GIORDANO, HALLERAN & CIESLA
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
PLEASE RESPOND TO:
U.S. POSTAL SERVICE ADDRESS:
POST OFFICE BOX 190
MIDDLETOWN, NEW JERSEY 07748
OR:
HAND DELIVERY AND OVERNIGHT SERVICE ADDRESS:
125 HALF MILE ROAD, SUITE 300
RED BANK, NEW JERSEY 07701
(732) 741-3900
FAX: (732) 224-6599
www.ghclaw.com

DIRECT DIAL NUMBER
(732) 219-5486

DIRECT EMAIL
mgross@ghclaw.com

CLIENT/MATTER NO.
16452-0001

March 6, 2009

Lawrence J. Baier, Director
Division of Watershed Management
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 418
Trenton, NJ 08625-0418

Attn: Highlands Applicability Determination

RE: Highlands Applicability Determination - Highlands Exemption Request of Tennessee Gas Pipeline Company
Blocks and Lots - Various
Vernon and West Milford Townships and Ringwood Borough
Sussex and Passaic Counties

Dear Mr. Baier:

We submit this letter on behalf of Tennessee Gas Pipeline Company ("Tennessee"), a subsidiary of El Paso Corporation, as its request for a determination by the New Jersey Department of Environmental Protection ("DEP") that the proposed upgrade of Tennessee's existing natural gas delivery facilities in northwestern New Jersey (the "Project") is exempt from the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (the "Act"), the Highlands Regional Master Plan ("RMP") and all associated regulations.

Tennessee is seeking an exemption pursuant to N.J.S.A. 13:20-28.a(11) and N.J.A.C. 7:38-2.3(a)11 for the "routine maintenance and operations, rehabilitation, preservation, reconstruction, repair or upgrade of public utility lines, rights-of-way or systems by a public utility that is consistent with the goals and purposes of the Act". The Act provides that such activities "are exempt from the provisions of this [A]ct, ***the regional master plan***, any rules or regulations adopted by [DEP] pursuant to this [A]ct, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically

conform them with the regional master plan." N.J.S.A. 13:20-28.a (emphasis added). The New Jersey Highlands Water Protection and Planning Council ("Highlands Council") Staff has asserted that applicants for a utility line exemption pursuant to N.J.S.A.13:20-28.a(11) must demonstrate consistency with the goals and purposes of the Act as allegedly articulated in the provisions of the RMP. There is nothing in the Act or the legislative history to the Act that supports the Staff's position. The Legislature created very specific exemption criteria under N.J.S.A.13:20-28.a(11), including the requirement for consistency "with the goals and purposes of the Act". Absent from the statutory criteria is any requirement for consistency with the provisions of the RMP. Moreover, the Staff's position constitutes circular reasoning because the Act specifically provides that if you qualify for any exemption you are exempt from, among other things, the RMP. Given that the public utility exemption language does not expressly require that a project demonstrate compliance with the provisions of the RMP to qualify for the exemption, it would contravene the Act to require Tennessee to demonstrate compliance with the provisions of the RMP. Imputing such a requirement into the exemption provisions of the Highlands Act would vitiate the very purpose of the exemption sought by Tennessee.

Accordingly, consistent with the express provisions of the Highlands Act, Tennessee's exemption request is limited to a demonstration of compliance with the goals and purposes of the Highlands Act and does not address the provisions of the RMP.

The Project will consist of approximately 17.26 miles of 30-inch outside diameter underground natural gas pipeline, with approximately 15.9 miles to be located within the Highlands Region. Of the Highlands portion of the Project, approximately 10.94 miles will be located in the Preservation Area. Since the DEP has jurisdiction over the Preservation Area portion of the Project, which is the Highlands area applicable to the Project, Tennessee has limited this exemption request to the Preservation Area only. In the event that Vernon Township obtains Plan Conformance Approval from the Highlands Council for the Planning Area portion of the Project, and thereafter takes action to adopt an approved, conforming master plan and development regulations, Tennessee will at such time and to the extent necessary apply to the Highlands Council for an exemption for the applicable Planning Area portion of the Project.

In support of this request, and in accordance with N.J.A.C. 7:38-9.2, we submit a check made payable to the Treasurer, State of New Jersey in the amount of $750.00 for the required application fee and two copies of the following documents:

- Completed Highlands Applicability Determination application form.

