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**APPENDIX A**

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**PRECEDENTIAL**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

**No. 17-3163**

**[Filed July 25, 2018]**

ADORERS OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE, N/K/A ADORERS OF THE BLOOD OF CHRIST, UNITED STATES REGION, SUCCESSOR BY MERGER TO ADORERS THE BLOOD OF CHRIST, PROVINCE OF COLUMBIA, PA, INC., formerly known as SAINT JOSEPH'S CONVENT, MOTHER HOUSE OF SISTER ADORERS OF THE MOST PRECIOUS BLOOD, COLUMBIA, PA also known as SISTERS ADORERS OF THE MOST PRECIOUS BLOOD, ST. JOSEPH CONVENT, COLUMBIA, PA formerly known as SAINT JOSEPH CONVENT MOTHERHOUSE OF THE ADORERS OF THE BLOOD OF CHRIST, COLUMBIA, PENNSYLVANIA, INC.; SISTER DANI BROUGHT; SISTER MARY ALAN WURTH; SISTER SARA DWYER; SISTER MARIA HUGHES; SISTER THERESE MARIE SMITH,

Appellants

v.

FEDERAL ENERGY REGULATORY  
COMMISSION;

App. 2

COMMISSIONER OF THE FEDERAL ENERGY  
REGULATORY COMMISSION;  
TRANSCONTINENTAL GAS PIPE LINE  
COMPANY, LLC, C/O CT CORPORATION SYSTEM

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civ. No. 5-17-cv-03163)  
District Judge: Honorable Jeffrey L. Schmehl

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Argued January 19, 2018

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Before: SMITH, *Chief Judge*, GREENAWAY, JR.,  
and KRAUSE, *Circuit Judges*

(Opinion Filed: July 25, 2018)

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### App. 3

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### OPINION

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GREENAWAY, JR., *Circuit Judge.*

Under the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717–717z, the Federal Energy Regulatory Commission (“FERC”) has the power to issue “certificates of public convenience and necessity” authorizing private developers to construct, operate, and maintain interstate natural gas pipeline projects. *See* 15 U.S.C. § 717f(c). But before FERC may grant such a certificate, it must, in most circumstances, set the matter for a hearing and provide reasonable notice to interested parties. *Id.* § 717f(c)(1)(B). If FERC ultimately issues the certificate following the requisite hearing, any aggrieved person may seek judicial review of its decision—either in the Court of Appeals for the District of Columbia Circuit or the circuit wherein the

## App. 4

natural gas company is located or has its principal place of business. *Id.* § 717r(b). The statute provides that the chosen court of appeals then has “exclusive” jurisdiction “to affirm, modify, or set aside” FERC’s order. *Id.* § 717r(b), (d)(1). Prior to seeking review in the relevant court of appeals, however, the aggrieved party must, within thirty days of the issuance of the certificate, apply for rehearing before FERC. *Id.* § 717r(a). Anyone who fails to first seek rehearing before FERC is statutorily barred from later seeking judicial review. *See id.*

In this case, the Appellants are the Adorers of the Blood of Christ (the “Adorers”), a vowed religious order of Roman Catholic women that owns a parcel of land in Columbia, Pennsylvania affected by FERC’s decision to issue a certificate of public convenience and necessity to Transcontinental Gas Pipe Line Company, LLC (“Transco”), authorizing the company to construct a roughly two-hundred-mile-long pipeline (“Pipeline Project” or “Project”). The Adorers object to the use of their land as part of the Project, explaining that their deeply-held religious beliefs require that they care for the land in a manner that protects and preserves the Earth as God’s creation. But despite receiving notice of the proposed project, the Adorers never raised this objection before FERC. Instead, over five months after FERC granted Transco the certificate, the Adorers filed suit in the District Court for the Eastern District of Pennsylvania, raising a claim under the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb-1. The District Court promptly dismissed the Adorers’ complaint, concluding that it lacked subject matter jurisdiction in light of the NGA’s specific provisions addressing judicial review of FERC orders.

## App. 5

On appeal, the Adorers contend that the District Court erred because their RFRA claim raises a federal question, over which the court had jurisdiction pursuant to 28 U.S.C. § 1331. We disagree, and hold that a RFRA cause of action, brought by invoking a court’s general federal question jurisdiction, does not abrogate or provide an exception to a specific and exclusive jurisdictional provision prescribing a particular procedure for judicial review of an agency’s action. Accordingly, we will affirm the order of the District Court.

### I<sup>1</sup>

#### A

The Pipeline Project proposed by Transco consists of 199.5 miles of new pipeline in Pennsylvania connecting to existing pipelines running to South Carolina. The Pipeline Project is marketed as potentially supplying more than seven million American homes with enough natural gas to meet their daily needs by connecting natural gas producing Pennsylvania regions to markets in the mid-Atlantic and southeastern states.

The Pipeline Project consists of many subsections, including “Central Penn Line South,” a proposed 127.3-mile section of the Project that will run from Lancaster County, Pennsylvania to Columbia, Pennsylvania, with a forty-two-inch diameter capable

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<sup>1</sup> “In an appeal from a grant . . . of a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), this Court reviews only whether the allegations on the face of the complaint, taken as true, allege sufficient facts to invoke the jurisdiction of the District Court.” *Oss Nokalva, Inc. v. European Space Agency*, 617 F.3d 756, 761 n.2 (3d Cir. 2010).

## App. 6

of transporting 1.7 dekatherms (billion cubic feet) of natural gas per day, and a maximum operating pressure of 1,480 pounds per square inch. The subsection would facilitate the extraction, harnessing, transportation, and use of natural gas. The Pipeline Project would run through the Adorers' property in Columbia, Pennsylvania.

## B

On July 29, 2014, FERC published a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Atlantic Sunrise Expansion, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* ("NOI") in the *Federal Register*, see 79 Fed. Reg. 44,023 (2014), and mailed it to nearly 2,500 interested parties, including affected property owners, to provide notice of the proposed Pipeline Project. The NOI provided a synopsis of the Pipeline Project and a preliminary list of issues identified by FERC's staff. It also described the environmental review process, invited written comments on issues that should be addressed, listed the date and location of four public meetings to be held in the area surrounding the Project, and provided a deadline of August 18, 2014, for all comments.

According to FERC, it received over six hundred written comments from various interested parties, and ninety-three speakers provided comments at the scoping meetings held between August 4 and 7, 2014. The Adorers did not provide a written comment or attend any one of these meetings.

Transco filed its project application with FERC for a certificate of public convenience and necessity for the

## App. 7

Pipeline Project on March 31, 2015. On October 22, 2015, FERC mailed letters to landowners potentially affected by the proposed Pipeline Project. The letter briefly described proposed project reroutes under consideration, invited newly affected landowners to participate in the environmental review process, and provided a special thirty-day limited scoping period. Among the recipients of the October 22, 2015 letter were the Adorers, who failed to respond to the letter.

The Adorers are “an ecclesial group of women living in community” and practicing their deeply-held religious convictions, App. 28, “whose religious practice includes protecting and preserving creation, which they believe is a revelation of God,” App. 24. They believe that “God calls humans to treasure land as a gift of beauty and sustenance that should not be used in an excessive or harmful way.” App. 24. Part of their practice is to “protect, preserve and treasure the land that [they] own.” App. 24.

The Adorers own the parcel of land in Columbia, Pennsylvania that is at issue here. The land has been used to sponsor the St. Anne’s Retirement Community, and for growing crops by local farmers. The Adorers assert that their intentional decision on how to use the land “is an integral part of exercising their well-established and deeply-held religious beliefs as active and engaged stewards of God’s earth.” App. 32.

## App. 8

In 2015, the Adorers followed an encyclical<sup>2</sup> letter titled “*Laudato Si’* of the Holy Father Francis on Care for our Common Home,” written by Pope Francis. In the letter, Pope Francis provides a comprehensive theological basis that, as an act of religious belief and practice, members of the Roman Catholic Church must preserve the Earth as God’s creation. Specifically, Pope Francis identifies that climate change based, among other things, “on the great concentration of greenhouse gases related mainly as a result of human activity” and “aggravated by a model of development based on the intensive use of fossil fuels . . . is a global problem.” Pope Francis, *Laudato Si’* of the Holy Father Francis on Care for our Common Home 18–19, 20–21 (2015). Accordingly, the letter makes a calling “to devise larger strategies to halt environmental degradation and to encourage a ‘culture of care’ which permeates all of society.” *Id.* at 166–67.

On May 5, 2016, FERC issued a draft Environmental Impact Statement (“EIS”) addressing the issues raised during the scoping period and up to its publication. Notice of the draft EIS was published in the *Federal Register* on May 12, 2016, and mailed to the affected parties, several environmental entities, as well as to additional affected parties that were added after the issuance of the NOI. FERC then held four public comment meetings between June 13 and June 16, 2016, where approximately 203 speakers provided comments regarding the draft EIS. FERC also received

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<sup>2</sup> An encyclical letter is a letter sent by a bishop or high church official that treats a matter of grave or timely importance and is intended for extensive circulation. *Encyclical*, Webster’s Third New International Dictionary 747 (4th ed. 1976).

## App. 9

over 560 written comments from affected parties regarding the draft EIS. As a result of the oral and written comments, FERC postponed the issuance of the final EIS, and nearly 100 additional comments were filed related to the Pipeline Project. The Adorers failed to provide a comment or otherwise participate in any of these fora.

On February 3, 2017, FERC issued an “Order Issuing Certificate” to Transco authorizing the construction and operation of the Pipeline Project. Among other things, the Order granted Transco the right to take private property on the Pipeline Project by eminent domain, should landowners refuse to voluntarily convey a right to use their land. *See* 15 U.S.C. § 717f(h).

Based on the issuance of the Order, the Adorers refused to grant Transco an easement on the land to begin construction.<sup>3</sup> On April 14, 2017, Transco initiated condemnation proceedings against them in the Eastern District of Pennsylvania, pursuant to the NGA and Federal Rule of Civil Procedure 71.1. Two months later, given that the Adorers had failed to answer the complaint or file any sort of responsive motion, Transco filed an “Emergency Motion for Default Judgment and for Possession of Rights of Way in Unopposed Condemnation Action,” and soon after moved for a preliminary injunction for possession of those rights of way, which the Adorers opposed. The District Court then issued an order granting Transco’s

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<sup>3</sup> The Adorers aver that they have “consistently and repeatedly denied all monetary offers from Transco to acquire their Property and made it clear that, as a matter of religious conviction, no amount of money would change their mind.” Adorers Br. 14.

## App. 10

right to condemn the relevant section of the Adorers' land on July 7. On August 23, the District Court entered a preliminary injunction granting Transco access to and the rights of way on the Adorers' land upon the posting of a bond in the amount of \$329,220 (which Transco paid one week later).

The Adorers did not object, appeal or seek rehearing regarding any order issued related to these condemnation proceedings.

Instead, on July 14, 2017, a week after the District Court issued the order granting Transco's right to condemn, the Adorers filed their own complaint against FERC in the Eastern District of Pennsylvania seeking declaratory judgment, alleging that FERC violated their rights under RFRA, and additionally seeking injunctive relief preventing the Pipeline Project from running across their land. They later filed an amended complaint reiterating the same claims, listing additional plaintiffs, and adding Transco as a defendant.<sup>4</sup>

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<sup>4</sup> We need not reach the issue of whether a holder of a section 7 certificate fully assumes the role of a state actor when exercising eminent domain rights. While RFRA, by its terms, only applies to state actors, *see* 42 U.S.C. § 2000bb-1 ("Government shall not substantially burden a person's exercise of religion . . . ."), Transco did not raise a state-actor defense in its briefs or even invoke one in response to questioning at oral argument, *see* Oral Argument at 30:22–31:25, *Adorers of the Blood of Christ v. F.E.R.C.*, No. 17-3163, <http://www.ca3.uscourts.gov/oral-argument-recordings>. Thus, the issue of whether an entity in Transco's position qualifies as a state actor—which we have previously recognized is an open question in our circuit, *see Goadby v. Phila. Elec. Co.*, 639 F.2d 117, 120 n.2 (3d Cir. 1981)—is one we will leave for another day.

