



September 23, 2020

**VIA ELECTRONIC MAIL**

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**Re: PennEast Pipeline Company, LLC  
Application Nos. CENAP 2014-00975, CENAB-OPR-P-2015-00581-P12  
Comment on PennEast 2020 Amendment Project**

To Whom it May Concern,

The Delaware Riverkeeper Network, Delaware Riverkeeper (collectively, "DRN"), Clean Air Council ("CAC"), and PennFuture provide the following comments to be considered by the United States Army Corps of Engineers, Philadelphia and Baltimore Districts (collectively, "Corps") regarding the applications of PennEast Pipeline Company, LLC ("PennEast") for Department of the Army permits pursuant to Section 10 of the Rivers and Harbors Act of 1899<sup>1</sup> and Section 404 of the Clean Water Act.<sup>2</sup>

**I. History of Project**

On September 11, 2017, the Corps' Baltimore District provided public notice soliciting comments on PennEast's proposal to install its 36-inch diameter PennEast Pipeline across the Susquehanna River via open-cut installation, which requires an individual permit.<sup>3</sup> On September 14, 2017, the Corps Philadelphia District provided public notice soliciting

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<sup>1</sup> 33 U.S.C. § 403.

<sup>2</sup> 33 U.S.C. § 1344.

<sup>3</sup> U.S. Army Corps of Engineers, Baltimore District, Public Notice, PN17-42 (PennEast Pipeline) – 2015-00581 (Sept. 11, 2017).

comments on PennEast’s proposal for five single and complete crossings, each requiring an individual permit<sup>4</sup>:

- Individual Permit (“IP”) 1- Bear Creek & Unnamed Tributary to Bear Creek (Luzerne County)
- IP 2 – Lehigh River (Carbon & Luzerne Counties)
- IP 3 – Unnamed tributary to Laurel Run (Carbon County)
- IP 4 – Unnamed tributary to Stony Creek (Carbon County)
- IP 5 – Delaware River and Delaware Canal (Bucks County, PA and Hunterdon County, NJ)

DRN submitted comments on the proposed permits to both the Baltimore and Philadelphia Districts, which are attached hereto and incorporated by reference.<sup>5</sup> On May 23, 2019, the Corps Philadelphia District issued a public notice seeking comment regarding its receipt of applications for four additional Department of the Army permits under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act:

- IP 6 – Wetland complex (Carbon County)
- IP 7 – Wetland complex (Carbon County)
- IP 8 – Wetland complex and unnamed tributaries to Hokendauqua Creek (Northampton County)
- IP 9 – Wetland Complex and unnamed tributaries to Bull Run (Northampton County)

DRN and CAC submitted comments on these applications to the Philadelphia District, which are attached hereto and incorporated by reference.<sup>6</sup>

On January 18, 2018, the Federal Energy Regulatory Commission (“FERC”) issued a certificate of public convenience and necessity to PennEast for the construction of its 116-mile pipeline.<sup>7</sup> DRN petitioned the United States Court of Appeals for the District of Columbia Circuit for review of PennEast’s certificate on May 9, 2018.<sup>8</sup> Meanwhile, PennEast sought to condemn the land necessary to construct the pipeline under the authority granted to it under the Natural Gas Act,<sup>9</sup> but was prevented from doing so by the Third Circuit with regard to

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<sup>4</sup> U.S. Army Corps of Engineers, Philadelphia District, Public Notice for Application No. CENAP 2014-00975 (Sept. 14, 2017).

<sup>5</sup> Delaware Riverkeeper Network, Comment Letter: Public Notice 17-42 Re CENAP-OP-2015-00581-P12 – PennEast Pipeline Company’s PennEast Pipeline Project (Oct. 8, 2017) (Attached as Exhibit A); Delaware Riverkeeper Network, Comment Letter: Public CENAP-OP-R- RE. CENAP 2014-00975 – PennEast Pipeline Company’s PennEast Pipeline Project (Oct. 14, 2017) (Attached as Exhibit B).

<sup>6</sup> Delaware Riverkeeper Network, Comment Letter: Public CENAP-OP-R-Re. CENAP 2014-00975 – PennEast Pipeline Company’s PennEast Pipeline Project (June 2, 2019) (Attached as Exhibit C).

<sup>7</sup> Order Issuing Certificates, PennEast Pipeline Company, LLC, Docket No. CP15-558-000, 162 FERC ¶ 61,053 (Jan. 19, 2018).

<sup>8</sup> See Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory Comm’n, No. 18-1128 (D.C. Cir.)

