

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PennEast Pipeline Company, LLC)
)
) Docket No. CP20-47-000

**ANSWER OF
PENNEAST PIPELINE COMPANY, LLC**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ PennEast Pipeline Company, LLC (“PennEast”) hereby answers the Motion to Disclose Information Labeled Privileged and to Extend Public Comment Period of the New Jersey Conservation Foundation (“NJCF”) and The Watershed Institute (“Watershed”) (collectively, “Movants”) filed in the above captioned proceeding on February 19, 2020 (“Motion”).² For the reasons set forth below, PennEast respectfully requests that the Commission deny the Motion.

**I.
Background**

On January 30, 2020, PennEast filed its Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity in the above captioned proceeding (the “2020 Amendment Application”), requesting that the Commission issue an order amending PennEast’s certificate of public convenience and necessity (“Certificate”) for the PennEast Pipeline Project (“Project”) to authorize PennEast to construct, own, and operate the Project in two (2) phases (“Phase 1” and “Phase 2”).³ The Commission issued its Notice

¹ 18 C.F.R. § 385.213 (2019).

² New Jersey Conservation Foundation and The Watershed Institute, Motion to Disclose Information Labeled Privileged and to Extend Public Comment Period, Docket No. CP20-47-000 (Feb. 19, 2020).

³ PennEast Pipeline Company, LLC, Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity, Docket No. CP20-47-000 (Jan. 30, 2020).

of Application on February 12, 2020, establishing a deadline of March 4, 2020 for comments and motions to intervene in this proceeding (“Comment Date”).⁴

On February 19, 2020, the Movants filed the Motion. In their Motion, the Movants request that the Commission require the public disclosure of privileged and commercially sensitive information in Exhibit I of Volume III of the 2020 Amendment Application.⁵ Claiming that this lack of information about the Project precludes meaningful public participation and due process, the Movants also request a 30-day extension of the comment period after this privileged information has been fully and publicly disclosed.⁶

II. Answer

A. Disclosure of Privileged Information is Not Necessary for the Movants Participation in this Proceeding.

The Commission relies on executed precedent agreements as evidence of market need for capacity.⁷ In the 2020 Amendment Application, PennEast explained that, “with respect to Phase 1 service, PennEast has executed precedent agreements with four shippers for approximately 340,000 [dekatherms per day (“Dth/d”)] of capacity for long-term, firm transportation service as part of the Phase 1 service.”⁸ PennEast also noted that it “is negotiating with additional shippers for a significant quantity of capacity for long-term, firm transportation service as part of the Phase 1 service.”⁹ As clearly stated in the 2020

⁴ *PennEast Pipeline Company, LLC*, Notice of Application, Docket No. CP20-47-000 (Feb. 12, 2020) (“Notice”).

⁵ Motion at 2-4.

⁶ Motion at 4-5.

⁷ *PennEast Pipeline Company, LLC*, 162 FERC ¶ 61,053, at PP 27-28 (2018) (citing *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 110 n.10 (D.C. Cir. 2014); see also *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 183 F.3d 1301, 1311 (D.C. Cir. 2015)); order on reh’g, 164 FERC ¶ 61,098 (2018) (“Certificate Order”).

⁸ 2020 Amendment Application at 9.

⁹ 2020 Amendment Application at 9.

Amendment Application, Exhibit I includes a copy of the executed Phase 1 precedent agreements.¹⁰

Consistent with the Commission's regulations, PennEast submitted the executed Phase 1 precedent agreements as privileged in order to preserve commercially sensitive information that is not relevant to any Commission's determination in this proceeding.¹¹ The Commission allows pipelines to obtain confidential treatment of such information by marking such information as privileged. The Commission has consistently allowed applicants to maintain the confidentiality of certain commercially sensitive information contained in precedent agreements during the certificate process.¹²

To facilitate the public review of the market demand for the construction and operation of the Phase 1 facilities, PennEast herein provides the following additional information regarding the shippers (and associated volumes) with whom PennEast has executed the filed Phase 1 precedent agreements:

Shipper	Transportation Contract Quantity (Dth/Day)
New Jersey Natural Gas Company	180,000
South Jersey Gas Company	75,000
UGI Energy Services	50,000
Elizabethtown Gas Company	<u>33,000</u>
Total	338,000

¹⁰ See Amendment Application at 22 and Ex. I.