- "Narrative Report in Support of Highlands Applicability Determination – Highlands Exemption Request for the 300 Line Project" prepared by Tennessee dated March 6, 2009, providing a description of the proposed Project, the purpose of the Project, analysis of consistency with goals and purposes of the Act, and information supporting the request for exemption.

- U. S. Geological Survey topographic map delineating the proposed Project route.

- Copy of a report entitled "Need for Incremental Pipeline Capacity Tennessee Gas Pipeline Company 300 Line Project" prepared by Tennessee.

- Certified Mail Receipts documenting that a copy of the entire application has been provided to the following: (1) municipal clerk for Vernon and West Milford Townships and Ringwood Borough; and (2) the Highlands Council.

- Certified Mail Receipts documenting that a copy of the application notice letter has been provided to the following: (1) municipal Environmental Commission for Vernon and West Milford Townships and Ringwood Borough (if any exist); (2) the Planning Board for Vernon and West Milford Townships and Ringwood Borough; (3) the Construction Official for Vernon, and West Milford Townships and Ringwood Borough; (4) the County Planning Board for Sussex and Passaic Counties; and (5) the Environmental Commission for Sussex and Passaic Counties (if any exist).

The Project qualifies for the public utility line exemption established under the Act, N.J.S.A 13:20-28a(11), and DEP regulations, N.J.A.C. 7:38-2.3(a)11. The Project is a "Major Highlands development" as defined pursuant to N.J.A.C. 7:38-1.4, as it involves a non-residential development partially in the Preservation Area. However, as detailed in the enclosed Narrative Report, the Project involves planned upgrades to Tennessee's existing natural gas delivery facilities located in the northwestern portion of the State, Tennessee should be considered a public utility with respect to this exemption submission, and the Project is consistent with the goals and purposes of the Act. Therefore, the Project is exempt from the Act, the RMP, and all associated regulations. N.J.S.A 13:20-28a(11); N.J.A.C. 7:38-2.3(a)11.

Based on the materials submitted with this letter, and for all of the aforesaid reasons, the Project is exempt from the Highlands Act, the RMP, DEP's regulations implementing the Highlands Act, and any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the RMP, and we request that DEP issue a written determination confirming the exemption.

Very truly yours,

MICHAEL J. GROSS

MJG/mea
Enclosures

cc: **Attached Distribution List**

::ODMA\PCDOCS\GHCDOCS\678610\1

New Jersey Department of Environmental Protection
Highlands Region Preservation Area
Determination of Applicability
Distribution List

Application

Vernon Township
Robin Kline – Municipal Clerk
21 Church St.
First Floor
Vernon, NJ 07462

West Milford Township
Antoinette Battaglia – Township Clerk
1480 Union Valley Road
West Milford, NJ 07480

Ringwood Borough
Kelley A. Rohde – Municipal Clerk
60 Margaret King Ave.
Ringwood, NJ 07456

New Jersey Highlands Council
John Weingart – Chairman
100 North Road
Chester, New Jersey 07930

Mayor Austin Carew
Vernon Municipal Center
21 Church Street
Vernon, New Jersey 07462

Mayor Bettina Bieri
West Milford Township Hall
1480 Union Valley Road
West Milford, New Jersey 07480

Mayor Walter Davison
Ringwood Borough Hall
60 Margaret King Avenue 07456

Kenny Esser
Policy Advisor
Office of the Governor
PO Box 001
Trenton, NJ 08625-0001

Nancy Belonzi
Governor's Office of Economic Growth
Chief of Staff
125 West State Street
Trenton, NJ 08625-0001

Notice Only

Passaic County Planning Department
Michael La Place - Director
Totowa Business Center
930 Riverview Drive Suite 250
Totowa, NJ 07512

Ringwood Borough
Mike Hasner – Construction Official
60 Margaret King Ave
Ringwood, NJ 07456

Ringwood Borough
Environmental Commission
c/o Marie Cannici – Municipal Clerk
60 Margaret King Ave
Ringwood, NJ 07456

Ringwood Borough Planning Board
c/o Marie Cannici – Municipal Clerk
60 Margaret King Ave
Ringwood, NJ 07456

Sussex County Division of Planning
Eric Snyder – Director
One Spring Street
Newton, NJ 07860

Vernon Township
Tom Pinand – Construction Official
21 Church Street
PO Box 340
Vernon, NJ 07462

