



September 12, 2016

Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Comments on Conditional Approvals and Unconstitutional and Unlawful Taking of Private Property, FERC Docket No. CP15-558

Dear Ms. Bose,

Enclosed please find comments from Homeowners Against Land Taking-PennEast (HALT) describing the constitutional and statutory problems with FERC's Draft Environmental Impact Statement and FERC's proposal to grant eminent domain to PennEast on the current record through a flawed "conditional approval" process.

HALT's members are concerned that the proposed pipeline will result in as much as \$1 billion or more in harm to private property: \$681,000,000 in devaluation of private property and preserved land, over \$317,000,000 in takings as a result of eminent domain, and significant environmental damage.

None of these costs are considered or evaluated in the Draft Environmental Impact Statement ("DEIS"). Yet FERC has proposed to issue a "conditional approval" of the project under a fatally flawed theory that it can blatantly violate its constitutional and statutory duties and prematurely grant a license as long as it assures affected communities and landowners that it will cure or mitigate those manifold violations at some later date.

HALT requests that FERC withdraw the Draft Environmental Impact Statement to address the errors discussed in the enclosed comments. Thank you for your attention to this matter.

Sincerely,

s/ R. Steven Richardson

Counsel for Homeowners Against Land Taking-PennEast

Enclosures

Federal Energy Regulatory Commission

Docket ID No. CP15-558

**Application of PennEast Pipeline Company, LLC for Certificates of Public
Convenience and Necessity**

**COMMENTS OF INTERVENOR HOMEOWNERS
AGAINST LAND TAKING-PENNEAST ON
TAKING OF PRIVATE PROPERTY**

SEPTEMBER 12, 2016

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EXECUTIVE SUMMARY

These comments are submitted by Homeowners Against Land Taking-PennEast (“HALT”). HALT represents over 200 impacted landowners in towns along PennEast’s proposed 115-mile pipeline route, ranging from ordinary homeowners, residents, and farmers, to small businesses. HALT intervened in this proceeding on February 3, 2016. Its members are concerned that the proposed pipeline will result in upwards of \$681 million in private property losses, \$317 million in land takings through eminent domain, and significant environmental damage. None of these costs are considered in the Draft Environmental Impact Statement (“DEIS”).

The DEIS published by FERC in response to PennEast’s Application for Certificates of Public Convenience and Necessity (“Application”) reflects a fundamentally flawed assumption: that FERC can blatantly violate its constitutional and statutory duties and prematurely grant a license as long as it assures affected communities and landowners that it will cure or mitigate those manifold violations at some later date.

This assumption is fatally flawed. FERC cannot grant a premature license and authority to condemn private property based on the insufficient and self-serving record compiled in the Application and the DEIS. Doing so would fundamentally undermine the sanctity of the property rights guaranteed by the Fifth Amendment to the U.S. Constitution.

In the DEIS, FERC proposes to issue a “conditional license” approving the project and authorizing private property condemnation without first determining how the impacted localities would be economically or environmentally impacted and whether the project would serve the public interest. FERC has chosen to place blind faith in PennEast’s promises to conduct the required reviews and analyses after FERC makes its decision and authorizes the taking of private

property from HALT members. There is no justification for postponing the analysis until after the critical public-comment period has ended and private property already has been taken by eminent domain. For landowners, their constitutional rights depend upon FERC first evaluating whether this proposed project serves a public purpose and is otherwise in the public interest. Any decision allowing private property to be taken before the requisite evaluation is complete would unconstitutionally brush aside these landowner rights.

FERC's premature authorization of condemnation authority also is inconsistent with unambiguous obligations imposed on FERC in the Natural Gas Act and with FERC's own Certificate Policy Statement. Granting "conditional certificates" that also authorize eminent domain violates the Natural Gas Act on its face and in these circumstances. Section 7 of the Natural Gas Act, in paragraphs (a) and (h), allows a company that has been granted a final certificate authorizing construction of a pipeline to condemn property for such construction. Under this provision, if FERC has not met the prerequisites to authorize the undertaking of construction, it cannot authorize a private company to exercise eminent domain for any purpose. That much is plain on the face of Section 7. And FERC can never authorize eminent domain for impermissible purposes—such as the gathering of information to satisfy application requirements—that are outside Section 7's enumerated purposes. In this DEIS, however, FERC has proposed to grant a "conditional certificate" and authorize eminent domain despite glaring analytical omissions, expansive infringements on private property rights, and a clear disregard for the limitations Congress placed on FERC's authority.

It is a bedrock principle of administrative law that an agency does not have this unbounded authority. Section 7 of the Natural Gas Act—enacted specifically to prevent natural-gas companies from exploiting the public—does not allow FERC to ignore or postpone its

analysis of impacts on landowners or to presume that a natural-gas company that enters into self-dealing transactions with its own affiliates will only do so when in the public interest. Rather, the Natural Gas Act requires a weighing of information so that FERC can independently evaluate the public interest and make the requisite public interest determinations before any licensing decision is made.

But in this instance, FERC in the DEIS reverses its obligation: it has decided to trust PennEast and defer its analysis of whether the statutory prerequisites of the Natural Gas Act have been satisfied until after FERC has made an irreversible grant of legal rights—including authority to condemn private property—to PennEast under a “conditional certificate.” This approach is patently unconstitutional and unlawful. FERC must withdraw the DEIS until it has met its constitutional and statutory obligations.

I. GRANTING PENNEAST AUTHORITY TO CONDEMN PRIVATE PROPERTY BASED ON THE CURRENT RECORD WOULD VIOLATE BASIC FIFTH AMENDMENT RIGHTS

A. The DEIS Confirms that this Project is Grounded Only on Private Benefits for PennEast and its Affiliates and Not for “Public Use” As Required by the Fifth Amendment

A pipeline proposed by a private natural-gas company is not presumptively a “public use” under the Fifth Amendment of the U.S. Constitution. Instead, federal government agencies are constitutionally prohibited from taking private property unless they first establish the taking is for “public use.” U.S. Const. amend V.

The Supreme Court has interpreted the “public use” clause to require that an agency establish that it has a “public purpose” for condemnation.¹ But in this proceeding the Application and the DEIS fail to define any public purpose. Indeed, in its Application, PennEast

¹ *Kelo v. City of New London*, 549 U.S. 469 (2005).

conceded that the project is “primarily driven” by the needs of project shippers. PennEast Application Resource Report 1 at 1-3 (FERC Sept. 2015) (“Application RR1”).

In the DEIS, FERC has adopted PennEast’s assertion that advancing the needs of project shippers is the “primary objective” for the pipeline. DEIS at 3-1. For that reason, the DEIS uncritically rejected many system alternatives solely because they would not provide equal benefits to project shippers. *See, e.g., id.* at 3-4 (“A viable system alternative to the Project would have to provide the pipeline capacity necessary to transport an additional 1.1 MMDth/d of natural gas at the contracted volumes and to the delivery points required by the precedent agreements signed by PennEast and the Project Shippers.”).

Indeed, the Application and DEIS make no secret that the sole purpose of the proposed pipeline is to promote financially-attractive private contracts between PennEast and its shippers. *Id.* at 1-17 (“PennEast is proposing to construct the Project based on commitments from Project shippers.”); *id.* at ES-15 (“We evaluated the use of alternative energy sources and the potential effects of energy conservation, but these measures similarly would not satisfy the objectives of the Project, provide an equivalent supply of energy, or *meet the demands of the Project shippers.*”) (emphasis added); *id.* at 3-1 (“PennEast states that *the Project was developed in response to market demands and interest from shippers* that require transportation capacity to accommodate increased demand and greater reliability of natural gas in the region.”) (emphasis added); *id.* at 3-3 (“If PennEast’s proposed facilities are not constructed, the Project shippers may need to obtain an equivalent supply of natural gas from new or existing pipeline systems [which] would result in environmental impacts that could be equal to or greater than those of the Project.”); Application RR1 at 1-2 (“The Project was *developed in response to* market demands in New Jersey and Pennsylvania, and *interest from shippers* that require transportation capacity

to accommodate increased demand . . .”). The public interest is excluded from this definition of the project’s purpose, and this deficiency is compounded for this project because the project shippers are nearly all corporate affiliates of PennEast.

The conferral of financial benefits on PennEast and its shippers—both private entities—is not a “public use” justifying a taking under the Fifth Amendment. If it were, Section 7 applicants would have boundless discretion to take any private property desired in nearly all circumstances. The Fifth Amendment requires more: there needs to be a valid public purpose for the specific land taking, not merely a private company’s desire to enhance corporate profits, which would apply equally to any license application. FERC must therefore define the purpose of the undertaking in terms of the public and make an independent determination that the proposed pipeline will serve that public purpose. *See City of Cincinnati v. Vester*, 281 U.S. 439, 448 (1930) (establishing that a public purpose for a taking “must be suitably defined”); *Armendariz v. Penman*, 75 F.3d 1311, 1321 (9th Cir. 1996) (en banc) (stating that officials cannot later “posit[] ‘a conceivable public purpose’” unless supported by evidence in the record). In making this determination, FERC must differentiate applications in which the only purpose is to create windfalls for private companies from those that actually serve the public interest, and limit the right of condemnation to those in the latter category. *See Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (“It has long been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B.”).

FERC has not done so. In this case, approval of a DEIS and authorization to condemn private property—where only a private purpose has been articulated for the land that is being taken—would effectively eviscerate the Fifth Amendment’s “public use” provision. This alone requires the DEIS be withdrawn.

B. Because the DEIS Lacks an Adequate Assessment of Local Conditions, it Cannot Support Condemnation of Private Property

Foundational in the Supreme Court's Fifth Amendment jurisprudence is that a government taking must be justified by evidence in the agency's public record that it carefully evaluated local conditions in the particular case presented and developed a record weighing any benefits against the project's local impacts. *Kelo* at 545 U.S. at 478 (upholding condemnation when "executed pursuant to a 'carefully considered' development plan"); *id.* at 493 (Kennedy, J., concurring in the judgment) ("The city complied with elaborate procedural requirements that facilitate review of the record and inquiry into the city's purposes."); *Armendariz v. Penman*, 75 F.3d 1311, 1321 (9th Cir. 2001) (en banc) (finding no deference is owed to government condemnor absent evidentiary record).

In light of this jurisprudence, FERC is prohibited from authorizing a license applicant to exercise eminent domain based on a hollow promise that the applicant will evaluate local conditions after the land at issue has been taken. That approach flips the constitutional test upside down. Instead, as *Kelo* emphasizes, FERC must "carefully consider" local conditions *before* it makes a "public use" finding. Simply put, FERC can authorize eminent domain only after it evaluates the relevant local conditions. *Kelo*, 545 U.S. at 496 (O'Connor, J., dissenting) (stating that the "public use" clause "ensure[s] stable property ownership by providing safeguards against excessive, unpredictable, or unfair use of the government's eminent domain power"); *99 Cents Only Stores*, 237 F. Supp. 2d at 1130 ([T]he court need not defer to [a] belated statement of public use.").

Although FERC has discretion over its "public use" determinations, that discretion is limited by the requirement that it must nonetheless "discern[] the local public needs." *Kelo*, 545 U.S. at 482. Those local issues may include "resources, the capacity of the soil, the relative

importance of industries to the general public welfare, and the long-established methods and habits of the people.” *Id.* at 483. Indeed, FERC itself has provided guidance in its Certificate Policy Statement of specific local needs it must evaluate before it weighs potential benefits against the adverse impacts and subsequently authorizes eminent domain. *See Certification of New Interstate Nat’l Gas Pipeline Facilities*, 88 FERC ¶ 61,227, 61,747 (Sept. 15, 1999) (“*Policy Statement*”) (“[C]onstruction projects that would have residual adverse effects would be approved only where the public benefits to be achieved from the project can be found to outweigh the adverse effects. Rather than relying only on one test for need, the Commission will consider all relevant factors reflecting on the need for the project.”).

