



State of New Jersey

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Celebrating 30 Years of Preserving Farmland

and

Protecting the Right to Farm

July 1, 2013

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Re: COMMENTS - Notice of Intent to Prepare an Environmental Impact Statement for the Planned East Side Expansion Project [Columbia Gas Transmission, LLC (Columbia)], Docket No. PF13-7-000

Via: "eFiling"

Dear Ms. Bose:

The State Agriculture Development Committee (SADC) has been advised that the Federal Energy Regulatory Commission (FERC) invited comments on the above Notice of Intent as part of FERC's scoping process in connection with the proposal by Columbia Gas Transmission, LLC (Columbia) to construct the East Side Expansion Project in Gloucester County, New Jersey ("the project").

The project may involve construction activities on New Jersey farmland either preserved pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-1, et seq. (ARDA), or lands identified for inclusion in an agricultural development area (ADA) by a county agriculture development board (CADB or board). Accordingly, please accept these comments addressing relevant state statutes, regulations and SADC policies governing the eminent domain takings of preserved farms and of properties within an ADA necessitated by the construction of

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power generating projects within and outside of preexisting utility company easements. Please note that these statutes, regulations and policies also apply to public bodies or public utilities that intend to advance grants, loans, interest subsidies or other funds within an ADA for the construction of dwellings, commercial or industrial facilities, transportation facilities or water or sewer facilities to serve nonfarm structures.

While the SADC understands that there may be superseding Federal authority providing Columbia with the ability to undertake construction activities on ADA lands or preserved farms, we believe it is important to bring to FERC's attention the following matters as part of the scoping process.

Condemnation of property within an ADA

N.J.S.A. 4:1C-19a. requires a "public body or public utility" to file a notice of intent (NOI) with the CADB and SADC *prior to* exercising the power of eminent domain for acquisition of land in an ADA "for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures. . ." The statute also requires the public body or public utility to file the NOI with the CADB and SADC *prior to* "advanc[ing] a grant, loan, interest subsidy or other funds within an [ADA] for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures. . ." Therefore, even if Columbia intends to construct the project completely within existing rights-of-way, Columbia's activities still fall within the statute's ambit due to the company's expenditure of funds within an ADA. The notice of intent includes a statement of reasons for the proposed project; an alternatives analysis; and information about the project and its impacts on agricultural activities within the ADA. See N.J.A.C. 2:76-7.3 and 7.4.

Within 30 days of receiving a complete NOI, the CADB and SADC review the project "to determine its effect upon the preservation and enhancement of agriculture in the [ADA], the municipally approved eight-year program, and upon overall State agricultural preservation and development policies." N.J.S.A. 4:1C-19b. If the CADB or SADC find that the proposed project will cause unreasonably adverse effects on the ADA or on statewide preservation and development policies, then the CADB or SADC may direct that no action be taken by the public body or public utility for 60 days, during which time a public hearing is held, and a report for public distribution is prepared, by the board and/or SADC.

In a municipally approved eight-year program, landowners can voluntarily restrict development on their land for a period of eight years. Although landowners receive no payment for the restriction, they are eligible to apply for cost-sharing grants for soil and water conservation projects and for other benefits and protections afforded permanently preserved farms under the ARDA.

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Condemnation of preserved farms

N.J.S.A. 4:1C-25 recognizes the right of a “public body” to exercise eminent domain authority for the taking of preserved farmland or farms in a municipally-approved eight year program to construct “dwellings, commercial facilities, transportation facilities, or water or sewer facilities to serve nonfarm structures,” but only upon a written declaration by the Governor “that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative.”

That the Legislature did not include utility companies within the contemplation of “public body” in section 25 of the ARDA is apparent in N.J.S.A. 4:1C-19, which allows a “public body *or public utility*” to exercise eminent domain authority, under certain circumstances, in ADAs [emphasis added].

Accordingly, no utility company can enter upon any preserved farms or farms enrolled in a municipally approved eight-year program from outside that company’s existing rights-of-way for the purpose of its proposed energy generation or distribution expansion plan.

Temporary entry onto properties within an ADA

The ARDA’s condemnation process furthers the strong public policy, expressed in the legislative findings accompanying enactment of the statute, of encouraging the maintenance of agricultural production and a positive agricultural business climate. The ARDA’s pre-condemnation notice and hearing requirements also recognize that ADA lands, eligible for preservation by purchase of a development easement with substantial public funds, should remain inviolate except under the limited circumstance in which clear proof exists of another overriding public purpose.

Therefore, the SADC considers the temporary use of an ADA-designated parcel in connection with the above-described construction activities to be an “acquisition of land” triggering the notice and hearing requirements of Section 19 of the ARDA. Acquisition occurs even if the utility project involves a traffic detour onto roadways within a subject farm, and regardless of the temporary and/or emergent nature of the project.

Identification of affected farmland

The SADC strongly recommends that Columbia identify, by lot and block number, all properties that will be affected by the expansion project and proposed construction activities that are located on preserved farms or ADA-designated lands so that eminent domain issues can be addressed comprehensively.

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Use of environmental impact statements

Should Columbia decide to submit a draft environmental impact statement in conjunction with the NOI requirements, it must pay close attention to N.J.A.C. 2:76-7.4.

CADB contacts

A current list of CADB administrators and their telephone and email contact information may be found on the SADC website at:

<http://www.nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html>.

Thank you for your attention to this matter.

Sincerely,



Susan E. Payne
Executive Director, SADC

c: Kerstin Sundstrom, Governor's Authorities Unit
Timothy Brill, SADC Agricultural Retention Program Manager
Brian D. Smith, Esq., SADC Chief of Legal Affairs
Judith Andrejko, Esq., SADC Legal Specialist
Ken Atkinson, Administrator, Gloucester CADB
Matthew Blake, Director of Community Development, Woolwich Township

Document Content(s)

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