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Application ID: 0-9999-00181/00009 - Water Quality Certification
Application ID: 0-9999-00181/00010 - Freshwater Wetlands
Application ID: 0-9999-00181/00011 - Water Withdrawal
Application ID: 0-9999-00181/00012 - Excavation and Fill in Navigable Waters
Application ID: 0-9999-00181/00013 - Stream Disturbance

Dear Mr. Tomasik,

The issuance of the Final Environmental Impact Statement (FEIS) by the Federal Energy Regulatory Commission (FERC) for the Constitution Pipeline was based on the following Major Conclusions:

We determined that construction and operation of the projects would result in limited adverse environmental impacts. This determination is based on a review of the information provided by Constitution and Iroquois and further developed from environmental information requests; field reconnaissance; scoping; literature research; alternatives analysis; and contacts with federal, state, and local agencies, and other stakeholders. We conclude that the approval of the projects would have some adverse environmental impacts, but these impacts would be reduced to less-than-significant levels. Although many factors were considered in this determination, the principal reasons are:

Constitution would minimize impacts on natural and cultural resources during construction and operation of its project by implementing its Plan and Procedures;

Our oversight of an environmental inspection and mitigation monitoring program that would ensure compliance with all mitigation measures that become conditions of the FERC authorizations and other approvals.

The conclusions in the EIS are based on our analysis of the environmental impact and the following assumptions:

- the Applicants would comply with all applicable laws and regulations;*
- the proposed facilities would be constructed as described in section 2.0 of the EIS; and*
- the Applicants would implement the mitigation measures included in their applications and supplemental submittals to the FERC and cooperating agencies, and in other applicable permits and approvals. (1)*

These conclusions are similar to conclusions of all of FERC approved pipeline projects in that they have the following things in common:

- 1) There would be adverse impacts but they would be minimized and mitigated based on the company's proposed "plans and procedures" and "best management practices."
- 2) FERC ensures that the companies will comply with all rules and regulations through the Agency's third party inspection oversight.
- 3) FERC's Conclusions regarding environmental impacts hinge on the "assumption" that companies will follow the rules and regulations in the FEIS and agency permits.

So how are FERC's Environmental Assessments, Conclusions and Assumptions working out?

The Iroquois Pipeline Operating Company(Iroquois), a co-applicant with Constitution for this project, has built only one major pipeline in the United States, running 370 miles from Canada through upstate New York and

Connecticut to Long Island. The project was approved by FERC.

The results? Twenty two million dollars in criminal and civil fines for violating federal environmental and safety laws. According to the press release:

"In the largest penalty in an environmental case since the 1989 Exxon Valdez oil spill, the Connecticut-based Iroquois Pipeline Operating Company will pay \$22 million in criminal and civil fines for violating federal environmental and safety laws, the United States announced today.

The company and four of its high-level officers and supervisors pleaded guilty..to numerous criminal violations of the Clean Water Act including failure to clean up or restore damage to nearly 200 streams and wetlands as a result of rushing to meet construction deadlines."

"The plea agreements entered into in U.S. District Court in Syracuse, are the result of a four-year investigation led by the United States Attorney for the Northern District of New York. The investigation stemmed from the company's violations of permits issued by the Army Corps of Engineers and the Federal Energy Regulatory Commission."

"Other matters addressed in the plea agreement include the improper placement of large rocks on the pipeline in an effort to quickly fill the trenches in which it is housed. Placement of rocks in such a manner can damage the pipeline, posing a serious threat to its structural integrity."

"Each of the four felony violations of the Clean Water Act to which Iroquois pleaded guilty fall into one of three categories:

- failure to clean up or otherwise restore 188 streams and wetlands;

- failure to install innumerable trench breakers;

- failure to install trench breakers at the edges of wetlands.

In total, the categories encompass **thousands of individual Clean Water Act violations.** "

"Almost everywhere we dug we found violations," said Lois J. Schiffer, Assistant Attorney General in charge of the Justice Department's Environment and Natural Resources Division.

