the age of 18 currently has asthma. For asthma sufferers in Birdsboro which may number close to 500, this power plant will mean more missed school days, more missed work days, and increased health care costs. This example only looks at one respiratory condition. People with other respiratory conditions as well as heart disease will also pay a price in the quality of their health and the quality of their lives.

⁴ Balmes, J.R., et al. (2009). Exposure to traffic: Lung function and health status in adults with asthma. *Journal of Allergy and Clinical Immunology*, 123(3), 626-631. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2785911/>

⁵ De Roos, A.J., et al. (2015). *Proximity to traffic, ambient air pollution, and community noise in relation to incident rheumatoid arthritis* (Doctoral dissertation, University of British Columbia). Retrieved from <http://ehp.niehs.nih.gov/1307413/>

⁶ U.S. Environmental Protection Agency. (2016). *How Mobile Source Pollution Affects Your Health*. <https://www.epa.gov/mobile-source-pollution/how-mobile-source-pollution-affects-your-health>

⁷ New York State Department of Health. (2011). Fine Particles (PM 2.5) *Questions and Answers*. Retrieved from http://www.health.ny.gov/environmental/indoors/air/pmg_a.htm

⁸ Illinois Partners for Clean Air. (2016). *Particulate Matter*. Retrieved from <http://www.cleantheair.org/air-quality-information/particulate-matter>

Scenic Schuylkill River

The Schuylkill River was the first river in Pennsylvania to be named a State Scenic River, a designation that was approved in 1978. The Schuylkill's nomination was made in a report prepared by the Pennsylvania Environmental Council for the Pennsylvania Department of Environmental Resources. This report was prepared by the Schuylkill River Study Committee, a group of seven volunteers who walked the shorelines, paddled the river, and documented the Schuylkill's characteristics and its eligibility to be designated as a scenic river under the requirements of the Pennsylvania Scenic River Act. The Schuylkill River Study Committee held meetings to gather public input; hundreds of people turned out to these meetings.⁹

Under the Schuylkill Scenic River Act (P.L. 1415, No. 333), the Schuylkill River was broken into reaches and designated "recreational" or "modified recreational." The reach in which the proposed transmission line would be constructed is designated "recreational."

Rivers or sections of rivers eligible for designation as a recreational designation under Pennsylvania Scenic River Act, "are readily accessible, that may have some development along their shorelines and may have undergone some impoundment or diversion in the past."¹⁰

In Chapter 41. Rivers Conservation—Statement of Policy, the Pennsylvania Code provides guidance for eligibility as a scenic river as well as guidance for protecting rivers that have been designated under Pennsylvania Scenic Rivers Act. This Statement of Policy states that:

Recreation and modified recreation river classifications shall conform with the following:

- (i) It is intended to develop a more coordinated utilization of those river segments that best portray outstanding aesthetic-recreational values and that are ideally suited for active or intensive recreational uses. The utilization shall, however, be maintained within the restraints imposed by the resource capability to adequately support use without degradation. The segments could combine interesting intermixtures of forests, fields and other human modifications, that notwithstanding their marked human influences, still blend into a pleasant readily accessible river-landscape of high visitor interest.

The proposed transmission line would run along the Schuylkill River's banks in Exeter Township to a substation adjacent to the Antietam Creek where it will connect with the South Reading– North Boyertown 230 kV line. This existing transmission line, as well as the Hosensack– N Lancaster 500 kV line, *cross* the Schuylkill River in Berks County, but a 230 kV TL *running parallel* to the Schuylkill's banks is incompatible with the River's scenic designation.

The proposed power plant and this transmission line do not represent "interesting intermixtures of forests, fields and other human modifications, that notwithstanding their marked human influences." These human influences degrade the outstanding aesthetic-recreational values.

The Program Interpretation of Pennsylvania Wild and Scenic River System in the Pennsylvania Code states:

Of primary importance is the preservation of the feeling of freedom that the wilderness, or rural, or river expanse imparts. The significance of such segments in social, scientific and educational value as a comparative frame of reference for present and future generations is beyond measure.¹¹

⁹ Reed, D. 12 August 1976. "River Study Is Outlined." Reading Eagle.

