**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

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| Transcontinental Gas Pipe Line Company LLC | ) | Docket Nos. CP17-101- |
| | ) | CP20-49- |

**PROTEST AND MOTION TO INTERVENE BY CENTRAL JERSEY SAFE ENERGY COALITION, FOOD & WATER WATCH, NEW JERSEY LEAGUE OF CONSERVATION VOTERS EDUCATION FUND, NY/NJ BAYKEEPER, PRINCETON MANOR HOMEOWNERS ASSOCIATION, SIERRA CLUB, AND SURFRIDER FOUNDATION**

Transcontinental Gas Pipe Line Company, LLC's ("Transco") petition ("Petition") to reissue the certificate of public convenience and necessity for the Northeast Supply Enhancement Project (the "Project") to the Federal Energy Regulatory Commission's ("FERC" or the "Commission") should be denied as inconsistent with the Natural Gas Act ("NGA") and FERC's regulations. The Commission's rules and precedent do not allow companies to abandon and then resurrect expired certificates. Further, any record that exists before FERC is insufficient to establish that there is a need for the Project. The Commission also has not adequately addressed the Project's potential environmental impacts. The NGA requires a substantive FERC process to establish that the project is required by the public convenience and necessity. Transco has failed to establish any basis for skipping that process. The Commission must deny the Petition and require that Transco submit a new application that can be evaluated as required by the NGA. Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation also all move to intervene in the above-captioned dockets and in any new docket FERC creates to properly evaluate a new application from Transco.[1]

## I. Background

Transco submitted its initial application for the Project in March 2017. The Project would have included (1) constructing a new compressor station in Somerset County, New Jersey, (2) increasing pipeline pressure and capacity in certain existing pipelines in New Jersey and Pennsylvania, and (3) constructing almost 27 miles of new pipeline from Sayreville, New Jersey, across the Raritan and Lower New York Bays to a hookup off of Rockaway Beach, New York. FERC issued a Final Environmental Impact Statement ("FEIS") for the Project in January 2019, concluding that significant adverse environmental impacts could be mitigated adequately by the adoption of various conditions. On May 3, 2019, FERC issued a certificate of public

[1] Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation reiterate and/or join in the request to extend the comment period on Transco's Petition to ensure that all affected community members and entities have sufficient time to provide FERC with input on Transco's extraordinary request. *See Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101, Comment by New Jersey League of Conservation Voters et al. (June 20, 2025), Accession No. 20250620-5300.

convenience and necessity for the Project, which was conditioned upon Transco's receipt of all applicable authorizations, including the Clean Water Act Section 401 certifications ("Section 401 certifications") from New York and New Jersey. The certificate also required that Transco complete construction and put the Project into service by May 3, 2021.

In May 2020, New York and New Jersey each denied Transco's application for the Section 401 certifications.[2] In particular, New York concluded that Transco had failed to demonstrate that the offshore portion of the Project would be consistent with water quality standards. Transco did not appeal those denials and did not contemporaneously file any new applications seeking to obtain the missing Section 401 certifications. Instead, on March 19, 2021, Transco submitted a request to FERC under 18 C.F.R. § 385.2008(a) for a two-year extension of the certificate's in-service deadline. FERC granted Transco's request and extended the deadline to May 3, 2023. 175 FERC ¶ 61,148 (2021).

On April 7, 2023, still having failed to reapply for or secure the Section 401 certifications, Transco asked FERC for another two-year extension to its in-service date. The Commission asked Transco for additional information about the steps that Transco had taken to obtain the Section 401 certifications and Transco confirmed that it had not taken any steps, except to examine "how it might revise the scope of the project facilities to avoid impacts to offshore water resources." Order Granting Extension of Time, 186 FERC ¶ 61,038, P 13 (Jan. 18, 2024). Despite Transco's failure to litigate the states' denials or to reapply for water quality certifications, FERC found that good cause existed to grant Transco's request, but only for one year. The Commission noted that it was "concerned" that Transco had not submitted new applications under the Clean Water Act and had stopped paying for property easements rights that were necessary to complete the Project. *Id.* at P 17. The Commission anchored its decision in the finding that the Project was "still supported by two long-term precedent agreements with National Grid for one hundred percent of the project's capacity." *Id.* at P 16. FERC concluded that Transco's "continued commitment to the National Grid contracts and revising the project in response to the New York and New Jersey water quality permit denials supports our action." *Id.* at P 17.

Despite Transco's prior assurances to FERC, on April 10, 2024, Transco informed FERC that it planned to let the Project certificate expire. Therefore, on June 10, 2024, the Commission vacated the Project's certificate and dismissed as moot a rehearing request then pending. 187 FERC ¶ 61,145. The precedent agreements Transco had signed with its two shippers also lapsed.

## II. Protest

Transco's Petition[3] purports to be a "Petition to Reissue" but it is really a request to extend the in-service deadline for a certificate that Transco abandoned and the Commission vacated. Transco's novel choice of caption should not distract the Commission from the fact that

[2] Letter from Diane Dow, Div. Land Use Regul., N.J. Dep't Env't Prot., to Joseph Dean, Transco (May 15, 2020) attached hereto as **Exhibit A** ("NJ 401 Denial"); Letter from Daniel Whitehead, Div. Env't Permits, N.Y. State Dep't Env't Conservation to Joseph Dean, Transco (May 15, 2020), attached hereto as **Exhibit B** ("NY 401 Denial").

[3] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP-17-101 & CP20-49, Petition for Expedited Reissuance of Certificate Authority (May 29, 2025), Accession No. 20250529-5275 ("Petition").

Transco's request is without precedent and inconsistent with FERC's rules and prior orders, including its order in this docket extending Transco's deadline by only one year to May 3, 2024. Transco has provided no basis for having FERC break with its longstanding approach to enforcing in-service deadlines. FERC should deny the Petition and direct Transco to file a new application if it wishes to pursue the Project.

Even if Transco's request were procedurally proper—which it is not—the record before the Commission would not justify granting Transco a new certificate, because Transco has not shown that the Project is required by the public convenience and necessity. Transco has not secured customers for the Project. Since FERC granted the original certificate in 2019, important facts have changed that require additional investigation and analysis.

Similarly, Transco's Petition does not establish that there is an emergency that would justify expediting FERC's standard process, let alone any facts that would compel FERC to make a decision within a matter of months. FERC must ensure that the Project is required by the public convenience and necessity and must take the time needed to do so.

## A. There Is No Legal Basis for "Reissuing" a Certificate that FERC Vacated After the Applicant Abandoned It.

FERC's regulations do not allow an applicant to abandon a project and then seek to resuscitate it under the same certificate. The Commission's regulations establish a presumption that extensions to certificate in-service dates should be requested before the certificate expires—and if an applicant does so request, it must demonstrate "good cause" for its failure to place the project into service by the deadline. But if the deadline has lapsed, the applicant must meet a higher standard and show "extraordinary circumstances sufficient to justify the failure to act in a timely manner." Transco does not meet that standard and does not even attempt to argue that it does. The Commission must adhere to its longstanding and well-reasoned approach to providing competitors, landowners, and the public with a predictable and stable system of deadlines. Nothing in Transco's Petition supports such a significant departure from the Commission's rules and practice, nor does a declaration of a purported emergency. FERC must deny the Petition.

### 1. The NGA and FERC's Regulations Do Not Allow for the Reissuance of Transco's Certificate.

The NGA and FERC rules do not allow for the reissuance of abandoned and expired certificates and the authorities Transco's Petition cite do not establish otherwise.[4] Indeed, FERC's certificates include in-service deadlines that cannot be extended outside of certain narrow circumstances to provide "a reasonable period of time for the project sponsor to complete construction" without leaving the time for putting the project into service unbounded and undefined. *See Sierra Club v. FERC*, 97 F.4th 16, 20 (D.C. Cir. 2024) (quoting *Nat'l Fuel Gas*

[4] *See* Petition at 2. Transco cites to Rule 207 of FERC's Rules of Practice, which pertains only to petitions more broadly and does not specifically contemplate a petition for reissuance of an expired certificate. *See* 18 C.F.R. § 385.207. Transco also cites to Section 7(c) of the NGA, 15 U.S.C. § 717f(c), and Part 157, Subpart A of FERC's regulations, 18 C.F.R. pt. 157, subpart A, which give FERC the ability to issue temporary certificates in cases of emergency but say nothing about reissuing expired certificates.

*Supply Corp.*, 179 FERC ¶ 61,226, P 10 (2022)). Adherence to certificate deadlines serves three important functions. First, to protect "the information supporting FERC's public convenience and necessity determinations from going stale with the passage of time." *Id.* (quoting *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138, P 16 (2020)). Second, to prevent neighboring landowners from indefinitely being unable to use their land in manners that might be incompatible with a project. *Id.* (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 10 (2012)). Third, to "prevent developers from holding on to certificates for so long that they 'inhibit a potential competitor from pursuing its own project to serve the same market.'" *Id.* (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 9).

To ensure that the purposes of in-service deadlines are preserved, FERC's regulations only provide for limited opportunities to extend in-service deadlines. If the deadline has yet to lapse, an applicant must show "good cause." 18 C.F.R. § 385.2008(a). Where the in-service deadline has expired, an applicant must show "extraordinary circumstances sufficient to justify the failure to act in a timely manner." *Id.* § 385.2008(b). But there is no regulation or precedent for reissuing a certificate after the in-service deadline has expired and the certificate has been both abandoned by the proponent and vacated by FERC. None of the authorities Transco cites provide for the relief it seeks.[5] In the period of time since FERC vacated the certificate, landowners and competitors alike will have reasonably relied on the Project being defunct to make new plans. Having taken the overt step to desert its pipeline proposal, Transco cannot un-ring the bell and circumvent FERC's rules and procedures. The Commission's regulations and precedent simply do not allow an applicant to resurrect a certificate for a project that it abandoned after the in-service deadline has passed.

Despite Transco's attempt to style its Petition as a relatively novel request to reissue its certificate, it is in effect a request to extend the in-service deadline on an expired certificate. However, Transco does not meet the regulatory standard for granting such a request. Transco does not even try to argue, nor could it, that its own decision to abandon the project and let its certificate expire more than a year ago would constitute "extraordinary circumstances." Both FERC and the D.C. Circuit have repeatedly emphasized that the granting and upholding of extension requests is contingent on finding that the project sponsor demonstrated diligence in continuing to pursue the project. *See, e.g.*, *Appalachian Voices v. FERC*, No. 24-1094, 2025 WL 1600153, at *1, *8 (D.C. Cir. June 6, 2025) (upholding FERC's grant of an extension where the court agreed that the applicant demonstrated no intent to abandon the project); *Sierra Club v. FERC*, 97 F.4th at 19. FERC again made this point in its decision to partially grant Transco's second extension, stating "[a]ny further extension would require further demonstration by Transco that it has not 'set its authorization on a shelf and let it lie dormant.'" 186 FERC ¶ 61,038, P 17. But not only has Transco let it lie dormant, it affirmatively abandoned the project. Transco informed FERC that it intended to let the certificate expire, did nothing to stop FERC from vacating the certificate, and let its precedent agreements lapse.

Even before that point, FERC noted "concern" that Transco had not done more to challenge the states' denials of its Section 401 authorizations or reapply anew and had let a critical property easement lapse. The Commission, however, took solace in the fact that the

[5] Notably, the cases that Transco cites in footnote 27 of the Petition involve requests for extensions where the deadline had not lapsed and the applicant had not abandoned its project.

precedent agreements were still in place and that the company was pursuing plans to redesign the project to avoid the offshore impacts that led to the denial of the Section 401 authorizations. *Id*. Transco's Petition makes clear, however, that the company (1) did nothing to allay the Commission's concerns about its failure to pursue new Section 401 certifications for years, (2) does not have precedent agreements in place anymore, and (3) is proposing the "same" Project and did not redesign it to avoid the offshore impacts that led to the denial of its Section 401 certifications. Transco admits in its Petition that it still does not have the necessary easements in place for two tracts of land in New Jersey.[6] In short, based on the Commission's 2024 order, even under the lesser "good cause" standard that the Commission was using to evaluate Transco's 2023 application for an extension, FERC would have denied the request if it had been presented with the instant facts.

Transco's Petition does not cite any additional provisions that would justify granting its request to resurrect a defunct certificate, nor could it.[7] Its claims that it is consistent with the Certificate Order to reauthorize NESE because other projects have had in-service dates of up to nine years from the date of certification ignores two of the three key justifications FERC has for in-service deadlines discussed above. That some projects have been given a lengthier in-service window does not support a radical departure from FERC's rules and precedent. Nor does it justify the whiplash to landowners, competitors, regulators, and communities that Transco's request to suddenly reanimate a defunct certificate would cause. Granting Transco's novel request here to resurrect an abandoned and vacated certificate would upend FERC's longstanding approach to ensuring that Commission decisions are undertaken in a manner that provides predictability and fairness to affected landowners and competitors, not to mention the requirement under the NGA that the applicant demonstrate that the project is required by the public convenience and necessity. Transco made the decision to drop its project and, having done so, its only option should be to file a new application. To allow otherwise would overturn years of FERC precedent and cause regulatory uncertainty by opening the door for any number of other failed and abandoned projects to be resurrected.

### 2. The Executive Order Declaring an Energy Emergency Does Not Provide a Basis for Granting Transco's Petition.

President Trump's Executive Order ("EO") declaring a national energy emergency does not alter the reality that Transco's Petition is at odds with the Commission's regulations and precedent implementing its NGA authority. "[A]n executive order is not 'law' within the meaning of the Constitution . . . ." *California v. EPA*, 72 F.4th 308, 318 (D.C. Cir. 2023). "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). Article II of the Constitution, to the contrary, directs the President to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Thus, even if the President's EO did identify any real emergency—which it does not, *see infra* Section B—the President's declaration does not enlarge the powers executive agencies hold beyond the authorities given to them in existing statutes. *Sierra Club v. Trump*, 977 F.3d 853, 864–65 (9th Cir. 2020), *vacated on other grounds*, *Biden v. Sierra Club*, 142 S. Ct.

[6] Petition at 17.

[7] The Commission's Rule 716 does allow for reopening a proceeding, but only to reopen the evidentiary record in proceedings set for a hearing, which is not applicable here. *See* 18 C.F.R. § 385.716.

56 (2021); *see also Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11 (D.D.C. 2020) (reviewing actions taken by the Department of Defense pursuant to a presidential declaration of a national emergency to ensure consistency with existing statutes). As discussed above, neither the NGA nor FERC's regulations provide the Commission with the basis to reissue a certificate that the applicant abandoned and FERC vacated, a reality that an EO cannot change.

**B. The Record Before the Commission Does Not Establish that the Project Is Required by the Public Convenience and Necessity.**

Despite Transco's claims to the contrary, since it abandoned its certificate key elements have changed that make it premature for Transco to even be applying for a new certificate, let alone be issued a new one. Primarily, Transco has not established Project need. The company admits that the original precedent agreements were terminated once FERC vacated its certificate. Petition at 8. In granting the second extension, FERC based its decision that the project was still required by the public convenience and necessity, in part, on the fact that Transco still had long-term firm transportation precedent agreements with terms "extend[ing] far beyond May 3, 2024, and there [wa]s no evidence in the record that either shipper intends to cancel their contract." 186 FERC ¶ 61,038, P 19. Those agreements no longer exist, and although Transco claims to be negotiating with its previous shippers, *id.* at P 5, the mere existence of negotiations is not the same as having precedent agreements.

FERC has made it clear in docket after docket that precedent agreements are *significant* evidence of need. Certification of New Interstate Natural Gas Pipeline Facilities Policy Statement, 88 FERC ¶ 61,227, 61,748 (1999); *see, e.g.*, *Trunkline Gas Co.*, 147 FERC ¶ 61,041 at P 20 (2014). The Commission has concluded that "the level of subscription of a project's capacity is a fundamental consideration that goes into project design and financing before a company submits an application to the Commission." *Transcontinental Gas Pipe Line Co., LLC*, 190 FERC ¶ 61,048 P 29 (2025) (citing *Tex. E. Transmission, LP*, 163 FERC ¶ 61,020, at PP 17-19 (2018)). As FERC recently declared, the Commission believes that:

> Although [p]rojections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states, precedent agreements for long-term firm service represent actual evidence regarding demand. In short, it is the Commission's policy that precedent agreements are the best evidence that the service to be provided by the project is needed to connect supply and demand.

*Id.* at P 29 (internal citations omitted). There are no precedent agreements in place here anymore, and Transco is lacking; therefore, what the Commission repeatedly has stated it considers the "best" evidence that the Project is needed.

Nothing else in Transco's Petition demonstrates need for the Project, particularly in the absence of any precedent agreements. The EO declaring an energy emergency does not establish Project need. Nothing in the EO establishes the existence of a genuine energy emergency, let

alone one that would demonstrate the specific need for this Project. The EO claims that there is insufficient domestic energy supply and grid unreliability, but those allegations are contradicted by government research[8] and independent assessments.[9] U.S. energy production and *exports* are also at all-time highs.[10] The lack of factual underpinning of any real emergency is evident from the EO's own internally inconsistent approach of claiming domestic energy shortages while directing federal agencies to increase energy exports.

The EO's claims that there are energy-related problems that are particularly pronounced in the Northeast are also not supported by any citations or facts. *See Declaring a National Energy Emergency* 90 Fed. Reg. 8,433 (Jan. 29, 2025). While the EO appears to disagree with New York's and other Northeast states' efforts to duly enact state laws to curb climate pollution, that does not change the nature of the showing Transco must make to establish need under the NGA.

While Transco claims that the record before FERC from the prior proceeding establishes need, much has changed since FERC's original determination. Transco points to supportive statements by the former Project Shippers, which are now more than seven years old.[11] Filings made with the New York Public Service Commission demonstrate that the parent company of those shippers did not even know that Transco planned to resurrect NESE until very recently and requires additional time to evaluate how the Project's capacity would affect its long-term planning.[12] Other changes include the expansion of regional gas transmission capacity that has come online in the area, as well as multiple changes in forecasted demand for gas. New York City, which forms part of the area that the Project would serve, enacted Local Law 154, N.Y.C. Admin. Code § 24-177.1, which prohibits the installation of natural gas in newly constructed buildings and is expected to reduce demand in the downstate part of New York by 35 MDth/day in Winter 2027/28 and by 127 MDth/day by Winter 2035/36.[13] Even Transco's own submissions belie the claim that the market for gas has remained constant—Transco's Petition refers to the potential to serve power generation needs, but the Project Shippers that signed precedent agreements before were local distribution companies, whose customers are not power generators. And especially because the customers of local distribution companies are captive ratepayers, FERC must duly consider all the evidence regarding whether the Project will serve a public need. *See New Jersey Conservation Foundation v. FERC*, 111 F.4th 42, 59-62 (D.C. Cir. 2024).

