

New York State Department of Environmental Conservation

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Joe Martens
Commissioner

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

November 7, 2012

RE: Case No. PF 12-9/ New York State Department of Environmental Conservation (NYSDEC) Comments on the Scope of Environmental Impact Statement for the Constitution Pipeline Project.

Dear Secretary Bose,

The New York State Department of Environmental Conservation (NYSDEC) respectfully submits the following comments in response the Federal Energy Regulatory Commission (FERC) *Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Planned Constitution Pipeline Project, (Project) Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*, dated September 7, 2012. Since the majority of the Project is proposed to be located in New York, a thorough evaluation of all impacts, including cumulative impacts to New York's resources, is warranted.

Project Description

As proposed, the Project would include new construction of approximately 120.6 miles of a 30-inch-diameter pipeline and associated pipeline facilities, providing about 650,000 dekatherms per day (Dth/d) of natural gas from two receipt points in Susquehanna County, Pennsylvania to two new delivery points in Schoharie County, New York. The majority of the Project would be located in New York and is proposed to be approximately 97.9 miles in length routed through Broome, Chenango, Delaware and Schoharie Counties. Constitution Pipeline Company, LLC (Project Sponsor) provided a number of routing segments and recently developed an alternative route at the request of the FERC which generally parallels New York Interstate 88 for a substantial portion of the route.

NYSDEC Review and Approvals

In accordance with Section 401 of the Clean Water Act, applicants seeking a Federal license or permit for activities that may result in a discharge to navigable waters must obtain a Water Quality Certification (WQC) from NYSDEC indicating that the proposed activity will comply with State water quality standards. Federally-delegated or authorized permits, such as a Title V permit for the proposed compressor station, and a State Pollution Discharge Elimination System (SPDES) Stormwater Permit for Construction Activities, must also be approved and granted by NYSDEC. The Project Sponsor will also be expected to apply for applicable State law permits as relevant to the resources impacted by the project proposal. Along with the permit applications, the NYSDEC also intends to rely upon the federal environmental review prepared

pursuant to the National Environmental Protection Act to determine if the Project will comply with the applicable New York State standards.

Water Resources, Fisheries, and Wetlands

Stormwater Runoff and Erosion: The EIS must provide detail sufficient for NYSDEC to make a determination regarding the applicability of the SPDES Stormwater General Permit for Construction Activities (GP-0-10-001) (General Permit) to the proposed Project, or whether an individual SPDES Permit would be required. A linear utility construction project of this nature may be granted authorization under the SPDES General Permit. However, Part 1, Section D.7, of the General Permit does not authorize discharges from construction activities for linear utility projects that: a) are tributary to waters of the state classified as AA or AA-s; and b) disturb two or more acres of land with no existing impervious cover and where the Soil Slope Phase is identified as an E or F on the USDA Soil Survey for the County in which the disturbance will occur.

Additionally, Section D.4 of the General Permit does not authorize discharges from construction activities that adversely affect listed, or proposed to be listed, endangered or threatened species or its critical habitat. Furthermore, Section D.8 does not authorize construction activities that adversely affect property that is listed or is eligible for listing on the State or National Register of Historic Places (including Archeological sites), unless a written agreement is in place with the NYS Office of Parks, Recreation and Historic Preservation or other governmental agencies to mitigate the effects, or if local land use approvals evidencing the same are obtained. If the Project will include any of the activities described above, an individual SPDES Permit must be granted by NYSDEC for the entire length of the Project within New York State.

A preliminary Stormwater Pollution Prevention Plan (SWPPP) must be included as an appendix to the draft EIS, describing the proposed erosion and sediment control practices and, where required, post-construction stormwater management practices, that will be used and constructed to reduce the pollutants in stormwater discharges. Of particular concern in certain areas along the proposed Project route is the existence of karst topography, which warrants additional considerations in preparation of the SWPPP to ensure that by-products of the construction process do not enter karst inlets, including exposed soil, fuel, oil, hydrologic fluids and other construction-related chemicals. Work in and around streams, wetlands and karst inlets (including discharge of water withdrawn from surface water or groundwater for hydrostatic testing) must employ Best Management Practices (BMPs) to ensure that water quality standards are maintained. Strict attention to proper installation and maintenance of sediment and erosion controls in these areas is critical. Methods for maintaining water quality should include isolating work areas (e.g. piping, coffer dam, pumping around) from the flowing waters to ensure that work is accomplished in the dry such that no visible contrast to waters outside and downstream of the work site is apparent.

The draft EIS should discuss and evaluate how the various erosion control techniques described in the SWPPP will be coordinated within the construction schedule to avoid the potential for catastrophic erosion events witnessed by NYSDEC staff in previous pipeline installations. For example, extensive time delays between vegetation clearing/grubbing, initial

grading of the right-of-way (ROW) and actual installation of the pipe must be avoided and temporary mulching or the use of wood chips for ROWs should be evaluated. It is recommended that only a limited length of the Project development area be opened up at any one time. Where forest cover will be removed, it is also recommended that stump removal and grubbing not be conducted until installation crews are ready to work in that area.

