

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

New Jersey Conservation Foundation, New Jersey League of Conservation Voters, Aquashicola Pohopoco Watershed Conservancy, and Catherine Folio,)	
)	
)	
)	
)	Case No. 23-1064
Petitioners,)	
)	
v.)	
)	
Federal Energy Regulatory Commission,)	
)	
Respondent.)	
)	
)	

**OPPOSITION OF INTERVENOR TRANSCONTINENTAL GAS PIPE
LINE COMPANY, LLC TO PETITIONERS’ EMERGENCY MOTION FOR
STAY**

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GLOSSARY

Certificate Order	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 182 FERC ¶ 61,006 (Jan. 11, 2023)
Conservancy	Petitioner Aquashicola Pohocopo Watershed Conservancy
FERC or Commission	Respondent The Federal Energy Regulatory Commission
Notice to Proceed	March 16, 2023 Notice to Proceed with Construction – Tree Felling
Petitioners	Petitioners New Jersey Conservation Foundation, New Jersey League of Conservation Voters, Aquashicola Pohopoco Watershed Conservancy, and Catherine Folio
Project	Transcontinental Gas Pipe Line Company, LLC's Regional Energy Access Expansion Project
Rehearing Order	<i>Transcontinental Gas Pipe Line Co. LLC</i> , 182 FERC ¶ 61, 148 (Mar. 17, 2023)
Transco	Intervenor Transcontinental Gas Pipe Line Company, LLC

I. INTRODUCTION

Without first going to the Federal Energy Regulatory Commission (the “Commission” or “FERC”), Petitioners seek to stay critical tree felling activity which began March 16, 2023, the day such activity was authorized by the Commission. In order to protect endangered species, tree felling must be completed by March 31, 2023, and must continue without interruption. Tree felling has already been completed in the two areas identified by Petitioners—the property of Petitioner Catherine Folio, who consented to tree felling on her property, and the area of concern to Petitioner Aquashicola Pohocopo Watershed Conservancy.

The Court should deny Petitioners’ Emergency Motion for Stay because it does not satisfy the rigorous requirements for extraordinary relief, which is what the Commission found when considering the same facts and arguments. Petitioners cannot demonstrate that they will suffer irreparable harm from pre-construction tree felling, which has already occurred on the properties they identify. Petitioners allege that there will be harm from general construction activity but that activity has not been authorized by the Commission yet and is not occurring. If the Commission authorizes full construction activity, it will do so by issuance of a separate letter order that is subject to the Natural Gas Act’s mandatory rehearing requirements before Petitioners may seek federal appellate court review, as this Court so held in *Delaware Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017).

Petitioners have not sought rehearing of the Commission's letter order authorizing pre-construction tree felling activity either, so their motion to this Court is premature for that reason, too.

Petitioners also are not likely to succeed on the merits. The Commission considered all evidence bearing on the need for the Project and provided reasoned explanations for concluding that a need exists. Finally, the public interest does not favor a stay, as discussed in the orders issued by the Commission. The Court should deny Petitioners' motion for stay.

II. **BACKGROUND**

On March 26, 2021, pursuant to provisions of the Natural Gas Act, 15 U.S.C. § 717 *et seq.*, Transco applied to FERC for a certificate of public convenience and necessity, which would authorize Transco to construct and operate the Project. On January 11, 2023, the Commission issued Transco the Certificate Order¹ permitting Transco to construct and operate the Project, which will provide 829,400 dekatherms per day of incremental firm transportation service to committed shippers, and to abandon and upgrade certain compression facilities. Certificate Order ¶ 1. The Project includes: construction of approximately 36 miles of 30- and 42-inch diameter pipeline loop and horsepower addition to an existing compressor station in

¹ See Order Issuing Certificate, *Transcontinental Gas Pipe Line Company, LLC*, 182 FERC ¶ 61,006 (Jan. 11, 2023) ("Certificate Order"). The Certificate Order is attached to the Petition for Review that is the subject of this proceeding.

Pennsylvania; construction of one new electric motor driven compressor station and horsepower addition at an existing compressor station in New Jersey; and upgrades and modifications to existing compressor stations, regulating stations, delivery meter stations, and ancillary facilities in Pennsylvania, New Jersey, and Maryland.² *Id.* ¶ 4.

In accordance with Transco's commitment to emissions reduction, the Project also includes retirement of reciprocating compression units at compressor stations in Pennsylvania and New Jersey. *Id.* ¶ 5. In New Jersey, retirement of eight legacy reciprocating engines will result in significant reductions (over 97%) in permitted criteria and hazardous air pollutants. *Id.* The Project supports the climate commitment of Transco, its parent company The Williams Companies, Inc., and the shippers under the Project, and provides a practical path to reduce emissions, support the viability of renewables, and advance a clean energy economy. Certificate Order ¶ 5 n.12.

The Project represents an investment by Transco of approximately \$950 million. Declaration of Su-Lin Jaaskelainen ("Jaaskelainen Declaration") ¶ 20, attached hereto as Addendum B. Transco has incurred approximately \$676 million

² A pipeline loop or "looping" is when a segment of pipeline is installed alongside and adjacent to one or more pre-existing pipelines. The loop segment then is connected to the pre-existing pipeline at both ends, allowing increased transportation capacity and/or better system reliability.

of actual and committed costs to date on the Project. *Id.* ¶ 21. There are several steps necessary to initiate construction of the Project, all of which have now taken place:

- a. authorization from FERC in the form of a certificate of public convenience and necessity;
- b. resolution by the Commission of any rehearing requests so that the rehearing requests are no longer pending before the Commission;
- c. receipt of all necessary federal, state and local authorizations;
- d. acquisition of all necessary property rights;
- e. observance of other project-specific requirements such as waterbody, migratory bird, and threatened and endangered species construction window restrictions;
- f. satisfaction of all pre-construction conditions of the FERC Order; and
- g. the FERC's separate, post-certificate authorization that construction may begin (a Notice to Proceed) in whole or in part – to date only the Notice to Proceed with tree felling has been issued.

Id. ¶ 22. As required by a condition of the Certificate Order, the shippers, most of whom are public utility companies, have entered into binding service agreements for the Project, and those with urgent need have expressed interest in all Project capacity available to them (approximately 50% of total capacity) for the 2023-2024 winter heating season. *Id.* ¶ 23.

Following the issuance of the Certificate Order, on February 10, 2023, Petitioners filed a Request for Rehearing and Motion for Stay before the Commission requesting rehearing and vacatur of the Certificate Order, and a stay of

the Certificate Order pending judicial review. On March 13, 2023, the Commission denied Petitioners' request for a rehearing by operation of law. On March 16, 2023, the Commission issued the Notice to Proceed, which granted Transco's prior request to commence tree felling activities for the Project in Luzerne and Monroe counties, Pennsylvania and Gloucester and Somerset counties, New Jersey. *See* Addendum A, Notice to Proceed. The tree felling window imposed by the Certificate Order and other federal authorizations will close on March 31, 2023, so tree felling must continue without interruption in order to be completed before that window closes. *See* Certificate Order (Danly concurrence and dissent) ¶ 6; Jaaskelainen Declaration ¶ 6.

As permitted by Section 19(a) of the Natural Gas Act, on March 17, 2023, the Commission modified the discussion in the Certificate Order through the issuance of an Order on Rehearing, Granting Clarification, Denying Stay, and Dismissing Waiver (the "Rehearing Order"). *See Transcontinental Pipe Line Co., LLC*, 182 FERC ¶ 61,148 (Mar. 17, 2023), attached as Exhibit 2 to Petitioners' Motion. Prior to filing the instant Motion to Stay, Petitioners did not seek a rehearing or stay of the Notice to Proceed before the Commission. Accordingly, upon the issuance of the Notice to Proceed, Transco commenced, and continues to conduct, tree felling activities related to the Project.

III. ARGUMENT

A. Legal Requirements for Stay Requests

A stay is an “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). The Court considers four factors in determining whether to grant the extraordinary relief of a stay, which is a form of preliminary injunction: “(1) the movant’s showing of a substantial likelihood of success on the merits, (2) irreparable harm to the movant, (3) substantial harm to the nonmovant, and (4) public interest.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291 (D.C. Cir. 2009) (citation omitted). A stay “should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted). Petitioners have not carried their burden here.

