September 29, 2014

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington D.C. 20426

RE: <u>Comment Letter - Environmental Assessment – East Side Expansion Project (Docket No. CP14-17).</u>

Dear Secretary Bose:

The Delaware Riverkeeper Network ("DRN") submits the following comment on the issuance of the Environmental Assessment ("Assessment") by the Federal Energy Regulatory Commission ("Commission") with respect to the East Side Expansion Project (the "Project") proposed by Columbia Gas Transmission LLC ("Columbia"). Columbia's proposed system expansion would include construction of two natural gas looping pipeline segments, compression facilities, and other aboveground facility modifications. The Line 10345 Loop would consist of about 9.6 miles of 20-inch-diameter pipeline in Gloucester County, New Jersey and the Line 1278 Loop would consist of about 9.5 miles of 26-inch-diameter pipeline in Chester County, Pennsylvania. Columbia also proposes to abandon and replace compressor units at two existing compressor stations in Pike and Northampton Counties, Pennsylvania; modify two existing compressor stations in Chester County, Pennsylvania and Harford County, Maryland; and modify three meter and regulation (M&R) stations, two in Bucks County, Pennsylvania and one in Orange County, New York.

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

For the reasons explained below, the environmental review fails to meet the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*. (2006), and its implementing regulations, 40 C.F.R. Pts. 1500-08. The Assessment cannot serve as the basis for an adequate hard look at the Project's environmental impacts or support a finding of no significant impact ("FONSI"). Based on this flawed environmental review, the Commission cannot determine that the public benefits of the proposed Project outweigh its adverse impacts, thus violating the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717f (2006) and its implementing regulations, 18 C.F.R. Part 157 (2011). Additionally, DRN requests that the Commission require Columbia to submit the information requested regarding gas flow velocities in a formal evidentiary hearing before the Commission, as well as an extension of the comment period by 45 days.

I. Columbia's Proposed Project Violates 25 Pa Code § 105 and is therefore Unlawful

Chapter 105 of the Pennsylvania code establishes a clear regulatory regime with respect to the protections afforded to wetlands within the state. *See generally*, 25 Pa. Code 105.17-105.18a, et seq. Wetlands in Pennsylvania are classified as either "exceptional value wetlands" or "other wetlands." 25 Pa. Code § 105.17(1)-(2). "Exceptional value wetlands" are wetlands that exhibit one or more of the following characteristics:

> (i) Wetlands which serve as habitat for fauna or flora listed as ''threatened'' or ''endangered'' under the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. § § 4601-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402 and 1531—1543), the Wild Resource Conservation Act (32 P. S. § § 5301—5314), 30 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code).
>
> (ii) Wetlands that are hydrologically connected to or located within 1/2-mile of wetlands identified under subparagraph (i) and that maintain the habitat of the threatened or endangered species within the wetland identified under subparagraph (i).

> (iii) Wetlands that are located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value under Chapter 93 (relating to water quality standards) and the floodplain of streams tributary thereto, or wetlands within the corridor of a watercourse or body of water that has been designated as a National wild or scenic river in accordance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. § § 1271—1287) or designated as wild or scenic under the Pennsylvania Scenic Rivers Act (32 P. S. § § 820.21—820.29).
>
> (iv) Wetlands located along an existing public or private drinking water supply, including both surface water and groundwater sources, that maintain the quality or quantity of the drinking water supply.
>
> (v) Wetlands located in areas designated by the Department as ‘‘natural’’ or ‘‘wild’’ areas within State forest or park lands, wetlands located in areas designated as Federal wilderness areas under the Wilderness Act (16 U.S.C.A. § § 1131—1136) or the Federal Eastern Wilderness Act of 1975 (16 U.S.C.A. § 1132) or wetlands located in areas designated as National natural landmarks by the Secretary of the Interior under the Historic Sites Act of 1935 (16 U.S.C.A. § § 461—467).

25 Pa. Code § 105.17(1)(i)-(v). Any wetlands that do not meet at least one or more of the abovementioned characteristics are defined as “other wetlands.” 25 Pa. Code § 105.17(2). It is important that the correct classifications of wetlands are identified because the Pennsylvania wetland classification determines the level of environmental protection for the wetland, and is reflective of the functions and values of that wetland. For example, proposed projects are not permitted to have an “adverse impact” on an Exceptional Value wetland. 25 Pa. Code § 105.18(a).