## App. 11

In the amended complaint, the Adorers claimed that allowing Transco to complete the Pipeline Project would interfere with their ability to use their land in a manner consistent with their religious beliefs. In particular, the Adorers alleged that the drilling and subsequent extraction of natural gas from wells in the land would cause leakage of methane. This leakage, they contended, would contribute to global warming in a manner contrary to their religious beliefs. The Adorers also alleged that the expansion of natural gas would be harmful to the environment by accelerating global warming and consequently harming the Earth and humans.

On September 28, 2017, the District Court in the RFRA action granted FERC's and Transco's motions to dismiss for lack of subject matter jurisdiction. The court held that RFRA did not allow the Adorers to circumvent the specific procedure prescribed by the NGA for challenging a FERC order. In other words, the Adorers' RFRA claim did not change the basic fact that, under the NGA, "no entity may seek judicial review of a FERC order unless it first sought rehearing from the agency." App. 8. Because the Adorers had failed to seek FERC rehearing, the court concluded that it was foreclosed from hearing their claims. The Adorers then filed this appeal.

**II<sup>5</sup>**

According to the Adorers, the District Court erred in dismissing the complaint for lack of subject matter jurisdiction because RFRA grants them a statutory right to assert an appropriate claim in district court. The NGA, they contend, cannot be used to foreclose that statutory right because Congress explicitly provisioned RFRA to supersede all other Federal law. Thus, to the extent that RFRA and the NGA conflict, the Adorers argue that the latter must yield. While we agree that the NGA would have to necessarily yield to RFRA if the two statutes indeed conflicted, we conclude that the two statutes do not conflict. Rather, the NGA merely provides for complementary procedural requirements that a claimant must adhere to when exercising their RFRA right to a “judicial proceeding.” 42 U.S.C. § 2000bb-1(c).

“When reviewing an order dismissing a claim for lack of subject matter jurisdiction, we exercise plenary review over legal conclusions and review findings of fact for clear error.” *White-Squire v. U.S. Postal Serv.*, 592 F.3d 453, 456 (3d Cir. 2010).

We begin by examining the two statutory schemes that the Adorers argue are in conflict. Section 7 of the NGA grants FERC the authority to approve or deny the construction of interstate natural gas pipelines. *See* 15 U.S.C. § 717f. Indeed, before a private developer can

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<sup>5</sup> “[E]very federal appellate court has a special obligation to ‘satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review[.]’” *Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 177 (3d Cir. 2017) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

## App. 13

begin construction on any pipeline project, FERC must grant the developer a “certificate of public convenience and necessity,” *id.* § 717f(c)(1)(A)—also referred to as a “section 7 certificate” or a “certificate.” FERC may grant a certificate only upon a finding that the project at issue will serve the public interest of convenience and necessity. *Id.* § 717f(e). FERC may also “attach to the issuance of the certificate . . . reasonable terms and conditions as the public convenience and necessity may require.” *Id.* § 717f(e).

Once FERC has issued a certificate to a developer, the certificate holder has the ability to acquire “the necessary right-of-way to construct, operate and maintain a pipe line or pipe lines” from unwilling landowners by eminent domain. *Id.* § 717f(h). As such, any party who is “aggrieved” by a FERC certificate may seek redress by petitioning the federal court of appeals, which would have “exclusive” jurisdiction “to affirm, modify, or set aside” the certificate, provided that the party first seek rehearing before FERC. *Id.* § 717r(a)-(d); *id.* § 717r(b) (“Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States . . . by filing in such court, within sixty days after the order of the Commission upon application for rehearing[.]”).

RFRA, meanwhile, instructs that the “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government demonstrates that the burden “is the least restrictive means” to further a “compelling government interest.”

42 U.S.C. § 2000bb-1(a)–(b). The statute’s judicial relief provision further provides that “[a] person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government.” *Id.* § 2000bb-1(c).

**III**  
**A**

The Adorers contend that the plain language of this judicial relief provision grants them a statutory right to assert their RFRA claim in district court. We disagree. The NGA is a detailed statute, setting forth specific provisions on the procedure by which approval and subsequent review of a pipeline project may be attained. The statute provides that “[a]ny party . . . aggrieved by an order issued by the Commission . . . may obtain a review of such order in the court of appeals of the United States . . . by filing in such court, within sixty days after the order of the Commission upon application for rehearing.” 15 U.S.C. § 717r(b). Once issued, the FERC order was undoubtedly under the exclusive purview of the NGA’s provision for appellate review of the circuit courts of appeals. *See id.* RFRA, on the other hand, provides that “[a] person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a *judicial* proceeding and obtain appropriate relief against the government.” 42 U.S.C. § 2000bb-1(c) (emphasis added). Nowhere does the text specifically confer jurisdiction to the federal district courts to hear RFRA claims.<sup>6</sup>

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<sup>6</sup> Were we to interpret RFRA’s reference to a “judicial proceeding” as necessarily requiring a district court hearing, we would have to

As such, the NGA’s procedural regime is controlling here. It explicitly states that jurisdiction is “exclusive” with “the court[s] of appeals of the United States.” 15 U.S.C. § 717r(b). Moreover, the statute’s exhaustion provision, requiring that objections to FERC’s order be “urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do” before appellate review, *id.*, makes clear Congress’ intent to confer exclusive jurisdiction to the NGA by a highly reticulated statute nullifying any procedural alternatives an aggrieved party may otherwise have. Indeed, the NGA is the exclusive remedy for matters relating to the construction of interstate natural gas pipelines. It forms the paradigm by which FERC operates in matters related to interstate natural gas pipelines. By failing to avail themselves of the protections thereunder, the Adorers have foreclosed judicial review of their substantive RFRA claims.

Besides, even if the NGA did not expressly preclude jurisdiction in this case, we would nonetheless find that it did so implicitly under the two-step framework

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conclude that the NGA unlawfully conflicted with RFRA. *See* 42 U.S.C. § 2000bb-3(a) (“This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.”). But the NGA’s procedural requirements, which permit parties to seek review in a court of appeals following an initial agency hearing, qualify as a “judicial proceeding” under RFRA. Although an agency proceeding alone would not qualify as such a “judicial proceeding,” we conclude that the NGA’s “FERC + Court of Appeals” framework so qualifies. In this sense, then, the NGA and RFRA do not conflict with each other. Rather, the NGA simply lays out what procedural rules a claimant must adhere to when exercising their RFRA right to a “judicial proceeding” in the pipeline context.

provided in *Thunder Basin Coal v. Reich*, 510 U.S. 200 (1994). At the first step, the court asks whether Congress' intent to preclude district court jurisdiction is "fairly discernible in the statutory scheme," based on an examination of the statute's text, structure, and purpose. *Id.* at 207. The second step, in turn, asks whether plaintiffs' claims "are of the type Congress intended to be reviewed within this statutory structure." *Id.* at 212. At this stage the court considers three factors: (1) whether the statutory scheme "foreclose[s] all meaningful judicial review;" (2) the extent to which the plaintiff's claims are "wholly collateral" to the statute's review provision; and (3) whether "agency expertise could be brought to bear on the . . . questions presented." *Id.* at 212–13.

Here, Congress' intent to vest jurisdiction in circuit courts is "fairly discernible in the" NGA. *See Thunder Basin*, 510 U.S. at 207 (setting forth first prong of two-part test). Only "the court of appeals of the United States" where the natural gas company is located or has its principal place of business or the District of Columbia Circuit may "affirm, modify, or set aside [a FERC] order in whole or in part." § 717r(b). By challenging the permissibility of the Pipeline Project under RFRA, the Adorers are seeking to "modify or set aside" FERC's order—a matter the NGA places in the "exclusive" purview of the court of appeals, only after administrative exhaustion.

At step two, we think the Adorers' claims "are of the type Congress intended to be reviewed within this statutory structure." *Thunder Basin*, 510 U.S. at 212. First, the statutory authority, the NGA, does not foreclose all meaningful judicial review because it vests

the courts of appeals with jurisdiction to review FERC orders. *See id.* at 212–13. Second, the claims asserted here are not “wholly collateral” because they “inhere in the controversy,” that is, if the Adorers are successful in their administrative challenge, the FERC order will be modified or set aside. *Id.* Finally, although the constitutional claims may be outside of FERC’s expertise, this is tempered by the court of appeals’s review, which regularly resolves constitutional issues. *See Massieu v. Reno*, 91 F.3d 416, 420 n.4 (3d Cir. 1996) (“[T]he [Thunder Basin] Court’s fundamental point, we think, was that both statutory and constitutional claims could be meaningfully addressed in the court of appeals.”); *see also Elgin v. Dep’t of Treas.*, 567 U.S. 1, 19 (2012) (“We see nothing extraordinary in a statutory scheme that vests reviewable factfinding authority in a non-Article III entity that has jurisdiction over an action but cannot finally decide the legal question to which the facts pertain.”).

We are therefore not convinced that “the plain language of RFRA” grants the Adorers, Adorers Br. 22, the statutory right to assert their RFRA claim in a federal district court. As the Supreme Court has explained, the general “principle” that, “when federal law creates a private right of action . . . district courts possess federal-question jurisdiction under § 1331,” is one that does not “endure[]” where “Congress divests federal courts of their § 1331 adjudicatory authority.” *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 378–79 (2012). Thus, we reject the Adorers’ contention that the District Court committed an error of law when it applied the provisions of the NGA to conclude it lacked

subject matter jurisdiction to hear their substantive RFRA claims.<sup>7</sup>

Our sister circuits also agree. In *American Energy Corporation v. Rockies Express Pipeline LLC*, the Sixth Circuit concluded that the NGA's reticulated procedure provides that the "relevant court of appeals . . . has 'exclusive' jurisdiction 'to affirm, modify, or set aside [FERC's] order in whole or in part'" and that "no entity may seek judicial review of a FERC order unless it first sought rehearing from the agency." 622 F.3d 602, 605

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<sup>7</sup> This analysis is consistent with our decision in *Francis v. Mineta*, 505 F.3d 266 (3d Cir. 2007). In *Francis*, we noted that "Congress did not intend RFRA to subsume other statutory schemes," and thereby acknowledged that "nothing in RFRA alters the exclusive nature of Title VII with regard to employees' claims" because of "Title VII's exclusive and comprehensive scheme." *Id.* at 270. The Court concluded that, despite the plaintiff's attempt to invoke a RFRA claim, Title VII affords plaintiffs "the exclusive remedy for job-related claims of federal religious discrimination." *Id.* at 272.

Judge Stapleton's Concurrence in *Francis*, with which the Majority did "not disagree", *id.* at 272 n.7, is of particular relevance here. Judge Stapleton relied on *Brown v. General Services Administration*, 425 U.S. 820 (1976) to highlight the Supreme Court's analysis in enunciating that Title VII provides "the exclusive, pre-emptive [sic] administrative and judicial scheme for the redress of federal employment discrimination." *Id.* at 272 (Stapleton, J., concurring) (quoting *Brown*, 425 U.S. at 829). As Judge Stapleton observed, the Supreme Court opined that Title VII should supersede general statutes under the canon of statutory interpretation that resolves tension between specific and general statutes, favoring specific statutes. *Francis*, 505 F.3d at 272 (Stapleton, J., concurring). In addition, the Supreme Court reasoned that, as a practical matter, Title VII's remedial provisions would be entirely undermined "if a plaintiff could circumvent its procedural requirements by 'the simple expedient of putting a different label on the pleadings.'" *Id.* (quoting *Brown*, 425 U.S. at 833).