<sup>9</sup> 15 U.S.C. § 717f(h).

property in which the State of New Jersey holds an interest.<sup>10</sup> Because the Third Circuit's ruling stopped PennEast's project from going forward, the D.C. Circuit appeal was held in abeyance while PennEast petitioned the Supreme Court for certiorari of the Third Circuit decision.<sup>11</sup>

## II. PennEast's 2020 Amendment Plan

On January 30, 2020, PennEast submitted an Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity to FERC.<sup>12</sup> In that application, PennEast sought to construct the currently-certificated PennEast Pipeline<sup>13</sup> in two phases: the first phase would consist of the first sixty-eight miles of pipeline, and terminate in Bethlehem Township, Pennsylvania, at a new interconnection with Adelpia Gateway Pipeline and Columbia Gas Transmission Pipeline; the second phase would involve the completion of the remainder of the pipeline. Upon completion of Phase 1, the pipeline will deliver approximately 338,000 dekatherms per day (“Dth/d”)<sup>14</sup> of natural gas to the new interconnection site called the Church Road Facility, which would include a metering and regulation station with two separate interconnections and measurement facilities as well as a PIG launcher/receiver and access road.<sup>15</sup>

DRN, CAC, and PennFuture have submitted several comments to FERC explaining why PennEast's 2020 Amendment Project demands a reevaluation of the project's environmental impacts in light of the new purpose and need of the project—delivering 338,000 Dth/d of natural gas to shippers.<sup>16</sup> In sum, Phase 1 of the New PennEast Project is an entirely different project than what was originally proposed, despite using a portion of the previously-approved route for the physical pipeline. Furthermore, PennEast's endeavor is may very well stop at Phase 1, as the current state of the law prevents the construction of Phase 2, and if it does not, then the entire New PennEast Pipeline, including all of its other proposed and intended segments, must be evaluated.

In light of the changed purpose of PennEast's project, the Corps should: (1) re-open the comment periods on applications CENAP 2014-00975 and CENAB-OPR-P-2015-00581-

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<sup>10</sup> *In re PennEast Pipeline Company, LLC*, 938 F.3d 96 (3d Cir. 2019), *petition for cert. filed*, *PennEast Pipeline Co., LLC v. New Jersey*, No. 19-1039 (U.S. Feb. 20, 2020).

<sup>11</sup> *Petition for Writ of Certiorari, PennEast Pipeline, LLC v. State of New Jersey*, No. 19-1039 (U.S. Feb. 20, 2020).

<sup>12</sup> Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity, PennEast Pipeline Company, LLC, Accession No. 20200130-5196, FERC Docket No. CP20-47-000 (Jan. 30, 2020) (“Abbreviated Application”).

<sup>13</sup> *See Order Issuing Certificates*, PennEast Pipeline Company, LLC, Docket No. CP15-558-000, 162 FERC ¶ 61,053 (Jan. 19, 2018), *amended by* Docket No. CP19-78-000, 170 FERC ¶ 61,198 (March 19, 2020).

<sup>14</sup> Abbreviated Application at 9.

<sup>15</sup> Abbreviated Application at 10, Exhibit F-I at 4–5.

<sup>16</sup> Delaware Riverkeeper Network, et al., Comment in Opposition, Accession No. 20200304-5296, FERC Docket No. CP20-47 (Mar. 4, 2020) (Attached as Exhibit D); Delaware Riverkeeper Network, et al., National Environmental Policy Act Scoping Comment, Accession No. 20200330-5321, FERC Docket No. CP20-47 (Mar. 30, 2020) (Attached as Exhibit E); Delaware Riverkeeper Network, et al., Comment on PennEast 2020 Amendment Project Environmental Assessment, Accession No. 20200902-5211 (Sept. 2, 2020) (Attached as Exhibit F).

P12 so that the public can provide up-to-date input on these re-framed analyses; and (2) conduct its public interest review based on the new “benefits” and “detriments”<sup>17</sup> of the project, and conclude that the PennEast Pipeline is contrary to the public interest.

### **III. Additional Public Comment on PennEast’s Applications is Necessary**

The Corps’ regulations require public notice for Department of the Army permits that “solicit[s] comments and information necessary to evaluate the probable impact on the public interest.”<sup>18</sup> The notice must include a “brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments . . . .”<sup>19</sup> Although the Corps provided public notice and comment periods for PennEast’s permit applications in 2017 and 2019, a new public notice and comment period is warranted due to the substantial changes proposed in PennEast’s Abbreviated Application to FERC.

The Corps’ public interest review involves a balancing of a proposed project’s benefits against its reasonably foreseeable detriments.<sup>20</sup> Because PennEast now proposes to construct the PennEast Pipeline in two phases, with a high likelihood that Phase 2 will never be constructed, the Corps must look to Phase 1 independently to determine the project’s benefits and reasonably foreseeable detriments when evaluating PennEast’s applications for CENAB-OPR-P-2015-00581-P12 and CENAP 2014-00975 IP 1 through IP 4 and IP 6 through IP 9.<sup>21</sup> Accordingly, the Corps should re-open the public comment period so that it can gather input on this re-calibrated public interest review.