Water Withdrawals: The draft EIS must evaluate water withdrawals that would exceed 100,000 gallons per day (gpd), either from surface or groundwater, and procedures to ensure that water withdrawals less than 100,000 gpd do not compromise the required bypass flow (the minimum stream flow at any particular stream point necessary to protect fisheries resources). If proposed NYSDEC regulations pertaining to water withdrawals that exceed 100,000 per day become effective prior to the start of project construction, withdrawal reporting or permit application obligations or updated withdrawal reporting may be required.

Wetlands: The draft EIS should evaluate wetland impacts that would result from construction of the proposed and alternate routes, including avoidance and minimization measures that would be employed. If proposed construction in wetlands could result in a significant change in the type of wetland community (such as conversion of forested to non-forested wetland) or in a significant loss to the functions and benefits of the wetland, mitigation in the form of created wetlands or other acceptable measures would be required and should also be evaluated.

Stream Crossings: The draft EIS must describe the classification of all stream segments proposed to be crossed, including alternative segments, and discuss the proposed method for crossing for each segment. All waters of the State are provided a class and standard designation based on existing or expected best usage; these classifications include AA, A, B, C(t) and (Cts) which are classified as "protected." NYSDEC is currently reviewing stream classifications in NYSDEC Regions 4 and 7. An initial review of the preferred Project route shows that seven stream sections currently classified as "unprotected" would meet criteria for protected status, either as C(t) and (Cts). It is recommended that the Project Sponsor consult with the NYSDEC Division of Fish, Wildlife and Marine Resources in the preparation of the EIS related to this issue.

For streams and wetlands the preferred method for crossing is Horizontal Directional Drilling (HDD) because it has the advantages of minimizing land disturbance, avoiding the need for dewatering of the stream, leaving the immediate stream bed and banks intact, and reducing erosion, sedimentation and Project-induced watercourse instabilities. The draft EIS should also evaluate cases where other methods are proposed, for instance the Project Sponsor should explain why HDD will not work or is not practical for that specific crossing. Where HDD will be utilized, the Project Sponsor should: ensure that HDD staging areas remain outside of regulated boundaries (e.g., state-wetland 100 foot adjacent area and 50 feet from protected streams); describe the typical work area required and protective measures that will be used to limit runoff of sediment and HDD fluids into streams and wetlands; and develop contingency plans for any HDD failure that results in sediment and/or drilling fluid entering a wetland or stream.¹

¹ It is important to note that where HDD cannot be utilized, in-stream work for streams with a standard of Tor TS is permitted by NYSDEC only between the dates of June 15th to September 30th.

The draft EIS should evaluate instances where the bed or bank of a stream is disturbed and discuss the use of "Natural Stream Design" techniques and structures for restoration of the area instead of extensive use of rip-rap.² Many of the structures utilized to stabilize stream banks can also serve to enhance in-stream habitat for fish. Where the pipeline crosses under a stream, there should be an extended length on each side of the bank where the pipe is buried deeper.³

Air Quality

The draft EIS should evaluate the Project facility description and source information used to calculate the anticipated air emission levels from operation of the facility, including the Best Available Control Technology (BACT) analysis for NO₂ and CO₂ equivalents and the modeling protocol for NO₂ and formaldehyde. Further, methane emissions from both emissions/leaks from compressor stations and from pipeline leaks should be evaluated, and the Project Sponsor should identify measures that it will employ to ensure minimization of any such methane emissions.

As proposed, the compressor station would require a Title V permit and is subject to Prevention of Significant Deterioration requirements due to anticipated CO₂ equivalents emissions levels. The Title V permit would require BACT for CO₂. All other criteria air pollutants emission levels are anticipated to be below Attainment and Nonattainment Major New Source Review thresholds; however NO₂ emissions are expected to be greater than the 40 TPY significant project thresholds. Accordingly, air modeling must be conducted to demonstrate that NO₂ emissions from this facility will not cause or contribute to a violation of the NO₂ National Ambient Air Quality Standard; modeling for projected formaldehyde emissions should also be conducted.

Land Use

State Land: NYSDEC is opposed to any disturbance to State Forest lands and the draft EIS should include maps, at an appropriate scale, that show the proposed routing alternatives and their proximity to State land. Although the proposed route was reportedly chosen to avoid crossing State land, alternative route segments under consideration would in fact cross land owned by the State.

Forest Tax Law Program: The draft EIS should evaluate the adverse implications of timber removal along the preferred or alternate routes on land enrolled in the Forest Tax Law Program (Real Property Tax Law 480-a), and outline procedures that should be followed to ensure that affected landowners are not inadvertently penalized. Private landowners who are enrolled in the Forest Tax Law Program will be impacted if the Project crosses private lands. Specifically, construction resulting in the removal of timber resources on property enrolled in this program may subject the landowner to violations and penalties if not addressed correctly. As such, landowners must be fully aware of the impacts and process for withdrawing land from the program to avoid any serious tax implications.