An adverse impact has been found to include the permanent conversion of wetlands from forested wetlands to emergent wetlands. *See* Exhibit A; *see also* Environmental Assessment, at 2-26. Therefore, to the extent any of the 1.32 acres of forested wetlands that are being permanently converted to emergent wetlands meet one of the five criteria in section 105.17, the Commission’s approval would violate section 105 of the Pennsylvania code, and therefor also violate the Clean Water Act.

The Environmental Assessment fails to include any assessment of the wetlands crossed pursuant to Pennsylvania's state classification. Indeed, the record is completely devoid of any assessment of the five criteria for determining the State Wetland Classification in Pennsylvania. The Environmental Assessment does not include any information on whether the habitat is suitable for fauna or flora listed as threatened or endangered, or whether the wetland is hydrologically connected to or located within a half-mile of wetlands that serve as habitat for threatened or endangered species. 25 Pa. Code § 105.17(1)(i)-(ii). The Environmental Assessment also fails to identify whether the wetland is located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value under Chapter 93 and the floodplain of streams tributary thereto. 25 Pa. Code § 105.17(1) (iii). There is also no mention of whether the wetland was located along an existing public or private drinking water supply. 25 Pa. Code § 105.17(1) (iv). Lastly, the Environmental Assessment also does not identify whether the wetlands are located in areas designated by the Department as ''natural'' or ''wild'' areas within State forest or park lands. 25 Pa. Code § 105.17(1)(v). Indeed, the Commission cannot show anywhere else in the record that information specific to these five criteria where collected or analyzed. There isn't even a description in the Environmental Assessment determining whether the wetlands crossed in Pennsylvania are classified as "other" wetlands or "exceptional value" wetlands.

Without gathering and cataloging the required data on the five criteria for Pennsylvania State Wetland designations, it is impossible for the Commission to have made an informed decision regarding a baseline from which to measure the impacts of the proposed Project. As such, a finding of no significant impact based on the Environmental Assessment, and its supporting documents, would be arbitrary, capricious, and an abuse of discretion. Until such time the Commission gathers data to properly identify the wetlands to be impacted the Environmental Assessment is deficient and unlawful.

II. The Commission Failed To Evaluate The Impacts Of The Project In Accordance With Its NEPA Obligations

NEPA requires an Environmental Impact Statement for proposed "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C)(i). When scoping the range of actions to include in an Environmental Impact Statement, agencies must consider whether proposed actions are connected, cumulative, or similar. 40 C.F.R. § 1508.25(a)(1)-(3). An agency may avoid preparation of an Environmental Impact Statement by preparing an Environmental Assessment which supports a finding of no significant impact. 40 C.F.R. §§ 1501.4(e)(1), 1508.9.

NEPA requires federal agencies to take environmental considerations into account "to the fullest extent possible." 42 U.S.C. § 4332; 40 C.F.R. § 1500.2; *Bentsen*, 94 F.3d at 684. NEPA ensures that a federal agency, "in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts" and "guarantee[s] that the relevant information [on impacts] will be made available to the larger audience." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); 40 C.F.R. § 1500.1(b).

a. The Commission Has Unlawfully Segmented Its Review Of Columbia's Interconnected And Interdependent Pipeline Upgrade Projects Pursuant to 40 C.F.R. § 1508.25(a)

The Commission violated NEPA by segmenting review of Columbia's new pipeline upgrade into separate projects. These projects are part of a unified whole with functional interdependence, common timing, and geographic proximity. The segmented projects have no independent utility, nor were the segment locations for each project determined by the delivery contracts justifying them. In short, Columbia's upgrades to its pipeline system is one project divided into segments that have significant adverse environmental impacts and should have been evaluated in a programmatic NEPA document.

An agency should prepare a single programmatic EIS for actions that are "connected," "cumulative," or "similar," such that their environmental effects are best considered in a single impact statement. *Am. Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027, 1032 (D.C. Cir. 2008); 40 C.F.R. § 1508.25(a). "Actions are 'connected' or 'closely related' if they: '(i) Automatically trigger other actions which may require environmental impact statements; (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; [or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.'" *Hammond v. Norton*, 370 F. Supp. 2d 226, 247 (D.D.C. 2005) (quoting 40 C.F.R. § 1508.25(a)(1)). Similar actions have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. *Id*. at 246; 40 C.F.R. § 1508.25(a)(3).