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[8] *See, e.g.*, Nat'l Renewable Energy Lab'y, *Explained: Reliability of the Current Power Grid* (Jan. 2024), https://docs.nrel.gov/docs/fy24osti/87297.pdf.

[9] *See, e.g.,* Mark Dyson & Lauren Shwisburg, Rocky Mountain Inst., *Reality Check: Electricity Load Growth Does not Have to Undermine Climate Goals* (Sept. 16, 2024), https://rmi.org/reality-check-electricity-load-growth-does-not-have-to-undermine-climate-goals/; Energy Innovation, *The Future of Operational Grid Reliability Can Be Bright with Clean Energy* (Oct. 5, 2023), https://energyinnovation.org/expert-voice/the-future-of-operational-grid-reliability-can-be-bright-with-clean-energy/.

[10] U.S. Energy Info. Admin., *Short-Term Energy Outlook* (Feb. 11, 2025), https://www.eia.gov/outlooks/steo/data/browser.

[11] *See, e.g.*, Petition at nn. 11–12.

[12] Letter from Philip DeCicco, National Grid to Michelle Phillips, N.Y. State Public Service Comm'n (June 2, 2025) (attached hereto as **Exhibit C**).

[13] *See* National Grid, *Final Gas System Long-Term Plan: Case No. 24-G-0248*, n. 33 (Mar. 7, 2025), https://www.nationalgrid.com/document/558131/download.

The fact that Transco cites to a new study in its Petition also underscores the need for a new evaluation of the Project's need.[14] Neither FERC nor the public has had a chance to examine the data, methodology, or conclusions of the NPCC study or to submit or examine evidence that might undermine the conclusions therein or their applicability to the need for this Project. Indeed, FERC's own study done in the aftermath of Winter Storm Elliott found that the supply disruptions that occurred during that extreme storm event were not due to a lack of transmission capacity but the lack of supply source diversity, which is not a problem that the Project will fix.[15] The NPCC study's findings also are not specific to the need for this particular project, and thus are far from conclusive evidence that the NESE project is needed, particularly in light of the absence of any precedent agreements. The NPCC study was expressly limited to "the impact of scheduling restrictions on the availability of gas for *generation* during the peak heating season when plausible disruptions in the gas supply chain are tested."[16] It, therefore, does not answer the question of whether the captive customers of the local distribution companies with which Transco is negotiating but has not yet contracted need the Project's additional capacity. Gesturing at some vague generalized need is not enough to satisfy the rigorous standard under Section 7 of the NGA. *See* 114 F.4th at 62. A new docket is needed to consider the NPCC study, as well as other evidence on need.

Transco also claims incorrectly that nothing has changed in the assessment of the Project's potential environmental impacts and that the previous review should suffice. FERC staff has already sent multiple supplemental information requests to Transco, asking for more information on environmental impacts that were not in the original docket. Transco's responses alone make clear that new analysis is required. For example, Compressor Station 206 is subject to new air quality regulations since the original project approval.[17] New Jersey has lowered its Hazardous Air Pollutant ("HAP") reporting thresholds since Transco submitted its original applications to the New Jersey Department of Environmental Protection in 2017, and the values for certain HAPs now exceed the reporting thresholds.[18] This may trigger the need for a risk assessment and modifications to the Project if the risk from emissions is determined to be non-negligible. *See* 50 N.J.R. 454(a) (rule adoption). Transco's new air quality conformity analysis also demonstrates that background ambient air quality values have changed since FERC's analysis in the FEIS.[19] In particular, the monitor values for large particulate matter and sulfur dioxide have increased significantly since 2019, when FERC conducted the original environmental review.

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[14] *See* Petition at 8.

[15] FERC et al., *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott* at 7 (Oct. 2023), https://www.ferc.gov/media/winter-storm-elliott-report-inquiry-bulk-power-system-operations-during-december-2022.

[16] Levitan & Assocs, Inc., Northeast Gas/Electric System Study at 1 (Jan. 21, 2025), *available at* https://cdn.prod.website-files.com/67229043316834b1a60feba3/678fee912264907c381a0f68_NPCC%20Northeast%20Gas%20Electric%20System%20Study.pdf (emphasis supplied) ("NPCC Study").

[17] *See* Environmental Resources Management, Inc., Air Quality Technical Report at 10 (May 15, 2025) (Note: PDF page 68 of Transco's Petition).

[18] *Compare* Transco, Resource Report 9: Air Quality and Noise, Northeast Supply Enhancement Project, at 9-7–9-8, Tbl. 9.2-1 (Mar. 2017), CP17-101, Accession No. 20170327-5102, *with* N.J.A.C. 7:27-17.9.

[19] *Compare* Petition, Exhibit Z-1: Updated Conformity Reports, at Tbl. 2 (May 15, 2025), CP17-101, Accession 20250606-5140 to FERC, *with* FEIS at 4-298, Tbl. 4.10.1-3 (Jan. 25, 2019), CP17-101, Accession No. 20190125-3001.

Transco also must reapply for individual permits for Compressor Station 206 under the New Jersey Flood Hazard Area Control Act, the regulations for which were recently amended to mandate higher design flood elevations, stricter stormwater management, and the use of best available precipitation projections to mitigate flood risks. *See* 55 N.J.R. 1385(b) (Inland Flood Protection Rule adoption). These new regulations were adopted after the devastation Tropical Storm Ida caused in New Jersey in 2021 to change the way New Jersey considers flooding risks and stormwater management and incorporate current evidence on increased precipitation and extreme weather events. *See* 54 N.J.R. 2169(a) (rule proposal). FERC cannot view compliance with these regulations as a foregone conclusion and must conduct a new assessment in cooperation with the relevant state entities.

As FERC recognized in its decision to previously extend Transco's certificate before the company allowed it to lapse, "environmental impacts are subject to change and … the validity of an order's conclusions and environmental conditions cannot be sustained indefinitely." 186 FERC ¶ 61,038, P 23. FERC granted the extension there only because it concluded that "commenters have not identified any specific change of fact or law that would require the Commission to reconsider our prior findings that the project, as conditioned, is an environmentally acceptable action." *Id.* With the passage of even more time and the change in the state programs that implement key federal laws like the Clean Air Act and Clean Water Act, that same conclusion can no longer be sustained.

### C. There Are No Grounds for Expediting Consideration of Transco's Application.

No matter how Transco's application is styled, there is no justification for reviewing it on an arbitrarily expedited basis. Although FERC may leverage the analysis it did on Transco's prior application to the extent that analysis remains valid, there is no legal or factual justification for hewing to the August 29, 2025 deadline proposed by Transco, which necessarily would entail cutting corners and curtailing the review processes required under federal law.

First, there is no legal or factual basis for expediting consideration of an application under the NGA in the manner Transco contemplates. The Commission's Rules allow applicants to ask for an expedited procedure, 18 C.F.R. § 157.6(c), but only when no issue of substance is raised by any request to be heard, protest, or petition filed, *id.* § 385.802. The instant protest demonstrates considerable opposition to Transco's Petition, as do multiple other submissions to FERC. Moreover, the Commission's past precedent indicates that the kind of "expedited" process contemplated by Rules 801 and 802 is one that omits a full trial-type hearing, not one that compresses an entire Section 7 review into a three-month period. *See, e.g.*, *Atlantic Coast Pipeline, LLC Dominion Transmission, Inc. Piedmont Natural Gas Co., Inc.*, 161 FERC ¶ 61,042, at PP 22–23 (2017) (rejecting the claims that an evidentiary hearing was necessary where the use of "shortened procedures pursuant to Rules 801 and 802" that lasted more than two years where "all interested parties have been afforded a full complete opportunity to present their views to the Commission through numerous written submissions."); *Tres Palacios Gas Storage LLC*, 160 FERC ¶ 61,107, P 12 (2017).

Transco also has not provided any need-based reason for fast-tracking FERC's consideration of this particular project. There is nothing in the record that demonstrates need,

much less any acute need to get this project approved, other than Transco's sudden desire to move forward quickly. The Project has lain completely dormant for more than a year and Transco has no evidence that any shortages have occurred in its absence. It is clear from National Grid's recent submissions on long-term planning to the NY Public Service Commission that the utility was not even aware that Transco's project might be resurrected, let alone did it factor into any of the utility's short-term or even long-term planning.[20] And the study Transco cites by the Northeast Power Coordinating Council confirms that "operating risk in New York City and Long Island is already mitigated" in the event of a cold snap when existing gas infrastructure cannot deliver additional capacity to electricity generators.[21]

Second, FERC expediting its review will serve no purpose other than to arbitrarily truncate the Commission's review under the NGA, because New York State has made it clear that it intends to take six months to review the Project's application for a certification under Section 401 of the Clean Water Act.[22] The Clean Water Act clearly provides states with a "reasonable period of time" not to exceed one year to act on a Section 401 application and the Environmental Protection Agency's regulations stipulate that, if a state and the relevant federal agency do not agree on the duration of a "reasonable period of time," the default deadline is six months. 40 CFR § 121.6(c). There is, therefore, absolutely no fact-based rationale for the Commission to short circuit its review as Transco proposes.

Third, there is also good reason to doubt whether NESE will be able to obtain legally-defensible approvals of its Clean Water Act certification applications. New York and New Jersey previously denied NESE's applications for Clean Water Act certification because of water-quality based deficiencies in Transco's applications.[23] New York's Department of Environmental Conservation ("NYSDEC") denied Transco's application in 2020 due to "Transco's inability to demonstrate the Project's compliance with all applicable water quality standards."[24] In particular, the denial was premised on Transco's use of a default 500-foot mixing zone in all areas.[25] NYSDEC also objected to Transco's plan to bury the pipeline only 4 feet deep in some locations where NYSDEC requires six-foot burial and the company's failure to include proposed construction methods to address water quality concerns for burial at that depth.[26] Similarly, in 2019 New Jersey denied Transco's prior application because "the available information indicates that the proposed dredging could adversely impact surface water quality and that Transco has not sufficiently demonstrated how it would avoid adverse impacts to surface water quality,"[27] and gave no indication in its denial in 2020 that Transco had addressed this deficiency.[28]

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[20] *See* Exhibit C.
[21] NPCC Study at 5.
[22] Letter from Cheryl Sandrow, Div. Env't Permits, N.Y. State Dep't Env't Conservation to Debbie-Anne A. Reese, FERC (June 23, 2025), CP17-101, Accession No. 20250623-5303.
[23] NY 401 Denial, *supra* note 2.
[24] *Id.* at 3.
[25] *Id.* at 4.
[26] *Id.*
[27] Letter from Diane Dow, Div. Land Use Regul., N.J. Dep't Env't Prot., to Sara Mochrie, Transco, at 14 (June 5, 2019), attached hereto as **Exhibit D**.
[28] NJ 401 Denial, *supra* note 2.

While Transco claims to be "negotiating" with both states, it also has emphasized that its pipeline proposal remains the same. In its cover letter to NYSDEC, Transco states that "Transco is now resubmitting its application as it existed at the time of the Denial with substantially the same information."[29] Transco claims that it has included material in its new application to NYSDEC to address the concerns raised in NYSDEC's denial,[30] but it also continues to assert that NYSDEC's conclusions in its denial were incorrect.[31] And Transco's recent submission to New Jersey makes clear that it is submitting virtually the same information it did before.[32] Just as the last time and presented with substantially the same applications, New York and New Jersey may have a different view than Transco as to whether its applications demonstrate that the Project will comply with water quality standards and, therefore, qualify for certification under Section 401. Indeed, absent significant changes to the applications, or the submission of substantial amounts of new information, it is difficult to see how the states could rationally reach the opposite conclusion as they did before. It, therefore, is far from certain that Transco will obtain the certifications it seeks, let alone on an expedited basis.

## III. Motion to Intervene

As is articulated above, FERC should deny Transco's Petition and require the company to file a new application, which the Commission should consider using its standard timeframe and process. The instant dockets effectively expired once FERC vacated the certificate and are not the appropriate place for FERC to be opening intervention windows, inviting comments and protests, or requesting additional information from Transco. To the extent that FERC opts to conduct a review of Transco's application in the instant dockets, and in response to FERC's June 3, 2025 Notice, Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation (collectively, "Movants"), by and through their undersigned counsel, and in accordance with the requirements of Rule 214 of the FERC Rules of Practice and Procedure, 18 C.F.R. § 385.214, and regulations under the NGA, 18 C.F.R. § 157.10, hereby move to intervene in the above-captioned proceedings on the terms set forth below. In the alternative, if FERC were to more appropriately open a new docket to review Transco's application as a new filing for a new certificate of public convenience and necessity, Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation seek to intervene in any new docket FERC creates to consider Transco's application.

CENTRAL JERSEY SAFE ENERGY COALITION ("CJSEC") is a nonprofit organization whose mission includes educating the community on the hazards and risks of the NESE project. CJSEC's members include residents who live near the site of Compressor Station 206 and who are concerned about the project's direct impacts on air and water quality, and health and safety, in their community. CJSEC intervened in and was a party to the Commission's

[29] Letter from Joseph Dean, Transco to Karen Gaidasz, Div. Env't Permits, N.Y. State Dep't Env't Conservation (May 30, 2025), CP17-101, Accession No. 20250606-5140.
[30] *Id.* at 2.
[31] *Id.* at 3.
[32] Letter from Joseph Dean, Transco to Colleen Keller, Div. Land Use Regul., N.J. Dep't Env't Prot. (May 30, 2025), attached hereto as **Exhibit E**.

proceeding regarding the NESE project (Docket No. CP17-101-000) as well as the Commission's subsequent proceeding on Transco's March 19, 2021 request for an extension of time. CJSEC was also a party to *NY/NJ Baykeeper v. FERC*, D.C. Cir. No. 20-1211, in which CJSEC sought judicial review of the Commission's original decision to issue a certificate for the NESE project.

FOOD & WATER WATCH ("FWW") is a national 501(c)(3) non-profit organization founded in 2005 to ensure access to clean drinking water, safe and sustainable food, and a livable climate. FWW has over 50,000 members and supporters in New Jersey, more than 115,000 members and supporters in New York, and more than 1.4 million members and supporters across the United States. FWW's members and supporters include residents of communities that would be directly and adversely impacted by the NESE project. In carrying out its mission, FWW assists local community groups whose members are concerned about the proposed buildout of fossil gas infrastructure, like NESE. FWW's work specifically includes working with people who would be affected by NESE and similar infrastructure projects across the region. FWW has raised climate, environmental, and public health and safety concerns surrounding the NESE project and associated infrastructure throughout the region. For example, the proposed Compressor Station 206 would be sited in a nonattainment area for ozone pollution; moreover, the construction of the compressor station would impact a forested wetland area and could lead to major water quality impacts. Further, pipeline construction could re-introduce legacy toxins from the Raritan Bay into the marine environment, which is a recreational and fishing area. The NESE project and similar projects throughout the Mid-Atlantic and the Northeast have resulted in opposition to the expansion of gas infrastructure and support for conversion of gas facilities to cleaner, sustainable energy sources. FWW seeks to represent its interests and the interests of its members and supporters who would be directly and adversely impacted by the NESE project. FWW intervened in and fully participated in FERC's original consideration of the NESE project and the requests to extend the original certificate.

NY/NJ BAYKEEPER[33] ("Baykeeper") is a nonprofit organization whose mission is to take action to protect, preserve and restore the ecological integrity and productivity of the New York-New Jersey Harbor Estuary ("Estuary") and the Raritan Bay. Baykeeper serves as a citizen advocate for the harbors, bays, streams and shores of the Estuary by preserving and restoring habitat, influencing land use decisions, stopping polluters, championing public access and educating the public. Consistent with its mission, Baykeeper advocates against the NESE project and its adverse impacts on ecological integrity and productivity within the Estuary—including adverse impacts to water quality and marine wildlife habitat in Raritan Bay. Baykeeper intervened in and was a party to the Commission's underlying proceeding regarding Transco's NESE project (Docket No. CP17-101). Baykeeper also intervened in the Commission's subsequent proceedings on Transco's March 19, 2021 request for an extension of time to construct and place the NESE project into service and Transco's April 27, 2023 second request for an extension of time. Baykeeper was also a party to *NY/NJ Baykeeper v. FERC*, D.C. Cir. No. 20-1211, in which Baykeeper sought judicial review of the Commission's underlying decision to issue a certificate for the NESE project.

[33] The instant motion to intervene supplements the motion filed by NY/NJ Baykeeper at Accession No. 20250618-5093.

NEW JERSEY LEAGUE OF CONSERVATION VOTERS EDUCATION FUND NEW JERSEY LEAGUE OF CONSERVATION VOTERS EDUCATION FUND ("New Jersey LCV Ed Fund") is a 501(c)3 nonprofit and committed to safeguarding our natural resources, communities, and families for a sustainable future. New Jersey LCV Ed Fund works to safeguard clean air, clean water, and equitable access to open space for all New Jerseyans. New Jersey LCV Ed Fund advances environmental initiatives by providing clear, fact-based information, educating the public, and engaging decision-makers. New Jersey LCV Ed Fund empowers and mobilizes people to participate in robust democratic processes and promote equitable and effective solutions for a healthier planet and environment. Interests in this matter include climate change impacts; clean air and water; public health; and environmental equity, which could be directly affected by the outcome of this proceeding. New Jersey LCV Ed Fund represents scores of members in New Jersey with stakeholder interests in this project as contributing taxpayers. Members of New Jersey LCV Ed Fund are also residents of Franklin Township who would be directly impacted by the new compressor station. New Jersey LCV Ed Fund intervened in Docket CP17-101-000 on 05/14/2018 AND Docket CP17-101-005 on 05/17/2023. New Jersey LCV Ed Fund also commented in the Commission's subsequent proceedings on Transco's March 19, 2021 request for an extension of time to construct and place the NESE project into service and Transco's April 27, 2023 second request for an extension of time.

