

Case 19-T-0684

Application of New York Transco LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the New York Public Service Law to Construct, Operate, and Maintain a New, Double-Circuit 54.5-Mile 345/115 Kilovolt Electric Transmission Line and Related Facilities Located in the Town of Schodack, Rensselaer County; the Towns of Stuyvesant, Stockport, Ghent, Claverack, Livingston, Gallatin, and Clermont in Columbia County; and the Towns of Milan, Clinton, and Pleasant Valley in Dutchess County

NEW YORK TRANSCO LLC OBJECTIONS & RESPONSES TO INTERROGATORY/DOCUMENT REQUEST

Request No.: JI-8
Requested By: Joint Intervenors
Directed To: New York Transco LLC/NMPC
Date of Request: June 8, 2020
Date of Response: June 18, 2020
Subject: Habitat Assessment Report – Appendix G

TRANSCO GENERAL DEFINITIONS

1. “CEII” shall mean “critical infrastructure” and “critical energy infrastructure” information as defined in Public Officers Law § 86 (5) and 18 CFR § 388.133 (c) (2), respectively.
2. “DPS” shall mean the New York State Department of Public Service.
3. “Joint Intervenors” shall mean the Towns of Livingston, Milan, and Pleasant Valley, together with Farmers and Families for Livingston, Farmers and Families for Claverack, and Walnut Grove Farm.
4. “Transco” shall mean New York Transco LLC.
5. “Protective Order” shall mean Administrative Law Judge Anthony Belsito’s Ruling Adopting Protective Order issued February 13, 2020 and the Ruling Adopting Amended Protective Order issued May 7, 2020.
6. “PSC” shall mean the New York Public Service Commission.
7. “PSL” shall mean New York State Public Service Law.
8. “Staff” shall mean DPS Staff.

TRANSCO GENERAL OBJECTIONS

Transco makes the following general objections (collectively, “General Objections”), which shall be incorporated by reference into the below specific responses, as if expressly restated therein, without limiting or waiving any other objections to the instant information requests (individually, the “Request” and collectively, the “Requests”) proffered by the Joint Intervenors:

1. Transco objects to the Requests to the extent they seek information or production of documents that is or are subject to the attorney-client privilege, constitute attorney work product, are protected under state or federal law or are proprietary or confidential, or constitute draft and/or non-final documents and/or communications containing or concerning same. The inadvertent disclosure of any information or production of any document that is confidential, privileged, was prepared in anticipation of litigation, or is otherwise irrelevant and/or immune from discovery, shall not constitute a waiver of any such privilege or of any ground for objection with respect to such information or document, the subject matter of the information or document, or of Transco’s rights to the use of any such information or document in any regulatory proceeding or lawsuit. Transco reserves its right to request the return of any such documents or information in the event of any inadvertent disclosure.
2. Transco objects to the Requests to the extent they are not tailored to this particular proceeding, are not commensurate with the importance of the issues to which each Request relates, and/or seek information or documents that is or are not relevant to any matter within the PSC’s jurisdiction.
3. Transco objects to the Requests to the extent they seek documents or information regarding matters, or from entities, over which the PSC (including Staff) has no authority or jurisdiction under the PSL.
4. Transco objects to the Requests to the extent they seek information concerning matters that, due to federal preemption or preclusion, are not subject to regulation by the State of New York.
5. Transco objects to Requests that are overbroad or unduly burdensome to the extent that they (a) are cumulative; (b) call for the production of documents not in Transco’s possession, custody, or control; (c) call for the review, compilation or production of publicly-available documents that could be obtained by the requesting party in a less-burdensome manner, including on a public website; (d) call for the review, compilation, and/or production of a voluminous number of documents at great expense to Transco, or (e) are duplicative of discovery requests already issued in this proceeding and responded to by Transco.
6. Transco objects to the Requests to the extent they seek documents and information already known to or possessed by the requesting party or which are available to those entities from documents in their own files or from public sources including, but not limited to, the DPS website or other online sources.

