

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Atlantic Highlands Arts Council
Bayside Regional Watershed Council
Bayside Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Clean Water Action
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1075
Concerned Businesses of COA
Concerned Citizens of Bensenville
Concerned Citizens of COA
Concerned Citizens of Montauk
Eastern Monmouth Chamber of Commerce
Environment NJ
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Food and Water Watch, NJ
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Allenhurst
Garden Club of Bay Head and Mantoloking/Seaweeders
Garden Club of Brielle/Bayberry
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Sea Girt/Holly
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Terra Nova
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Partnership
Junior League of Monmouth County
Keypoint Environmental Commission
Kiwamis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Environmental Lobby
NJ Friends of Clearwater
NJ Marine Education Association
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsies
NY Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOut.org
Pleasantville Saltwater Sportsmen Club
Rantan Riverkeeper
Religious on Water
Rotary Club of Point Pleasant
Rotary District #7540—Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Sunrise Rod & Gun Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
Surfrider Foundation, South Jersey Chapter
TACK I, MA
Unitarian Universalist Congregation/Monm. Cnty.
United Boatmen of NY/NJ
Viking Village
WATERSPIRIT
Women's Club of Brick Township
Women's Club of Keypoint
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Zen Society, NJ



Ocean Advocacy
Since 1984

Clean Ocean Action

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Submitted via Federal Energy Regulatory Commission eFiling process at
www.ferc.gov

**Re: Transcontinental Gas Pipe Line Company, LLC
Docket No. CP17-101-000
COMMENTS OBJECTING TO TRANSCO
REQUEST FOR EXTENSION**

Dear Secretary Bose:

Clean Ocean Action (“COA”) is a nonprofit organization representing a broad-based environmental coalition of over 125 unique and diverse stakeholders joined together to protect and enhance the marine environment of New York and New Jersey. COA has been participating in the public process involving the proposed project for many years and was granted intervenor status by order dated December 31, 2018. We write to contest the Request for Extension of Time submitted by the applicant in the above referenced matter.

Through a Request for Extension dated March 19, 2021, the applicant, Transcontinental Gas Pipe Line Company, LLC (“Transco”), has requested a two-year extension for the in-service date of the Northeast Supply Enhancement project (“NESE”). As detailed below, COA respectfully requests that the Commission deny Transco’s request for an extension of time for the following reasons: First, Transco has not met the requisite “good cause”¹ standard for the requested extension, and indeed, no good cause exists. Second, with the passage of time, FERC’s Initial Order has gone stale, as the reviewing states have found valid alternatives to the proposed project, and the potential impacts of greenhouse gas impacts were not considered by FERC, as it now does. Accordingly, the systemic and local environmental impacts of the Transco project dictate that the requested extension runs counter to both public interest and effective environmental assessment.

¹ 18 C.F.R. § 385.2008(a) (2021).

I. TRANSCO HAS NOT SUBMITTED GOOD CAUSE FOR THE REQUESTED EXTENSION, AND INDEED, NO GOOD CAUSE EXISTS.

The “good cause” standard applies to Commission decisions on any FERC rule or order, including the instant extension request.² As the Commission has explained, “good cause” for an extension of the in-service date can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered unforeseeable circumstances,³ such as difficulties in obtaining deliveries of needed materials or the discovery of cultural remains on an approved

right-of-way.⁴ The Commission has previously found good cause exists where said applicant was making “consistent diligent efforts to move the permitting process forward.”⁵

However, “good cause” will not be found if an applicant has failed to take “concrete steps” toward the development of its project or is merely hoping for circumstances to eventually change that would make its project viable.⁶ FERC is cognizant that the existence of a Certificate Order could inhibit other companies from pursuing its own project to serve the same market, and such anti-competitive implications are to be avoided.⁷ FERC is further aware that the information supporting its public convenience and necessity determinations have become “stale with the passage of time”.⁸

A. Transco Has Failed to Take Concrete Steps Toward the Development of the Project

As of their March 19, 2021 extension request, Transco has not completed the project, and in fact, has not commenced construction of the project, because the project is grossly incompatible with the environmental laws and regulations of the States of New York and New Jersey. Transco still lacks the appropriate permits to commence construction on the massive project. Transco is not actively pursuing these permits following a third round of permit denials from New York and New Jersey. It appears to be biding its time until federal and/or state administrations change to those less concerned about the integrity of our coastal waters and environs.