In contrast, if an agency has ignored relevant evidence about local conditions or not made any attempt to analyze the local conditions, any “public use” finding would be unconstitutionally arbitrary and invalid. *See Armendariz*, 75 F.3d at 1321 (finding that government cannot “take private property . . . simply by deciding behind closed doors” that the taking has a “public use”); *99 Cents Only*, 237 F. Supp. 2d at 1130. If the government were authorized to ignore or defer its analysis of local conditions until after the properties are taken, as the *Armendariz* court noted, “the ‘public use’ provisions of the Takings Clause would lose all power to restrain government takings.” *Armendariz*, 75 F.3d at 1321.

So too here. FERC cannot define the public purpose by facts not yet investigated. The DEIS does not even identify the number of properties that would be affected, let alone the local conditions at those properties. The record in this case vividly shows the constitutional infirmities in FERC’s approach. *See* DEIS at 5-26, 5-27 (establishing FERC’s intent to defer its analysis of various local conditions until it issues a Final EIS and grants eminent domain authority to PennEast). The DEIS concedes that local conditions are unknown for nearly 70% of the

proposed project area in New Jersey. *See* DEIS at 4-66, 4-68, 4-89, 4-107, 4-193. In fact, FERC proposed 54 conditions to the certificate, the majority of which catalogue the information that PennEast has failed to provide. *See, e.g.*, DEIS at 5-25. In the future, after PennEast provides that information, FERC and “the appropriate state agencies” then must review it to determine environmental, community, or landowner impacts. During this review, FERC then would determine whether construction of the project is for a public use. The number of local conditions on which FERC believes it can defer analysis is staggering. As just a few examples, the DEIS shows that:

- FERC has no data on the number of properties that will be subject to eminent domain or the value of those properties (*id.* at 4-166)
- PennEast has not evaluated water wells or springs in New Jersey (*id.* at ES-5)
- Despite acknowledging potential karst impacts, PennEast has yet to “complete additional geophysical investigations” necessary to evaluate “potential karst impacts” (*id.* at ES-3)
- FERC lacks sufficient information to evaluate environmental impacts on vernal pools (*id.* at ES-6)
- FERC lacks sufficient information to evaluate environmental impacts on endangered and threatened species (*id.* at ES-9)
- A “sizeable portion of the Project has not been investigated for cultural resources” (*id.* at ES-12)
- FERC and PennEast have developed no data on the effect of the proposed pipeline on local ratepayers in New Jersey and Pennsylvania, and the only evidence in the record instead shows that they will be harmed. *See* Greg Lander, *Analysis of Public Benefit Regarding PennEast Pipeline* at 12-15 (Mar. 9, 2016) (“Lander Study”) (FERC Docket No. CP-15-558, Accession No. 20160311-5209)
- FERC and PennEast have not assessed the environmental and health impacts posed by arsenic mobilization caused by construction and operations (*e.g.*, Comments of Tullis Onstott, *Arsenic Release into Stream from the PennEast Pipeline* (Aug. 19, 2016) (FERC Docket No. CP-15-558, Accession No. 20160819-5209)

In seeking to justify deferring evaluation of so many local conditions until after it grants authority to take the Intervenor's private property, the DEIS touts that 37% of the pipeline will be constructed adjacent to existing rights of way. But it offers no explanation for why it deems the impact on local conditions to be minimal when 63% of the pipeline, that is 72.45 miles, will require new rights-of-way necessitating private landowner displacement and numerous other adverse impacts. Nor has the DEIS even purported to address whether other alternatives would result in fewer adverse impacts and displacement of private land ownership.² The record is simply nonexistent on the number of properties subject to eminent domain under either the preferred alternative or any of the other alternatives.

Simply put, every one of FERC's asserted "reasons" for recommending the taking of Intervenor's private property are speculative and unsupported statements about what it expects to find during the local-conditions analysis it has not yet performed. *See* DEIS at ES-16 (promising, for example, that "PennEast would minimize impacts" on "natural and cultural resources" that have not yet been evaluated through mitigation measures that have not yet been finalized). Granting eminent domain authority on such an inadequate DEIS would suggest that FERC can make a "public use" finding without any analysis of the local conditions on the land being taken, based entirely on the facile assurances of future actions by a private company. Unsurprisingly, no court has ever granted the government deference when a "public use" finding precedes the gathering and evaluation of evidence on which that finding must be based. Because FERC has improperly deferred analysis of local conditions until after eminent domain is authorized, it must withdraw the DEIS and that authority pending that analysis.

C. PennEast's Contracts with Project Shippers Provide No "Public Use"

² *See 99 Cents Only Stores*, 237 F. Supp. 2d at 1129 (overturning eminent domain when it was "undisputed that [the developer] could have easily expanded . . . onto adjacent property without displacing [the condemnee]") (emphasis in original).

**Evidence, and the DEIS Ignores Findings by FERC’s and Outside Experts
Showing that Such Contracts Provide No Public Benefit**

Seemingly as an afterthought, the Application and the DEIS speculate that the pipeline also will serve an incidental “public purpose” not only by satisfying supply contracts with shippers but also by providing reliable supplies of lower-priced gas to consumers via affiliate shippers. But this “public purpose” falters on the absence of evidence that there is a consumer need or market for additional gas supplies in this area of New Jersey and Pennsylvania. In the absence of such evidence, FERC cannot simply adopt PennEast’s alleged public benefits without scrutiny into whether PennEast’s “actual purpose” is only “to bestow a private benefit.” *Kelo*, 549 U.S. at 478; *see also id.* at 493 (Kennedy, J., concurring) (“There may be private transfers in which the risk of undetected impermissible favoritism of private parties is so acute that a presumption (rebuttable or otherwise) of invalidity is warranted under the Public Use Clause.”).

FERC and Penn East have attempted to equate “market need” with a “public purpose” based on supply contracts with project shippers who desire a new source of gas supply. But six of these project shippers are affiliates of PennEast and have contracted for 74.2% of the new pipeline capacity (and 88% of the contracted capacity after ten years). These self-serving contracts do not show that additional gas supplies are required for the area or that the public will otherwise benefit from the project. As FERC itself has previously recognized, supply contracts are an insufficient means in many cases to justify the taking of land under the Fifth Amendment: FERC’s exclusive reliance on supply contracts “makes it difficult to articulate to landowners and community interests why their land must be used for a new pipeline project” and “raise[s] difficult questions of establishing the public need for the project.” *Policy Statement*, 88 FERC at 61744. And even if contracts with shippers were indicative of public need in some cases, FERC still would be required to look beyond an “applicant’s stated purpose” in a particular case, which

it has elected not to do here. DEIS at 1-4. That is, FERC cannot first identify a shipper, “and then design[]” the public use “around that new user.” *See, e.g., Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1230 (C.D. Cal. 2002).

As shown above, in this proceeding PennEast has proposed this project simply to satisfy contractual obligations to its affiliate shippers; this is not a public purpose. The only other alleged benefit described in the DEIS is that it will provide additional and lower-priced gas for public consumers in the area. However, this alleged benefit is only supported by a market study based on “the savings that could have been achieved” in the winter of 2013-2014, nearly three years ago. Concentric Energy Advisors, PennEast Pipeline Energy Market Savings Report and Analysis at 2 (2015).³ But past conditions provide no substantiation for whether there is a present or future public purpose justifying the taking of private property.⁴

As proposed, the pipeline will not become operational until the end of 2017 at the earliest. The only evidence in the record about market conditions at that time shows that the likely result of PennEast’s operations—and its self-dealing contracts with its affiliate shippers—will be new gas supplies that consumers do not need and higher costs to ratepayers in New Jersey and Pennsylvania. *See Lander Study* at 4 (“The impact of PennEast may well be to increase, rather than decrease[] costs to gas customers.”).

In fact, FERC’s own experts have evaluated pipeline capacity in New Jersey and concluded that the conditions underlying PennEast’s outdated market study are no longer applicable based on “new pipeline takeaway capacity” that has resulted in the Northeast now being a “net exporter of natural gas.” FERC, *2015-16 Winter Energy Market Assessment* (Oct.

³ Available at <http://peneastpipeline.com/ConcentricEconomicStudy>.

⁴ *See City of Pittsburgh v. FPC*, 237 F.2d 741, 752 (D.C. Cir. 1956) (“The public convenience and necessity for which regulatory agencies issue certificates are the convenience and necessity of the future. The needs of yesterday require no fulfillment if they be not the needs of tomorrow.”) (citing *Am. Airlines v. Civil Aeronautics Bd.* 192 F.2d 417, 420-21 (D.C. Cir. 1951); *Kelo*, 545 U.S. at 478).

2015); *see also* FERC, *Summer 2016 Energy Market and Reliability Assessment* (May 2016) (stating that the Mid-Atlantic market “expect[s] to be well supplied with Marcellus gas this summer” and that “storage inventories set a record at the start of the 2015/2016 winter” and are “again at historically high levels”); FERC, *State of the Markets Report 2015* (Mar. 2016) (“The North American natural gas market will likely remain oversupplied and prices low in the near term.”). Indeed, New Jersey was recently ranked one of the most at-risk states for natural-gas overreliance based on growth in natural-gas capacity, natural gas generation as a percentage of total in-state electricity, and ongoing construction of new natural-gas power plants.⁵

On this record, to suggest that the existence of supply contracts eliminates the need for FERC to analyze whether the project will provide a public benefit is pure sophistry. FERC is not free to cherry-pick the evidence in this manner.⁶ Likewise, reliance on supply contracts to justify the taking of private property for “public use” ignores FERC’s clear guidance about the importance of market studies that include “projections of market growth” and that fully explain “the basis for any projections”; “[v]ague assertions of public benefits will not be sufficient.” *Policy Statement*, 88 FERC at 61,748.

Despite its candid recognition that contracts seldom establish a public purpose sufficient to explain the exercise of eminent domain, and notwithstanding evidence from its own experts that there is no public need for additional gas supplies in the area, FERC now arbitrarily proposes, without explanation, to grant eminent domain authority to PennEast. Under the Fifth Amendment, that course of action is plainly unconstitutional. Agency inertia provides no justification to defer blindly to the existence of supply contracts when doing so would violate

⁵ *See* Union of Concerned Scientists, *Rating the States on their Risk of Natural Gas Overreliance* (Oct. 2015).

⁶ *See, e.g., Trout Unlimited v. Lohn*, 645 F. Supp. 2d 929, 964–65 (D. Or. 2007) (summarizing “cases finding that agencies erred in disregarding the best available science and the opinions of their own scientists”).

one of the longest standing and most established constitutional rights that is of inestimable value to HALT members: the “right to exclude” the government from arbitrary “physical invasion.”⁷

D. FERC’s Eminent Domain Authority is Being Unconstitutionally Used to Coerce Landowners to Surrender Benefits to Which They are Entitled

The well-settled “unconstitutional conditions” doctrine states that the government cannot coerce its citizens into giving up any of their enumerated rights as a condition to receiving governmental benefits to which they are otherwise entitled.⁸ It is unconstitutional for the government to burden constitutional rights “by coercively withholding benefits from those who exercise” their constitutional rights.⁹ For example, under this doctrine, the government cannot grant a permit conditioned on the permittee’s surrender of land that would otherwise need to be taken through appropriate eminent domain procedures.¹⁰

FERC has violated the unconstitutional conditions doctrine in this proceeding. Specifically, FERC has provided the benefit of public comment and the right to have one’s property considered in the DEIS’s analysis of the route alignment only to those landowners who relinquish their constitutional rights and allow PennEast to enter their property. Those who exercise their rights do not receive this benefit. Acting within this flawed process, PennEast told landowners along the pipeline that if they refused access to PennEast for surveys—or if they refused to agree to easement offers—they would be denied the benefit of being able to influence the route’s placement and to protect resources on their properties.¹¹ PennEast’s coercions are effective only because FERC’s premature release of the DEIS does in fact deny the benefit of

⁷ See *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005) (“A permanent physical invasion, however minimal the economic cost it entails, eviscerates the owner’s right to exclude others from entering and using her property—perhaps the most fundamental of all property interests.”).

⁸ *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586, 2594-95 (2013)

⁹ *Id.* at 2595.

¹⁰ *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

¹¹ See Attachment A for an example of a letter from PennEast to landowners describing how landowners will lose the ability to influence the route if they do not grant survey access.

influencing the route and protecting resources for landowners who exercise their constitutional rights.