"The widespread nature of the criminal violations is almost impossible to overstate," said Joseph A. Pavone, Acting United States Attorney for the Northern District of New York. "(2)

In June 2010, FERC approved the Tennessee Gas Pipeline Company's(TGP) 300 line project which permitted the looping of 127 miles of 30-inch pipeline in Pennsylvania and New Jersey, and the addition of 55,000 horsepower with the installation of two new compressor stations and upgrades at seven existing compressor stations.

On December 22nd 2014, The Pennsylvania Department of Environmental Protection (PA DEP) issued a notice that it had issued an \$800,000 Settlement against TGP for violations during construction of their 300 line. Kinder Morgan, owner of the TGP 300-line, reported in their 2014 SEC filings that the original fine was 1.5 million.(3)

According to the DEP notice:

TGP will pay a penalty of \$210,000 and will fund a \$540,000 clean-up program of illegal dump-sites in Pike, Potter, Susquehanna and Wayne Counties.

During 73 inspections of the "300 Line Project," inspectors with the Potter, Susquehanna, Wayne and Pike County Conservation Districts discovered violations including the discharge of sediment pollution into the waters of the commonwealth, some of which are protected as "High Quality" or "Exceptional Value Waters," and failure to implement required construction best management practices to protect water quality.

“This civil penalty is two-fold in its benefit to the public,” DEP Northeast Regional Director Mike Bedrin said. “It eliminates unsightly and illegal dump-sites that are problematic for many communities across the state and it directs more money into the Pennsylvania Clean Water fund, which is designed to protect the waterways of the commonwealth.”(4)

It's ironic that the DEP notes that a benefit of the fine was it's contribution to PA's Clean Water Fund. It's unfortunate that it takes water pollution to fund the protection of PA's water. Once the damage to water and resources is done, it's done. Financial compensation(negotiated and reduced), doesn't change that.

Where was FERC in all of this? Where was the promised oversight? The mitigation? Why was the entire project able to continue on while there were repeated violations occurring?

In October of 2006, FERC approved the Millennium Pipeline Project which involved construction of 182 miles of 30" pipe across eight counties in Southern New York. Construction began in the middle of June 2007.

On June 20, 2008, the New York State Department of Environmental Conservation (DEC) issued a "Stop Work Order" to Millennium. The Company cleared a 100-foot swath of Mountainside on a 50% slope, which caused a mudslide, leaving sediment on the banks of the East Branch of the Delaware River. Millennium was cited for inadequate erosion control devices in place, "to the extent they were in place", and did not meet DEC technical standards.

Additionally, the Stop Work Order stated DEC did not give approval of disturbing more than five acres which is required under the Storm Water Permit along with a document listing conditions to lift the Stop Work Order (document attached).

On November 24th 2008, DEC issued a notice of "Complaint" to Millennium Pipeline Company, documenting hundreds of state and federal water quality violations(document attached). The complaint cited eleven "causes of action" by DEC and are summarized as follows:

- 1) The General Permit requires the permittee to submit a Notice of Intent(NOI) to the department prior to commencing any construction activity. Millennium submitted a NOI to DEC on April 26, 2008, which became effective May 5, 2008. Millennium violated the general Permit by disturbing greater than one acre of soils-324 days prior to the date of its permit coverage.
- 2) The General Permit states that the owner shall not disturb greater than five acres of soil at any one time without prior written approval by the department. Millennium "continuously" disturbed an excess of five acres during the 2007 and 2008 construction seasons and never requested authorization from DEC.
- 3) The General Permit requires permittee to comply with state water quality standards. Millennium was cited **169 times** for violating NYS Narrative Water Quality Standards for turbidity and oil and floating substances.
- 4) The General Permit requires the permittee to prepare a Final Storm Water Pollution Prevention Plan(SWPPP) prior to filing the NOI. Millennium had not filed a SWPPP with Department as of the date that the Complaint was filed(over fifteen months after beginning construction.)