PRINCETON MANOR HOMEOWNERS ASSOCIATION[34] represents an interest which may be directly affected by the outcome of this proceeding, and its participation is in the public interest. Princeton Manor is an age 55 and over community downwind of the compressor station, whose residents, most of whom are in their seventies and eighties, would be especially affected by expelled toxic gases that would be blown directly into the community (less than 1/2 mile downwind of the proposed NESE compressor station), especially during periodic and routine blow downs. Princeton Manor intervened in and was a party to the Commission's underlying proceeding regarding the NESE project (Docket No. CP17-101-000) as well as the Commission's subsequent proceeding on Transco's March 19, 2021 request for an extension of time and Transco's April 27, 2023 second request for an extension of time. Princeton Manor was also a party to *NY/NJ Baykeeper v. FERC*, D.C. Cir. No. 20-1211, in which Princeton Manor sought judicial review of the Commission's underlying decision to issue a certificate for the NESE project. Moreover, Princeton Manor represents the collective interest of its more than 700 residents, who live near the site of Compressor Station 206 and who are concerned about the project's direct impacts on air and water quality, and health and safety, in their community.

SIERRA CLUB is the nation's largest grassroots environmental organization and is dedicated to the protection of the natural environment and public health. Sierra Club has a longstanding interest and expertise in the development and use of natural resources in Pennsylvania, New Jersey, and New York. The Sierra Club's Atlantic Chapter has more than 36,500 members. There are over 15,000 members in New Jersey, including members who live, work, and recreate near the proposed route for NESE project. The Sierra Club also has over 24,000 members in Pennsylvania, including members who live, work, and recreate near the proposed pipeline that would be constructed and near existing fracking sites elsewhere in the

[34] The instant motion to intervene supersedes the motion to intervene filed in Princeton Manor Homeowners Association's name at Accession No. 20250618-5008.

state. The NESE project will expose these members to various harms and risks, including, methane leaks from the new pipeline and higher volumes of shipped gas; air pollution emitted by the expanded compressor station and new compressor station during operation; potential dangerous accidents and explosions at pipelines; reduced property values due to an undesirable facility being sited close to members' property; and impacts to fishing and water recreation in the Raritan Bay, Lower New York Bay, and elsewhere along the pipelines' routes. The Sierra Club also has demonstrated the vitality of its interests in FERC's consideration of gas projects. The Sierra Club runs national advocacy and organizing campaigns dedicated to reducing the country's dependence on fossil fuels, including gas, and to protecting public health. These campaigns are dedicated to promoting a swift transition away from fossil fuels and towards reducing global greenhouse gas ("GHG") emissions. Further, the Sierra Club has developed great expertise in improving the environmental review process of projects that would exacerbate climate change. Allowing the Sierra Club to bring its expertise to bear in this docket would be in the public interest. The Sierra Club, New Jersey Chapter submitted comments in CP17-101- in May 2018 and a motion to intervene and comments on Transco's 2023 request for an extension.

THE SURFRIDER FOUNDATION ("Surfrider") is a 501(c)(3) non-profit environmental organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people through a powerful network. As a grassroots organization, Surfrider's efforts include promoting the right of low-impact, free and open access to the coastal environment, as well as conservation of coastal habitat and resources. Surfrider Foundation is deeply involved in protection of water quality and advocacy for climate resilience in the New York and New Jersey coastal area. The project site proposed by Transco and the surrounding or affected area is used by members of the public and by Surfrider Foundation members. The project poses a threat to the aforementioned activities. Coastal users may be impacted by the project through diminished environmental quality, aesthetics, recreational opportunities and public safety. Surfrider, as a grassroots public interest group working to preserve the coast, is concerned about this pipeline proposal and its potential impacts to coastal resources and aquatic habitat, ocean recreation, nearshore ecology, public safety, aesthetic and fishing access. Surfrider is also concerned with any project that may exacerbate climate change and corresponding sea level rise and ocean acidification. The water-related effects of climate change include flooding, erosion, water quality degradation, wetland destruction and other negative consequences. Surfrider has a considerable interest in the protection of the coastal resources that may be affected by this project.

All Movants have demonstrated the vitality of their interests by participating in the prior FERC proceedings relating to the Project. Movants' intervention is in the public interest, as provided by 18 C.F.R. § 385.214(b)(2)(iii). Moreover, Movants' intervention in this proceeding will not prejudice the rights of any other party.

Pursuant to 18 C.F.R. § 385.203(b)(10), Movants identify the following persons for service of correspondence and communications regarding this application:

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Pursuant to 18 C.F.R. § 385.214(b)(1), Movants' position is that the petition should be denied for the reasons discussed in the above Protest.

Dated: June 24, 2025

Respectfully submitted,

*/s/ Moneen Nasmith*

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# EXHIBIT A

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PHIL MURPHY
Governor
SHEILA OLIVER
Lt. Governor

CATHERINE R. McCABE
Commissioner

Division of Land Use Regulation
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420
www.nj.gov/dep/landuse

May 15, 2020

Transcontinental Gas Pipe Line Co.
c/o Mr. Tim Powell
2800 Post Oak Blvd., Suite 900
Houston, TX 77056

RE: Denial of an Application for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront In-Water Individual Permit, Waterfront Upland Individual Permit, Coastal Wetlands Individual Permit and Water Quality Certificate
DLUR File No.: 0000-01-1001.3; LUP 200001 &
Applicant: Transcontinental Gas Pipe Line Company Co.
Project: Northeast Supply Enhancement Project
Block: 5.02 Lots: 20 & 25
Township of Franklin, Somerset County
Transco Right-of-Ways
Township of Old Bridge and Borough of Sayreville, Middlesex County

Dear Mr. Powell:

On January 21, 2020 Transcontinental Gas Pipe Line Co. (Transco) submitted an application for the above-referenced permits for its Northeast Supply Enhancement (NESE) Project, which includes the proposed construction of suction and discharge piping connecting a proposed compressor station with Transco's existing Mainlines A and C, and two new 26-inch diameter pipelines through freshwater wetlands, transition areas, coastal wetlands, flood hazard areas, riparian zones, and under the Raritan Bay. The New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR) reviewed the NESE Project pursuant to the NJDEP's federal authority assumed under the Clean Water Act to issue permits for freshwater wetlands and impacts to coastal resources, the Freshwater Wetlands Protection Rules (N.J.A.C. 7:7A) and the Coastal Zone Management Rules (N.J.A.C. 7:7), which incorporate the NJDEP's consideration of water quality impacts and determination whether to issue a Water Quality Certificate pursuant to Section 401 of the federal Clean Water Act, and the Flood Hazard Control Act Rules (N.J.A.C. 7:13).



Exhibit A

The NJDEP hereby denies the NESE Project applications and the referenced permits due to the applicant's failure to demonstrate compliance as described herein.

## PROJECT DESCRIPTION

The NESE Project is a proposed expansion of Transco's existing system from Pennsylvania through New Jersey to New York, to provide 400,000 dekatherms per day (Dth/d) of incremental capacity to National Grid at Transco's existing Rockaway Transfer Point located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York. According to Transco, the capacity of the existing Northeast Supply line is insufficient to provide the additional 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

The regulated portions of the proposed NESE project would involve the construction and installation of three components in New Jersey: suction and discharge piping connecting proposed Compressor Station 206, the Madison Loop, and the Raritan Loop.

The regulated activities include the construction of suction and discharge piping on block 5.02, lots 20 and 23 in Franklin Township, Somerset County, which will connect a proposed compressor station with Transco's existing Mainlines A and C. The proposed suction/discharge piping will result in the permanent disturbance of 0.852 acres of freshwater wetlands and 0.487 acres of transition areas and will temporarily disturb 0.149 acres of freshwater wetlands and 0.449 acres of transition areas.

The Madison Loop would be co-located within existing Transco right(s) of way in Sayreville and Old Bridge Townships, Middlesex County, and would consists of approximately 3.43 miles of new 26-inch-diameter gas pipeline. The Madison Loop will result in temporary s to 1.968 acres of mapped coastal wetlands, 1.32 acres of riparian zone vegetation, of which 0.67 acres is previously disturbed, 0.157 acres of State open waters and 1.987 of freshwater wetlands; and the permanent disturbance to 0.327 acres of freshwater wetlands, 1.143 acres of transition areas and 0.415 acres of riparian zone vegetation.

The Raritan Loop would begin within the upland waterfront development area in Middlesex County and extend into and under Raritan Bay. The Raritan Loop, as proposed, would consist of approximately 5.95 miles of new 26-new diameter pipeline in New Jersey waters and 0.16 miles onshore. Transco has proposed three (3) methods of installing the pipeline in Raritan Bay: horizontal directional drilling (HDD), clamshell bucket trenching and jet trenching. The HDD technique is proposed from a location onshore in Old Bridge Township (mile marker 12+00) and continues offshore in Raritan Bay to mile marker 12+50. From mile marker 12+50 to 14+02 the pipeline would be installed via clamshell bucket. At mile marker 14+02 the pipeline would then enter New York waters, continue for approximately 12 miles, and then reenter New Jersey waters at approximate mile marker 26+50. From that point, the pipeline would be installed via jet trenching except beginning at mile marker 29+50 where it would be installed via HDD under Ambrose Channel to an exit point at approximate mile marker 30+00. At that point the pipeline

would reenter New York waters and continue to its terminus at mile marker 35+49 at the Rockaway Delivery Lateral in New York State waters.

On March 27, 2017, Transco applied to the Federal Energy Regulatory Commission (FERC) for a Certificate of Public Convenience and Necessity (Certificate) pursuant to the Natural Gas Act for approval of the NESE Project. FERC issued a Draft Environmental Impact Statement ("DEIS") for the NESE Project on March 23, 2018, and a Final Environmental Impact Statement ("FEIS") on January 25, 2019. The FEIS identified some of the various environmental impacts FERC anticipates from the construction and operation of the Project. On May 3, 2019, FERC issued Transco a Certificate for the Project subject to conditions to mitigate the anticipated environmental impacts. Transco's request to amended to the Certificate is currently pending with FERC.

## ADMINISTRATIVE HISTORY

- On March 27, 2017, Transco submitted an application to FERC for a Certificate pursuant to the Natural Gas Act for approval of the project.

- On July 26, 2017, Transco submitted an initial application to NJDEP for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development In-Water Individual Permit, Waterfront Development Upland Individual Permit, and a Coastal Wetlands Individual Permit (DLUR File No. 0000-01-1001.3; FWW170001, FHA170001, FHA170002, WFD170001, WFD170002, and CSW170001) for the NESE Project. The proposed activities included the construction of a new compressor station in Franklin Park, Somerset County and new 26-inch diameter gas pipelines for the proposed Madison Loop and Raritan Loop. Transco withdrew the application on June 15, 2018 due to technical deficiencies.

- On June 20, 2018, DLUR received the resubmission of the application for NESE Project for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development In-Water Individual Permit, Waterfront Development Upland Individual Permit, and a Coastal Wetlands Individual Permit (DLUR File No. 0000-01-1001.3; FWW180001, FHA180001, FHA180002, WF180001, WFD180002, and CSW180001).

- On July 18, 2018, the DLUR issued a deficiency letter, which informed Transco that among other deficiencies, its application did not include property owner consent to access work and construction areas outside the existing Transco Right of Way, failed to address stormwater management issues at the proposed compressor station, and did not include approval from the United States Army Corps of Engineers for Transco to dispose of dredge materials within the Historic Area Remediation Site (HARS) or any another suitable proposed upland disposal facility.

- On September 4, 2018, Transco submitted a response package to the July 18, 2018 deficiency letter. Information included updates to property owner certification, stormwater information, and dredge plan and spoils disposal information.

- On September 14, 2018, DLUR issued a second deficiency letter after determining the information submitted on September 4, 2018 was not complete.

- On September 26, 2018, Transco submitted a response package to the September 14, 2018 deficiency letter. Transco's response included the necessary property owner consents for all outstanding properties and an updated Sediment Sampling and Analysis Plan for the proposed Raritan Loop.

- On September 27, 2018 DLUR issued a third deficiency letter advising Transco that although the Sediment Sampling and Analysis Plan was sufficient for dredge sampling to begin the application remained deficient until the results have been analyzed and a letter was provided from an upland dredge material disposal facility indicating that both storage and chemical composition was acceptable. The September 27 letter also identified outstanding stormwater deficiencies.

- On November 5, 2018, NJDEP held a public hearing in Franklin Township for the freshwater wetland components of proposed Compressor Station 206 and the Madison Loop. The public comment period for the public hearing was from November 5 through November 20.

- On November 8, 2018, DLUR requested that Transco provide an analysis of a potential alternative access road into CS 206 from the SUNCO utility right of way to determine if such an alternative would reduce or avoid impacts to wetlands. Transco provided responses on November 30, supplemental information on December 12, 2018, and follow up responses related to the access road width on December 21, 2018. The follow up information indicated that the SUNCO alternative would not reduce or avoid wetlands impacts.

- On February 6, 2019, Transco provided information consisting of revisions and supplemental information for the CS 206 infiltration basin, results of pre-dredging sampling and analysis, and the acceptance letter from an upland dredge material disposal facility. The NESE Project application was declared complete for review February 6, 2019. The 90-day review period pursuant to the Coastal Zone Management Rules and the Flood Hazard Area Control Act Rules was set to end May 6, 2019.

- On March 18, 2019, NJDEP held a public hearing in East Brunswick Township for the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits and a pending Division of Water Allocation permit application for temporary dewatering activities for the NESE Project. The public comment period for the public hearing was from March 18

through April 2, but was subsequently extended to April 17, 2019, to allow the public additional time to provide comments on the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits for the NESE Project.

- On March 20, 2019, DLUR requested additional information from Transco regarding HDD failure contingency plans and proposed work in the Raritan Bay Superfund Slag Site as a result of comments received during the public hearing. Transco provided an HDD contingency plan memo on March 27, 2019.

- On March 20, 2019, DLUR asked Transco to revise the Madison Loop site plans to reflect that there were no exceptional resource value wetlands west of Gondek Drive. Revised plan sheets depicting this change were received on April 28, 2019.

- On March 25, 2019, DLUR received an email from Eastern Environmental Law Center concerning the sighting of a Barred Owl adjacent to the proposed CS 206 site by a local resident.

- On April 4, 2019, DLUR's Threatened and Endangered Species Unit conducted a site visit at the CS 206 site location to determine the suitability for Barred Owl habitat.

- On April 5, 2019, DLUR in consultation with Transco agreed to extend the 90-day review period for 30 days. The review period ends June 5, 2019. The public comment period was extended an additional 15 days to May 2, 2019.

- On April 11, 2019, DLUR asked Transco to revise the CS 206 site plans to account for the anticipated exceptional resource value wetland reclassification and update the freshwater wetland compliance report and alternative analysis to account for the Barred Owl habitat evaluation. On May 1, 2019, Transco provided revisions to the environmental report to address N.J.A.C. 7:7A-10.3 and 10.4 and DLUR received site plan revisions on May 2, 2019. On May 17, 2019, DLUR received further revisions to the CS 206 site plans to reflect the modified buffer and changes to the Stormwater Detention Basin.

- On April 29, 2019, the Barred Owl sighting record was accepted as valid by the NJDEP Division of Fish and Wildlife, Endangered and Non-Game Species Program. At that time, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owl and therefore, the wetlands surrounding the CS 206 were reclassified as exceptional resource value with a 150-foot buffer.

- On June 5, 2019, DLUR denied the FWW IP, WFD In-Water IP, WFD Upland IP, Coastal Wetlands IP and FHA IP applications (DLUR file no.: 0000-01-1001.3; FWW180001, FHA180001, CSW180001, WFD180001, WFD 180002) indicating that Transco had not adequately demonstrated alternatives for the CS206, the detention basin,

the access roadway to CS206 as required under N.J.A.C. 7:7A-10.2 and 10.3, the compelling public need requirements at N.J.A.C. 7:7A-10.4(a)1, the riparian zone requirements at N.J.A.C. 7:13-11.2 and the dredging requirements at N.J.A.C. 7:7-12.7.

- On June 12, 2019, Transco resubmitted this application for the NESE Project for an FWW IP, WFD IP In-Water, WFD IP Upland, Coastal Wetlands IP, and FHA IP (DLUR File No. 0000-01-1001.3; LUP 190001 and 190002).

- On June 21, 2019, DLUR issued an administrative deficiency letter regarding the application fee.

- On June 25, 2019, DLUR issued a technical deficiency letter for the NESE Project. In the technical deficiency letter, DLUR requested a modeling analysis for any parameters that exceeded ER-M values for saline water sediments; revised plans showing the access road to the compressor station, and suction and discharge piping tie-in located outside any exceptional resource value transition areas; submission of items identified in the June 20, 2019 email from the DLUR's Dredging Unit to Transco; additional alternatives for the compressor station access roadway, including access through Higgins Farm and eminent domain and condemnation; and additional information on the compelling public need of the NESE Project.

- On June 28, 2019, Transco submitted supplemental information addressing the June 21, 2019 and June 25, 2019 deficiency letters.

- On July 12, 2019, DLUR issued a complete for review letter for the WFD In-Water IP, WFD Upland IP and Coastal Wetlands IP applications (LUP 190002), and a technical deficiency letter for the FHA IP and FWW IP applications (LUP 190001). The DEP's 90-day decision deadline for the WFD In-Water IP, WFD Upland IP and Coastal Wetlands IP permit was September 25, 2019.

- On August 1, 2019, Transco submitted FHA (LUP 190001) information for review and on August 16, 2019, Transco submitted FWW information for review. On August 26, 2019, DLUR emailed Transco indicating that the FHA application was complete for review and the 90-day deadline for permit issuance is October 25, 2019. Additionally, the FWW IP (LUP 190001) was also complete for review, but there is no statutory review for the FWW IP application. On October 25, 2019, Transco requested a 30-day extension of the review period for the FHA application. The 120$^{th}$ day decision deadline is November 28, 2019.

- A tidelands utility license application was submitted to the NJDEP, Bureau of Tidelands on June 17, 2019. The license application is currently pending.

- On September 16, 2019, Transco requested a 30-day extension of the review period for the WFD Upland IP, WFD In-Water IP and Coastal Wetlands IP (LUP 190002). The 120th day decision deadline was October 25, 2019. These applications were subsequently withdrawn on October 25, 2019.

- On October 28, 2019, Transco re-submitted an application for a WFD In-Water IP, WFD Upland IP, and Coastal Wetlands IP (LUP 190003). The 90th day decision deadline is January 25, 2019.

