October 9, 2012

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

RE: Trout Unlimited Comments on the Scope of Environmental Impact Statement for the Constitution Pipeline Project, Docket No. PF12-9

Dear Ms. Bose:

Trout Unlimited, and the New York and Pennsylvania Councils of Trout Unlimited (collectively "Trout Unlimited") hereby submit these comments, in response to the *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Constitution Pipeline Project, Request for Comments on Environmental Issues, and Notice Of Public Scoping Meetings*, published in the Federal Register by the Federal Energy Regulatory Commission on September 14, 2012. 77 FR 56835. Trout Unlimited has reviewed the following documents associated with the proposed Constitution Pipeline project (Docket No. PF12-9): primary pipeline route, alternate pipeline routes, Resource Report 1, Resource Report 10, and related correspondence between the Federal Energy Regulatory Commission (Commission) and Constitution Pipeline, LLC (Applicant).

Trout Unlimited's mission it to conserve, protect, and restore North America's coldwater fisheries and their watersheds. To accomplish its mission, Trout Unlimited employs a comprehensive strategy to protect the highest quality trout and salmon habitat, reconnect high quality habitats with restored areas downstream through the augmentation of instream flows and barrier removals, and restore degraded habitats so that they again support healthy trout and salmon populations. Trout Unlimited has more than 7,500 members in New York and 12,000 members in Pennsylvania, who are committed to protecting, restoring and reconnecting trout habitat. Thus, Trout Unlimited's comments on the scoping document for the Environmental Impact Statement (EIS) for the Constitution Pipeline project will focus on identifying the impacts of the project on coldwater resources and identifying mitigation measures to limit or eliminate those impacts.

Pursuant to the National Environmental Policy Act, the Commission is required to consider the following actions and impacts, in determining the scope of the EIS: (1) connected actions, cumulative actions and similar actions; (2) the no action alternative, other reasonable

alternatives and mitigation measures not proposed in the action; and (3) direct, indirect and cumulative impacts. NEPA §102(2)(C); 40 C.F.R. §1508.25.

In general, and most notably, the Commission has failed to include the direct, indirect and cumulative impacts to coldwater fisheries in its list of "Currently Identified Environmental Issues," provided in its Notice of Intent, dated September 14, 2012. The proposed primary and alternate pipeline routes proposed will have significant negative impacts on many of New York and Pennsylvania's coldwater streams.

According to Trout Unlimited's GIS-based evaluation of the routes, the proposed primary pipeline route crosses or is located near 37 streams that are designated as trout and trout spawning streams, have brook trout presence or have high brook trout potential in New York and Pennsylvania. Alternate M appears to have a slightly lesser impact; this route crosses or is located near 29 streams with similar trout designation, presence or potential. Given that the proposed primary pipeline route for the Constitution Pipeline project and the preferred Alternate M route cross or are located near a significant number of streams in New York and Pennsylvania that are designated trout streams, have brook trout presence, or have high brook trout habitat potential, Trout Unlimited strongly urges the Commission to add the impact to coldwater fisheries and their habitats to the list of environmental impacts to be considered in the EIS.

Stream crossings

Depending on the size, timing, duration and methods employed, stream crossings can have significant impacts on aquatic ecosystems by altering stream morphology, process and function including instream habitat both upstream and downstream of the crossing location, as well as at the crossing location itself. Trout Unlimited recommends that the pipeline route avoid alteration of stream hydrology, sediment transport, and morphology by eliminating crossing streams of any size, including ephemeral streams, where possible. Based upon maps of the proposed primary pipeline route and Alternate M, there appear to be some sections of the pipeline that could be moved slightly to avoid construction on steep slopes and to avoid stream crossings. For example, by relocating small sections of Alternate M, the Applicant could avoid crossing or impacting 11 of the designated trout or trout spawning streams. Where avoidance is not feasible measures to reduce impacts should include site specific evaluations of construction activities, for example stream crossings should be located downstream from all confluences to reduce the total number of stream crossings and the impacts on stream morphology at these convergent locations. Trout Unlimited recommends that the Commission include in the EIS appropriate measures to reduce both short term and long term impacts to stream morphology and hydrology. This is particularly important given the importance of small headwater streams that serve as spawning reaches and thermal refuges for coldwater fish, including trout.