B. Petitioners Fail to Satisfy the Requirements for a Stay

1. Petitioners Have Not Made a Clear Showing that the Actions They Seek to Enjoin Will Cause Irreparable Harm

Petitioners failed to demonstrate that they will suffer irreparable harm absent a stay. The only activity that is ongoing and can be stayed at this time is tree felling. Tree felling has already occurred on the properties identified in the motion—the property of Petitioner Catherine Folio, as she admits in her Declaration, and the

property of concern to Petitioner Aquashicola Pohocopo Watershed Conservancy (the “Conservancy”). See Jaaskelainen Declaration ¶ 14.

As the Commission found when considering Petitioners’ request for a stay of the Certificate Order, “We find that NJCF’s asserted impacts are speculative and NJCF has not shown that irreparable injury is ‘likely’ to occur. Further, the Commission included protective conditions in the Certificate Order and the final Environmental Impact Statement (Final EIS) to mitigate construction impacts on landowner property.” Rehearing Order at 12. Petitioners cannot satisfy any of the requirements for demonstrating irreparable harm. They must demonstrate not only that they will likely suffer irreparable injury, but also that their irreparable injury is “great,” meaning significant in degree and beyond remediation. See *Winter*, 555 U.S. at 22; *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). To establish irreparable harm justifying a stay, a petitioner must “make a clear showing that the plaintiff is entitled to such relief[.]” *Winter*, 555 U.S. at 22. Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent” with that requirement. *Id.* Instead, “plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Id.* (citations omitted, emphasis in original); *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 545-46 (1980) (even where environmental harm at issue

would be classified as “irreparable,” injunctive relief inappropriate where the harm is not “sufficiently likely”); *Tozzi v. EPA*, 148 F.Supp.2d 35, 49 (D.D.C. 2001) (noting, “[s]peculative harm is not sufficient to constitute irreparable harm”). Petitioners have not carried this burden. Petitioners also must demonstrate a “causal link” between the irreparable harm it claims it will suffer and the action sought to be stayed. *Bronx Household of Faith v. Bd. of Educ. of City of New York*, 331 F.3d 342, 350 (2d Cir. 2003); *see also Wis. Gas*, 758 F.2d at 674.

As an initial matter, Transco has already completed tree felling on Ms. Folio’s property, so that cannot supply a basis for any claim of irreparable harm. *See* Exhibit 8 to Emergency Motion, Folio Declaration ¶¶ 3-4; Jaaskelainen Declaration ¶ 13. And FERC has not authorized Transco to perform any activity other than pre-construction tree felling, so the remainder of Petitioners’ claims of irreparable harm related to construction activity is premature. *See* Jaaskelainen Declaration ¶ 26.

Further, Ms. Folio entered into an Option and Right of Way Agreement signed on October 18, 2021 by Ms. Folio, for which she has received payment in full from Transco for anticipated construction impacts to her property. *See* Option and Right of Way Agreement (the “Folio Right of Way Agreement”), attached as Addendum

C, and recorded in the Recorder of Deeds Office of Monroe County, Pennsylvania at Book 2592, Page 3040.³

Specifically, Ms. Folio acknowledged that “part of the consideration herein paid includes payment in full for any damages caused, or to be caused” by the proposed pipeline. Folio Right of Way Agreement ¶ 8. In addition, Ms. Folio acknowledged that upon exercise of the option in the Folio Right of Way Agreement, she conveyed to Transco:

[T]he irrevocable right to conduct within the Easement Area all activities necessary to construct . . . the proposed pipeline, . . . (the “Work”) including but not limited to all required surveys, tree clearing, construction, restoration and maintenance activities and other activities required by the Natural Gas Act (“NGA”), 15 U.S.C. §717, et seq., and the Pipeline Safety Act (“PSA”), 49 U.S.C. § 60101, et seq., all applicable orders thereunder, and the regulations thereunder, as amended from time to time.

Id. ¶ 5(f).⁴ Transco’s non-mechanized tree felling within the workspace and right of way on Ms. Folio’s property is an activity clearly contemplated by the Folio Right

³ The Court may take judicial notice of “a fact that is not subject to reasonable dispute,” if it either “is generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.” *Kareem v. Haspel*, 986 F.3d 859, 866 n.7 (D.C. Cir. 2021).

⁴ The option in the Folio Right of Way was exercised by Transco, and payment made to Ms. Folio as reflected in the Notice of Exercise of Option and Right of Way Agreement executed by Ms. Folio on November 18, 2022, attached hereto as Addendum E.

of Way Agreement. There is not (and cannot be) any irreparable harm to Ms. Folio for an activity to which she agreed, so a stay is not warranted.

As to the concerns raised on behalf of the Conservancy, the tree felling also already occurred in the areas identified in the Declaration submitted by them, and the remaining concerns they raise relate to activities associated with full construction, which has not been authorized to begin. *See* Petitioners' Exhibit 19 at ¶ 3; Jaaskelainen Declaration ¶ 14. Additionally, the Certificate Order contains several environmental conditions that comprehensively prescribe conditions to avoid or mitigate any environmental impacts. *See* Certificate Order ¶ 70; Rehearing Order ¶ 15 (holding Petitioners' claims of environmental harm was not evidence of irreparable harm because "implementation of Transco's plans and the Commission's mitigation measures, construction and operation of the [P]roject will not have a significant impact on soil erosion, water quality, vegetation, surface waters, wetlands, fisheries, or wildlife"); *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297. Moreover, in considering Petitioners' request for a stay of the Certificate Order, the Commission explicitly found that Petitioners' allegations of environmental harm were "speculative," and that Petitioners had "not shown that irreparable injury is 'likely' to occur." Rehearing Order ¶ 12. Accordingly, any alleged harms will be appropriately remediated and mitigated.

Finally, the Commission and the United States Courts of Appeals consistently deny motions to stay non-mechanized tree felling in particular, and construction in general, because of a lack of irreparable harm alleged by petitioners. For example, in *Empire Pipeline, Inc.*, the Commission denied a request to stay tree felling activities because the petitioner “provided only unsupported, generalized allegations about environmental harm resulting from the project” which were “fully considered and addressed” by the Commission. *Empire Pipeline, Inc.*, 153 FERC ¶ 61,379, at ¶¶ 11-14 (2015). The Commission determined that, on balance, the project “if constructed and operated in accordance with the application and supplements, and in compliance with the 15 environmental conditions appended to the order, would not significantly affect the quality of the human environment,” and noted that the Commission and the courts consistently deny stays in similar circumstances. *Id.*⁵

⁵ See also *Transcontinental Gas Pipe Line Co., LLC, order denying stay*, 160 FERC ¶ 61,042 (Aug. 31, 2017) (“The proposed tree clearing activities addressed in Transco’s request for partial notice to proceed would be conducted by hand, using equipment that will not rut soils or damage root systems. The Commission has denied motions to stay non-mechanized tree felling, particularly where, as here, there is no allegation of irreparable harm.”); *Tennessee Gas Pipeline Company, L.L.C., order denying stay*, 181 FERC ¶ 61,051 (Oct. 24, 2022); *Mountain Valley Pipeline, LLC, order denying stay*, 174 FERC ¶ 61,192 (Mar. 24, 2021); *National Fuel Gas Supply Corp., order denying request for rehearing and denying request for stay*, 154 FERC ¶ 61,180 (March 8, 2016); *Constitution Pipeline Company, LLC, order denying stay*, 154 FERC ¶ 61,092 (Feb. 10, 2016) (note that in the Constitution Project the stay was denied despite the fact that not all federal authorizations for the project had been received; here all federal authorizations have been received); *Transcontinental Gas Pipe Line Company, LLC, order denying stay*, 150 FERC ¶ 61,183 (Mar. 12, 2015); *Millennium Pipeline Co., LLC order denying stay*, 141

The same is true here. Accordingly, since Petitioners will not suffer irreparable harm resulting from Transco's tree felling activities, this Court should deny Petitioners' request for a stay.

2. The Significant Harm that a Stay Will Cause Transco Weighs Heavily Against Granting a Stay

Although Transco requested permission to begin tree felling on March 3 and was not authorized to begin until March 16, Transco can still complete tree felling before the March 31 deadline, so long as a stay is not entered. Jaaskelainen Declaration ¶¶ 6, 9, 16. A stay of even one day risks causing significant harm to Transco and weighs heavily against granting a stay. *Id.* ¶¶ 15-16.

