



March 8, 2019

Ms. Kimberly Bose
Federal Energy Regulatory Commission
Office of the Secretary
888 1st Street, NE
Washington, DC 20428

Re: Docket No. CP19-78-000 PennEast Pipeline Project

Dear Ms. Bose,

On February 15, 2019, the Federal Energy Regulatory Commission (FERC) issued a Notice of Application for Amendment to amend the certificate of public convenience and necessity for the PennEast pipeline. Among these amendments are four modifications to the Pennsylvania portion of the Project design, route, workspace, and construction methods. The route changes were identified as Saylor Ave Realignment (MP 8.5R3 to MP 8.9R3), I-81 Workspace Adjustment (MP 10R2 to 10.4R2), Appalachian PPL Trail Crossing Realignment (MP 48.6R2 to 53.6R3), and Freemansburg Ave Realignment (MP 69.7R3 to 70.8).

The Federal Energy Regulatory Commission (FERC) cannot justify approval of these route changes based on the information provided. There are significant impacts that are unacceptable and/or have not been properly considered or addressed. The Delaware Riverkeeper Network (DRN), Citizens for Pennsylvania's Future (PennFuture), and Berks Gas Truth offer the following comments regarding these route changes and the need for further evaluation.

Threatened and Endangered Species Surveys are Incomplete

Although most of the route changes are within 0.25 mile of the previously certified route (with the exception of the Appalachian Trail Crossing Realignment), the action area of the construction has shifted and therefore the impacts to state and federally threatened and endangered species need to be reexamined. While PennEast states that it is in the process of having new surveys completed and is in consultation with state and federal agencies, the surveys nevertheless remain incomplete and therefore valuable information regarding the affected species are unknown. For example, there are outstanding eastern small-footed bat surveys along the Revised PA Route, which includes five small areas of potential roost habitat within the Saylor Ave Realignment workspace. In fact, Phase 2 emergence surveys are only

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82.8% complete for the Revised PA Route. PennEast indicates that if mitigation is pursued in lieu of or in response to emergence survey results, it would include removing the roost habitat from the workspace (between November 15 and March 31) or excluding bats from the potential habitat areas using impermeable covering (e.g., tarp, landscape fabric) prior to April 1 to prevent bats from using the roost.

Summer roosts for this bat species include caves and mines, hollow trees and under bark, cracks and crevices in rock walls, and ridge-top talus fields. It is assumed that “removing the roost habitat from the workspace” would involve cutting down hollow trees or removing loose bark. Removing trees and bark, even in the winter, would destroy any future summer roosting habitat and could have severe long-term detrimental effects on the natural behavior of the bats. Similarly, blocking the roosts with an impermeable tarp could confuse or disorient bats attempting to access the crevices that they are used to utilizing. These serious and significant impacts to bat species that are already impacted by so many threats and harms will be compounded by the proposed construction and activities of PennEast. In addition, PennEast conducted Phase 1 eastern small-footed bat and Allegheny woodrat surveys along the Appalachian Trail PPL Crossing Realignment in 2017 and 2018. Potential habitat for both species were identified between MP 51.3R3 and MP 52.5R3. While these surveys did not document Allegheny woodrat occupancy at that time, PennEast was instructed to coordinate with the Pennsylvania Game Commission’s (PGC) right-of-way (ROW) liaison, Nate Havens, in order to determine whether mitigation will be necessary for impacts to unoccupied suitable habitat for Allegheny woodrat on State Game Lands. This consultation is ongoing and the final determination regarding Allegheny woodrat presence remains incomplete.

Furthermore, the PGC asked PennEast to reduce the ROW in areas of forested wetlands to less than 45 feet near MP 27.7 and MP 32.1 so northern flying squirrels can cross. However, PennEast asserted that they are unable to reduce their workspace to 45 feet in areas of forested wetland due to constructability constraints and so this important concern and requested modification remains outstanding at this time. While PennEast has co-located their proposed ROW with an existing pipeline ROW in this area to reduce fragmentation of habitat and total tree clearing, primarily for safety reasons, PennEast asserts that they are not able to operate heavy construction equipment on the maintained 40-foot ROW of the existing utility. Therefore, PennEast takes the position that in order to complete their wetland crossings, they would be working from one side of the trench and thus would require the full 75-foot corridor to build their pipeline in this area. As a result, the requested workspace reduction is being denied by PennEast and will have ramifications for the northern flying squirrel. The wider corridor PennEast is insisting upon would increase habitat fragmentation and would make it too wide for flying squirrels to cross as they can only glide for short distances.

