



# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

401 East State Street

P.O. Box 420, Mail Code 401-07

Trenton, New Jersey 08625-0420

Tel. (609) 292-2885 • Fax (609) 292-7695

[www.nj.gov/dep](http://www.nj.gov/dep)

**PHILIP D. MURPHY**

*Governor*

**SHEILA Y. OLIVER**

*Lt. Governor*

**CATHERINE R. McCABE**

*Commissioner*

September 2, 2020

Kimberly Bose  
Federal Energy Regulatory Commission  
888 1st Street NE Washington, DC 20426

Re: FERC# CP20-47-000  
PennEast Pipeline Company, LLC  
Environmental Assessment for the 2020 Amendment Project

Dear Ms. Bose,

Thank you for providing the New Jersey Department of Environmental Protection (NJDEP) with the opportunity to provide input regarding the PennEast Environmental Assessment for the 2020 Amendment Project (Amended Project EA). After reviewing the Amended Project EA, NJDEP continues to have the same concerns as described in NJDEP's March 30, 2020 scoping letter to FERC. Rather than reiterate those issues here, NJDEP attaches its March 30, 2020 scoping letter and incorporates it in full into this comment. Notwithstanding these concerns, NJDEP provides comments on the Amended Project EA's Air analyses, which are also attached hereto.

Thank you for your consideration.

Sincerely,

Megan Brunatti, Chief  
Office of Permitting & Project Navigation

w/attachments



# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION OFFICE OF PERMIT COORDINATION & ENVIRONMENTAL REVIEW

401 East State Street

P.O. Box 420, Mail Code 401-07J

Trenton, New Jersey 08625-0420

Tel. (609) 292-3600

[www.nj.gov/dep/peer](http://www.nj.gov/dep/peer)

**PHILIP D. MURPHY**

*Governor*

**SHEILA Y. OLIVER**

*Lt. Governor*

**CATHERINE R. McCABE**

*Commissioner*

March 30, 2020

Kimberly Bose  
Federal Energy Regulatory Commission  
888 1<sup>st</sup> Street NE  
Washington, DC 20426

Dear Ms. Bose,

Re: FERC# CP20-47-000  
PennEast Pipeline Company, LLC

Thank you for providing the New Jersey Department of Environmental Protection (NJDEP) with the opportunity to provide input regarding the scope of FERC's National Environmental Policy Act (NEPA) analysis of PennEast's January 30, 2020 application to amend its 2018 Certificate of Public Convenience and Necessity (2018 Certificate).<sup>1</sup> For the reasons that follow, FERC should conduct a full Environmental Impact Statement (EIS) of both phases of PennEast's proposed project, which should include consideration of historical resources for both project phases, and require PennEast to demonstrate that both Phase I and Phase II are needed. FERC has all the requisite environmental information for both halves of the project to conduct a complete EIS.

PennEast's January 30, 2020 application seeks permission to split PennEast's interstate natural gas transmission project into two phases: Phase 1, which effectively consists of the first 68 miles of the certificated project in Pennsylvania along with new interconnection facilities<sup>2</sup>, and Phase 2, which would include the remainder of the certificated project and would primarily be located in New Jersey.<sup>3</sup> (Amended Application). PennEast proposes to place Phase 1 in service by November, 2021 and Phase 2 in service upon receipt of outstanding permits.<sup>4</sup> Throughout the Amended Application, PennEast takes pains to demonstrate that Phase 1 will be a stand-alone

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<sup>1</sup> NJDEP and other Petitioners have challenged the sufficiency of the 2018 Certificate in the D.C. Circuit Court of Appeals. *Delaware Riverkeeper v. FERC*, Docket No. 18-1144.

