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**Middle District Federal Court Hands Environmental Organizations
Challenging the Transco REAE Pipeline Another Victory
by Upholding The Authority of the Pennsylvania Environmental Hearing Board
to Review State Permitting**

Pennsylvania & National News: The United States District Court for the Middle District of Pennsylvania has once again sided with environmental interests by granting their motion to dismiss the federal case that had been filed by Transcontinental Gas Pipe Line Company, LLC seeking to prevent the Pennsylvania Environmental Hearing Board from hearing an appeal of state permits issued to the company's Regional Energy Access Expansion project. The court's decision, issued December 22, 2023 just before the holidays, notably, and in part, reads:

- "Transco's request for relief is predicated upon an erroneous interpretation of federal law."
- Quoting case law the court goes on: "the NGA leaves untouched the state's internal administrative review process, which may continue to operate as it would in the ordinary course under state law."

The appeal at issue was brought by the Delaware Riverkeeper Network, the Delaware Riverkeeper Maya van Rossum, and Citizens for Pennsylvania's Future seeking to challenge state permits that provided the underlying basis for the Pennsylvania's Clean Water Act approval (what is known as 401 certification) of the Transco REAE pipeline. Following the usual protocol for legal appeal of state permitting, the organizations brought their appeal of the permits before the Pennsylvania Environmental Hearing Board. The permits and associated 401 Certification being challenged are not only required for the project to advance within Pennsylvania, but are also an underlying requirement of the Federal Energy Regulatory Commission (FERC) Certification of the project. Without the state authorization, the FERC Certification is no longer legally secure. The company challenged the environmental organizations' appeal, asserting that the Pennsylvania Environmental Hearing Board had no jurisdiction to hear administrative appeals of state issued permits involving FERC regulated natural gas pipeline infrastructure, and that instead, any legal challenge had to proceed before the Federal Third Circuit Court of Appeals. In today's determination, the Middle District rejected Transco's arguments and upheld the authority of the Pennsylvania EHB to review the challenged permitting, and in so doing, it strengthened the rights of a state, in this case the Commonwealth of Pennsylvania, to have primary legal authority regarding state permitting for natural gas pipeline infrastructure,

“This victory validates and secures the rights of impacted communities to challenge state issued approvals to natural gas pipelines through their own state's administrative appeals process, rather than having to leap frog to the federal court system where the pipeline companies and FERC, which are generally aligned and working in collaboration, have much greater access, resources and sway to press their position,” said **Maya van Rossum, the Delaware Riverkeeper, and leader of the Delaware Riverkeeper Network.** “When it comes to natural gas pipelines, the federal government has already severely curtailed the rights of states and people to protect themselves. Over a period of decades, FERC has expanded its own authority when it comes to natural gas pipeline infrastructure, and at the same time strengthened the ability of pipeline companies to withstand the legal authority of states, other federal regulatory agencies, and court challenges brought by impacted community members. A contrary ruling from the Middle District would have expanded this inequity.”

Ms. van Rossum adds: “We look for to the opportunity to make our case before the Pennsylvania EHB that the permits granted to Transco should be vacated and the project should not be allowed to proceed.”

“Every single court that has reviewed this issue to this point has found the Pennsylvania Environmental Hearing Board can take up this appeal and review Transco’s plans to cross and impact multiple miles of Pennsylvania’s special protection waters,” said **Jessica O’Neill, PennFuture’s Senior Attorney**. “We will continue to push back against Transco’s attempts to evade review, and we will continue to challenge these permits that degrade Pennsylvania’s special protection waters.”

“Today’s win means that Transco’s permit will continue to be reviewed by the Environmental Hearing Board just like any other permit issued by the Department of Environmental Protection in Pennsylvania. Our unique tripartite administrative system helps ensure compliance with Pennsylvania’s environmental statutes, regulations, and Pennsylvania’s constitutional Green Amendment, Article I, section 27,” **Kacy Manahan, Senior Attorney representing van Rossum and the Delaware Riverkeeper Network** and who was the **lead attorney defending against the Transco lawsuit**.

Background and Project Details:

The Transco REAE project is an expansion of existing natural gas infrastructure that would involve the construction of new natural gas facilities in Pennsylvania, New Jersey, and Maryland. In Pennsylvania, the Project includes 22.2 miles of 30-inch diameter pipeline and associated structures in Luzerne County (the Regional Energy Lateral); 13.8 miles of 42-inch diameter pipeline and associated structures in Monroe County (the Effort Loop); modifications to Compressor Station 515 in Luzerne County, Compressor Station 195 in York County, and Compressor Station 200 in Chester County; modifications to the Mainline A Regulator in Bucks County and the Delaware River Regulator in Northampton County; modifications to three existing pipeline tie-ins; and new and expanded access roads and contractor staging areas.

The project obtained its Natural Gas Act certificate of public convenience and necessity from the Federal Energy Regulatory Commission on January 11, 2023. The project is also required to secure a Section 401 Certification pursuant to the Clean Water Act from each of the states through which the project will pass. In order to secure a 401 Certification, the project must demonstrate it will comply with a State’s water quality standards. Transco secured its Pennsylvania 401 Certification on March 30, 2022, and thereafter, on February 3, 2023, was granted Erosion and Sediment Control permitting pursuant to Chapter 102 of the Pennsylvania Code as well as Water Obstruction, Encroachment permitting pursuant to Chapter 105 of the Pennsylvania Code.

Delaware Riverkeeper Network, the Delaware Riverkeeper Maya van Rossum, and Citizens for Pennsylvania's Future appealed the state issued permits to the Pennsylvania Environmental Hearing Board on March 14, 2023. It is the exercise of Environmental Hearing Board jurisdiction over that appeal that Transco has challenged in this case.

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