Yet by law, every landowner is entitled to the benefit of public comment and having FERC consider the impacts of the undertaking on their land. FERC therefore placed an unconstitutional condition on landowners who asserted their constitutional rights to exclude the government until after appropriate condemnation procedures and a “public use” finding, and denied them a benefit offered by the government to other landowners who were willing to forfeit their constitutional rights.

Landowners thus were asked to choose between their constitutional right and a benefit that FERC has the power to confer or withhold. The unconstitutional conditions doctrine is designed to combat this exact evil: government wielding its power to confer valuable benefits only on those citizens willing to suffer deprivation of their rights.

This unconstitutional condition doctrine was violated in large part here because FERC refused to require PennEast to gather all relevant information about impacted properties or develop alternative routes and mitigation measures based on those impacts *before* making its licensing decision. If FERC had required all relevant information to be submitted and evaluated as a prerequisite to its decision, as legally required, then landowners would still be able to exercise their rights under the Fifth Amendment’s “takings” clause at the same time they sought to influence PennEast’s routing and other mitigation proposals to FERC. Instead, FERC’s premature decision deprived landowners of government protections and public benefits mandated by the Fifth Amendment and various statutes.

Many of the landowners who refused to allow PennEast to trespass on their property or to voluntarily grant easements to their land are the owners of properties having significant

economic, aesthetic, historic, and cultural value. Because the landowners chose not to give up their rights to object to FERC's use of eminent domain and because FERC has authorized the use of eminent domain before mitigation measures have been proposed, the landowners have been unconstitutionally denied the benefit of influencing the project's route and other mitigation options in a way that could preserve these valuable resources.

II. CONFERRAL OF EMINENT DOMAIN ON THE CURRENT DEIS RECORD ALSO VASTLY EXCEEDS FERC'S AUTHORITY UNDER THE NATURAL GAS ACT AND IS CONTRARY TO FERC'S OWN POLICY GUIDANCE

A. The DEIS Erroneously Assumes that FERC Can Authorize Eminent Domain Without Satisfying the Prerequisites for its Authority Under Section 7 of the Natural Gas Act

FERC cannot act beyond the authority that Congress has delegated to the Commission. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 359 (1986) (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”). That means that FERC cannot relieve an applicant for a license from a statutory requirement if “Congress has yet to embrace proposals” inconsistent with the statute. *Consumer Fed'n of Am. v. FPC*, 515 F.2d 347, 359 (D.C. Cir. 1975).

In the Natural Gas Act, Congress delegated limited authority to FERC to grant a license for natural-gas companies to “undertake the construction” of facilities. 15 U.S.C. § 717f(a). As a precondition of that authority, FERC must determine that the proposed construction “is or will be required by the present or future public convenience and necessity.” *Id.* § 717f(c), (e). To meet these statutory obligations, FERC must assemble sufficient evidence to support a “public convenience and necessity” finding as a “prerequisite to the issuance” of approval of an applicant's proposed project. *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 392 (1959). Section “7(e) requires the Commission to evaluate all factors bearing on the public interest.” *Id.* at 391; *see also FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1 (1961) (requiring

Commission “to determine from its analysis of the total situation on which side of the controversy the public interest lies”). A failure to consider any factor bearing on the public interest is legal error and requires reversal of a license. *See City of Pittsburgh v. FPC*, 237 F.2d 741, 753 (D.C. Cir. 1956) (“The exclusion of evidence relating to future expansion and the refusal to consider future expansion in determining the public convenience and necessity were erroneous.”) (cited in *FPC*, 365 US at 23 n.19). Until FERC has met the prerequisites for authorizing construction, it lacks authority to authorize eminent domain. 15 U.S.C. § 717f(a), (h). Because the right of eminent domain only applies after construction is authorized, FERC self-evidently lacks authority to authorize eminent domain for the purpose of gathering missing information that FERC must evaluate as part of its “public convenience and necessity” determination.

In short, under the Natural Gas Act, until FERC has determined that the undertaking of construction is in the public interest, it has no authority to grant licenses to natural-gas company applicants. Nor can FERC grant any of the rights that may otherwise result from a license, such as the right to exercise eminent domain. *Id.* § 717f(h) (“When any holder of a certificate of public convenience and necessity cannot acquire . . . the necessary right-of-way to construct . . . a pipe line . . . , it may acquire the same by the exercise of the right of eminent domain.”). That is, the right of eminent domain may only be given to companies who have already “qualified under the Natural Gas Act to carry out and perform the terms of any certificate.” S. Rep. No. 80-429, at 3 (1947) (emphasis added). It cannot be given to a company that has not yet been authorized to undertake construction due to the fact that FERC has been unable to complete its statutorily mandated analysis.

This stepwise approach, also required under the Fifth Amendment mandate that a valid “public use” determination must precede the exercise of eminent domain authority, has heightened relevance in the context of the Natural Gas Act. The Act was enacted to remedy a situation in which private natural-gas companies were able to exploit the public and extract windfall profits from them based on their market power as monopolistic utilities. *See, e.g., FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 19 (1961). Thus, from the moment that the Natural Gas Act was passed, Congress instructed FERC to scrutinize the purpose of the project and motives of the companies applying for a government license in order to assure that the project would serve the public interest. Failure to conduct this scrutiny contravenes the explicit delegation of eminent domain authority from Congress.

FERC’s DEIS lacks required information about whether the proposed construction project is in the public interest and whether it will be able to obtain the approvals of other government entities and site-specific information about local conditions necessary to properly “carry out” the terms of a certificate. Because FERC admits it has not yet evaluated impacts and other local conditions affected by the project, that also means the Natural Gas Act prevents FERC from granting a license, or any of the rights that can exist exclusively under a license, to PennEast at this time.

Nevertheless, FERC indicated in the DEIS that it will grant eminent domain authority irrespective of its failure to comply with its statutory obligations. *See, e.g.,* DEIS at 5-24 (environmental condition 17). FERC’s rationale for ignoring the statute was offered in a recent proceeding which authorized property to be taken prior to a determination of whether the project’s construction satisfied the public convenience and necessity standard. *See Constitution Pipeline Co.*, 154 FERC ¶ 61,046, 61,274 (Jan. 28, 2016) (“Not allowing certificate holders to

proceed with eminent domain proceedings until necessary permits have been obtained, *could prevent project sponsors from obtaining access to property* and to information necessary to obtain those permits.”) (emphasis added).

Yet Congress has instructed FERC to give preeminence to the public interest, not to the concerns of project applicants at the expense of the public interest or private property rights. FERC simply has no power to strip the property rights of landowners to satisfy “project sponsors” until it has fulfilled its statutory duties by making the requisite public interest finding. *See Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 281 (D.C. Cir. 2015) (Rogers, concurring in the judgement) (“The Natural Gas Act allows the use of eminent domain pursuant to a certificate that authorizes ‘the construction or extension of [] facilities.’”). Because the Natural Gas Act places the focus of inquiry on the public interests of consumers, landowners, and communities, a purpose solely defined by the applicant’s needs is contrary to the purposes for which the Natural Gas Act authorizes eminent domain. *See* 81 Cong. Rec. 6,691, 6,723 (1937) (statement of Rep. Lea) (“The Commission decides the question from the viewpoint of the public interest and not from the viewpoint of the welfare of that company.”).

Here, so long as the record reflects no public purpose and a lack of other information and analyses necessary to approve all aspects of the proposed project, FERC lacks the authority to confer any rights that are contingent on a final license. FERC cannot rewrite the Natural Gas Act to displace the rights of landowners and prematurely confer the right to exercise eminent domain on a natural-gas company before all of the statute’s licensing prerequisites are satisfied.

B. FERC’s Authorization of Eminent Domain through the Artifice of “Conditional Approval” Violates the Natural Gas Act

FERC has attempted to unlawfully expand its eminent domain authority through an artful play on the phrase “conditional approval.” But FERC’s ability to attach “conditions” to a license

granted after weighing the public convenience and necessity is fundamentally different than FERC's obligation to satisfy statutory pre-conditions before granting that license.¹² Indeed, it is well-settled that an agency cannot use a "conditional approval" as a way to "circumvent [a] substantive requirement" of a statute¹³ or "when vital information has not yet been submitted."¹⁴

As in *Connecticut Fund*, in this proceeding FERC proposes to "use a conditional approval mechanism" improperly to circumvent a statutorily-required substantive determination, attempting to reinvent "conditions precedent to final approval" as "conditions subsequent" that can be satisfied after the conditional approval. *Id.* at 1007. But on this point, the D.C. Circuit has been clear: a "conditional" order from FERC is not a "final approval" of a Certificate. *Del. Dept. of Nat. Res. and Envtl. Control v. FERC*, 558 F.3d 575, 577 (D.C. Cir. 2009) (emphasis in original). Had Congress wished to grant FERC authority to issue interim certificates authorizing rights of eminent domain but not construction rights, it knew how to do so. *See, e.g.*, 7 U.S.C. 136a(c)(7) (authorizing rights under another statute when a "conditional" license is granted). But Congress has not granted that authority under Section 7 of the Natural Gas Act as it exists today.

Apparently, FERC wishes to authorize the use of eminent domain before a final Certificate is issued to an applicant because landowners may resist under local trespass and nuisance laws an applicant's efforts to collect information about their land. If so, FERC's remedy is to request Congress to amend the law. *Consumer Fed'n*, 515 F.2d at 358 ("Until [Congress] acts to alter the present [Section 7]" the agency cannot ask a court to "abandon [its] responsibility by acquiescing in a charade or a rubber stamping of nonregulation in agency

¹² In similar contexts, the Supreme Court has rejected attempts to abridge Fifth Amendment rights through clever but legally meaningless plays on words. *See Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 841 (1987) ("We view the Fifth Amendment's Property Clause to be more than a pleading requirement, and compliance with it to be more than an exercise in cleverness and imagination.").

¹³ *Conn. Fund for Envtl. v. EPA*, 672 F.2d 998, 1009 (2d Cir. 1982).

¹⁴ *Charette v. Bergland*, 84 F.R.D. 98 (D.R.I. 1979).

trappings.”); *Chevron, U.S.A., Inc. v. FERC*, 193 F. Supp. 2d 54, 72–73 (D.D.C. 2002), *aff’d sub nom. Williams Cos. v. FERC*, 345 F.3d 910 (D.C. Cir. 2003).

FERC’s attempt prematurely to grant “conditional” certificates authorizing eminent domain and the taking of private property also is disingenuously inconsistent. At the same time FERC attempts to authorize the exercise of eminent domain via “conditional approval,” it has conceded that “conditional” certificates—unlike final certificates—provide no legal right under Section 7 of the Natural Gas Act for a license applicant to begin the project’s construction. *See Crown Landing LLC*, 117 FERC ¶ 61209, 62106 (Nov. 17, 2006). This recognition shows that FERC’s position that a conditional certificate provides eminent domain rights has no statutory basis. To the contrary, FERC itself has recognized that “conditional” certificates in fact have no legal force until Section 7’s preconditions are satisfied: “[o]ur order is an incipient authorization without current force and effect” until an applicant “fulfills the conditions” *Id.*

In short, FERC is not free to rewrite the Natural Gas Act to prejudice landowners while favoring project applicants. But that is exactly what FERC has done here by the unlawful use of “conditional approval” to prematurely authorize the taking of the Intervenors’ private property. *See Cole v. Young*, 351 U.S. 536, 551 (1956) (rejecting an agency’s authority to act before it has satisfied each “condition precedent to the exercise of th[at] authority”).

C. FERC’s Proposal to Grant Eminent Domain Before it has Evaluated All Factors Required by the Natural Gas Act is Inconsistent With FERC’s Own Guidelines

In the DEIS, FERC has recognized that it “is required to consider . . . all factors bearing on the public convenience and necessity.” DEIS at 1-18. Indeed, FERC has provided detailed guidance regarding the evaluation of the public interest factors in the context of a proposal to construct a new pipeline. Under this guidance, FERC engages in two steps to evaluate the public interest under longstanding policy. *First*, FERC “balanc[es] the evidence of public benefits to be

achieved against the residual adverse effects” on three groups of people: “[1] existing customers of the pipeline proposing the project, [2] existing pipelines in the market and their captive customers, or [3] *landowners and communities affected by the route of the new pipeline.*” *Policy Statement*, 88 FERC at 61745 (emphasis added). Under this first step, “[t]he strength of the benefit showing will need to be proportional to the applicant’s proposed exercise of eminent domain procedures.” *Id.* at 61749. Thus, where a proposed project will result in even “modest use of federal eminent domain authority,” a “showing of significant public benefit” would be required.” *Id.* Second, “[o]nly when the benefits outweigh the adverse effects on *economic interests* will the Commission then proceed to complete the *environmental analysis* where other interests are considered.” *Id.* at 61746 (emphasis added).