<sup>2</sup> Specifically, the application proposes a new interconnection facility in Bethlehem Township, Northampton County, Pennsylvania, a regulation station at approximately milepost 68.2 of the certificated route, and two separate interconnection and measurement facilities. Amended Application at 9-10.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 8.

project.<sup>5</sup> Yet, despite altering the original project to enable Phase 1 to stand on its own, it appears that PennEast simultaneously seeks to be able to simply proceed with Phase 2 if it receives the required permits.<sup>6</sup> Since FERC's prior analysis for the certificated route contained serious flaws, neither FERC nor PennEast can simply isolate the current analysis to Phase 1 and ignore Phase 2. Instead, FERC should undertake a new need analysis and analyze both phases of the project under an Environmental Impact Statement, rather than an Environmental Assessment.<sup>7</sup>

There are substantive reasons FERC should review PennEast's latest application under the more scrutinizing Environmental Impact Statement rubric, starting with whether the project is needed. Under its Certificate Policy<sup>8</sup>, a natural gas transmission project's applicant "must show public benefits that would be achieved by the project that are proportional to the project's adverse impacts."<sup>9</sup> FERC further noted in adopting the policy that reliance on precedent agreement contracts "raises additional issues when the contracts are held by pipeline affiliates."<sup>10</sup> PennEast's newest application now argues that Phase 1 "is a stand-alone" project.<sup>11</sup> Proposed Phase 1 of the amended project will provide 650,000 dekatherms per day of capacity.<sup>12</sup> However, as of this writing, only four shippers have executed precedent agreements for Phase 1 and the combined total of that contracted capacity is only 340,000 dekatherms per day – or approximately 52% of Phase 1's capacity.<sup>13</sup> PennEast later disclosed that the four shippers are all PennEast's corporate affiliates and three of the four shippers are intrastate shippers within New Jersey.<sup>14</sup> All four shippers also executed precedent agreements for the original project<sup>15</sup>, yet the Amended Application is silent regarding Phase 2's need or how the newly executed precedent agreements may shift the public need for the entire project.<sup>16</sup> FERC should therefore undertake a fresh analysis as to whether Phase 1 is a "stand-alone" project and, should PennEast pursue Phase 2 in the future, also undertake a new analysis as to whether Phase 2 is needed.

FERC should also conduct the thorough environmental analysis required by NEPA which was stymied by PennEast's incomplete original application. As noted throughout NJDEP's comments in FERC docket number CP15-558, which are incorporated by reference into this

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<sup>5</sup> See e.g. Amended Application at 8 ("the construction and operation of these Phase 1 facilities are in no way contingent on or otherwise impacted by the New Jersey Authorizations or the ultimate construction of Phase 2."); *id.* at 9 ("Phase 1 is a stand-alone project and is not dependent on the construction of Phase 2.").

<sup>6</sup> See Amended Application at 8 ("PennEast seeks to revise its Certificate to" construct and place the Phase 1 facilities into service on November 1, 2021 "and to construct, own and operate the remainder of the certificated Project facilities – the Phase 2 facilities – upon receipt of the New Jersey Authorizations.").

<sup>7</sup> 18 C.F.R. 380.6(a)(3) applies independently to PennEast's Phase 1 because no construction of its certificated project has taken place and, if Phase 1 is indeed a stand-alone project, it is therefore a "major pipeline" project "using rights-of-way in which there is no existing natural gas pipeline."

<sup>8</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (Sept. 15, 1999), *clarified* 90 FERC ¶ 61,128 (Feb. 9, 2000), *further clarified* 92 FERC ¶ 61,094 (July 28, 2000).

<sup>9</sup> *Id.* at 61,748.

<sup>10</sup> *Id.* at 61,744.

<sup>11</sup> Amended Application at 9.

<sup>12</sup> Amended Application at 1.

<sup>13</sup> Amended Application at 1, 9.

<sup>14</sup> February 27, 2020 PennEast Answer to Motion to Disclose Information Labeled Privileged and to Extend Public Comment Period of the New Jersey Conservation Foundation and the Watershed Institute at 3 (identifying UGI Energy Services as well as New Jersey Natural Gas Company, South Jersey Gas Company, and Elizabethtown Gas Company, the latter three of whom are intrastate shippers in New Jersey, as the shippers who executed Phase 1 precedent agreements).