- On November 27, 2019, the application for the WFD In-water and Upland Individual Permits, Freshwater Wetlands Individual Permit, Coastal Wetland Permit and Flood Hazard Area Permit was withdrawn.

- On January 21, 2020, Transco resubmitted an application for all of the previously requested permits as well as a Flood Hazard Verification.

- February 5, 2020, the Division made a request for additional administrative information.

- February 7, 2020, Transco submitted the requested administrative information and the application was declared complete for review. The 90-day deadline for rendering a decision on the application was determined to be May 6, 2020.

- February 20, 2020 – The Department's February 19, 2020 bulletin was published, which provided public notice of the application. The start of public comment period therefore was February 20, 2020.

- February 23, 2020, National Grid, the planned recipient of the additional natural gas conveyed by the Project, released its Natural Gas Long-Term Capacity Report for Brooklyn, Queens, Staten Island, and Long Island, which evaluated the public need for the Project.

- April 6, 2020, the 45-day public comment period ended.

- April 7, 2020, Transco requested, and the Department agreed to a 30-day extension to the 90-day deadline.

- April 8, 2020, Transco withdrew a requested Flood Hazard Area Verification because it was not required because there are no above ground structures in any flood hazard area.

- April 15, 2020, the Department published in the DEP that the public comment period would be extended for an additional 30 days.

- May 7, 2020, the Department's extended public comment period ended.

- May 8, 2020, National Grid issued Supplemental Report Natural Gas Long-Term Capacity Report for Brooklyn, Queens, Staten Island, and Long Island, which evaluated the public need for the Project.

- May 15, 2020, the New York State Department of Environmental Conservation denied the necessary approvals for the Project.

## ANALYSIS

The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1, et seq.) and Rules (N.J.A.C. 7:7A) require that a permit be obtained from the Department for regulated activities within freshwater wetlands and/or transition areas to freshwater wetlands. The Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) require that a permit be obtained from the Department for regulated activities within flood hazard areas and/or within the riparian zones of regulated waters. The Waterfront Development Law (N.J.S.A. 12:5-3) and the implementing Coastal Zone Management Rules (N.J.A.C. 7:7) require a Waterfront Development Permit be obtained from the Department for any regulated activity below the mean high-water line of any tidal water body and for any regulated activity within the upland 500 feet from the mean-high water line. The Wetland Act of 1970 (N.J.S.A. 13:9A) requires that a Coastal Wetlands Permit be obtained from the Department for any regulated activity within any wetland delineated and mapped pursuant to the Wetlands Act of 1970. Finally, Section 401 of the Clean Water Act requires an applicant for a federal license or permit to conduct any activity including, but not limited to, the discharge of dredge or fill material into Waters of the United States or navigable waters, to obtain a Water Quality Certificate from the State from which the discharge originates.

Under N.J.A.C. 7:7A-10.4, an applicant is required to demonstrate that there is a compelling public need for the proposed activity. To address the compelling public need requirement, Transco relies, in part, on the FERC's May 3, 2019 Certificate of Public Convenience and Necessity (Certificate) and January 25, 2019 Final Environmental Impact Statement (EIS). According to Transco, this information demonstrates a public need for an increase in the capacity of the existing Northeast Supply line by 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory. Transco proposes to provide this additional capacity to Brooklyn Union Gas Company and KeySpan Gas East Corporation (collectively referred to as National Grid) in order to serve National Grid's residential and commercial customers in the New York City area. In its prior application, Transco also indicated that the NESE Project will support the growing demand for natural gas as a result of New York City's mandate requiring the conversion of buildings from heavy heating oils. According to Transco, in 2011, New York City began the planned phase-out of No. 4 heating oil by 2030. Transco states that the NESE Project will displace the use of No. 4 fuel oil in New York City and Long Island, resulting in significant reduction of ozone precursors of nitrogen oxides (NOx), sulfur dioxide (SO2), and particulate matter (PM).

In this application, Transco reiterated its position that the NESE Project will support the growing demand for natural gas as a result of New York City's mandate requiring the conversion of buildings from heavy heating oils. While Transco also provides additional information seeking to demonstrate the benefits of the project to New Jersey residents, such as increased reliability of the interconnected interstate gas delivery system, the primary recipient of the proposed capacity increase remains New York residents.

As the Department explained in its November 27, 2019 letter confirming Transco's withdrawal of its prior permit applications, in order to fully establish a compelling public need under N.J.A.C. 7:7A-10.4, Transco was required to demonstrate concurrence from New York to confirm the purported public need and to ensure that the project is not constructed in New Jersey without an endpoint for the proposed additional natural gas capacity.

On May 15, 2020, the New York State Department of Environmental Conservation (NYSDEC) denied Transco's application for a Water Quality Certification for the NESE Project, which, as noted above, would also transit New York waters of the Raritan Bay. NYSDEC concluded that the Project did not satisfy certain water quality criteria or other qualitative assessment criteria, including purported public need for the Project due to anticipated natural gas supply and demand in the New York City region.

Given Transco's reliance on New York's need for additional natural case capacity to satisfy the requirements of N.J.A.C. 7:7A-10.4, the Department also reviewed the May 8, 2020, "Natural Gas Long-Term Capacity Supplemental Report" (Report) by National Grid, which updated findings of its earlier February 24, 2020 report, which was also evaluated by NYSDEC in reaching its May 15, 2020 decision. The Report provided an updated analysis of natural gas demand-supply gap in the New York City region that the NESE Project is designed to address. Taking into account safety, reliability, cost, environmental impacts (including greenhouse gas emissions), community impact and deliverability, the Report compared the NESE Project to other available alternatives, including an alternative that avoided new fossil fuel infrastructure and relied instead upon enhancements to existing infrastructure combined with incremental energy efficiency and improved demand response measures. New York, the ultimate beneficiary of the Project, appears to have concluded that the alternative of enhancing existing infrastructure represented comparable cost options, had minimal comparable environmental impacts, accelerated greenhouse gas emission reduction goals, and provided additional job opportunities.

Accordingly, in evaluating compliance with N.J.A.C. 7:7A-10.4, which requires that Transco demonstrate a compelling public need for the Project, the Department must conclude that, under these circumstances, public need has not been demonstrated. Furthermore, as there would be no endpoint for the Project absent NYSDEC's approval, Transco's application has been rendered effectively moot and any grant of its permit applications by the Department would be futile.

Under these circumstances, the Department need not resolve any further issues presented by the subject applications.

## CONCLUSION

Based on the above analysis, Transco has failed to demonstrate that the proposed NESE Project would comply with the Freshwater Wetland Protection Act Rules at N.J.A.C 7:7A. The denial of the permit under these rules eliminates the project. Therefore, the NESE Project permit application, including for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront Development In-Water Individual Permit, Water Quality Certificate, Waterfront Development Upland Individual Permit, Coastal Wetland Individual Permit and Water Quality Certificate, is hereby denied.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-28, Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-21, and the Flood Hazard Control Act Rules at N.J.A.C. 7:13-23.

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, 401 East State Street, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist. The Checklist is available through the Division's website at http://www.nj.gov/dep/landuse/forms.html. The DEP Bulletin is available through the Department's website at http://www.nj.gov/dep/.

I am sharing a copy of the denial with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources.

If you have any questions on this decision, please contact Joslin Tamagno of my staff in writing at the above address, by telephone at (609) 984-6216, or via email at Joslin.Tamagno@dep.nj.gov.

Sincerely,

Christopher Jones

for
Diane Dow, Director
Division of Land Use Regulation

c: Bureau of Coastal and Land Use Enforcement, Toms River
Borough of Sayreville Clerk and Planning Board
Township of Old Bridge Clerk and Planning Board
Township of Franklin Clerk and Planning Board
Mr. Joe Dean, Transco
FERC

# EXHIBIT B

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Division of Environmental Permits**
625 Broadway, 4th Floor, Albany, New York 12233-1750
P: (518) 402-9167 | F: (518) 402-9168 | deppermitting@dec.ny.gov
www.dec.ny.gov

May 15, 2020

Mr. Joseph Dean
Manager, Environmental Health and Safety
Transcontinental Gas Pipe Line Company, LLC
2800 Post Oak Boulevard (77056)
P.O. Box 1396
Houston, TX 77251-1396

Re: Notice of Denial of Water Quality Certification
Transcontinental Gas Pipe Line Company, LLC
Northeast Supply Enhancement Project
DEC ID: 2-9902-00109/00006 – Water Quality Certification

Dear Mr. Dean:

On May 17, 2019, Transcontinental Gas Pipe Line Company, LLC ("Transco") submitted a federal Clean Water Act ("CWA") Section 401[1] Water Quality Certification ("WQC") application ("2019 WQC Application") to the New York State Department of Environmental Conservation ("NYSDEC" or "Department") for the proposed Northeast Supply Enhancement Project ("Project").[2] Based on its review of the 2019 WQC Application and supplemental information provided by Transco, the record before the Federal Energy Regulatory Commission ("FERC") regarding the Project,[3] and the over 16,000 public comments received from individuals or organizations during the Department's public comment period,[4] the Department hereby provides notice to Transco that the 2019 WQC Application is denied.[5] As required by Title 6 of the New York Codes,

[1] 33 U.S.C. § 1341.
[2] Transco originally submitted a Joint Application for Permits on June 30, 2017, which included applications for Endangered/Threatened Species (Part 182 Incidental Take Permit), Environmental Conservation Law ("ECL") Article 15 Excavation & Fill in Navigable Waters permit, and a WQC ("Joint Application"). The Department denied the original June 30, 2017 WQC application without prejudice on April 20, 2018. Transco subsequently submitted a new WQC application on May 16, 2018, which the Department denied without prejudice on May 15, 2019 ("2019 Denial"). *See* Notice of Denial, May 15, 2019, *available at*: https://www.dec.ny.gov/docs/administration_pdf/nodtgp.pdf. The 2019 WQC Application is the subject of this Notice of Denial letter. The Part 182 Incidental Take Permit and ECL Article 15 Excavation & Fill in Navigable Waters applications remain pending before the Department and are not the subject of this letter.
[3] *See* FERC Docket No. CP17-101.
[4] The Department received over 16,000 written public comments during the public comment period on the 2019 WQC Application from May 29, 2019 to July 13, 2019.
[5] Separate from the Joint Application for Permits, Transco applied on June 21, 2018 for a State Pollutant Discharge Elimination System ("SPDES") to discharge hydrostatic test discharge water into the Atlantic Ocean. The SPDES permit application remains pending before the Department and is not the subject of this letter.

Rules, and Regulations ("6 NYCRR") Section 621.10, a statement of the Department's basis for this denial is provided below.

## Project Background and FERC Application

Along with other components located in Pennsylvania and New Jersey, the Project would involve the installation of approximately 17.4 miles of 26-inch diameter natural gas loop pipeline within New York State waters, to be known as the Raritan Bay Loop. The Raritan Bay Loop would be entirely underwater from New Jersey through Richmond and Queens Counties and would connect to the existing Rockaway Delivery Lateral in Queens, New York. The Project would provide 400,000 dekatherms per day of incremental natural gas capacity to National Grid to serve customers in Brooklyn, Queens, and Long Island.

On March 27, 2017, Transco submitted an application for a Certificate of Public Convenience and Necessity ("Certificate") to FERC under Section 7(c) of the Natural Gas Act[6] for construction and operation of the Project.[7] FERC issued a Draft Environmental Impact Statement ("DEIS") on March 23, 2018. The Department submitted comments to FERC regarding the DEIS on May 14, 2018. FERC issued a Final Environmental Impact Statement ("FEIS") for the Project on January 25, 2019. The FEIS outlined some of the numerous environmental impacts FERC anticipates from the construction and operation of the Project and recommended certain conditions to mitigate some of the impacts. On May 3, 2019, FERC issued Transco a Certificate for the Project,[8] subject to certain environmental conditions recommended in the FEIS. According to FERC, these conditions would mitigate many of the environmental impacts associated with the Project.

## 2019 WQC Application and Procedural Background

In addition to FERC's issuance of a Certificate for the Project, Transco must obtain a WQC from the Department prior to commencing construction of the Raritan Bay Loop portion of the Project in New York State. Pursuant to Section 401 of the CWA, no federal license for a project can be granted until a WQC is issued or waived by the relevant state agency, which, in this case, is the Department.[9] Likewise, pursuant to Section 401 of the CWA, no federal license for a project can be granted if a WQC is denied.[10]

For the Project, the Certificate issued by FERC recognizes the need for a WQC from the Department. For example, to obtain authorization to commence construction of the Project, Transco must provide FERC with "documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof)."[11]

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[6] 15 U.S.C. § 717f(c).
[7] *See* FERC Docket No. CP17-101.
[8] FERC Order Issuing Certificate, 167 FERC ¶ 61,110 (May 3, 2019) ("FERC Order").
[9] 33 U.S.C. § 1341.
[10] *Id.*
[11] FERC Order at 41, Appx. A, Environmental Conditions at ¶ 10.

The FEIS issued by FERC expressly acknowledges that among such authorizations is a WQC from the Department.[12]

As cited above, on June 30, 2017, Transco originally submitted a Joint Application to the Department for the Project. The Department denied the original June 30, 2017 WQC application without prejudice on April 20, 2018, due to incomplete information and the ongoing environmental review by FERC.[13] On May 16, 2018, Transco submitted to the Department a new WQC application for the Project that included additional information ("2018 WQC Application"). The 2018 WQC Application was supplemented on multiple occasions with further additional information, including in response to requests from NYSDEC. A public comment period and public statement hearings were held in early 2019[14] and the Department subsequently denied the 2018 WQC Application without prejudice on May 15, 2019.[15]

On May 17, 2019, Transco submitted to the Department a new WQC application ("2019 WQC Application") for the Project, which is the subject of this Notice of Denial letter. The 2019 WQC Application included changes from the 2018 WQC Application in response to the 2019 Denial and otherwise. Transco supplemented the 2019 WQC Application on May 23, 2019 and June 19, 2019. As previously mentioned, over 16,000 public comments were received from individuals or organizations during a public comment period held between May 29, 2019 through July 13, 2019.

## Basis for Denial

The Department denies the 2019 WQC Application based on Transco's inability to demonstrate the Project's compliance with all applicable water quality standards. To obtain a WQC from the Department, an applicant must, among other requirements, demonstrate compliance with State water quality standards. *See* 6 NYCRR § 608.9. Transco has not demonstrated that construction and operation of the Project would comply with applicable water quality standards. Because the Department lacks

[12] FEIS at 1-19, Table 1.5-1.

[13] *See* Notice of Denial/Notice of Incomplete Application, April 20, 2018 ("2018 Denial"), available at https://www.dec.ny.gov/docs/water_pdf/transcodenial42018.pdf. As stated in the 2018 Denial, FERC's environmental review of the Project, conducted pursuant to the National Environmental Policy Act ("NEPA"), takes the place of an environmental review that would otherwise be conducted under the State Environmental Quality Review Act (ECL Article 8). FERC's NEPA review of the Project was incomplete at the time of the 2018 Denial. As mentioned above, notwithstanding the sufficiency or lack thereof of FERC's environmental review, FERC has since issued an FEIS for the Project and issued the Certificate for the Project.

[14] During a public comment period from January 30, 2019 to March 15, 2019, the Department received over 14,000 public comments on behalf of over 45,000 individuals or organizations. Pursuant to 6 NYCRR Section 621.8, legislative public comment hearings were held on February 26, 2019 in Brooklyn, and March 6, 2019 in Rockaway Park.

[15] *See* 2019 Denial. As stated in the 2019 Denial, the Department determined that Transco had not demonstrated that the Project would comply with all applicable water quality standards and that the construction of the Project would likely have significant water quality impacts in New York State. Most notably, according to Transco's own submissions and as acknowledged by FERC [FEIS at 4-123, Table 4.5.2-8], water quality standards for both mercury and copper were projected to be exceeded in certain areas in New York State waters.

reasonable assurances that the Project would comply with applicable water quality standards, particularly without the use of a default 500-foot mixing zone for mercury and copper, the Department hereby denies the 2019 WQC Application.

Transco's projections in the 2019 WQC Application are based on the presumed use of a default 500-foot mixing zone. But as the Department noted in its 2019 Denial, the Department maintains discretion to assign a smaller mixing zone or no mixing zone, based on its assessment of relevant factors including the nature of sediment contamination, the proximity of sensitive habitats, and other qualitative assessments. The Department has considered the Project in light of these criteria and has determined that the default 500-foot mixing zone is not appropriate at all locations proposed to be crossed by the Project. Without the use of a default mixing zone at all locations, the Project would not comply with all applicable water quality standards, and therefore, the Department is denying the 2019 WQC Application.

Based on the Department's review of the 2019 WQC Application for the Raritan Bay Loop portion of the Project, including all supplemental materials, review of the over 16,000 public comments received on the 2019 WQC Application for the Project, and review of the FEIS and other record materials associated with the Project, the Department has determined that the construction of the Project would have adverse water quality impacts in New York State. This includes significant water quality impacts from the resuspension of sediments and other contaminants, including mercury and copper, particularly without the use of a default 500-foot mixing zone in certain areas. The Project would cause impacts to habitats due to the disturbance of shellfish beds and other benthic resources. The water quality impacts would be especially problematic within the productive hard clam area in Raritan Bay located between milepost ("MP") 14 and MP 20, which is considered both a "sensitive habitat"[16] and a "critical resource area" [17] (the "hard clam critical resource area").

Given the nature of anticipated sediment contamination, the importance of the hard clam critical resource area that would be crossed by the Project, along with the overall nature and need for the Project, the use of a default 500-foot mixing zone is not appropriate in all Project areas, particularly in the hard clam critical resource area. Furthermore, in some locations, Transco proposes to bury the Project only four feet under the seafloor, rather than the minimum six-foot burial depth more recently sought by the Department for other offshore projects. Were Transco to maintain a minimum six-foot burial depth throughout the entire Project route, it would also need to propose construction methods that would address any water quality impacts from such a burial depth.

[16] "Sensitive habitat" as referenced in the Technical & Operational Guidance Series ("TOGS") 5.1.9, In-Water and Riparian Management of Sediment and Dredged Material, November 2004 – available at https://www.dec.ny.gov/docs/water_pdf/togs519.pdf

[17] "Critical resource areas" as referenced in the United States Environmental Protection Agency ("EPA") 820-B-14-004 September 2014 Water Quality Standards Handbook, include breeding or spawning grounds, habitat for threatened or endangered species areas with sensitive biota shellfish beds, fisheries, drinking water intakes and sources and recreational areas.

