PennEast Pipeline: Conflicts with Wild and Scenic Rivers

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PennEast Pipeline

- The proposed 110-mile PennEast pipeline would cut through the Delaware River Valley beginning in Dallas Township, Luzerne County, Pennsylvania.
- It would cross the Delaware River and 254 other major waterways, into to Hopewell Township and connect to an existing pipeline in Pennington, New Jersey.
- It will transport natural gas, promote fracking, add to air pollution, and create safety hazards to the communities it passes through.

National Wild and Scenic Rivers

In an October 18, 2000 letter to **U.S. Rep. Rush Holt, President Bill Clinton wrote:**

"As you know, the future of the Delaware River, the longest free-flowing river in the eastern United States, is vital to the economy of the regions surrounding this important waterway. Wild and Scenic River designation will encourage natural and historic resource preservation and protect precious open space. By allowing local municipalities to sustain and protect the Delaware River as one of our nation's national treasures, this law will help to ensure the vitality of these communities and the quality of life of their citizens."

- *Sierra Club worked with Congressman Frank Lautenberg and Congressman Rush Holt to get the Lower Delaware River designated as Wild and Scenic*

Wild and Scenic Rivers Act

- the statute declares a policy of preserving rivers that “possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values . . . for the benefit of present and future generations.”

Constraints on Energy Transmission in Section 7's restrictions

- It provides that the foregoing restrictions as applied to river segments that are already part of the System do not preclude "licensing of, or assistance to, developments **below or above a wild, scenic or recreational river area . . . which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date" of the river's designation as part of the System.**

More Restrictions

- the statute bars FERC from licensing the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other “project works” under the FPA “on or directly affecting any component of the System.”
- It says no federal agency (including FERC) “shall assist by loan, grant, license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values” for which the river was designated as part of the System. The determination whether a project will adversely affect river values is made by the federal land management agency with jurisdiction over the federal lands containing the affected river.
- the statute imposes the same prohibitions, albeit for a limited period of time, on projects on or directly affecting rivers that have been designated as potential additions to the system.

Authority of Interior Department

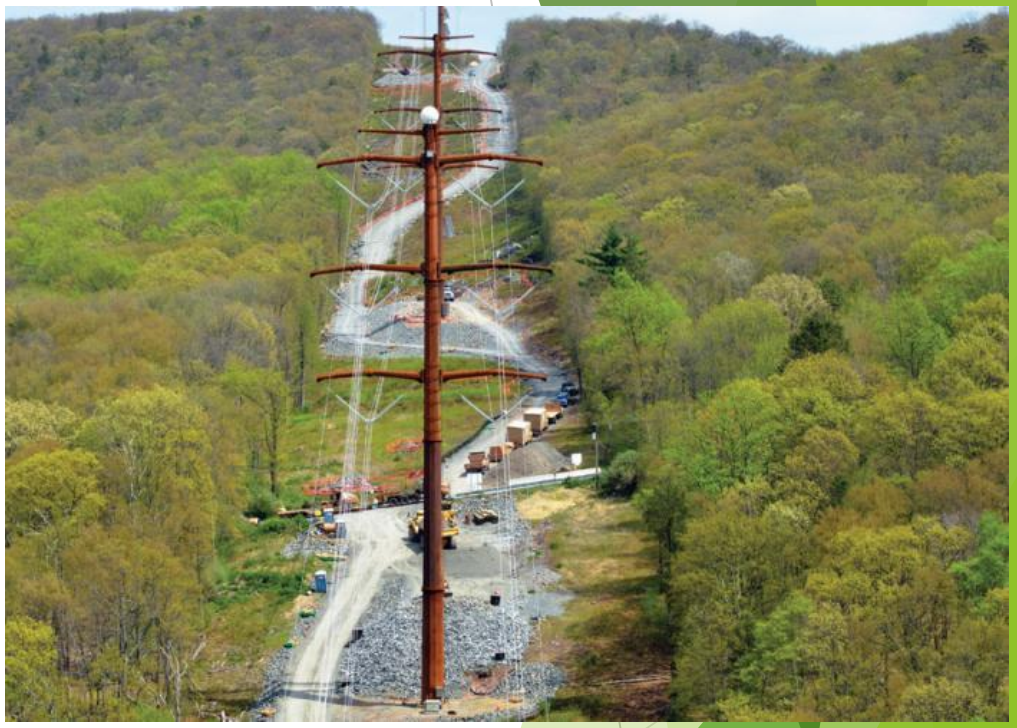
- FERC, the states, and other siting authorities lack the power to override any federal laws that limit or prohibit construction of transmission facilities on federal lands. The primacy of federal land management laws, including the FLPMA, the MLA, and the WSRA, and the agencies that administer them, is particularly notable for the federal lands set aside primarily for preservation, recreational, or wildlife protection purposes, given the inapplicability of the presidential appeal process to transmission projects on those lands.
- **The Interior Department could have the authority to stop a pipeline and do avoidance over mitigation, but they choose not to**