<sup>15</sup> PennEast Pipeline Company, LLC Order Issuing Certificates, 162 FERC ¶ 61,053 at ¶ 6 (Jan. 19, 2018).

<sup>16</sup> Amended Application at 9, 13-14 (discussing need for Phase 1 only).



comment, PennEast's original project application was missing field surveys for numerous resources including but not limited to threatened and endangered species, historical resources, freshwater wetlands, geology, and drinking wells throughout the majority of the route.<sup>17</sup> PennEast argued it could not obtain the information because it lacked landowner access.<sup>18</sup> The same rationale can no longer be true, as PennEast condemned its requested rights-of-ways and subsequently conducted field surveys for the remaining resources.<sup>19</sup> Yet PennEast has not submitted any additional environmental information to FERC under CP15-558 nor has it done so as part of this amended application. Indeed, the Amended Application focuses solely on the proposed Church Road interconnection facilities.<sup>20</sup> This is in error, as it presumes the underlying environmental data for the entire project is complete, which it is not. This approach also impermissibly permits PennEast to segment the entire project to avoid complete consideration of the environmental impacts<sup>21</sup>, and limits the alternatives that should be considered for the entire Project.<sup>22</sup> Since PennEast seeks to sweep in the incomplete environmental analyses from the Project as a whole and FERC can no longer rely on landowner refusals as the basis for the missing information, FERC should require PennEast to submit the missing information. FERC should then remedy the flaws from the previous FEIS issued and avoid creating additional NEPA errors by conducting a new EIS for both Phase 1 and Phase 2 of the project. The new EIS should include reconsideration of the categories of resources NJDEP previously identified as missing information in addition to the environmental issues identified in FERC's February 28, 2020 Notice, and conduct a full alternatives analysis for both Phases.

One area wherein these concerns become clear is the amended application's treatment of historical resources. New Jersey's Historic Preservation Office (HPO) reviews projects for their effects on historic properties when federal funding, licensing, or permitting is involved. Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended<sup>23</sup>, requires federal agencies to consider the effects of their actions on historic properties. The HPO consults with federal agencies in identifying historic properties and avoiding or minimizing any potential adverse effects from federally funded, licensed, or permitted undertakings. FERC first initiated consultation with HPO pursuant to NHPA Section 106 when FERC issued the Notice of Intent to Prepare an Environmental Impact Statement on January 13, 2015. Section 106 consultation has continued since then and is still ongoing at this time. Based on its review of PennEast's amended application, however, HPO has significant concerns as to whether FERC can meet its NHPA obligations.

First, the 2018 Certificate was contingent on the fact that NHPA Section 106 consultation was ongoing. To meet its own Section 106 responsibilities, FERC's 2018 Certificate prohibited PennEast from beginning construction until additional surveys were completed, survey reports and treatment plans were reviewed by the consulting parties, and FERC provided written notification

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<sup>17</sup> See NJDEP comments to PennEast's application and environmental analyses submitted in FERC Docket No. CP15-558-000 dated July 2 and October 28, 2015, September 12 and December, 2016, and May 25 and July 17, 2017.

<sup>18</sup> PennEast Pipeline Company, LLC Order Issuing Certificates, 162 FERC ¶ 61,053 at ¶ 98 (Jan. 19, 2018).

<sup>19</sup> Although PennEast did not condemn the properties in which the State of New Jersey held an interest, *In re PennEast*, CITE, since NJDEP and the other State agencies permitted PennEast to conduct necessary surveys before the condemnation actions were filed, the failure of those actions has no effect on PennEast's ability to provide all relevant information to FERC.

<sup>20</sup> See Amended Application at 14-15.

<sup>21</sup> See *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014).

