



DEPARTMENT OF THE ARMY  
NEW YORK DISTRICT, CORPS OF ENGINEERS  
JACOB K. JAVITS FEDERAL BUILDING  
26 FEDERAL PLAZA  
NEW YORK, NEW YORK 10278-0090

FEB 13 2015

Regulatory Branch

SUBJECT: Tennessee Gas Pipeline Company, LLC Northeast Energy Direct  
Proposed Natural Gas Pipeline from Troy, PA to Dracut, MA

Tennessee Gas Pipeline Company, LLC  
Attn: Howdy McCracken, Sr. Pipeline Engineer  
EH&S Project Permitting - 1460E  
1001 Louisiana St., Suite 1000  
Houston, Texas 77002

Dear Mr. McCracken:

Thank you for meeting with the U.S. Army Corps of Engineers (USACE), Regulatory Offices from New York, Baltimore, Buffalo and New England Districts as well as the North Atlantic Division on May 27, 2014 and February 3, 2015 regarding the proposed 400-plus mile natural gas pipeline from Troy, PA to Dracut, MA. Based on the discussion at the meeting on February 3, 2015, your company is proposing to place 187 acres of regulated fill in regulated waters and wetlands for the construction of 429 miles of new and replacement natural gas pipelines. This letter is intended to provide information needed as part of the permit application package for a Department of the Army permit.

The permit application must include the amount of fill, in acres, being placed in regulated waters and/or wetlands, both temporary and permanent, and identification of wetland losses or impacts, including permanent conversion and temporary disturbance. Attached is an example of a spreadsheet with the type of data that would be required. The number of wetland or waters crossings is also important to provide including access roads and staging areas, and impacts on property identified for compensatory mitigation. The limited use of remote sensing of wetlands for the purposes of publication of a public notice may be acceptable. If the use of remote sensing for some of the preliminary site assessments is required, please be prepared to provide a description of the methods and tools to be applied.

In addition, in order for each of the four USACE Districts to understand the known and unknown information, please provide in a table format, the total number of parcels within the proposed right-of-way, the total acreage within the proposed right-of-way, then quantify the total number of parcels proposed for remote sensing, and the total acreage proposed for remote sensing at the current time. This should be broken out by District. Field verification of wetlands and waters must be done as soon as possible, when suitable conditions allow for wetland delineations to be conducted in accordance with the 1987 Manual. The Corps requires field verification of all regulated

FEB 13 2015

Regulatory Branch

SUBJECT: Tennessee Gas Pipeline Company, LLC Northeast Energy Direct  
Proposed Natural Gas Pipeline from Troy, PA to Dracut, MA

wetlands and waters prior to beginning the decision-making phase, in order to have greater confidence in the amount of intrusion into the regulated aquatic environment and the resultant environmental impacts.

The proposal to discharge fill materials into regulated waters (including wetlands) of the United States must be in compliance with the Clean Water Act Section 404(b)(1) Guidelines (40 CFR Part 230). Therefore, it is expected that Tennessee Gas Pipeline Company will submit to this office a written demonstration of compliance with the Guidelines. This documentation must include a detailed analysis of alternatives to avoid and/or minimize the amount of filling of regulated waters (including wetlands) of the United States and discharge alternatives which would meet the purpose and need for your company's pipeline project. If an alternative is not practicable as defined at 40 CFR Part 230.10(a), the submittal must include an explanation of why it was found as not practicable.

The fundamental precept of the Section 404(b)(1) Guidelines is that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern. In order for this determination to be made, your company must submit a cumulative effect analysis addressing the incremental impact of the proposed pipeline activities when added to other past, present, and reasonably foreseeable future actions within the vicinity of the proposed construction activities within the aquatic ecosystem.