² See <http://www.dec.ny.gov/permits/49060.html>.

³ NYSDEC has witnessed pipeline installations where pipeline became exposed because stream water flowed behind the installed rip-rap and exposed the shallow section of pipe adjacent to stream. Extending the setback of the deep bury would provide a significant buffer against this scenario.

ROW Clearing and Disposal Methods: The methods and rationale for cutting and disposition of timber and vegetation, and any use of open burning, should be evaluated in the draft EIS. As a first priority, merchantable timber should be harvested for lumber; secondarily, timber should be harvested for firewood in accordance with NYSDEC's regulations pertaining to the movement of firewood and quarantine areas related to the Emerald Ash Borer infestation.⁴ Clearing crews should be trained to identify and report the Asian Long-horned Beetle, the Emerald Ash Borer, and any other insect that NYSDEC identifies as a potential problem along the proposed route. Further, any use of open burning for disposal of wood waste should be evaluated relative to requirements in 6 New York Codes, Rules and Regulations (NYCRR) Part 215 including seasonal prohibitions on all open burning between March 15 and May 15 to limit the risk of wildfires.

Vegetation and Wildlife

Invasive Species: An invasive species control plan should be included within the Project construction/work plan section of the draft EIS. In order to address the potential impacts from invasive species, the plan should document BMPs that will be utilized to prevent the spread of invasive species between work sites, including the potential transport from withdrawal water sources to the receiving water body during hydrostatic testing. The plan should incorporate conducting preconstruction wetland and stream corridor habitat surveys to document population/percentage of invasive species present within the Project ROW so that post construction monitoring and an evaluation of increased populations resulting from Project construction can be accomplished.

Rare, Threatened, and Endangered Species

The draft EIS should provide and evaluate general information regarding the presence of any federal or State-listed rare, threatened or endangered (RTE) species or critical habitat areas, taking into consideration that detailed information about the location of known occurrences of RTE species may be confidential. Before including any sensitive RTE information in the draft EIS, the Project Sponsor should consult with NYSDEC staff and the United States Fish and Wildlife Service (USFWS). A description of proposed field surveys for RTE species and/or habitat, measures to avoid impacts to RTE species such as re-routing work areas, a discussion of the use of physical barriers such as fencing and warning signs, and seasonal timing of construction work should be included in the draft EIS. If RTE species are present and would be permanently impacted, proposed habitat mitigation for these impacts should also be described in the draft EIS.

The draft EIS should also describe proposed contingency plans that will be put in place if an unanticipated encounter with an RTE species occurs during construction activities, including: training for workers; providing stop-work authority for the environmental monitor; ensuring proper handling of the RTE species; and reporting to the appropriate resource agency. Further, the draft EIS should include records of State or federal agency consultation, including any

⁴ See 6 NYCRR Section 192.5.

requests to the New York Natural Heritage Program for RTE information along the proposed and alternate routes, if these do not contain confidential information.

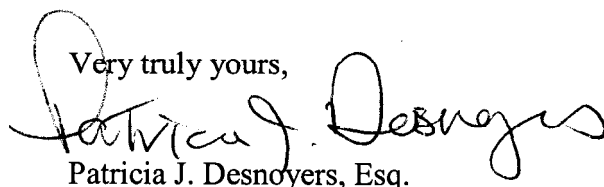
Cumulative Impacts

Finally, the draft EIS must evaluate whether the pipeline would be reasonably available for supply and distribution for communities along the pipeline route and whether the pipeline could reasonably serve as a collector line for additional supply from New York Marcellus and Utica Shale formations. Since the location of the proposed Project route has a high potential for development of natural gas extraction from Marcellus and Utica Shale formations, as indicated in the revised *NYSDEC draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program*, September 7, 2011, the draft EIS must evaluate the cumulative environmental impacts associated with these potential activities.

The draft EIS discussion should include the applicable procedures and requirements for the potential aforementioned activities and their associated Project upgrades and modifications. At a minimum, the draft EIS should describe and evaluate the following: 1) if the pipeline supply is available to additional customers along the route, describe what additional facilities or upgrades would be needed (i.e., additional compressor stations, metering stations) and their associated environmental impacts; 2) discuss whether additional suppliers could be accommodated by this pipeline with and without a need for pipeline upgrades should drilling and production occur in areas serviceable by the pipeline and describe their associated environmental impacts; and 3) discuss the FERC approval process relating to system upgrades or modification such as additional compressor stations, lateral collection and distribution lines.

Thank you for your consideration of these important issues and please contact me if you have any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia J. Desnoyers". The signature is fluid and cursive, with the first name "Patricia" and last name "Desnoyers" clearly distinguishable.

Patricia J. Desnoyers, Esq.

Cc: S. Tomasik

Document Content(s)

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