### **IV. The Detriments of Phase 1 and the New PennEast Project Outweigh the Benefits**

As DRN, CAC, and PennFuture pointed out in our comment on FERC’s EA for the 2020 Amendment Project, FERC “correctly recognized that PennEast is proposing two projects: (1) the Phase 1 Project, and (2) a new and expanded version of the PennEast project that includes the interconnection with the Adelpia and Columbia pipelines (‘New PennEast Project’).”<sup>22</sup> Because PennEast is currently foreclosed from proceeding with the Original PennEast Pipeline, the Corps should use the “overall purpose” of Phase 1 in determining the pipeline’s benefit—delivering 338,000 Dth/d of natural gas to the Columbia Gas Transmission and Adelpia Gateway pipelines in Bethlehem Township, Pennsylvania, and when considering its detriments must include analysis of the cumulative environmental impacts of the Adelpia Gateway pipeline as well.

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<sup>17</sup> 33 C.F.R. § 320.4(a)(1).

<sup>18</sup> 33 C.F.R. § 325.3(a).

<sup>19</sup> 33 C.F.R. § 325.3(a)(5).

<sup>20</sup> 33 C.F.R. § 320.4(a)(1).

<sup>21</sup> CENAP 2014-00975 IP 5 covers the Delaware River and Delaware Canal (Bucks County, PA and Hunterdon County, NJ), which will only be necessary if Phase 2 is built.

<sup>22</sup> EA Comment, Exhibit F at 11.

The original PennEast Project's detriments have been previously raised in DRN's comments to the Corps,<sup>23</sup> however, the New PennEast Project includes additional impacts from the construction and operation of the Church Road Facility.<sup>24</sup> DRN, CAC, and PennFuture have provided FERC with information concerning the environmental impacts of the Church Road Facility, as well as an analysis of the greenhouse gas impacts of Phase 1 and the New PennEast Pipeline, which are attached hereto and incorporated by reference.<sup>25</sup> In summary, Phase 1 of the PennEast Project will cause the following detriments, among others:

- Increase public health costs
- Reduce nearby property values
- Damage agriculture and infrastructure
- Result in the temporary and permanent loss of ecosystem services
- Adversely impact aesthetics of the region
- Increase shale gas extraction and production<sup>26</sup>
- Increase greenhouse gas emissions from end use of extracted product<sup>27</sup>
- Impact threatened and endangered species living along the pipeline route
- Transform the land use of hundreds of acres of land
- Adversely affect flood hazards in the region
- Result in the loss of riparian vegetation causing increased erosion of streams
- Negatively impact recreation interests in the region
- Disrupt aquifers and wellhead protection areas
- Adversely impact water quality
- Utilize eminent domain for private industry desires
- Pose a substantial risk public health and safety
- Damage agricultural lands
- Adversely impact air quality

The Corps should conclude that these detriments substantially outweigh the meager benefit of supplying 338,000 Dth/d of gas to the Adelphia Gateway and Columbia Gas Transmission pipelines, must include in its analysis the cumulative detrimental impacts of other pipeline projects in the area, particularly the Adelphia Gateway pipeline, and must deny PennEast's permit applications because the project is contrary to the public interest.

## **V. Conclusion**

Because PennEast's 2020 Amendment Project proposes a dramatic change to the PennEast Pipeline, and because the PennEast Pipeline as certificated in 2018 may never be constructed, the Corps must base its public interest review for CENAB-OPR-P-2015-00581-

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<sup>23</sup> See Exhibits A through C.

<sup>24</sup> See EA Comment, Exhibit F; and Scoping Comment, Exhibit E.

<sup>25</sup> EA Comment, Exhibit F; Scoping Comment, Exhibit E.

<sup>26</sup> See RACHEL WILSON, ET AL., SYNAPSE ENERGY ECONOMICS, INC., IMPACTS OF THE PENNEAST AND ADELPHIA GATEWAY PIPELINES ON GAS DRILLING IN PENNSYLVANIA: AN ESTIMATE OF INDUCED NEW GAS WELLS AND ASSOCIATED GREENHOUSE GAS EMISSIONS 1 (2020) (Attached as Exhibit G).

<sup>27</sup> *Id.*

P12 and CENAP 2014-00975 IP 1 through IP 4 and IP 6 through IP 9 on the foreseeable benefits and detriments of Phase 1—a 68-mile pipeline running from Luzerne County, Pennsylvania, to Northampton County, Pennsylvania that will carry 338,000 Dth/d of natural gas including the cumulative adverse effect of the Adelpia Gateway pipeline.

The Corps must provide notice and allow for comment on Phase 1 so that the public can provide input on the probable impact to the public interest. Ultimately, the Corps should deny PennEast's permit applications because the PennEast Pipeline, in all of its proposed forms, is contrary to the public interest.

Respectfully,

Maya K. van Rossum



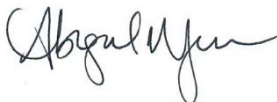
the Delaware Riverkeeper  
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cc: Federal Energy Regulatory Commission (via FERC efile in Docket No. CP20-47)

Enclosures