(6th Cir. 2010) (internal citations omitted). The court emphasized that “[e]xclusive means exclusive, and the [NGA] nowhere permits an aggrieved party otherwise to pursue collateral review of a FERC certificate in state court or federal district court.” *Id.*; *see also La Voz Radio de la Comunidad v. F.C.C.*, 223 F.3d 313, 319 (6th Cir. 2000) (concluding that RFRA “does not provide that the ‘judicial proceeding’ must be in the district court as opposed to a designated court of appeals” and reasoning that “Congress has equipped the FCC with an impressive arsenal of remedies,” of which the “effectiveness . . . would be largely nullified if [plaintiffs] could simply run to the district court and enjoin the FCC from utilizing them”); *Gen. Fin. Corp. v. F.T.C.*, 700 F.2d 366, 368 (7th Cir. 1983) (“You may not bypass the specific method that Congress has provided for reviewing adverse agency action simply by suing the agency in federal district court under 1331 or 1337; the specific statutory method, if adequate, is exclusive.”).

Indeed, the Supreme Court has long held that the Federal Power Act’s (“FPA”), statutory review scheme, 16 U.S.C. § 825l, which is materially identical to the NGA’s,<sup>8</sup> “necessarily preclude[s] de novo litigation between the parties of all issues inhering in the controversy, and all other modes of judicial review,” and that challenges brought in the district court outside that scheme are therefore “impermissible collateral attacks.” *City of Tacoma v. Taxpayers of*

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<sup>8</sup> The FPA, 16 U.S.C. § 791a, is a statutory scheme recognized as “substantially identical” to the NGA and subject to “interchangeabl[e]” precedent. *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 578 n.7 (1981).

*Tacoma*, 357 U.S. 320, 336, 341 (1958); *see also Me. Council of the Atl. Salmon Fed. v. Nat'l Me. Fisheries Serv.*, 858 F.3d 690, 693 (1st Cir. 2017) (Souter, J., sitting by designation) (“The Supreme Court has made clear that the jurisdiction provided by [the Federal Power Act’s jurisdictional provision] is ‘exclusive,’ not only to review the terms of the specific FERC order, but over any issue ‘inhering in the controversy.’” (quoting *City of Tacoma*, 357 U.S. at 336)).

Thus, the District Court did not err in concluding that it lacked subject matter jurisdiction.

## B

The Adorers further claim that, even if they had indulged the administrative process, they could not have asserted their rights under RFRA within the NGA because they would have had “to have anticipated a possible RFRA violation and affirmatively acted to become a party to a private third party’s administrative application.” Adorers Br. 41-42. We disagree.<sup>9</sup>

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<sup>9</sup> Our conclusion here should not be interpreted as precluding the filing of a proper freestanding due process claim pursuant to *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976). “The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness.” *Id.* at 348. This is consistent with *Thunder Basin*’s long-standing observation that a district court may hear claims that are considered “wholly collateral” to a statute’s review provisions and outside the agency’s expertise,” where a finding of preclusion potentially forecloses all meaningful judicial review. 510 U.S. at 213–14 (quoting *Heckler v. Ringer*, 466 U.S. 602, 618 (1984)). When such a claim arises, it “may be challenged in a district court,” as long as it is “entirely collateral” and “the petitioner ha[s] made a colorable showing that full postdeprivation relief could not be obtained.” *Id.* at 214 (citations omitted).

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The Adorers' contention is unavailing because FERC may hear any claim raised before it—even potential violations of federal law. There is no inherent inhibition to FERC hearing a potential claim in the first instance because it is statutorily granted the authority to hear any claim from an affected party when raised timely. It may adjudicate these claims in a way it believes appropriate. If an affected party disagrees with the adjudication of her claim, she has the opportunity for direct appeal before a federal court of appeals.<sup>10</sup>

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<sup>10</sup> As proof of this process, Transco submitted an Order of Rehearing issued by FERC related to the Pipeline Project (“28(j) Letter”). The 28(j) Letter indicates that the plaintiffs in that matter requested rehearing on an order issued by FERC authorizing construction and operation of the Pipeline Project, which challenged several potential violations of federal laws. As a result of following the NGA’s procedural process, the plaintiffs’ claims will be heard by the District of Columbia Circuit Court of Appeals. In our view, the 28(j) Letter provides evidence that, when the procedural process of the NGA is adhered to, all issues—whether dispositive or potential—may be addressed at the agency level. If a party is not satisfied with the result at that level, she may seek review in a court of appeals—as the parties in the 28(j) Letter have done. Had the Adorers likewise taken advantage of the NGA’s regime, we see no reason to conclude that they would not have had an opportunity to review their substantive RFRA claims on two levels: at the administrative and the appellate level.

Moreover, just as an objector has a fundamental right to raise concerns prompted by religious beliefs at the administrative level, so, too, FERC bears a commensurate responsibility to carefully consider those objections and to treat respectfully the expression of sincerely-held religious beliefs. *See Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1732 (2018) (an objector is “entitled to a neutral decisionmaker who w[ill] give full and fair consideration to h[er] religious objection”). Likewise, although we hold today that such objections must be raised in the

## App. 22

If the Adorers had participated in the administrative process, FERC may have denied or modified the conditions of Transco’s certificate. Or, if FERC failed to do so, the reviewing court of appeals may have ruled in the Adorers’ favor. Under these circumstances, the Adorers would have, at the very least, had the opportunity to seek the relief they so desire today.<sup>11</sup> But because they failed to engage with the NGA’s procedural regime, we are without jurisdiction to hear the Adorers’ claims.<sup>12</sup>

## IV

For the foregoing reasons, we hold that a claim under RFRA, 42 U.S.C. § 2000bb-1(c), brought pursuant to the general jurisdictional grant of a federal question under 28 U.S.C. § 1331, does not abrogate or provide an exception to a specific and exclusive

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administrative forum under FERC’s exclusive regime to preserve appellate review, nothing in this opinion should be construed to call into question the sincerity of the deeply-held religious beliefs expressed by the Adorers.

<sup>11</sup> While RFRA expressly provides for damages, *see* 42 U.S.C. § 2000bb-1, it appears that the NGA circumscribes FERC’s authority to issue a ruling on the merits of a certificate of public convenience and necessity, *see* 15 U.S.C. § 717f(e), and the Court of Appeals is similarly limited to “affirming, modifying, or setting aside” the certificate, *id.* § 717r(b). Thus, the ability of a RFRA claimant to receive damages through the NGA process may indeed bear on “whether the claims can be afforded meaningful review.” *Thunder Basin*, 510 U.S. at 207. The Adorers did not request damages in their complaint; hence, we need not reach this issue today.

<sup>12</sup> Because we hold that neither the District Court nor this Court have jurisdiction to adjudicate the Adorers’ substantive RFRA claim, we need not address their alternative arguments.

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jurisdictional provision prescribed by Congress for judicial review of an agency's action. Accordingly, we shall affirm the order of the District Court granting Transco's and FERC's motions to dismiss.

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## **APPENDIX B**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA**

**CIVIL ACTION  
NO. 17-3163**

**[Filed September 28, 2017]**

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ADORERS OF THE BLOOD OF CHRIST,	)
UNITED STATES PROVINCE, et al.	)
	)
v.	)
	)
FEDERAL ENERGY REGULATORY	)
COMMISSION, et al.	)
	)

---

**MEMORANDUM**

SCHMEHL, J. /s/ JLS

September 28, 2017

Plaintiffs brought this action claiming that defendant Federal Energy Regulatory Commission (“FERC”) and its Commissioner, defendant Cheryl A. LaFleur, violated the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb, *et seq.* by issuing an Order authorizing defendant Transcontinental Gas Pipeline Company, LLC. (“Transco”) to forcibly take and use land owned by the plaintiffs as part of an interstate fossil fuel pipeline, known as the Atlantic Sunrise Pipeline (the “Pipeline”). Plaintiffs also allege

that Transco violated the RFRA by forcibly taking plaintiffs' land by condemnation. Before the Court are plaintiffs' amended motion for a preliminary injunction and the defendants' motions to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. For the reasons that follow, the motions to dismiss will be granted and the plaintiffs' amended motion for a preliminary injunction will be denied as moot.

Rule 12(b)(1) challenges are either facial or factual attacks. *Kestelboym v. Chertoff*, 538 F. Supp. 2d 813, 815 (D.N.J. 2008). "A facial attack questions the sufficiency of the pleading," and "[i]n reviewing a facial attack, a trial court accepts the allegations in the complaint as true." *Id.* However, "when a court reviews a complaint under a factual attack, the allegations have no presumptive truthfulness, and the court that must weigh the evidence has discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts." *Id.* See also *Carpet Group Int'l v. Oriental Rug Imps. Ass'n, Inc.*, 227 F.3d 62, 69 (3d Cir. 2000); *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). In evaluating a Rule 12(b)(1) motion, "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Mortensen*, 549 F.2d at 891. See also *Carpet Group Int'l*, 227 F.3d at 69. "[T]he existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Mortensen*, 549 F.2d at 891. The plaintiff has the burden of proving that jurisdiction does in fact exist. *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006) (quoting *Mortensen*, 549 F.2d at 891).

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The Amended Complaint alleges that plaintiff Adorers of the Blood of Christ (“Adorers”) is a “vowed religious order of Roman Catholic women whose religious practice includes protecting and preserving creation, which they believe is a revelation of GOD, the sacredness of which must be honored and protected for future generations. The individually named plaintiffs are all Sisters of the Adorers.” [ECF 10, ¶ 1.] Plaintiffs claim the construction and operation of the Pipeline through land they own in Columbia, Pennsylvania would violate their free exercise of religion protected by RFRA. They seek a preliminary injunction enjoining Transco from constructing and operating the Pipeline on their property until this Court has considered their RFRA claim.

On March 31, 2015, Transco filed an application with FERC under section 7(c) of the Natural Gas Act (“NGA”), 15 U.S.C. 717f(c), for authorization to construct and operate the Pipeline. On February 3, 2017, FERC issued a “Certificate of Public Convenience and Necessity” (“FERC Order”) authorizing Transco’s proposed route for the Pipeline that would require use of the Adorers’ property. The FERC Order granted Transco the right to take private property along the route of the Pipeline by eminent domain if landowners such as the Adorers would not agree to voluntarily convey their land. Many interested parties, including affected landowners, requested a rehearing of the FERC Order. Significantly, the Adorers did not present their RFRA claims (or raise any other objections) to FERC either initially or by requesting a rehearing. To date, FERC has not addressed the merits of the requests for rehearing of the FERC Order.

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The Adorers refused to voluntarily convey their land. As a result, on April 14, 2017, Transco filed a “Verified Complaint in Condemnation of Property Pursuant to Fed. R. Civ. P. 71.1” in this Court to condemn a portion of the Adorers’ property to allow Transco to construct, install and operate the Pipeline on the Adorers’ property. The Adorers neither responded to the Verified Complaint nor to Transco’s motion for partial summary judgment on the issue of Transco’s right to condemn. After an evidentiary hearing on July 7, 2017, this Court granted Transco’s motion for Partial Summary Judgment. On August 23, 2017, this Court granted possession of the Adorers’ property to Transco. *Transcontinental Gas Pipe Line Company, LLC. v. Permanent Easement for 1.02 Acres*, No. 17-cv-1725. Doc. 29 (E.D.Pa. Aug. 23, 2017).

The RFRA provides, in pertinent part:

Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except ... [g]overnment may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person---(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000bb—1(a), (b).

In their motions to dismiss for lack of subject matter jurisdiction, FERC and Transco join in arguing that under the NGA, this Court lacks subject matter

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jurisdiction over plaintiffs' RFRA claims. As the law in this area is particularly well-settled, the Court agrees.