The Application and the DEIS flatly ignore FERC’s guidance. Under the first step, the economic interests of affected communities and landowners simply have not been evaluated. Despite thousands of comments from affected landowners, PennEast’s Application concludes that the project will have minimal adverse effects on landowners based entirely on evidence that PennEast has reached out to inform landowners about the project and to request access to their property. PennEast Application at 15-16 (FERC Sept. 24, 2015) (“Application”). What FERC fails to acknowledge is that PennEast’s communications have led to easement agreements with only a few landowners, so that eminent domain will still be necessary in most instances. These communications are not proof that economic interests of the landowners have been addressed. In fact, neither the Application or the DEIS even contain a listing of the number of affected properties or their value.¹⁵

The DEIS similarly has made no attempt to quantify the economic, recreational, and aesthetic cost of the destruction of preserved resources—including conserved land, historic and

¹⁵ See DEIS at 4-166 (omitting any discussion of specific numbers of impacted properties or their value).

cultural resources, wetlands, or wildlife preserves. In lieu of quantifying the impact of destroying many of these resources, the DEIS simply states that it will *identify* these impacts at a later time. See DEIS at 5-19 (unevaluated historical and cultural resources); *id.* at 5-27 (unevaluated private land); PennEast Letter on Consulting Party Status¹⁶ (failure to consult in identifying historical and cultural resources); *id.* at 5-28 (limiting evaluation of conserved land to federal USDA easements while excluding state conserved lands).

These deficiencies are especially egregious because there can be no question that these impacts are significant. Comments submitted by the association representing New Jersey's 45,000 realtors demonstrated that the pipeline is likely to have drastic economic consequences for landowners.¹⁷ HALT's rough estimate is that the costs to private landowners from the pipeline's construction could easily exceed \$681,700,000, with an additional \$317,000,000 in land taking through eminent domain, and it is FERC's obligation to perform a detailed analysis of these costs. Some of these costs include:

1. *Loss in Property Value of Land on Pipeline Route.* Studies related to natural-gas pipeline construction show that landowners face immediate expected losses of property value of between 10.5 and 66.2 percent based on decreased demand for properties located along pipelines similar to the one proposed by PennEast.¹⁸ Assuming that property loss is near the 66.2% estimated decline in property value (a reasonable estimate given estimates from realtors to HALT members and the

¹⁶ FERC Docket No. CP-15-558, Accession No. 20160809-5232.

¹⁷ Comments of New Jersey Realtors, FERC Docket No. PF15-1-000, Accession No. 20150303-0055.

¹⁸ See Spencer Phillips et al., *Economic Costs of the Atlantic Coast Pipeline: Effects on Property Value, Ecosystem Services, and Economic Development in Western and Central Virginia* at 31 (Feb. 2016) ("*Economic Costs*"), available at http://friendsofnelson.com/wp-content/uploads/2016/02/20160209-FINAL-EconomicCostsOfTheACP_TechnicalReport; Kurt Kielisch, *Study on the impact of Natural Gas Transmission Pipelines* (2015) (Attachment B); see also Comments of New Jersey Realtors (discussing "severe impacts" of pipeline on "home and land values" and potential "[d]isclosure issues" where landowners would be required to disclose presence of proposed or actual pipeline). With no explanation, the DEIS simply ignores these and other studies and judicial proceedings that show impacts on property values. DEIS at 4-167.

unique environmental and land-use features on the properties affected), that the pipeline affects 865 private properties,¹⁹ and that these properties are near the average property values as provided by New Jersey’s Department of Taxation for the affected New Jersey counties and townships—that is, between \$298,300 and \$516,293²⁰—the loss in property value for those on the pipeline would be between \$170,815,529 and \$295,644,861.²¹

2. *Loss in Property Value of Land in High Consequence Areas.* The loss in property values is not limited to the property on which the pipeline is located, but also extends to nearby land, because the adjacent property owners often are required to disclose their proximity to pipelines as part of real estate sales.²² Assuming that the one adjacent property on each side of the property containing the pipeline would also be required to disclose the presence of a pipeline based on proximity to high consequence areas or potential evacuation zones, this disclosure is likely to reduce property value on these adjacent properties by approximately 3.8%.²³ The incremental loss in property value from these adjacent properties would be between \$19,610,242 and \$33,941,102.
3. *Value of Land Taken.* The dollar amount received in eminent domain proceedings when “balancing the adverse effects of a project against the public benefits” must

¹⁹ The DEIS does not provide the number of landowners that will be affected, so this number is an estimate based on a partial and redacted list that HALT obtained in a previous FOIA request to FERC.

²⁰ According to the New Jersey State Department of Taxation, \$298,300 was the average residential sales price of property in Stockton Boro in Hunterdon County, and \$516,293 was the average price in Hopewell Township in Mercer County. Other affected townships and boroughs within those counties generally fall within that range.

²¹ Other comments from affected landowners with relevant local information from realtors about their own expected property loss estimate that this amount could be much higher, and closer to \$500 million. See FERC Docket No. CP-15-558, Accession No. 20160908-5179.

²² This disclosure requirement is applicable in New Jersey according to the comments of the association for realtors in New Jersey. See Comments of New Jersey Realtors (discussing potential liability in New Jersey for failure to disclose presence of nearby pipeline).

²³ See *Economic Costs* at 31-32 (discussing estimates of property loss for nearby properties).

also be considered. *Certification of New Interstate Pipeline Facilities*, 90 FERC ¶ 61,128, 61,398 (Feb. 9, 2000) (“Order Clarifying Statement of Policy”). To estimate this number, HALT conservatively took the average per acre value of land in New Jersey.²⁴ New Jersey has one of the highest per-acre values of land among the 50 states at \$196,410 per acre,²⁵ of which the DEIS states that construction would affect 1,613.5 acres.²⁶ The economic value of the land taken in these circumstances is \$316,907,075. Assuming also that PennEast will offer below-market easement prices—as its pattern has been in early offers to HALT members—and that about 70% of the 865 landowners will incur approximately \$40,000 per property in legal expenses to obtain market value, those legal expenses represent a \$24,220,000 additional cost for landowners.

4. *Impact on ecosystem benefits to community.* The loss in value is still greater when the pipeline destroys ecosystem benefits to landowners, such as preserved and recreational land, cleaner water, and land containing other ecologically significant features or species. Many of these costs decrease landowners’ enjoyment of their properties and also decrease the value of their property. Although HALT has not quantified this additional impact on property values, it is undeniably substantial, and FERC is required to do so.²⁷ A study examining such benefits in Lancaster County, which shares many of the same ecosystem benefits

²⁴ The value in fact is likely to be much higher, because the affected areas in Hunterdon and Mercer County have higher average land values than the state as a whole, and the estimate does not take into account any business or commercial use of the land that would further increase its value.

²⁵ BUR. OF ECON. ANALYSIS, NEW ESTIMATES OF LAND IN THE UNITED STATES at 14, 27 tbl. 3 (Apr. 2015), available at <https://www.bea.gov/papers/pdf/new-estimates-of-value-of-land-of-the-united-states-larson.pdf>.

²⁶ DEIS at ES-2.

²⁷ A recent valuation of such benefits on another pipeline project in the same region, see Lancaster Farmland Trust, *Supplemental Comments on Atlantic Sunrise Project*, Dkt. No. PF 14-8-000 (Dec. 22, 2015), estimated \$676 million in economic benefits provided by preserved land in Lancaster County Pennsylvania.

including high amounts of preserved land, wetlands, and protected rivers and stream valued ecosystem benefits as between \$6,055-\$14,664 per acre annually. Projected for the 784-acre PennEast project area for permanent operations, the annual loss in ecosystem benefits would be \$4,747,000. Extending those annual benefits based on the 50-year term of the lease at a 0.6% rate—to reflect the risk free inflation adjusted discount rate taken from market prices for Treasury TIP bonds—and with the loss in value of the ecosystem benefits assumed to be between the same 10.5-66.2% discussed above, the loss in ecosystem benefits would be between \$52 and \$328 million, using the higher per-acre estimate.

Yet the DEIS makes no attempt to take account of these economic impacts, which HALT's rough estimates show could exceed \$681,700,000 in economic costs on private landowners and local communities. Instead, FERC touts the financial benefits that the project will bring PennEast and its shippers while glibly speculating about the effects on the impacted landowners, without performing any study of the actual landowner impacts or the costs of those impacts. HALT's number is not intended to be conclusive, but to highlight FERC's complete failure to consider significant economic impacts. FERC has an obligation to correct this error through reasoned analysis.

Further, before a project is approved, FERC's policy statement requires identification and balancing of these adverse economic impacts against the potential benefits before proceeding to the second step of review involving environmental concerns. PennEast's Application never performs this balancing. Instead, it describes the project's alleged benefits, while stating only that the adverse effects "have been or will be significantly mitigated through PennEast's efforts." Application at 17. However, there is no evidence in the record that PennEast has to date

mitigated any of the project's impacts on the Intervenor's property; PennEast's communications with the landowners certainly have not done so. As to future mitigation, FERC improperly adopted PennEast's promise to mitigate adverse effects that may be discovered, without any identification of what those adverse effects are or how those impacts should be weighed against the project's alleged benefits.

This approach is clearly inconsistent with FERC's policy statement. That document does not allow future promises about mitigation to substitute for the impact analysis and the balancing required by statute and the policy guidance itself. FERC cannot depart from its policy guidance without explanation. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("Unexplained inconsistency is . . . a reason for holding an interpretation to be an arbitrary and capricious change"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 537 (2009) (Kennedy, J., concurring) ("An agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past, any more than it can ignore inconvenient facts when it writes on a blank slate.").

The same deficiencies attend to the second step of the analysis required by FERC's policy statement. Despite admitting that it lacks information necessary to evaluate environmental impacts, FERC's basis for recommending conditional approval is that "PennEast would minimize impacts" by implementing best practices and mitigation plans during construction. DEIS at ES-16, 4-118. Yet the affected landowners whose property is to be taken will not have the requisite opportunity to publicly comment on the mitigation proposals and have no assurance that they can obtain administrative and judicial review of the adequacy of mitigation actions undertaken by PennEast. Any mitigation measures, and the analysis underlying them, must be part of the scope of public comment and licensing process afforded

under the statute and FERC's own policy guidance. *See Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 528 (9th Cir. 2015) (invalidating license based on "lack of any meaningful study of the effects of the mitigation measures"); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) ("It would appear to be a fairly obvious proposition that studies upon which an agency relies in promulgating a rule must be made available during the rulemaking in order to afford interested persons meaningful notice and an opportunity for comment.").

CONCLUSION

The DEIS should be withdrawn.

Dated: September 12, 2016

Respectfully Submitted,

s/ R. Steven Richardson
Wiley Rein LLP
1776 K Street N.W.
Washington, DC 20006
202-719-7000

HALT-PennEast

ATTACHMENT A



August 11, 2015

Jeffrey R. & Mary Louise Shafer
66 Brookville Hollow Road
Stockton, NJ 08559

Re: **NOTICE OF INTENT TO ENTER LAND TO SURVEY**
Proposed PennEast Pipeline Project
Tax Parcel #: 1007-60-14
Property located in: Hunterdon County, NJ

Dear Jeffrey R. & Mary Louise Shafer:

For several months, representatives of PennEast Pipeline Company, LLC ("PennEast") have been attempting to obtain permission to enter your property to conduct surveys needed before PennEast formally files its application with the Federal Energy Regulatory Commission ("FERC"). As shared over the last several months, our efforts to obtain permission to enter your property are part of the project development and regulatory process.