### *Statutory and Regulatory Basis*

The Department, in accordance with CWA Section 401, is required to certify that a facility meets State water quality standards prior to a federal agency issuing a federal license or permit in conjunction with its proposed operation.[18] An applicant for a WQC must provide the Department sufficient information to demonstrate compliance with the State's water quality regulations found at 6 NYCRR Section 608.9 (Water Quality Certifications). Pursuant to this regulation, an applicant must demonstrate compliance with Sections 301, 302, 303, 306 and 307 of the CWA, as implemented by applicable water quality standards set forth in 6 NYCRR Parts 701, 702, 703, 704, and 750, and State statutes, regulations and criteria otherwise applicable to such activities. Denial of a WQC may occur, for example, when an application fails to contain sufficient information to demonstrate compliance with the above-referenced State water quality standards and other applicable State statutes and regulations, or when an application contains information that construction and operation of a project may violate or exceed an applicable water quality standard.

### *Applicable Water Quality Standards for Mercury and Copper*

As described above, and pursuant to 6 NYCRR Section 608.9, Transco must demonstrate that the Project will comply with all applicable water quality standards in order for the Department to issue a WQC for the Project. Among these water quality standards are both narrative and numerical standards, which in turn depend on the regulatory classification of the particular waterbody or waterbodies at issue. *See generally* 6 NYCRR Part 703. The waters that would be crossed by the Project are primarily classified by the Department as either Class SA or Class SB saline surface waters. *See* 6 NYCRR § 890.6.[19] The best usages of Class SA saline surface waters "are shellfishing for market purposes, primary and secondary contract recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival." 6 NYCRR § 701.10.[20] The best usages of Class SB saline surface waters "are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival." 6 NYCRR § 701.11.[21]

Numerical water quality standards are established by the Department for particular substances and waterbody classifications. For copper, the aquatic chronic standard for SA and SB waters is 3.4 ug/L dissolved, except in the New York/New Jersey harbor where it is 5.6 ug/L dissolved. *See* 6 NYCRR § 703.5. For mercury, the regulatory Health (Fish Consumption) water quality standard is 0.70 ng/L or $7x10^{-4}$ ug/L (dissolved). *See* 6 NYCRR § 703.5, Table 1. The applicable standard for mercury relevant to the Project, however, is higher and is based on a multiple discharge variance procedure developed

[18] 33 U.S.C. § 1341.
[19] *See also* FEIS at 4-50.
[20] *See also id.*
[21] *See also id.*

according to 6 NYCRR Section 702.17(h).[22] The resulting mercury water quality standard variance concentration is 50 ng/L or 0.05 ug/L total mercury. Along with other applicable water standards, the construction and operation of the Project must comply with these numerical standards for copper and mercury.

***Transco's Contaminant Modeling***

Transco conducted contaminant modeling for various compounds, including copper and mercury. This modeling projected concentrations of compounds at the edge of a default 500-foot mixing zone at various locations. As acknowledged by FERC in both the FEIS and the FERC Order, based on a review of the modeling information submitted by Transco itself, "[f]or some of the modeled scenarios, water quality standards for mercury and copper would not be met at the edge of the mixing zone."[23]

Transco's earlier models projected exceedances of the numerical water quality standard variance concentration for mercury at the edge of a default 500-foot mixing zone within the hard clam critical resource area at Vibracore sites VC6, VC16, and VC17.[24] Within this hard clam critical resource area, the highest projected concentration for mercury was 0.1 ug/L, which would have been double the variance-based water quality standard of 0.05 ug/L.[25] In addition to the modeling results within the hard clam critical resource area, Transco's earlier modeling projected exceedances for mercury by as much as more than double the variance-based water quality standard of 0.05 ug/L, with a maximum projected concentration of 0.12 ug/L.[26] As described above, and as was described in the 2019 Denial, the variance concentration is already significantly higher than the regulatory water quality standards for mercury in 6 NYCRR Section 703.5. Similarly, exceedances of the numerical water quality standards for copper were projected in Transco's original modeling to occur at the edge of a default 500-foot mixing zone within the hard clam critical resource area at Vibracore sites VC7 and VC16.[27]

Transco submitted Addendum B to its Contaminant Transport Modeling Results as part of the 2019 WQC Application that included additional pollutant dispersion calculations for Vibracore sites VC7, VC37 and VC42. Addendum B modified the rate of dredging for each of the segments around VC7 to 4,800 cubic feet per hour, and for segments around VC37 and VC42 to 4,500 cubic feet per hour. For segments around VC37 and VC42, Addendum B also incorporated a "slack-tide pause." On June 19, 2019, Transco submitted Addendum C to its Contaminant Transport Modeling Results that included additional pollutant dispersion calculations for Vibracore sites VC6, VC16, VC17, and VC38. Addendum C modified the rate of dredging for each of the segments around

[22] *See* NYSDEC TOGS 1.3.10 Mercury - available at: https://www.dec.ny.gov/docs/water_pdf/tog1310final.pdf.
[23] FEIS at ES-12; FERC Order at p.19, ¶ 49.
[24] Supplemental Informational Filing #A-2, Table 3-3 "Summary of Addendum A Contaminant Modeling Results – October 2018." *See also* FEIS at ES-12, 4-122 to 4-123, Table 4.5.2-8; FERC Order at 19, 49.
[25] *Id.*
[26] *Id.*
[27] FEIS at 4-123, Table 4.5.2-8; Supplemental Informational Filing #A-2, Table 3-3 "Summary of Addendum A Contaminant Modeling Results – October 2018."

VC6, VC16, VC17, and VC37 from 11,250 cubic feet per hour to 4,800 cubic feet per hour. Addendum C notes that the reduced dredging rate lengthens the time necessary to complete the proposed Project. As a result of the reduction in dredging rates and implementation of selective "slack-tide pause," Transco's revised modeling results (Addendum B and Addendum C) now project no exceedances of the variance-based water quality standard of 0.05 ug/L for mercury or the standard of 5.6 ug/L for copper at the edge of a presumed default 500-foot mixing zone. This analysis improperly assumes application of a default 500-foot mixing zone at all locations. As explained below, however, the use of the default 500-foot mixing zone has not been established at all locations and is not appropriate in certain areas along the proposed Project route.

Finally, without further documentation, the Department cannot accept the modeled sediment loss rate of 5%, which was used to project sediment loss due to jet trencher activities. The 5% loss rate is applied in the hard clam critical resource area (MP 16.6 to MP 17.3 and MP 17.9 to MP 19.7) where jetting installation is proposed. From the FEIS, in Table 3.6-1, the percent dispersed rate from the jet trencher is listed as 5% whereas the dispersed rate from a jet sled is listed as 90%, with a 10% dispersed rate for a mechanical plough. The footnotes to the Table indicate that the jet sled equipment dispersed rate is based on information received from LL&G Construction Company and the mechanical plough equipment dispersed rate is based on information received from Royal IHC. However, there is no basis for the jet trencher dispersed rate listed in this table. Contained in Transco's submission dated May 16, 2019, is Addendum 5 - February 15, 2019 Regarding: NESE Modeling Results (Addendum). In this Addendum, Transco assumes losses from the jet trencher to be 5% of the total disturbance volume. Modeling results from other comparable jetting installation projects that NYSDEC has reviewed have assumed a 25% to 30% sediment loss rate for jetting installation activities. Without a reference to the basis for the 5% loss rate assumed for jet trenching, it is not possible to verify this 5% loss rate assumption. This loss rate is likely to affect the water quality projections contained in Transco's Contaminant Transport Modeling Results and associated addenda.

***Use of Default Mixing Zone of 500 feet***

All of the water quality standard exceedances previously projected by Transco were based on the presumed use of a default 500-foot mixing zone, as explained in the 2019 Denial. Similarly, as explained above, Transco's updated projections in the 2019 WQC Application – which projected no exceedances for applicable mercury or copper standards – were all based on the use of a default 500-foot mixing zone. Without the use of a 500-foot mixing zone in certain locations along the proposed Project route, Transco's projections do not provide reasonable assurances that construction and operation of the Project would meet all applicable water quality standards.[28]

[28] The Department's discretion to apply a mixing zone other than the default 500-foot mixing zone is consistent with guidance by EPA Office of Water EPA 820-B-14-004 September 2014 Water Quality Standards Handbook Chapter 5: General Policies.

As noted in the 2019 Denial, the Department has discretion to reduce the size of a mixing zone from the default 500-foot size, or eliminate a mixing zone altogether, based upon a case-by-case analysis of the facts particular to each application and location. While the Department previously noted the default 500-foot mixing zone value, the Department has made no final discretionary determination regarding the appropriate mixing zone at all locations for the Project. In fact, the Department noted in the 2019 Denial that, in this case, the Department could assign a mixing zone of less than 500 feet. Neither the 2019 Denial nor any other previous document with Transco assigned a particular mixing zone for the Project because it was not necessary to do so at that time. That is, based on the previous application that was before the Department at the time, Transco had projected exceedances for mercury and copper even with the use of a default 500-foot mixing zone.

The Department's discretion in determining the size and shape of a mixing zone allows the Department to ensure that natural resources are protected by minimizing the suspension of contaminated sediment during permitted activities. As outlined in TOGS 5.1.9 - *In-Water and Riparian Management of Sediment and Dredged Material*, this case-by-case analysis examines the following factors: (1) the nature of the sediment contamination; (2) proximity of sensitive habitats or water use areas; (3) proximity of sensitive life stages of important biological resources; and (4) other qualitative assessment factors relevant to the project, including a comparison of the proposed project to similar projects.[29] This approach is consistent with the EPA's guidance on mixing zones, which provides: "States and tribes should conclude that mixing zones are not appropriate … where they may endanger critical areas such as breeding and spawning grounds, habitat for threatened or endangered species, areas with sensitive biota, *shellfish beds*, fisheries, drinking water intakes and sources, and recreational areas."[30] Transco's sediment sampling indicates the presence of a water quality limiting substance (mercury) and analytes detected in the sediment at greater than Class A threshold values (metals and polychlorinated biphenyls ("PCBs"). Based on a consideration of these factors, as described below, the Department concludes that the use of a default 500-foot mixing zone is inappropriate in certain locations proposed to be crossed by the Project, namely, the hard clam critical resource area of Raritan Bay.

*1. Nature of the Sediment Contamination*

As mentioned above, sediment sampling in the Project area has identified both mercury and copper as well as arsenic, silver, nickel, lead, zinc, PCB and dioxin/furan sediment contamination buried in the hard clam critical resource area (VC6, VC7, VC16, VC17). As part of its review of the 2019 WQC Application, the Department considered the historical background contaminant concentrations in the area proposed to be crossed by the Project, including for mercury and copper. In particular, NYSDEC asked Transco for ambient water column concentration information.[31] Transco supplied historical water

[29] TOGS 5.1.9, Section V. Permit Conditions for Dredging and Dredged Material Management at 35-37.
[30] *See* EPA 820-B-14-004, September 2014 Water Quality Standards Handbook, Chapter 5 (emphasis added).
[31] *See* Supplemental Informational Filing #A-2, at 12.

column monitoring data, including historical background contaminant concentrations in the water column.[32] Resuspension of contaminated sediment caused by the construction of the Project will release contaminants into the water column and these contaminant concentrations will exceed background levels. Consequently, construction activities are projected to cause the exceedances for mercury and copper.

Copper is a critical contaminant that is closely regulated in the environment due to its potential to have drastic and immediate effect on aquatic life. Suspending copper-laden sediments may adversely affect and harm aquatic life, inhibit reproduction, or kill aquatic life. Similarly, mercury is a metal that contaminates the environment from human activities, and suspension of mercury-laden sediments may adversely affect aquatic life, including harming, inhibiting reproduction, or killing aquatic life.

Due to the bioaccumulative effect of mercury, there is also potential for such adverse effects to migrate up the food chain, adversely affecting other organisms. Although analysis of contaminant transport has thus far utilized the variance-based water quality standard of 0.05 ug/L for mercury, the Department notes that the Health (Fish Consumption) standard for dissolved mercury is 0.0007 ug/L, due to mercury's bioaccumulative properties. *See* 6 NYCRR § 703.5, Table 1. Increased scrutiny of mixing zone usage for such bioaccumulative pollutants is consistent with EPA guidance, which goes further and "recommends that state and tribal mixing zone policies do not allow mixing zones for discharges of bioaccumulative pollutants."[33] Bioaccumulation is particularly a concern in areas designated as Class SA waterbodies where shellfishing is a best use. *See* 6 NYCRR § 701.10.

Copper and mercury, as well as other heavy metals such as silver, zinc, and nickel, can have negative impacts on metamorphosis, growth and survival of larval clams, which are at a critical life stage and are more susceptible to impacts from metals and contaminants than their adult counterparts. Larval stage hard clams are more vulnerable to the negative impacts of exposure to heavy metals during this critical life stage that results in increased mortality and impacts to growth and successful metamorphosis to the "setting" stage. In addition to the impact of such exposure on the mortality of hard clam larvae when exposed to toxic levels of copper or mercury, these and other heavy metals in seawater, particulate matter and algae would be filtered by larvae, juvenile, and adult clams. The vulnerability of hard clams to such pollutants is of particular concern to the Department because the proposed Project is located in an important area for shellfish propagation and survival, as is discussed in greater detail below.

*2. Proximity of Sensitive Habitats*

The Project is proposed to be located in an important area for shellfish propagation and survival. Currently, Raritan Bay supports a healthy abundance of diverse resident and migratory marine species and specifically a valuable hard clam critical resource area. In particular, Raritan Bay is one of last known highly productive hard clam beds in the

[32] *See id.* at 14-15.
[33] *See* EPA 820-B-14-004, September 2014 Water Quality Standards Handbook, Chapter 5.

State, and its benthic habitat is particularly critical and sensitive. Specifically, the hard clam critical resource area in Raritan Bay is located between MP 14.0 and MP 20. Transco estimated that the hard clam density between MP 14.4 and MP 21.6 to be approximately 69.6 individuals per square foot. The majority (approximately 74%) of hard clam individuals collected in this area were less than one inch (25 millimeters) in size.[34] Part of this area is currently an uncertified shellfish area, meaning that shellfish harvest is currently prohibited except pursuant to a Department-managed transplant program. Due in large part to high-quality habitat with no current harvest, there is currently a thriving hard clam population in these areas.

Overall, the construction of the Project would likely have significant adverse impacts to shellfish propagation and survival.[35] As stated by FERC in the FEIS, "the primary impacts associated with construction of the Raritan Bay Loop would be the potential adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments)."[36] In particular, seabed disturbance from the construction of the Project would have direct impacts including "mortality, injury, or temporary displacement of the organisms living on, in, or near the 87.8 acres of seafloor directly affected by the Project."[37] Moreover, indirect impacts from construction of the Project "would include suspension of sediments in the water column, which could clog fish gills and obscure visual stimuli, and the redistribution of sediments that fall out of suspension, which could bury benthic and demersal species, resulting in mortality of eggs and other life stages. Benthic invertebrates and demersal (bottom-dwelling) fish species in or near areas directly impacted by construction would be most affected."[38] The Project would disrupt early life stages of hard clams settled on the bottom sediments that would be buried by sediment deposition with an expected high rate of mortality. Smaller clams might experience as high a mortality rate as 100%. Adult clams may also experience mortality but to a lesser degree than juvenile clams.

As described above, and as acknowledged by both Transco and FERC, if construction of the Raritan Bay Loop portion of the Project were to proceed, there would be various environmental impacts, including to water quality, shellfish beds, and other benthic resources. Based on information contained in Transco's Contaminant Transport Modeling Results (including Addenda B and C), the Project would result in a 1,000-foot-wide corridor along which water quality standards for copper and mercury are projected to be exceeded. This corridor is currently proposed to cut directly through the Raritan Bay hard clam critical resource area. As noted above, the Health (Fish Consumption) standard for dissolved mercury is 0.0007 ug/L, due to the bioaccumulative effect of mercury. *See* 6 NYCRR § 703.5, Table 1. Given the Project proposes to create a 1,000-foot-wide

[34] FEIS at 4-101 to 4-102.
[35] As mentioned above, pursuant to 6 NYCRR Section 701.10, the best usages of Class SA saline surface waters are shellfishing for market purposes, primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival. And pursuant to 6 NYCRR Section 701.11, the best usages of Class SB saline surface waters are primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival.
[36] FEIS at ES-10.
[37] FEIS at ES-11. *See also* FERC Order at 17-18, ¶ 46.
[38] FEIS at ES-11.

corridor through the hard clam critical resource area where mercury-laden sediment is suspended at levels roughly 100 times more concentrated than the Health (Fish Consumption) standard, the application of a default 500-foot mixing zone is not appropriate.

Given the severity of the potential adverse impact to the unique natural resource of the hard clam critical resource area, Transco's proposed use of a default 500-foot mixing zone is not appropriate in this location. Furthermore, because the model predicts only achieving the water quality standard concentration for copper and mercury at the edge of the default mixing zone, the concentrations of these contaminants within the confines of the default mixing zone would be expected to exceed the water quality standards. This will be especially true closer to the source of resuspension. Therefore, reducing the size of the default mixing zone in a specific area would likely lead to additional and greater exceedances of mercury and copper water quality standards in that area and may also lead to exceedances of other applicable standards. None of the material submitted by Transco to the Department or to FERC appears to address Transco's ability to reduce the size of the mixing zone, nor does Transco address what actions could be taken to avoid the hard clam critical resource area or minimize the likely adverse effects of the Project on the hard clam critical resource area (beyond the Best Management Practices ("BMPs") already proposed, such as the use of an environmental bucket or elimination of barge overflow). Therefore, given the proximity of sensitive habitats to certain areas along the proposed Project route, the application of this factor also weighs towards the use of a smaller or no mixing zone.

*3. Proximity of Sensitive Life Stages of Important Biological Resources*

Based on the requirements in TOGS 5.1.9, Table 3, for Class C sediment, Transco is already implementing the BMPs of no barge overflow and the use of an environmental bucket for dredging. Transco also proposes to slow its proposed rate of dredging as a means of addressing compliance with water quality standards. Further slowing the rate of dredging, however, would also potentially interfere with the required no work windows for important biological species because there is already minimal buffer, or float, built into the schedule.

