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April 7, 2014

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

*Re: Comments on Constitution Pipeline DEIS  
Application Docket No. CP13-499*

Dear Ms. Bose,

Thank you for the opportunity to submit comments on the Draft Environmental Impact Statement (DEIS) for the above application to obtain a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission (FERC).

CWCWC is a registered intervenor in the above application. As indicated in CWCWC's petition to intervene, it is not-for-profit corporation which includes 50 affiliated groups representing over 120,000 individuals. Over the last fifteen years, CWCWC has worked to protect and improve New York's surface and groundwater supplies through education and advocacy.<sup>1</sup>

The Constitution Pipeline is jointly proposed by four companies, Williams, Cabot Oil & Gas, Piedmont Natural Gas and WGL Holdings ("Applicant"). The latest figures for net annual income for these companies is 7.5 billion, 279 million, 134 million and 119 million, respectively. (Company Annual Reports).

WGL will bear the initial cost of the pipeline which it estimates to be \$68 million. (2013 Annual Report). The 124-mile 30-inch pipeline is proposed to transport natural gas supplies from a small area of northern Pennsylvania to Schoharie County, N.Y. from where it would be sent to northeastern markets.

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<sup>1</sup> CWCWC's mission statement states: "[t]he Coalition strives to protect and improve the waters of NYC's Croton Watershed as well as all New York State watersheds. We are an alliance of individuals and groups who believe that safe, clean and affordable drinking water is a basic human right."

## POINT I

### THE DEIS FAILS TO DEMONSTRATE THAT THE APPLICANT IS ENTITLED TO A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

In determining whether to grant the certificate of public necessity, FERC's official policy in the siting of gas pipelines requires it to "appropriately consider... the unneeded exercise of eminent domain" and "take these landowners concerns into account, and to mitigate adverse impacts where possible and feasible." (FERC Statement of Policy issued September 15, 1999, Dkt. No. PL99-3-000 Natural Gas Pipeline Facilities).

Moreover, "[t]he more interests adversely affected or the more adverse impact a project would have on a particular interest, the greater the showing of public benefits from the project required to balance the adverse impact." Even the "modest use of federal eminent domain authority" would need to be justified by "[a] showing of significant public benefit." The policy directs FERC to "to act with caution to avoid unnecessary rights-of-way."

Here, the public necessity requirement cannot be met.

According to Earthjustice<sup>2</sup> the pipeline will cut through more than 1,862 acres of land in Broome, Chenango, Delaware, and Schoharie Counties in New York and Susquehanna County in Pennsylvania. Only nine percent of the proposed 124-mile route utilizes existing rights-of-way, with the remainder decimating hundreds of thousands of trees in over 1,000 acres of forest land. This permanent conversion of forest to open land will fragment important habitat, result in increased storm-water runoff, and make the area more prone to flooding. In addition, the pipeline will cross multiple public drinking water supply sources, three watersheds, at least 91.8 acres of wetlands, and 277 waterbodies, including high quality streams, trout streams, and at least 99 protected streams.

In addition, the project includes two compressor stations, posing a threat to air quality and public health. These sources will emit harmful air pollution, including climate-change-causing greenhouse gases. Moreover, there is the potential to impact and potentially contaminate multiple public drinking water sources and an untold number of private drinking water wells that lie within the project area.

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<sup>2</sup> <http://earthjustice.org/news/press/2014/environmental-groups-question-unexamined-impacts-in-federal-evaluation-of-constitution-pipeline-project>.

Indeed, in New York, the 100-mile segment will require a construction corridor 85-125 feet in width. That equates to between 45 and 66 million square feet of land disturbance and the forced taking of property from dozens of homeowners.

Review of the Applicant's annual reports show that the purpose of the Constitution Pipeline is to accommodate shippers' needs in Pennsylvania to transport gas to the northern states from a very small area in northern Pennsylvania measuring 15 miles long by 8 miles wide. (See DEIS Map Figure 3.4.2-1).

Consequently, rather than public necessity, the pipeline is simply an convenient method of gas transport allowing the industry to maximize short gain revenues at the permanent expense of land owners in New York spanning a hundred mile corridor.

Comments on the DEIS already complain that many homeowners have been bullied by the Applicant in attempting to force homeowners to sign leases. The Applicant presents a Hobson's choice of leasing now or facing eminent domain proceedings where the result is a foregone conclusion.

As above, the Applicant must show a "significant public benefit" to justify significant (and irreversible) impacts to the environment and the industry's use of eminent domain proceedings against the rights of every owner inconvenienced by the 124-mile pipeline.

DEIS comments from homeowners, small business owners and farmers show the pipeline will cause irrevocable damage on an unprecedented scale. Farms relying on a maple sugaring will suffer from the permanent loss of mature trees which cannot be replaced. Homeowners who have spent years and in some cases, decades farming and improving their lands will suffer an irreversible change in their quality of life along the 124-mile corridor. Homeowners will never recoup the damages to their property values. The pipeline will also damage homeowners' abilities to sell or refinance their lands and will be a permanent cloud on the title of those properties.

Gregory May, a Senior Vice President for Residential Mortgage Lending with Tompkins Trust Company authored a "White Paper" in 2011 setting forth a number of basic conflicts caused by using residential properties for industrial uses such as a gas pipeline.