By design, the FERC pre-filing phase encourages a collaborative approach in order to gain your specific insights and to minimize impacts to your land, when and where possible, in order to better define the route. To date, we have not received the requested permission to survey your property. While we will continue to work with you as the Project progresses, survey activities in your area are underway and preferably need to begin on your property before we file our formal application with the current proposed route.

The current proposed route can be found on the Project website, www.penneastpipeline.com. We intend to submit our certificate application, with some minor adjustments next month. Shortly afterward, PennEast will begin discussing compensation for easements with individual landowners.

We ask again that you engage with us about impacts to your property and provide permission to PennEast to enter your property to perform the necessary survey activities. Enclosed is another survey authorization form, a document titled "Description of Survey Activities" and a self-addressed, stamped envelope. We ask that you take this opportunity to provide your consent, request reasonable conditions, or provide any other important information about your property for the necessary survey activities. If FERC approves the proposed route, the opportunity to adjust the route on your property will be very limited.

Please remember that granting survey permission to allow PennEast's entry onto your property does not represent a right-of-way agreement, nor does it constitute your support of the project. We understand that the process for locating interstate pipeline projects can be confusing and you are receiving competing information from people not directly impacted by our project. For objective information about your rights as a landowner during the regulatory process, please visit FERC's website at www.ferc.gov.

PennEast will certainly keep you informed of the progress of the Project. If you have questions about this letter, please call the landowner toll-free number, (855) 303-4830; send an email to answers@penneastpipeline.com or visit our website at www.penneastpipeline.com.

Thank you for your attention to this matter and for your anticipated cooperation.

Sincerely,



Jeffrey D. England
PennEast Project Manager

Enclosures:

Survey Authorization Form
Description of Survey Activities
Self-addressed stamped envelope

Tract No.: 1007-60-14

SURVEY PERMISSION FORM

I/We hereby give PennEast Pipeline Company, LLC (PennEast), its affiliates, agents, employees, and contractors, as well as its surveyors, biologists, archeologists, and environmental scientists, permission to enter upon my/our premises described below ("Property") to conduct civil surveys, environmental surveys, cultural resource surveys, and all other surveys and tests necessary for a pipeline route study, including, but not limited to the placement of stakes, limited non-mechanical (by hand) line-of-sight clearing, and geotechnical soil borings, subject to the condition that I am/we are paid for any and all damages to the Property caused by said surveys, if any. This permission includes the right to use existing roads, driveways, and trails as necessary. PennEast or its agents are to give prior notice before entering property.

Date: _____, 2015. Landowner:

Name: Jeffrey R. & Mary Louise Shafer

Mailing Address: _____

Phone: _____

County: Hunterdon

Property Address: 66 Brookville Hollow Road

Tenant's Name: _____

Tenant's Phone: _____

Is there a water well located on this property? Yes No

Is there a septic system located on this property? Yes No

Are there any abandoned gas wells located on this property? Yes No

Notes/Conditions:

Are there any other notable features we should be aware of? Yes No

Notes/Conditions:

Are there any other special conditions? Yes No

Notes/Conditions:

This instrument prepared by:
Western Land Services
55 West Street
Tunkhannock, PA 18657

Description of Survey Activities

Depending on the size of an individual parcel, all survey activities described below should only take a minimal amount of time and should not result in any inconvenience to the property owner. All survey work will be performed during reasonable daylight hours only. All work will be performed by authorized professional surveyors and their crews. The surveys that PennEast Pipeline Company ("PennEast") will request for each property are:

(a) **Civil Survey.** This activity involves approximately four to five representatives, intermittently placing wooden stakes along a portion of each property to delineate the area described as the "study corridor." Depending upon the length of the proposed study corridor on the property to be surveyed, this activity should take no longer than two days for each property that will be surveyed.

(b) **Environmental Survey.** This activity involves approximately two to three representatives walking within the study corridor, which will be clearly staked, to identify and delineate any vegetative and geological indicators of wetland areas that may be present on the property. The wetlands boundaries will be marked with small colored flags. PennEast representatives will also look for the presence of any threatened or endangered species, if a suspected habitat is within the staked area. Depending on the length of the proposed route of the pipeline on the property being surveyed, this activity should take no longer than three days for each property that will be surveyed.

(c) **Cultural Resources Survey.** This activity involves two to four representatives walking within the staked study corridor to identify any indicators of potential archaeological resources. If such a site is suspected, then the Archeologists would return to that location with spade shovels and perform a limited excavation of the test hole that would measure approximately 2x2 feet square and approximately 2-3 feet deep. Any area that is excavated for this type of survey will be restored by PennEast to a condition consistent with its condition prior to the excavation. Depending on the length of the proposed route of the pipeline on the property being surveyed, the archaeological walkover will take less than one day. If a limited archaeological excavation is necessary, it should take no longer than two days, weather permitting.

During any survey work, no trees over 2 inches in diameter or timber will be cut down or removed from any property. Small brush, however, may be cut in order for the civil surveyors to obtain a line-of-sight. If any such brush is cut in residential areas, it will be removed from the property by PennEast representatives.

ATTACHMENT B

Study on the Impact of Natural Gas Transmission Pipelines by: Kurt C. Kielisch, Sr. Appraiser, Forensic Appraisal Group, Ltd.

1.1 Perception = Value

Damages resulting from perceived market negative influence are sometimes known as “stigma” or “severance” damages. These perceptions need not be factual to be real. These perceptions drive the view of the potential buyer as to the potential enjoyment or return on investment they may receive in the purchase of the property. Since it is the job of the appraiser to reflect the actions of the potential market, i.e. buyer, it is necessary to study the actions of these buyers and what they perceive as detractors of value. Though it is true that the properties affected by natural gas transmission pipelines do sell in the market, *it may not be true that these properties sell at the same price* as a similar property not so affected. To discover if such a perception exists, we have completed both research studies on our own accord and collected other studies completed by other entities relating to the market perception and reaction to the presence of a natural gas transmission pipeline on a property.

The foundation of our studies was recognizing that there are two factors that give value to real estate. The first is that only humans give value to real estate. It may be an obvious point, but nonetheless a necessary one for it leads directly to the second factor. The second factor that gives value is perception (or belief) by the human as to what the property value is. This perception can come in many forms. For example, with residential properties it is largely based on the expected enjoyment of the property by the user and how that property compares to others. For developers, the value is in their perceived return on investment on completion of the development. Understanding this concept of “perception motivates value,” it becomes necessary to research and quantify the public’s general consensus regarding high pressure natural gas transmission pipelines and their effect on residential property values.

1.2 Perception Gained Through the Media

Recognizing that our media tends to shape our opinions and beliefs about certain matters, we engaged in an information search on what the media is saying about gas pipelines and, more particularly, gas transmission pipelines. We have collected and reviewed over 700 pages of articles, including 147 news stories, some radio/television transcripts, and miscellaneous media relating to gas pipelines and their safety. Most stories covered the perceived dangers of such pipelines focusing on explosions, tragic stories of injury or loss of life and questions about their safety. Examples of such articles include:

- “3 injured in Utah gas line explosion,” United Press International, 12/3/98.
- “Pipeline rupture kills one in Iowa,” Associated Press, 11/12/99.

- “When pipelines are time bombs” USA Today, 3/14/00.
- “Pipeline blast in New Mexico kills 10,” U.S. News, 8/20/00 and The Associated Press (CNN news) August 21, 2000.
- “Gas line explosion sends flames, smoke hundreds of feet high,” Associated Press, Kansas City Star. ○ “Massive natural Gas Explosion Reported in Illinois,” The Associated Press, Fox News, April 29th, 2007.
- “Louisiana pipeline blast kills 1, injures 1,” Reuters, December 14, 2007.
- “Homes evacuated after pipeline explosion in Luzerne County,” The Associated Press, February 18, 2002.
- “Huge Gas Pipeline Explosion Rocks Northeast New Jersey,” The New York Times, March 24th, 1994.
- “Company fined in Appomattox pipeline explosion,” The News & Advance, August 10th, 2008.
- “Fifteen die in Belgium gas blast,” BBC News, July 30, 2004.

This list is an example and not an inclusive listing of the articles found. There were also articles that painted a positive picture about the pipelines, however most of these articles were found in special trade magazines relating to, and supported by, the pipeline industry.

In addition to articles and reports mentioned above, we have found published reports on the public domain of two congressional hearings and two other reports relating to gas transmission pipelines and their safety. These hearings are:

- a. Re-authorization of the natural gas pipeline safety act and the hazardous liquid pipeline safety act, hearing before the Subcommittee on Energy and Power, February 3, 1999.
- b. The Bellingham, Washington, hazardous liquid pipeline incident, hearing before the Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation, October 27, 1999.
- c. GAO Report to the Ranking Minority Member, Committee on Commerce, House of Representatives, entitled “Pipeline Safety: The Office of Pipeline Safety (OPS) is changing how it oversees the pipeline industry.” May 2000, report #GAO/RCED-00-128.
- d. Letter to the Secretary of the Department of Transportation, Rodney E. Slater, by Congressman John D. Dingle, Ranking Member, in reference to his concerns about the GAO report and pipeline safety. June 4, 2000.

These hearings and reports looked into the safety record and procedures of the pipeline companies, revealing disturbing information regarding these issues. Some of these issues included:

- The Office of Pipeline Safety (OPS) is supported by user fees assessed on transmission pipelines paid by the pipeline companies. (page 8)
- There is virtually no testing of (pipeline) operators.
- There are more than 2 million miles of pipeline in the United States and there are 52 inspectors from the Office of Pipeline Safety. (page 8)
- For the most part, safety violations and leaks are self reported by the pipeline companies to the Office of Pipeline Safety (OPS). Trusting the pipeline companies to report all of their safety violations and leaks to the OPS for review and potential penalties, would amount to reporting on yourself.
- The OPS reports that the average number of major accidents (defined as resulting in a fatality, injury or property damage of \$50,000 or more) has increased at a 4% rate annually for a 10-year time period ending in 1998. (page 4)
- The OPS has had the lowest compliance ratio to the Safety Board's recommendations. (page 5)
- Natural gas transmission pipelines have a higher "number of major accidents per 10,000 miles of pipeline" than natural gas distribution pipelines. (page 15)

The GAO report is available on-line, in public libraries or can be sent to a citizen on request. The point here is that this report, and others like it, is readily available to the potential buyer of a property that has a natural gas transmission pipeline on it and would like to learn more about such a pipeline.

A more recent development relating to gas transmission pipelines is the blackout of information relating to the presence of these pipelines and basic information regarding their size, buried depth, odor, pressure and substance transported. Prior to the terrorist attack on the World Trade Center on September 11th, 2001, our office could obtain all cited data directly from the pipeline company. Now, such information is difficult, if not impossible, to obtain. Contact with the gas utility company requesting such information typically results in the company refusing the information citing Homeland Security issues. A call to the Homeland Security Office confirms this security issue. It would appear that such pipelines are a potential terrorist threat. An article appearing in the U.S. News & World Report (December 22nd, 2003) entitled "Keeping Secrets," a U.S. Army Ranger named Joseph McCormick (Floyd County, Virginia) was refused

information relating to two natural gas transmission pipelines by the Federal Energy Regulatory Commission. The reason given to him was such information “would provide a road map for terrorists.” Indeed, on July 2nd and again four days later, bombs were exploded on the B.C. Pipeline in Canada causing injury to the pipelines, but thankfully no explosions. These bombings were suspected to be the work of a terrorist group in Canada. This group was accused of setting off similar bombs along pipelines on October 2008.

Our literature research indicated that the media presents natural gas pipelines in a negative light. Most articles and news stories are about explosions, injury, loss of property value, leaks and fear by property owners living in close proximity of such pipelines. Many of the stories did not differentiate between a gas distribution pipeline and a gas transmission pipeline. The common theme in the stories was natural gas and pipelines. It is not known if the reading public has the knowledge to distinguish a distribution pipeline from a transmission pipeline. However, it can be reasonably concluded that such a negative presentation of the gas pipelines most likely will influence the perception that gas pipelines are not safe and can cause injury if they explode.