"Piecemealing" or "segmentation" is the unlawful practice whereby a project proponent avoids the NEPA requirement that an EIS be prepared for all major federal actions with significant environmental impacts by dividing an overall plan into component parts, each involving action with less significant environmental effects. *Taxpayers Watchdog v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987) ("Taxpayers"). Federal agencies may not evade their responsibilities under NEPA by "artificially dividing a major federal action into smaller components, each without a 'significant' impact." *Coal. on Sensible Transp. v. Dole*, 826 F. 2d 60, 68 (D.C. Cir. 1987). *See also* 40 C.F.R. § 1508.27(b)(7).

The general rule is that segmentation should be "avoided in order to insure that interrelated projects, the overall effect of which is environmentally significant, not be fractionalized into smaller, less significant actions." *Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988). Without this rule, developers and agencies could "unreasonably restrict the scope of environmental review." *Fund for Animals v. Clark*, 27 F. Supp. 2d 9, 16 (D.D.C. 1998) ("Fund").

Columbia's 1278 pipeline extends from the Wagoner Interconnect with the Millennium pipeline in New York, and extends south across Pennsylvania through the Downingtown Compressor Station. This system stretches for a distance of over 100 miles. Section 10.4.1 and 10.4.2 of Resource Report 10 indicate that this system is currently unlooped and is comprised of a single line. Resource Report 10 further indicates that in order to "increase natural gas capacity along line 1278" Columbia would need to construct one of three different proposed options. The first option is the proposed Project, which is to loop the section of 1278 between the Downingtown Compressor and the Eagle Compressor Station. The next option is to loop 1278 from between the Wagoner Interconnect and the Easton Compressor station. The final option is to loop the 1278 line from the Milford Compressor Station to the Eagle Compressor Station. A review of these alternatives suggests that the proposed Project is simply the *first phase* in upgrading the entire 100 mile pipeline corridor between the Wagoner Interconnect and the Downingtown Compressor Station.

FERC must initiate a comprehensive *corridor wide* review to examine the impact of upgrading the entire Columbia 1278 line. It is clearly Columbia's intention to have this entire corridor fully looped; therefore, NEPA demands that a proper review of the environmental impacts of such an upgrade occurs. Indeed, Columbia has confirmed that the project will result in gas flow velocities beyond its recommended 50 feet per second threshold in a 7.7 mile stretch of the 1278 line downstream of the project. The Environmental Assessment contends that Columbia "confirmed that it is well below the estimated erosional velocity for the pipeline segment," Environmental Assessment at 2-109; however, the Commission cites to no studies, standard, regulation, or study to support its position.

The Commission should be well aware of gas velocity erosional limit ranges as made public from another gas transmission company where the Commission rejected a pipeline alternative in the application "where transporting the current and proposed gas volumes through

only the existing pipeline would result in gas velocity significantly above TGP's recommended maximum design velocity of approximately 40 feet per second. This increased velocity could compromise the pipeline's integrity and safety."[1] Nowhere in the record does the Commission explain why it has chosen to allow Columbia to operate at velocities higher than its stated design threshold of 50 ft/sec, while it denied Tennessee Gas and Pipeline Company for exceeding their lower design threshold of 40 ft/sec. This irreconcilable position alone demonstrates a dispositive deficiency of the Commission's Environmental Assessment.

We remind the Commission of the recent holding in *Delaware Riverkeeper, et al. v. F.E.R.C.*, where the D.C. Circuit Court held that the Commission was required to assess the construction and operational impacts of four natural gas pipeline projects that were designed to upgrade a single pipeline in one environmental review because the projects were "connected, closely related, and interdependent[.]" *Delaware Riverkeeper*, 753 F.3d 1304, 1309 (D.C. Cir. 2014). There the Commission conducted an Environmental Assessment that was incomplete relative to the degree of the Commission's control over the underlying projects, and the connected actions rule applied because the D.C. Circuit determined that the Commission had improperly *limited* the scope of the review of the actions. Specifically, the court held that "the agency's determination of the proper scope of its environmental review must train on the governing regulations, which here means 40 C.F.R. § 1508.25(a)." *Id*. at 1315.

In *Delaware Riverkeeper*, the court stated that there was "a clear physical, functional, and temporal nexus between the projects. There are no offshoots to the Eastern Leg. The new pipeline is linear and physically interdependent; gas enters the system at one end, and passes through each of the new pipe sections and improved compressor stations on its way to extraction." *Id*. at 1308-1309. Columbia's upgrade projects present an identical factual situation.