<sup>22</sup> 42 U.S.C. § 4332(C)(iii).

<sup>23</sup> 16 U.S.C. 470f.



to proceed.<sup>24</sup> Phasing the proposed project and permitting construction to proceed on half the project when the required consultation has not been completed on the other half directly conflicts with the 2018 Certificate conditions. Similarly, PennEast's plan to phase the implementation of the 2018 certificate route presupposes that PennEast will acquire all necessary State and federal permits for Phase 2, another condition from the 2018 Certificate before PennEast may begin construction.<sup>25</sup>

Section 106 of the NHPA also requires federal agencies to consider impacts and alternatives in a manner similar to NEPA. The Advisory Council on Historical Preservation promulgated regulations governing Section 106 of the NHPA's implementation which say adverse effects on historic properties may include reasonably foreseeable effects.<sup>26</sup> Such effects may occur later in time, be farther removed in distance, or be cumulative.<sup>27</sup> Like NEPA, Section 106 also requires federal agencies to consider the full range of project alternatives to avoid or minimize adverse effects on historic properties.

PennEast's proposal to split the certificated Project into two phases runs afoul of both NEPA and Section 106's required considerations. If FERC approves PennEast's application to split the certificated project into two phases as currently proposed, FERC would limit the consideration of cumulative impacts associated with the 2018 certificated project by narrowly focusing only on the impacts from the newly proposed Church Road facilities. Similarly, FERC would be precluded from considering the full range of alternatives to avoid or minimize harm to historic properties before Section 106 review is complete for both phases of the proposed project. By considering Pennsylvania's Phase 1 first without the full record of information available for the entire route and without all required federal and State permits in place, FERC impermissibly presupposes an outcome for Phase 2, which is again in conflict with NEPA and the NHPA. To avoid these issues, FERC should consider both Phases of PennEast's project simultaneously under a comprehensive analysis that considers all potential impacts to historic resources and mechanisms to avoid those impacts.

For the reasons outlined above, NJDEP urges FERC to consider both Phases of PennEast's proposed project together for need, environmental resource impacts, and impacts to historic resources, based on a full and complete record for the entire route. Should FERC insist on analyzing Phase 1 separately from Phase 2, then, minimally, FERC should undertake a complete suite of analyses – need, NEPA, and historic resources – for Phase 2.

Thank you for your consideration.

Sincerely,



Megan Brunatti, Program Manager  
Office of Permit Coordination & Environmental Review

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<sup>24</sup> PennEast Pipeline Company, LLC Order Issuing Certificates, 162 FERC ¶ 61,053, Environmental Conditions 47-51. (Jan. 19, 2018).

<sup>25</sup> PennEast Pipeline Company, LLC Order Issuing Certificates, 162 FERC ¶ 61,053, Environmental Condition 10. (Jan. 19, 2018).

<sup>26</sup> 36 C.F.R. § 800.5(a)(1).

<sup>27</sup> *Id.*; see also 40 C.F.R. § 1508.27(b)(7) (Council on Environmental Quality's NEPA regulations requiring reviewing agencies to review actions for cumulatively significant impacts).



The NJDEP Bureau of Evaluation and Planning (BEP) has reviewed the Environmental Assessment for PennEast's 2020 Amendment Project and has the following comments:

## **7.0 Air Quality and Noise**

### **1) Existing Air Quality**

The amended EA states, "Table B.7.2-3 presents the AQCRs in which various components of the 2020 Amendment Project would be located, along with the current attainment status listed in 40 CFR 81 for each pollutant." Table B.7.2-3 Attainment Status for 2020 Amendment Project Components lists Hunterdon NJ (Holland, Alexandria, Kingwood, Delaware, West Amwell) in marginal nonattainment for the 2008 National Ambient Air Quality Standard (NAAQS).

