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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

PENNEAST PIPELINE COMPANY,  
LLC,  
One Meridian Boulevard, Suite 2C01  
Wyomissing, PA 19610

Plaintiff,

vs.

A PERMANENT EASEMENT FOR  
0.73 ACRES ± IN DELAWARE  
TOWNSHIP, HUNTERDON  
COUNTY, NEW JERSEY, TAX  
PARCEL NO. 1007-32-4;

NEW JERSEY CONSERVATION  
FOUNDATION, JERSEY CENTRAL  
POWER AND LIGHT COMPANY,  
AT&T CORPORATION,  
TOWNSHIP OF DELAWARE, THE  
STATE OF NEW JERSEY,  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION;

AND ALL UNKNOWN OWNERS,  
Defendants.

**DOCKET NO: 3:18-cv-01756**

Civil Action

**SECOND AMENDED ANSWER TO VERIFIED COMPLAINT IN CONDEMNATION  
OF PROPERTY PURSUANT TO FED. R. CIV. P. 71.1 AND DEMAND FOR JURY  
TRIAL**

Defendant, New Jersey Conservation Foundation (individually or collectively “Defendant”), as and for its Answer to the Verified Complaint (the “Complaint”) of Plaintiff, PennEast Pipeline Company, LLC, says:

**RULE 71.1 (e) (2) (A) and (B) STATEMENTS**

As required by FRCP Rule 71.1(e) (2) subsections (A) and (B), the Defendant hereby identifies the real property in which they claim an interest to be that real property described in paragraph 2(e) of the Complaint, known as Lower Creek Road in Delaware Township, Hunterdon County, New Jersey, described in a Deed dated October 21, 1992 recorded in Hunterdon County at Book 108 Page 618 and known as Tax Parcel Number 1007-32-4 and as further described in a Deed dated September 16, 1998 recorded in Hunterdon County at Book 1196 Page 188. The nature and extent of their interest in such property is fee simple.

**NATURE OF THE CASE**

1. Neither admits nor denies the allegations of paragraph 1 of the Complaint because they contain only conclusions of law as to which no answer is necessary.

**DEFINITIONS**

2. In response to the “definitions are used in this Complaint”:
- a. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2(a) of the Complaint.
  - b. Admit allegations of paragraph 2(b).
  - c. Admit FERC issued an Order and the FERC Order is a public record, but Defendant neither admits nor denies the balance of the allegations of paragraph 2(c) of the

Complaint because they contain only conclusions of law as to which no answer is necessary.

- d. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2(d) of the Complaint.
- e. Admit.
- f. Admit that Complaint described the Rights of Way, but deny the Rights of Way are necessary to install and construct the Project. Deny the Rights of Way are adequately depicted on the drawing attached to the Complaint as Exhibit “A”. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2(f) of the Complaint.
- g. Defendant denies that the Appraised Value is the fair market value. Defendant denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations of paragraph 2(g) of the Complaint since the Complaint does not describe the appraisal report or identify the appraiser. It is not known if Plaintiff has more than one appraisal.
- h. Admit.
- i. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2(i) of the Complaint since defendant has not obtained an updated title search and does not know if any other person or entity has an interest in the property.
- j. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2(j) of the Complaint.

## **JURISDICTION AND VENUE**

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint.
5. Denies the allegations of paragraph 5 of the Complaint
6. Neither admits nor denies the allegations of paragraph 6 of the Complaint because they contain only conclusions of law as to which no answer is necessary.
7. Neither admits nor denies the allegations of paragraph 7 of the Complaint because they contain only conclusions of law as to which no answer is necessary.

**NO AUTHORITY TO CONDEMN**

8. Admit that on January 19, 2018, the FERC issued the FERC Order to PennEast, but deny the balance of the allegations of paragraph 8 of the Complaint. Defendant specifically denies that the FERC Order allows Plaintiff to construct or operate a pipeline or the Project.
9. Neither admits nor denies the allegations of paragraph 10 of the Complaint because they contain only conclusions of law as to which no answer is necessary, except to deny that the FERC Order is a valid, enforceable order allowing for the construction of a pipeline.
10. Neither admits nor denies the allegations of paragraph 10 of the Complaint because they contain only conclusions of law as to which no answer is necessary, except to deny that the FERC Order is a valid, enforceable order allowing for the taking of property.
11. Denies the allegations of paragraph 11 of the Complaint