Battle Against Tennessee Gas Pipeline

- Sierra Club, Delaware Riverkeeper Network and the challenged the federal approval of the pipeline. We won the Court case, but did not get a stay.
- When TGP prepared to drill underneath the Delaware River to install a new pipeline as part of the Northeast Upgrade project in Montague Township, construction activities caused a portion of River Road to collapse with a huge sink hole.
- This project is located in one of the most environmentally sensitive areas of New Jersey and through critical water supply watershed lands, including the Monksville Reservoir and Delaware River.

Susquehanna Roseland Case

- Sierra Club and DRN sued against the Susquehanna-Roseland transmission line through 3 National Park units, the Delaware Water Gap, Appalachian Trail, and the Middle Delaware River.
- We argued that several Board findings were erroneous, including it was need for reliability, that no alternatives were considered, that the project did not pose unacceptable health and safety risks, and that the upgrade was designed to provide an outlet for coal-generated electricity produced in states to the west and south of New Jersey, rather than to serve the interests of New Jersey electric consumers.
- Department of Interior Secretary accepted $63 million in mitigation money to approve the utility companies preferred route. They did this over protecting resources, while siding with NJ Audubon.



Pena Case

- Sierra Club won against the Minnesota and Wisconsin Department of Transportation's proposal for a four-lane bridge across the Lower St. Croix River, a river that is part of the National Wild and Scenic Rivers System.
- We argued that the project failed to comply with wetlands and historic resources protections, did not conduct a proper alternative analysis, and did not review significant impacts in an Environmental Impact Statement.
- The court noted that the Department had consistently deemed bridge projects that involve construction activity in the bed or on the banks of a wild and scenic river to be "water resource projects" because construction activity that requires a dredge and fill permit "inherently alters the free-flowing natural condition of the river and always triggers a Section 7 determination."

Working with the DEP and DRBC to understand impacts

New Jersey Department of Environmental Protection (DEP)

- The DEP rejected PennEast Pipeline's applications for 401 Water Certificate and other water and wetlands permits for being deficient.
- Since 65 percent of the route has yet to be surveyed, the DEP said they do not have enough information for any of these approvals.
- This is a major setback because it delays their application for months, if not longer.
- They have 30 days to respond and another 60 days to collect more data, which will be difficult for PennEast to do.
  - They can't get on people's property with FERC not having a quorum

Department of Environmental Protection

- 401 water quality certificates
- Stream encroachment
  - crossings, buffers
- Wetlands
  - fill, crossing, and buffers
  - Section 202 CWA
- Section 303 Water permit
- Flood hazards
  - fill, buffers
- Stormwater
- CAFRA Coastal Program
- Coastal Zone Management Act
- Green Acres
- Statehouse Commission
- Watershed Moratorium Commission
- Water allocation
- NJPDES (water discharge)
- Threatened and Endangered Species
- SHPO (historic reviews)
- Replacement trees on public lands
- Other land use permits

Delaware River Basin Commission (DRBC)

- We got DRBC to do it's own EIS analysis, separate from FERC. They haven't started this processes yet.
- They committed to having at least six public hearings, none of which have been scheduled yet.
- FERC can not approve this project unless the DRBC approves it.
- This can hold them up for up to a year and if the DRBC rejects their permits, they can stop the project.
- PennEast has also applied for Surface Water Withdrawal and Discharge permits from the DRBC which must be approved.

Other Federal Agencies and Reviews

- Environmental Protection Agency has been critical of the project
  - Sent a deficiency letter on flawed NEPA and EIS
- US Fish and Wildlife Service also sent a letter criticizing the process of the project.
- Ratepayer Advocate declared the project would be bad for consumers.
- Department of the Interior
  - 319 review if it impacts any historic structure or district on National Registrar of Historic Places

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