¹⁰ Pennsylvania Scenic Rivers Act (P.L. 1277, Act No. 283 as amended by Act 110, May 7, 1982).

¹¹ Title 17 PA Code § 41.2(b)(i) Program interpretation Pennsylvania Wild and Scenic River System.

The proposed power plant and transmission line harm the feeling of freedom that the Schuylkill River in this reach imparts. Birdsboro Power itself, in its Chapter 105 permit application acknowledges the significant changes that the new transmission line will bring to this reach:

The largest impact of the electric transmission line project and those like it is to the existing aesthetic of the project area. The electric line and poles will be easily seen from a long distance and somewhat accentuated by required deforestation of the right-of-way.

Wetlands, Waterways and Buffer Impacts

DTE's proposed Birdsboro Pipeline will likely result in significant impacts to the Schuylkill River as well as to many small waterbodies including the Little Manatawny and Monocacy Creeks. DRN notes that the Little Manatawny Creek is on the Pennsylvania Fish and Boat Commission's Wild Trout List due to the presence of naturally reproducing brown trout. As such, all wetlands in an along the floodplains of the Little Manatawny and its tributaries are classified as Exceptional Value (EV) and cannot be degraded. The proposed Birdsboro Pipeline will result in extensive and permanent alteration of wetlands, including EV wetlands along the Little Manatawny. In addition, forested wetlands along the pipeline route will likely be converted to emergent wetlands.

Hay Creek, from its Headwaters downstream to its confluence with the Schuylkill River, is also designated as a Wild Trout Water. Therefore, all wetlands in the floodplain of the Hay Creek are also EV and not allowed to be degraded.

The practice of indiscriminant clearing of vegetation and construction techniques commonly used in and around wetlands through which pipelines pass results in permanent alteration in the kind and quality of wetland habitat. Forested wetlands are often converted to emergent wetlands and as such result in a significantly altered habitat condition that exists throughout the operational life of the pipeline.

Similarly the transmission line will result in permanent alteration of the habitats over which it passes. After the 2003 power outage that affected large portions of the northeastern U.S. and Canada, Federal Energy Regulatory Commission (FERC) gave the North American Electric Reliability Corporation (NERC) the responsibility for developing and enforcing reliability standards for vegetation management along ROWs.¹² As it will be operated at 230 kV, this proposed high voltage transmission line is likely to be subject to those standards which require:

Trees and other vegetation are regularly pruned beyond the minimum clearance distance to account for the fact that they continuously grow and sway with the wind. Power lines can also sag due to high usage, heat, or snow/ice build-up. Thus prudent right-of-way maintenance necessitates a greater clearance distance between power lines and trees than may occasionally appear to be necessary.¹³

Metropolitan Edison (MetEd) is the transmission owner for the 230 kV line to which this proposed transmission will connect. This suggests that the proposed substation and proposed transmission will be transferred to MetEd's ownership after completion:

¹² Federal Energy Regulatory Commission. 19 September 2013. Tree Trimming & Vegetation Management. Accessed at <https://www.ferc.gov/industries/electric/indus-act/reliability/vegetation-mgt.asp>

¹³ Federal Energy Regulatory Commission. 19 September 2013. Tree Trimming & Vegetation Management. Accessed at <https://www.ferc.gov/industries/electric/indus-act/reliability/vegetation-mgt.asp>

All property rights for AA2-115 interconnection substation and 230 kV transmission line loop must be surveyed and metes and bounds descriptions prepared for incorporation into Transmission Owner's document forms, for transfer of title.¹⁴

Metropolitan Edison is a subsidiary of FirstEnergy. Guidance for vegetation management along FirstEnergy transmission lines suggests that even stricter vegetation management would be likely with this new ownership (emphasis added):

When site conditions permit, FirstEnergy utilizes the "wire zone- border zone" approach for maintaining most of its higher voltage transmission line corridors, typically those that are more than 100 feet wide. All trees and incompatible vegetation are removed and controlled in both zones. In the "wire zone," which extends about 15 feet beyond each side of where the wires are attached to tower or structure, efforts are made to encourage low growing grasses and shrubs that mature at less than five feet tall. In the "border zone," which extends beyond the wires to the edge of the ROW, taller shrubs and plants that mature at 15 feet or less are allowed to grow.