Transco would be subject to various construction work windows for the Project, including to protect certain threatened and endangered species such as Atlantic Sturgeon and species in decline such as Winter Flounder.[39] Applicable work windows in locations that would be crossed by the Project already result in a relatively tight construction schedule due to the presence of these and other species. As part of the Joint Application, Transco applied for a Part 182 Incidental Take Permit from the Department. As an example of an applicable construction work window, if Transco cannot comply with the

[39] *See* Species-related Time-of-year (TOYR) Flexibility Requests – revised December 14, 2018 Northeast Supply Enhancement Project. *See also* FERC Order at 42, Appx. A Environmental Conditions, ¶ 14 (addressing requirement for Transco to provide, prior to commencing construction of the Raritan Bay Loop portion of the Project, documentation of timing restriction commitments and allowable work within these periods).

following conditions for MP 30 to MP 35.5, then an incidental take of Atlantic Sturgeon may occur:

- No work May 1st through June 30th and no work October 1st through November 30th, with the exception of limited low-impact activities (hand jetting, spool installation, hydrotesting and drying), only.
- From March 1st through April 30th, work can occur provided that no sturgeon are present. Absence of sturgeon must be confirmed with acoustic monitoring prior to work being conducted.

Transco's construction schedule does not appear to provide any buffers to avoid impacts to or take of important biological species. As a result, even if a reduced construction rate would ensure compliance with water quality standards, it may not be possible for Transco to employ such a reduced rate while still complying with applicable construction work windows to protect species. Thus, Transco has not provided sufficient documentation to the Department that any identified need to reduce the rate of dredging to comply with water quality standards would be possible within applicable work windows to protect important biological species.

*4. Other Qualitative Assessments*

In determining whether to assign the default 500-foot mixing zone or a different value, the Department may also consider "[q]ualitative assessments which compare the proposed project to similar projects . . . ."[40] Based on the factors discussed above related to the sensitive hard clam area that would be crossed by the Project, it is not necessary to reach this factor to determine the appropriate mixing zone. While the application of this factor is not necessary for the Department to determine that the default 500-foot mixing is inappropriate in the hard clam critical resource area, consideration of this criterion is consistent with the application of the other factors. As discussed further below, this includes qualitative assessments of the Project's greenhouse gas ("GHG") emissions and climate change impacts, especially given the State's recently-enacted Climate Leadership and Community Protection Act ("Climate Act"),[41] as well as the need for the Project in light of anticipated natural gas supply and demand in the downstate region. The assessment of these additional qualitative factors provides further supplemental support for the Department's determination that the default 500-foot mixing zone is inappropriate for the hard clam critical resource area.

Overall, based on a consideration of the factors explained above, the Department concludes that the use of the default 500-foot mixing zone is not appropriate at certain locations for the proposed Project, including the hard clam critical resource area.

[40] TOGS 5.1.9 at 37.
[41] Chapter 106 of the Laws of 2019.

***Compliance with Water Quality Standards without Default Mixing Zone***

Given NYSDEC's case-specific determination that the assignment of the default mixing zone of 500 feet is not appropriate in all locations for this Project, particularly at the hard clam critical resource area, NYSDEC must assess the Project's projected compliance with applicable water quality standards without the use of the default mixing zone. Based on its review of the 2019 WQC Application and other materials outlined above, the Department does not have reasonable assurances that construction of the Project would comply with applicable water quality standards once the default 500-foot mixing zone is removed from the analysis.

During review of the 2019 WQC Application, NYSDEC also considered Transco's proposal to bury the pipeline only four feet under the seafloor in some locations. This burial depth is less than the six feet minimum depth sought by the Department in other contexts, such as newly proposed underwater electric transmission lines within the New York Bight. A six-foot burial depth is generally aimed at providing additional protection from a fishing and fisheries perspective, to avoid exposing or snagging the line and to minimize risk of vessel or gear impact that might compromise the pipeline.[42] Additionally, the Project is proposed in an area where transmission cables may be sited in the future to transmit renewable energy generated by offshore wind projects to both New York and New Jersey. As such, the design of any new offshore cable or pipeline must consider and avoid potential conflicts with future projects, including installation at a minimum depth of six feet.[43] An evaluation of a deeper burial depth to avoid gear interaction and conflicts with future projects in the Raritan Bay and more broadly, the New York Bight, was not considered in the 2019 WQC Application. However, absent an evaluation by Transco, the Department cannot make a determination regarding water quality impact of the more appropriate six-foot burial depth.

## Additional Impacts and Qualitative Assessment

In addition to the water quality standard exceedances for mercury and copper projected to be caused by the construction of the Project without the application of a default mixing zone that are the basis for this denial, the construction and operation of the Project would cause numerous other significant adverse environmental impacts. This includes impacts to shellfish propagation and survival, as well as impacts to other

[42] For example, in a letter to the Bureau of Ocean Energy Management on November 19, 2018, New York State agencies recommended a six-foot burial depth for offshore wind transmission lines: https://www.regulations.gov/document?D=BOEM-2018-0010-0085. The letter cites to conflicts with, "vessel anchorage, effective fishing bottom-gear deployment, finfish and shellfish stocks, and related habitat that may be harmed or inaccessible to fishing due to transmission cable protection measures and [inadequate] cable burial depth." New York State agencies requested, "a focused cumulative impacts analysis that considers planned offshore wind development in sites in the same geographic region over the next 5 years." Additionally, New York State agencies recommended removal of cable and protective measures when projects are decommissioned.

[43] NYSDEC submitted a comment letter to the New York State Public Service Commission ("PSC") for Case 18-T-0604 on July 12, 2019, indicating that offshore wind transmission cables should be buried at least six feet to avoid interactions with fishing gear and to prevent potential exposure of the cable.

important biological species. Moreover, the Project would result in GHG emissions, which cause climate change and thus indirectly impact water and coastal resources, including from the construction and operation of the Project, and from reasonably foreseeable upstream and downstream GHG emissions.[44] The Project's climate change impacts due to GHG emissions are especially important in light of the State's recently-enacted Climate Act. Finally, recent trends in the supply and demand of natural gas do not necessarily demonstrate the need for the Project and suggest at least one other alternative to meeting any projected supply shortages or reliability concerns. While none of these additional impacts are necessary for the Department to determine the inappropriateness of the default mixing zone within the hard clam critical resource area, the following qualitative assessment of these impacts is consistent with NYSDEC's determination to deny the 2019 WQC Application.

Because of these impacts from the construction and operation of the Project, mitigation would be required if the Project were to proceed and should adequately address them. Indeed, pursuant to the FERC Order, prior to commencing construction of the Raritan Bay Loop, Transco must provide FERC with "documentation of consultation with [the Department and other agencies] regarding its final proposed mitigation for fisheries and aquatic resources."[45]

***Greenhouse Gas Emissions and Climate Impacts***

While the 2019 WQC Application was pending before the Department, the State enacted the Climate Act. Among other things, as described further below, the Climate Act codifies the State's energy policy and goals, requires Statewide reductions in GHG emissions, and necessitates a transition away from the use of natural gas to produce electricity. Particularly without the identification of alternatives or GHG mitigation measures, the Project appears to be inconsistent with these requirements, as set forth below.

First, the Project will result in GHG emissions, which cause and contribute to climate change. GHG emissions associated with the Project include those from the full lifecycle of natural gas that will be transported through the Project. This includes upstream emissions, GHG emissions associated with the construction and operation of the Project, and downstream emissions. Upstream GHG emissions from the Project include those associated with the extraction and transmission of natural gas, including the extraction or production of the natural gas that is transported through the pipeline. This would include GHG emissions associated with the extraction of natural gas in Pennsylvania through high-volume hydraulic fracturing, provided such gas is ultimately transported for consumption in the State through the Project. GHG emissions associated with the operation of the Project would include leakage and other losses of gas transported through the pipeline. Downstream GHG emissions from the Project include those caused

[44] *See* FERC Order at 33-34, ¶ 90; Opinion of LaFleur, Commissioner, Concurring; and Opinion of Glick, Commissioner, Dissenting in Part. *See also* Order Denying Rehearing and Stay, April 16, 2020, 171 FERC ¶ 61,031; Opinion of Glick, Commissioner, Dissenting in Part.
[47] FERC Order at 42, Appx. A Environmental Conditions, ¶ 14.

by the combustion, by end-users in the National Grid service territory in New York City and Long Island, of the natural gas that is transported through the pipeline.

Second, in order to achieve the State's critical and ambitious climate change and clean energy policies, the State needs to continue its ongoing transition away from natural gas and other fossil fuels. While the Department recognizes that many building assets in the State currently rely on natural gas for heating and other energy uses, the continued long-term use of fossil fuels is inconsistent with the State's laws and objectives and with the actions necessary to prevent the most severe impacts from climate change. Therefore, the State must continue to support the ongoing transition to renewable and other clean sources of energy, as it works to ultimately eliminate all fossil fuel combustion sources that cannot be counterbalanced by guaranteed permanent carbon sequestration. Without appropriate alternatives or GHG mitigation measures, the Project could extend the amount of time that natural gas may be relied upon to produce energy, which could in turn delay, frustrate, or increase the cost of the necessary transition away from natural gas and other fossil fuels.

Third, the Climate Act requires a reduction of GHG emissions, a transition to renewable and other clean sources of energy, and a pathway for the ultimate achievement of net zero GHG emissions in all sectors of the economy. The Project would be inconsistent with or interfere with the Statewide GHG emission limits and other requirements established in the Climate Act, without the identification of additional alternatives or GHG mitigation measures.

In particular, the Climate Act adds a new Article 75 to the ECL. ECL Article 75 establishes Statewide GHG emission limits, requiring a 40 percent reduction in Statewide GHG emissions from 1990 levels by 2030, and an 85 percent reduction in Statewide GHG emissions from 1990 levels by 2050.[46] Moreover, as set forth in the Climate Act, Statewide GHG emissions include all emissions of GHGs from sources within the State, as well as GHGs "produced outside of the State associated with either the generation of electricity imported into the State or the extraction and transmission of fossil fuels imported into the State."[47] Thus, because natural gas that is extracted outside of the State would be transmitted through the Project to serve National Grid customers in New York City and Long Island, upstream GHG emissions associated with the Project would be considered part of Statewide GHG emissions under the Climate Act, in addition to the remaining portion of lifecycle GHG emissions associated with the Project. In addition, the Climate Act specifies that Statewide GHG emission limits be measured on a carbon dioxide equivalent basis, using a 20-year global warming potential.[48] The methane emissions associated with the Project are more impactful in terms of carbon dioxide equivalents when measured on this shorter-term basis, as specified in the Climate Act.

Moreover, the Climate Act includes the addition of Section 66-p to the Public Service Law ("PSL"). Among other things, PSL Section 66-p requires the PSC to establish

[46] ECL § 75-0107(1).
[47] ECL § 75-0101(13).
[48] ECL § 75-0101(2) and (8).

a program to ensure that 70 percent of the State's electricity is generated by renewable energy sources by 2030, and that 100 percent of the State's electricity is generated by carbon-free energy by 2040. The use of natural gas, such as that transported through the Project, to produce electricity would be inconsistent with these renewable and carbon-free energy generation requirements.

Furthermore, the Climate Act establishes a Climate Action Council, which among other things will be required to develop a Scoping Plan. The Scoping Plan must outline recommendations for attaining the Statewide GHG emission limits established pursuant to ECL Section 75-0107, including regulatory measures to be implemented by NYSDEC.[49] The Scoping Plan to be developed by the Climate Action Council must also include recommendations for the reduction of GHG emissions beyond the 85 percent by 2050 reduction requirement, to achieve net zero emissions in all sectors of the economy.[50] Many details regarding implementation of the Climate Act will be determined by the Climate Action Council in the Scoping Plan, and during the regulatory process by NYSDEC and other agencies, with substantial input from environmental justice and other stakeholders. Notwithstanding these important processes, it is already clear that achievement of the Statewide GHG emission limits established pursuant to ECL Section 75-0107, as well as achievement of net zero emissions in all sectors of the economy, will ultimately require a transition away from natural gas and other fossil fuels to produce energy. As this Project would facilitate the use of natural gas for an extended period of time, and may frustrate or delay the necessary transition away from natural gas to renewable and other clean sources of energy, it is clear that the Project as it is currently envisioned is inconsistent with the energy and climate policies, laws, and goals of the State. While not necessary for the Department's determination, this inconsistency further supports the Department's determination that the default mixing zone is inappropriate at all locations of the Project. This is especially true given that the State should not sacrifice its water quality, sensitive habitats, and important biological resources for a project that would have adverse climate impacts and one that runs counter to the State's policy to significantly reduce GHGs by transitioning away from the use of natural gas to produce electricity.

***Need for and Alternatives to Project***

The Department focused its review of the 2019 WQC Application on assessing whether the construction and operation of the Project would comply with applicable water quality standards. Whether the Project is needed, and whether alternatives to the Project are available to supply natural gas and meet long-term demand in the downstate region, are questions not directly at issue in the Department's review of the 2019 WQC Application. Thus, this denial does not represent a determination by the Department regarding whether the Project is necessary to meet long-term demand for natural gas in the downstate region. However, as part of its consideration of the appropriateness of applying the discretionary default mixing zone of 500 feet, the Department may review the overall impacts of the project as compared to alternatives in assessing the impacts to

[49] ECL § 75-0103(11)-(14).
[50] ECL § 75-0103(11).

the nature of the sediment contamination, the proximity of sensitive habitats or water use areas, and proximity of sensitive life stages of important biological resources. As discussed above, Transco's sampling indicating the presence of a water quality limiting substance (mercury) and analytes detected in the sediment at greater than Class A threshold values (metals and PCBs), are grounds to withhold providing the default 500-foot mixing zone. The availability of a less impactful alternative is relevant and provides further support to the Department to fully protect its natural resources and water quality.

While not necessary for the Department in determining the inappropriateness of the default mixing zone, the Department recognizes consideration by the public, National Grid, the PSC, and other entities regarding the need for and potential alternatives to the Project. For example, this issue is part of an ongoing proceeding instituted by the PSC to address and investigate denials of service requests by National Grid.[51] On February 23, 2020, National Grid released its Natural Gas Long-Term Capacity Report for Brooklyn, Queens, Staten Island, and Long Island ("Capacity Report").[52] National Grid issued a Supplemental Report on May 8, 2020, taking into account additional input from the public and other sources, as well as the potential economic impacts in the State from the COVID-19 pandemic ("Supplemental Report").[53]

National Grid's Supplemental Report found natural gas demand reductions in the downstate region due to the impact of COVID-19 and identified additional incremental supply. Based on this updated analysis, the Supplemental Report forecasts a smaller gap between gas demand and supply than previously estimated by National Grid in the Capacity Report. The Supplemental Report also identifies an additional option to close the future gap between demand and supply, as projected by National Grid. Finally, the Supplemental Report includes additional analyses of various options in terms of their potential environmental impacts, GHG emissions, and consistency with the Climate Act.

Based on this updated analysis, National Grid's Supplemental Report identifies and recommends at least one alternative to the Project. This alternative would include enhancements to existing infrastructure combined with incremental energy efficiency and demand response measures. While the precise details of this alternative are not relevant to this denial, according to National Grid, this alternative would meet the projected gap between demand and supply of natural gas even without the installation of the Project. Critically, as compared to the Project, National Grid concludes that this alternative is less environmentally impactful, in terms of water quality, GHG emissions and otherwise, and more consistent with the requirements of the Climate Act.

Therefore, while 100 percent of the natural gas to be transported through the Project would be provided to National Grid to serve customers in the downstate region, National Grid itself has identified at least one potential alternative to the Project that could

[51] *See* PSC Case No. 19-G-0678.
[52] National Grid, Natural Gas Long-Term Capacity Report, PSC Case No. 19-G-0678 (filed Feb. 24, 2020).
[53] National Grid, Natural Gas Long-Term Capacity Supplemental Report, PSC Case No. 19-G-0678 (filed May 8, 2020).

meet the same demand. Moreover, National Grid's analysis concludes that this alternative would have less of an environmental impact and be more in line with the long-term energy policies of the State as set forth in the Climate Act. Thus, in assessing the appropriate mixing zone for the Project, the apparent lack of need for the Project, as well as its increased impacts to water quality as compared to identified alternatives, provides further support of the Department's determination that the default 500-foot mixing zone is inappropriate at certain locations.

## Conclusion

For the reasons described above, the Department denies the 2019 WQC Application.

Pursuant to 6 NYCRR Section 621.10(a)(2), Transco has the right to an adjudicatory hearing regarding this denial of the 2019 WQC Application. Any such request for a hearing must be made in writing to me within 30 days of the date of this letter.

If you have any questions regarding this letter or the Project, you may contact me or Karen Gaidasz in my office, or Jonathan Binder in the Office of General Counsel.

Sincerely,

Daniel Whitehead, Director
Division of Environmental Permits

cc: FERC (Docket No. CP17-101)
J. Binder, NYSDEC OGC
K. Gaidasz, NYSDEC DEP
T. King, NYSDEC OGC
K. Woodfield, NYSDEC DOW

# EXHIBIT C

**Philip A. DeCicco**
New York General Counsel

nationalgrid

June 2, 2025

**VIA ELECTRONIC FILING**
Honorable Michelle L. Phillips, Secretary
New York State Public Service Commission
3 Empire State Plaza, 19th Floor
Albany, NY 12223-1350

**Case 24-G-0248 - In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid**

Dear Secretary Phillips,

Last Friday, May 29, 2025, Transcontinental Gas Pipe Line Company, LLC ("Transco") filed a petition with the Federal Energy Regulatory Commission ("FERC") requesting expedited reissuance of a certificate of public convenience and necessity for the construction and operation of the Northeast Supply Enhancement Project ("NESE Project"). The Brooklyn Union Gas Company d/b/a National Grid NY ("KEDNY"), KeySpan Gas East Corporation d/b/a National Grid ("KEDLI"), and Niagara Mohawk Power Corporation d/b/a National Grid (collectively, "National Grid" or the "Company") submit this letter to the New York State Public Service Commission ("Commission") respectfully requesting the opportunity to prepare and submit an update to its Gas System Long-Term Plan ("GSLTP") to capture this recent development concerning a potential new gas supply project.[1]

By way of background, the NESE Project received a FERC certificate in 2019 and KEDNY and KEDLI had previously entered contracts with Transco for its capacity. Transco subsequently canceled the project following determinations made in the State's water quality certification process.