Additionally, Third Party Monitors documented the following violations of the General Permit:

Wetland and Water body Construction and Mitigation Procedures:

- *Failure to have Plans for ROW greater than 75 feet*

- *Failure to have Sediment barriers*
- *Failure to construct bridges for unrestricted flows and no soil discharge Environmental Construction Standards:*
- *Failure to Install Temporary Erosion and Sediment Controls*
- *Failure to maintain Temporary Erosion and Sediment Controls*
- *Failure to to install and maintain(daily)Erosion Controls During Grading*
- *Failure to store Soil Piles Ten Feet From Water-body*
- *Failure to Install Temporary Trench Plugs*
- *Failure to Follow Trench Dewatering Specifications*
- *Failure to Remove Waste from Construction Work Area(CWA)*
- *Failure to Restore after Final Grading*
- *Failure to Follow water body crossing procedures*
- *Discharge of Bentonite Drilling Fluid from Frack Out*
- *Failure to install/Maintain Equipment Bridges Per FERC Standards*
- *Trench De watering to Wetland or Water-body*
- *Failure to Use Trench Plugs*
- *Failure to Minimize Construction Wetland Disturbance*
- *Failure to Mark Wetland Boundaries Prior to Clearing/Construction*
- *Failure to Properly Address Temporary Access Roads*
- *Failure to Properly Clear Wetlands*
- *Failure to Properly Follow Trench De-watering Procedures*

- *Failure to Follow Backfilling Procedures Attach*
- *Spill Prevention, Containment and Control Plan*

Millennium was cited **642 times** for the above listed violations.

Millennium's failure to implement the erosion and sediment controls are violations of the Water Quality Certification(WQC) and the General Permit.

5) The WQC requires that the Respondent "assure that the Third Party Compliance Monitors and Compliance Manager have received project-specific environmental training. From the effective date of the General Permit Coverage(May 5, 2008 until August 4, 2008). Millennium failed to train it's environmental inspectors for the project. Inspectors lacked project-specific environmental training for conducting inspections pursuant to the General Permit.

*Inspectors are assumed to have also lacked environmental training for the 324 days that Millennium had been operating without a permit.

6) Millennium violated the "Upland Erosion Control, Re-vegetation and Maintenance Plan" and the WQC by failing to conduct daily inspections on the Peas Eddy site. Department staff reviewed Millennium's environmental inspections website and there were no documented inspections for the month of June 2008 .

These violations stem from the June 16th mudslide that led to the June 20th "Stop Work Order" by DEC.

7) Millennium violated the General Permit by failing to have each of it's contractors sign the certification statement which identifies trained contractors that will be responsible for installing, constructing, repairing, inspecting and maintaining the erosion practices included in the SWPPP.

8) Millennium violated the WQC by conducting clearing and restoration during the restriction period for cold water streams. The specified construction timing windows are meant to minimize impact on water

quality and to avoid interruption of spawning runs in water bodies.

9) Millennium failed to retain a permit for storm water discharges resulting in the disturbance of soils outside of the Construction work area, which is covered by the General Permit.

10) Millennium violated the States Navigation Law by discharging hydraulic oil into the East Branch of the Delaware River.

11) Millennium failed to notify the department within two hours of a petroleum discharge in violation of the Navigation Law.

The DEC Complaint, detailed above, concludes by setting requirements and conditions for ROW stabilization and erosion and sediment control as required by the General Permit.

A civil Penalty of \$7,400,000 was assessed against Millennium and the company was ordered to deposit \$2,000,000 into a distinct Environmental Benefit Project (EBP) escrow account. The money would be spent on an EBP determined by the Department.

However that is not what happened. Based on the Order of Consent signed by the acting DEC Commissioner Alexander B. Grannis and Millennium's President, Richard H. Leehr;

- Millennium denied all allegations in the complaint in lieu of responding to Department staff.
- Department Staff agreed to withdraw the complaint with prejudice
- Millennium was assessed a civil penalty of \$200,000
- Millennium was ordered to hire five full time positions by a third party entity, for a total EBP payment of \$1,000,000. Four of the positions were for storm water pollution control specialists and the fifth position was a stream protection biologist.
- DEC agreed not to sue Millennium

It's difficult to understand how an assessed Civil Penalty of \$7,400,000 could be downgraded to a mere \$200,000. Millennium was cited **811 times** for violations that harmed or threatened streams, rivers and wetlands. Perhaps DEC staff was anxious to resolve the situation given that the ROW was so unstable. Perhaps it would have required a lengthy legal process to require the company to pay something closer to what DEC had originally assessed in their Complaint. In any case, it certainly leaves Millennium in the drivers seat with absolutely no incentive to play by the rules. It's analogous to pulling someone over for drunk driving, writing them them a parking ticket and then giving them back the keys.

