



October 5, 2017

Steven J. Tambini, Executive Director  
Delaware River Basin Commission  
25 State Policy Drive  
West Trenton, NJ 08628-0360

**Re: PennEast Pipeline Project – Jurisdiction, Tour, Presentation, Process**

Dear Mr. Tambini,

The Delaware Riverkeeper Network requests equal time and access for our experts and community representatives to the time and access that has been given to the PennEast Pipeline Company. We want confirmation that DRBC has rejected PennEast's offer to help review and respond to public comments regarding the project. We are also requesting a firm written statement of the DRBC's interpretation of the extent of its jurisdiction when it comes to the PennEast Pipeline project so we can understand and respond accordingly. And we are urging you to issue a determination that you do not intend to hold public hearings or issue a draft document for PennEast at this time and until you have made a formal determination that their application materials to the DRBC are complete, a determination that cannot be rendered at this time based upon the facts and the record.

**The Public Is Entitled to Equal Access in the Form of Site Visits/Tours, Expert Reports, Meetings.**

According to documents on the record, DRBC has held several meetings, tours/site visits and received expert presentations from the PennEast Pipeline Company and its representatives. Most recently, DRBC staff conducted tours/site visits with PennEast representatives in December 2016 and again in April 2017. DRBC has recently received at least one presentation, in July 2017, from experts working for PennEast. Meetings have also been held multiple times, including as recently as May of this year, between DRBC staff and PennEast Pipeline representatives/consultants.

In light of the DRBC's willingness to undertake site visits/tours, receive expert presentations, and to conduct substantive meetings to discuss the PennEast project with representatives from the company, we too are formally requesting that DRBC conduct similar activities with experts representing the Delaware Riverkeeper Network and other involved community organizations,

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including at least two days to tour areas of particular concern along the pipeline route, a series of expert presentations regarding impacts to water resources from the proposed pipeline, and a sit down meeting to discuss the project with community representatives. In order to avoid an inherently biased understanding of the PennEast Pipeline Project, DRBC must give equal access and consideration to the expert analyses conducted on the project's impacts on behalf of the Delaware Riverkeeper Network and others, and must give equal access and consideration to the concerns and perspectives of impacted community members as it gives to those of the applicant seeking DRBC approval. Please let us know with whom we should be in touch to schedule.

### **Has DRBC Rejected PennEast's Offer to Assist in Responding to Public Comments?**

In a June 2, 2017 email PennEast offered to "help address public comments that the DRBC receives on the Project" i.e. PennEast. We would like to see, in writing, DRBC's response to this outrageous "offer". It is obvious that PennEast is not an independent entity that would fully, fairly and objectively consider comments offered by the public or other agencies to the DRBC. It is wholly inappropriate for DRBC to, in anyway, rely on PennEast to review, assess, consider and respond to comments submitted from the public and their experts. We would like to see, in writing, confirmation that DRBC has rejected this "offer".

### **Please Confirm that DRBC Agrees Its Review, a Draft Docket & Public Hearings on PennEast are Premature.**

On April 26, 2017 the New Jersey Department of Environmental Protection issued a determination that the PennEast application materials submitted to the state were significantly deficient and incomplete. Subsequently, on June 28, 2017, NJDEP determined the PennEast Pipeline Company's application for state approval of its project to be "administratively closed" due to the company's failure to remedy significant identified deficiencies and its failure to provide full information in a timely fashion for Clean Water Act decisionmaking. In its determination letter the NJDEP wrote:

*"...given the complexity of the remaining deficient items, and the lack of demonstrated progress on the part of the applicant, it appears that it would be unlikely that an additional 60 days would allow substantial progress on the application. This application will be deemed 'administratively closed' as of the date of this letter."*

Similarly, FERC's Final EIS for PennEast notes a wealth of missing information, including much, if not most of which, speaks to issues that have a direct effect on the quality and health of the surface waters, groundwater and wetlands of the Delaware River watershed under the jurisdiction of the DRBC.

PADEP has also sent a series of three incompleteness review letters to PennEast for its Chapter 105 and Chapter 102 permits. Each of the letters has indicated the applications submitted are not yet considered to be complete by DEP. DEP cannot commence technical review until the applications are complete. The incompleteness letters were sent on April 26, 2016, and again September 19, 2016 and December 23 2016. On June 26, 2017, DEP received a request for an extension from PennEast Pipeline Company, LLC. PennEast requested additional response time to the December 23, 2016 incompleteness review letters, indicating that they "do not anticipate submitting the information requested to complete the applications until December 29, 2017." On August 10, 2017, DEP granted the requested extension. The missing information that PADEP requires for their Chapter 105 Water

Obstruction and Encroachment Permits and Chapter 102 Erosion and Sediment Control permits are extremely relevant to the quality and health of the surface waters, groundwater and wetlands of the Delaware River watershed under the jurisdiction of the DRBC and the impacts they would suffer were the PennEast pipeline constructed.

