



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Division of Land Use Regulation
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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).

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 consist of approximately 3.43 miles of new 26-inch-diameter gas pipeline. The Madison Loop will result in temporary disturbance 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 acres 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-inch 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 120th 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 gas 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,



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