FERC ¶ 61,022 (Oct. 9, 2012); *Ruby Pipeline, LLC, order denying stay*, 134 FERC ¶ 61,103 (Feb. 11, 2011); *Ruby Pipeline, LLC, order denying stay*, 134 FERC ¶ 61,020 (Jan. 12, 2011). For stays denied by the courts see: *Sierra Club v. FERC*, No. 20-1512 (D.C. Cir. Feb. 19, 2021); *Adorers of the Blood of Christ v. FERC*, No. 17-3163 (3d Cir. Oct. 13, 2017); *Sierra Club, et al. v. FERC*, No. 16-1329 (D.C. Cir. Nov. 17, 2016); *City of Boston Delegation, et al. v. FERC*, No. 16-1081 (D.C. Cir. Oct. 28, 2016); *Catskill Mountainkeeper, Inc., et al. v. FERC*, No. 16-345 (2d Cir. Feb. 24, 2016); *EarthReports, Inc. v. FERC*, No. 15-1127 (D.C. Cir. June 12, 2015); *In re Del. Riverkeeper Network*, No. 15-1052 (D.C. Cir. Mar. 19, 2015); *In re Clean Air Council*, No. 15-2940 (3d Cir. Dec. 8, 2015); *Town of Dedham v. FERC*, No. 1:15-cv-12352, 2015 WL 4274884 (D. Mass. July 15, 2015); *In re Stop the Pipeline*, No. 15-926 (2d Cir. Apr. 21, 2015); *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, No. 12-1481 (D.C. Cir. Mar. 5, 2013); *Feighner v. FERC*, No. 13-1016 (D.C. Cir. Feb. 8, 2013); *Del. Riverkeeper Network v. FERC*, No. 13-1015 (D.C. Cir. Feb. 6, 2013); *In re Minisink Residents for Pres. of the Env't and Safety*, No. 12-1390 (D.C. Cir. Oct. 11, 2012); *Coal. for Responsible Growth & Res. Conservation v. FERC*, No. 12-566 (2d Cir. Feb. 28, 2012); and *Summit Lake Paiute Indian Tribe of Nev. and Defenders of Wildlife, et al. v. FERC*, Nos. 10-1389 & 10-1407 (D.C. Cir. Jan. 28, 2011 & Feb. 22, 2011).

Significantly, the Commission itself recognized the sensitive nature of Transco's deadlines, noting, "[t]he reality is that failing to issue a timely order in this proceeding would almost certainly delay the development of [the Project] for at least [a] year, meaning that it would not be available for the upcoming winter season." Rehearing Order, Phillips concurrence ¶ 3. Continuing, Chairman Phillips highlighted the irreparable impacts of any such delay, stating that "[s]uch a failure would also jeopardize reliability and the economic benefits, including jobs, associated with the REAE pipeline, which was unanimously approved by the Commission in the underlying order." *Id.*

To complete the tree felling required by the March 31, 2023 deadline safely, Transco will need every daylight hour of work. A delay for any length of time will likely cause Transco to miss the deadline and be unable to complete the tree felling needed for Project construction. Jaaskelainen Declaration ¶ 16. Therefore, if Transco is unable to complete tree felling prior to the close of the construction window required by the U.S. Fish & Wildlife Service, its permits and the Certificate Order, the Project construction would be unduly delayed, and the in-service date of the Project would be postponed by up to 12 months, jeopardizing the shippers' access to adequate gas supplies, reliability, and operational flexibility needed for the 2023-2024 winter heating season. *Id.* ¶ 17.

Transco is subject to various complicating logistical and statutory factors that require significant planning and careful execution to ensure that construction proceeds efficiently and safely. *See id.* ¶¶ 26-31 (describing various practical and legal considerations that render the Project highly sensitive to delay, including construction and design requirements, environmental impact considerations, time-of-year restrictions, and scheduling of various construction crews, among other factors). Transco will suffer significant harm if construction is delayed, including harm to its reputation, delay in the planned in-service date for the Project and attendant financial consequences, such as the loss of revenue. The Project represents an investment by Transco of approximately \$950 million. *Id.* ¶ 20. Transco has incurred approximately \$676 million of actual and committed costs to date on the Project. *Id.* ¶ 21. If Transco had to cease the on-going tree felling activities it would incur costs of approximately \$150,000.00 per day. *Id.* ¶ 18. Such costs and lost revenue likely cannot be fully recoverable by Transco to the extent that it contributes to or causes the cost of the Project to exceed amounts recoverable from the shippers as part of the transportation rates agreed upon with the shippers for the Project capacity. *Id.* ¶ 36.

In short, even a slight delay endangers Transco's ability to complete the Project in time for the 2023-2024 heating season. Since the Project is "critical energy infrastructure that is needed for reliability and the public interest," Rehearing Order

(Phillips concurrence) ¶ 2, the harm that Transco will suffer if a stay is granted undoubtedly weighs against affording Petitioners the relief they request.

3. Petitioners Have Not Made a Clear Showing of a Likelihood of Success on the Merits

Petitioners argue that the Commission acted on an incomplete record and failed to properly consider evidence of lack of need for the Project. *See* Motion at 4-12. FERC considered all of Petitioners' claims at length in the Rehearing Order and rejected them for rational reasons. *See* Rehearing Order ¶¶ 18-21, 29-71; *see also* Certificate Order ¶ 21-35. And FERC's determination of need is amply explained supported by multiple sources in the record. *See id.* That is all that the Natural Gas Act requires. *See Allegheny Def. Project v. FERC*, 964 F.3d 1, 19 (D.C. Cir. 2020).

Petitioners rely principally upon comments in Commissioner Clements' concurrences to the Certificate Order and the Rehearing Order. Despite Commissioner Clements' reservations, she concurred in the result, which includes the issuance of a certificate of public convenience and necessity for the Project. No Commissioner dissented from the issuance of the Certificate Order or from the Rehearing Order. Petitioners do not raise any new arguments regarding the need for the Project in this motion (nor could they without first presenting them to FERC), and the Rehearing Order systematically rejects each of their arguments and demonstrates that Petitioners are not at all likely to succeed on the merits of their appeal.

4. A Stay Does Not Favor the Public Interest

Petitioners also fail to demonstrate that the public interest will be served by granting a stay. In the Natural Gas Act, Congress vested FERC with jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce. 15 U.S.C. § 717. Before constructing a natural gas pipeline, a company must obtain a “certificate of public convenience and necessity,” like the Certificate Order, from FERC and “comply with all other federal, state, and local regulations not preempted by the” Act. *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 240 (D.C. Cir. 2013). FERC “shall” issue a certificate if it determines that a proposed pipeline “is or will be required by the present or future public convenience and necessity.” 15 U.S.C. § 717f(e). Contrary to Petitioners’ claim that the public interest favors a stay, FERC determined that constructing and operating the Project is in the public interest.

The Commission found that Transco “demonstrated a need for [the Project], that the [P]roject will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project’s benefits will outweigh any adverse economic effects on landowners and surrounding communities.” Certificate Order ¶ 82. That is, the Commission determined “under section 7 of the NGA that the public convenience and necessity requires approval of [the Project.]” *Id.* Likewise, after Petitioners sought a rehearing, the Commission reiterated “that Transco has taken sufficient steps to minimize adverse impacts on

landowners and surrounding communities, and that the benefits of the [P]roject in improving reliability and diversifying supply outweigh potential adverse effects.” Rehearing Order ¶ 133. Petitioners’ contentions to the contrary fall flat.

For example, in *Amoco, supra*, the Supreme Court emphasized that while protection of the environment is “a public interest,” 480 U.S. at 546 (emphasis in original), it is not the *only* public interest to be evaluated in determining whether a stay is appropriate. In *Amoco*, the respondents argued that the Secretary of the Interior failed to comply with the Alaska National Interest Land Conservation Act granting oil and gas leases and that the leases would threaten natural resources used for subsistence. *Id.* at 534-36. The Ninth Circuit, in entering a preliminary injunction against all activity in connection with the leases, concluded “that the public interest favored injunctive relief because the interests served by federal environmental statutes, such as [the Alaska National Interest Land Conservation Act], supersede all other interests that might be at stake.” *Id.* at 545. The Supreme Court reversed, rejecting the notion that environmental considerations “supersede all other interests,” including natural resource development. *Id.* at 546.

Here, Petitioners overstate the benefit to the public if the Project does not proceed as planned. To the contrary, as the issuance of the Certificate Order indicates, the public will be harmed if the Project is not completed. As set forth by the Commission, “the construction and operation of the [P]roject will provide more

reliable service on peak winter days and will provide cost benefits by increasing supply diversity.” Certificate Order ¶ 34; Rehearing Order ¶¶ 30, 42. In addition, the Commission agreed that the public will benefit from the Project “from the increased reliability of replacement equipment, resulting in fewer maintenance outages, less downtime, decreased air emissions, less fuel consumption and costs, and lower operation and maintenance costs.” Rehearing Order ¶ 59. Moreover, the Project will provide gas to local distribution companies in New Jersey to be used in residential applications. *See* Certificate Order ¶ 8; Rehearing Order ¶ 5. Undoubtedly, as the Commission determined, there is a strong public interest that militates against granting a stay herein.