As stated succinctly by the Court of Appeals for the Sixth Circuit:

The Natural Gas Act sets forth a highly reticulated procedure for obtaining, and challenging, a FERC certificate to build an interstate pipeline. A party aggrieved by such an order may apply for rehearing before FERC. 15 U.S.C. § 717r(a). And no entity may seek judicial review of a FERC order unless it first sought rehearing from the agency. *Id.* Once FERC concludes the rehearing, the aggrieved party may petition for review either in the D.C. Circuit or in the circuit where the natural gas company is located or has its principal place of business—in this instance, the Third or Fifth Circuit. 15 U.S.C. § 717r(b); R.2 at 3 (the pipeline company is a Delaware LLC and has its principal place of business in Texas). The relevant court of appeals thereafter has 'exclusive' jurisdiction 'to affirm, modify, or set aside [FERC's] order in whole or in part.' 15 U.S.C. § 717r(b); *see also* 15 U.S.C. § 717r(d)(1). **Exclusive means exclusive, and the Natural Gas Act nowhere permits an aggrieved party otherwise to pursue collateral review of a FERC certificate in state court or federal district court.**

\*\*\*\*\*

Now that FERC has issued its final order and now that the coal companies have appealed that

order to the D.C. Circuit, the matter lies within that court's exclusive jurisdiction. 15 U.S.C. § 717r; *see also Williams Natural Gas Co. v. City of Oklahoma City*, 890 F.2d 255, 262 (10th Cir.1989). The coal companies thus may not seek what amounts to a second round of collateral review of FERC's order here. *See Williams Natural Gas Co.*, 890 F.2d at 262.

*Am. Energy Corp. v. Rockies Express Pipeline LLC*, 622 F.3d 602, 605-606 (6th Cir. 2010) (emphasis added); *See also Steckman Ridge GP, LLC v. An Exclusive Nat. Gas Storage Easement Beneath 11.078 Acres*, 2008 WL 4346405, at \*4 (W.D. Pa. Sept. 19, 2008) ("Under the statutory framework, there is no appeal of a FERC decision save to the appropriate Court of Appeals. Disputes as to the propriety of FERC's proceedings, findings, orders, or reasoning, must be brought to FERC by way of request for rehearing. Appeals may thereafter be brought before a U.S. Court of Appeals only.") In short, "§ 717r's exclusivity provision forecloses judicial review of a FERC certificate in district court." *Town of Dedham v. Federal Energy Regulatory Commission*, No. 15-12352, 2015 WL 4274884, at \*1 (D. Mass. July 15, 2015).

Here, plaintiffs do not dispute that they not only failed to apply for a rehearing before FERC, but failed to present their RFRA claims in any manner to the FERC, and ultimately to the appropriate Court of Appeals. [ECF 22, at 19.] Having failed to do so, plaintiffs are barred by 15 U.S.C. §§ 717r(a) and 717r(b) from pursuing what amounts to collateral review of the FERC Order before this Court.

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Plaintiffs argue that such a result conflicts with the “sweeping super-statute” nature of RFRA and further argue that the fact Congress made RFRA applicable “to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993,” …“unless such law explicitly excludes such application by reference to this chapter,” means that RFRA supersedes the exclusive jurisdiction provisions of the NGA. 42 U.S.C. § 2000bb-3(a),(b).

Specifically, plaintiffs argue that the result conflicts with 42 U.S.C. § 2000bb-1(c) which states:

### (c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

42 U.S.C. § 2000bb-1(c). According to plaintiffs, if they are now foreclosed from proceeding with their RFRA claims before this Court, they will have been deprived of their opportunity to assert their RFRA claims in a “judicial proceeding,” as guaranteed by § 2000bb-1(c).

In a case directly on point and not referenced by plaintiffs in their opposition papers, Judge Bartle of this Court rejected these very same arguments. *Radio Luz v. Federal Communications Commission*, 88

F. Supp. 2d 372, *aff'd sub nom.* 213 F. 3d 629 (3d Cir. 2000). Specifically, the Court stated:

The government argues that this court lacks subject matter jurisdiction over the claims raised in plaintiffs' complaints. It contends that pursuant to 47 U.S.C. § 402, it is the United States Court of Appeals, not the district court, that has exclusive jurisdiction to determine the validity of FCC regulations. In essence, it is the government's position that the radio broadcasters are seeking to litigate their claims in the wrong forum. Instead of proceeding in the district court, the government maintains that plaintiffs should first seek to have their constitutional and statutory challenges decided by the FCC and then seek judicial review of any adverse order of the FCC by appealing directly to the court of appeals. [citation omitted]. . . . Plaintiffs assert that this court has jurisdiction because of the federal questions involved and pursuant to 42 U.S.C. § 2000bb. That section sets forth Congress's findings in support of RFRA and its purposes for enacting the statute. Nowhere does the statute specifically confer jurisdiction on federal district courts to hear all RFRA claims. Rather, it states, 'A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.' 42 U.S.C. § 2000bb-1(c). Presumably, plaintiffs are relying on 28 U.S.C. § 1331, which grants federal question jurisdiction to the district courts. **The general jurisdictional grant of**

**§ 1331, however, does not trump a specific jurisdictional provision adopted by Congress for review of an agency action.** See *General Finance Corp. v. FTC*, 700 F.2d 366, 368 (7th Cir. 1983) (Posner, J.). In *General Finance*, the targets of an investigation by the Federal Trade Commission filed suit in the district court seeking a declaratory judgment and an injunction to prevent the agency from investigating their activities. The Court of Appeals for the Seventh Circuit faced the question of whether the district court had jurisdiction over the suit pursuant to § 1331 despite the fact that Congress had prescribed that investigatory targets may obtain judicial review of the agency's investigations only when the agency brings a subpoena enforcement action against the target. See *id.* at 368–69. The Court concluded that the district court did not have jurisdiction. ‘You may not bypass the specific method that Congress has provided for reviewing adverse agency action simply by suing the agency in federal district court under [§] 1331 ... the specific statutory method, if adequate, is exclusive.’ *Id.* at 368.

*Id.* at 374–76 (emphasis added.); see also *La Voz Radio de la Comunidad v. Federal Communications Commission*, 223 F.3d 313, 319 (6th Cir. 2000) (RFRA “provides that a person who believes that his ‘religious exercise’ has been ‘burdened’ in violation of RFRA ‘may assert that violation as a claim or defense in a judicial proceeding . . . .’ It does not provide that the ‘judicial proceeding’ must be in the district court as opposed to a designated court of appeals.”) (citation omitted).

*Williams Nat. Gas Co. v. City of Okla. City*, 890 F.2d 255, 261-62 (10th Cir. 1989) (court “would be hard pressed to formulate a doctrine with a more expansive scope” than the rule that § 717r(b) “preclude[s] de novo litigation between the parties of all issues **inhering in the controversy.**”) (emphasis added); *Me. Council of the Atl. Salmon Fed. v. Nat'l Marine Fisheries Serv.*, No. 16-2155, 2017 WL 2456812, at \*2 (1st Cir. June 7, 2017) (Souter, J., sitting by designation) (“The Supreme Court has made it clear that the jurisdiction provided by [the Federal Power Act’s exclusive jurisdiction provision] is ‘exclusive,’ not only to review the terms of the specific FERC order, but over any issue **‘inhering in the controversy.’**”) (emphasis added).

Plaintiffs’ RFRA claims clearly “inhere in the controversy” between plaintiffs and FERC. Moreover, plaintiffs would have had the opportunity to present their RFRA claims in a judicial proceeding before the appropriate Court of Appeals had they first sought a rehearing before FERC. Having failed to participate at all at FERC, or raise any objections at FERC, either initially or through a rehearing as did the other interested parties, plaintiffs cannot now argue that they have been deprived of the ability to assert their RFRA claims in a judicial proceeding. No matter how sweeping RFRA may be, plaintiffs simply may not bypass the specific procedure established by Congress in the NGA by bringing a RFRA suit against FERC in this Court. See *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 378-79 (“[D]istrict courts possess federal-question jurisdiction” under 28 U.S.C. § 1331 when federal law creates a private right of action, “unless [like here] Congress divests federal courts of their [section] 1331 adjudicatory authority.” Very

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significantly, unlike the NGA, RFRA does not contain an exclusive jurisdictional provision. As none of the cases cited by plaintiffs supports the proposition that RFRA supersedes the NGA's exclusive jurisdiction provision, the motions to dismiss for lack of subject matter jurisdiction are granted and the plaintiffs' motion for a preliminary injunction is denied as moot.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA**

**CIVIL ACTION  
NO. 17-3163**

**[Filed September 28, 2017]**

ADORERS OF THE BLOOD OF CHRIST, )  
UNITED STATES PROVINCE, et al. )  
  )  
  )  
v. )  
  )  
FEDERAL ENERGY REGULATORY )  
COMMISSION, et al. )  
  )  
  )

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**ORDER**

**AND NOW**, this 28<sup>th</sup> day of September, 2017, upon consideration of the defendants' motions to dismiss, the plaintiffs' amended motion for a preliminary injunction and all responses and replies thereto, it is hereby **ORDERED** that:

1. Defendant Transcontinental Gas Pipeline Company's Motion to Dismiss [Doc. 15] is **GRANTED**.
2. Defendant Federal Energy Regulatory Commission and Cheryl A. LaFleur's Motion to Dismiss [Doc. 13] is **GRANTED**.
3. The Amended Complaint [Doc. 10] is **DISMISSED** with prejudice.
4. Plaintiffs' motion for a preliminary injunction [Doc. 11] is **DENIED** as moot.

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5. Plaintiffs' amended motion for a preliminary injunction [Doc. 21] is **DENIED** as moot.
6. Defendant Transcontinental Gas Pipe Line's Motion to Intervene [Doc. 3] is **DENIED** as moot.

**BY THE COURT:**

/s/ Jeffrey L. Schmehl  
**JEFFREY L. SCHMЕHL, J.**

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## **APPENDIX C**

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### **15 U.S.C. § 717 - Regulation of natural gas companies**

\* \* \*

#### **(b) TRANSACTIONS TO WHICH PROVISIONS OF CHAPTER APPLICABLE**

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

#### **15 U.S.C. § 717f - Construction, extension, or abandonment of facilities**

\* \* \*

#### **(c) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

##### **(1)**

**(A) No natural-gas company or person which will be a natural-gas company upon completion**

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of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

**(B)** In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this

section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

**(2)** The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

- (A)** natural gas sold by the producer to such person; and
- (B)** natural gas produced by such person.

\* \* \*

**(e) GRANTING OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the

service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

\* \* \*

**(h) RIGHT OF EMINENT DOMAIN FOR CONSTRUCTION OF PIPELINES, ETC.**

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State

where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

**15 U.S.C. § 717o - Administrative powers of Commission; rules, regulations, and orders**

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

**15 U.S.C. § 717r - Rehearing and review**

**(a) APPLICATION FOR REHEARING; TIME**

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

**(b) REVIEW OF COMMISSION ORDER**

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business,

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or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or

setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

\* \* \*

**28 U.S.C. § 1254 - Courts of appeals; certiorari; certified questions**

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

\* \* \*

**28 U.S.C. § 1291 - Final decisions of district courts**

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

**28 U.S.C. § 1331 - Federal question**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

**28 U.S.C. § 1343 - Civil rights and elective franchise**

**(a)** The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

\* \* \*

**(4)** To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

\* \* \*

**42 U.S.C. § 1988 - Proceedings in vindication of civil rights**

**(a) APPLICABILITY OF STATUTORY AND COMMON LAW**

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the

constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

**(b) ATTORNEY'S FEES**

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

**(c) EXPERT FEES**

In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

**42 U.S.C. § 2000bb - Congressional findings and declaration of purposes**

**(a) FINDINGS** The Congress finds that—

- (1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;
- (2) laws “neutral” toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;
- (3) governments should not substantially burden religious exercise without compelling justification;
- (4) in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
- (5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

**(b) PURPOSES** The purposes of this chapter are—

- (1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

**(2)** to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

**42 U.S.C. § 2000cc - Protection of land use as religious exercise**

**(a) SUBSTANTIAL BURDENS**

**(1) GENERAL RULE** No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

**(A)** is in furtherance of a compelling governmental interest; and

**(B)** is the least restrictive means of furthering that compelling governmental interest.

**(2) SCOPE OF APPLICATION** This subsection applies in any case in which—

**(A)** the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

**(B)** the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

**(C)** the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

**(b) DISCRIMINATION AND EXCLUSION**

**(1) EQUAL TERMS**

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

**(2) NONDISCRIMINATION**

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

**(3) EXCLUSIONS AND LIMITS** No Government Shall Impose or Implement a Land Use Regulation That—

**(A)** totally excludes religious assemblies from a jurisdiction; or

**(B)** unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

**18 C.F.R. § 157.10 - Interventions and protests.**

**(a)** Notices of applications, as provided by § 157.9, will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by § 385.214 of this chapter, desiring to intervene may file its notice of intervention.

