



NEW JERSEY HIGHLANDS COALITION
508 Main Street • Boonton, New Jersey 07005 • 973.588.7190

Terry Pilawski, Chief
Division of Watershed Management
Bureau of Watershed Regulation
PO Box 418
Trenton, NJ 08625

June 15, 2009
(Resubmitted June 23, 2009 with revisions and sign-ons)

Re: Highlands Applicability Determination -Highlands Exemption Request
Tennessee Gas Pipeline -300 Line Project
Program Interest Nos. 435442 and 435459
Activity Nos. CSD090014 and CSD090002

Dear Ms Pilawski:

I am submitting the following comments on behalf of the New Jersey Highlands Coalition regarding the request by Tennessee Gas Pipeline Company (TGP) for an Exemption #11 under the **Highlands Water Protection and Planning Act**.

The New Jersey Highlands Coalition opposes this application because TGP misinterprets the language of Exemption #11 from the Highlands **Water Protection and Planning Act** in satisfaction of its own self-interest; which is to pre-empt any regulatory oversight on the part of NJDEP and the NJ Highlands Council and to establish its own procedures for the wholesale disturbances it proposes for the Highlands region. TGP makes no effort to employ the established hierarchy of avoidance, minimization and mitigation when disturbing sensitive lands. They do not propose the replanting of trees or management of invasive species in the restoration of rights of way and temporary work areas. The application provides no detail regarding the intended uses, activities and traffic and storage volumes of the Pipe Storage Area. TGP has made no mention in their application of the necessity to traverse 1000' of the Monksville Reservoir and the Long Pond Ironworks State Park. Our specific comments are detailed below. Overall, TGP's H.A.D. application lacks detail, any sense of value of the unique resources they propose to disturb and an entitled sense of avoidance of the regulatory processes of New Jersey and the New Jersey Highlands Region.

Our comments will reference the April 9, 2009 *Revised Narrative Report in Support of Highlands Applicability Determination – Highlands Exemption Request for the 300 Line Project*, which comprises TGP's substantive justification for its request Exemption #11.

1.0 Introduction

TGP correctly quotes the section of the Highlands Act that prefaces exemptions: “The following are exempt from the provisions of this act, the regional master plan, any rules or regulations adopted by the Department of Environmental Protection pursuant to this act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan.” However, of all of the 17 exemptions listed in the act, only exemptions #9 and #11, for repair of transportation or infrastructure systems and for public utility lines, rights of way, or systems, they are the only exemptions that specifically require the following, **“provided that the activity is consistent with the goals and purposes of this act”** (emphasis added).

The act clearly states in its finding the following goal and purpose, “...That it is in the public interest of all the citizens of the State of New Jersey to enact legislation setting forth a comprehensive approach to the protection of the water and other natural resources of the New Jersey Highlands; that this comprehensive approach should consist of the identification of a preservation area of the New Jersey Highlands that would be subjected to stringent water and natural resource protection standards, policies, planning, and regulation; that this comprehensive approach should also consist of the establishment of a Highlands Water Protection and Planning Council charged with the preparation of a regional master plan for the preservation area in the New Jersey Highlands as well as for the region in general...”

The establishment of the Highlands Council and the preparation of the now adopted Highlands Regional Master Plan were clearly stated as goals and purposes of the act in order to implement other specified goals and purposes of the Highlands Act.

Exemption #9 and #11 are unique among the 17 exemptions in that it singularly requires adherence to the goals and purposes of the Act, which in effect “exempts” it from the reliefs found in preface. For TGP to interpret the preface as to override the particular wording of exemption #11 is disingenuous.

TGP, unable to find a “specific section of the Highlands Act entitled ‘goals and purposes’”, conveniently proposes to cherry-pick on its own through the Legislative Findings section of the Act, exempting itself from the Act, the DEP rules, the Highlands Council and the Regional Master Plan.

TGP later claims that requiring it to comply with the provisions of the Regional Master Plan would “vitate it from the very purpose of the exemption sought by [TGP].” No, it would require it to comply with the goals and purposes of the Highlands Act and design a project that is consistent with the Regional Master Plan.