On May 15, 2020, the New Jersey Department of Environmental Protection denied all necessary

² 18 C.F.R. § 385.2008(a) (2021).

³ Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 31 (2020).

⁴ Chestnut Ridge, LLC, 139 FERC ¶ 61,149, at P 11 (2012).

⁵ Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 32 (2020).

⁶ Chestnut Ridge, LLC, 139 FERC ¶ 61,149 P 3 (2012).

⁷ *Id.* at P 9.

⁸ *Id.* at P 8.

permits for the project, including for freshwater wetlands, flood hazard area, waterfront development, and coastal wetlands, as well as a Water Quality Certificate. That same day, the New York State Department of Environmental Conservation also denied Transco's application for a Water Quality Certificate.

Since that time, Transco declined to avail itself of the opportunity—provided by both agencies—to administrative review of the denials. Transco has not brought any legal challenge to the denials.⁹ Nor has Transco resubmitted its applications to address the litany of concerns raised by the state agencies. In fact, after the denials, Transco issued a statement stating that it would not be resubmitting its applications,¹⁰ as reported by Bloomberg News.¹¹ Moreover, (parent company) Williams reportedly told investors during a conference call in May of 2020 that it was not allocating significant capital to the project until it had all of its necessary permits.¹²

The May 2020 denials were in fact the third round of environmental permit denials for this Transco project. In 2017, Transco applied to NYSDEC for a water quality certificate and to NJDEP for various environmental permits to building the pipeline, but the NY application was rejected in 2018 and Transco withdrew the NJ application. The company resubmitted its application to NYSDEC and filed for a series of approvals from NJDEP later in 2018, but this second round of applications were rejected by the agencies in May and June of 2019. A short time later, Transco made a third round of applications to New York and New Jersey, with the same outcome.

After three rounds of submissions, and nearly a year after the latest rejections, New York and New Jersey still have many concerns regarding the environmental impacts of the project. The Request for Extension is not accompanied by any evidence (or even assertion) that the project design has been revised to address these concerns.

As cited above, the recent *Algonquin Gas Transmission* case provides applicable precedent that distinguishes Transco's extension request from those typically granted by FERC. In *Algonquin Gas Transmission*, the town of Weymouth, Massachusetts argued that Algonquin had refused to

⁹ This fact distinguished the instant matter from Constitution Pipeline Co., LLC, 165 FERC ¶ 61,081 (2018), a FERC decision cited by Transco in its request for a two-year extension. There, FERC granted applicant Constitution Pipeline Co. a two-year extension of the Certificate Order's time limit for good cause, because the applicant appealed NYSDEC's denial of a water quality certificate to the Second Circuit of the U.S. Court of Appeals. See id. at P 4. Similarly, in Iroquois Gas Transmission System, L.P., Docket No. CP13-502-000 (Aug. 2, 2016), FERC granted applicant Iroquois a two-year extension of its Certificate Order's time limit for good cause, because the applicant had a pending appeal of NYSDEC's denial of Clean Air Act permits. Iroquois Gas Transmission System, L.P., Docket No. CP13-502-000 (2016).

¹⁰ This fact that Transco has no pending applications for the necessary permits distinguishes this matter from PennEast Pipeline Company, LLC, Docket No. CP15-558-000 (Feb. 20, 2020). There, PennEast was granted a two-year extension to its Certificate Order for good cause, because, in part, the applicant was working with the U.S. Army Corps of Engineers to obtain multiple federal permits. See id. at P 8.