If the ROW is 100 feet or less, all incompatible vegetation will be controlled from edge to edge.¹⁵

Under FirstEnergy's transmission line vegetation management plan, portions of the transmission line ROW (including portions in the floodplain that are now forested) would likely be controlled from edge to edge, resulting in permanent alteration of the wetland habitat, riparian buffers, and forests over which it passes. The removal of buffers in the floodway that will likely be necessary for transmission line construction will result in have higher peak flow volumes and faster flow rates during periods of high flows.

Tree clearing within the ROW will occur, but clearing and grubbing of the land's surface will not. According to PADEP staff, tree-clearing by hand does not constitute an earth disturbance activity.¹⁶

Together, the power plant and transmission line will totally transform the aesthetic values of this reach of the Scenic Schuylkill River, degrade water quality, worsen flood flows, and scar the landscape where the 110 to 140 foot transmission line monopoles will tower over nearby vegetation (vegetation that will likely be limited to 15 feet in height under MetEd's vegetation management).

A growing body of research has shown that a 100-foot buffer width is the minimum that should be required. Buffers of 300 feet or more have been shown to be even more protective of stream ecosystems. New Jersey has adopted 300 foot buffer widths to safeguard water quality and protect high quality streams. Where the proposed Transmission line encroaches into existing riparian buffer zone within 300 feet of the Schuylkill River, construction activities are likely to degrade water quality.

The Birdsboro Pipeline's construction will result in the loss of riparian vegetation. For each pipeline construction technique, there is a resulting loss of foliage associated with clearing the stream banks. This reduction in foliage increases stream temperature and reduces its suitability for fish incubation, rearing, foraging and escape habitat. Benthic macroinvertebrate populations are also reduced with loss of riparian vegetation, as diverse benthic populations disappear; literature has shown decreased denitrification and cycling of nutrients and algae, and reduction of water quality impacts farther downstream that can impact water supplies and habitat downstream.

¹⁴ PJM Interconnection. (December 2016).)Generation Interconnection Facility Study Report for PJM Generation Interconnection Request Queue Position AA2-115, S. Reading-Boyertown 230 kV

¹⁵ FirstEnergy. (n.d.). Maintaining a Safe and Reliable Transmission System: Tree Trimming and Comprehensive Vegetation Management.

¹⁶ Kovach, D. (14 December 2016). DRBC Staff Recommendation and Response to Comments, Docket No. D-2016-004-1 Birdsboro Power, LLC Consumptive Use, Birdsboro Borough and Exeter and Robeson Townships, Berks County, Pennsylvania [Memorandum]. Delaware River Basin Commission.

The loss of vegetation also makes the stream more susceptible to erosion events, as the natural barrier along the stream bank has been removed. Deposited sediment from construction activities can fill in the interstitial spaces of the streambed, changing its porosity and composition, and thereby increasing embeddedness and reducing riffle area and quality. Furthermore, deposited sediment has the potential to fill in stream pool and floodplain areas and reduce stream depth downstream of the construction area. In turn this can exacerbate future flooding impacts.

Many of the sediment and erosion control best management practices used during pipeline construction are not designed to be protective during significant rain events. For example, heavy rains during two tropical storms in August and September of 2011 caused extensive failures to erosion and sediment controls on pipelines under construction in north central Pennsylvania resulting in environmental harm from sedimentation plumes in nearby water resources. With impacts of climate change and catastrophic climate destabilization, more extreme weather events and storm events have become a regular occurrence and these extreme weather events and the pollution impacts as well as natural impacts they cause (increased wind throw, increased erosion, more blowouts during construction due to heavy rains, more runoff and extreme peak flows, etc.) should be considered.