FERC's Final Environmental Impact Statement for the Millennium Pipeline states: (5)

-Staff concludes that the project would be environmentally acceptable action (with appropriate mitigation) because:

-The environmental monitoring for this project would ensure compliance with all mitigation measures that become conditions of any FERC authorization.

-All of the applicants would implement the Plan and Procedures to minimize impacts on soils, wetlands, and water bodies;

By all standards, the Millennium Pipeline was NOT "environmentally acceptable" and most certainly did NOT have "appropriate mitigation". The environmental monitoring for the project did NOT "ensure compliance with all mitigation measures". Far from it. The applicants did NOT implement its plans and procedures and consequently-impacts on soils, wetlands and water bodies was extensive.

The overwhelming violations for Iroquois, Tennessee and Millennium caused repeated damage to the environment, particularly water, and demonstrate gross negligence by these companies with a complete disregard for natural resources, government agencies, permits, and their own BMPs.

FERC's Environmental Impact Assessments, while they may look comprehensive on paper, don't hold up in the real world. FERC's assurance that their third party monitoring will ensure compliance, is false. The record clearly documents this. Monitors documenting violations is exactly that-monitors DOCUMENTING violations. The documentation does not prevent violations from continuing to happen. If it did then Iroquois, Tennessee and Millennium wouldn't have racked up thousands of safety and environmental infractions.

Furthermore, FERC knows this. According to staff that I recently spoke with from FERC's Gas Certification Division, FERC is in charge of oversight for all third party monitoring during pipeline construction and maintains "Environmental Inspection Reports" in their database during pipeline construction. I was told that Third party monitors "work for us"(FERC).

FERC is fully aware of the extensive environmental violations and yet they continue to green light these projects. In fact, according to the FERC staff that I've spoken with, FERC has never denied a Interstate Gas Pipeline Certification.

After Iroquois pleaded guilty to numerous violations of the Clean Water Act, Joseph Povone, acting United States Attorney for the Northern District of New York was quoted as saying "The pipeline construction industry is now on notice that it will be held accountable and criminally liable for knowingly failing to comply with promises made to the public and the government regarding adherence to environmental and safety laws." That was in 1996. Almost twenty years later, the problem appears to be systemic.

The DEC is now in the position of deciding whether or not to issue Constitution Pipeline a 401 Water Quality Certificate. Your department has the authority to make or break this project.

The question is-will Williams (part owner, builder, and operator of the proposed project) perform any differently than the Companies cited in this

letter? Will they follow the Plans and Procedures and their Best Management Practices set forth in their Permit Applications? Will they minimize and mitigate adverse impacts to the natural resources of New York State? Will they self-report when there is a spill, accident or problem? Will they abide by and comply with the Pipeline and Hazardous Materials Safety Administration's Compliance requirements to ensure safe pipeline operation?

The answer to all of these questions is unequivocally NO. No they will not.

In Pennsylvania, Williams repeatedly fails to provide accurate information on the location of streams, wetlands and access roads in its Permit Applications. The company often does not self-report when obligated to do so. They often ignore inspector's requests, leaving cited violations uncorrected. They habitually fail to implement erosion and sediment best management practices, resulting in contamination of PA's streams, rivers, and wetlands. Williams racked up the highest fines in PA (2013) for all of these problems.

FERC's environmental conclusions, assurances regarding compliance and mitigation, along with their assumptions that Constitution will follow the rules, regulations and permit conditions are contrary to the reality of Williams' proven track record.