If construction of the Project does not proceed as planned, the public will not be able to enjoy the benefits found by Commission when issuing a certificate of public necessity and convenience to Transco for the Project. As such, a stay is not in the public interest.

5. Petitioners’ Stay Request Is Premature

Finally, Petitioners’ Motion is “incurably premature” as it relates to the Notice to Proceed with tree felling. Petitioners failed to seek rehearing of the Notice to Proceed, and, therefore, they may not seek a stay of the Notice to Proceed from this Court. 15 U.S.C. § 717r(b) (“No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the

Commission in the application for rehearing unless there is a reasonable ground for failure so to do.”); *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017) (citing 15 U.S.C. §§ 717r(a)-(b); *Darby v. Cisneros*, 509 U.S. 137, 145 (1993) (recognizing the statutory rehearing requirement of § 717r as mandatory).

Seeking a rehearing of the Notice to Proceed is not merely a procedural requirement. The Commission has been granted statutory supervision over the matters at issue and has developed the necessary expertise to address those issues, and to consider how its ruling effects the public interest. Petitioners’ improper attempt to circumvent Congress’s carefully crafted scheme leaves this Court without the benefit of the Commission’s experts views and sensitivity to the public interest. *See N. Atl. Westbound Freight Ass’n v. Fed. Mar. Comm’n*, 397 F.2d 683, 685 (D.C. Cir. 1968) (noting the general deference given to the agency’s factual and policy determinations and finding that, because the agency is the “presumptive guardian of the public interest,” its views “indicate the direction of the public interest” for purposes of deciding a stay request) (cleaned up). As such, for this additional reason, Petitioners’ requested relief must be denied.

IV. CONCLUSION

For the foregoing reasons, Transco respectfully requests that the Court deny Petitioners' Emergency Motion for Stay.

Respectfully submitted this 22nd day of March, 2023.

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(D.C. Circuit Bar No. 55948)
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By: /s/ Elizabeth U. Witmer
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Counsel for Intervenor Transcontinental Gas Pipe Line Company, LLC

ADDENDUM A

March 16, 2023 Notice to Proceed

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 2
Transcontinental Gas Pipe Line
Company, LLC
Regional Energy Access Expansion
Docket No. CP21-94-000

March 16, 2023

VIA FERC Service

Joseph Dean
Manager, Permitting – Major Projects
Transcontinental Gas Pipe Line Company, LLC
2800 Post Oak Boulevard (77056)
P.O. Box 1396
Houston, Texas 77251-1396

Re: Notice to Proceed with Construction - Tree Felling

Dear Mr. Dean:

I grant your February 14, 2023 request for Transcontinental Gas Pipe Line Company, LLC (Transco) to commence tree felling construction activities for the Regional Energy Access Expansion in Luzerne and Monroe counties, Pennsylvania and Gloucester and Somerset counties, New Jersey. This authorization is based on our review of Transco's Implementation Plan, filed January 17, 2023, along with your supplemental filings on February 14, 2023 and February 22, 2023. These filings included the information necessary to meet all pre-construction conditions of the Commission's January 11, 2023 *Order Issuing Certificate and Approving Abandonment* (Order) issued to Transco in the above referenced docket. In addition, we have confirmed the receipt of all federal authorizations necessary for the project.

Further, I approve your February 14, 2023 variance request to conduct tree felling activities on Sundays during the month of March 2023. Transco's February 22, 2023 supplement confirms that landowners will be notified prior to tree felling and that Transco will exclude Sunday tree felling at Compressor Stations 201, 505, or 515, and within 0.25-mile of residences and places of worship. We find your variance request is in compliance with Environmental Condition No. 1 of the Order in the above-referenced docket.

I remind you that Transco must comply with all applicable remaining terms and conditions of the Order. If you have any questions, please call Joanne Wachholder, Environmental Project Manager, at (202) 502-8056.

Sincerely,

A. Eric Howard, Chief
Gas Branch 2
Division of Gas – Environment and
Engineering

ADDENDUM B

Declaration of Su-Lin Jaaskelainen

DECLARATION OF SU-LIN JAASKELAINEN

SU-LIN JAASKELAINEN, of full age, hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am employed by The Williams Companies, Inc. and acting for Transcontinental Gas Pipe Line Company, LLC (“Transco” or the “Company”) as its Project Director for the Regional Energy Access Expansion Project (the “Project”), and have personal knowledge of the facts contained in this Declaration.

2. On January 11, 2023, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) approved the Project with the issuance of an Order Issuing Certificate of and Approving Abandonment (the “Certificate Order”), subject to certain conditions, finding that the construction and operation of the Project is in the public interest pursuant to the public convenience and necessity standard of Section 7(c) of the Natural Gas Act.

3. Petitioners and other intervenors sought rehearing and a stay of the Certificate Order and all such requests were denied by the Commission.

4. As Project Director, I am highly involved with the implementation and planning for construction of the Project. In connection with the planning of the Project, I am familiar with the need for the Project in order to meet customer demand (these customers are referred to in the industry as “shippers”) and construction requirements, including schedules for the construction of the physical facilities that

are proposed. Further, I am generally familiar with the environmental permits, clearances, and approvals needed to begin and complete construction of the Project on a timely basis.

5. I make this Declaration for the purpose of setting forth certain facts in opposition to Petitioner's Emergency Motion for Stay.

Emergent Tree Felling Activity

6. Transco's permits require that tree felling necessary for the Project be completed by March 31, 2023, for the protection of endangered species and migratory birds, as determined by the United States Fish and Wildlife Service and the Pennsylvania Game Commission, requirements which are incorporated into the Certificate Order.

7. Transco requested that the Commission issue a Notice to Proceed authorizing limited non-mechanized tree felling no later than March 3, 2023.

8. Tree felling is performed by hand (without the use of mechanized felling equipment) and does not involve any ground-disturbing activities, root removal, or grading.

9. The Notice to Proceed was issued on March 16, 2023.

10. Transco began tree felling within the hour of the issuance of the Notice to Proceed, and has continued to fell trees.

11. Transco has 20 crews with a total of approximately 110 tree felling professionals working across the Project right now.

12. Because Transco has secured all necessary property rights, the tree felling is occurring on properties for which Transco has already obtained the authorization to construct the Project from the landowner,

13. The trees have already been felled on Petitioner/Landowner Catherine Folio's property.

14. The trees have already been felled in the area of Poplar Creek (a tributary to Pohopoco Creek), Pohopoco Creek, Sugar Hollow Creek, and Princess Run, the areas that the Aquashicola Pohocopo Watershed Conservancy ("Aquashicola") indicated it exists to protect in previous filings with the Commission.

15. If tree felling is stopped for even one day, Transco would likely not be able to complete tree felling by the deadline of March 31, 2023.

16. To complete the tree felling required by the March 31, 2023, deadline safely we will need every daylight hour of work. A delay for any length of time will likely cause Transco to miss the deadline and be unable to complete the tree felling needed for Project construction.

17. Therefore, if Transco is unable to complete tree felling prior to the close of the construction window required by the U.S. Fish & Wildlife Service, its permits and the Certificate Order, the Project construction would be unduly delayed, and the in-service date of the Project would be postponed by up to 12 months, jeopardizing the shippers' access to adequate gas supplies, reliability, and operational flexibility needed for the 2023-2024 winter heating season.

18. If Transco had to cease the on-going tree felling activities it would incur costs of approximately \$150,000.00 per day.

Project Description and Background

19. Transco owns and operates an interstate natural gas transmission system that extends through the Southern and Atlantic Seaboard regions, terminating in the metropolitan New York City area.

20. On March 26, 2021, pursuant to provisions of the Natural Gas Act, 15 U.S.C. § 717 et seq., Transco applied to the Commission for authorization to construct and operate the Project. The Project involves the abandonment and replacement of existing, less energy efficient compression facilities and the construction of new pipeline facilities in Luzerne and Monroe Counties, Pennsylvania, and a new compressor station in Gloucester County, New Jersey; the expansion of existing compressor stations in Somerset County, New Jersey, and Luzerne County, Pennsylvania; modifications to the certified capacity of compressor stations in York and Chester Counties, Pennsylvania, and Middlesex County New Jersey; and modifications to various tie-ins, regulators, and delivery meter stations in Pennsylvania, New Jersey, and Maryland for the purpose of providing 829,400 dekatherms per day (Dth/d) of firm transportation service for its shippers. The Project represents an investment by Transco of approximately \$950 million.