The Birdsboro Pipeline would also cut across steep slopes. Past pipeline projects in the steep northeast have experienced more sediment blowouts and issues with erosion on these steep slopes, especially when the cuts eliminate the forest on these steep slopes. Even with BMPs in place, these steep slopes are irreparably changed and erosion even years later has been noted on old and relatively new pipeline projects alike. Continued erosion and raw banks long term due to only herbaceous vegetative growth along a pipeline path leads to opportunistic invasive plant species often colonizing these disturbed areas.

Studies documenting the effects of stream crossing construction on aquatic ecosystems identify sediment as the primary stressor for construction on river and stream ecosystems. During pipeline stream crossing construction, discrete peaks of high suspended sediment concentration occur during activities such as blasting, trench excavation, and backfilling. The excavation of streambeds can generate persistent plumes of sediment concentration and turbidity. This sedimentation has serious consequences for the benthic invertebrates and fish species whose survival is crucial for healthy aquatic ecosystems. There have been documented reductions in benthic invertebrate densities, changes to the structure of aquatic communities, changes in fish foraging behavior, reductions in the availability of food, and increases in fish egg mortality rates. In addition to the stream crossing construction activity itself, the associated new road construction increases the risk of erosion and sedimentation.

Impact Analysis – Errors, Omissions, Generalizations,

DRN previously reviewed Birdsboro Power's Chapter 105 permit application and identified errors, omissions, and generalizations. DRN detailed these problems with the Birdsboro Power's Chapter 105 permit application in correspondence emailed to the Pennsylvania Department of Conservation Natural Resources (dated 5/4/2017, 2:18 PM, Subject Line: Proposed transmission line threatens Scenic Schuylkill River) which was copied to DEP. DRN requests that the DEP refer to and incorporate into the record DRN's past comments.

Under the requirements of Pennsylvania's Scenic River Program, Birdsboro Power is required to perform an impact analysis:

- (x) Impacts analysis. A detailed analysis of the potential impacts, to the extent applicable, of the proposed project on water quality, stream flow, fish and wildlife, aquatic habitat, Federal and State forests, parks, recreation, instream and downstream water uses, prime farmlands, areas or structures of historic significance, streams which are identified candidates for or are included within the Federal or State wild and scenic river systems and other relevant

significant environmental factors. If a project will affect wetlands the project description shall also include:

- (A) A narrative of the delineation process supported by the appropriate data sheets and copies of appropriate soil maps and descriptions from soil conservation service soil surveys. Soil conservation service soil surveys may be obtained from the county conservation district offices.
- (B) An analysis of whether the wetland is exceptional value as classified in § 105.17 (relating to wetlands).
- (C) A statement on water dependency. A project is water dependent when the project requires access or proximity to or siting within water to fulfill the basic purposes of the project.¹⁷

When DRN reviewed Birdsboro Power's Chapter 105 application, no impact analysis to determine how the transmission line will affect that Scenic Schuylkill River was included. Birdsboro Power's only statement regarding the transmission line's impact on the Scenic Schuylkill River, found in the *Mitigation and Functional Assessment Discussion*, is entirely inadequate:

The Birdsboro Power project will not impact or interfere with the usage of the Schuylkill River as a modified recreational river protected under the PA Scenic Rivers Act. A contiguous riparian buffer will be maintained throughout the project area with the exception of the two crossing locations. The geometry of the transmission line, at the river crossing points, was designed to be perpendicular to the watercourse or match that of existing utility line crossings in close proximity.