In terms of safety, in 2013 the US Chemical Safety board(USCSB) initiated an investigation after an explosion at William's Louisiana chemical plant killed two workers and left 80 injured. The investigation was expanded after two more incidents in 2014. The first, a natural gas plant fire that mandated the evacuation of a town in Wyoming. The second, an explosion at a liquefied gas storage site in Plymouth, Washington where five people were injured and 1,000 residents and agricultural workers were evacuated.

According to Dan Tillema, a lead investigator at USCSB, "with a strong corporate oversight of process safety, it would be very unlikely to have three incidents like this in a 12-month period."(6)

Williams also has a lengthy history of cathodic protection problems according to PHMSA(7, 8). I have gone into greater violation detail in my other comments to DEC so I will refrain from repeating it here.

On a personal note, I have spent the last two and a half years researching this company and witnessing how they operate, communicate and how they treat landowners and the public. I have observed that they are outwardly polished and polite while simultaneously they have trespassed on private property and lied to landowners . They attempted to sway public opinion by giving "generous" donations to towns and local businesses. They refused to give our county a map during FERC's scoping comment process. It's quite difficult to make meaningful comments on a pipeline project when you can't see its location. The bottom line-I don't like this Company. I don't trust this company. And the idea of them being allowed to build something in NY is extremely disturbing.

If the DEC issues this Permit, there will be a repeat experience of what happened with the Millennium Pipeline in New York. William's past poor performance has been consistent and there is absolutely no reason to believe it will be any different here. In that regard, there is nothing special about New York where Williams is concerned. We're simply the shortest and most strategic path from point a to point b.

A critical piece of information that was dismissed by FERC in its FEIS is the significance of the location of "point b". The Constitution pipeline would deliver gas to The Wright interconnect, a compressor station in Schoharie owned by Iroquois. The proposed project would upgrade Iroquois compressor station to increase capacity to 650,000 Dth/day-the same capacity that The Constitution Pipeline has been approved for by FERC.

Iroquois documents on their website that their proposed SoNo Project "traditionally a north-to-south pipeline," would "reverse the flow on the Iroquois system... transport up to 650,000 Dth/day from Iroquois' existing interconnects with Dominion Transmission in Canajoharie, NY and Algonquin Gas Transmission in Brookfield, CT, as well as the Constitution

Pipeline in Wright, NY.... sending gas to Trans Canada Gas Pipelines Limited at Waddington Canada"(9)

To be clear, the same capacity that Constitution would transport is the exact same capacity that Iroquois' SoNo would deliver to Canada. This would all be Marcellus gas, some of which would be delivered by Constitution, and all gas would be transported on FERC approved interstate gas pipelines. This does not constitute a domestic need. Most certainly, it does not warrant taking people's land through eminent domain, cutting down hundreds of thousands of trees, blasting and digging which would result in degrading/contaminating water resources, fish and wildlife.

The interactions that I have had with the DEC have shown me that there are genuinely good people working there who care deeply about New York's water quality and natural resources. If politics and outside pressure do not interfere and if the DEC examines the facts, I trust that the Department will come to one conclusion and one conclusion only. The Constitution Pipeline 401 Water Quality Permit must be denied in order to truly conserve and protect the environment in our great state.

Sincerely,

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Footnotes:

1) FEIS. ES-13 p.34

2) <http://www.justice.gov/archive/opa/pr/1996/May96/233.enr.htm>

3) page 40

http://ir.kindermorgan.com/sites/kindermorgan.investorhq.businesswire.com/files/report/file/KMI_3Q_Rpt_2014.pdf

4)

<http://www.portal.state.pa.us/portal/server.pt/community/newsroom/14287?id=20661&typeid=1>

5) <http://www.ferc.gov/industries/gas/enviro/eis/2006/10-13-06.asp>

6) <http://www.bloomberg.com/news/2014-05-15/williams-probe-expanded-on-unusual-gas-accidents-trio.html#sthash.qe097XY1.dpuf>

7)

http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_220111011H.html?nocache=1886#_TP_1_tab_2

8)

http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_120081004H.html?nocache=3286#_TP_1_tab_2

9)

http://www.iroquois.com/project/sono/SoNo_OpenSeasonBrochure_1_12_15.pdf

<http://www.iroquois.com/project/sono/>