---

[1] Tennessee Gas Pipeline Company ("TGP"), "Northeast Upgrade Project (Docket No. CP11-161-000), Environmental Assessment," November 2011, p. 3-3.

b. The Commission Has Unlawfully Segmented Its Review Of Columbia's Interconnected And Interdependent Pipeline Upgrade Projects Pursuant To The Factors Identified in *Taxpayers Watchdog*

In addition to failing to meet the requirements of 40 C.F.R. § 1508.25(a), the Commission also fails to satisfy the three of the factors articulated in *Taxpayers Watchdog v. Stanley*, thus demonstrating that it impermissibly segmented its NEPA analysis. *Taxpayers*, 819 F.2d 294 (D.C. Cir. 1987). To determine whether a project has been unlawfully segmented, "courts have considered such factors as whether the proposed segment (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives[.]" *Taxpayers*, 819 F.2d at 298. Courts consider "independent utility" in concert with other factors, including economic interdependence, timing, and geographic proximity. In *Delaware Riverkeeper*, the court held that even if the court were to expand its analysis from Section 1508.25(a) to the factors in articulated in *Taxpayers Watchdog*, the Commission's defense of its action were still deficient. (the court found that the projects did not have "(1) has logical termini; [or] (2) . . . substantial independent utility.").

A project lacks "independent utility" if it could not function or would not have been constructed in the absence of another project. *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105, 1118 (9th Cir. 2000). *See also W. N.C. Alliance v. N.C. DOT*, 312 F. Supp. 2d 765, 774-775 (E.D.N.C. 2003) ("Alliance") (project widening highway section lacked independent utility because it would leave a "bottleneck" of narrow highway to north, such that traffic congestion between the termini of the project would be worsened until construction of later project widening bottleneck section).

The Commission has previously relied upon the assertion that because pipeline upgrade projects are designed to serve different customers, at different points in time, they have independent utility, and thus warrant individual review. Such an argument improperly rests entirely on the economic independent utility of each project. Taken to its logical conclusion, this

argument suggests that if a project sponsor could find individual shippers interested in small volumes of gas that would require only half-mile stretches of looped pipeline along an existing pipeline, FERC could certificate each one of those small individual half-mile loops. Thus, under those circumstances, FERC could theoretically certificate over 200 individual projects along Columbia's Leidy Line. Such a result undermines the design, purpose, and intent of NEPA.

Indeed, this specious argument was specifically addressed and rejected in *Delaware Riverkeeper*, where the court rightly identified that the project sponsor "could have proposed two-mile segments, or one-mile segments, or one-hundred-yard segments for NEPA review, so long as it produced shipping contracts in anticipation of the increased capacity attributable to each of these new segments. To interpret the 'substantial independent utility' factor to allow such fractionalization of interdependent projects would subvert the whole point of the rule against segmentation." *Delaware Riverkeeper*, 753 F.3d. at 1315.

Additionally, the proposed Project does not have logical termini. As shown by the alternatives analyses in the Environmental Assessment for the proposed Project, when pipeline owners add new loops along a larger pipeline corridor to increase gas delivery capacity to the end point of that corridor, the location of the start and end points of individual loops is not fixed by the contracted-for quantity. Where the contracted-for quantity could be satisfied by adding new loops and compressors in a variety of configurations, pipeline owners add loops in locations based on factors including cost and difficulty of construction, environmental considerations, short- and long-term safety, and avoiding the need to acquire additional property rights.

In *Delaware Riverkeeper*, the court noted that "[t]o the extent that the [projects are] comparable to a highway, it is more analogous to a highway that connects two major points than one section of a web of metropolitan roadways for which the logical termini criterion loses significance." *Id*. at 1316. The proposed Project presents an identical factual scenario, where a single pipeline corridor is being upgraded piecemeal and avoiding the proper environmental

scrutiny. Therefore, because the selection of the termini for each segment did not turn on the projects' individual contract, the existence of that separate contract cannot by itself establish the independence of the project from the expansion of capacity on the Eastern Leg as a whole.

