



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

June 29, 2016

Timothy L. Powell  
Transcontinental Gas Pipe Line Company, LLC  
2800 Post Oak Boulevard  
P.O. Box 1396  
Houston, Texas 77251-1396

Dear Mr. Powell,

In consultation with the New Jersey Office of the Attorney General, this letter is provided as a response to Transco's June 15, 2016 letter, objecting to the New Jersey Department of Environmental Protection's (DEP) decision to provide a public hearing on Transco's pending Freshwater Wetlands permit application (No. 0300-15-0002.2 FWW150001) for the Garden State Expansion Project. DEP's mission is to protect New Jersey's air, water, land, and natural and historic resources. DEP accomplishes its mission, in part, by soliciting comments from the general public and State and local elected officials on permitting actions that may impact New Jersey's valuable resources. To claim that the DEP has failed to comply with federal laws and DEP's own regulations by holding a public hearing on this matter demonstrates a lack of understanding and appreciation of federal and state environmental laws and regulations. We are disappointed with the tone and content of your letter because our Office of Permit Coordination and Environmental Review has provided Transco with valuable customer service throughout the permitting process, including working with Transco to resolve the numerous technical deficiencies in its permit application.

The focus of Transco's letter is the timing of the DEP's decision to hold a hearing as it relates to federal and state laws and regulations. Transco erroneously claims that under the federal Natural Gas Act, DEP "must" make a final determination according to a schedule set by the Federal Energy Regulatory Commission (FERC). This is inaccurate. DEP's review of the Freshwater Wetlands individual permit application is not subject to FERC's Schedule for Environmental Review of the Garden State Expansion Project. FERC's Schedule yields to all applicable schedules established by federal law. See 15 U.S.C. § 17n(c). New Jersey's Freshwater Wetlands permitting review rules are expressly incorporated into the U.S. Environmental Protection Agency's federal regulations pursuant to the Clean Water Act. See 40 C.F.R. 233.71. Therefore, in making a decision on Transco's application, DEP is bound only by its implementing regulations, which have been incorporated into federal law.

The letter also erroneously states that DEP's obligation under its own rules is to now issue a permit decision on Transco's application associated with the Garden State Expansion Project. DEP's rules strongly encourage DEP to issue or deny a permit within 180 days of submittal of a complete application. N.J.A.C. 7:7A-12.5. However, permit applications are not automatically deemed approved or denied if DEP's review extends beyond 180 days. Ibid; compare 18 C.F.R. 385.713(f) (automatically denying rehearing requests unless the Commission acts otherwise). Thus, DEP's rules for deciding a Freshwater Wetlands permit application do not obligate DEP to issue or deny within 180 days. Rather, the rules encourage the DEP to render a permitting decision as close to within 180 days as is feasible. Even when a statute includes an automatic approval provision, which the Freshwater Wetlands Protection Act does not, such provisions are generally only applied if there is a "clear showing of purposeful delay." Infinity Outdoor, Inc. v. Delaware and Raritan Canal Comm'n, 388 N.J. Super. 278, 287 (App. Div. 2006) (quoting Eastampton Ctr. v. Plan. Bd., 354 N.J. Super. 171, 194 (App. Div. 2002)). Since the application was received by the DEP on July 27, 2015, the DEP has requested additional technical information on numerous occasions. The timing of responses and scope of requested information has contributed to a protracted review period. Any delay in the project's in-service date is entirely attributed to Transco's lack of planning or understanding of New Jersey's regulatory processes. DEP has worked cooperatively with Transco to resolve these deficiencies in order to complete the administrative record and to ensure compliance with applicable environmental laws and regulations. Without a complete application and supporting information, DEP is under no obligation to approve any regulated activity, especially a project such as this that has generated widespread public concern.

Given the above statutory and regulatory requirements, it is important to note the context of DEP's decision to hold a public hearing. In this case, Transco is proposing a controversial infrastructure project that raises widespread concerns over public safety, environmental protection, and the general welfare. The requests for a public hearing are made by two affected municipalities through which the proposed project would run. DEP is not "purposefully delaying" a decision, Infinity Outdoor, Inc., supra, 388 N.J. Super. at 287. On the contrary, DEP is acting in the public's interest by allowing an additional opportunity for public comment on this high-profile project. The benefit of a robust and extended comment period on this matter is apparent from FERC's own June 8, 2016 decision to grant a rehearing for further consideration on the Garden State Expansion Project. The full opportunity for public comment will help DEP to make a permitting decision that fully addresses all legitimate concerns.

In light of the significant public controversy that typically accompanies pipeline projects, including other previously permitted Transco projects, DEP advises Transco to make all reasonable efforts to establish in-service dates that reflect the often contentious and lengthy permitting processes for such projects. As DEP has discussed with FERC, a company's in-service date as ultimately approved by FERC is driven by the contractual arrangements a pipeline company establishes with prospective customers. DEP is under no obligation, nor does the DEP agree with the notion that, DEP should circumvent or otherwise curtail its regulatory function to satisfy the contractual arrangements made by Transco or any pipeline company. DEP disagrees with Transco's position that providing for a public hearing is contrary to DEP's statutory and regulatory obligations. Therefore, DEP will move forward with holding a public hearing on this matter.

If you have any questions regarding this matter, please contact me at 609-292-9954.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Gray', with a long horizontal flourish extending to the right.

John P. Gray, Esq.  
Deputy Chief of Staff

cc: Ginger Kopkash, Assistant Commissioner, Land Use Regulation  
Megan Brunatti, Office of Permit Coordination and Environmental Review  
David Apy, Assistant Attorney General  
Lewin Weyl, Deputy Attorney General  
John Doyle, Deputy Attorney General  
Nancy Fox-Fernandez, Project Manager, FERC  
Evan Kirchen, Vice President of Engineering and Construction, Williams Companies