

PennEast Pipeline Company, LLC
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610



September 11, 2015

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

Re: PennEast Pipeline Company, LLC, Docket No. PF15-1-000
Supplemental Information

Dear Ms. Bose:

PennEast Pipeline Company, LLC (“PennEast”) hereby provides to the Federal Energy Regulatory Commission (“FERC” or “Commission”) additional information in the above-captioned proceeding that is responsive to supplemental comments submitted by Dr. Ned Heindel and Dr. Linda Heindel, by letter dated September 2, 2015.¹ The September 2 Comments were filed in response to information filed by PennEast on July 1, 2015, in the referenced docket.² As discussed below, PennEast disagrees with the legal interpretations included in the Heindels’ September 2 Comments.³ PennEast is committed to continue working with all affected landowners, including the Heindels, to address their concerns and to acquire the necessary property rights to construct the PennEast Pipeline Project without resorting to condemnation.

In its Informational Filing, PennEast provided information relative to specific inquiries posed by the Commission, *inter alia*, regarding “[L]aws and/or regulation governing these tracts and all other tracts within conservation easements along the planned pipeline route and the process by which PennEast would need to obtain an easement.”⁴ As explained therein, PennEast had not yet identified, at the time the initial draft of Resource Report 8 was filed, all properties on the proposed pipeline route that have conservation easements.⁵ PennEast subsequently determined that parcels of land owned or co-owned by the Heindels (either individually or in their capacity as trustees of inter vivos trusts) are included in the proposed pipeline route, specifically Northampton County, Pennsylvania, tax parcel nos. P9-6-6, P9-7-13 and P9-7-15.

PennEast respectfully disagrees with any interpretation of the Pennsylvania Conservation and Preservation Easements Act, 32 P.S. §§ 5051 et seq. (“CPE Act”) that prohibits an entity with eminent domain power from purchasing property subject to a conservation easement without resort to condemnation. The September 2 Comments quote the relevant text of 32 P.S.

¹ Supplemental Comments for Dr. Ned Heindel and Dr. Linda Heindel Regarding PennEast Pipeline Project, Docket No. PF15-1-000 (Sept. 2, 2015) (“September 2 Comments”).

² PennEast Pipeline Company, LLC, Docket No. PF15-1-000 (July 1, 2015) (“Informational Filing”).

³ The September 2 Comments also contains pejorative language (e.g., inadequate, misleading), but such language is unsupported by the record evidence as described herein.

⁴ *Id.* at 1 (emphasis added).

⁵ *Id.* at 4.

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§ 5055(d)(1)(ii) then states that “the statute does not confer ... any power or authorization to purchase property subject to a conservation easement.”⁶ Although this statement is correct, *i.e.*, the CPE Act does not confer power to purchase property subject to a conservation easement, the CPE Act does not prohibit sales to entities with the right of eminent domain. The relevant text provides that the CPE Act “shall not be construed to limit the right [of an entity like PennEast] to purchase rights for its public purposes over real property subject to a conservation or preservation easement without resort to condemnation.”⁷ Thus, a pipeline can negotiate for the purchase of property rights at any time and when the pipeline acquires the right of eminent domain with a FERC certificate, the pipeline and a willing landowner will be able to consummate the purchase of property rights without resort to condemnation. As noted above, the reason PennEast will be engaging in these good faith negotiations with affected landowners, including the Heindels, is to address their concerns and to acquire the necessary property rights to construct the PennEast Pipeline Project without resorting to condemnation.

Further, the September 2 Comments rely upon the proposition that any natural gas transmission pipeline would be contrary to the overall purpose of the conservation easements, *i.e.*, conservation. The presence of a buried underground pipeline, however, is not inconsistent with the purposes of the CPE Act because the surface area will be restored following a temporary disruption for construction of the PennEast Pipeline Project and will remain undeveloped.

Significantly, tax parcel No. P9-7-13 already contains a natural gas pipeline and related communication lines installed under multiple easements granted by the landowners’ predecessors to Columbia Gas Transmission, LLC, a major interstate natural gas pipeline system servicing the Northeast and Mid-Atlantic regions. Presumably, if the presence of an underground natural gas pipeline had been deemed by the County and Township to be inconsistent with conservation principles, those entities would not have accepted the dedication of the Heindels’ conservation easement on parcel No. P9-7-13. Moreover, as discussed above, the Pennsylvania legislature included language in the CPE Act that explicitly allows such an easement to be purchased by an entity with eminent domain powers and did not exclude natural gas pipelines as inherently inconsistent with the conservation purposes of the statute. Finally, there is no explicit prohibition of such a pipeline in the instruments that created the conservation easements on the Heindel properties.

The Heindels are interpreting their conservation easements as absolutely prohibiting them from negotiating rights-of-way with PennEast under any circumstances, which would have the effect of “forc[ing] PennEast into an eminent domain proceeding for each and every such property [containing a conservation easement] it intends to traverse.”⁸ PennEast disagrees with the interpretation of the conservation easements, including the classification of the pipeline as industrial or commercial, in the September 2 Comments and, as described above, the CPE Act under which the conservation easements were granted specifically allows for a sale outside of condemnation. As authorized by the CPE Act, PennEast remains willing to negotiate in good

⁶ September 2 Comments at 3.

⁷ 32 P.S. § 5055(d)(1)(ii).

⁸ September 2 Comments at 4.

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faith with the Heindels and to work with the other stakeholders, including Northampton County, Williams Township and the co-owners of parcel no. P9-7-13, in order to avoid resort to condemnation in the event FERC grants PennEast a certificate of public convenience and necessity.

Should you have any questions regarding the foregoing, please contact me at (610) 406-4322.

Sincerely,

/s/ Anthony C. Cox
Anthony C. Cox
PennEast Pipeline Company, LLC,
By its Project Manager
UGI Energy Services, LLC

cc: Medha Kochhar (FERC)
Kandilarya Barakat (FERC)