**PENNEAST IS A HOLDER OF A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY**

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint.
13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint, except to deny that any review was extensive.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint.
15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint, except to deny that any public participation was meaningful.
16. Admit that when evaluating proposals for the construction of a new pipeline, the FERC must assess whether there is a need for the proposed project and whether the Project will serve the public interest, but deny that the FERC properly or adequately evaluated or reviewed if there is a need for the proposed project and whether the Project will serve the public interest.
17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.
18. Denies the allegations of paragraph 18 of the Complaint
19. Denies the allegations of paragraph 19 of the Complaint
20. Denies the allegations of paragraph 20 of the Complaint
21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Complaint.
22. Denies the allegations of paragraph 22 of the Complaint

23. Denies the allegations of paragraph 23 of the Complaint
24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Complaint.
25. Denies the allegations of paragraph 25 of the Complaint
26. Denies the allegations of paragraph 26 of the Complaint

**DENIALS THAT PENNEAST HAS BEEN UNABLE TO ACQUIRE THE RIGHTS OF WAY BY AGREEMENT**

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint.
28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint.
29. Admit that PennEast's land agent contacted the Defendant, but deny that PennEast negotiated in good faith or attempted to purchase the limited Rights of Way. Deny balance of allegations.
30. Denies the allegations of paragraph 30 of the Complaint.
31. Denies the allegations of paragraph 31 of the Complaint

**DENIALS PENNEAST HAS OFFERED AT LEAST \$3,000 FOR THE RIGHTS OF WAY**

32. Denies the allegations of paragraph 32 of the Complaint
33. Denies the allegations of paragraph 33 of the Complaint
34. Denies the allegations of paragraph 34 of the Complaint

**FIRST CLAIM FOR RELIEF**

**AWARD OF POSSESSION BY EMINENT DOMAIN**

35. Denies the allegations of paragraph 35 of the Complaint

36. Denies the allegations of paragraph 36 of the Complaint

37. Denies the allegations of paragraph 37 of the Complaint

38. Denies the allegations of paragraph 38 of the Complaint

**SECOND CLAIM FOR RELIEF**  
**DETERMINATION OF JUST COMPENSATION**

39. Admit the Landowners are entitled to receive just compensation for the Rights of Way granted to PennEast in this action, but deny PennEast has the right to take any Rights of Way.

40. Admit that PennEast requests that the just compensation to which the Landowners are entitled be determined and awarded in this action, but deny that PennEast has the right to take any property rights.

**THIRD CLAIM FOR RELIEF**  
**INJUNCTIVE RELIEF**

41. Admit that PennEast has requested the issuance of preliminary and permanent injunctive relief, but deny that PennEast is entitled to any relief set forth in paragraph 41 of the Complaint.

42. Denies the allegations of paragraph 42 of the Complaint

43. Neither admits nor denies the allegations of paragraph 43 of the Complaint because they contain only conclusions of law as to which no answer is necessary

44. Denies the allegations of paragraph 44 of the Complaint

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint.

**RULE 71.1 (e) (2) (C) STATEMENT OF  
OBJECTIONS TO TAKING AND DEFENSES**

Pursuant to FRCP Rule 71.1 (e)(2)(C), Defendant objects to the relief requested in the Complaint, and asserts as their specific objections and defenses to the taking by eminent domain of Defendant's property and property rights, the following:

**VIOLATIONS OF US CONSTITUTION  
AND EXCEEDING STATUTORY AUTHORITY**

1. PennEast's request to take Defendant's real property rights violates the Takings Clause of the Fifth Amendment of the *U.S. Constitution*.
2. PennEast's request to take Defendant's real property rights violates the Due Process Clause of the Fifth Amendment of the *U.S. Constitution*.
3. The Federal Energy Regulatory Commission ("FERC") did not issue an Order containing a final finding of public use. As a result, PennEast cannot meet its burden of proof and establish there is a public use or public purpose to support its request to use of the Federal Government's power of eminent domain. This Court is not bound by the FERC's findings based upon an incomplete record and/or unconstitutional practice of conferring eminent domain authority prior to making a final and proper finding of public use. The Fifth Amendment of the *U.S. Constitution* requires evidence in the record that there is a public use that justifies the physical taking of real property. There is no such evidence.
4. The record before FERC and the contents of the Order issued by the FERC on January 19, 2018 at Docket No. CP15-558-000, conditionally authorizing the PennEast Pipeline Project and granting PennEast a Non-Final and Conditional Certificate of Public



Convenience and Necessity (the “FERC Order”) clearly show that the FERC did not make a final finding of public convenience and necessity or issue the kind of certificate upon which takings could proceed. PennEast cannot rely upon the conditional and non-final findings by the FERC and must wait until it can show a record containing sufficient evidence to meet the public use or public benefit criteria in order to satisfy the strict requirements of Takings Clause and Due Process Clause of the Fifth Amendment of the *U.S. Constitution*.