Columbia's projects have also foreclosed the alternative of leaving the 1278 line incomplete. A project may be impermissibly segmented from future projects if it eliminates the "no build" alternatives for those future projects. *See Alliance*, 312 F. Supp. 2d at 775 (project that would exacerbate traffic due to existing bottleneck foreclosed no build option for future widening of bottleneck). Columbia's projects have made the completion of looping the 1278 line inevitable. Once Columbia completes the segments for the proposed Project and begins shipping additional gas under contracts for the Project, gas velocities in the remaining unlooped segments along the line will substantially exceed the 50 ft/sec maximum velocity, increasing the long-term potential for pipeline failure due to increased internal erosion. By exceeding its own design thresholds, Columbia risks the long-term safety of its system.

Consequently, completion of the Project irretrievably committed Columbia to complete looping at least the 7.7 mile stretch of line that will be operating under high erosional velocities. As in *Alliance*, *see id*., the Project has eliminated the option of no further future construction by creating safety problems and inefficiencies that would necessitate future upgrade projects.

III. <u>The Commission's Failure To Request And Analyze Data Critical To Determine The Operational Safety and The Functional Consequences Of the Proposed Project Render the Environmental Assessment Deficient</u>

DRN filed a request for specific data on gas flow velocities and supporting information for Columbia's proposed Project. The information requested by DRN did not appear anywhere in the Environmental Assessment or its supporting documents. Columbia's limited response regarding the data on flow velocities is wholly insufficient to answer any of the very basic questions asked in DRN's initial letter, which include:

1. The pipe diameters and where they change,

2. The pipe grade and where the grade changes,

3. The pipe wall thicknesses,

4. The mileage for each pipe grade along the system,

5. Include the MAOP for each pipe segment and where it changes,

6. Identify for each pipeline segment the location of gas meters (if any) along the Columbia's system Loops that may be used to allocate gas flow between the various pipeline segments

7. Gas flow rates in MMSCF/D, for all stream inputs and deliveries along the systems,

8. Pressures at the respective inlet and delivery points along the system for the peak flow case, and

9. At each compressor station, include the compressor HP, fuel usage, compressor suction pressure, compressor discharge pressure, the compression ratio, gas volume compressed in MMSCF/D.

A simple hydraulic profile, critical to determining if each project is justified on its own and thus not segmented, cannot be reliably developed from the limited data provided. A failure to provide this critical information on flow velocities makes it impossible for the public in general, or the Commission specifically, to accurately confirm the safety ramifications of the project, and how quickly Columbia will need to complete upgrading its system before it is compromised by internal erosional gas velocities. As such, the Environmental Assessment and any decision based on its conclusions is unlawful.

IV. **The Commission Failed to Formally Request That The Delaware River Basin Commission Act As A Cooperating Agency**

NEPA demands that the Commission, as the lead agency for the project, "*shall* [r]equest the participation of each cooperating agency in the NEPA process at the earliest possible time." 40 C.F.R. § 1501.6(a)(1) (emphasis added). Where a lead agency fails to properly invite a proper

agency to serve as a cooperating agency that error is more than harmless. *Id*. Here, the record reflects that the Commission never formally requested that the Delaware River Basin Commission act as a cooperating agency. Commission Section 1508.5 provides the definition for what qualifies as a "cooperating agency:"

> Cooperating Agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

40 C.F.R. § 1508.5. Although the Delaware River Basin Commission needs only to satisfy one of the two triggers identified in Section 1508.5, the Delaware River Basin Commission has both the "jurisdiction by law" and the "special expertise" to qualify as a cooperating agency for this project. Agencies have jurisdiction by law if they possess "authority to approve, veto, or finance all or part of the proposal." *Id.* § 1508.15. Agencies have "special expertise" if they have expertise "with regard to the environmental issues involved." *Colorado Environmental Coalition v. Office of Legacy Management*, 819F.Supp.2d 1193, 1216 (D. Col. 2011).

The Delaware River Basin Commission is an inter-state federal agency with the force of law to oversee a unified approach to managing a Delaware River system without regard to political boundaries. The Delaware River Basin Commission is the most logical choice to provide "special expertise" and technical guidance to the Commission regarding the potential environmental impacts of the proposed project on the water resources of the basin. For example, in 1992, in response to a petition filed by DRN, the Delaware River Basin Commission launched the Special Protection Waters program, which established regulations to "keep the clean water clean" in the upper and middle sections of the non-tidal Delaware, portions of which had been designated by the federal government as part of the National Wild and Scenic Rivers System in

1978. Following the federal designation of an additional 38.9 miles of the Delaware in the National Wild and Scenic Rivers System in 2000, and again in response to a petition filed by DRN, in 2008 the Delaware River Basin Commission expanded Special Protection Waters coverage to include the river from the Delaware Water Gap National Recreation Area downstream to the head of tide at Trenton, New Jersey.

