



State of New Jersey

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February 2, 2018

FOR SETTLEMENT PURPOSES ONLY

VIA EMAIL (jengland@ugies.com) AND OVERNIGHT MAIL

Jeffrey D. England
Project Manager
PennEast Pipeline Project
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610

Re: Easement Acquisition Offer, PennEast
Pipeline Project

Dear Mr. England:

This office represents the State of New Jersey's Department of Environmental Protection, the New Jersey Water Supply Authority, the New Jersey Natural Lands Trust, the Department of Agriculture¹, and the Department of Transportation (hereinafter collectively referred to as "the State") in connection with the letters you sent on January 20, 2018,² requesting that the State

¹ Regarding the farm properties in which the State Agricultural Development Committee (SADC) holds a property interest, the property owners lack the legal authority to enter into a binding financial settlement with PennEast to purchase any right-of-way since the properties are subject to the State of New Jersey Farmland Preservation Program's deed of easement (DOE). Since N.J.S.A. 4:1C-32.a prohibits the voluntary reconveyance of the easement, any future acquisition of the ROW rights PennEast seeks may only be acquired through the use of eminent domain proceedings in which the SADC and the DOE Grantees are parties.

² The State also received letters dated January 22, 2018, and a letter with a February 18, 2018, deadline. As the majority of the letters were dated January 20, 2018, with a February 5, 2018, response deadline, this letter uses those dates. Every reference to the January 20, 2018, letters also includes the January 22, 2018, letters the concern regarding the time to consider the offer is not



sign the proposed Right-of-Way necessary for construction of the PennEast Pipeline Project and accept the offered compensation.

The State cannot accept PennEast's offers and sign the Right-of-Way because the Certificate of Public Convenience and Necessity is still subject to legal challenge and PennEast has not provided sufficient information regarding the bases for the offers and the terms contained in the proposed Right-of-Way, some of which are ambiguous or contrary to law. Moreover, by unilaterally setting a February 5, 2018, deadline to accept the offers, PennEast has not provided a reasonable period of time for our clients to consider the offers, obtain necessary information not provided by PennEast, or engage in meaningful negotiations.

In addition to the foregoing, the January 20, 2018, letter is patently misleading. In the letter, PennEast claims that it has "attempted on multiple occasions to negotiate an easement agreement" for the Project. This statement is not true. Prior to receipt of the January 20, 2018, letter, the State has not received any communications from PennEast describing the specific property rights it seeks, offering any compensation, or seeking to negotiate.³ For example, although the Water Supply Authority was copied on letters dated May 5 and July 6, 2016, to Hunterdon Land Trust Alliance wherein PennEast asked the Hunterdon Land Trust Alliance to consider using the Green Acres diversion process, neither letter contained an offer of monetary compensation, the proposed Right-of-Way that PennEast wants the State to sign, or a request to engage in negotiations. Moreover, PennEast's "take it or leave it" position as its opening offer is contrary to the spirit of fairness in dealing with a property owner that imbues good faith negotiations required in any condemnation matter. County of Morris v. Weiner, 222 N.J. Super. 560 (App. Div. 1988). Accordingly, it is the State's position that PennEast has not made an attempt to negotiate with the State at all, much less in good faith.

The State needs to obtain the information set forth on attached Schedule A in order to engage in any discussions with PennEast. However, based upon our preliminary review of the

ameliorated by the extra 13 days given in the letter with the February 18, 2018, deadline.

³ The State acknowledges that the Department of Transportation (DOT) received an appraisal for the Right-of-Way being sought on DOT's property.

proposed Right-of-Way there are numerous vague terms (such as multiple and undefined references to "reasonable" time or notice in Paragraphs 3 and 6, and unclear rights in Paragraph 4) and other terms which cannot be accepted by the State as a matter of law. For example, the following paragraphs are unacceptable as drafted:

- Paragraph 6 allowing PennEast to modify the route without any input or comment by the State is contrary to the State's obligations to its citizens.
- Paragraph 11 requiring the State to indemnify PennEast is contrary to law since the State legally cannot indemnify a private party in these circumstances.
- Paragraph 15 allowing PennEast to terminate all responsibilities or liabilities by assigning their rights to an undisclosed third party without the consent of the State is not reasonable.
- Paragraph 17 requiring the State to assist PennEast in obtaining all governmental approvals cannot apply because the State cannot contract away its regulatory authority.
- Paragraph 22 requiring that the Right-of-Way to be kept confidential is contrary to public policy and the Open Public Records Act and cannot be agreed to by the State.

These are some of the deficiencies contained within the proposed Right-of-Way and the State reserves the right to negotiate all of the terms of the Right-of-Way upon receipt of the requested information.

If PennEast does not intend to provide the requested information or you have any questions, please let us know. We look forward to hearing from you.

Sincerely yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____


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Schedule A

State requests pertaining to Right-of-Way ("ROW") provisions

ROW Paragraph	Substance of Paragraph	State request or notation
2(a)	Purchase price listed	Provide documentation supporting offer.
2(a)(i)(x)	Purchase price based, in part, on "consideration of the route of the pipeline(s) and other factors"	Please explain what the "other factors" referenced here are and how the "consideration of the route" and the "other factors" relates to the January 19, 2018 Certificate of Public Convenience and Need ("CPCN").
2(b)	Damage amount listed	Provide documentation supporting damages amount, including the types of damages anticipated and which actions PennEast undertakes which are anticipated to cause damages.
3	Cites "reasonable notice" to the Grantor	Please define "reasonable notice," including but not limited to the means of notice, timing, and who will receive notice.
4	Enumeration of rights acquired in ROW.	Please explain how each of the specific rights acquired in Paragraphs 4(a), (b), and (f) relates to the construction of the Pipeline Project as authorized by FERC in the CPCN.
6	Map for permanent ROW.	Please explain what "reasonably modify the path of the Right-of-Way" means and whether such modifications would be under Grantee's sole discretion.
11	Grantor indemnifies Grantee	The State cannot indemnify a private entity. This provision must be deleted.
15	Allows the Grantee to assign, transfer or convey the ROW without Grantor's consent.	This language is unacceptable. The State requires the ability to withhold consent of any assignments and, further, that the assignment does not terminate PennEast's responsibilities or liabilities.
17	Grantor will cooperate with Grantee	The second sentence must be deleted, as the State is itself a permitting entity.
22	ROW will be confidential	This provision is contrary to public policy and numerous "Sunshine" laws which require transparency in good governance. This entire provision must be deleted.