**(1)** Any person filing a petition to intervene or notice of intervention shall state specifically whether he seeks formal hearing on the application.

**(2)** Any person may file to intervene on environmental grounds based on the draft environmental impact statement as stated at § 380.10(a)(1)(i) of this chapter. In accordance with that section, such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement.

**(3)** Failure to make timely filing will constitute grounds for denial of participation in the absence of extraordinary circumstances or good cause shown.

**(4)** Protests may be filed in accordance with § 385.211 of this chapter within the time permitted by any person who does not seek to participate in the proceeding.

\* \* \*

**18 C.F.R. § 385.214 Intervention (Rule 214).**

**(a) *Filing.***

**(1)** The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

**(2)** Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

**(3)** Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

**(4)** No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter.

**(b) *Contents of motion.***

**(1)** Any motion to intervene must state, to the extent known, the position taken by the movant and the basis in fact and law for that position.

**(2)** A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

**(i)** The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

**(ii)** The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

**(A)** Consumer,

**(B)** Customer,

**(C)** Competitor, or

**(D)** Security holder of a party; or

**(iii)** The movant's participation is in the public interest.

**(3)** If a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived.

**(c) *Grant of party status.***

**(1)** If no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to

intervene is filed, the movant becomes a party at the end of the 15 day period.

**(2)** If an answer in opposition to a timely motion to intervene is filed not later than 15 days after the motion to intervene is filed or, if the motion is not timely, the movant becomes a party only when the motion is expressly granted.

**(d) *Grant of late intervention.***

**(1)** In acting on any motion to intervene filed after the period prescribed under Rule 210, the decisional authority may consider whether:

**(i)** The movant had good cause for failing to file the motion within the time prescribed;

**(ii)** Any disruption of the proceeding might result from permitting intervention;

**(iii)** The movant's interest is not adequately represented by other parties in the proceeding;

**(iv)** Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and

**(v)** The motion conforms to the requirements of paragraph (b) of this section.

**(2)** Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of that motion.

**(3)**

**(i)** The decisional authority may impose limitations on the participation of a late intervener to avoid delay and prejudice to the other participants.

**(ii)** Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record was developed prior to the late intervention.

**(4)** If the presiding officer orally grants a motion for late intervention, the officer will promptly issue a written order confirming the oral order.

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## **APPENDIX D**

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**80 Fed Reg. 20213**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. CP15-138-000; PF14-8-000]**

**[Dated April 15, 2015]**

**Transcontinental Gas Pipe Line Company, LLC;  
Notice of Application**

Take notice that on March 31, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, TX 77251-1396 filed an application pursuant to section 7 (c) of the Natural Gas Act requesting authorization to construct and operate its Atlantic Sunrise Project to provide 1,700,002 dekatherms per day of capacity from northern Pennsylvania to Alabama. Specifically, Transco requests authorization to construct (i) 57.3 miles of 30-inch diameter pipeline and 125.2 miles of 42-inch diameter pipeline in Pennsylvania; (ii) two new compressor stations totaling 70,000 horsepower (hp) in Pennsylvania; (iii) the addition of 62,000 hp at three existing compressor stations in Pennsylvania and Maryland; and (iv) to modify its existing system to enable north-to-south flow, all as more fully set forth in the application. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the

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docket number excluding the last three digits in the docket number field to access the document. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the proposed project should be directed to Bill Hammons at Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, TX 77251 or at (713) 215–2130 or Scott Turkington, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, TX 77251–1396 or at (713) 215–3391(phone), or *scott.c.turkington@williams.com*.

On April 4, 2014, the Commission staff granted Transco’s request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF14–8–000 to staff activities involving the project. Now, as of the filing of this application on March 31, 2015, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15–138–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission’s rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental impact statement (EIS) and place it into the Commission’s public record (eLibrary) for this proceeding; or issue a Notice of Schedule for

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**Environmental Review.** If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EIS for this proposal. The filing of the EIS in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to

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participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory

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Commission, 888 First Street NE., Washington, DC  
20426.

*Comment Date:* April 29, 2015.

Dated: April 8, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-08553 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

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## APPENDIX E

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158 FERC ¶ 61,125  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting  
Chairman;  
Norman C. Bay, and Colette  
D. Honorable.

Transcontinental Gas Pipe Line Company, LLC  
Docket No. CP15-138-000

### ORDER ISSUING CERTIFICATE

(Issued February 3, 2017)

1. On March 31, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for authorization to construct and operate its proposed Atlantic Sunrise Project in Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina. The purpose of the project is to increase firm incremental transportation service on the Transco system by 1,700,002 dekatherms (Dth) per day.

2. For the reasons discussed below, the Commission grants Transco's requested certificate authorizations, subject to conditions.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2016).

**I. Background**

3. Transco,<sup>3</sup> a Delaware limited liability company, is a natural gas company<sup>4</sup> that transports natural gas in interstate commerce through its natural gas transmission system

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<sup>3</sup> Transco is a wholly-owned subsidiary of Williams Partners Operating LLC, which is a subsidiary of Williams Partners L.P., which is a subsidiary of the Williams Companies, Inc. On February 2, 2015, Williams Partners L.P. merged with and into Access Midstream Partners, L.P. Transco's subsidiaries are Cardinal Operating Company, LLC; Cardinal Pipeline Company, LLC; Pine Needle Operating Company, LLC; TransCardinal Company, LLC; and TransCardinal LNG Company, LLC.

<sup>4</sup> See 15 U.S.C. § 717a(6) (2012).

[pp.71-72]

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>233</sup>

## **VI. Conclusion**

174. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted, and upon consideration of the record,

### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to Transco, authorizing it to construct and operate the proposed Atlantic Sunrise Project, as described and conditioned herein, and as more fully described in the application as supplemented.

(B) A certificate of public convenience and necessity is issued under section 7(c) of the NGA authorizing Transco to lease from Meade, as described

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<sup>233</sup> See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

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more fully in the body of this order and in the application.

(C) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) Transco's proposed Atlantic Sunrise Project being constructed and made available for service within 3 years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) Transco's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Transco's compliance with the environmental conditions listed in Appendix C to this order; and
- (4) Transco's execution of firm contracts for volumes and service terms equivalent to those in its precedent agreements, prior to the commencement of construction.

(D) Transco is required to maintain separate accounting and reporting for the lease facilities, including separate accounting of the fuel costs due to compression, as explained in the body of this order, in a manner to comply with the requirements of section 154.309 of the Commission's regulations.

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(E) Transco's initial incremental reservation charge under Rate Schedule FT as recalculated for the project to reflect the removal of variable costs is approved, as discussed above.

(F) Transco is required to charge its generally applicable Rate Schedule FT Zones 4, 5 and 6, commodity charge as part of its initial recourse rate.

(G) Transco's request for use of system fuel retention and electric power rates is approved.

(H) Transco shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(S E A L )

Kimberly D. Bose,  
Secretary.

\* \* \*

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## **Appendix C**

### **Environmental Conditions**

As recommended in the EA, this authorization includes the following conditions:

As recommended in the final environmental impact statement (EIS) and otherwise amended herein, this authorization includes the following conditions. The section number in parentheses at the end of a condition corresponds to the section number in which the measure and related resource impact analysis appears in the final EIS.

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EIS, unless modified by the order. Transco must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

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2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Atlantic Sunrise Project. This authority shall allow:
  - a. the modification of conditions of the order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction (and operation).
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location(s) shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this order. All requests for modifications of environmental conditions of this

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order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Transco's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this order must be consistent with these authorized facilities and locations. Transco's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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This requirement does not apply to extra workspace allowed by Transco's Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by this order;

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- b. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
- c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- e. the location and dates of the environmental compliance training and instructions Transco will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
- f. the company personnel (if known) and specific portion of Transco's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

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- i. the completion of all required surveys and reports;
  - ii. the environmental compliance training of on-site personnel;
  - iii. the start of construction; and
  - iv. the start and completion of restoration.
7. Transco shall employ a team of EIs (i.e., two or more or as may be established by the Director of OEP) per construction spread. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of this order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.

8. **Beginning with the filing of its Implementation Plan**, Transco shall file updated status reports with the Secretary, with copies provided to the appropriate Pennsylvania Department of Environmental Protection (PADEP) representative, on a weekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. an update on Transco's efforts to obtain the necessary federal and state authorizations;
  - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Federal Energy Regulatory Commission [FERC or Commission] and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;

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- f. a description of any landowner/resident complaints that may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. Transco shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Transco shall mail the complaint procedures to each landowner whose property would be crossed by the project.
    - a. In its letter to affected landowners, Transco shall:
      - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
      - ii. instruct the landowners that if they are not satisfied with the response, they should call Transco's Hotline; the letter should indicate how soon to expect a response; and

- iii. instruct the landowners that if they are still not satisfied with the response from Transco's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
- b. In addition, Transco shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
  - i. the identity of the caller and date of the call;
  - ii. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
  - iii. a description of the problem/concern; and
  - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
- 10. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
- 11. Transco must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way

and other areas affected by the project are proceeding satisfactorily.

12. **Within 30 days of placing the authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Transco has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
13. **Prior to construction**, Transco shall file with the Secretary a revised alignment sheet that incorporates the Kochan Preferred Alternative 1 between mileposts (MP) M-0142 0.1 and M-0142 0.4 into the proposed route. (*Section 3.3.2*)
14. **Prior to construction**, Transco shall file with the Secretary a revised alignment sheet that incorporates the Byron Reroute along Central Penn Line (CPL) North between MPs 23.3 and 24.1 into the proposed route. (*Section 3.3.2*)
15. **Prior to construction across the Byron property**, Transco shall develop and file with the Secretary, for review and written approval

by the Director of OEP, a schedule for construction and restoration activities on the Byron property that minimizes conflict with the planned public use of the property. Transco shall develop the restoration activities in consultation with the Byrons. (*Section 3.3.2*)

16. **Prior to construction**, Transco shall further assess the pipeline alignment and workspace requirements in coordination with Mr. Shannon and file with the Secretary, for the review and written approval by the Director of OEP, revised alignment sheets and documentation of its landowner consultation regarding the crossing of Mr. Shannon's property associated with the revised Route Deviation M-0431 between MPs M-0423 2.8 and M-0423 3.0. (*Section 3.3.2*)
17. **Prior to construction**, Transco shall file with the Secretary a revised alignment sheet that incorporates the Option A, B, or C valve site location for Alternative 24D. (*Section 3.3.2*)
18. **Prior to construction**, Transco shall file documentation that it has acquired the necessary easement on tract PA-LA-137\_B.000 along the proposed route. In the event that Transco is unsuccessful in acquiring the necessary easement, Transco shall incorporate the Conestoga River Alternative into the proposed route. (*Section 3.3.2*)
19. **Prior to construction**, Transco shall file with the Secretary a revised alignment sheet that incorporates the Sharon and Russel Olt Option

2 Alternative between MPs 66.9 and M-0196 0.2 into the proposed route. (*Section 3.3.2*)

20. **Prior to construction**, Transco shall further assess the pipeline alignment and workspace requirements in coordination with Mr. Goehring and file with the Secretary, for the review and written approval by the Director of OEP, revised alignment sheets and documentation of its landowner consultation regarding the crossing of Mr. Goehring's property associated with Route Deviation M-0209. (*Section 3.3.3*)
21. **With its Implementation Plan**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a final Abandoned Mine Investigation and Mitigation Plan. The final plan shall include the results of all abandoned mine land investigations, the results of secondary investigations to further characterize potential mine-related features, and site-specific mitigation and monitoring measures Transco will implement when crossing abandoned mine lands, including measures to manage and dispose of contaminated groundwater. (*Section 4.1.7*)
22. **With its Implementation Plan**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a final Karst Investigation and Mitigation Plan. The final plan shall include results of missing karst survey areas and any additional karst features identified through examination of the 1937 to 1942 aerial photography, 2014 Light Detection

and Ranging (LiDAR) imagery, and 1999 color infrared imagery. (*Section 4.1.7*)