The entire 197-mile non-tidal river is now included under the Special Protection Waters regulations, which is believed to be the longest stretch of anti-degradation policy established on any river in the nation. Special Protection Waters are waters designated by the Delaware River Basin Commission, pursuant to the Water Quality Regulations, that have exceptionally high scenic, recreational, ecological, and/or water supply values and are subject to stricter control of non-point pollution control, wastewater discharges, and reporting requirements to prevent degradation. In light of the Delaware River Basin Commission's experience and familiarity with the water resources of the basin, they are a vital, and indeed, necessary resource for the Commission. As such, the Delaware River Basin Commission qualifies under the "special expertise" trigger provided in § 1508.5.

As highlighted above, the need for the Delaware River Basin Commission's consultation is clearly delineated by the fact that the Environmental Assessment has failed to identify numerous special protection wetlands, and has allowed the unlawful degradation of water resources as a result of improper water crossing techniques. These are the exact areas that the Delaware River Basin Commission has institutional knowledge and technical expertise.

In addition to "special expertise," the Delaware River Basin Commission also undeniably has "jurisdiction by law." Project sponsors who propose certain construction activities in the Delaware River Basin must submit docket applications to the Delaware River Basin Commission for review to ensure that the project does not conflict with the Delaware River Basin Commission's Comprehensive Plan, and that the project is designed to prevent substantial

adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin. Within that context, the Delaware River Basin Commission's Rules of Practice and Procedure ("Rules") provide regulatory authority to approve or deny pipeline project docket applications.

The Delaware River Basin Commission requires that project sponsors, including pipeline companies, receive docket approval for any proposal to withdrawal from ground water, impoundments, or running streams "when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons." RPP 2.3.5.A.2-3. Many recent pipeline projects have met this threshold and were required to submit a docket application to the Delaware River Basin Commission. Two examples of Commission authorized projects that received such review are the Tennessee Gas Pipeline Company's Northeast Upgrade Project (Docket No. Cp11-161) and Transco's Northeast Supply Link (Docket No. CP12-30). In the Environmental Assessments for both projects a list of required permits and authorizations was provided, which included the requirement of receiving Delaware River Basin Commission docket approval for hydrostatic testing. Indeed, Columbia likely needs to file a docket with the Delaware River Basin Commission. Pursuant to its water withdrawal docket requirement the Delaware River Basin Commission possesses the "authority to approve, veto . . . part of the proposal." *Id.* § 1508.15.

In addition to water withdrawal jurisdiction, the Delaware River Basin Commission has also exercised their power to review projects pursuant to the authority provided in the Delaware River Basin Commission Rules of Practice and Procedure Section 2.3.5.A(12) on two projects that were Certificated by the Commission. These projects include the Tennessee Gas and Pipeline Company's 300 Line Upgrade Project (Docket No. CP09-444), and Columbia's 1278k Replacement Project (Docket No. CP10-492).

For the foregoing reasons, the Delaware River Basin Commission possesses both "jurisdiction by law" and "special expertise" for review of pipeline projects in the Delaware River Basin, and specifically this pipeline project. Therefore, to the extent that this Assessment was issued without the formal request of cooperating agency status by the Commission to the Delaware River Basin Commission it is deficient and unlawful cannot be relied upon for a finding of no significant impact by the Commission.

V. Conclusion

For the aforementioned reasons, the environmental review fails to meet the requirements of the National Environmental Policy Act and its implementing regulations. The Environmental Assessment cannot serve as the basis for an adequate hard look at the Project's environmental impacts or support a finding of no significant impact. The Commission cannot determine that the public benefits of the proposed Project outweigh its adverse impacts be relying on the flawed environmental review, thus violating the Natural Gas Act and its implementing regulations. On this basis, the Commission should reject the Environmental Assessment and issue a programmatic Environmental Impact Statement. Additionally, DRN requests that the Commission require Columbia to submit the information requested above regarding gas flow velocities in a formal evidentiary hearing before the Commission, as well as an extension of the comment period by 45 days.

Respectfully submitted,

/s/ Aaron Stemplewicz
Aaron Stemplewicz
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, Pennsylvania 19007
215-369-1188 x115
aaron@delawareriverkeeper.org

Counsel for the Delaware Riverkeeper Network