1.3 Safety and High Consequence Area

Other information that has been obtained by this research was the testimony of Benjamin J. Pooler, II, who is an expert in gas safety issues. In his letter and testimony, Mr. Pooler brought up some interesting issues regarding natural gas transmission pipelines. Some of these are:

- ❖ the natural gas in these pipelines typically has no odor.
- ❖ natural gas is a simple asphyxiate.
- ❖ outside forces and construction account for 50% of all the gas pipeline accidents. (OPS statistics for pipeline accidents, 1994-1997)
- ❖ a 36" diameter natural gas transmission line under high pressure, if exploded, could cause radiant heat to ignite secondary fires within a 1,000 foot radius.

Mr. Pooler’s observation of the radius of radiant heat to ignite secondary fires was supported by the tragic pipeline explosion in New Mexico (2000) which killed 10 campers who were in excess of 800ft from the pipeline. The TransCanada gas transmission pipeline explosion on December 1st and 2nd, 2003, again showed the power and devastation of a gas transmission line explosion. This explosion left a heavily timbered area in a remote part of Canada, leveled to the ground with only sand like deposits remaining within the blast area.

The U.S. Government (departments of OPS, ESPA and DOT) has identified areas of high consequence on the potential of a gas transmission pipeline explosion. They have defined an area of concern called the

High Consequence Area (HCA) whereas significant damages may occur that would do considerable harm to people and their property. “The definition of the HCA includes class 3 and 4 locations; facilities with persons who are mobility-impaired, confined or hard to evacuate, and places where people gather, the corridor of protection from the pipeline is 300 feet, 660 feet and 1,000 feet depending on the pipelines diameter and operating pressure.”¹

This appraiser discovered the industry’s formula for predicting the High Consequence Area (HCA). The formula for a pipeline’s HCA is:

$$0.69 \sqrt{\text{pressure (psi)} \times \text{diameter}^2 \text{ (inches)}} = \text{radius of HCA from center line of pipe (feet)}$$

Example: the subject pipeline being a 42" pipe under 1300lbs psi:

Calculation:

$$0.69 \sqrt{1300 \text{ (psi)} \times 42^2 \text{ (inches)}} = \text{radius of HCA from center line of pipe (feet)}$$

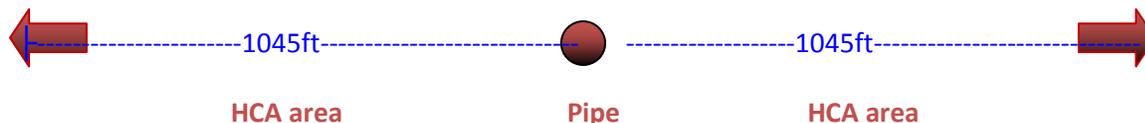
$$0.69 \sqrt{1300 \text{ (psi)} \times 1764 \text{ (inches)}} = \text{radius of HCA from center line of pipe (feet)}$$

$$0.69 \sqrt{2,293,200} = \text{radius of HCA from center line of pipe (feet)}$$

$$0.69 \times 1514.33 = \text{radius of HCA from center line of pipe (feet)}$$

$$1044.88 \text{ ft} = \text{radius of HCA from center line of pipe}$$

Diagram:



In this example the HCA would be 1,045ft radiating from the center of the pipeline.

1.4 Real Estate Agents and Land Owner Opinion Surveys

The next step of the Research Study was to discover how this generally negative image of the gas pipelines has affected the belief of the potential buyer of a residential property. We engaged in an opinion survey given to real estate sales agents attempting to measure this belief. This survey summarized the results

¹ *Pipeline Safety: High Consequence Areas for Gas Transmission Pipelines*: Federal Register, August 6, 2002 (Vol 67, No. 151).

from agents in three geographic areas: Brookfield, Madison and Oshkosh, Wisconsin. In summary, the following results were tabulated:

- ✓ 68% stated that the presence of a pipeline on a residential property would decrease its value.
- ✓ 70% believed that it would take longer to sell the house with a pipeline than one without.
- ✓ Of those who said there would be a decrease in value due to a gas pipeline, 56% believed the decrease in value to be between 5% and 10%.
- ✓ 78% stated they believed a pipeline is a safety risk.
- ✓ 78% stated that such a pipeline should be revealed to the potential buyer through disclosure.

This survey was undertaken to discover what the real estate sales agents believed based on their experiences in the sale of real estate working daily with buyers and sellers.

Another opinion survey was completed regarding what the buying public believes about the presence of gas transmission pipelines on residential properties. This survey was completed by an outside firm that specializes in researching for advertising, marketing and public relations. The survey was entitled, "Guardian Pipeline Study, Jefferson and Walworth Counties," prepared by Dr. James W. Peltier, President of APR Research (McFarland, Wisconsin). Mr. Peltier's study surveyed the opinions of property owners with the intent to "determine whether the presence of the Guardian Pipeline in Jefferson and Walworth Counties, Wisconsin, would impact the *perceived* value of the property under which the pipeline would be buried." (Guardian Study, page 1) [*italics mine*]. This study was completed March 28, 2002. It interviewed 418 individuals with an even mix between males and females. These individuals were limited to property owners who reside in Jefferson and Walworth counties.

This survey asked two questions that were similar with the exception of the amount of information given to property owners. The first question read:

"Suppose you were looking for some property and you found one that you really liked. You determine what you think is a fair market price for that property and are ready to buy it. Now, suppose that the same property has a three-foot in diameter high-pressure natural gas pipeline buried four feet below the land on that property. Which of the following three choices best describes how the pipeline would impact your decision to buy the property?"

Of the total respondents 58.9% said they would not buy the property at any price, 18.7% would buy but at a reduced price and 22.5% said it had no impact and they would still buy.

Then, this question was asked again (later in the interview) after the property owner responded to a risk question that went like this:

“Although extremely rare, Realtors must disclose to you that the pipeline carries certain risks. Some of these rare risks include, accidental explosions, terrorist threats, tampering, and the inability to detect leaks. How worried would you be regarding the following?” (The three risks were then read and rated.)

When the first question was then repeated after this question, i.e. making the respondents more aware of risks related to the pipelines, the number that would not buy rose to 62.2%, while the number that would buy but at a reduced price stayed relatively the same at 18.9% and the number that said it had no impact dropped to 18.9%. In addition, the number that stated they would still buy, but at a reduced price, indicated an average price reduction of 21% in both scenarios.

The results of this study had interesting consequences to valuation.

First, it supports the view that the more information the potential buyer receives that is negative regarding the presence of a natural gas transmission pipeline, the more prejudiced they become against the property. This prejudice resulted in the “no buy” decision percentages to increase. This also supports the position that information shapes our perception and this perception motivates buying decisions.

Next, the basic economic principle of Supply and Demand would suggest that the lower the demand (i.e. fewer potential buyers), the lower the price (with the supply remaining steady). Hence, if nearly 60% of the buying market would not even consider buying a property with a gas pipeline on it, the amount of potential buyers would be severely reduced. In addition, of the remaining group that would consider buying such a property, about half of them would demand a discount on the average of 21%. This is significant and supports our earlier findings in the real estate sales agent survey which indicated that such a property would be harder to sell, be on the market longer, would sell for less and be subject to safety risk concerns.

1.5 Disclosure

The last question of our real estate agent survey dealt with the question of having to reveal the presence of a gas pipeline on a property through the Real Estate Condition Report. In that question 78% of the real estate agents said the homeowner would have to reveal the presence of a gas transmission pipeline on their property. In support of that position I have received a copy of a letter by Attorney Mark C. Young in regards to “disclosure obligations for sellers of residential real estate across which runs a high-pressure natural gas transmission line.” Mr. Young is an attorney specializing in real estate law. In this letter he summarizes his position as to how much to disclose by stating:

“My recommendation to sellers in such circumstances is to make full and accurate disclosure of any matters affecting the property which they could reasonably expect a jury to expect them to disclose. . . . it would be my recommendation that a seller disclose the existence of a highpressure gas transmission line located on the seller’s property and not risk the potential for a later claim from the purchaser.”

He continues,

“Thus, a seller would be more fully protected by disclosing not only the presence of the pipeline, but also the fact it is significantly larger than the distribution lines bringing natural gas into homes, that the line is under greater pressure than those lines, and that there is no odor added to the gas as there is in the gas distributed into homes.”

The State of Virginia is also a full disclosure state. Real Estate Attorney Jeffrey Hammaker (Virginia Beach, Virginia) addresses the issue of full disclosure and gas transmission pipelines in his letter.

“If the owner sells the property using a disclosure, certain items must be disclosed. Such items requiring disclosure include “land use matters” and “hazardous or regulated materials, including . . . underground storage tanks. Natural gas constitutes a hazardous and regulated material.”

In relation to the presence of a high pressure, natural gas transmission pipeline on the owner’s land, Atty. Hammaker states that this owner has two choices in disclosure:

“The property owner could (1) disclose his knowledge of the pipeline, or (2) sell the property under a disclaimer.”

However, if a property owner chooses to sell using a disclaimer, which means he is unwilling to make any disclosure, then he must sell the property “as is.” Selling a property under the “as is” condition presents a red-flag to buyers which, in turn, typically increase market resistance.

Ohio is also a disclosure state. Ohio §5302.30 (Property Disclosure) requires the seller to disclose pertinent facts to the potential buyer. These disclosures have been put into a disclosure form entitled the “Residential Property Disclosure Form.” Section H(5) of this form requires the seller to disclose any

known “toxic or hazardous substances” on the property. Section N of this form requires the seller to disclose “Other known material defects” which is defined as “material defects would include any non-observable physical condition existing on the property that could be dangerous to anyone occupying the property or any non-observable physical condition that could inhibit a person’s use of the property.” Attorney William Kaufman (attorney for the client) has opined to this appraiser that he would think such a disclosure requirement would include the presence of a natural gas transmission pipeline. Realtor Brad Knapp (Henkle-Schueler, Lebanon, Ohio) agrees with Atty. Kaufman’s opinion and stated that he would recommend that any client of his reveal the presence of any pipeline on the property. The opinions of Mr. Kaufman and Mr. Knapp echo the opinions that this appraiser has experienced by other real estate professionals and lawyers in the State of Ohio.

It would appear, due to the opinions cited, the requirement of disclosure in Ohio and due diligence, that the property owner with a pipeline on their property in Ohio should disclose the presence of this pipeline. How much disclosure as to the nature of the pipeline is debatable. However, prudence would suggest that the property owner disclose all that is in their common knowledge about the presence and nature of the pipeline.

We have seen with the survey results the more negative information a potential buyer receives on a property, the more inclined they are to perceive such a pipeline as a “real” threat and problem, not worth the risk. This negative perception could translate into an outright refusal to purchase the property, or a demand for a lower price to balance out the risk and negatives the property possesses.

1.6 Utility Corridor

Utility corridors have been on the rise as land owners become more reluctant to “give their land over” to new utility easements. Utility companies have responded by planning their easement corridor along established utility easements and other right-of-ways such as roadways, railroads and recreational trails. This placement of new easements alongside existing easements creates a utility corridor. This phenomena is taking place throughout the nation as states enact utility siting laws (e.g. Wisconsin §1.12(6)) requiring future planned routes for transmission utility easements to be given preference to existing easements. The Federal Energy Regulatory Commission has been cited in many accounts accepting and complimenting utility routes that utilize “other” utility easement routes for the siting of their transmission utility easements. This corridor effect is evident in Ohio.

The buying public is becoming more aware of this phenomenon. It is a growing knowledge that if you have an existing transmission line or pipeline easement running through a property, there is a good likelihood that another such line or pipeline will follow in the coming years. The country is painfully aware of its need for more energy and an energy independence from foreign resources. Utility transmission lines and pipelines are growing in number to meet this need and the public is keenly aware of its growth.

1.7 Conclusion of Perception

The buying public's perception of property is largely influenced by what it learns from the media. This media is not isolated to print or news media anymore. The Internet has a large role in delivering news and information to the public and is growing in use and trust by the public. As a result the public is not limiting their information on such issues as gas pipelines to news stories, but they have the ability to dig deeper into the topic including obtaining data from the government and various investigations enacted and reported by them.