TGP asserts that as a result of their disturbances, “The natural beauty of the Highlands will be preserved based on the underground nature of the Project facilities.” Yet they specifically rule out replanting of trees and managing invasive species as part of its restoration planning. TGP frequently mentions they are under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the Department of Transportation (DOT), as if the regulatory oversight of these agencies overreach the regulatory requirements of New Jersey and the Highlands Act, and that “the Project qualifies for an exemption from the Highlands Act, the RMP, NJDEP regulations implementing the Highlands Act, and any local master plan amendments or regulations adopted to conform with the RMP.” TGP fails to note that the Highlands Act concludes the section on exemptions with the following, “The exemptions provided

in...this section shall not be construed to alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or ordinances.”

Policy 7F1 of the adopted RMP states, “To provide guidance on the activities that are exempt from the provisions of the Highlands Act, the RMP, any rules or regulations adopted by NJDEP pursuant to the Highlands Act, and any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP.” Objective 7F1f states, “Activities authorized under exemptions #9 and #11, which require a finding that the activity is consistent with the goals and purposes of the Highlands Act, shall be based upon a finding that the proposed activities are consistent with Highlands Act, the RMP, any rules or regulations adopted by the NJDEP pursuant to the Highlands Act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP.”

3.2 Existing and Proposed Permanent Right of Way

TGP proposes to increase its permanent right of way by 50% through the entirety of the 15.9 miles that it passes throughout the Highlands (10.94 miles within the Preservation Area). TGP makes no effort to avoid, minimize, or mitigate for the effects of their disturbances.

3.3 Temporary Construction Workspace

TGP claims to follow FERC-approved restoration Plan and Procedures. This does not include replanting of trees or management of invasive plant species.

3.4 Access Roads

2 private roads are mentioned as the only non-public access roads. Both are located within the Preservation Area. No mention is made to their current widths, surface conditions, necessary improvements, or the types of construction/hauling traffic they will carry.

3.5 Pipe and Equipment Storage Yard

One of two possible approximately 35-acre previously disturbed sites have been identified for pipeline storage and as the staging area for the entire new pipeline construction. No mention is made of the amount of pipe anticipated to be stored, the activities and other functions to be expected at the site including any hazardous material storage and refueling operations.

5.1 Protection of Water Resources

No mention is made of how TGP will construct a new pipe across approximately 1000’ of the Monskville Reservoir.

5.5 Protection of Environmentally Sensitive Lands

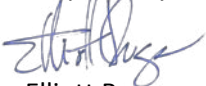
TGP states, "Additional surveys will be conducted during the 2009 field season to determine presence or absence of listed species. Impact avoidance and/or mitigation measures will be determined based on the result of field surveys and additional consultations with applicable regulatory agencies."

No ruling by NJDEP can be made until the field surveys are completed and impact avoidance and/or mitigation measures are approved.

Other Comments

TGP has not made public the results of any cultural and historical resources studies, and the impacts to these resources. Although the FERC does not require public disclosure of these resources, New Jersey has no such embargo. In fact, impacts upon these resources are a necessary part of any H.A.D. application and/or any Consistency Determination of the Highlands Council. These studies, if they have been provided, must be available for public inspection and comment.

Respectfully submitted,



Elliott Ruga

Cc: Eileen Swan, Executive Director
NJ Highlands Council

And on behalf of:

Candace Mckee Ashmun

Association of NJ Environmental Commissions
Sandy Batty, President

The Land Conservancy of New Jersey
David Epstein, President

Morris County Trust for Historic Preservation
Marion Harris, President

New Jersey Audubon
Eric Stiles, V.P. Conservation and Stewardship

New Jersey Environmental Lobby
Anne Poole, President

Passaic River Coalition
Ella Filappone, Executive Director

Sierra Club, NJ Chapter
Jeff Tittel, Director

South Branch Watershed Association
William Kibler, Executive Director

Skylands CLEAN
Robin O'Hearn, Executive Director

Stop Riverbank
Matt Lally, Trustee

Trout Unlimited, NJ State Council
Rick Ege, V.P., Northern Region