23. **With its Implementation Plan**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, an Abandoned Mine Investigation and Mitigation Plan that:
  - a. identifies methods and surveys completed to define the locations of existing mine fires near the project and the depth and extent of coal seams that could pose a risk to the project facilities;
  - b. identifies any mitigation measures that Transco will implement to protect the integrity of the pipeline from underground mine fires during the lifetime operation of the project; and
  - c. provides for revisions to the pipeline route if it is found that pipeline integrity could be compromised anytime during the lifetime operation of the project due to the current and future predicted location of the mine fires. (*Section 4.1.7*)
24. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a revised table 4.3.1-2 that includes an updated list of water wells and springs within 150 feet of construction workspaces based on completed surveys. This table shall indicate any water wells and springs that are within 500 feet of construction workspaces in areas of known karst. (*Section 4.3.1.4*)

25. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a Well and Spring Monitoring Plan for the pre- and post-construction monitoring of well yield and water quality of wells within 150 feet of the construction workspace and, in areas of known karst terrain, of wells within 500 feet of the construction workspace. **Within 30 days of placing the project facilities in service**, Transco shall file with the Secretary a report describing any complaints it received regarding water well yield or quality, the results of any water quality or yield testing performed, and how each complaint was resolved. (*Section 4.3.1.7*)
26. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a notification plan developed in consultation with surface water intake operators. The notification plan shall identify the specific points of contact and procedures that Transco will implement in the event of an inadvertent release of hazardous materials within 3 miles upstream of a surface water intake or within Zone A source water protection areas. (*Section 4.3.2.6*)
27. **Prior to construction**, Transco shall file with the Secretary, and provide to other applicable agencies, a schedule identifying when trenching or blasting will occur within each waterbody greater than 10 feet wide, or within any coldwater fishery. Transco shall revise the

schedule as necessary to provide **at least 14 days advance notice**. Changes within this last 14-day period must provide for **at least 48 hours advance notice**. (Section 4.3.2.6)

28. **In the event that the horizontal directional drill of the Central Penn Line North Susquehanna River, Central Penn Line South Susquehanna River, Conestoga River, or Interstate 80 (I-80)/Little Fishing Creek fails**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, final site-specific crossing plans concurrent with its application to the U.S. Army Corps of Engineers for an alternative crossing method. These plans shall include scaled drawings identifying all areas that will be disturbed by construction and a description of the mitigation measures Transco will implement to minimize effects on water quality and recreational boating. In addition, a scour analysis shall be conducted for each crossing and filed concurrently with the site-specific crossing plan. (Section 4.3.2.6)
29. **With its Implementation Plan**, Transco shall file with the Secretary additional justification for the additional temporary workspace associated with the waterbodies identified in bold in table K-5 in appendix K of the EIS. (Section 4.3.2.6)
30. **With its Implementation Plan**, Transco shall file with the Secretary additional justification for the additional temporary workspace associated with the wetlands identified in bold

in table L-2 in appendix L of the EIS. (*Section 4.4.5*)

31. **Prior to construction**, Transco shall file with the Secretary a final copy of the Permittee-Responsible Mitigation Plan, including any comments and required approvals from the U.S. Army Corps of Engineers and the PADEP. The plan shall designate wetland seed mixes to be used and which agency recommended them. (*Section 4.4.6*)
32. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, complete results of noxious weed surveys and a final Noxious and Invasive Plant Management Plan. The final Noxious and Invasive Plant Management Plan shall be revised to include mitigation measures to prevent forest disease spread from the construction corridor. (*Section 4.5.4*)
33. **Prior to construction of project facilities in Pennsylvania**, Transco shall file with the Secretary all documentation of its correspondence with the Pennsylvania Game Commission and the Pennsylvania Department of Conservation and Natural Resources and any avoidance or mitigation measures developed with these agencies regarding the State Game Land and Sproul State Forest crossings. (*Section 4.6.1.2*)
34. **With its Implementation Plan**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, its

memorandum of understanding with the U.S. Fish and Wildlife Service (FWS) regarding the voluntary conservation measures that Transco will provide to offset the removal of upland forest and indirect impacts on interior forests. *(Section 4.6.1.3)*

35. **With its Implementation Plan**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a complete set of site-specific residential construction plans for all project facilities. For all residences located within 10 feet of the construction work area, the plans shall be revised to either: (1) modify the construction work area so that it is not closer than 10 feet to a residence, or (2) provide site-specific justification, including documentation of landowner or resident concurrence with the plan, for the use of any construction workspace within 10 feet of a residence. *(Section 4.8.3.1)*
36. **Prior to construction across the commercial property at 1010 Susquehannock Drive near Central Penn Line South MPs 2.0 and 2.1**, Transco shall file with the Secretary, for review and approval by the Director of OEP, a site-specific plan for minimizing impacts on the commercial structures, stormwater management facilities, and planned future warehouse expansion on the property, including documentation of consultation with the owner. *(Section 4.8.3.1)*
37. **Prior to construction across the Justin and Susan Cappiello property**, Transco shall file with the Secretary, for review and written

approval by the Director of OEP, a site-specific plan for minimizing construction impacts on the Cappiello's newly constructed barn including documentation of consultation with the landowner. (*Section 4.8.3.1*)

38. **With its Implementation Plan**, Transco shall file with the Secretary the final results of consultations with the landowner/developer of the Eastern Land and Resources Corporation commercial and residential development, including any project modifications or mitigation measures Transco will implement to minimize impacts on the Eastern Land and Resources Corporation development. (*Section 4.8.3.2*)
39. **Prior to construction across the McCallum property**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a plan to minimize impacts on the market garden and previously unidentified greenhouse structure. (*Section 4.8.4*)
40. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, an organic certification mitigation plan developed in consultation with Pennsylvania Certified Organic to ensure organic certification is maintained on the organic farms crossed by the project. The plan shall include:
  - a. specific mitigation measures to be implemented to maintain certification during and after construction of the project;

- b. a plan for addressing complaints from landowners regarding loss of certification during and after construction, including measures to facilitate reinstatement of certification or to compensate the landowner if certification is lost or canceled; and
  - c. copies of consultations with Pennsylvania Certified Organic. *(Section 4.8.4.1)*
- 41. **With its Implementation Plan**, Transco shall file copies of correspondence with the Pennsylvania Department of Conservation and Natural Resources confirming all Pennsylvania Department of Conservation and Natural Resources -funded properties crossed by the project have been identified and any change in use or transfer of rights for the Pennsylvania Department of Conservation and Natural Resources -funded properties is in compliance with Pennsylvania Department of Conservation and Natural Resources' conversion policies. *(Section 4.8.6.1)*
- 42. **With its Implementation Plan**, Transco shall file with the Secretary final sitespecific crossing plans for each of the recreation and special interest areas listed as being crossed or otherwise affected in table 4.8.6-1. The site-specific crossing plans shall include, as applicable:
  - a. site-specific timing restrictions;
  - b. proposed closure details and notifications (e.g., reroutes, signage, public notices);

- c. specific safety measures; and/or
- d. other mitigation Transco will implement to minimize effects on the recreation areas and their users during construction and operation of the project.

In addition, the site-specific crossing plan for State Game Land 206 shall include specific safety measures Transco will implement during work activities in the vicinity of the on-site shooting range. (*Section 4.8.6.1*)

43. Transco shall notify the U.S. Department of Agriculture's Natural Resources Conservation Service (Conservation Service) **at least 1 week prior to the start of construction activities within each** Conservation Service -held **easement** to facilitate Conservation Service monitoring of construction and restoration of disturbed areas within the Conservation Service -held easements. The Conservation Service notifications shall be documented in Transco's **weekly** status reports. (*Section 4.8.6.2*)
44. **With its Implementation Plan**, Transco shall file with the Secretary a revised table 4.8.6-3 that includes any newly identified conservation easements including copies of correspondence documenting any mitigation measures Transco will implement based on its consultation with the administering agency or agencies. (*Section 4.8.6.2*)
45. **Prior to construction**, Transco shall file with the Secretary copies of the Aids to Navigation Plans, approved by the Pennsylvania Fish and

Boat Commission, for each of the waterbody crossings listed in table 4.8.6-4. (*Section 4.8.6.3*)

46. Transco shall file with the Secretary reports describing any documented complaints from a homeowner that a homeowner's insurance policy was cancelled, voided, or amended due directly to the grant of the pipeline right-of-way or installation of the pipeline and/or that the premium for the homeowner's insurance increased materially and directly as a result of the grant of the pipeline right-of-way or installation of the pipeline. The reports shall also identify how Transco has mitigated the impact. **During construction**, these reports shall be included in Transco's **weekly** status reports (see recommendation 8) and in **quarterly reports for a 2-year period** following in-service of the project. (*Section 4.9.6*)
47. Transco shall not begin construction of facilities in Pennsylvania or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
  - a. Transco completes the remaining cultural resources surveys and files with the Secretary all remaining cultural resources survey and evaluation reports, any necessary avoidance or treatment plans that outline measures to avoid, reduce, and/or mitigate, effects on historic properties, and the Pennsylvania State Historic Preservation Office's comments on the reports and plans;

- b. Transco completes the remaining geomorphological investigation of the west bank of Swatara Creek and files the report with the Secretary;
- c. the Advisory Council of Historic Preservation is provided an opportunity to comment on the undertaking if historic properties would be adversely affected; and
- d. the Commission staff reviews and the Director of OEP approves all cultural resources survey reports and plans, and notifies Transco in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the Secretary containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”** (*Section 4.10.5*)

48. **Prior to construction in Lancaster County**, Transco shall file with the Secretary final evidence of an enforceable transfer of oxides of nitrogen (NO<sub>x</sub>) emission reduction credits to offset the estimated 2017 NO<sub>x</sub> construction emissions for Lancaster County, Pennsylvania that exceed General Conformity thresholds. Transco must notify Commission staff if the transfer does not execute or significant changes to the project require a reevaluation of General Conformity. (*Section 4.11.1.2*)

49. **Prior to construction**, Transco shall file with the Secretary, for review and written approval by the Director of OEP, a Construction Emission Plan identifying how Transco would track its construction schedule for each component of the project within the Lebanon County PM<sub>2.5</sub><sup>234</sup> Nonattainment Area and ensure that construction emissions of NO<sub>x</sub> would remain below the General Conformity applicability threshold. If a change in the construction schedule or Project results in emissions of NO<sub>x</sub> greater than the General Conformity applicability threshold of 100 tons per year, Transco shall provide and document all mitigation measures it will implement to comply with the General Conformity regulations at 40 C.F.R. § 93.158. (*Section 4.11.1.2*)
50. Transco shall review the Northeast Diesel Collaborative's recommendations for reducing diesel emissions from new on- and off-road construction equipment and indicate **in the project's Implementation Plan** what measures it would implement. (*Section 4.11.1.3*)
51. Transco shall continue to operate the existing air quality monitors at Compressor Stations 517, 520, and 190 for carbon dioxide (CO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), inhalable particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>) and 2.5 microns (PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>) **for a period of 3 years after the newly modified facilities begin**

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<sup>234</sup> PM<sub>2.5</sub> stands for inhalable particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.