5. PennEast seeks to improperly use the nascent FERC Order seeks to authorize the taking of private property before State Clean Water Act review and analysis is complete. The State of New Jersey is entitled to make a determination whether to issue the necessary permits before any takings are authorized.
6. Allowing property rights to be taken before there is a final determination of need for the Project violates the Takings Clause and Due Process Clause of the Fifth Amendment of the *U.S. Constitution* because, among other things, only property that is necessary for the construction and operation of a pipeline that is actually going to be constructed may be taken. The FERC has not made a final determination of need for the Project.
7. PennEast cannot prove there is a public use or public purpose for the Project if the State of New Jersey or other federal agencies deny permits necessary to construct the Project thereby stopping the Project from being built. Taking of property for a project that may never be built violates the Takings Clause and Due Process Clause of the Fifth Amendment of the *U.S. Constitution*.
8. PennEast’s request for an Order confirming it may take property by eminent domain is impermissible under the *U.S. Constitution* because Congress’ delegation of the power of

eminent domain to the FERC was limited to that allowed by the Fifth Amendment of the U.S. Constitution, and the Order FERC issued does not fall within this power.

9. The FERC exceeded the powers granted to it by statute by granting the FERC Order before state and federal agencies make their final determinations under applicable law, including but not limited to the Clean Water Act. The limited delegation of eminent domain cannot be invoked based on a certificate issued before receiving a §401 Water Quality Certification from the State of New Jersey.
10. The FERC exceeded the powers granted to it by statute by granting the FERC Order conditioned upon other state and federal agencies making their final determinations under applicable law. Although Congress allowed FERC to place conditions on a certificate, it only meant the types of conditions that limit performance under the certificate, and it did not empower FERC to make a conditional finding of public use that could trigger delegated condemnation authority.
11. The FERC does not have the power to grant eminent domain authority to gather information needed to finally determine whether or not the project is required by the public convenience and necessity, or serves a public use.
12. The proposed taking of the Defendant's real property rights by eminent domain confers a private benefit on a particular and identifiable group of private parties, namely PennEast and the owners of PennEast, in violation of the Takings Clause of the Fifth Amendment of the *U.S. Constitution*, and is not premised on any substantial finding of public use.

## **NO SUBSTANTIVE RIGHT TO TAKE PROPERTY**

13. PennEast cannot establish a substantive right of eminent domain because without all of the necessary permits, the certificate remains conditional under the Natural Gas Act (“NGA”).
14. PennEast cannot establish a substantive right of eminent domain because without all of the necessary permits, the Project may never be built. Only property necessary for the construction and operation of a pipeline are subject to a taking.
15. PennEast cannot establish a substantive right of eminent domain because the FERC has not made a final determination of need for the pipeline.
16. PennEast’s power of eminent domain, if any, is limited to “the necessary right-of-way to construct, operate, and maintain a pipe line . . . and the necessary land . . . for the location of . . . stations or equipment necessary to the proper operation of such pipe line.” 15 U.S.C. § 717f (h). Only those properties that are necessary for the construction and operation of the pipeline may be taken by the use of the power of eminent domain. The project may never be build, or the final route is likely to change based upon (a) results of surveys and tests, (b) conditions that may be imposed by the State of New Jersey after reviewing all applications for permits, or (c) PennEast reviewing the “Hopewell Alternative Route”, it is not known at this time which properties are actually necessary.
17. PennEast did not attempt to acquire the property rights described in the Complaint by contract since the pre-litigation offer made to the Defendant to acquire property rights was for property rights that greatly exceeded the property rights necessary for the construction and operation of the Project described in the Complaint and considered by the FERC.