We have reviewed these media outlets and found that gas pipelines are typically reported in a negative fashion as to cause concern and fear. Realtor surveys have supported the notion that pipelines have a negative influence on property value. A land owners' survey has shown that pipelines have a diminishing impact on property value and the more information that is disclosed about the pipeline the greater the negative impact. Disclosure is required in many states, Ohio included, and it is recommended that a prudent seller disclose both the presence of a pipeline on their property and their knowledge of its nature. It is believed that the disclosure of a pipeline on a property will influence the value perception of the property. The relatively contemporary phenomenon of the Utility Corridor, is slowly becoming known to the public mostly by observation of the placement of new utility transmission easements, and can have a negative view on the future of a property currently encumbered with a pipeline. Therefore, it is concluded that these market influences places a negative perception on a

property with a gas transmission pipeline.

2 Impact Studies

2.1 Structure of an Impact Study

An impact study is a study using empirical evidence, typically sales during a certain time period, and comparing these sales of properties with a natural gas transmission pipeline to comparable properties that were not encumbered with a pipeline. If structured properly, the difference in value between the two types of property is identified as the "impact" to a property due to the presence of the pipeline. This impact can be either positive, meaning the presence of the pipeline enhanced property value; negative, meaning the presence of the pipeline lowered the property value; or, neutral, meaning the impact had not measurable effect on property value.

We have completed several studies measuring the impact that a natural gas transmission pipeline had on property value. The two geographic areas studied were Ohio and Wisconsin. We have also searched for any published or unpublished studies on the impact of pipelines on property value. The results of our research follow this introduction.

2.2 Ohio Impact Studies

We completed four impact studies in Ohio. Three of these were in Butler County and one in Warren County. All of these studies were residential vacant land use having lot sizes from 0.23 acres to 1.15 acres. One study included an analysis of a residential development parcel of 200+ acres. A fifth study is included that was completed by Raymond Jackson, an appraiser in Ohio. This study included improved residential properties with typical subdivision sized lots. These studies are presented in summary form on the next page.

After review of these studies it is concluded that the average impact due to the presence of a gas transmission pipeline is -11.6%, rounded to -12%. However, this average is for mostly residential lots of less than 1 acre in size. The larger parcel study, Hawthorne Hills, indicated a -13% loss. Therefore, using these five studies the overall loss would be represented in the range of -12% to -14%. This is an overall loss including the permanent easement area, but not the temporary easement impact which would have been incurred at the time of the taking period.

**SUMMARY OF STUDIES ON THE
IMPACT OF A NATURAL GAS TRANSMISSION PIPELINE ON PROPERTY VALUE**

Location of study	typical lots	pipeline easement	# parcels in study	# pipeline	# without pipeline	range of loss	overall avg loss
Riverside Estates Butler County, Ohio	0.30 ac – 1.00 ac	80ft wide easement running along front yard and street	21	11	10	-5% to -15%	-7%
Logsdon Woods Butler County, Ohio	0.41ac – 1.00 ac	110ft wide easement running along the side yard and rear yard lines	86	20	66	+6% to -44%	-14%
Rolling Meadows Warren County, Ohio	0.23ac – 1.15 ac	50ft wide easement running parallel to a 150ft wide HVTL and oil pipeline easement, gas easement runs along side yard and back yard line	44	7	37	-11% to -16% impact after impact of HVTL and oil pipeline were extracted	-14%
Hawthorne Hills Butler County, Ohio	204.56 ac development parcel	Gas transmission pipeline bisecting parcel, also a HVTL running diagonally along parcel intersecting perpendicular to gas pipeline	Used paired sales analysis with a 60.3 acre comparable sale of development land within close proximity			-13% for gas pipeline after HVTL impact was extracted	-13%
Rolling Knolls Butler County, Ohio Completed by Jackson	Improved residential lots 1985-2002 sales	Gas easement running along the back property line of improved properties	96	19	77	-5% to -10%	-10%

2.3 Wisconsin Impact Studies

We have completed several impact studies in the State of Wisconsin. These studies include residential lots in subdivisions and rural agricultural land and large agricultural land tract with a future use for residential subdivision. These studies appear on the next page.



**SUMMARY OF STUDIES ON THE
IMPACT OF A NATURAL GAS TRANSMISSION PIPELINE ON PROPERTY VALUE**

Location of study	time of land sales	typical lots	pipeline easement	# parcels in study	# pipeline	# without pipeline	indicated range of loss	overall avg loss
Knightsbridge Mequon - WI	1991- 1994	0.57 - 1.00 ac	25ft wide easement, pipeline with 3 properties adjacent to the line but not encumbered and 1 with the line along the back yard	17	4	13	-4.6% to -14.1% The adjacent lots ranged -4.6% to 6.2%, the encumbered lot -14.1%	-7.5%
Mole Creek Grafton - WI	1996-1998	0.29 - 0.80 ac	50ft wide easement cutting diagonally across two lots, along the rear of another and nicking the rear corner of the last	11	4	7	-26.3% to -44.7%	-33.4%
Twin Creeks Jackson - WI	2002-2003	0.45 - 0.55 ac	76ft wide easement running along the sideyard and just barely crossing onto the lot	29	4	27	-4% to -14%	-9%
Ashbury Meadows Appleton - WI	1997-1998	0.20 - 0.30 ac with some 0.48ac	75 ft wide pipeline easement, running diagonally alongside property lines	105	9	96	-15 to -40%	-30%
Maple Hills I Appleton - WI	1993-1998	0.28 - .051 ac	75 ft wide pipeline easement, running diagonally alongside property lines	77	7	70	-6 to -29%	-16%

Maple Hills II Appleton - WI	1994-1998	0.25 - 0.68 ac	75 ft wide pipeline easement, running diagonally alongside property lines	81	16	65	+3% to -59%	-18%
Prairie Creek I Menasha - WI	1989-1995	0.25 - 0.70 ac	75 ft wide pipeline easement, running diagonally alongside	75	11	64	-8% to -32%	-26%
			property lines, two pipes, one 8" and one 16"					
Prairie Creek II Menasha - WI	1993 - 1998	0.25 - 0.84ac	75 ft wide pipeline easement, running diagonally alongside property lines, two pipes, one 8" and one 16"	41	5	36	-21%	-21%
Cardinal Crest Est Sun Prairie - WI	1990-1994	0.19 - 0.42ac	75 ft wide easement running diagonally through sideyards and nipping a back yard corner	92	5	87	-6.5% to -20%	-13%
Shonas Heights Sun Prairie - WI	1994- 1999	0.24 - 0.58 ac	12" gas pipeline running mostly along sideyards and backyard lines.	112	24	88	-15% to -30% green space corner -6% inside lots -4% to -5%	-22% -6% -5%
Rustic Ridge New Berlin -WI	1998- 2000	0.35 - 1.00 ac	50ft wide pipeline easement running along back line of large outside lots	38	9	29	-6% to -18%	-13%
Mourning Dove Washington County- WI	1994- 1995	2.13- 6.28 ac	100ft wide easement running along front yard and street for 2 lots and bisecting the others	20	7	13	+4% to -20%	-8.7%



Large acreage sales Walworth & Jefferson Counties - WI	2001	27ac - 65 ac average 43 ac	50ft wide easement running along the fence line of property except 1 which it bisects the property	Comparative analysis	-8% to -26%	-14%
OVERALL MEAN						-15%

Following are two comparative studies of large acreage lands whereas one parcel had a natural gas pipeline running through it compared to similar properties that did not.

The first of these studies we have completed is a matched pair analysis of a rural 40 acre tract in Darien Township, Walworth County, Wisconsin, that had a 36" natural gas pipeline traversing the property in a diagonal fashion going from the southeast corner to the northwest corner. This parcel was purchased as vacant, but it has a large lot subdivision across the street and is less than 1 mile from Darien. Three comparable sales with the same type of geographic placement and future potential use were found and analyzed in comparison with this parcel. The comparables did not have a pipeline or any other utility transmission easement traversing the property. This matched pair analysis adjusts for the variables of time, size, topography et cetera to arrive at an estimated price without the pipeline. The difference in price between these comparables and the pipeline property are then compared and put into a percentage analysis. In this analysis you can see the loss due to the pipeline was -31%. This high loss factor could be a result of the pipeline traversing at a diagonal bisecting the parcel and the parcel's future use being in close proximity to the urban areas of Darien and Delavan.

The analysis follows on the next page.



MATCHED PAIR SALES ANALYSIS

GAS PIPELINE SALE v. NON-PIPELINE COMPARABLE SALES

	Pipeline W-1	Sale W-2		Sale W-3		Sale W-4		
address	Sec 25-T2-15E CTH K Darien, WI	Sec 30 -T2N-16E N Shore Drive Delavan, WI		Sec 24-T2N-16E Town Hall Road Delavan, WI		Sec9-T2N-15E State Hwy 11 Darien, WI		
Parcel I.D.	#BD2500002B	#FD3000001A		#FE2400006		#BD900022		
Sales Price	\$202,000	\$		\$		\$		
size in acres	40.00 acres	40.00		25.00		43.00		
\$/ac	\$5,050	\$		\$		\$		
date of sale	October 20, 2003	October 8, 2003		September 16, 2004		March 15, 2004		
time in months	Base	0		(11)		(5)		

time adj 6.00% base	Base	0.00%		-5.53%		-2.45%		
Adj \$/acre	\$5,050	\$		\$		\$		
			adj		adj		adj	

MATCHED PAIR SALES ANALYSIS								
GAS PIPELINE SALE v. NON-PIPELINE COMPARABLE SALES								
size	40 acres	40 acres	0%	25 acres	0%	43 acres	0%	
topography	all open, used for cropland, tree lined	all wooded	-10%	mostly open, all cropland, irregular in shape	0%	all wooded	-10%	
terrain	gently rolling to rolling	gently rolling to rolling	0%	gently rolling	0%	very rolling	10%	
zoning	agriculture	agriculture	0%	agriculture	0%	agriculture/now residential	0%	
utilities	at street	at street	0%	at street	0%	at street	0%	

use	agricultural with future regimental	agricultural with future residential	0%	agricultural with future residential	0%	residential large lot with underground util	0%	
Misc	Guardian-I, 36" natural gas pipeline bisects property	none	0%	two road access	-10%	across street from landfill, further from urban areas	25%	
Location	T of Darien Walworth Cnty	T of Delavan Walworth Cnty	0%	T of Delavan Walworth Cnty	0%	T of Darien Walworth Cnty	0%	
total adj %	Base		-10%		-10%		25%	

**MATCHED PAIR SALES ANALYSIS GAS
PIPELINE SALE v. NON-PIPELINE COMPARABLE SA
.ES**

total \$/acre adj	Base		\$(825)		\$(831)		\$1,418	
comparable Value	\$5,050		\$7,425		\$7,482		\$7,089	
difference due to pipeline \$/ac			\$(2,375)		\$(2,432)		\$(2,039)	

Difference due to pipeline %			-32%		-33%		-29%	
Mean % loss								-31%

Explanation of Adjustments:

Time- A 6% per annum adjustment was made for time adjustment.

Size- No adjustment was needed, all sales were similar.

Topography- Sales studies have shown that a fully wooded property can sell for up to 20% or more compared to a non-wooded parcel, however in consideration of the subject parcel and matching W-2 to W-3, it appeared a 10% was more in line.

Terrain- All sales were considered similar except W-4 which is very rolling and hard to cultivate or develop.

Zoning- All sales were considered similar.

Use- All sales had similar zoning and land use

Misc- The subject property had a 36" natural gas pipeline bisecting the property from the northwest corner to the southeast corner. No comparables had such an improvement. W-4 was across the street from a very large county landfill and 3 miles north of Darien and 3 miles northwest of Delavan, whereas the other comparable properties were in all within 1 mile or so of either Delavan or Darien.

Location- All sales were considered in a similar locational advantage.



The second of these studies is a matched pair analysis of a rural 38.886 acre tract in Concord Township, Jefferson County, Wisconsin, that had a 36" natural gas pipeline traversing the property along the east property line, but placed a few hundred feet from it, then following a north-south path diverting around a pond. This parcel was purchased as vacant and had the opportunity to place a residence where the old farmstead is located. Six comparable sales with the same type of geographic placement and future potential use were found and analyzed in comparison with this parcel. The comparables did not have a pipeline or any other utility transmission easement traversing the property. This matched pair analysis adjusts for the variables of time, size, topography et cetera to arrive at an estimated price without the pipeline. The difference in price between these comparables and the pipeline property are then compared and put into a percentage analysis. In this analysis you can see the loss due to the pipeline was -18%.