21. Transco has incurred approximately \$676 million of actual and committed costs to date on the Project.

22. There are several steps necessary to initiate construction of the Project, all of which have now taken place:

- a. authorization from FERC in the form of a certificate of public convenience and necessity;
- b. resolution by the Commission of any rehearing requests so that the rehearing requests are no longer pending before the Commission;
- c. receipt of all necessary federal, state and local authorizations;
- d. acquisition of all necessary property rights;
- e. observance of other project-specific requirements such as waterbody, migratory bird, and threatened and endangered species construction window restrictions;
- f. satisfaction of all pre-construction conditions of the FERC Order; and
- g. the FERC's separate, post-certificate authorization that construction may begin (a Notice to Proceed) in whole or in part – to date only the Notice to Proceed with tree felling has been issued.

23. As required by a condition of the Certificate Order, the shippers, most of whom are public utility companies, have entered into binding service agreements for the Project, and those with urgent need have expressed interest in all Project capacity available to them (approximately 50% of total capacity) for the 2023-2024 winter heating season.

24. On March 16, 2023, the Commission denied the three requests for rehearing of the Certificate Order that were filed and the request for stay made by Petitioners, and no requests for rehearing of the Certificate Order are pending before the Commission.

25. On March 16, 2023, Transco filed with the Commission a request for issuance of a second Notice to Proceed which would allow Transco to begin full construction of the Project.

26. The second Notice to Proceed which would allow full construction has not been issued by the Commission yet. Transco's current authorization is limited to the tree felling activities authorized by the first Notice to Proceed.

27. The construction of large-diameter natural gas pipelines is accomplished in linear segments, with a number of different crews performing different functions as part of the overall pipeline spread. Each crew follows the one ahead of it from one end of a construction spread to the other. The crews (and equipment) proceed sequentially in an assembly-like fashion along the construction

corridor at a rate (distance per day) that depends on topography, road and stream crossings, and other factors. In addition, there will be specialty crews that typically do not work sequentially with the other crews. The specialty crews perform tasks such as road borings, stream installations, and trenchless crossings of environmentally sensitive areas.

28. After tree felling, pipeline construction begins with tree and vegetation clearing, and installation of environmental controls, followed by grading and trenching. Thereafter, stringing, pipe bending, welding, non-destructive examination of the welds, and coating of the pipe takes place, followed by lowering-in, backfilling, remediation, and restoration. The newly constructed pipeline will then be pressure-tested prior to being placed in service.

29. Construction of the Project is subject to significant restrictions intended to protect the environment and minimize the impact of construction on the environment. These restrictions are time sensitive and interdependent.

30. Transco must design and then maintain a detailed construction schedule that coordinates work across the construction spreads and multiple locations that complies with any applicable restrictions, in order to place the Project in service as soon as commercially practicable.

31. The various time-of year restrictions include but are not limited to:

- a. Vegetative clearing is restricted between April 1st and November 15th in much of the pipeline right of way in Pennsylvania;
- b. Pipeline construction activities involving ground disturbance are restricted between November 16th and March 31st in certain workspaces in Pennsylvania within a 0.5-mile radius of identified state and federally listed bat hibernacula;
- c. Blasting is restricted year-round within a 0.5-mile radius of the subsurface hibernacula limits of state and federally listed bats, except where mine investigation studies revealed flooded mine conditions or excess depth of the mine relative to surface impacts;
- d. Wild Trout streams in Pennsylvania are restricted (no in-stream disturbance) between October 1st and December 31st; and
- e. Class A Wild Trout streams in Pennsylvania are restricted (no in-stream disturbance) between October 1st and April 1st.

32. Additionally, for projects of this size, Transco must use multiple construction contractors, and will have two pipeline construction spreads, as well as crews dedicated to compressor stations and other facility construction. Transco's contracts with its contractors anticipate the start of construction and completion of work on specific segments of the Project by dates certain. If the schedule pushes into less productive winter months, with fewer daylight hours and freezing temperatures, Transco could incur significant additional costs.

33. The shippers under the Project with urgent need for the incremental firm transportation service have expressed their need for service to be made available by the Project, including the need to have as much of the Project capacity in service as possible by the 2023-2024 winter heating season. The shippers will begin utilizing that capacity as soon as the Project is placed in service. Shippers filed comments with FERC in support of the Project, stating their need for the capacity and the incremental natural gas supply, reliability, and operational flexibility to be provided by such capacity.

Harm If Project Construction Is Delayed

34. If the Project shippers perceive that Transco is not making an effort to provide service as soon as reasonable, or if Transco cannot deliver natural gas through the Project capacity as promised to its customers, Transco may suffer a loss of shipper confidence that would have a detrimental impact on Transco's relationship with these particular shippers and, thus, make it more difficult to contract with these shippers in the future. It also may have an adverse effect on Transco's reputation in the industry and could cause serious harm.

35. In addition, delay in the planned in-service date for the Project would have serious financial consequences, as revenues from the Project are estimated to be as much as \$ 0.47 million per day (which would be approximately \$13.8 million per month once service commences). Completion of pipeline and other facilities in

2023 resulting in delivery of fifty percent of capacity to those shippers with need of that service for 2023-2024 would yield estimated revenues of \$ 0.23 million per day (\$6.8 million per month). Transco would therefore suffer a substantial loss in revenue if the Project is not placed in service as soon as commercially practicable.

36. A delay would also cost Transco the time value of money and delay Transco's recovery of its substantial investment costs.

37. Additionally, a delay would cause Transco to compress or rearrange the construction schedule, to the extent possible, in a less efficient manner, which would cause Transco to incur additional expense that may, or may not, be fully recoverable at some time in the future by Transco to the extent it contributes to or causes the cost of the Project to exceed amounts recoverable from the shippers as part of the transportation rates agreed upon with the shippers for the Project capacity.

38. In the event full construction commences but then becomes delayed as a result of these proceedings, Transco would incur significant standby costs including work suspension rates of approximately \$620,000.00 per day, per construction spread.

I declare under penalty of perjury that the foregoing is true and correct.



Su-Lin Jaaskelainen

Executed this 22nd day of March, 2023

ADDENDUM C

October 18, 2021 Option and Right of Way Agreement, recorded in the Recorder of Deeds Office of Monroe County, Pennsylvania at Book 2592, Page 3040.

AFTER RECORDING, RETURN TO:

Transcontinental Gas Pipe Line Company, LLC
300 Laird Street, Suite 200
Wilkes Barre, PA 18702
Attn: Diane Howley

Line # 10-4007
R/W# EL-PA-MO-0200
Parcel# 02.8C.2.13
Municipality Chestnuthill Township

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF MONROE

OPTION AND RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, **CATHERINE FOLIO**, ("Grantor", whether one or more), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto **TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC**, a Delaware limited liability company whose address is 2800 Post Oak Boulevard, Houston, TX 77056-6106, its successors and assigns ("Grantee") an exclusive and irrevocable option (the "Option") to purchase an easement (the "Easement") which includes a perpetual easement and right of way (the "Permanent Right of Way") upon, over, under and through strip(s) of land shown and identified as "Additional Permanent Right of Way" on the attached drawing(s) marked "**Exhibit A**" together with Temporary Easements described below in paragraph 1 and an Access Easement as described in paragraph 2 for the purposes of laying, constructing, maintaining, operating, repairing, altering, replacing, changing the size of, and removing pipelines (with valves, regulators, meters, headers, fittings, appliances, tie-overs, cathodic protection, fences and appurtenant facilities) for the transportation of gas, oil, petroleum products, or any other liquids, gases, or substances which can be transported through pipelines, under, upon, over, through and across certain lands of Grantor (the "Property"), situated in Chestnuthill Township, County of Monroe, Commonwealth of Pennsylvania, described as follows:

A certain tract or parcel of land located in Monroe County, containing 3.36 acres, more or less, and being more particularly described in that certain Deed from Anna M. Wescott, to Catherine Folio, recorded with the Monroe County Recorder of Deeds and/or Clerk's Office at Deed Book 2418, Page 2106, of the public records of Monroe County, Commonwealth of Pennsylvania.