Resource Report 1, section 1.3.2.9., describes the methods that will be used for stream crossing, including: horizontal directional drill, open cut crossing, dry flume crossing, dam and pump method and the open cut wet method. While each of these methods is explained, the report

fails to explain under what circumstances each method will be used, what type of evaluation process will be used by the Applicant to determine which crossing method is appropriate, what criteria will be used to determine appropriateness, and when during the planning process a decision will be made on which method is appropriate. Nor does the report explain how pre-construction conditions will be restored at each stream crossing location or the methods for documenting existing conditions and how that information will be used to guide stream reconstruction activities. Given the lack of details, Trout Unlimited recommends that the Commission request from the Applicant responses to the above outstanding questions, prior to drafting an EIS. Without this information, the Commission cannot reasonably identify the potential impacts of this project, nor can the Commission identify which mitigation measure will limit or eliminate impacts on stream form, process, and function and its dependent aquatic life. Further, Trout Unlimited recommends that the EIS identify each stream crossing, by mile post, as well as the proposed method for each stream crossing. Field reconnaissance by pipeline personnel is necessary for the identification of stream crossings since many ephemeral and some perennial streams are not visible on topographical maps. Field reconnaissance should also identify important stream characteristics for each proposed crossing including, but not limited to, bankfull width, channel slope, bank height, constituent bed materials, and proximity to the nearest confluence up and downstream. This will allow for a site-specific review of the proposed method and provide an opportunity for Trout Unlimited and other interested parties to provide specific recommendations on mitigation measures appropriate for each specific stream crossing.

Horizontal Directional Drilling (HDD) is one stream crossing method that is proposed by the Applicant. Trout Unlimited appreciates the Commission's request (dated June 11, 2012) to the applicant to supply more information regarding HDDs, including: (1) confirming that a geotechnical analyses will be conducted to evaluate the probability of HDD success; (2) evaluating additional workspace that may be needed to conduct HDD and additional impacts that may occur as a result of steep terrain; and (3) developing a detailed HDD Contingency/frac-out plan, including a decision tree for scenarios and plans for emergency contacts/actions (including after hours/weekend/holiday contacts). This information will help to determine potential new impacts that may be caused or created from HDD, and create a plan for addressing incidents that arise.

According to Resource Report 1, the applicant proposes to use HDD for seven stream crossings, which includes some, but not all of the trout and trout spawning waters in the path of the proposed pipeline route. HDD, if constructed properly, has the least impacts on stream flow, stream banks, fish passage, and instream sedimentation. Therefore, Trout Unlimited recommends that the Commission require the Applicant to evaluate whether HDD can be used for each stream crossing, and at a minimum, whether HDD is feasible for the crossings proposed for trout streams and trout spawning streams. As part of the feasibility assessment, Trout Unlimited recommends that a hydraulic analysis be completed at each crossing to ensure that the pipeline is deep enough to remain undisturbed by scour and fill processes typically associated with peak flows that have the potential to negatively impact trout habitat.

Trout Unlimited further recommends that the open cut crossing method not be used in any circumstances on any trout streams and trout spawning streams.

Construction activities, erosion and sedimentation controls

As part of the planning process, the EIS should evaluate opportunities for sediment reduction at each phase of construction, giving specific attention to locations where the pipeline parallels a stream, and making sure that there is an adequate buffer between the excavation and the stream. The proposed pipeline project has the potential to impact many miles of headwater systems in steep terrain, even if the pipeline itself is not crossing the stream. Trout Unlimited urges the Commission to include in the EIS appropriate erosion control mitigation measures in these headwater areas.

Trout Unlimited appreciates the Commission's request for clarification by the Applicant that slopes less than 30% grade may also be considered "steep" for construction and erosion control purposes. Trout Unlimited urges the Commission to further clarify that any slope that exceeds a 15% grade(or 8.5°) is considered "steep" and therefore construction activities on these slopes should be avoided, and at a minimum, additional erosion and sediment control measures should be required if avoidance is not possible. Table 1.3-2 in Resource Report 1 describes slope sections, with a grade of 30% or more, by milepost. Trout Unlimited urges the Commission to include, in the EIS, a similar table, identifying, by mile post, all construction activities proposed for areas where the slope exceed 15% (or 8.5°) grade.