Vernon Township Environmental Commission
Attn: Craig Williams – Chairperson
21 Church Street
PO Box 340
Vernon, NJ 07462

Vernon Township Planning Board
c/o Deborah Perry – Secretary
21 Church Street
PO Box 340
Vernon, NJ 07462

West Milford Township
Building Department
Tim Ligus – Construction Official
1480 Union Valley Road
West Milford, NJ 07480

West Milford Township Environmental Commission
c/o Tanya Cubby – Secretary
1480 Union Valley Road
West Milford, NJ 07480

West Milford Township
Planning Board
c/o Tanya Cubby – Secretary
1480 Union Valley Road
West Milford, NJ 07480

For Office Use Only
Date Received by DEP ___/___/___ Project Identification Number_____

New Jersey Department of Environmental Protection

Highlands Applicability and Water Quality Management Plan (WQMP) Consistency Determination Application Form (Highlands Applicability Determination)

PLEASE TYPE OR PRINT CLEARLY

For tips on filling out this application visit: www.nj.gov/dep/highlands/hadshelp.htm

Note: Pursuant to N.J.A.C. 7:38-2.4(a)any person proposing to undertake an activity that constitutes a major Highlands development may stipulate that their proposed project or activity that needs a Department permit is not exempt from the Highlands Act vis-à-vis an application for a Highlands Preservation Area Approval without first obtaining a Highlands Applicability Determination.

This form includes the following four sections:
Section I. General Highlands applicant information;
Section II. Information for determination whether a project or activity is a major Highlands development;
Section III. Information for determination whether Highlands regulatory requirements are applicable to a project or activity; and
Section IV. Information for determination whether the project or activity is consistent with the Areawide Water Quality Management Plan (WQMP).

Complete all sections of the form and provide two copies of the form and all attachments:

Section I. General Highlands Applicant Information

1. **NAME OF PROJECT:** 300 Line Project
Property Owner's Last Name or Company Name, Type of Development (Example: Doe, Minor Subdivision; Doe, Single-Family Home)

2. **DATE OF APPLICATION:** March 6, 2009

3. **PROPERTY OWNER:**

NAME/AGENCY/COMPANY: Various properties - See attached list

ADDRESS: _____
Street Address Apt. or Suite Number

_____
City State Zip

CONTACT PERSON: _____ TITLE: _____

PHONE: ( ) _____ FAX: ( ) _____ E-MAIL _____

4. **APPLICANT OR AGENCY SUBMITTING REQUEST:**

NAME/AGENT/ENGINEER: N/A

AGENCY/COMPANY: Tennessee Gas Pipeline Company

ADDRESS: 8 Anngina Drive
Street Address — Apt. or Suite Number

Enfield — CT — 06082
City — State — Zip

PHONE: (713) 420-2600 FAX: (713) 455-8641 E-MAIL

CONTACT PERSON: C. Susan King TITLE: State Government Affairs Manager

PHONE: (860) 413-9816 FAX: (860) 763-6078 E-Mail: c.susan.king@elpaso.com

5. **APPLICATION FEE:** There is no fee for applications submitted by the New Jersey Department of Transportation. A fee of $100.00 for individual applicants proposing improvements costing $100,000 or less; municipalities; or applicants seeking a determination based on receipt of a woodland management plan or a determination if an agricultural or horticultural activity is not regulated as a major Highlands development and $750.00 for all other applicants, paid as follows:

- ☒ The fee shall be paid by personal check, certified check, attorney check, government purchase order, or money order;
- ☒ The fee shall be made payable to "**Treasurer, State of New Jersey**",
- ☒ Each check, purchase order, or money order must be marked with the name of the applicant, and
- ☒ Each check, purchase order, or money order must indicate that the fee is for a Highlands Applicability Determination

The total project or activity cost for this application is $ $750.00 .