18. PennEast did not attempt to acquire the Rights of Way described in the Complaint as limited by the FERC Order.
19. PennEast did not enter into good faith bona fide negotiations with the Defendant, a substantive state right that is applicable in this proceeding and not pre-empted by the NGA or Federal Rules of Civil Procedure.
20. PennEast did not disclose its appraised value until the last minute when it was too late for Defendant to respond and have the appraisal review by its own appraiser.
21. PennEast did not disclose how it determined the offer made to Defendant to acquire property rights, said offer being different than the appraised value.
22. PennEast must adhere to the same good faith requirements of the United States Government in exercising a delegated power. PennEast did not turn square corners and adhere the same standards as the government in negotiating and dealing with private property owners in seeking to obtain private property rights.
23. PennEast used the threat of eminent domain to gain an advantage over the Defendant in order to force the Defendant to sell additional rights to PennEast.
24. The Complaint describes rights to be acquired in Defendant's properties that exceed the rights contemplated by the FERC in its conditional, non-final certificate, including, without limitation, the right to use the Defendant's private roads and properties to access it proposed easements.
25. PennEast has failed to describe easement areas in sufficient detail to adhere to minimal requirements to transfer real property interests and provide constructive notice to the public under applicable law.

26. PennEast admitted it does not have the right to use the power of eminent domain to take property prior to completion of all surveys and tests.
27. Plaintiff should be compelled to go through the diversion process under New Jersey state law before having the right to take property.

### **NO RIGHT TO PRELIMINARY INJUNCTION**

28. PennEast has no power of a quick-take similar to that granted public entities under applicable state and federal law.
29. New Jersey state law does not grant a private entity -- even one that has been delegated a final federal authorization to condemn -- the right to a quick take. This is a substantive law right that is not pre-empted by the NGA or court rules.
30. PennEast is not entitled to any judgment authorizing a taking on the return date of the Order to Show Cause since that relief is a form of final judgment that must be obtained by way of summary judgment or trial.
31. A judicial grant of Plaintiff's request for immediate access and entry upon Defendant's property prior to the determination of just compensation will violate the doctrine of separation of powers, in that only Congress can grant PennEast's quick-take power, which it has not granted in the NGA.
32. Until the Court determines that PennEast has the authority to condemn Defendant's property, the Court is without jurisdiction to grant PennEast's request for a Preliminary Injunction. Since no request for a final determination that PennEast has a substantive right to condemn the affected parcels has been made, the relief is premature.

33. PennEast has not shown an entitlement to injunctive relief under any of the factors set forth in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), much less all of them.
34. Monetary harm alone cannot constitute irreparable harm. PennEast's harm is purely monetary.
35. PennEast's alleged harm is self-inflicted and does not meet the definition of irreparable harm.
36. PennEast provided no proof of even economic harm, nor could it, even if it failed to negotiate a reasonable timeline and deadline with its contractors that accounted for the time necessary to complete surveys and testing, and complete the review process before the NJDEP.
37. PennEast has failed to attempt to mitigate any alleged irreparable harm by seeking an extension of in-service date from FERC.
38. FERC routinely grants extensions of in-service dates so any alleged harm to PennEast is pure fiction.
39. PennEast's alleged economic harm is simply a delay in receiving anticipated windfall profits, which it acknowledges includes payment for any risks associated with delay.
40. There are no documents before this Court showing any type of harm for any alleged breach of contract claim.
41. PennEast's return on its investment, as approved by the FERC, takes into account the risk of delay and thereby compensates PennEast for alleged harms.
42. Defendant will be harmed since Defendant's property was preserved to protect public natural resource values and Defendant's property will be encumbered by a right of way

that is contrary to its preservation status, threatens those public values, and may undermine Defendant's organizational mission.

43. Harm to Defendant's property arising from any pre-construction activities or testing may not be adequately remedied if trees are removed, soils disturbed or endangered species harmed because there is no amount of money that can remedy those harms.
44. Plaintiff does not have a right to cut any trees or disturb soils without complying with all state and local laws.
45. Harm to the quality of life, economic prosperity and environmental quality in the State of New Jersey that may arise from the pre-construction activities or testing cannot be adequately remedied if the pipeline is not built because permits and approvals are not obtained.
46. Defendant will be harmed by the issuance of an injunction which will result in a violation of the protections afforded to them under the Takings Clause and Due Process Clause of the Fifth Amendment of the *U.S. Constitution*.
47. Defendant's right to possession of its property is a fundamental property right protected by the *U.S. Constitution*.
48. PennEast failed to demonstrate in proceedings before the FERC, and cannot demonstrate, nor has it alleged in its Complaint, that it is financially capable of justly compensating all defendants herein, including Landowners, for the property interests and properties it seeks to acquire by the extraordinary governmental power of eminent domain. Unless and until such financial condition is established by actual payments following just compensation trials, PennEast has no right to enter or take possession.
49. Protection of fundamental property rights is in the public's best interest.