In its recent petition, Transco commits to begin construction of the NESE Project by year-end upon expedited reissuance of its certificate. In its Long Term Gas Plan Order, the Commission directed gas utilities to include in their long-term plans a forecast and assessment of potential sources of gas supply. Critical to the Commission's consideration of the Company's GSLTP, the NESE Project would provide an additional 400,000 dekatherms per day of firm transportation capacity to Transco's offshore Rockaway Transfer Point, which connects to National Grid's service territory. However, because Transco just filed the NESE Petition on Friday, the Company could not have identified the project, much less considered it, as a viable source of new gas capacity for the Company's supply portfolio. The emergence of this project requires additional analysis to ensure that the Company's GSLTP fully considers the NESE Project's impacts, and thus, provides a comprehensive evaluation of all potential supply sources.

[1] In accordance with the Commission's Order Adopting Gas System Planning Process issued on May 12, 2022 in NYPSC Case 20-G-0131 ("Long Term Gas Plan Order"), the Company filed its GSLTP on March 7, 2025.

Likewise, stakeholders should have the opportunity to assess the updated GSLTP prior to submitting comments.

National Grid thus commits to expeditiously analyze the effects of the NESE Project on its gas service to customers in downstate New York. Accordingly, National Grid hereby respectfully requests: (i) the Commission provide the Company 30 days to file an update to the GSLTP to assess the NESE Project; and (ii) the Secretary issue the notice soliciting comments on the Company's GSLTP thereafter to ensure that stakeholders have the opportunity to review and comment on the update to the GSLTP.

Thank you for your consideration of this request.

Very truly yours,

*/s/ Philip DeCicco*

# EXHIBIT D

PHIL MURPHY
Governor
SHEILA OLIVER
Lt. Governor

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Land Use Regulation
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420
www.nj.gov/dep/landuse

CATHERINE R. McCABE
Commissioner

June 5, 2019

Sara Mochrie, Principal-Project Manager
Ecology and Environment, Inc.
368 Pleasant View Drive
Lancaster, NY 14086

RE: Denial of an Application for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront In-Water Individual Permit, Waterfront Upland Individual Permit, Coastal Wetlands Permit and Water Quality Certificate
DLUR File No. 0000-01-1001.3 FWW180001, FHA 180001, CSW180001, WFD180001, WFD180002
Applicant: Transcontinental Gas Pipeline Company
Project: Transcontinental Gas Pipeline Northeast Supply Enhancement Project
Project Location: Old Bridge Township, Sayreville Township, Middlesex County
Franklin Township, Somerset County
Block: Multiple
Lot: Multiple

Dear Ms. Mochrie:

On June 30, 2018, Transcontinental Gas Pipe Line Co. (Transco) submitted an application for the above-referenced permits for its Northeast Supply Enhancement (NESE) Project, which includes the proposed construction of a new compressor station and two new 26-inch diameter pipelines through freshwater wetlands, transition areas, coastal wetlands, flood hazard areas, riparian zones, and under the Raritan Bay. The New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR) reviewed the NESE Project pursuant to the NJDEP's federal authority assumed under the Clean Water Act to issue permits for freshwater wetlands and impacts to coastal resources, the Freshwater Wetlands Protection Rules (N.J.A.C. 7:7A) and the Coastal Zone Management Rules (N.J.A.C. 7:7), which incorporate the NJDEP's consideration of water quality impacts and determination whether to issue a Water Quality Certificate pursuant to Section 401 of the federal Clean Water Act, and the Flood Hazard Control Act Rules (N.J.A.C. 7:13). The NJDEP hereby denies without prejudice the NESE Project application and the referenced permits due to the applicant's failure to demonstrate compliance as described herein.

## PROJECT DESCRIPTION

The NESE Project is a proposed expansion of Transco's existing system from Pennsylvania through New Jersey to New York, to provide 400,000 dekatherms per day (Dth/d) of incremental capacity to National Grid at Transco's existing Rockaway Transfer Point located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York. According to Transco, the capacity of the existing Northeast Supply line is insufficient to provide the additional 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

The proposed NESE project would involve the construction and installation of three components in New Jersey: Compressor Station 206, the Madison Loop, and the Raritan Loop.

Proposed new Compressor Station 206 (CS 206) would be a 32,000-horsepower gas fired compressor station within Block 5.02, Lots 23 and 25 in Franklin Township, Somerset County. The proposed compressor station would occupy about 16.1 acres. Proposed new suction and discharge piping would connect CS 206 with Transco's existing Mainline, which is approximately 600 feet to the southeast of proposed CS 206. Access to CS 206 is proposed on lots 1.02, 9, 10, 11.02, 12, 16 and 17. The proposed access road, if approved as currently designed, would result in the disturbance of 2.862 acres of freshwater wetlands, 0.006 acre of state open waters, and 0.485 acres of riparian zones. In 2019, the Department received information that CS 206 was proposed in an area containing habitat for the State-listed Barred Owl. The Department investigated the information and confirmed the Barred Owl habitat, resulting in a reclassification of the onsite wetlands as exceptional resource value and increasing the associated wetland transition area from 50 to 150 feet. With these classification changes, the proposed construction for CS 206, the suction/discharge piping and a stormwater detention basin, if approved as currently designed, would result in disturbances to 1.02 acres of freshwater wetlands and 2.47 acres of exceptional resource value wetland transition areas.

The Madison Loop would be co-located within existing Transco right(s) of way in Sayreville and Old Bridge Townships, Middlesex County, and would consist of approximately 5.96 miles of new 26-inch diameter pipeline partially located within the upland waterfront development area. The Madison Loop would result in the disturbance of 1.968 acres of mapped coastal wetlands, 0.338 acres of freshwater wetlands, 1.143 acres of permanent impacts and 4.039 acres of temporary impacts to transition areas, and 0.46 acres of permanent disturbance and 0.597 acres of temporary impacts to riparian zones.

The Raritan Loop would begin within the upland waterfront development area in Middlesex County and extend into and under Raritan Bay. The Raritan Loop, as proposed, would consist of approximately six miles of new 26-inch diameter pipeline in New Jersey waters. Transco has proposed three (3) methods of installing the pipeline in Raritan Bay: horizontal directional drilling (HDD), clamshell bucket trenching and jet trenching. The HDD technique is proposed

from a location onshore in Old Bridge Township (mile marker 12+00) and continues offshore in Raritan Bay to mile marker 12+50. From mile marker 12+50 to 14+02 the pipeline would be installed via clamshell bucket. At mile marker 14+02 the pipeline would then enter New York waters, continue for approximately 12 miles, and then reenter New Jersey waters at approximate mile marker 26+50. From that point, the pipeline would be installed via jet trenching except beginning at mile marker 29+50 where it would be installed via HDD under Ambrose Channel to an exit point at approximate mile marker 30+00. At that point the pipeline would reenter New York waters and continue to its terminus at mile marker 35+49 at the Rockaway Delivery Lateral in New York State waters. Construction of the Raritan Loop in New Jersey would result in the discharge of dredge or fill material into Waters of the United States or navigable waters, with potential water quality impacts and adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments).

On March 27, 2017, Transco applied to the Federal Energy Regulatory Commission (FERC) for a Certificate of Public Convenience and Necessity (Certificate) pursuant to the Natural Gas Act for approval of the NESE Project. FERC issued a Draft Environmental Impact Statement ("DEIS") for the NESE Project on March 23, 2018, and a Final Environmental Impact Statement ("FEIS") on January 25, 2019. The FEIS identified some of the various environmental impacts FERC anticipates from the construction and operation of the Project. On May 3, 2019, FERC issued Transco a Certificate for the Project subject to conditions to mitigate the anticipated environmental impacts.

## ADMINISTRATIVE HISTORY

- On March 27, 2017, Transco submitted an application to FERC for a Certificate pursuant to the Natural Gas Act for approval of the project.

- On July 26, 2017, Transco submitted an initial application to NJDEP for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development Individual In Water Permit, Waterfront Development Individual Upland Permit, and a Coastal Wetlands Permit (DLUR File No. 0000-01-1001.3.3 FWW170001, FHA170001, FHA170002, WFD170001, WFD170002, and CSW170001) for the NESE Project. The proposed activities included the construction of a new compressor station in Franklin Park, Somerset County and new 26-inch diameter gas pipelines for the proposed Madison Loop and Raritan Loop. Transco withdrew the application on June 15, 2018 due to technical deficiencies.

- On June 20, 2018, DLUR received the resubmission of the application for NESE Project for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development Individual In Water Permit, Waterfront Development Individual Upland Permit, and a Coastal Wetlands Permit (DLUR File No. 0000-01-1001.3.3 FWW180001, FHA180001, FHA180002, WF180001,

WFD180002, and CSW180001).

- On July 18, 2018, the DLUR issued a deficiency letter, which informed Transco that among other deficiencies, its application did not include property owner consent to access work and construction areas outside the existing Transco Right of Way, failed to address stormwater management issues at the proposed compressor station, and did not include approval from the United States Army Corps of Engineers for Transco to dispose of dredge materials within the Historic Area Remediation Site (HARS) or any another suitable proposed upland disposal facility.

- On September 4, 2018, Transco submitted a response package to the July 18, 2018 deficiency letter. Information included updates to property owner certification, stormwater information, and dredge plan and spoils disposal information.

- On September 14, 2018, DLUR issued a second deficiency letter after determining the information submitted on September 4 was not complete.

- On September 26, 2018, Transco submitted a response package to the September 14, 2018 deficiency letter. Transco's response included the necessary property owner consents for all outstanding properties and an updated Sediment Sampling and Analysis Plan for the proposed Raritan Loop.

- On September 27, 2018 the Division issued a third deficiency letter advising Transco that although the Sediment Sampling and Analysis Plan was sufficient for dredge sampling to begin the application remained deficient until the results have been analyzed and a letter was provided from an upland dredge material disposal facility indicating that both storage and chemical composition was acceptable. The September 27 letter also identified outstanding stormwater deficiencies.

- On November 5, 2018, NJDEP held a public hearing in Franklin Township for the freshwater wetland components of proposed Compressor Station 206 and the Madison Loop. The public comment period for the public hearing was from November 5 through November 20.

- On November 8, 2018, DLUR requested that Transco provide an analysis of a potential alternative access road into CS 206 from the SUNCO utility right of way to determine if such an alternative would reduce or avoid impacts to wetlands. Transco provided responses on November 30, supplemental information on December 12, 2018, and follow up responses related to the access road width on December 21, 2018. The follow up information indicated that the SUNCO alternative would not reduce or avoid wetlands impacts.

- On February 6, 2019, Transco provided information consisting of revisions and supplemental information for the CS 206 infiltration basin, results of pre-dredging sampling and analysis, and the acceptance letter from an upland dredge material disposal facility. The NESE Project application was declared complete for review February 6, 2019. The 90-day review period pursuant to the Coastal Zone Management Rules and the Flood Hazard Area Control Act Rules was set to end May 6, 2019.

- On March 18, 2019, NJDEP held a public hearing in East Brunswick Township for the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits and a pending Division of Water Allocation permit application for temporary dewatering activities for the NESE Project. The public comment period for the public hearing was from March 18 through April 2, but was subsequently extended to April 17, 2019, to allow the public additional time to provide comments on the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits for the NESE Project.

- On March 20, 2019, DLUR requested additional information from Transco regarding HDD failure contingency plans and proposed work in the Raritan Bay Superfund Slag Site as a result of comments received during the public hearing. Transco provided an HDD contingency plan memo on March 27, 2019.

- On March 20, 2019, DLUR asked Transco to revise the Madison Loop site plans to reflect that there were no exceptional resource value wetlands west of Gondek Drive. Revised plan sheets depicting this change were received on April 28, 2019.

- On March 25, 2019, DLUR received an email from Eastern Environmental Law Center concerning the sighting of a Barred Owl adjacent to the proposed CS 206 site by a local resident.

- On April 4, 2019, DLUR's Threatened and Endangered Species Unit conducted a site visit at the CS 206 site location to determine the suitability for Barred Owl habitat.

- On April 5, 2019, DLUR in consultation with Transco agreed to extend the 90-day review period for 30 days. The review period ends June 5, 2019. The public comment period was extended an additional 15 days to May 2, 2019.

- On April 11, 2019, DLUR asked Transco to revise the CS 206 site plans to account for the anticipated exceptional resource value wetland reclassification and update the freshwater wetland compliance report and alternative analysis to account for the Barred Owl habitat evaluation. On May 1, 2019, Transco provided revisions to the environmental report to address N.J.A.C. 7:7A-10.3 and 10.4 and DLUR received site plan revisions on May 2, 2019. On May 17, 2019, DLUR received further revisions to the

CS 206 site plans to reflect the modified buffer and changes to the Stormwater Detention Basin.

- On April 29, 2019, the Barred Owl sighting record was accepted as valid by the NJDEP Division of Fish and Wildlife, Endangered and Non-Game Species Program. At that time, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owl and therefore, the wetlands surrounding the CS 206 were reclassified as exceptional resource value with a 150-foot buffer.

## ANALYSIS

The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1, et seq.) and Rules (N.J.A.C. 7:7A) require that a permit be obtained from the Department for regulated activities within freshwater wetlands and/or transition areas to freshwater wetlands. The Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) require that a permit be obtained from the Department for regulated activities within flood hazard areas and/or within the riparian zones of regulated waters. The Waterfront Development Law (N.J.S.A. 12:5-3) and the implementing Coastal Zone Management Rules (N.J.A.C. 7:7) require a Waterfront Development Permit be obtained from the Department for any regulated activity below the mean high-water line of any tidal water body and for any regulated activity within the upland 500 feet from the mean-high water line. The Wetland Act of 1970 (N.J.S.A. 13:9A) requires that a Coastal Wetlands Permit be obtained from the Department for any regulated activity within any wetland delineated and mapped pursuant to the Wetlands Act of 1970. Finally, Section 401 of the Clean Water Act requires an applicant for a federal license or permit to conduct any activity including, but not limited to, the discharge of dredge or fill material into Waters of the United States or navigable waters, to obtain a Water Quality Certificate from the State from which the discharge originates.

The Division of Land Use Regulation denies without prejudice the referenced permit applications for the NESE Project because the applicant has not demonstrated compliance with the applicable Rules as discussed below.

### Proposed Compressor Station

**Freshwater Wetlands Individual Permit**

**7:7A-10.2 Standard requirements for all individual permits**
*(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:*

*1. Has no practicable alternative which would meet the requirements at (b)1i and ii below:*

*i. The alternative would have a less adverse impact on the aquatic ecosystem or would not involve a freshwater wetland or State open water; and*

*ii. The alternative would not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal;*

Construction of and access to the CS 206 site, as proposed, would adversely impact freshwater wetlands, and Transco has failed to demonstrate that that no practicable alternatives exist. First, as set forth above, after receiving a sighting report of a Barred Owl adjacent to the proposed CS 206 site and subsequent investigation, including an inspection of the site and contiguous forested area by NJDEP biologists on April 29, 2019, NJDEP accepted as valid the sighting report of a Barred Owl adjacent to the proposed CS 206 site due to the presence of suitable forested habitat conditions on site and the larger contiguous forested area. As a result, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owls and wetlands surrounding the proposed compressor station were reclassified as exceptional resource value with a 150-foot buffer.

In anticipation that the wetlands would be reclassified from intermediate to exceptional resource value, DLUR asked Transco on April 11, 2019 to supplement its Freshwater Wetlands Individual Permit application to demonstrate compliance with N.J.A.C 7:7A-10.2(b) and N.J.A.C.7:7A-10.4. In response, Transco submitted additional information on May 1, 2019. On May 17, 2019, Transco submitted site plan revisions that depicted a 150-foot wetlands transition area as well as design changes to the proposed stormwater detention basin.

Transco's revised site plans proposed to clear exceptional resource value forested wetland transition areas to construct 1) the compressor station and 2) the proposed stormwater detention basin. Transco also proposed to clear a large area to the west of the compressor station for "staging and laydown," with no permanent structures proposed following construction activities. Shifting the compressor station footprint to the west would avoid impacts to the exceptional resource value transition area. The transition area serves, among other functions, as a sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetland species, habitat area for breeding, spawning, nesting and wintering of endangered, commercially, and recreationally important wildlife, and a corridor area which facilitates the movement of wildlife to and from freshwater wetlands, streams, and uplands. The supplemental information submitted by Transco did not address why the proposed compressor station and stormwater detention basin could not be shifted to the west, with any associated reconfiguration of the proposed staging and laydown areas, to avoid the exceptional resource value transition area. In addition, there was no information submitted to address why the transition area disturbance for the project as proposed could not be reduced.

Second, Transco's preferred alternative to access the proposed CS 206 site is from County Route 518 (Georgetown Franklin Turnpike), which would result in 2.862 acres of freshwater wetland disturbance. The submitted alternatives analysis identified an existing access road for the adjacent Higgins Farm Superfund Site (Higgins Farm access road) as an alternative point of accessing the CS 206 site. Utilizing the Higgins Farm access road would require the road to be extended 700 feet and widened in some areas resulting in 1.5 acres of disturbance to the Higgins Farm site. However, DLUR determined based upon a site inspection of the Compressor Station 206 site and the use of the NJDEP GIS wetland mapping that the Higgins Farm access road alternative would result in approximately 0.50 acres of wetland impact, compared to 2.862 acres under Transco's preferred alternative. Thus, the Higgins Farm access road alternative would reduce the wetland impacts by approximately 2.362 acres.

Transco asserted that this alternative is not practicable because the Higgins Farm is a Superfund site and there is a conservation easement on the property which prohibits non-agricultural development. In support of its position, Transco provided only an incomplete and unrecorded conservation easement between the property owner and Franklin Township. Additionally, Transco provided no information to demonstrate that the U.S. Environmental Protection Agency (USEPA) would prohibit use and extension of the Higgins Farm access road, or that the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., pertains to this site and, if applicable, how the Act would prohibit use of the access road. Transco also cited Franklin Township's opposition to the project for rejecting the Higgins Farm access road as a practicable alternative. According to the information in the submitted application, Transco, through its local counsel, sent the Franklin Township attorney a letter dated May 26, 2017, requesting the opportunity to discuss temporarily delaying the adoption of any ordinance or resolution to allow time for negotiations to take place between Transco and the Higgins family. Transco did not provide DLUR with a copy of its letter to the township. According to Transco, the township attorney never responded to the letter. Transco apparently had no further follow up communication with the township. Therefore, Transco has not demonstrated either that it exhausted reasonable efforts to continue communication with the township, or otherwise made reasonable attempts to remove the encumbrance necessary to extend the access road.