Stream bank and soil disturbance occurring on or near streams during critical trout spawning and rearing stages can negatively impact coldwater species. At least 15 different direct negative effects from sedimentation have been demonstrated to impact trout, ranging from stress, altered behavior, reductions in growth and direct mortality. The EIS should describe each proposed construction activity and identify acceptable time frames for when the proposed construction may take place, limiting the impact on critical life stages of coldwater species.

Further, section 1.3 of Resource Report 1 states that "unless otherwise authorized through a variance granted by the Commission, Constitution will comply with the Commission's Upland Erosion Control, Revegetation and Maintenance Plan (the "Plan", January 17, 2003 version), the Commission's Wetland and Waterbody Construction and Mitigation Procedures (the "Procedures", January 17, 2003 version), and Constitution's project-specific Soil Erosion and Sediment Control ("SESC") Plan. The EIS should detail when a variance may be sought and the Commission should provide an opportunity for public comment on each proposed variance.

Site specific determination of riparian buffers and site restoration

Due to the very serious potential for erosion and sedimentation from construction activities occurring near streams to impact trout populations, Trout Unlimited recommends that the EIS include general minimal buffer setbacks for construction activities occurring on various slope grades, with a site-specific determination for each construction activity occurring near trout or

trout spawning streams, to determine if the buffer width for each stream should be greater than the general minimal buffer distance.

Regardless of the type of crossing method, the Commission should require the Applicant—with input from appropriate agencies and groups such as the U.S. Fish and Wildlife Service, the New York State Department of Environmental Conservation, the Pennsylvania Fish and Boat Commission and Trout Unlimited—to develop a stream restoration plan for each stream crossing prior to the initiation of construction. At a minimum, the restored stream channel should be comparable in width, depth, slope, and substrate to upstream and downstream reaches, and should be constructed of native materials similar in type, composition and species to those in the vicinity of the crossing including, but not limited to, wood, rock, and vegetation. The plan should also ensure that the resulting reconstruction does not impede natural channel processes, such as lateral channel migration, vertical adjustment (bed aggradation/degradation), or the transport of sediment, wood and ice. Regardless of crossing method, the pipeline should be located at sufficient depth and distance from the stream bed to accommodate any reasonably anticipated horizontal or vertical channel adjustment during the design life of the pipeline materials.

Hydrostatic Testing

Prior to performing hydrostatic testing, the impacts of such testing on aquatic users (both fish and invertebrates) must be determined for all trout and trout spawning streams. If large quantities of water are to be removed from the stream, there may be an adverse impact on stream temperature and water levels, which are critical for fish health and habitat. Discharge of hydrostatic testing water must be through barriers that permit filtration of sediments contained in the discharge, and also to allow the water temperature to cool to its pre-withdrawal temperature.

Monitoring

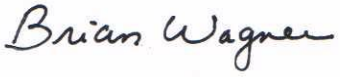
A monitoring plan should be developed for each stream crossing and tailored to evaluate potential biological and morphological impacts to the aquatic system. Pre-construction monitoring will provide baseline data to evaluate potential impacts. Post-construction monitoring should consider immediate and long term impacts to the stream system. Trout Unlimited requests that the Applicant be required to complete both pre-construction and post-, long term monitoring.

In summary, Trout Unlimited strongly urges the Commission to include the direct, indirect and cumulative impacts of the proposed Constitution Pipeline project on coldwater resources, in the list of environmental issues for consideration in the scope of the EIS. Thank you for your consideration of Trout Unlimited's comments. Please do not hesitate to contact Katy Dunlap, kdunlap@tu.org or 607-703-0256, if you require additional information or clarification.

Sincerely,

Katy Dunlap
Eastern Water Project Director

Ronald Urban
NY State Council Chair



Brian Wagner
PA State Council Chair