Among Mr. May's major points were that:

- Surface or sub surface [oil or gas] rights within 200 feet of a residential structure would not be acceptable for conventional financing in the Secondary market.
- NYS title insurance gas endorsements specifically void title insurance coverage if the premises are used for any commercial venture.
- Lenders are responsible to warrant several items to the investor in the Secondary market that can not be done leaving lenders with significant liability.
- Surface or sub surface [oil or gas] rights within 300 feet of a residential structure or within 300 feet of property boundary lines would not be acceptable for FHA (Department of HUD) financing.<sup>3</sup> Id.

Also in 2011, the New York State Bar Association Journal<sup>4</sup> examined the issue of oil and gas lease impacts upon homeowner's property interests. The article quoted Mr. May in stating:

Even before the drilling commences, many upstate New York homeowners with gas leases cannot obtain mortgages. Bank of America, Wells Fargo, Provident Funding, GMAC, FNCB, Fidelity and First Liberty, First Place Bank, Solvay Bank, Tompkins Trust Company, CFCU Community Credit Union and others are either imposing large buffer zones (too large for many borrowers) around the home as a condition to the loan or not granting a mortgage at all.

Mr. May's reports have been submitted during hearings before the New York State Assembly and the State Senate.

May's 2014 report concludes that a gas lease – or worse an eminent domain proceeding allowing a gas pipeline - is in direct conflict with most financing options:

These conflicts with commonly accepted lending standards would appear to prohibit any residential property with a gas lease or drilling activity from securing traditional mortgage financing.

The report reiterates financing prohibitions on “surface or sub-surface entry within 200 feet of the residential structure.” (Freddie Mac requirements in section 39.4[i].) Id. at pg. 2.

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<sup>3</sup> Available at: [www.tompkins-co.org](http://www.tompkins-co.org).

<sup>4</sup> “Homeowners and Gas Drilling: Boon or Bust? Elisabeth N. Radow, Esq. (November/December 2011).

Further, the report indicates the standard NYS mortgage document (Fannie Mae/Freddie Mac form 3033) “adopted by virtually all lenders in New York” prohibits storage or disposal of hazardous substances on residential property such as would be conveyed by the pipeline. (Section #21 of the standard NYS mortgage document.) Id. at pg. 3.

Also, the 2014 report identifies that homeowner’s insurance policies prohibit gas leases. It identifies that large nationwide insurance companies such as Nationwide and State Farm have clearly stated they do not provide coverage for any losses associated with gas leasing. Id. at pg. 4.

Additionally, 8 x 15 mile supply area in Pennsylvania is finite. Once the gas resources are depleted the purpose of the pipeline will have been fulfilled but will leave behind a legacy of the destruction of millions of square feet of forests, wetlands and undisturbed lands.

Therefore, the Applicant cannot demonstrate that the extraction of a limited amount of natural gas from a discrete area justifies the impacts upon the public and environment.

The pipeline also forestalls New York goal of shifting 30 percent of the electrical grid to renewables by the end of 2015. Natural gas expansion puts that goal out of reach, and deflects spending on alternative energy sources,

On another point, the Applicant has failed to justify the taking of landowners’ properties along the preferred pipeline route.

The Interstate Route 88 corridor provides the least number of eminent domain proceedings, if Alternative M is reconfigured. Much of the interstate has a wide median of 100 feet and pipeline can be built within that span though it may cost more. (See attachment “Temporary Right of Way Width Requirements for Pipeline Construction”).

While, NYSDOT stated that the proposed pipeline would be required to comply with FHWA policy, (23 CFR 645, Subpart B) the Applicant has the means to meet all such requirements.

As above, the Applicant’s combined net annual income is in the order of eight (8) billion dollars and thus the Applicant has the means to absorb the cost of realigning the pipeline route and utilizing advanced technology to minimize the width needed to install the pipeline in the highway median.

Finally, it is important to note the recent decision of *Kentuckians United to Restrain Eminent Domain, Inc. v. Bluegrass Pipeline, Inc.* Franklin County, Civil Case No. 13-CI-1402 involving the Bluegrass Pipeline proposed by the Applicant Williams herein bearing striking similarities to the Constitution Pipeline. Bluegrass is 150 miles in length with a 24-inch diameter running through Kentucky, carrying natural gas liquids from Pennsylvania to the Gulf Coast.

The court ruled that a private corporation would need an “undeniably clear mandate from the legislature” before being able to seize citizen's property rights and “[t]here has been no such clear and explicit delegation of this power to Bluegrass.” The court further held “Bluegrass is a private, for-profit unregulated entity . . . not acting ‘in public service,’ and therefore, it falls outside the scope of KRS Chapter 278.”

Similarly, in New York “[e]xercise of the eminent domain power cannot be for the sole benefit of a private party.” *West 41st Street Realty LLC v New York State Urban Development Corp.* 298 AD2d 1 (1st Dept 2002) *appeal dismissed* 98 NY2d 727, (2002), *certiorari denied* 537 US 1191 (2003). (See also *Northville Dock Pipe Line Corp. v. Fanning*, 21 NY2d 616, [1968] ruling “a public corporation possessing condemnation powers must establish that it is in fact performing a public use or public benefit before it can proceed with a condemnation.”)

For all of the above reasons, FERC must deny the application as the Applicant cannot meet the federal requirements to obtain a Certificate of Public Convenience and Necessity.

Respectfully,



James Bacon

Attorney for CWCWC