¹¹ Adams-Heard, Rachel, Williams Won't Refile State Applications for Blocked Pipeline, Bloomberg News, Updated May 16, 2020 (available at <https://www.bloomberg.com/news/articles/2020-05-15/new-york-again-blocks-controversial-natural-gas-pipeline>), Copy enclosed.

¹² Id.

cooperate with state and local agencies. Yet, Algonquin carried out “consistent diligent efforts to move the permitting process forward” after facing pending permits and outright denials at the local and state levels.¹³

The Commission agreed and found that Algonquin “demonstrated good cause exists to grant the two-year extension.” Distinct from Algonquin’s good-faith efforts, Transco has failed to re-file or pursue administrative or legal remedies since their May 2020 denials by both the New York and New Jersey state agencies. Under the *Algonquin Gas Transmission* standard, Transco has not made diligent, good-faith efforts to comply with FERC’s construction timeline nor state agency standards. No good cause exists to grant Transco’s extension request.

To sum up, we submit good cause cannot be found where the applicant has failed to (i) exhaust its administrative remedies, (ii) resubmit its permit applications, (iii) allocate significant capital for the project, and (iv) failed to re-design the project to address numerous environmental concerns.

B. Transco’s Proffered Excuse is Without Merit and Does Not Constitute Good Cause

Rather than supply FERC any reasonable ground to believe that Transco is capable of obtaining the thrice-rejected approvals, *Transco brazenly and shamelessly attempts to excuse its failure on COVID.* . In fact, New York’s denial was wholly independent of the reported/projected drop in demand due to COVID, which was mentioned in the NYSDEC’s denial after the agency detailed a series of environmental concerns. New Jersey’s denial made no mention of COVID. Transco has not gotten the job done, is not taking any responsibility for its failure to do so, and cannot even be forthright with FERC for the bases of its failure. Clearly, there is no good cause for the requested extension of time.

The Notice of Request for Extension of Time states that the Commission will not, at this time, entertain arguments as to whether the project is a matter of public convenience and necessity, and indeed, COA will refrain from making such arguments. Instead, if one is to accept the finding of the need for the expansion of natural gas supply to this region, then one must ask if an extension can be reasonably expected to fulfill that need. We submit it is not. Transco has not even begun construction. Transco has designed a project that is clearly incompatible with the environmental laws and regulations of the States of New York and New Jersey. Transco has had more than three (3) years to find another way to obtain such approvals, be it administrative appeal or project re-design, but it has not done so. Transco says it has not allocated significant capital for the project. And now Transco comes to FERC and blames COVID for its failure to serve the needs of the region. Given the above factors, we respectfully submit this is neither the project nor the company to attain that objective.

II. THE INFORMATION SUPPORTING THE CERTIFICATE ORDER HAS BECOME STALE WITH THE PASSAGE OF TIME

¹³ 170 FERC ¶ 61,144 at P 13.

A. The Project was Not Evaluated for Greenhouse Gas Emissions and Downstream Effects

For Transco's project and many before it, FERC did not consider the indirect and direct, widespread effects of natural gas pipelines on communities, the surrounding ecosystems, and other stakeholders. In fact, FERC used to contend that considering greenhouse emissions in their public interest determination is too speculative.¹⁴ However, in a recent open meeting regarding their approval of a Northern Natural Gas Co. pipeline, Chairman Richard Glick stated, "Going forward, we are committed to treating greenhouse gas emissions and their contribution to climate change the same as all other environmental impacts we consider."¹⁵ This is consistent with an updated meaning of public convenience and the reality that natural gas has played a major role in exacerbating the effects of climate change. In order to mitigate the harsh realities of climate change and sufficiently represent the interests of the public, FERC must maintain and expand their novel greenhouse gas policy on a project-by-project and nationwide basis.