**operation.** Transco shall file **quarterly** air quality monitoring reports with the Secretary. In the event that the air quality monitoring shows a violation of the National Ambient Air Quality Standards, Transco shall immediately contact the state air quality agency to report the violation and establish a plan of action to correct the violation in accordance with the terms of the facility air permit and applicable state law. *(Section 4.11.1.3)*

52. **Prior to construction at the Central Penn Line South I-80/Little Fishing Creek horizontal directional drill at milepost M-0423 3.3,** Transco shall file with the Secretary, for review and written approval by the Director of OEP, the results of the noise impact assessment for the nearest noise-sensitive areas within a 0.5-mile radius of the horizontal directional drill- entry and exit points. If the results of the noise impact assessment indicate that the estimated noise attributable to horizontal directional drill-equipment operations would exceed FERC's day-night sound level ( $L_{dn}$ ) criterion of 55 decibels on the A-weighted scale (dBA) at any of the noise-sensitive areas, Transco shall provide additional information on the mitigation measures, such as sound barriers, that will be implemented to reduce noise levels below 55 dBA. *(Section 4.11.2.2)*
53. Transco shall file **in its weekly construction status reports** the following information for the Central Penn Line North Susquehanna River horizontal directional drill-entry site and the

Central Penn Line South Conestoga River horizontal directional drill-entry and exit sites:

- a. the noise measurements from the nearest noise-sensitive area for the Central Penn Line North Susquehanna River horizontal directional drill-entry site and the Central Penn Line South Conestoga River horizontal directional drill-entry and exit sites, obtained at the start of drilling operations;
  - b. any noise mitigation that Transco implemented at the start of drilling operations; and
  - c. any additional mitigation measures that Transco will implement if the initial noise measurements exceed an Ldn of 55 dBA at the nearest noise-sensitive area. (*Section 4.11.2.3*)
54. Transco shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized units at Compressor Stations 517 and 190 in service. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at Compressor Stations 517 and 190 under interim or full horsepower load conditions exceeds an  $L_{dn}$  of 55 dBA at any nearby noise-sensitive areas, Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the

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in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (Section 4.11.2.3)

55. Transco shall conduct a noise survey at Compressor Station 520 to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above an  $L_{dn}$  of 55 dBA at the nearby noise-sensitive areas. The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified units in service. If any of these noise levels are exceeded, Transco shall, **within 1 year** of the in-service date, implement additional noise control measures to reduce the operating noise level at the noise-sensitive areas to at or below the previously existing noise level. Transco shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (Section 4.11.2.3)
56. Transco shall file a noise survey with the Secretary **no later than 60 days** after placing Compressor Stations 605 and 610 in service. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at Compressor Stations 605 and 610

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under interim or full horsepower load conditions exceeds an  $L_{dn}$  of 55 dBA at any nearby noise-sensitive areas, Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (*Section 4.11.2.3*)

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## APPENDIX F

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA**

**CIVIL ACTION-LAW  
Docket No. 5:17-CV-01725**

**[Filed August 23, 2017]**

---

TRANSCONTINENTAL GAS	)
PIPE LINE COMPANY, LLC	)
2800 POST OAK BOULEVARD	)
HOUSTON, TEXAS 77251-1396,	)
	)
Plaintiff,	)
v.	)
	)
PERMANENT EASEMENT FOR	)
1.02 ACRES AND TEMPORARY	)
EASEMENTS FOR 1.65 ACRES IN	)
WEST HEMPFIELD TOWNSHIP,	)
LANCASTER COUNTY,	)
PENNSYLVANIA, TAX PARCEL	)
NUMBER 3000462100000	)
	)
ADORERS OF THE BLOOD OF	)
CHRIST, UNITED STATES	)
PROVINCE, N/K/A ADORERS OF	)
THE BLOOD OF CHRIST, UNITED	)
STATES REGION, SUCCESSOR	)
BY MERGER TO ADORERS OF THE	)

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BLOOD OF CHRIST, PROVINCE OF )  
COLUMBIA, PA, INC., F/K/A SAINT )  
JOSEPH CONVENT MOTHERHOUSE )  
OF THE ADORERS OF THE BLOOD )  
OF CHRIST, COLUMBIA, )  
PENNSYLVANIA, INC., ALSO F/K/A )  
SAINT JOSEPH'S CONVENT, )  
MOTHER HOUSE OF SISTER )  
ADORERS OF THE MOST PRECIOUS )  
BLOOD, COLUMBIA, PA, A/K/A )  
SISTERS ADORERS OF THE MOST )  
PRECIOUS BLOOD, ST. JOSEPH )  
CONVENT, COLUMBIA, PA C/O )  
CORPORATION SERVICE CO. )  
2595 INTERSTATE DRIVE, SUITE 103 )  
HARRISBURG, PA 17110 )  
 )  
AND ALL UNKNOWN OWNERS )  
 )  
Defendants. )  
 )

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**ORDER**

AND NOW, this 23<sup>RD</sup> day of August, 2017, upon consideration of Plaintiff's Omnibus Motion for Preliminary Injunction for Possession of Rights of Way by August 18, 2017 Pursuant to the Natural Gas Act and Federal Rules of Civil Procedure 71.1 and 65, and the accompanying documents, Defendant's opposition thereto, Plaintiff's Reply, and after a hearing and oral argument, it is hereby **ORDERED** that the Motion is **GRANTED**. It is further **ORDERED** as follows:

- (1) Transcontinental Gas Pipe Line Company, LLC ("Transco") has the substantive right to condemn

the following easements and rights of way (collectively referred to as the “Rights of Way”):

- a. A permanent right of way and easement of 1.02 acres, as described as “Area of Proposed CPLS R/W” in Exhibit A to the Verified Complaint, for the purpose of constructing, operating, maintaining, altering, repairing, changing but not increasing the size of, replacing and removing a pipeline and all related equipment and appurtenances thereto (including but not limited to meters, fittings, tie-overs, valves, cathodic protection equipment, and launchers and receivers) for the transportation of natural gas, or its byproducts, and other substances as approved by the Order of the Federal Energy Regulatory Commission dated February 3, 2017, Docket No. CP15-138-000, 158 FERC ¶ 61,125 (2017), and conducting all other activities as approved by the Order of the Federal Energy Regulatory Commission dated February 3, 2017, Docket No. CP15-138-000, 158 FERC ¶ 61,125 (2017); together with all rights and benefits necessary or convenient for the full enjoyment or use of the right of way and easement. Further, the landowner shall not build any permanent structures on said permanent right of way or any part thereof, will not change the grade of said permanent right of way, or any part thereof, will not plant trees on said permanent right of way, or any part thereof, or use said permanent right of way or any part thereof for a road, or use said

permanent right of way or any part thereof in such a way as to interfere with Transco's immediate and unimpeded access to said permanent right of way, or otherwise interfere with Transco's lawful exercise of any of the rights herein granted without first having obtained Transco's approval in writing; and the landowner will not permit others to do any of said acts without first having obtained Transco's approval in writing. Transco shall have the right from time to time at no additional cost to landowners to cut and remove all trees including trees considered as a growing crop, all undergrowth and any other obstructions that may injure, endanger or interfere with the construction and use of said pipeline and all related equipment and appurtenances thereto; and

- b. Temporary easements of 1.65 acres, as described as "Area of Proposed Temporary Work Space #1" and "Area of Proposed Temporary Work Space #2" in Exhibit A to the Verified Complaint, for use during the pipeline construction and restoration period only for the purpose of ingress, egress and regress and to enter upon, clear off and use for construction and all other activities approved by the Order of the Federal Energy Regulatory Commission dated February 3, 2017, Docket No. CP15-138-000, 158 FERC ¶ 61,125 (2017).

(2) Upon filing the bond required below, beginning August 18, 2017, Transco is granted access to, possession of and entry to the Rights of Way for all purposes allowed under the Order of the Federal Energy Regulatory Commission dated February 3, 2017, Docket No. CP15-138-000, 158 FERC ¶ 61,125 (2017);

(3) In the event of a violation of this Order by Defendants, such as interference with Transco's possession of the Rights of Way by Defendants or by third parties who are authorized by Defendants to be on the Property, the U.S. Marshal Service, or a law enforcement agency it designates, shall be authorized to investigate and to arrest, confine in prison and/or bring before the Court any persons found to be in violation of this Order and in contempt of this Order, pending his/her compliance with the Court's Order.

(4) Transco shall post a bond in the amount of \$329,220.00 as security for the payment of just compensation to Defendants.

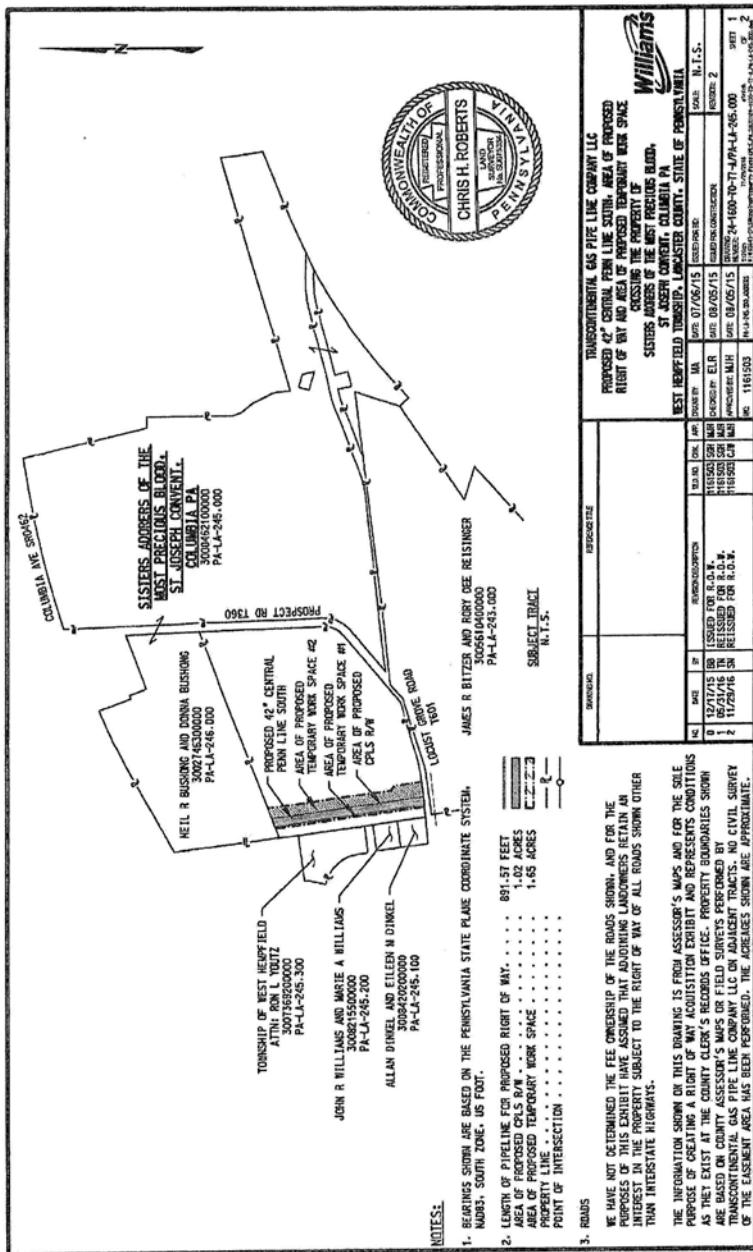
(5) Transco shall record this Order in the Office of the Recorder of Deeds for Lancaster County, Pennsylvania.

