

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

PennEast Pipeline Company, LLC ) Docket Nos. CP15-558-000  
and CP15-558-001

**MOTION FOR A STAY PENDING REHEARING SUBMITTED BY  
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE  
DELAWARE AND RARITAN CANAL COMMISSION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC") the New Jersey Department of Environmental Protection and the Delaware and Raritan Canal Commission (collectively, "NJDEP") hereby move for a stay of the January 19, 2018 order granting a certificate of public convenience and necessity to PennEast ("Order"). 18 C.F.R. § 385.212.

NJDEP requests a stay of the Order pending FERC's final disposition of NJDEP's Rehearing Request, to continue during the pendency of any tolling order FERC may issue. Specifically, NJDEP requests a stay of the authority to permanently condemn property interests in New Jersey.

FERC may grant requests for stays pending judicial review when "justice so requires" under the Administrative Procedure Act, 5 U.S.C. § 705 (2018). In deciding motions for stay, FERC considers whether the party requesting the stay will suffer irreparable injury without a stay; whether issuing the stay may substantially

harm other parties; and whether a stay is in the public interest. Millennium Pipeline Company, LLC, 141 FERC ¶ 61,022 at P 13 (2012).

NJDEP incorporates by reference all of the arguments made in its Rehearing Request, and emphasizes that irreparable harm will result absent a stay of the CPCN. Even though environmental impacts to almost two thirds of the route are unknown, the CPCN allows condemnation of land along the entire route, including environmentally sensitive State-preserved land. September 12, 2016 NJDEP Comment to DEIS. To date, PennEast has filed for eminent domain of almost 150 parcels in New Jersey alone. Enabling PennEast to condemn perpetual easements before knowing whether the route must be shifted to avoid environmental impacts undoes the preserved nature of the land even if the pipeline will never ultimately cross that land due to route changes. Moreover, condemning permanent easements at this stage with inadequate environmental information to guide the route is inefficient due to likely later route changes.

A stay is appropriate due to fundamental flaws in the CPCN. First, FERC incorrectly conflated mitigation with minimization/avoidance. The CPCN mistakenly purports to allow PennEast to mitigate for environmental impacts in lieu of minimization/avoidance. In other words, FERC reasoned that even though two-thirds of the route has not been surveyed, environmental degradation to streams and wetlands would be acceptable because

PennEast would provide mitigation. Under the Clean Water Act, however, mitigation is only acceptable after a permittee shows avoidance or minimization of the impact to wetlands and waters. 40 C.F.R. 230.5; see also N.J.S.A. 13:9B-10(b) and N.J.S.A. 13:9B-13(b). Although the pipeline proposes to cross over thirty streams in New Jersey, NJDEP has not been provided with any site-specific stream crossings detailing how environmental impacts would be avoided or minimized. FERC's misunderstanding that impacts can be mitigated away not only threatens precious environmental resources but also would leave PennEast in the position of having condemned properties which may not qualify for permits under the Clean Water Act.

Further, PennEast has proposed Horizontal Directional Drilling ("HDD"), a process by which the pipeline would be laid underneath wetlands and streams. HDD is not possible through certain types of bedrock. In this instance, PennEast has yet to perform on-site geological surveys showing that HDD is feasible for all of the stream crossings, nor has it outlined an acceptable plan if HDD fails. All of these amount to impacts to environmental resources which constitute irreparable injury. Winters v. NRDC, 555 U.S. 7 (2008)(finding that environmental impacts constitute irreparable harm).

Further, a stay of the CPCN will not substantially harm any other parties. Even absent the CPCN, PennEast must apply for a

water quality certificate and a wetlands individual permit pursuant to New Jersey's assumption of Clean Water Act authority. PennEast does not even have a permit application pending at this time. Further, pursuant to the Clean Water Act, once the application is received NJDEP has a reasonable period of time, which shall not exceed one year to consider the permit. 33 U.S.C. 1341(a)(1). Thus, a stay of the CPCN while the Commission addresses the rehearing request cannot possibly harm PennEast.

Moreover, a stay also would prevent the unneeded exercise of eminent domain before the route is finalized. NJDEP acknowledges PennEast has stated that, due to landowner opposition, it cannot complete the surveys on over 65% of the properties in New Jersey and, therefore, requires the CPCN for condemnation authority. NJDEP therefore reiterates its suggestion that an amended CPCN be issued which provides PennEast the authority to condemn only those property interests absolutely necessary to conduct surveys, soil borings, and other environmental analyses along the proposed route. Such a compromise would enable all parties - PennEast and the Commission included - to have a full understanding of the environmental ramifications of the Project while also avoiding unnecessary condemnation and damage to environmentally sensitive resources.

Finally, a stay of the CPCN or an amended CPCN is in the public interest in this case. NJDEP is but one of numerous parties

who have requested a rehearing of the CPCN. NJDEP's own submission includes over ten specific issues which either require rescission of the CPCN or significant amendments to same. It will take the Commission time to carefully consider each one of these issues. Allowing PennEast's condemnation to proceed on a flawed CPCN without giving sufficient time to review the CPCN issues is contrary to the public interest. Although FERC's general policy is to deny stays of its orders in order to ensure definiteness and finality in FERC proceedings, Sea Robin Pipeline Company, 92 FERC ¶ 61,217 (2000), a stay here would ensure the pipeline route is mapped based on sound environmental data and would avoid future changes and uncertainty due to the current lack of information.

NJDEP respectfully requests that the CPCN be stayed so the environmental impacts to the pipeline route can be ascertained, premature and possible unnecessary permanent condemnation can be avoided, and the route can be planned accordingly.

Sincerely yours,

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