¹¹ See *Id.*; see also 18 C.F.R. § 388.112 (2019).

¹² See, e.g., *ANR Pipeline Company*, 90 FERC ¶ 61,171, 61,559-60 (2000); see also *Kinder Morgan Interstate Gas Transmission LLC*, 122 FERC ¶ 61,154 at P 41 (2008) (citing *Kinder Morgan Interstate Gas Transmission LLC*, 104 FERC ¶ 61,266, at P 37 (2003)); *Atlantic Coast Pipeline, et. al.*, 164 FERC ¶ 61,100 at PP 23-24 (2018); *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 at n.66 (2019) ("Adelphia").

All of the executed Phase 1 precedent agreements provide for contract terms of up to 15 years, which terms are not dependent on the Phase 2 facilities and will remain in effect if the Phase 2 facilities are not ultimately constructed. Since this is the relevant information contained in the precedent agreements, there is no compelling reasons for disclosing the Phase 1 precedent agreements included in Exhibit I to the 2020 Amendment.¹³

Public disclosure of the remaining terms and provisions in the executed Phase 1 precedent agreements is also unnecessary because the Commission's regulations provide a process for intervenors to access this commercially sensitive and privileged information requested in the Motion.¹⁴ In fact, NJCF has already availed itself of this very process in the instant proceeding, and will receive a copy of the information sought in the Motion in accordance with the regulations.¹⁵ Since NJCF will have received the information sought before the Commission can act on the Motion, the Motion is unnecessary and should be denied.

B. Extension of the Comment Period is Not Appropriate

The Movants allege that the comment period is insufficient to review the 2020 Amendment Application, and request an extension thereof.¹⁶ The Movants request that the comment deadline be extended 30 days from the date that the remaining terms and provisions in the executed Phase 1 precedent agreements filed as Exhibit I to the 2020 Amendment Application are publicly disclosed.¹⁷

¹³ See *supra* note 13.

¹⁴ 18 C.F.R. § 388.112(b); see also *Adelphia* at n.66.

¹⁵ On February 20, 2020, PennEast received an executed protective agreement from NJCF and a copy of NJCF's motion to intervene. See 18 C.F.R. § 388.112(b)(iii).

¹⁶ Motion at 4.

¹⁷ Motion at 5.

There is no compelling reason to extend the comment period. The comment period established in the Notice is the standard period of time provided to comment on certificate applications. The 2020 Amendment Application provided sufficient detail to demonstrate the purpose and need of the phasing of the Project, and the participants will have multiple opportunities to participate in this proceeding.¹⁸ It is also evident that the Movants were aware of the 2020 Amendment Application prior to the issuance of the Notice, and could have sought access to the requested information sooner.¹⁹ For these reasons, PennEast submits that the 21-day comment period established in the Commission's Notice is sufficient to allow interested parties to review and comment on the 2020 Amendment Application, and therefore extending the comment period is unnecessary and the motion should be denied.

¹⁸ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 at P 55 (2017).

¹⁹ Motion to Intervene of New Jersey Conservation Foundation and The Watershed Institute, Docket No. CP20-47-000 (Feb. 7, 2020).

**III.
Conclusion**

For the foregoing reasons, PennEast respectfully requests that the Commission accept this Answer and deny the Motion.

Respectfully submitted,

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ATTORNEYS FOR
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February 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have electronically served the Answer of PennEast Pipeline Company, LLC upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Houston, Texas, this 26th day of February, 2020.

/s/ R.J. Colwell

R.J. Colwell

On behalf of
PennEast Pipeline Company, LLC

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