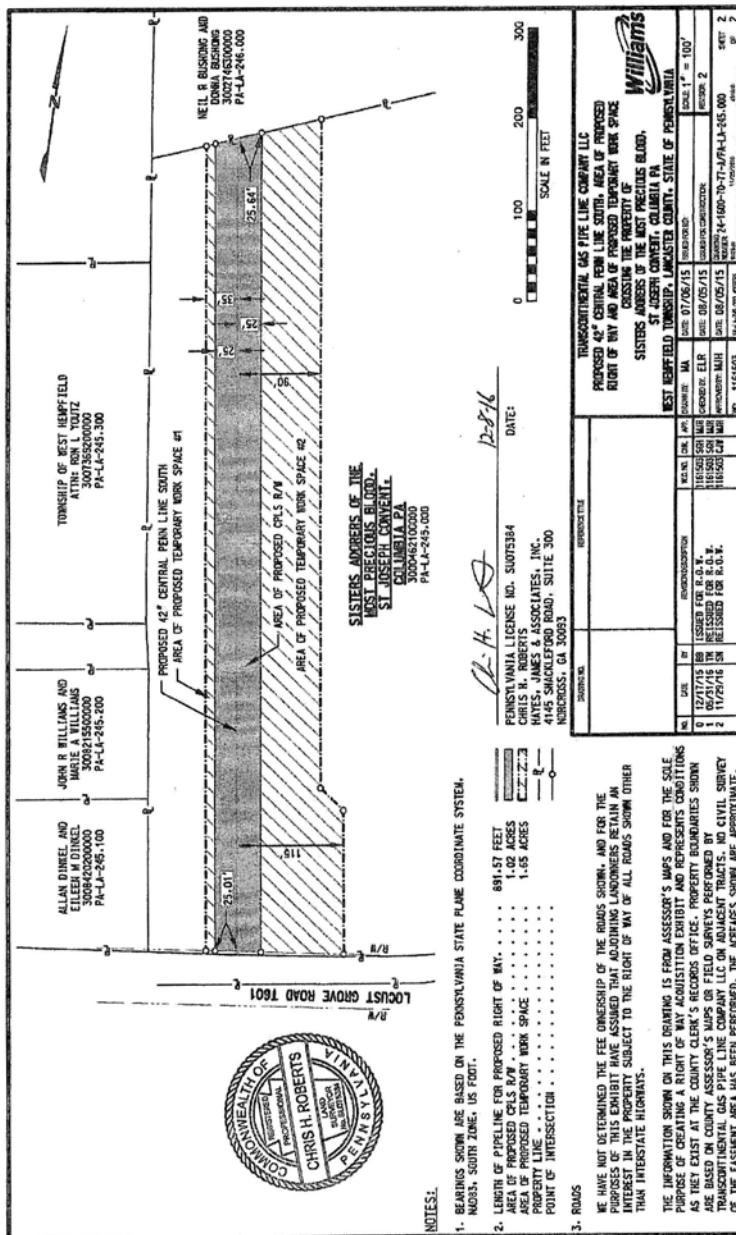
BY THE COURT

/s/Jeffrey L. Schmehl  
Jeffrey L. Schmehl, J.

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EXHIBIT A





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## APPENDIX G

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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426  
OFFICE OF ENERGY PROJECTS

In Reply Refer To:  
OEP/DG2E/Gas 2  
Transcontinental Gas Pipe Line  
Company, LLC  
Docket Nos. CP15-138-000 and  
CP17-212-000

September 15, 2017

Joseph Dean  
Manager, Environmental Permitting  
2800 Post Oak Boulevard  
P.O. Box 1396  
Houston, TX 77251-1396

**Re: Authorization to Construct Central Penn  
Lines North and South Pipelines, Meter  
Stations, and Use of Contractor Yards**

Dear Mr. Dean:

I grant Transcontinental Gas Pipe Line Company, LLC's (Transco) September 5 and September 8, 2017 requests to construct the following facilities in Pennsylvania for the Atlantic Sunrise Project: Central Penn Line North Pipeline, Central Penn Line South Pipeline, Meter and Regulatory Stations, and use of

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contractor yards, as identified in table 1 of each of Transco's requests. This approval also grants your September 5, 2017 variance request, as supplemented on September 14, 2017, for use of the new High Ridge Contractor Yard in Schuylkill County, Pennsylvania.

In considering this notice to proceed, we have determined that Transco's February 8, 2017 Implementation Plan and February 17, 2017 Supplement; the alignment sheets filed on July 12, 2017; and your September 5, 8, and 14, 2017 requests and supplemental filing include the information necessary to comply with the construction conditions in the Commission's February 3, 2017 *Order Issuing Certificate* (Order) issued in Docket No. CP15-138-000 and the May 18, 2017 *Order Amending Certificate* (Amendment Order) issued in Docket No. CP17-212-000 applicable to these facilities. We have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

Please note that this authorization does not include any other construction activities, other than those described above. I remind you that Transco must comply with all applicable terms and conditions of the Commission's Orders.

If you have any questions regarding this approval, please contact Joanne Wachholder at 202-502-8056.

Sincerely,

/s/Alisa M. Lykens  
Alisa M. Lykens  
Chief, Gas Branch 2

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Division of Gas – Environment  
and Engineering

cc: Public File, Docket Nos. CP15-138-000 and CP17-  
212-000

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## APPENDIX H

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**THE LAW OFFICES OF  
ESTD GKH 1977  
GIBBEL KRAYBILL & HESS LLP  
ATTORNEYS & COUNSELORS AT LAW**

By Appointment Only

N. Duke Street · Lancaster  
Suburban Square · Ardmore

717 291 1700 ·	2933 Lititz Pike
484 416 0531	PO Box 5349
WWW.GKH.COM	Lancaster, PA 17606

August 31, 2018

Via FERC E-filing System and Regular Mail  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Attention: Kimberly D. Bose, Secretary

Reference: Transcontinental Gas Pipe Line  
Company, LLC  
Atlantic Sunrise Project  
Docket Nos. CP15-138-000 and CP17-212-000  
Request for Authorization to Place  
Facilities into Service and Commence  
Service

Dear Ms. Bose:

Please be advised that our office represents the  
Adorers of the Blood of Christ (“Adorers”). As the

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Federal Energy Regulatory Commission (“FERC”) knows, the Adorers is a vowed religious order of Roman Catholic women whose religious practice includes protecting and preserving creation, which they believe is a revelation of God, the sacredness of which must be honored and protected for future generations. The Sisters’ belief in the sanctity of earth and the calling to care for God’s creation is evidenced in their actions, including, by caring for and protecting the land the Adorers own. Consistent with the teachings and beliefs of the Adorers and the teachings of Pope Francis as set forth in his encyclical letter entitled *“Laudato Si’ . . . On Care For Our Common Home,”* how the Adorers use their own land is an integral part of exercising their well-established and deeply-held religious beliefs as active and engaged stewards of God’s earth. The Adorers’ care for God’s earth includes addressing the threat of climate change caused by the great concentration of greenhouse gases released as a result of human activity and based on intensive use of fossil fuels. Indeed, Pope Francis has declared global warming as one of the principal challenges facing humanity today—a challenge that calls people of faith to respond as a matter of great spiritual urgency and importance. Accordingly, as a matter of religious belief and practice, the Adorers have refused to allow the property they own in West Hempfield Township, Lancaster County, Pennsylvania to be used for Transcontinental Gas Pipe Line Company, LLC’s (“Transco”) Atlantic Sunrise Pipeline and strongly oppose on religious grounds any transmission of natural gas through the pipeline that was installed without permission on the Adorers’ property.

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Please be advised that if FERC authorizes Transco to place the Atlantic Sunrise Project facilities into service, thereby permitting natural gas to flow on the Adorers' property over their religious objections, it will substantially burden the Adorer's exercise of religion by forcing them to use their own land to facilitate harm to God's creation, which violates their deeply held religious beliefs. Such a substantial burden would continue as long as natural gas is being transmitted over their property. It remains our opinion that such conduct by FERC and Transco violates the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.* The Adorers have authorized us to take all legal steps available to protect their religious beliefs and rights from being trampled by the federal government and the fossil fuel industry.

Accordingly, our office intends to file a petition to the United States Supreme Court requesting that the Court review the Third Circuit's recent decision in *Adorers of the Blood of Christ, et al. v. Federal Energy Regulatory Commission*, 897 F.3d 187 (3d Cir. 2018). FERC should wait until all of the Adorers' appeal rights have been exhausted before authorizing Transco to begin transmission of natural gas over the Adorers' property.

Moreover, please be advised, regardless of whether the United States Supreme Court grants the Adorer's Petition for a Writ of Certiorari, the Third Circuit's recent decision specifically left open the possibility that the Adorers could pursue a claim for damages arising out of FERC's and Transco's violation of the Adorer's rights under RFRA. It is my opinion that a claim for damages will ripen should natural gas be allowed to

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flow across the Adorers' property, as that would clearly result in a substantial burden on the Adorers' exercise of religion. Accordingly, this is to put on notice FERC, its Commissioners and other officials and employees who may be involved in deciding whether to allow the transmission of natural gas using the Adorers' property that such officials may be subject to a claim for monetary damages by the Adorers for violating their religious beliefs and practices as guaranteed under RFRA.

In summary, RFRA places a statutory duty on federal agencies to not substantially burden a person's exercise of religion. Forcing the Adorers to use their own land to facilitate a high volume fossil fuel pipeline will substantially burden their religious exercise. Accordingly, the Adorers object to any authorization by FERC that would allow Transco to transmit natural gas over the Adorers' property in Lancaster County, Pennsylvania.

Thank you for your attention to this matter, and please let me know if you have any questions.

Very truly yours,

/s/J. Dwight Yoder  
J. Dwight Yoder  
*dyoder@gkh.com*

JDY/blb  
Enclosures

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cc: Client (via email)  
Susanna Y. Chu, Esquire (via email)  
Elizabeth U. Witmer, Esquire (via email)

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## **APPENDIX I**

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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426  
OFFICE OF ENERGY PROJECTS

**In Reply Refer To:**  
OEP/DG2E/Gas 2  
Transcontinental Gas Pipe Line  
Company, LLC  
Docket Nos. CP15-138-000 and  
CP17-212-000

October 4, 2018

Micheal Dunn  
Executive Vice President & Chief Operating Officer  
The Williams Companies, Inc.  
One Williams Center, Suite 4900  
Tulsa, OK 74172-0140

**Re: Authorization to Place Facilities into Service**

Dear Mr. Dunn:

I grant your August 24, 2018 request, as supplemented on September 13, September 19, and September 28, 2018, for Transcontinental Gas Pipe Line Company, LLC (Transco) to place into service the Atlantic Sunrise Project (Project) facilities.

Your request is in compliance with environmental condition 11 of the Commission's February 3, 2017 *Order Issuing Certificate* (Order) issued in Docket No. CP15-138-000. This authorization is granted on the

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basis of Transco's recent construction status reports and our third-party compliance monitor field inspections. We find that Transco has adequately stabilized the areas disturbed by construction and that restoration is proceeding satisfactorily.

I remind you that Transco must comply with all applicable remaining terms and conditions of the above-referenced Order. If you have any questions regarding this approval, please contact Joanne Wachholder at 202-502-8056.

Sincerely,

/s/Rich McGuire  
Rich McGuire, Director  
Division of Gas - Environment and  
Engineering

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## APPENDIX J

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### ADORERS OF THE BLOOD OF CHRIST

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#### *Land Ethic*

Whereas, we Adorers of the Blood of Christ believe creation is a revelation of God, we proclaim that:

**As Adorers**, we honor the sacredness of all creation; we cultivate a mystical consciousness that connects us to the Holy in all of life.

**As women**, we celebrate the rhythms of creation; with Mother Earth we live the Paschal Mystery of life, death and new life and, with others, preserve and nurture creation.

**As students of Earth**, we listen intently to Earth's wisdom; we respect our interconnectedness and oneness with creation and learn what Earth needs to support life.

**As prophets**, we reverence Earth as a sanctuary where all life is protected; we strive to establish justice and right relationships so that all creation might thrive.

**As leaders**, we know our choices impact our interdependent Earth community; we initiate broad-based participation to make decisions focused on our common good.

**As advocates of Earth**, we choose simple lifestyles that avoid excessive or harmful use of natural

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resources; we work in solidarity with all creation for a healthy and sustainable lifestyle.

**As companions with creation**, we enjoy and share its bounty gently and reverently; we seek collaborators to help implement land use policies and practices that are in harmony with our bioregions and ecosystems.

**As co-creators**, we participate in God's dream for Earth; we offer new visions and vistas that expand consciousness and encourage creative expression.

**As ASC community**, we treasure land as a gift of beauty and sustenance; we see it as a legacy for future generations.