

Congress of the United States
Washington, DC 20515

Director Terry Turpin
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, NE
Washington, DC 20426
Re: CP15-558-000

October 9, 2019

Dear Director Turpin,

On September 10, 2019, the United States Court of Appeals for the Third Circuit issued a decision barring the PennEast Pipeline Company, LLC (PennEast) from utilizing federal eminent domain authority to seize land owned and protected by the State of New Jersey, such as Milford Bluffs and Baldplate Mountain Preserve, along PennEast's certificated pipeline route.¹ The Court stated that the Natural Gas Act (NGA) "does not permit suits by private parties in federal court...[and] PennEast's condemnation suits are thus barred by the State's Eleventh Amendment immunity."²

In light of the Court's recent decision, we request the Federal Energy Regulatory Commission (FERC) immediately issue a stop work order for all of PennEast's land-clearing and construction-related activities.³ We do so for two related reasons.

First, PennEast's proposed route is now uncertain. The January 19, 2018 Certificate Order⁴ authorized the construction and operation of a new 116-mile natural gas pipeline from Luzerne County, Pennsylvania, through Hunterdon County, New Jersey, to Mercer County, New Jersey. This pipeline route is now problematic considering PennEast can no longer seek the condemnation of approximately 40 properties owned and protected by the State of New Jersey.⁵ Therefore, PennEast will need to make substantial revisions to the route authorized in the Certificate Order in order to avoid the New Jersey State lands located in Hunterdon and Mercer Counties.

Any route changes will likely implicate private land adjacent to the land owned by the State. Therefore, FERC should halt all land-clearing and construction activities to ensure eminent domain is not used against private citizens unnecessarily. In the event that the current route is

¹ *PennEast Pipeline Company, LLC v. State of New Jersey*, Nos. 19-1191 thru 19-1232, 2019 WL 4265190 (3d Cir. Sept. 10, 2019).

² *Id.*

³ We also strongly disagree with the Petition for Declaratory Order (PDO) and Request for Expediated Action filed by PennEast with FERC on October 4, 2019 in docket RP20-41-000. The PDO should be noticed in CP15-558 so all parties have an opportunity to file comments and opposition to PennEast's request for the Commission's involvement and "authoritative interpretation" of NGA's eminent domain that will be used to challenge the Court's finding on state sovereign immunity.

⁴ *PennEast Pipeline Company, LLC*, 162 FERC ¶ 61,053 (2018) (*PennEast*).

⁵ Some of these State lands have been preserved for conservation, recreation, and/or agriculture.

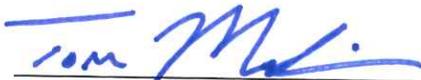
deemed no longer valid and PennEast has to make substantial revisions to its connecting segments, we do not want landowners and surrounding communities to be subjected to tree-clearing and loss of property for a pipeline that can no longer be built along the FERC authorized route.⁶

Second, the National Environmental Policy Act (NEPA) requires all federal agencies to consider potential impacts of an action (e.g. granting a pipeline certificate and approving a specific pipeline route).⁷ FERC is designated as the lead agency for coordinating NEPA compliance and “all applicable Federal authorizations” in reviewing pipeline applications.⁸ While FERC did an environmental impact statement for the PennEast Project, the proposed route may no longer be valid, and any alternative or significant route variation would require a supplemental NEPA review, an amended FERC certificate, and potentially, new environmental conditions subsequent.⁹ Additionally, FERC would have to provide for notice and comment of any proposed route changes.

For these reasons, we request the Commission issue a stop work order to halt all land-clearing and construction-related activities on the PennEast Project until necessary route changes are identified, and PennEast submits the new proposed route to FERC for environmental review, notice and comment, and a determination under Section 7 of the NGA of whether the project is in the public interest.¹⁰

Thank you for your attention to this matter.

Sincerely,



Tom Malinowski
Member of Congress



Bonnie Watson Coleman
Member of Congress

⁶ In addition, PennEast should have to demonstrate that the pipeline segments on either side of the State-owned lands have independent utility before FERC allows land-clearing and construction to proceed. *See Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,28, PP 7, 27-29 (2017).

⁷ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.

⁸ Federal Energy Regulatory Commission, “Preparing Environmental Documents,” September 2008, p. v. <http://www.ferc.gov/industries/hydropower/gen-info/guidelines/eaguide.pdf>

⁹ *PennEast*, 162 FERC ¶ 61,053 at Appendix A, 84-98 (Environmental Conditions for the PennEast Pipeline Project).

¹⁰ 15 U.S.C. § 717f (2012).

CC:

Chairman Neil Chatterjee

Commissioner Richard Glick

Commissioner Bernard McNamee

Congressman Frank Pallone, Chairman, House Committee on Energy and Commerce

Congressman Bobby Rush, Chairman, House Committee on Energy and Commerce
Subcommittee on Energy