The analysis follows on the next page



**MATCHED PAIR SALES ANALYSIS - TABLE 1 GAS
PIPELINE SALE v. NON-PIPELINE COMPARABLE SALES**

	Pipeline Con-1	Sale Jef-1		Sale Sul-1		Sale Sul-2		Sale Sul-3	
address	W1958 Bakertown Rd T of Concord	Schmidt Lane T of Jefferson		Indian Point Rd T of Sullivan		516 W. Northey Rd T of Sullivan		CTH P T of Sullivan	
Parcel I.D.	T006-07162924- 000	T014106150443 000 & T014061509120 00		T260616013100 2000		T260616234100 000		T260616061200 200	
Sales Price	\$257,500	\$		\$		\$		\$	
size in acres	38.886 acres	43.00		30.41		20.00		34.315	
\$/ac	\$6,622	\$		\$		\$		\$	
date of sale	October 26, 2005	March 15, 2004		December 15, 2005		August 25, 2004		December 27, 2005	
time in months	Base	20		(2)		14		(2)	
time adj 6.00% base	Base	9.83%		-0.83%		7.12%		-1.03%	

Adj \$/acre	\$6,622	\$		\$		\$		\$	
			adj		adj		adj		
size	38.886 acres	43 acres	0%	30.41 acres	0%	20.00 acres	0%	34.315 acres	0%
topography	mostly open,	20 ac open, 17	20%	mostly open,	0%	20% open, 80%	-11%	mostly open,	15%

	small pond , appx 2 acres in wetland (5%)	ac wooded and wetlands (40%)		crops, small woods, borders Glacial Drumlin Rec trail		wooded, long and narrow lot		scrub trees and grasses along 23acres plus small 2-3ac wetland area	
terrain	gently rolling to level	level	0%	level	0%	level	0%	level to gently rolling	0%
zoning	A-1	A-1	0%	A-1, A-3	0%	A-1, A-3	0%	A-1, A-3	
utilities	at street	at street	0%	at street	0%	at street	0%	at street	
use	agricultural with original farmstead left	no residential splits left	0%	agriculture with one residential lot, no splits left	0%	agriculture with one residential lot, no splits left	0%	agricultural with original farmstead left	
Misc	Guardian-I, 36" natural gas pipeline runs down east portion of land	none	0%	none	0%	none	0%	none	

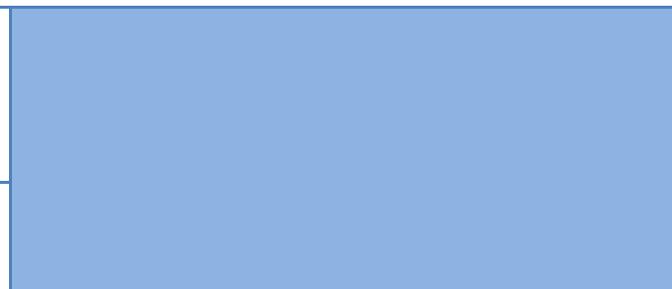
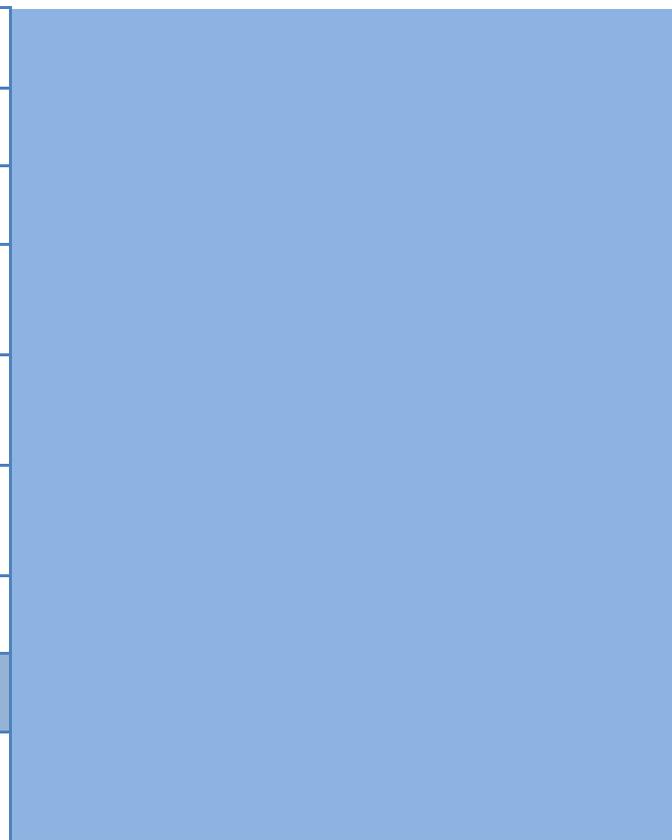
Location	T of Concord Jefferson Cnty	T of Sullivan Jefferson Cnty	0%	T of Sullivan Jefferson Cnty	0%	T of Sullivan Jefferson Cnty	0%	T of Sullivan Jefferson Cnty	
total adj %	Base		20%		0%		-11%		15%
total \$/acre adj	Base		\$1,405		\$0		\$(1,002)		\$844
comparable Value	\$6,622		\$8,429		\$9,783		\$8,103		\$6,468
difference due to pipeline \$/ac			\$(1,807)		\$(3,161)		\$(1,481)		\$154
Difference due to pipeline %			-21%		-32%		-18%		2%

**MATCHED PAIR SALES ANALYSIS - TABLE 2 GAS
PIPELINE SALE v. NON-PIPELINE COMPARABLE SALES**

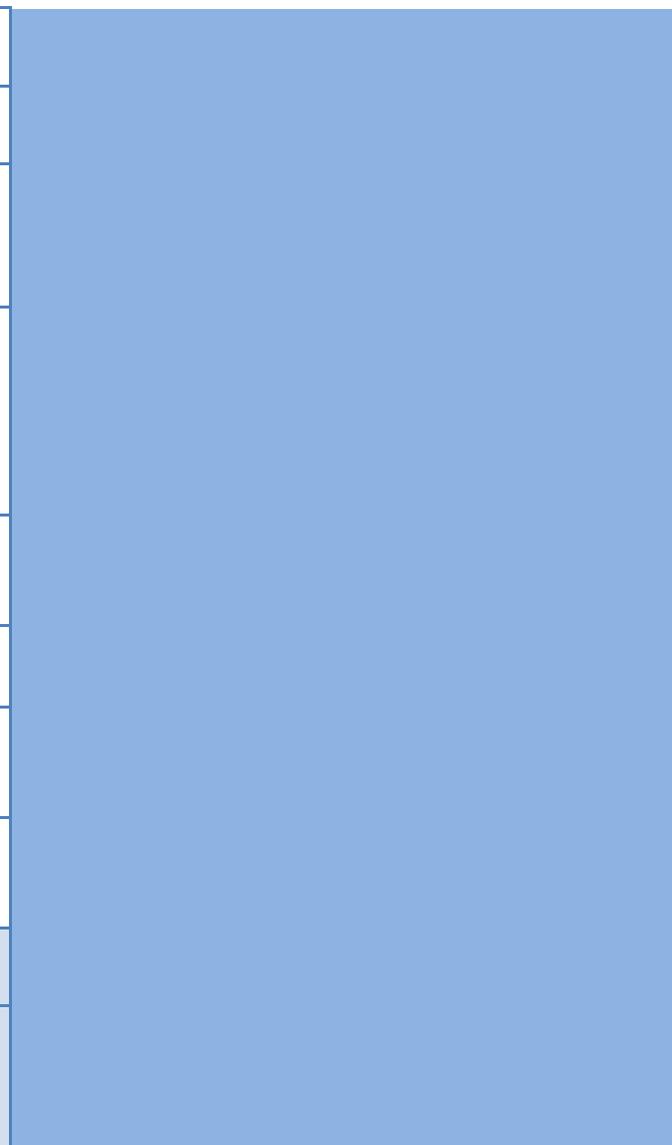
	Pipeline Con-1	Sale Sul-4		Sale Ixo-1	
address	W1958 Bakertown Rd T of Concord	Rome Oak Hill T of Sullivan		CTH E T of Ixonia	
Parcel I.D.	T006-07162924- 000	T260616282200 200		T120816324300 100	

Sales Price	\$257,500	\$		\$	
size in acres	38.886 acres	26.813		17.702	
\$/ac	\$6,622	\$		\$	
date of sale	October 26, 2005	March 5, 2004		July 1, 2005	
time in months	Base	20		4	
time adj 6.00% base	Base	10.00%		1.95%	
Adj \$/acre	\$6,622	\$		\$	
			adj		adj
size	38.886 acres	26.813 acres	0%	17.702 acres	-10%

topography	mostly open, small pond, appx 2 acres in wetland (5%)	mostly open, tree lined perimeter	5%	mostly open	5%
terrain	gently rolling to level	level	0%	level	0%



zoning	A-1	A-1, A-3	0%	A-1, A-3	0%
utilities	at street	at street	0%	at street	0%
use	agricultural with original farmstead left	agriculture with one residential lot left	0%	agricultural with original farmstead left	0%
Misc	Guardian-I, 36" natural gas pipeline runs down east portion of land	none	0%	none	0%
Location	T of Concord Jefferson Cnty	T of Sullivan Jefferson Cnty	0%	T of Ixonia Jefferson Cnty	-10%
total adj %	Base		5%		-15%
total \$/acre adj	Base		\$365		\$(1,555)
comparable Value	\$6,622		\$7,668		\$8,812
difference due to pipeline \$/ac			\$(1,046)		\$(2,190)
Difference due to pipeline %			-14%		-25%



Mean (average)

-18%

Explanation of Adjustments:

- Time- A 6% per annum adjustment was made for time adjustment.
- Size- Only Sale Ixo-1 needed a size adjustment being less than 20 acres.
- Topography- Sales studies have shown that a fully wooded property can sell for up to 20% which was used as a guideline for the woods adjustment. The subject property had a pond, rated at a +10%, but wetlands rated at a -5%. The wetland was calculated to retain 25% of the land value.
- Terrain- All sales were considered similar.
- Zoning- All sales were considered similar.
- Use- All sales had similar zoning and land use, except Sale Jef-1 which had no splits left.
- Misc- The subject property had a 36" natural gas pipeline running along the easterly portion of the property in a north-south basis, and veering around the pond. The location was not along the fence line, but similar.
- Location- All sales were considered in a similar locational advantage except Sale Ixo-1, which appears to have a higher land value due to location.
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2.4 Other Impact Studies

Additionally, our research discovered three gas pipeline studies conducted by other sources. These studies were: “Natural Gas Pipeline Impact on Residential Property Values: An Empirical Study of Two Market Areas,” (Kinnard, Dr. William, Jr, *Right of Way* magazine, June/July 1994); “Setting Value on a Gas Pipeline Easement Part Two, Case Studies of Potential Damages,” (Lang, William and Brett Smith, *Right of Way* magazine, Jan/Feb 1999); and, “INGAA Natural gas Pipeline Impact Study,” (Allen, Williford & Seale, Inc, INGAA Foundation, 2001). All of these studies looked at the effects that a natural gas transmission pipeline had on property values. It is the understanding of this appraiser that all of these studies were financed by the gas line industry (e.g. the Interstate natural Gas Association of American Foundation (INGAA)) or its individual members. All the studies concluded that there was no measurable impact on value.

2.5 Conclusion of Impact Studies

The Ohio studies indicated a range of loss in the range of -12% to -14% due to the presence of a pipeline easement. The Wisconsin studies indicated a loss in the range of -15% with thirteen studies being mostly small residential lots, and -18% to -31% with large agricultural parcels. The weighted overall average for the Wisconsin studies was -16%.

In conclusion, there is a perceived negative influence suffered by residential and agricultural properties having a gas transmission pipeline easement, reducing the market value of these properties. It would also appear that as more information on the characteristics and potential dangers of gas pipelines is made available, through public media or real estate disclosure requirements, potential buyers will perceive gas pipeline easements to have an increasingly negative influence on value.



Document Content(s)

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