Parcel ID # 02.8C.2.13

Grantor and Grantee further agree as follows:

1. **Temporary Easements.** Grantor shall, upon exercise of the Option, grant and convey to Grantee as a part of the Easement a temporary easement and right of way during the course of construction, including restoration, of the first of the pipelines, facilities, or improvements in the Permanent Right of Way, to, under and over that portion of the Property as shown on identified on the attached "**Exhibit A**" as "Temporary Work Space" and "Additional Temporary Work Space" (collectively referred to herein as "Temporary Easements") for the purpose of construction of the pipelines and facilities including the right to enter upon, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and use for any other construction activity necessary to construct the pipelines and facilities.
2. **Access Easement** Upon exercise of the Option, Grantor shall grant and convey to Grantee, as a part of the Easement, the non-exclusive, perpetual easement for ingress and egress over and across the Property by means of roads or other access areas utilized by Grantor.

Exercise of Option. Grantee shall exercise the Option by giving written notice to Grantor, along with payment of the Purchase Price which is set forth in an unrecorded Purchase and Construction Agreement ("PCA") (the "Purchase Price") less the amount of the Option Payment, which shall be credited towards the Purchase Price, at any time on or before thirty-six (36) months from the date of this Option. The "Option Payment" is the amount set forth in the PCA paid to Grantor at or about the time of executing this Option and Right of Way Agreement ("Agreement"). If Grantee does not exercise the Option as stated in the preceding sentence, then Grantor may retain the Option Payment. Upon exercise of the Option, the Easement shall be effective, valid and enforceable without further action; however, if requested by Grantee then Grantor shall execute any documents for the purpose of acknowledging the rights of the Grantee under this Agreement. It is understood and agreed by Grantor and Grantee that if the route, location or both of the Easement varies from the areas shown on "**Exhibit A**" (the "Easement Area") at the time of the exercise of the Option by Grantee, then Grantee and Grantor shall record a supplemental document showing the revised location of the Easement Area. The final location of the Easement Area shall be subject to approval by the Grantor and approval shall not be unreasonably withheld, conditioned, or delayed.

3. **Right of Entry:** For the period commencing with the date of this Agreement through the date of exercise of the Option, Grantee shall have the right to enter the Easement Area, with access across the Property as necessary, at reasonable times upon advance notice to Grantor for the purposes of conducting such physical, environmental and other inspections or surveys as Grantee deems appropriate.
4. **Adjustments.** Grantor acknowledges that prior to the exercise of the Option granted herein, Grantee shall have the right to make reasonable adjustments to the Easement

Area based upon issues that may arise during permitting for the pipelines and facilities, including, but not limited to, design issues, regulatory requirements, constructability issues, and/or field conditions.

5. Upon exercise of the Option, and as a part of the grant of the Easement, Grantor and Grantee agree as follows:

(a) **Adjustments.** Grantor acknowledges that Grantee shall have the right after the exercise of the Option to make reasonable adjustments to the Easement Area based upon issues that may arise during permitting for the pipelines and facilities, including, but not limited to, design issues, regulatory requirements, constructability issues, and/or field conditions.

(b) **De-Watering.** If during construction Grantee encounters conditions upon the Easement Area that Grantee believes will impede construction of the pipelines and/or appurtenant facilities, Grantee may install temporary de-watering systems and other equipment upon the Property that lies appurtenant or adjacent to such Easement Area. Said equipment will remove excess surface or subsurface water from the Easement Area by carrying the surface or subsurface water across the Property to a location where the water can be discharged. Grantee shall be responsible for restoring all areas affected by or used in accordance with the installation of the de-watering system to a condition as near as reasonably possible to their prior condition.

(c) **Recovery of Material.** Grantee shall have the right of ingress and egress across the Property to recover any equipment, piping, matting, or other tangible material relating to the construction and maintenance of facilities or improvements on the Property within the Easement Area. Grantee shall reimburse Grantor for any physical loss or damage caused by the recovery. Grantor agrees to reasonably cooperate with Grantee in obtaining, at Grantee's expense, all licenses, permits, or other approvals required for the recovery.

(d) **Environmental Mitigation Measures.** Grantee shall have the right to construct and maintain within and upon the Easement Area mitigation measures required to satisfy environmental permit requirements, including but not limited to, permanent berms, ditches, slopes, cuts, and fills. In the event of erosion or other environmental conditions that occur outside of the Easement Area (or defined construction area), Grantee shall have the right to access and restore the additional area in accordance with best management practices.

(e) **Maintenance.** Grantee shall have the right, from time to time as it may find convenient, to cut or remove all trees, undergrowth and other obstructions from the Permanent Right of Way, without liability for damages naturally resulting from the proper exercise of the rights granted herein.

(f) **Right to Conduct Activities within the Easement Areas.** Grantor acknowledges that it has conveyed to Grantee the irrevocable right to conduct within the

Easement Area all activities necessary to construct, maintain and operate the proposed pipeline, and/or appurtenant facilities and/or above ground facilities, as applicable, (the "Work") including but not limited to all required surveys, tree clearing, construction, restoration and maintenance activities and other activities required by the Natural Gas Act ("NGA"), 15 U.S.C. §717, et seq., and the Pipeline Safety Act ("PSA"), 49 U.S.C. §60101, et seq., all applicable orders thereunder, and the regulations thereunder, as amended from time to time.

(g) **Restoration.** Following construction of the first of the pipelines, facilities or improvements, Grantee, its agents, employees and contractors, shall have the right to enter the Property and to access the Easement Area granted, at all times and as needed, to perform any and all restoration activities in connection with the construction of any pipelines, facilities or improvements, or in accordance with any federal, state or local restoration requirements, including but not limited to, any requirements set forth by the Federal Energy Regulatory Commission.

(h) **Inspections.** Upon notice to Grantor, Grantee, its agents, employees and contractors, shall have the right to enter the Property from time to time to conduct certain investigations and inspections in the immediate area adjacent to Grantee's Permanent Right of Way, including but not limited to, civil surveys, topographical surveys, archeological and cultural resources surveys, biological surveys, environmental surveys, or any other inspections that may be requested or required by any federal, state or local governmental agency. Grantee shall restore or repair the Property, as nearly as practicable and permissible, to its condition prior to the commencement of the survey work.

(i) **No Interference.** Grantor acknowledges that it will cooperate in full with the Work and any and all reasonable requests made by Grantee related to the Work, including the execution of any forms necessary for permitting or construction of the Work. Grantor shall not interfere or allow any third parties to interfere with the Work. Grantor acknowledges that any interference or attempted interference with the Work (including but not limited to occupation by Grantor or Grantor's invitees of the Easement Area during the Work, including the flying of drones or other aircraft over the Easement Area which could interfere with the Work) is a breach of this Agreement, for which Grantee may seek injunctive relief to enjoin interference or attempted interference with the Work from any court of competent jurisdiction, together with costs including reasonable attorney's fees, and damages, including the costs of delay of construction and move around costs incurred by Grantee. Grantor shall cooperate with any investigation by local, state or federal law enforcement agencies of any alleged breach of this provision of the Agreement.

6. **Notices.** Any notices required or permitted to be given under this Agreement shall be given in writing and shall be delivered (a) in person or (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt and such notices, shall be addressed as follows:

If to Grantor:

Catherine Folio
1557 Sugar Hollow Road
Effort, PA 18330

If to Grantee:

Transcontinental Gas Pipe Line Company, LLC
2800 Post Oak Boulevard
Houston, TX 77056-6106
Attn: Land Supervisors

With a required copy to:

Elizabeth U. Witmer Esq,
Saul Ewing Arnstein & Lehr LLP
1200 Liberty Ridge Drive Suite 200
Wayne, PA 19087
Email: elizabeth.witmer@saul.com

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery); provided, however, that notice to Grantor must only be given to the owner of that portion of the Property which includes within its boundaries the Easement and if an address is not provided to Grantee then to the address shown for Grantor on County tax records. Any notice which is received on a Saturday, Sunday or a legal holiday, or after 5:00 p.m. prevailing local time at the place of receipt, shall be deemed received on the next business day.

7. **Grantor's General Representations.** Grantor hereby covenants and, as of the date hereof, represents and warrants to Grantee that:

(a) Grantor is the legal owner of indefeasible and marketable title to the Property with the right, power and authority to enter into this Agreement and to grant the Easement to Grantee, and any consents and authorizations required in connection with the execution and delivery of this Agreement have been obtained.

(b) As a condition precedent to this transaction, Grantor hereby warrants and represents that Grantor is the sole owner of any and all oil, gas and mineral rights associated with the Property, and that such rights have not been previously transferred or severed

(c) No party has any option or preferential right to purchase the Property or any part of the Property.

(d) The execution, delivery and performance by Grantor of this Agreement does not and will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or of any agreement to which Grantor is a party or by which Grantor is bound, nor violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.