#### **Comment #1**

New Jersey's northern nonattainment area (New York - Northern New Jersey - Long Island, (NY-NJ-CT), which includes Hunterdon County was reclassified from "marginal" to "moderate" nonattainment for the 2008 8-hour ozone standard effective June 3, 2016 (Fed. Reg. Vol. 81, No.86) and then again from "moderate" to "serious" nonattainment effective September 23, 2019 (Fed. Reg. Vol. 84, No. 164). Please revise Table B.7.2.3 Attainment Status for 2020 Amendment Project Components, to reflect the current ozone nonattainment classification of "serious" for Hunterdon County.

### **2) 7.3 General Conformity**

The amended EA states, "With regard to the 2020 Amendment Project, the relevant general conformity pollutant thresholds are shown in Table B.7.3-1. These thresholds are based on the current air quality designations (e.g. serious nonattainment, moderate nonattainment, maintenance, etc.)."

#### **Comment #2**

Table B.7.3-1 (General Conformity Applicability Evaluation for the 2020 Amendment Project), indicates that the de minimis levels for Hunterdon County for ozone are 100 tpy for NOx and 50 tpy for VOC, which is consistent with the marginal and moderate nonattainment classifications. Section 93.153 (Applicability) (b)(1) of the Federal General Conformity regulation states that for a "serious" nonattainment area for ozone the de minimis level for NOx or VOC is 50 tpy.

**3)** The amended EA states, "All construction emissions for Phase 1 and Phase 2 of the 2020 Amendment Project were conservatively assumed to occur in a single calendar year as demonstrated in the 2020 Amendment application. ...Based upon this assumption, emission estimates for the construction would not exceed general conformity applicability thresholds."

#### **Comment #3**

Comment #1 and #2 apply to this portion of the project.

The NOx emission estimates for Hunterdon County in Table B.7.3-1 (General Conformity Applicability Evaluation for the 2020 Amendment Project) are listed as 72.6 tons. Table B.7.3-2, (Comparison of General Conformity Emissions for the Original FEIS, 2019 Amendment, and 2020 Amendment Project), lists the NOx emission estimates for the approved (15-558) FEIS project construction as 20.2 tons. New

Jersey's northern nonattainment area is in "serious" nonattainment. Since PennEast is requesting to modify the project so that construction will take place in two phases, the "serious" nonattainment de minimis level of (50 tpy for NOx or VOC) must be used for Hunterdon County because the emission estimates have increased since the original project was approved.

Based on Section 93.157 (Reevaluation of Conformity) of the Federal General Conformity regulation, a reevaluation of conformity is required if any modification to the action results in an increase in emissions above the applicable levels for the nonattainment area based on classification as specified in Section 93.153 (b). This applies to the 2020 Amendment project.

Please prepare an Applicability Analysis and Conformity Determination (if necessary) using the "serious" nonattainment de minimis levels. Please revise Tables B.7.3-1 (General Conformity Applicability Evaluation for the 2020 Amendment Project) and B.7.3-2 to (Comparison of General Conformity Emissions for the Original FEIS, 2019 Amendment, and 2020 Amendment Project ) to reflect the "serious" nonattainment de minimis levels of 50 tpy for NOx or VOC.

#### **4) 7.3.2.1 Construction Emissions and Mitigation/Table B.7.3-3/Table B.7.3-4**

The amended EA states, "Fuel combustion emissions from off-road construction equipment and on-road vehicles were estimated using EPA's MOVES2014 model. For each equipment type, MOVES2014 can generate specific emission factors, which take into account such information as regional meteorology, regional equipment mix, and the calendar year of activity."

#### **Comment #4**

Please provide the backup material (including methodology, sample calculations, assumptions, emission factors, activity levels, etc.) for the construction emission estimates found in Table B.7.3-3 (Construction Emissions for Phase 1 of the 2020 Amendment Project) and Table B.7.3-4 (Construction Emissions for Phase 2 of the 2020 Amendment Project).

The latest version of the MOVES model is MOVES2014b. Please use this version when preparing the emission estimates.