Birdsboro Power's statement fails to address the significant impacts the proposed transmission line will have on the Scenic Schuylkill or the aesthetic and recreational qualities that earned the river this designation. BP's discussion of Project Impacts (Enclosure D) is filled with errors, omissions, and generalizations:

Birdsboro Power is required to prepare an Alternatives Analysis as part of its Chapter 105 permit application. The Alternatives Analysis fails to focus on how environmental impacts will be avoided or minimized. Instead, the Alternatives Analysis provided by Birdsboro Power focused on alternate transmission line routes. An Alternatives Analysis is defined as a "detailed analysis of alternatives to the proposed action, including alternative locations, routings or designs to avoid or minimize adverse environmental impacts."¹⁸ The purpose of the Alternatives Analysis is to identify routings or designs to avoid or minimize environmental impacts. The applicant is required to exhaust avoidance and minimization measures first. BP has not done this in the alternate routes it has identified. The Alternatives Analysis must be environmentally based and include a "no impact" alternative. BP's analysis of alternate routes is economically based, not environmentally based. Birdsboro Power's analysis of alternate routes does not include a no impact alternative.

Birdsboro Power and DTE must both be required to complete Alternatives Analyses worthy of the name that include no impact alternatives.

Water Dependency

Birdsboro Power and DTE should be required to provide statement of water dependency which is required for the Chapter 105 permit. No part of this power plant or its appurtenant structures is water dependent. A

¹⁷ Title 25 Pa. Code § 105.13(e)(iii)(D). Regulated activities—information and fees.

¹⁸ § 105.13(e)(1)(viii). Regulated activities—information and fees.

water dependent use is one that can only be conducted on, in, over, or adjacent to the water. The power plant proposes to secure water for cooling from RAWA. Discharged effluent will be directed to the Birdsboro Municipal Authority's (BMA's) wastewater treatment plant (WWTP). This facility, as proposed, along with its water lines, transmission line and natural gas pipeline, can be located anywhere. No public interest is served by permitting these structures. In fact, the public's interest is harmed by permitting these structures.

Water Quality Certification

Standard procedure in granting Section 401 water quality certifications in Pennsylvania is for DEP to issue the Section 401 water quality certification as part of the permitting process under the Dam Safety and Encroachments Act, which is Chapter 105 of the Pennsylvania Code. *See Pennsylvania Environmental Law and Practice*, ch. 6-4.4 (8th ed. 2015) ("DEP issues its section 401 certifications as part of the permits given under the Dam Safety and Encroachments Act"). To the extent DEP issues a Section 401 Certification for a proposed pipeline project prior to issuing a Chapter 105 Water Obstruction and Encroachment permit, DEP is acting in direct contravention of its own procedures. Indeed, there is no procedure recognized in the Pennsylvania Code that allows for separate review of a Section 401 water quality certification and Chapter 105 and/or Chapter 102 permits. As such, it is unlawful for DEP to issue the Section 401 Certification before receiving final plans and other critical information necessary to ensure that Pennsylvania's water quality standards have been complied with pursuant to Chapter 105 and Chapter 102.

Summary

The proposed power plant, transmission line, and pipeline are not needed in Pennsylvania. Their construction will cause harm to communities and the environment. These projects are not compatible with the Pennsylvania Scenic Rivers Program and they will harm the Schuylkill River's Scenic River designation. For these reasons and the outlined impacts, DRN objects to issuance of the requested permits for Birdsboro Power's stormwater structures and transmission line as well as to DTE's Birdsboro Pipeline project. We ask DEP to deny these applications outright. If denial is not granted, we urge DEP to formally issue additional time for the public to contribute important and meaningful information on the impacts of the Birdsboro power plant and its appurtenant structures. DRN requests that a 90-day extension for further review is provided to the public at minimum.

DRN also requests that the electronic GIS shape files be made available via the Governor's public pipeline portal in order for the public to fully review all aspects of the DTE pipeline application. DEP has provided these files on prior projects including the Mariner East pipeline.

We also ask that DEP hold multiple public meetings on these impacts with at least one meeting each for the power plant, the transmission line, and the pipeline to allow those who will be impacted to have the opportunity to both comment and hear the concerns of the neighbors. In addition to the extension of comment requested, a more transparent public process would be very beneficial to the community to be affected.

Thank you for your attention to these comments.

Respectfully submitted,



Maya K. van Rossum
the Delaware Riverkeeper