50. Preserving open spaces protected through the Green Acres Program and not allowing takings is in the public's best interest.
51. The Defendant requests that, if the Court does render a judgment or decree, the Court only allow a taking of the quality and quantity of estate necessary to accomplish any public purpose discernible from the Complaint with respect to the rights sought by PennEast.

### **OTHER DEFENSES**

52. The Rights of Way described in the Complaint are vague in certain parts and overreaching in others. The Court should require more definite information on a property-by-property basis.
53. To the extent the Court grants even valuable access rights for surveying and testing, said access rights should be limited in time and scope to protect property owners.
54. To the extent the Court grants even valuable access rights for surveying and testing, said access rights should expressly state that no trees may be removed for any purposes without further court order and on notice to the Defendant and the State of New Jersey.
55. To the extent the Court grants PennEast the right to take any type of permanent rights and or finds a right to take property, said decision or order should expressly state that any and all easements, Rights of Way or court orders that grant PennEast any rights in the Defendant's property shall be vacated if PennEast does not get the necessary permits and approvals to construct the pipeline or complete the project.
56. Many requests for rehearing were filed before FERC by groups of FERC intervenors, as interested parties, some requesting a stay of the certificate order. At a minimum, PennEast should therefore not be allowed to proceed with the right of eminent domain in



the Project until the FERC has ruled upon those requests, as FERC's Order remains non-final.

57. After FERC finishes its statutorily required rehearing process, and FERC's Order has undergone judicial review by a circuit court, it will still not serve as an authorization to construct, and be an incipient order that should have no current force or effect until the State of New Jersey's Clean Water Act review is completed.
58. Plaintiff failure to negotiate in good faith should result in a dismissal of this lawsuit.
59. Plaintiff failed to name a necessary and indispensable party.
60. Plaintiff failed to comply with all New Jersey substantive law under the New Jersey Eminent Domain Act of 1971 and other applicable law.
61. Plaintiff failed to comply with applicable relocation laws and failed to offer relocation assistance for property owners with may be displaced as a result of survey or constructions access.
62. To the extent the Court grants a preliminary injunction and/or allows the taking of any measure of property rights, the Court should attach conditions to the Order granting such relief, including (a) requiring the Orders to be vacated if permits and approvals are not obtained by Plaintiff and the pipeline is not built, and (b) compensation and damages to Defendant for any takings or damages relating to any temporary taking to access rights.
63. If the pipeline is not built and this matter dismissed for any reason, Defendant is entitled to be paid its legal fees and expenses.
64. There is no proof or even suggestions that the Defendant intends to physically obstruct any access rights that may be judicially granted.

65. Defendant objects to the amount of just compensation and requests trial jury on the amount of just compensation.

**WHEREFORE**, Defendant demands that this Court enter judgment in favor of Defendant and against PennEast, dismissing the Complaint with prejudice, awarding attorneys' fees and costs to the extent allowed by law, and entering such further relief as the Court may deem equitable and just.

### **DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, the Natural Gas Act, Defendant's rights under New Jersey law and other applicable law, Defendant demands a trial by jury on all issues triable to a jury.

### **CERTIFICATION**

Pursuant to Local Civil Rule 11.2, it is hereby stated that the matter in controversy is the subject of other lawsuits identified on Exhibit "A" to the Order to Show Case entered in this action. This matter is also the subject of numerous rehearing request made before the Federal Energy Regulatory Commission.

/s/Timothy P. Duggan  
TIMOTHY P. DUGGAN  
Attorney ID # 037691991

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**CERTIFICATE OF SERVICE**

I certify that on March 22, 2018, the foregoing Answer was served on Plaintiff's counsel via electronic mail and electronically filed with the Clerk of Court using the ECF system, which will also send notification of such filing to all attorneys of record herein.

/s/Timothy P. Duggan

TIMOTHY P. DUGGAN