7. Transco objects to the Requests to the extent they seek sensitive, proprietary and/or competitive information, trade secret information, confidential commercial information, work product, and/or material that is the subject of confidentiality agreements with third parties. To the extent Transco has elected to produce any confidential commercial information and/or trade secret information, such information is being produced solely for use in the above-captioned proceeding pursuant to the Protective Order.
8. Transco objects to the Requests to the extent they seek information and documents that are not known or reasonably available to Transco. Transco further objects to all Requests to the extent they seek to compel Transco to generate or to create information and/or documents that do not already exist.
9. Transco objects to the Requests to the extent they seek CEII.
10. Transco's agreement to provide information or documents in response to the Requests is not: (a) an acceptance of, or agreement with, any of the characterizations or purported descriptions of the transactions or events contained in these Requests; (b) a concession or admission that the requested material is relevant to any matter within the jurisdiction of the State of New York or any of its agencies; (c) a waiver of the objections herein; (d) an admission that any such information or documents exist; or (e) an agreement to provide information or documents pursuant to any other Request.
11. Each response reflects the information or documents located by Transco given the scope and nature of the Request at issue and as evidenced by the sponsor(s) of such response, after a reasonable, diligent search in the response period in which the Joint Intervenors have requested a response to be provided, particularly in light of the scope and breadth of the Requests. Transco reserves its right to amend or supplement the responses, including the assertion of additional objections, and any production of information and documents as additional discovery and investigations continue, in the event that additional information is identified, or in the event of error, inadvertent mistake, or omission.

JI-8.1

With respect to Appendix A (to Appendix D), Phase 1 Bog Turtle Data Sheets, please provide professional credentials, i.e., curriculum vitae, of Bernie Carr, Lead Surveyor, Aaron Goodell, Assistant; David MacDougall, Lead Surveyor, Amanda Vescovi, Assistant; and Elizabeth MacEwen, Lead Surveyor, AG, Assistant.

Transco's Response to JI-8.1. Subject to and without waiving any of the General Objections, Transco provides the following response:

Resumes for Bernard P. Carr, Aaron Goodell, David MacDougall, Amanda Vescovi, and Elizabeth MacEwen were previously provided in response to JI-2.5.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED® AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.2

Were there any other surveyors and/or assistants who participated in the bog turtle survey? If so, please provide their names and curriculum vitae.

Transco's Response to JI-8.2. Subject to and without waiving any of the General Objections, Transco provides the following response:

Beth Clements and Shannon Booth also participated in the bog turtle survey. Their resumes were also provided in response to JI-2.5.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.3

Why were all the bog turtle survey forms signed on July 15, 2019 “certifying to the best of your knowledge that all the information provided herein is accurate and complete” when some of the surveys were conducted more than six weeks prior?

Transco’s Response to JI-8.3. Subject to and without waiving any of the General Objections, Transco provides the following response:

Following the conclusion of all field work, Terrestrial Environmental Specialists, Inc. (TES) staff converted their detailed field notes, recorded contemporaneously with field activities, in order to compile all reports at once, rather than in daily segments. This was done both for convenience and in order to enable field work to progress continuously, without interruption for administrative tasks.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.4

Who prepared the Bog Turtle, Blanding's Turtle and Northern Cricket Frog Habitat Evaluation Report? Please provide curriculum vitae of all that contributed to that Report.

Transco's Response to JI-8.4. Subject to and without waiving any of the General Objections, Transco provides the following response:

The Bog Turtle, Blanding's Turtle and Northern Cricket Frog Report was prepared by David W. MacDougall, Beth Clements, Amanda Vescovi (providing GIS Data Support), Bernard P. Carr, and Barbara Beall, with Elizabeth MacEwen, Shannon Booth, and Haley Keff providing support. Resumes for these individuals were all provided in response JI-2.5.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.5

On page 6, Section 4.4, of Appendix G, Habitat Assessment Report, it is stated that “Chazen documented a total of 241 wetlands (including 204 peer-reviewed wetlands) during the 2019 field effort.” Does that mean that 37 wetlands were not peer-reviewed?

Transco’s Response to JI-8.5. Subject to and without waiving any of the General Objections, Transco provides the following response:

No. There are 49 wetlands (with the preface TCC or TES) identified in the 2019 Wetland Delineation report prepared by Chazen (the “2019 Report”) that were not identified in Tetra Tech’s 2015 Wetland Delineation Reports (the “2015 Report”) and were not peer-reviewed. While Chazen *did* peer review all 204 of the wetlands identified in the 2015 Report, the “37” number referenced in this question represents the *net change* in wetlands identified between the 2015 Report (204 wetlands) and the 2019 Report (241 wetlands identified). A summary of how to reach that net change figure is provided below.