As such, DLUR finds that Transco failed to demonstrate that no practicable alternative exists and therefore has not demonstrated compliance with N.J.A.C. 7:7A-10.2(b)1 and 2.

***7:7A-10.3 Additional requirements for a non-water dependent activity in a wetland or special aquatic site***

*(a) In addition to meeting the requirements of N.J.A.C. 7:7A-10.2, a non-water dependent activity in a freshwater wetland or special aquatic site shall meet the requirements of this section. If an activity is water-dependent, or if it disturbs only a State open water that is not a special aquatic site, this section does not apply to the activity.*

*(b) There shall be a rebuttable presumption that there is a practicable alternative to a nonwater dependent activity in a freshwater wetland or in a special aquatic site, which*

*alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem.*

*(c) In order to rebut the presumption established in (b) above, an applicant must demonstrate all of the following:*

*1. That the basic project purpose cannot reasonably be accomplished using one or more other sites in the general region that would avoid or reduce the adverse impact on an aquatic ecosystem;*

*2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;*

*3. That the basic project purpose cannot reasonably be accomplished by an alternative design that would avoid or reduce the adverse impact on an aquatic ecosystem;*

*4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints; and*

*5. If any portion of the proposed activity will take place in an exceptional resource value wetland or in trout production waters, that the requirements of N.J.A.C. 7:7A-10.4 are met.*

As discussed above, it has not been demonstrated that there are no practicable alternatives to the access road and that there is no alternative design for CS 206 and the proposed detention basin. Therefore, compliance with 7:7A-10.2(c) 1 through 4 has not been met because it has not been demonstrated that the project could not have been reconfigured, reduced in scope or relocated to avoid exceptional freshwater wetlands and their associated transition areas. Additionally, to the extent Transco has rejected alternatives due to alleged constraints, as discussed above, Transco has failed to show it made reasonable attempts to remove or accommodate such constraints.

***7:7A-10.4 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters***

*(a) If an applicant proposes a non-water dependent activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:*

*1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland or trout production water, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or*

*2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.*

As defined under N.J.A.C. 7:7A-1.3:

*"Compelling public need" means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the*

*proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.*

To address the compelling public need requirement at 7:7A-10.4(a)1, Transco submitted supplemental information on May 1, 2019 to address the project purpose, the January 25, 2019 FERC issuance of its Final Environmental Impact Statement (EIS), the anticipated May 2019 issuance of the Certificate of Public Convenience and Necessity (which was issued on May 3, 2019), and National Grid's comment on the FERC Docket confirming its support for the project. According to Transco, this information demonstrates a public need for an increase in the capacity of the existing Northeast Supply line by 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

However, to satisfy N.J.A.C. 7:7A-10.4, Transco must demonstrate a compelling public need as defined by the applicable regulations or, alternatively, an extraordinary hardship. Transco has done neither. Specifically, Transco has not demonstrated, based on facts specific to its application, that the proposed regulated activity will serve an essential health or safety need of the municipality in which the activities are proposed, that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.

Furthermore, while Transco asserts that the vast majority of the wetlands impacts that will occur in connection with CS 206 are necessary for the NESE Project as a whole and therefore a denial of the Freshwater Wetlands Individual Permit would constitute an extraordinary hardship brought about by circumstances peculiar to the subject property, Transco has not, as discussed above, demonstrated that there are no practicable alternatives that would avoid the purported hardship.

Therefore, Transco has not demonstrated compliance with N.J.A.C. 7:7A-10.4.

**Flood Hazard Area Control Act Permit**

***7:13-11.2 Requirements for a regulated activity in a riparian zone.***

*(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:*

*1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;*

*2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:*

*i. Situating the regulated activity or project as far from any regulated water as feasible; and*

*ii. Limiting construction to actively disturbed areas and/or areas wherein the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:*

*(1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;*

*(2) Abandoned pavement that has partially revegetated;*

*(3) Areas of dirt and gravel that are primarily devoid of vegetation;*

*(4) Eroded embankments; and*

*(5) Landscape islands within a paved parking area;*

Pursuant to N.J.A.C. 7:13-11.2(b)2ii, Transco has not adequately demonstrated that the proposed access road to the CS 206 site from the Franklin Georgetown Turnpike that crosses Block 5.02, Lots 1.02, 9, 10, 11.02, 12, 16 and 17 could not be accomplished without clearing, cutting or removing riparian zone vegetation of three unnamed tributaries to Carters Brook. Transco has not fully explored utilizing the existing Higgins Farm access road, which would eliminate all disturbances to riparian zone vegetation.

**Raritan Loop**

**Waterfront Development Individual Permit and Water Quality Certificate**

***N.J.A.C. 7:7-12.7 New Dredging***

*10. The new dredging shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:*

*i. An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. 7:7-12.9, Dredged material disposal in water areas, and N.J.A.C. 7:7- 15.12, Dredged material placement on land.). The Department will make an acceptable use determination for the beneficial use of dredged material in accordance with Appendix G;*

*ii. Pre-dredging chemical and physical analysis of the dredged material, including water quality predictive analyses for surface water and ground water may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;*

*iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and discharges from dredged material management areas (see N.J.A.C. 7:7-9.49) shall meet applicable Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may require the permittee to conduct biological, physical, and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;*

Due to suspected contamination of sediments along the proposed submerged pipeline route for the Raritan Loop, DLUR required Transco to provide pre-dredging chemical and physical analysis of the dredged material, as well as additional testing to determine potential impacts to surface water quality and benthic communities. The testing results were also necessary for NJDEP to determine if the proposed dredged material placement method and disposal site are acceptable. NJDEP's rules at N.J.A.C. 7:7-12.7(2) require compliance with Appendix G, regarding the management and regulation of dredging activities in state tidal waters, including required application information. As stated in Appendix G, a water quality certificate is required for any discharge of dredged material into navigable waters of the United States associated with the dredging operation.

Transco provided initial in-situ sediment sampling for bulk sediment chemical analysis, sediment grain size, and texture. However, the testing was insufficient for DLUR to determine if the proposed upland placement facility was acceptable or if surface water quality would be impacted due to resuspension of contaminants at the proposed dredging site.

NJDEP worked with Transco to create a sediment sampling and analysis plan (SSAP) for the upland placement of material. Transco conducted sediment sampling in fall/winter of 2018. Bulk sediment chemistry on raw dredged material samples results were screened against the *Ecological Saline Water Sediment Effects Range Medium (ER-M)* criteria. ER-Ms are measures of toxicity in marine sediment that are used in assessing toxicity hazards for trace metals and organic contaminants. Parameters that exceed the ER-M value indicate there is a greater than 50% incidence of adverse effects to benthic communities (*Guidance for Sediment Quality Evaluations – NJDEP – November 1998).* Transco's sampling results showed exceedances of the ER-M value for bis(2-ethylhexyl)phthalate, phenanthrene, arsenic, manganese, mercury, polychlorinated biphenyls (PCBs) and 4,4'-DDE (pesticides) at certain sample points, as follows:

**Bis(2-Ethylhexyl)phthalate (Semi-Volatile Organic Compounds):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 2.64651 | VC-214 | 4.98 |

**Phenanthrene (Semi-Volatile Organic Compounds):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 1.5 | VC-214 | 2.21 |

**Arsenic (Inorganic Compounds):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 70 (Non-res 19) | VC-208 | 63.8 |
| 70 | VC-214 | 70.1 |

**Manganese (Inorganic Compounds):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 260 | VC-304 | 366 |
| 260 | DEP-3 | 379 |
| 260 | DEP-4 | 353 |
| 260 | DEP-5 | 371 |

**Mercury (Inorganic Compounds):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 0.71 | VC-208 | 1.56 |
| 0.71 | VC-214 | 2.17 |

**PCBs (Aroclors Sum):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 0.18 | VC-208 | 0.821 |
| 0.18 | VC-214 | 0.869 |

**4,4'-DDE (Pesticides):**

| ER-M Screening Criteria | Sample ID | Result |
|---|---|---|
| 0.027 | VC-208 | 0.0289 |
| 0.027 | VC-214 | 0.0366 |

These results indicate that the proposed dredging could adversely impact surface water quality. Specifically, Transco's sampling results indicate the proposed dredging for the Raritan Loop may exceed the applicable surface water criteria for toxic substances at N.J.A.C. 7:9B (SWQS). Based on Transco's submission, the relevant contaminants are bis(2-ethylhexyl)phthalate, phenanthrene, arsenic, manganese, mercury, PCBs and 4,4'-DDE (pesticides). In support of its application, Transco provided a report entitled "*NESE Hydrodynamic & Sediment Transport Modeling*" dated August 2017 that analyzed various methods of dredging and potential total suspended solids (TSS) turbidity and sediment plumes. An analysis was provided for open bucket with barge overflow, jet sledding, jet trenching, and HDD dredging techniques. DLUR asked Transco to provide a more detailed analysis to compare different methods of bucket dredging and jet equipment. Additionally, DLUR required a comparison of different methods selected for the pipe installation. Transco provided information on the feasibility of the HDD method, mechanical dredging, and jet trenching and provided a modeling analysis of cumulative TSS, distance of TSS plume, production rates, maximum distance of deposition and confirmed it would implement appropriate best management practices to control TSS in a manner that complies with the surface water quality standards.

However, the chemical analysis for sample locations VC-208, VC-214, VC304, DEP-3, DEP-4, and DEP-5 resulted in exceedances to the *Ecological Saline Water Sediment ER-M criteria* which indicates there could be potential impact to water quality. Transco did not provide modeling to show that turbidity concentrations and water quality parameters for the identified chemicals of concern downstream and upstream of the dredging site will meet the SWQS.

Accordingly, the available information indicates that the proposed dredging could adversely impact surface water quality and that Transco has not sufficiently demonstrated how it would avoid adverse impacts to surface water quality. Any resubmittal of NESE Project application must include a modeling analysis for the above referenced parameters that demonstrates compliance with the SWQS, through the implementation of appropriate best management practices identified in Appendix G or otherwise, to avoid adverse water quality impacts.

## RECOMMENDATIONS AND CONCLUSION

Based on the above analysis, Transco has failed to demonstrate that the proposed NESE Project would comply with the Freshwater Wetland Protection Act Rules at N.J.A.C 7:7A, the Flood Hazard Control Act Rules N.J.A.C. 7:13, and the Coastal Zone Management Rules at N.J.A.C. 7:7. Therefore, the NESE Project permit application, including for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront Development Individual In-water Permit, Upland Waterfront Development, Coastal Wetland Permits and Water Quality Certificate, is hereby denied without prejudice.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-28, Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-21, and the Flood Hazard Control Act Rules at N.J.A.C. 7:13-23.

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, 401 East State Street, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist. The Checklist is available through the Division's website at http://www.nj.gov/dep/landuse/forms.html. The DEP Bulletin is available through the Department's website at http://www.nj.gov/dep/.

I am sharing a copy of the denial with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources.

If you have any questions on this decision, please contact Matthew Resnick of my staff in

writing at the above address, by telephone at (609) 777-3955, or via email at Matthew.resnick@dep.nj.gov.

Sincerely,

Diane Dow, Director
Division of Land Use Regulation

cc: Bureau of Coastal and Land Use Enforcement, Toms River
Sayreville Township, Municipal Clerk and Planning Board
Old Bridge Township, Municipal Clerk and Planning Board
Franklin Township Municipal Clerk and Planning Board

Transcontinental Gas Pipe Line Co. Attn: Joseph Dean, Manager, EH&S
2800 Post Oak Road Blvd., Suite 900
Houston, Texas 77056

FERC

# EXHIBIT E

**Transcontinental Gas Pipe Line Company, LLC**
2800 Post Oak Boulevard (77056)
P.O. Box 1396
Houston, Texas 77251-1396
713/215-2000

May 30, 2025

Colleen Keller, Director
Division of Land Resource Protection
Department of Environmental Protection
501 E. State Street, Second Floor
Trenton, New Jersey 08609

**RE: Request for Freshwater Wetlands Individual Permit with 401 WQC; Flood Hazard Area Individual Permit; and Waterfront Development Individual Permit with 401 WQC and Coastal Zone Consistency Determination**

Transcontinental Gas Pipe Line Company, LLC Northeast Supply Enhancement Project
Compressor Station 206 – Franklin Township, Somerset County, NJ
Madison Loop – Old Bridge Township and Sayreville Borough, Middlesex County, NJ
Raritan Bay Loop – Sayreville Borough, Middlesex County, NJ

Dear Ms. Keller,

In connection with Transcontinental Gas Pipe Line Company, LLC's (Transco) Northeast Supply Enhancement Project (NESE or Project), enclosed for filing with the Department of Environmental Protection (Department) are applications for a Freshwater Wetlands Individual Permit, a Flood Hazard Area (FHA) Individual Permit and Verification, and a Waterfront Development and Wetlands Act of 1970 Individual Permit. As you are aware from our pre-application meeting on May 5, 2025, the Project scope has not changed and, thus, the applications are essentially identical to the applications reviewed by the Department in 2020. That being said, given the amendments to the stormwater management rules since that time, Transco will submit updated plans and reports to reflect these changes, as necessary, in the coming weeks. Transco's consultants are reconfirming/updating the wetland surveys, and any changes will also be reflected in the updated plans. Given the permitting history and the Department's extensive review of the Project, the energy emergency and compelling need for natural gas in the Northeastern United States as explained herein, Transco respectfully requests that the Department make a permitting decision on or by August 29, 2025 so that it can begin construction.

The Project is a proposed expansion of Transco's existing system from Pennsylvania through New Jersey to New York, to provide 400,000 dekatherms per day (Dth/d) of incremental capacity to National Grid at Transco's existing Rockaway Transfer Point located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York. In New Jersey, the regulated portions of the proposed NESE project would involve the construction and installation of three components: (1) construction of a new gas-fired compressor station (CS 206) with connecting discharge piping (2) the Madison Loop, and (3) the Raritan Loop (offshore).

Transco is reviving the Project at the request of the federal administration and in consideration of the President's Executive Orders, *Declaring a National Energy Emergency* and *Unleashing American Energy,* issued on January 20, 2025. These Executive Orders make clear that infrastructure development, particularly in the Northeastern United States, is desperately needed. Transco's Project will enhance reliability, flexibility, and efficiency on a critical part of Transco's system and provide access to crucial supplies of natural gas. As recently highlighted in the Northeast Power Coordinating Council's *Northeast Gas/Electric System Study*, existing gas infrastructure in New York is unable to meet the demand for most electric generators during a cold snap.[1] While many generators in downstate New York—where the Project is intended to serve— are dual-fuel capable, very few electric generators have firm transportation entitlements, exposing electric generation to risk in the event of an extreme weather event or a pipeline outage.[2]

The Project will be able to deliver NextGen Gas from the Marcellus basin to markets in the Northeast United States. NextGen Gas is tracked from the wellhead to the delivery point and this pathway is among the lowest carbon intensive natural gas found anywhere in the world. Williams follows a strict certification process for these natural gas deliveries through implementation of its NextGen Gas program. Williams' NextGen Gas program is an industry leading measurement-based quantification, monitoring, reporting, and verification ("QMRV") program that certifies greenhouse emissions associated with the transportation and delivery of natural gas across Williams' assets. Through partnership with a climate tech company called Context Labs, Williams collects and correlates data from multiple disparate sources, including satellites, planes, real-time ground-based monitoring devices, direct source-level measurement, and live operational data to provide the most reliable and comprehensive quantification of its natural gas supply chain emissions. Williams' NextGen Gas program offers real-time tracking of greenhouse gas emissions intensity (on both methane and carbon intensity basis) with the low emissions attributes of transported and delivered natural gas represented by a verified certificate, with independent attestation by KPMG. Williams' NextGen Gas program was designed to improve trust and transparency in emissions detection, quantification, and reporting and to further enhance operational excellence by helping identify opportunities for Williams to continue to reduce emissions. Williams is currently the only U.S. midstream company to have joined the internationally recognized Oil & Gas Methane Partnership (OGMP) 2.0 and its NextGen Gas program has been recognized as a Gold Standard compliant pathway to achieving the Level 5 reporting standard, the highest standard of reporting under the OGMP 2.0 framework.

Given the urgent need for affordable natural gas supplies, Transco is respectfully requesting that the Department expedite its review of these permit applications. Transco has also submitted applications to both the New York State Department of Environmental Conservation and the Pennsylvania

[1] Northeast Power Coordinating Council, *Northeast Gas/Electric System Study*, at 5 (Jan. 21, 2025).
[2] *Id*. at 5-6.

Department of Environmental Protection and requested expedited reviews by these agencies. On May 29, 2025, Transco filed a Petition for Expedited Reissuance of Certificate Authority with the Federal Energy Regulatory Commission (FERC) requesting the certificate of public convenience and necessity, as amended, authorizing Transco to construct and operate the NESE Project be reissued on an expedited basis.[3]

Transco appreciates the Department's assistance and expeditious review of these applications. As discussed during the technical meeting on May 27, 2025, Transco will promptly provide any further information, as requested by the Department, to help facilitate the review of the applications.

If you require any additional information that will facilitate NJDEP's review, please contact me at 281-433-8046 or via email at joseph.dean@williams.com. Alternatively, you can contact Steven MacLeod, Project Manager at WSP at 716-462-0845 or via email at Steven.MacLeod@wsp.com.

Sincerely,

Joseph Dean
Manager, Permitting
Encls.
cc (via e-mail):

Jennifer Moriarity, Assistant Commissioner, NJDEP
Patrick Ryan, Manager, DLRP, NJDEP
David Pepe, Office of Permitting & Project Navigation, NJDEP
Tim Powell, Transco
Stephen Kellogg, Transco
Blake Clements, Transco
Daniel Merz, Esq. Transco
Christine A. Roy, Esq.
Sara Mochrie, WSP
Steven MacLeod, WSP
Kirsty Cronin, WSP

[3] The Petition for Expedited Reissuance of the Certificate Authority was filed under Dockets CP17-101-003 and CP20-49-001.