And so we reiterate our request that the DRBC formally make a determination that you too find the information on the record with the Delaware River Basin Commission to be inadequate and incomplete and that as a result the DRBC will not be undertaking any consideration of the PennEast Pipeline project at this time as it pertains to a DRBC docket for any portion of the construction of this project. We ask you to render this decision in writing.

In addition, we ask that you confirm for the public that you will not hold any public hearings until such time as the information filed with the DRBC is demonstrated and verified to be both complete and accurate and a formal determination to this effect has been released to the public by the DRBC.

And we urge you to make clear, for the public, FERC and PennEast, that the DRBC intends to enforce its authority as clearly articulated in its November 14, 2014 letter to the PennEast Pipeline Company that “DRBC review and approval are required prior to the commencement of any water withdrawal, discharge, or earth disturbance activities.” This is particularly important give that a quorum of Commissioners has been restored at FERC and so a Certificate of Public Convenience and Necessity may be imminent.

**Please Confirm, or Deny, that DRBC Intends to Exercise the Full Extent of Its Jurisdiction Over PennEast.**

A review of documents on file with DRBC, including documentation of the areas visited during site visits with PennEast representatives, suggests that the DRBC is intending to limit the exercise of its jurisdiction to only Comprehensive Plan Areas and issues surrounding hydrostatic testing, water withdrawals and water discharges. For the record, we want DRBC to inform the public now, to what extent it intends to exercise its jurisdictional authority over the PennEast pipeline. DRBC officials have obviously communicated this information to the PennEast Pipeline Company and its representatives. It is now time to communicate this information to the public so we can take all appropriate steps if you intend to neglect the full breadth of your legal obligations.

Section 3.8 of the Compact provides in relevant part:

No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation, or governmental authority unless it shall have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan. The commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section.

The DRBC Rules of Practice and Procedure (“RPP”) classifies projects for review under Section 3.8 of the Compact into two categories, those deemed not to have a substantial effect on the water resources of the Basin and therefore are not required to be submitted for DRBC review, and those deemed to have substantial effects on water resources of the Basin and therefore are required to be submitted for Commission review. See RPP Article 3, Section 2.3.5.

With respect to natural gas pipeline projects, the RPP categorizes them as projects that presumptively do not have a substantial effect on the water resources of the Watershed and that therefore do not automatically require DRBC review. But there are key exceptions for transmission lines, including gas pipelines, like PennEast. Section 2.3.5 A. says that:

Except as the Executive Director may specifically direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph C .. a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

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12. Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; **natural and manufactured gas transmission lines and appurtenances**; major water transmission lines and appurtenances; **unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources; ...**

RPP Article 3, Section 2.3.5.A(12) (emphasis added).

When read with accuracy, it is clear that there are four exceptions to the exemption for pipelines that can and do trigger DRBC review:

- 1) if the Executive Director of the Commission specifically directs;
- 2) if any state or federal agency refers a project under paragraph C;
- 3) if the project in question crosses an existing or proposed reservoir or recreation area that has been incorporated into the Comprehensive Plan; and
- 4) if the project involves a significant disturbance of ground cover affecting water resources.

When looking at these provisions, as well as others in the rules of practice and procedure, water code and compact, PennEast is clearly subject to DRBC jurisdiction and docket review resulting from its substantial land disturbance, its impact on Comprehensive Plan Areas, and its impact on Special Protection Waters, among others. And the jurisdiction of the Delaware River Basin Commission over the PennEast Pipeline project clearly extends the entire length of the project as it passes through the boundaries of the Delaware River watershed.

We would also hope that you as the Executive Director of the DRBC, and that the Pennsylvania and New Jersey Commissioners have used their authority to direct/request full project review for the

entire length of the project – but this is not essential to ensure full DRBC jurisdiction across the length of the project.

We urge the DRBC to confirm or deny for the public the extent of the jurisdiction it is intending to exercise. DRBC knows the answer, PennEast knows the answer, the public deserves to know the answer too so we can respond appropriately.

Respectfully requested,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is fluid and cursive, with a long horizontal line extending to the right.

Maya K. van Rossum  
the Delaware Riverkeeper

cc: DRBC Commissioners