- The 2019 Report includes 49 wetlands not identified in 2015. As these were not previously identified, they do not represent a peer review. (Net change: +49 wetlands; not peer reviewed, bringing the total number of Chazen-identified delineated wetlands to 253.)
- The 2019 Report includes five wetlands delineated in 2015 by Tetra Tech within the Project ROW that are not listed in the 2015 Knickerbocker to Churchtown Report Table 5.1. (Net change: +5 wetlands; peer reviewed, bringing the total number of Chazen-identified delineated wetlands to 258.)
- The 2019 Report moves one pond (WLV-22) listed on the 2015 Knickerbocker to Churchtown Table 5.1 to the Table of Delineated Streams and Waterbodies Within Survey Area. (Net change: -1 wetland/pond; peer reviewed, reducing the total number of Chazen-identified delineated wetlands to 257.)
- The 2019 Report deletes one wetland (Wetland B-WCV-5) identified in the 2015 Report(s) due to a lack of wetland indicators. (Net change: -1 wetland; peer reviewed, reducing the total number of Chazen-identified delineated wetlands to 256.)
- The 2019 Report deletes seven wetlands listed in the 2015 Churchtown to Pleasant Valley Report Table 5.1 due to being delineated outside the Project ROW. (Net change: -7 wetlands; peer reviewed, reducing the total number of Chazen-identified delineated wetlands to 249.)
- The 2019 Report consolidates wetlands that are connected but had been listed separately in the 2015 Report(s), resulting in a reduction of 8 wetlands. (Net change: -8; peer reviewed, reducing the total number of Chazen-identified delineated wetlands to 241.)

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED®AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.6

What is the definition of “peer-reviewed” in the context of the wetlands documentation?

Transco’s Response to JI-8.6. Subject to and without waiving any of the General Objections, Transco provides the following response:

In the context of the aquatic resources, peer review can be defined as the use of a qualified third-party peer reviewer to review a document for accuracy and appropriateness. For NYES, the peer review was of the 2015 Report(s) by a qualified third-party, Chazen Companies. In addition to reviewing the document for accuracy and appropriateness, Chazen Companies also did a field review to confirm that the aquatic resource data was current so that Transco’s Article VII application adequately and appropriately identified and characterized the aquatic resources within the Project’s ROW.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.7

Who were the principal authors of Appendix G - Habitat Assessment Report?
Please provide their curriculum vitae.

Transco's Response to JI-8.7. Subject to and without waiving any of the General Objections, Transco provides the following response:

The Appendix G Habitat Assessment Report was prepared by Barbara Beall, Bernard P. Carr and Beth Clements, with Elizabeth MacEwen, Aaron Goodell, David MacDougall, Haley Keff, and Richard Futyma contributing, and Amanda Vescovi providing data management support. Resumes for these individuals were provided in response to JI-2.5.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.8

With respect to Section 7.0 Wildlife – Observed, who were the observers and what was the period(s) of observation? Please provide their curriculum vitae.

Transco's Response to JI-8.8. Subject to and without waiving any of the General Objections, Transco provides the following response:

The observers were Beth Clements, Amanda Vescovi, David MacDougall, Bernard P. Carr, Aaron Goodell, Elizabeth MacEwen, and Shannon Booth. Resumes for these individuals were provided in response to JI-2.5.

The period of observation was: May 28, 29, 30, and 31, and June 4, 5, 6, 7, 11, 12, 14, 17, 18, 19, 20, 21, 25, 26, 27, and 28, all in 2019.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.9

With respect to Section 9.0 Terrestrial Ecological Communities Field Review Results, who were the observers and what was the period(s) of observation? Please provide their curriculum vitae.

Transco's Response to JI-8.9. Subject to and without waiving any of the General Objections, Transco provides the following response:

The observers were Beth Clements, Amanda Vescovi, David MacDougall, Bernard P. Carr, Aaron Goodell, Elizabeth MacEwen, and Shannon Booth. Resumes for these individuals were provided in response to JI-2.5.

The period of observation was: May 28, 29, 30, and 31, and June 4, 5, 6, 7, 11, 12, 14, 17, 18, 19, 20, 21, 25, 26, 27, and 28, all in 2019.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco

JI-8.10

With respect to Section 10.0 Significant Natural Communities Results, who were the observers and what was the period(s) of observation? Please provide their curriculum vitae.

Transco's Response to JI-8.10. Subject to and without waiving any of the General Objections, Transco provides the following response:

The observers were Beth Clements, Amanda Vescovi, David MacDougall, Bernard P. Carr, Aaron Goodell, Elizabeth MacEwen, and Shannon Booth. Resumes for these individuals were provided in response to JI-2.5.

The period of observation was: May 28, 29, 30, and 31, and June 4, 5, 6, 7, 11, 12, 14, 17, 18, 19, 20, 21, 25, 26, 27, and 28, all in 2019.

Name and Title of Person(s) Responsible for Response: Barbara B. Beall, PWS, LEED[®] AP, Principal, Director Natural Resource Services, The Chazen Companies

Date: June 18, 2020

Entity on Behalf of Which the Response is Provided: Transco