Current Chairman Glick has called climate change "the most important environmental consideration of our time."¹⁶ After the recent change in administration, FERC has both formally and informally shifted their stance on citing and analyzing the estimated emissions for natural gas projects.¹⁷ In their recent Notice of Intent to revise their Certificate Policy, FERC explained that they would consider foreseeable climate impacts in determining "whether the proposed project will serve the public interest."¹⁸ In this Notice and their recent *Northern Natural Gas* opinion, FERC has signaled their shift to a science and public input-based agency.

This change is of particular importance to the Transco project. In 2020, The New York Public Service Commission started a new initiative to promote alternatives to gas infrastructure.¹⁹ The Order requires natural gas companies to provide comprehensive analysis regarding energy

¹⁴ Order Denying Rehearing and Dismissing Stay Request, Algonquin Gas Transmission, LLC, 154 FERC ¶ 61,048, 44–46 (Jan. 28, 2016); Order Denying Rehearing, Sabine Pass Liquefaction Expansion, LLC, Sabine Pass Liquefaction, LLC, Sabine Pass LNG L.P., Cheniere Creole Trail Pipeline, L.P., 151 FERC ¶ 61,253, 62,671–73 (June 23, 2015).

¹⁵ Adler, Kevin, [US FERC adjusts gas pipeline review with deeper look at GHG emissions impact](https://ihsmarkit.com/research-analysis/us-ferc-adjusts-gas-pipeline-review-with-deeper-look-at-ghg.html), HIS Markit (March 23, 2021), available at <https://ihsmarkit.com/research-analysis/us-ferc-adjusts-gas-pipeline-review-with-deeper-look-at-ghg.html>

¹⁶ See *supra* note 5.

¹⁷ 174 FERC ¶ 61,189, P 11 (2021);

¹⁸ [Certification of New Interstate Nat. Gas Facilities](#), 163 FERC ¶ 61,042 (2018) (Initial NOI); 174 FERC ¶ 61,189, P 6 (2021);

¹⁹ New York Public Service Commission, Order Instituting Proceeding on Motion of the Commission in Regard to Gas Planning available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=20-G-0131&submit=Search>

Procedures, Case No. 20-G-0131, March 19, 2020, pp. 6-7.

efficiency, non-pipeline alternatives, and demand response conditions.²⁰ Further, the Public Service Commission has stated that non-pipeline solutions, including electrification of heating, energy efficiency, and demand response tactics “can reduce or eliminate the need for gas infrastructure and investments.”²¹ The NESE pipeline would only add unnecessary, excess capacity to a system and state that are transitioning to energy efficient measures and alternative energy.²²

To its credit, FERC has since demonstrated a willingness to “re-litigating”²³ certificate orders based on the project emissions numbers. However, FERC has not yet re-opened Transco’s initial certificate order. In the words of Commissioner Glick, the Commission “miss[ed] that mark by a mile”.²⁴ Accordingly, the determination that the project was in the public interest and subject to an effective environmental assessment is now stale.

B. Comparable Alternatives Now Exist

Following the issuance of the Certificate Order, alternatives to the project have been found to exist. National Grid released its Natural Gas Long-Term Capacity Report for Brooklyn, Queens, Staten Island and Long Island, on February 23, 2020 and a supplemental report on May 8, 2020. National Grid’s Supplemental Report identifies and recommends at least one alternative to the Project. This alternative would include enhancements to existing infrastructure combined with incremental energy efficiency and demand response measures. National Grid stated that this alternative would meet the projected gap between demand and supply of natural gas even without the installation of the Project.

Throughout Transco’s permitting process, state agencies including the New York State Department of Environmental Conservation and Public Service Commission have denied Transco’s permits and proposed feasible, low-impact alternatives to the project. The Public Service Commission issued an order on March 19, 2020, that started a public review process of clean energy alternatives to proposed natural gas projects, including Transco’s Northeast Supply Enhancement (NESE) Project. Even National Grid report’s cost-benefit analysis of the NESE project demonstrated that NESE would have the highest societal cost in a low demand scenario.²⁵

The New York Public Service Commission started a new initiative to promote alternatives to gas

²⁰ New York Public Service Commission, Order Instituting Proceeding on Motion of the Commission in Regard to Gas Planning P 8.

