

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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PennEast Pipeline Company, LLC)	Docket No. CP20-47-000
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**MOTION TO DISCLOSE INFORMATION LABELED PRIVILEGED AND TO EXTEND
PUBLIC COMMENT PERIOD**

On January 30, 2020, the PennEast Pipeline Company, LLC (“PennEast”) submitted a filing to amend its application under § 7 of the Natural Gas Act, 15 U.S.C. § 717f (“NGA”), and § 157 of FERC’s regulations, 18 C.F.R. §§ 157.1 et seq., (the “New Project”) for the proposed PennEast Pipeline, FERC Docket No. CP20-47-000. PennEast’s application purports to be a request to amend the certificate of public convenience and necessity issued in January 2018 (FERC Docket No. CP 15-558-000, Order Issuing Certificates, 162 FERC ¶ 61,053, Jan. 19, 2018) (the “Project”). In accordance with Rule 214 of FERC’s Rules of Practice and Procedure, 18 C.F.R. § 385.214, and 18 C.F.R. § 157.10, New Jersey Conservation Foundation (“NJCF”) and The Watershed Institute (“Watershed”) (collectively, “Movants”) moved to intervene in the above-captioned matter.¹

¹ Motion to Intervene by the New Jersey Conservation Foundation and The Watershed Institute, FERC Docket No. CP20-47, Accession #20200207-5137 (February 7, 2020).

I. RELIEF REQUESTED: DISCLOSURE OF INFORMATION CURRENTLY MARKED AS PRIVILEGED

The Movants hereby request that the Commission publicly release the information contained in Exhibit I of Volume III of the New Project Application.² PennEast marked this information as “privileged” in the New Project application, under Rule 112 of FERC’s Rules of Practice and Procedure.³ Exhibit I is labeled as “confidential market information.” Although it is of course impossible to determine what exactly is contained within this document, PennEast’s New Project application is glaringly missing any detail on why the New Project can meet the economic requirements for a determination of public need. The New Project application contains cursory statements at best, indicating only that PennEast has received “significant interest” for the newly conceived “Phase 1.”⁴ Shippers’ identities are undisclosed, as are contract terms or quantities. And there are no economic studies -- at least none publicly disclosed. Furthermore, PennEast’s application contains no information on the economic justification and interest in “Phase 2” of the New Project. On the whole, the application is woefully deficient in providing any economic data for which there can be a meaningful public assessment of or comments on the public need for the New Project.

PennEast disclosed precisely such data in its application for the Project. *See* Lander Affidavit at ¶ 12. PennEast provided the names of the shippers, the durations of their contracts, and their contracted for capacities.⁵ Although seriously flawed, PennEast also provided “market demand” studies, and other economic justifications, such as the Concentric Study and Econsult Study.⁶ It passes reason to suggest such data now must be cloaked in privilege; and no justifications have been offered for the stark absence of any public disclosure. The public cannot comment on what it cannot reasonably access.

² Exhibit I is one of the files in FERC Docket CP20-47, Accession #20200130-5197.

³ 18 C.F.R. § 388.112 (2020).

⁴ *See* Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity of PennEast Pipeline Company, LLC at 9, FERC Docket No. CP20-47, Accession #20200130-5196.

⁵ *See* Application of PennEast Pipeline Company, LLC for Certificates of Public Convenience and Necessity and Related Authorizations at 10, FERC Docket No. CP15-558, Accession# 20150925-5028,

⁶ *See* Appendices M, Economic Impact Report and Analysis, and N, Energy Market Savings Report and Analysis, Application of PennEast Pipeline Co., LLC for Certificate of Public Convenience and Necessity, FERC Docket No. CP15-558-000, Accession# 20150925-5028.

The amount of information provided by PennEast on the economic framework for the New Project is also significantly less detailed than information provided by other pipeline applicants under the NGA. For example, the Commission recently reviewed and approved the certificate application for Mountain Valley Pipeline, LLC and Equitrans, L.P.⁷ In particular, when denying a request for rehearing on the issuance of the certificate order, the Commission noted that the parties requesting rehearing could not rely on the fact that they were not able to access information marked as privileged as the basis for such a request (invoking the Due Process Clause) because “Mountain Valley publicly provided the identities of its shippers, as well as details about the maximum daily quantities and contract terms for which they have subscribed.”⁸ And that was not all that Mountain Valley included in its application; actual redacted copies of the precedent agreements for the project were included in its application as well.⁹ Not only has PennEast not disclosed any of this information; essentially no market, purpose or need information supporting PennEast’s simple assertions has been provided. As noted above, PennEast has not provided the identities of any of the shippers for the New Project, nor has it disclosed anything beyond the total amount of subscribed capacity. In contrast, with respect to subscribing shippers Mountain Valley provided not only the names of each subscribed shipper but each shipper’s subscription total and information on the terms of each executed precedent agreement.¹⁰ “Due process requires . . . a ‘meaningful opportunity’ to challenge new evidence.”¹¹ Without granting public access to the information on shippers and the other market, purpose or need information presumably contained in Exhibit I, the Commission will prevent the public from having a meaningful opportunity to challenge the new evidence that PennEast has provided to support the New Project.