The PennEast failure to provide for protection of the northern flying squirrel as requested by the state agency and experts requires FERC to deny this proposed modification. PennEast could in fact reduce their workspace as requested, they are simply choosing not to do so – we have seen many workspace accommodations during pipeline construction in order to protect natural resources and species; there is no reason why PennEast cannot do the same other than they don’t want to. In addition, it is unclear why HDD through this forested wetland is not being considered since increased clearing of mature trees will lead to thermal impacts, exacerbating the opening beyond the electric utility line. In other pipeline ROW’s, technical advancements to work within an existing ROW have been accomplished; PennEast should be required to do the same here in order to avoid harm to the sensitive forested wetland habitat at risk. At

the very least, more information and elaboration needs to be provided pertaining to the “safety reasons” PennEast currently states to justify such an expansion of the ROW in sensitive public and forested wetland areas in order to allow more informed evaluation of this unsupported and untenable position.

There are also areas newly affected by the proposed route modifications that have not been studied under previous PennEast surveys. The Appalachian Trail PPL Crossing Realignment crosses into Eldred Township, Monroe County, a township and county that were not previously affected by the Project. During wetland delineation surveys, PennEast biologists observed one dead timber rattlesnake within the Project study area in Monroe County. The rattlesnake appeared to have been killed by an all-terrain vehicle (ATV), as it was partially crushed and found within the tire tracks of a frequently utilized ATV/Jeep trail. This finding demonstrates how easily timber rattlesnakes can be crushed by vehicles such as the numerous trucks and construction equipment that would be present at this site. In addition, if PennEast is allowed to be constructed, it will create a new preferred pathway for ATVers providing permanent and ongoing impacts to timber rattlesnake habitat and likely resulting in ongoing ATV-caused deaths to the species. In addition, PennEast delineated two areas of potential timber rattlesnake denning habitat totaling 43 acres and 28 acres of potential gestating habitat, all of which is vulnerable to construction impacts despite the best mitigation measures. Studies indicate rattlesnakes are very reliant on their home ranges and den sites and any disturbance to these areas can mean subsequent harm to the species. If HDD were employed, less harm may result to this sensitive species. But HDD has not received due consideration. In the absence of consideration of this less harmful approach to construction and its ramifications for the timber rattlesnake, FERC cannot agree to these proposed modifications.

Impacts from New Alignments are not Fully Examined

The route modifications present several new implications for waterways and natural resources that are not fully examined. For example, PennEast is in the process of identifying the locations of water wells and springs that were not previously crossed by the Certificated Route (Pennsylvania and New Jersey). Until these new wells and springs are identified, this information is incomplete. The Revised PA Route would also cross 13 additional Wild Trout Waters compared to the Certificated PA Route – this is a significant increased adverse impact. Cumulative impacts are also not fully understood. The Appalachian Trail PPL Crossing Realignment extends approximately 3.3 miles from the Certificated PA Route, which exceeds the Cumulative Impact Assessment Area for several types of resources. This particular realignment would also expand the existing ROW by approximately 20 feet, further increasing the negative impacts associated with the harmful footprint of this project. The Project as a whole would already affect 220.6 acres of interior forest during construction and 63.6 acres during operation. The proposed changes will expand that footprint of harm. Expert analysis demonstrates that for every cut through an interior forest, there are an additional 300 feet of impact on either side¹ to the adjacent forest that must be considered. Additionally, the Project would have an indirect impact (through edge effects, potentially resulting in avoidance of habitats or decreased habitat quality) on 1,725 acres of interior forest.

PennEast maintains that most of the impacts are temporary and that they will restore disturbed areas. However, PennEast admits that all impacts on forested habitats will be considered long-term because of the time required to restore woody vegetation to preconstruction conditions (i.e., more than 30 years, and

¹ Nels Johnson, et al., Natural Gas Pipelines, The Nature Conservancy, 1 (December 2011).

possibly hundreds of years for some forested areas). Hundreds of years of lost habitat would have a permanent effect on generations of local wildlife. Compaction of soils and soil disturbance of “temporary work spaces and alternate temporary work spaces”, scalding of adjacent forest trees from opening additional areas with clearing, thermal changes, soil changes, wind throw, invasive species, and other forest fragmentation impacts must be fully weighed and considered when PennEast proposes to disrupt interior forest in such a detrimental way.