²¹ *Id.*

²² National Grid, Gas Demand Response REV Demonstration Project in New York City and LongIsland: Q4 2017 Report, P 1 (January 31, 2018).

²³ 174 FERC ¶ 61,126, P 2 (2021).

²⁴ Transcontinental Gas Pipe Line Company, LLC, Northeast Supply Enhancement project, 171 FERC ¶ 61,031, ¶ 4 (2020) (Glick, Comm’r, dissenting in part).

²⁵ National Grid, Natural Gas Long-Term Capacity Report for Brooklyn, Queens, Staten Island and Long Island, P 15 (February 2020), available at <https://www.nationalgridus.com/media/pdfs/other/ltnng-supplementalreport.pdf>

infrastructure.²⁶ The Order requires natural gas companies to provide comprehensive analysis regarding energy efficiency, non-pipeline alternatives, and demand response conditions.²⁷ Further, the Public Service Commission has stated that non-pipeline solutions, including electrification of heating, energy efficiency, and demand response tactics “can reduce or eliminate the need for gas infrastructure and investments.”²⁸ The NESE pipeline would only add unnecessary, excess capacity to a system and state that are transitioning to energy efficient measures and alternative energy.²⁹

In past projects and Transco’s initial certificate, FERC dismissed the indirect, direct, and cumulative impacts to our surrounding communities and climate change. They ignored climate change by arguing that “there exists no accepted methodology by which to make assessments.”³⁰ However, the D.C. Circuit and countless state and federal agencies have confirmed that the greenhouse gas emissions should be included in sound environmental analysis.³¹ By considering the clearly foreseeable impacts of natural gas projects to climate change, FERC would join enumerable state and federal agencies, community representatives, elected officials, and more in a public interest review that holistically evaluates “all factors bearing on the public interest.”³² COA strongly supports the inclusion of plainly foreseeable climate impacts for FERC’s determinations on Transco’s project, their extension request, and all future natural gas applicants.

The existence of valid alternatives is extremely relevant given Transco’s inability to obtain environmental permits. As compared to the proposed project, National Grid concluded that electrification of heating, energy efficiency, and demand responsive options are less environmentally impactful in terms of water quality, GHG emissions and otherwise, and more consistent with the requirements of the New York Climate Act. This conclusion is recited in NYSDEC’s May 15, 2020 denial letter,³³ which strongly suggests that there are realistic alternatives for serving the region’s needs in a more environmentally responsible manner. It is also significant given the Commission’s recent and welcomed attention to greenhouse gas emissions and climate change, as detailed above. Transco has provided no “good cause” for their extension and has failed to provide any grounds that they are capable of obtaining their thrice-rejected state permits.

Thank you for considering our strong objection to Transco’s extension request.

³⁰ 171 FERC ¶ 61,031, ¶ 4 (2020) (Glick, Comm’r, dissenting in part).

³¹ *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019); U.S. Department of State, Final Supplemental Environmental Impact Statement for the Keystone XL Project app. U at 55 (2014).

³² *Fed. Power Comm’n v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 8 (1961) (quoting *Atl. Refining Co. v. Pub. Serv. Comm’n*, 360 U.S. 378, 391 (1959)).

³³ See New York State Department of Environmental Conservation, Notice of Denial of Water Quality Certification: Transcontinental Gas Pipeline Company at 17.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Zipf". The signature is fluid and cursive, with the first letter being a large capital "C".

Cindy A. Zipf,
Executive Director

A handwritten signature in black ink, appearing to read "G. Connor Fagan". The signature is cursive and somewhat stylized, with the first letter being a large capital "G".

G. Connor Fagan, J.D.,
Legal Policy Advocate