⁷ Mountain Valley Pipeline, LLC, 163 FERC 61197 (June 15, 2018).

⁸ *Id.* at 7.

⁹ See Application of Mountain Valley Pipeline, LLC for Certificate of Public Convenience and Necessity and Related Authorizations, FERC Docket No. CP16-10-000, Accession #20151023-5035, at Exhibit I.

¹⁰ Certificate Order Mountain Valley Pipeline, LLC, 161 FERC 61043 at 9-10; see also Application of Mountain Valley Pipeline, LLC for Certificate of Public Convenience and Necessity and Related Authorizations, FERC Docket No. CP16-10-000, Accession #20151023-5035, at 16-19 (describing the contractual terms for the subscribed shippers).

¹¹ *BNSF Ry. Co. v. Surface Transp. Bd.*, 453 F.3d 473, 486 (D.C.Cir.2006) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 349, (1976)); see also *Blumenthal v. FERC*, 613 F.3d 1142, 1145–46 (D.C.Cir.2010).

Therefore, the Movants hereby move that the information contained Exhibit I be released to the public. It is necessary that this information be disclosed in order for the public to have a meaningful opportunity to comment on the New Project application, as it is entitled to do under the Natural Gas Act.¹² In addition, attached as Exhibit A is the Affidavit of Greg Lander, a renowned gas industry expert, in support of this request. Mr. Lander attests that there is no credible reason for the information presumably contained in Exhibit I to be marked privileged; moreover, keeping this information privileged is without precedent in applications of this kind. It is difficult to see the lack of information provided in the New Project filing as anything besides an attempt to obfuscate the economics behind the project. PennEast can provide the subscribing shipper information in tabulated form, or redact the precedent agreements, among other potential ways to disclose the data while protecting anything that should be withheld for actual competitive or proprietary business considerations. With respect to the balance of Exhibit I, if there is other information, text and/or discussion contained in Exhibit I, such information should also be made available without resort to the use of a “confidential” label. *See* Lander Affidavit at ¶ 14.

II. ADDITIONAL RELIEF REQUESTED: EXTENSION OF COMMENT PERIOD

Pursuant to the Notice of Application issued by the Commission on February 12, 2020, the public and parties to this proceeding must submit any comments by 5:00 PM Eastern Time on March 4th, 2020.¹³ PennEast submitted its original filing in this proceeding to amend its certificate of public convenience and necessity on January 30, 2020.¹⁴ As the public only received notice of the application on February 12th, 2020 it was granted only three weeks to review the entirety of PennEast’s four hundred and five page long submission. In addition, as outlined above the Movants and the public have to date been unable to review crucial economic details regarding the New Project. Even if the Movants and the public are granted access to the central information on shipper subscription and precedent agreements

¹² *See* 15 U.S.C. 717f (2018).

¹³ Notice of Application at 3, FERC Docket No. CP20-47, Accession# 20200212-3017 (February 12, 2020).

¹⁴ *See Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity of PennEast Pipeline Company, LLC under CP20-47*, FERC Docket No. CP20-47, Accession# 20200130-5196 (January 30, 2020).

currently marked as privileged, they will have at most two weeks to review such information and submit comments on the information. In light of these circumstances, the Movants hereby request that the deadline to submit comments be extended to thirty days from the date on which the information in Exhibit I is publicly disclosed.

III. CONCLUSION

For the reasons set forth above, Movants respectfully request that this Motion be granted and: (i) the information contained in Exhibit I of Volume III of the New Project Application, Accession #20200130-5197, be released to the public via FERC's Docket No. CP20-47, and (ii) the deadline for submitting comments in this proceeding be extended to thirty days from the date on which the information in Exhibit I is publicly disclosed. Movants reserve the right to raise additional issues at a later date. Movants respectfully request that the Commission grant this motion on an expedited basis, issuing a shortened order requiring PennEast to disclose these essential data, and extending the public's time to comment.

Respectfully Submitted,

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Dated: February 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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Dated: February 18, 2020