(e) There is no pending or threatened action, suit or proceeding that, if determined against Grantor, would adversely affect Grantor's ability to enter into this Agreement or to perform its obligations under this Agreement.

(f) Grantor will comply with all governmental laws, rules and regulations applicable to the Property.

8. **Payment in Full.** Grantor acknowledges that part of the consideration herein paid includes payment in full for any damages caused, or to be caused, by the construction of the first of the pipelines, facilities or improvements hereunder.
9. **Cooperation of Grantor.** Grantor agrees to cooperate with Grantee in obtaining, at Grantee's expense, all licenses and permits required for Grantee's use of the Easement.
10. **Land Rights within Public Roads and Public Waters:** Grantor acknowledges that the Easement granted upon exercise of the Option includes the agreed upon compensation for the acquisition of the Permanent Right of Way upon, over, under, through and across any rights or interest that the Grantor may hold in any road, stream, creek, waterbody or waterway in the Easement Area, together with any rights or interest that the Grantor may hold in any public road adjacent to the Property and crossed by the pipelines.
11. **Grantor's Covenants.** Without Grantee's prior written consent the Grantor shall not, and shall not permit any other person to: (i) build any permanent structures on the Permanent Right of Way or any part thereof, (ii) change the grade of the Permanent Right of Way, or any part thereof, (iii) plant trees on the Permanent Right of Way, or any part thereof, (iv) pave the Permanent Right of Way or any part thereof, (v) use the Permanent Right of Way or any part thereof in such a way as to interfere with Grantee's immediate and unimpeded access to said Permanent Right of Way, (vi) transfer, pledge, convey or create a security interest or lien upon the Property or the Easement Area which in any way is superior to or that jeopardizes in any manner or respect Grantee's rights, title or interests under this Agreement or (vii) otherwise interfere with Grantee's lawful exercise of any of the rights herein granted; and Grantor will not permit others to do any of said acts without first having obtained Grantee's approval in writing. No forbearance by Grantee to cut and remove any trees, undergrowth or other obstructions from the Permanent Right of Way or to exercise any other right provided by Grantee hereunder for any period of time shall constitute a waiver of such right or limit Grantee's ability to exercise such right as it may find convenient.
12. **Grantee's Covenants.** Grantee, by the acceptance hereof, covenants and agrees:

(a) Except for the damages caused by the construction of the first of the pipelines, facilities or improvements authorized hereunder, Grantee will reimburse the Grantor for any loss or damage to property which Grantor may suffer as a consequence of the laying, constructing, altering, repairing, removing, changing the size of, or replacing the pipelines, facilities or improvements, in the exercise of its rights granted, except that neither the Grantor nor any person or firms holding under the Grantor shall assert any claims for severance or consequential damages.

(b) Grantee will indemnify, defend and save harmless Grantor from any claims or suits which may be asserted against Grantor arising out of any negligent acts of Grantee, its agents or employees, in its exercise of the rights herein granted, except to the extent and in proportion that such claims or suits are attributable, in whole or in part, to the fault, failure or negligence of Grantor.

13. **Pipelines Buried; Damages.** Grantee agrees to bury the pipelines so that the pipelines will not interfere with the cultivation of crops (not trees) on the land, and also to pay for any actual physical damages including but not limited to fences, growing crops and timber which may arise from laying, constructing, altering, repairing, removing, changing the size of and replacing such pipelines. The term "timber" is defined as trees or the wood grown for commercial sale.
14. **Assignment.** This Agreement and any and all rights of Grantee hereunder shall be freely assignable by Grantee, in whole or in part, without the consent or approval of Grantor, and, if assigned by Grantee, any and all acts performable by Grantee hereunder may be performed by its assignee. Any assignment by Grantee, and its successors or assigns, of all of its or their respective rights hereunder shall completely relieve the assignor of any further duties, liabilities or obligations hereunder that accrue or arise from and after the effective date of such assignment, but not before.
15. **Covenants Binding and Run With the Land.** It is further agreed that the several terms, covenants, conditions and agreements herein contained shall in every case be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, executors, successors and assigns, with the same force and effect as if specifically mentioned in each instance where a party is named.
16. **Miscellaneous Covenants.** (a) This Agreement and all Exhibits attached hereto and the unrecorded PCA constitute the entire agreement and understanding of Grantor and Grantee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal statements or agreements; (b) any amendments to this Agreement must be in writing and executed by both parties; (c) this Agreement is governed by the laws of the Commonwealth of Pennsylvania; (d) if any term of this Agreement is found to be void or invalid, such provision shall be fully severable herefrom and such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and this Agreement shall be reformed and construed as if such invalid provision had never been contained herein, and if possible, such provision shall be reformed to the maximum extent permitted under applicable law

to render same valid, operative and enforceable to reflect the intent of Grantor and Grantee as expressed herein; (e) the paragraph headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement; (f) Grantor acknowledges that Grantee has not provided any legal or tax advice to Grantor in connection with the execution of this instrument; and (g) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

TO HAVE AND TO HOLD said Permanent Right of Way unto said Grantee, its successors and assigns, until such first pipeline be constructed and so long thereafter as a pipeline or appurtenant facility is maintained thereon; and the undersigned hereby bind themselves, their heirs, executors and administrators (and successors and assigns) to warrant title to said Permanent Right of Way and forever defend all and singular said premises unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN TESTIMONY WHEREOF, Grantor(s) has/have hereunto set her/his/their hand(s) and seal(s) this 18th day of October 2021.

GRANTOR:



CATHERINE FOLIO

COMMONWEALTH OF PENNSYLVANIA :
 : §
COUNTY OF Monroe :

On this 18th day of October, 2021, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Catherine Folio, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Kaila Rose Hittner [SEAL]
Notary Public
My Commission Expires: June 18, 2025

Commonwealth of Pennsylvania - Notary Seal
Kaila Rose Hittner, Notary Public
Monroe County
My commission expires June 18, 2025
Commission number 1396425
Member, Pennsylvania Association of Notaries

EXHIBIT 'A'

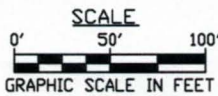
CHESTNUTHILL TOWNSHIP
MONROE COUNTY
PENNSYLVANIA

SUGAR HOLLOW RD.
APPARENT 41.5' R/W

EL-PA-MO-0200

Catherine Folio
02/8C/2/13

EXISTING 24" LEIDY LINE "A"
EXISTING 24" LEIDY LINE "B"
EXISTING 36" LEIDY LINE "C"
PROPOSED 42" EFFORT LOOP



NOTES
SEE SHEET 2 OF 2



LENGTH
74604.12 FEET +/-
4521.46 RODS +/-

LEGEND

0.00 AC +/-		PROPOSED CENTERLINE		EXISTING PIPELINE	
0.11 AC +/-		PROPERTY LINE		FENCE LINE	
0.11 AC +/-		AREAS			
0.22 AC +/-		EXCLUSIVE EASEMENT (XPE)			
0.09 AC +/-		DISTURBANCE WITHIN EXIST PERM RIGHT OF WAY (DPE)			
0.04 AC +/-		ADDITIONAL PERMANENT RIGHT OF WAY (APE)			
0.00 AC +/-		EXISTING PERMANENT RIGHT OF WAY (XRW)			
0.00 AC +/-		TEMPORARY WORKSPACE (TWS)			
0.00 AC +/-		ADDITIONAL TEMPORARY WORKSPACE (ATWS)			
0.00 AC +/-		TEMPORARY/PERMANENT ACCESS ROAD (TAR/PAR)			

RID:	RID 105	
DWN. BY:	JAF	DATE: 11-05-20
CHK. BY:		DATE:
PAGE:	1	OF 2

TRANSCONTINENTAL GAS PIPELINE CO, LLC
EFFORT LOOP
RW/OPTION PLAT
EL-PA-MO-0200
Catherine Folio
MONROE COUNTY, PENNSYLVANIA

K:\MAPPING\PA\LEIDY\LOOP\0043_19\LAND\OPT\Plot\EL-PA-MO-0200.dwg

GENERAL NOTES:

1. THIS DRAWING WAS CREATED BY TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC (TRANSCO) FOR THE SOLE PURPOSE OF DEPICTING THE LAND RIGHTS AND/OR AREA OF DISTURBANCE NEEDED TO CONSTRUCT, MAINTAIN AND OPERATE A PIPELINE.
2. ALL PROPERTY BOUNDARIES SHOWN ARE BASED ON DEEDS AND/OR ASSESSOR DATA
3. THE FEE OWNERSHIP OF ANY PUBLIC ROADS SHOWN HAS NOT BEEN DETERMINED, AND FOR THE PURPOSES OF THIS EXHIBIT IT IS ASSUMED THAT THE ADJOINING LANDOWNERS RETAIN AN INTEREST IN THE PROPERTY SUBJECT TO THE RIGHT OF WAY OF PUBLIC ROADS SHOWN, EXCEPT FOR INTERSTATE HIGHWAYS.
4. ANY "AREA OF DISTURBANCE" SHOWN IS AN AREA WHERE THE PROPOSED DISTURBANCE OR ACTIVITY IS WITHIN AN EXISTING RIGHT OF WAY MAINTAINED BY TRANSCO. IF NOT ALREADY PERMITTED BY THE TERMS OF TRANSCO'S EXISTING RIGHT OF WAY, THE AREA OF DISTURBANCE IS BEING ACQUIRED BY TRANSCO AS DPE OR ADDITIONAL PERMANENT RIGHT OF WAY FOR THE PURPOSES OF LAYING, CONSTRUCTING, MAINTAINING, OPERATING, REPAIRING, ALTERING, REPLACING, CHANGING THE SIZE OF, AND REMOVING A PIPELINE (WITH VALVES, REGULATORS, METERS, HEADERS, FITTING, APPLIANCES, TIE-OVERS, CATHODIC PROTECTION, FENCES AND APPURTENANT FACILITIES) FOR THE TRANSPORTATION OF NATURAL GAS.
5. IF ANY PE, TWS OR ATWS IS SHOWN ADJACENT TO THE EDGE OF AN EXISTING PERMANENT RIGHT OF WAY HELD BY TRANSCO, OR ADJACENT TO A PROPERTY BOUNDARY, NEW PE, TWS AND ATWS IS INTENDED TO BE IMMEDIATELY ADJACENT TO THE EXISTING PERMANENT RIGHT OF WAY OR TO THE PROPERTY BOUNDARY, WITH NO GAPS.
6. IF THERE ARE NO DIMENSIONS SHOWN FOR THE PE, THEN THE PE IS 50 FEET WIDE, AND THE NEW ADDITIONAL PIPELINE WILL BE LOCATED 25 FEET, PLUS OR MINUS, FROM THE CLOSEST EXISTING PIPELINE.
7. ACCESS ROADS (TAR/PAR) SHOWN ARE 25 FEET WIDE, UNLESS OTHERWISE SPECIFIED.



TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC
 EFFORT LOOP
 RW/OPTION PLAT
 EL-PA-MO-0200
 Catherine Folio
 MONROE COUNTY, PENNSYLVANIA

RID:	RID 105	
DWN. BY:	JAF	DATE: 12-14-20
CHK. BY:		DATE:
PAGE:	2	OF 2

NOTES
 SEE SHEET 1 OF 2

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COUNTY OF MONROE

RECORDER OF DEEDS
ONE QUAKER PLAZA
ROOM 106
STROUDSBURG, PA 18360
Area Code (570) 517-3969

Josephine Ferro - Recorder

Instrument Number - 202137211
Recorded On 10/28/2021 At 2:50:34 PM

Book - 2592 Starting Page - 3040

* Total Pages - 12

* Instrument Type - RIGHT OF WAY

Invoice Number - 838382

* Grantor - FOLIO, CATHERINE

* Grantee - TRANSCONTINENTAL GAS PIPE LINE COMPANY LLC

User - DMS

* Customer - WILLIAMS TRANSCONTINENTAL GAS PIPE LINE CO LLC

* FEES

STATE WRIT TAX	\$0.50
JCS/ACCESS TO JUSTICE	\$40.25
RECORDING FEES	\$27.00
COUNTY ARCHIVES FEE	\$2.00
ROD ARCHIVES FEE	\$3.00
TAX CODE CERTIFICATION	\$10.00
FEES	
TOTAL PAID	\$82.75

RETURN DOCUMENT TO:

WILLIAMS TRANSCONTINENTAL GAS PIPE LINE
CO LLC
PO BOX 21218
TULSA, OK 74121-1218

MC GIS Registry UPI Certification
On October 28, 2021 By SH

TAX ID #
2/8C/2/13

Total Tax IDs: 1



I Herobv CERTIFY that this document is recorded in the
Recorder's Office of Monroe County, Pennsylvania

Josephine Ferro

THIS IS A CERTIFICATION PAGE
Do Not Detach
THIS PAGE IS NOW THE LAST PAGE
OF THIS LEGAL DOCUMENT

* - Information denoted by an asterisk may change during
the verification process and may not be reflected on this page.



ADDENDUM D

November 18, 2022 Notice of Exercise of
Option and Right of Way Agreement

AFTER RECORDING, RETURN TO:

Transcontinental Gas Pipe Line Company, LLC
Post Office Box 1789
Plains, PA 18705
Attn: Patrick McClusky

Line #: 10-4007
Tract #: EL-PA-MO-0200
Parcel #: 02/8C/2/13
Municipality: Chestnuthill Township

NOTICE OF EXERCISE OF
OPTION AND RIGHT OF WAY AGREEMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF MONROE

Grantor: Catherine Folio

Grantee: Transcontinental Gas Pipe Line Company, LLC,
a Delaware limited liability company

Option Agreement Date: 10/18/2021

Option Agreement Recorded at: Book 2592, Page 3040, in the Monroe County Recorder of
Deeds Office on 10/28/2021.

Dated as of: _____

Effective Date: October 31, 2022

Grantor and Grantee agree as follows, intending to be legally bound:

1. Grantor and Grantee are parties to an Option and Right of Way Agreement (the "Option Agreement") dated on the Option Agreement Date and recorded as described above.
2. Grantee has exercised, on the Option Exercise Date, the Option (as defined in the Option Agreement) and has fulfilled the notice and payment requirements for exercise of the Option in the Option Agreement. Any failures to comply with formalities of notice or other requirements for exercise of the Option are hereby waived. The Additional Permanent Right of Way and Temporary Easements (as defined in the Option Agreement) and all rights and obligations of the Grantor and Grantee in the Option Agreement have vested and

- 3. This document may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall together be deemed to be one and the same document.
- 4. Capitalized terms used in this document shall have the meanings ascribed to them above.
- 5. This document shall be recorded in the Office of the Recorder of Deeds of the County of Monroe.

EXECUTED as of the date set forth below.

GRANTOR:

By: Catherine Folio

Name: Catherine Folio

Date: 11/18/22

COMMONWEALTH OF PENNSYLVANIA :
 COUNTY OF Monroe : §
 :

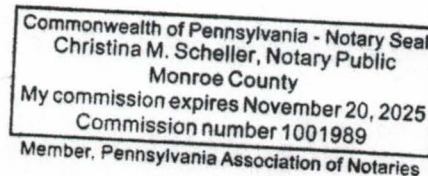
On this 18 day of November, 2022, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Catherine Folio, known to me (or satisfactorily proven) to be the person(s) whose name(s) is(are) subscribed to the within instrument, and acknowledged that he (she/he/they) executed the same for the purpose therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Christina Moscheller [SEAL]

Notary Public

My Commission Expires: November 20, 2025



**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This response to a motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 27(a)(2)(B), this response contains 4,701 words.

2. This response to a motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this response has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: March 22, 2023

/s/ Elizabeth U. Witmer

Elizabeth U. Witmer

(D.C. Circuit Bar No. 55961)

Saul Ewing LLP

1200 Liberty Ridge Drive, Suite 200

Wayne, PA 19087-5569

Phone: (610) 251-5062

Fax: (610) 651-5930

Elizabeth.Witmer@saul.com

*Attorney for Intervenor
Transcontinental Gas Pipe Line
Company, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2023, the foregoing Opposition of Transcontinental Gas Pipe Line Company, LLC to Petitioners' Emergency Motion for Stay has been filed and served electronically through the Court's CM/ECF system and by electronic mail, as follows:

Robert Solomon, Solicitor
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Robert.Solomon@ferc.gov

Attorney for Respondent

Jennifer Danis
Megan C. Gibson
Niskanen Center
820 First Street, NE, Suite 675
Washington, DC 20002
jdanis@niskanencenter.org
mgibson@niskanencenter.org

*Attorneys for Petitioners New Jersey
Conservation Foundation, et al.*

/s/ Elizabeth U. Witmer

Elizabeth U. Witmer

(D.C. Circuit Bar No. 55961)

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Wayne, PA 19087-5569

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*Attorney for Intervenor
Transcontinental Gas Pipe Line
Company, LLC*