Avoidance and minimization of impacts to waters is a critical component of this permit application. For those unavoidable impacts, the regulations at 33 CFR Part 332 require that compensatory mitigation for permanent loss and/or permanent conversion of regulated waters (including wetlands) of the United States be provided. Compensatory aquatic mitigation that not only meets the requirements of 33 CFR Part 332, but that is also acceptable to the States of New York and New Hampshire and the Commonwealths of Pennsylvania and Massachusetts should be investigated and identified in this permit application. Please note that, in accordance with 33 CFR Part 332, compensatory mitigation needs to be based upon replacing ecological functions and services lost as a result of the proposed activities. The requirements of 33 CFR Part 332.4, must be fulfilled in the planning and documentation of the mitigation plan.

The crossing of navigable waters, regulated under Section 10 of the Rivers and Harbors Act of 1899, including the Hudson, Connecticut, and Merrimack Rivers, will require the proposed pipeline to achieve a minimum burial depth to protect safe navigation and for maintenance of any Federal channel. In the Hudson River, the top of the pipeline and any protective covering must be at a depth of at least 47 feet below Mean Lower Low Water Datum. The other navigable river crossings will require

FEB 13 2015

Regulatory Branch

SUBJECT: Tennessee Gas Pipeline Company, LLC Northeast Energy Direct  
Proposed Natural Gas Pipeline from Troy, PA to Dracut, MA

sufficient burial to protect navigation interests as well as the proposed infrastructure itself.

As the lead Federal agency, the Federal Energy Regulatory Commission (FERC) is responsible for documenting compliance with the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act of 1996, and with Section 106 of the National Historic Preservation Act, including consultation with Federally-recognized Native American Tribes. The Tribal consultation required is a robust Nation to Nation requirement, and if not completed to USACE standards, would delay decision-making on this permit application, as other recent pipeline permit applicants have experienced. The information provided in the FERC environmental analysis will provide information to the USACE in the permit application review and decision making process, including the demonstration of compliance with Federal Laws and Regulations.

In addition, your company must obtain a Section 401 Clean Water Act Water Quality Certificate (WQC) from the States of New York and New Hampshire and the Commonwealths of Pennsylvania and Massachusetts for this proposal. In addition, your company must obtain a Coastal Zone Management (CZM) Consistency Certification from the New York State Department of State prior to the completion of the decision-making phase of this application.

Typically, the USACE permit application decision will be made within 90 calendar days of the filing of the Final Environmental Impact Statement, unless there are outstanding unresolved National Environmental Policy Act (NEPA) compliance requirements, such as incomplete Section 7 of the Endangered Species Act consultation, incomplete Magnuson-Stevens Fishery Conservation and Management Act coordination, and incomplete Section 106 of the National Historic Preservation Act consultation, including Tribal consultation or the requisite WQCs and CZM compliance certification has not been demonstrated. Therefore, regardless of the timing of any Final Environmental Impact Statement, Record of Decision or other Federal permit, certificate or order, the USACE cannot complete decision making until it is demonstrated that all Federal Act coordination and consultation has been satisfactorily completed including NEPA consultation and compliance, and State or Commonwealth Section 401 Water Quality Certifications and Coastal Zone Management Consistency Certifications are issued.

We are also in receipt of your proposed drawing, received on July 23, 2014, showing the horizontal directional drill crossing of the Hudson River. This drawing has a sufficient level of detail to show the proposed crossing, but additional requirements, especially including a scalable plan on 8 1/2" by 11" paper with a proper title block are necessary to meet the enclosed example.

FEB 13 2015

Regulatory Branch

SUBJECT: Tennessee Gas Pipeline Company, LLC Northeast Energy Direct  
Proposed Natural Gas Pipeline from Troy, PA to Dracut, MA

We cannot make a decision on whether there is a lead Regulatory District and which District would serve in that role until sometime after we have received and reviewed your company's submittal of the extent of regulated activities and impacts to jurisdictional waters and wetlands for each affected District (see attached spreadsheet for initial requirements).

If you have any questions regarding this letter, please don't hesitate to contact me at 917-790-8720.

Sincerely,



Jodi M. McDonald  
Chief, Regulatory Branch  
New York District

Enclosure: as  
Copy furnished:  
CENAN-OP-RU  
CELRB-TD-R  
CENAB-OP-R  
CENAE-R  
CENAD-PD-OR  
CELRD-PD