Bog Turtle Occupied Wetlands should be Exceptional Value

Phase 2 bog turtle surveys have been completed on 31 of the 33 wetlands (93.9%), meaning there are two wetlands that are entirely unsurveyed at the present time. The Appalachian Trail PPL Crossing Realignment crosses an occupied bog turtle habitat in Carbon County as discussed in the 2017 USFWS Biological Opinion (BO), but the realignment does not result in avoidance of bog turtle habitat, it simply changes the location where the cut through and harm will be inflicted. Through surveys and consultation with the USFWS, PennEast identified one previously documented bog turtle population in Northampton County along the proposed Project route. In August 2018, PennEast delineated a new wetland complex within Northampton County as a result of route revisions that had physical characteristics suitable for bog turtles. Because the Phase 1 habitat assessment of this wetland complex was completed in August and surpassed the spring Phase 2 survey season, Phase 2 surveys have not been completed. PennEast stated that it intends to complete the Phase 2 surveys in spring 2019; if a new population is identified, or if PennEast elects to forego Phase 2 surveys and assume presence, then PennEast will adhere to the avoidance and minimization measures presented in the BO. Due to the documented presence of the federally threatened bog turtle at these sites, all of these wetlands should be considered Exceptional Value (EV) wetlands, but this is never mentioned by PennEast. Exceptional value wetlands deserve special protection and are wetlands that exhibit one or more of the following characteristics:²

(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).

² <https://www.pacode.com/secure/data/025/chapter105/s105.17.html>

(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).

At the Northampton County site, PennEast has proposed minor pipeline adjustments in this area that they assert would avoid wetland impacts and route the pipeline through narrower crossing points and what they consider to be marginal habitat. However, no maps or alignment sheets were provided that reflects these adjustments unlike those provided for the four route modifications. Although these adjustments in Northampton County may be, according to PennEast, minor, they still differ from the alignment that was previously approved and should be viewed as another route modification like the other four. Alignment sheets and maps should be made available as well.

On May 7, 2018, PennEast bog turtle consultants met with representatives from USFWS, PFBC, and USACE to discuss the known bog turtle population at the Appalachian Trail PPL Crossing Realignment. There is a section of mucky soil at this site which, it is asserted, makes mitigation more difficult. It is asserted that silt fencing and exclusion barriers are not a good option due to the depth of the muck and the 3-dimensional (hummocked) nature of the wetland. Constructing the fence in such deep muck would be more challenging, and bring with it a high risk of failure. There is also a high chance of flooding due to the fact that the wetland is in a floodplain, which would destroy the silt fencing barrier. Options were discussed that would allow turtles to pass through rather than being diverted into the creek or having their travel along the wetland interrupted. Among these options was the potential to cross the core habitat and streams using aerial spans to the greatest extent possible. However, aerial spans would likely not be feasible for all the required aspects of the construction. The heavy operating equipment hoisting the aerial spans would also likely sink in the mud even with matting. During this meeting, it was explained that the old crossing location had less suitable habitat than the new crossing. Due the open-ended nature of the 2017 BO issued by USFWS, PennEast’s consultants believed, incorrectly, that the new activities were still covered because they do not represent a significant change in the type or amount of impacts to a federally listed species. However, USFWS has since recommended that FERC re-initiate consultation to modify the 2017 BO under the minor change process. Re-initiation will result in a consultation update letter which addresses route amendments and updated survey results. The recommendation of re-initiation was made due to the changed action area resulting from proposed route modifications.

Because FERC and PennEast cannot rely on the 2017 BO and the new crossing location has more suitable bog turtle habitat than the previous location, data gaps exist that make it impossible for FERC and the public and sister agencies to accept these route modifications without more detail, information, understanding, and assessment. In addition to the incomplete bog turtle and EV wetland information, there are incomplete surveys for other threatened and endangered species, unresolved consultations between PennEast and state and federal agencies, incomplete surveys for water wells and springs, 13 additional Wild Trout Waters crossed, a widened ROW, missing alignment sheets, and new implications for additional cumulative impacts. NJDEP rejected PennEast’s permit applications due to incomplete

information, and this FERC application, as well as the Chapter 105 permit application with PADEP, has the same missing information and more due to the new route changes in PA.

Incomplete Information Available for Public Review

The Delaware Riverkeeper Network also notes that we have been unable to secure electronic layers and data necessary for a more full and robust review and comment. Both KMZ files and GIS shapefiles were made available for other pipeline projects such as Mariner East 2. There is no rational reason not to make this data easily and electronically available for PennEast as well. And yet, the Delaware Riverkeeper Network continues to struggle to secure this information for the review of our inhouse and outside hired experts. We urge once again that there be a 90-day extension to the comment period and that instant access be allowed to the electronic layers and data that will allow for a more robust and complete comment.

For all of these reasons, the Delaware Riverkeeper Network strongly believes any approval pursuant to this docket should not be issued.

Sincerely,



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the Delaware Riverkeeper

s/ Alice Baker

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