6. **LOCATION OF PROJECT:**

A. MUNICIPALITY: Vernon & West Milford Townships; Ringwood Borough

B. COUNTY: Sussex & Passaic

C. LOT(S): Various Lot and Block numbers. See attached list.

D. BLOCK(S):

E. ADDRESS OF PROJECT LOCATION: Parallels existing Tennessee Gas pipeline - See attached line list.

F. TOTAL ACREAGE OF PROJECT SITE: 10.94 linear miles in Preservation Area
116.34 acres of temporary workspace / 31.61 acres of perm. easement

G. STATE PLANE COORDINATES OF CENTER OF DEVELOPMENT AREA

X: Start: 494335.52610413 End: 548009.130241117 Y: 849970.879919893 836604.005071583

(See item number 7 below for information on obtaining state plane coordinates)

H. WATER QUALITY MANAGEMENT PLAN: Northeast and Sussex

I. WATERSHED MANAGEMENT AREA: Wallkill (WMA2) and Pompton, Pequannock, Wanaque & Ramapo (WMA3)

7. ADDITIONAL REQUIREMENTS:

☐ Municipal Tax Map(s) delineating the project site by Lot(s) and Block(s); and
☒ A copy of a USGS Quad map or portion thereof (1:24,000 scale, include title-name of Quad), with the project site boundaries clearly delineated.

GIS coverage and the State Plane coordinates for a point at the approximate center of the site. Please use NAD 1983. The accuracy of these coordinates should be within 50 feet of the actual point. For assistance in determining the State Plane coordinates for a site, contact the Department's Geographic Information (GIS) Office at (609) 777-0672 or see the iMAP webpage at nj.gov/dep/gis/depsplash.htm.
(NOTE: a disk containing the USGS Quad map information recorded in a digital GIS format at a minimum scale of 1:12,000 may be submitted in lieu of a hard copy)

8. DESCRIPTION OF PROJECT/ACTIVITY:

PROVIDE A NARRATIVE DESCRIPTION OF THE PROPOSED PROJECT OR ACTIVITY:
(Attach additional pages if necessary) See attached Project narrative.

Highlands Applicability and Water Quality Management Plan (WQMP)
Consistency Determination Application Form
(Highlands Applicability Determination)

Section II. Highlands Major Development Determination

Determination as a major Highlands development located within the Highlands Preservation Area will institute specific design and performance standards. Please provide all of the following:

1. **Site Plan(s) certified by a licensed New Jersey Professional Engineer that clearly detail the following (FOR APPLICABLE PROJECT/ACTIVITIES):**

   - All proposed site improvements
   - Total area of disturbance, existing and proposed—include supporting area calculation
   - A metes and bounds disturbance area delineation description
   - Total area of existing impervious surface at the site
   - Total area of permanent impervious cover to be generated by the project—include supporting area calculation
   - Delineation of all forest on the site—if forest area is being disturbed, include area calculation for the disturbed portion(s)
   - A copy of the official proof of filing for the Site Plan(s) or Subdivision Plat(s) (this includes a county signature and stamp)

2. Proof that the public notice requirements below have been met. To prove that a document has been sent to a person, submit either the white postal receipt bearing the recipient's name, address, the date material was sent by certified mail and the cost to the sender, or the green certified mail return receipt card. If a project is located in more than one municipality or county, the notice requirements below must be met for each municipality and county in which the site is located.

   - Proof that the municipal clerk and the Highlands Council were sent a copy of the entire application and supporting documentation submitted to the Department; and

   - Proof that a completed copy of the notice letter (see Attachment A) was sent to:

     1) The Municipal Environmental Commission (if one exists);
     2) The Municipal Planning Board;
     3) The Municipal Construction Official;
     4) The County Planning Board; and
     5) The County Environmental Commission (if one exists).

3. Is the project considered a Capital Improvement pursuant to The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.?

   ☒ No ☐ Yes

4. Is the project proposed solely for Agricultural or Horticultural purposes pursuant to N.J.A.C. 7:38-1.4?

   ☒ No ☐ Yes

5. **DEPARTMENT PERMITS REQUIRED** (Check all that apply):

❑ Water Allocation ❑ Water Main Extension ☒ Freshwater Wetlands

☒ Flood Hazard Control Area ❑ 50 or More Realty Improvements (residential)

❑ Sewer Extension (TWA) ❑ Other type of Treatment Works Approval

❑ New NJPDES DSW ❑ Modification to NJPDES DSW ❑ Expansion/Re-rating NJPDES DSW

❑ New NJPDES DGW ❑ Modification to NJPDES DGW ❑ Expansion/Re-rating NJPDES DGW

❑ New NJPDES SIU ❑ Modification to NJPDES SIU

❑ **No Department permits are required**

NOTE HERE which, if any, of the above permits have already been received:

_____

_____

_____

_____

_____

6. **IS THE PROPOSAL REQUIRED AS PART OF AN ADMINISTRATIVE ORDER, COURT ORDER, NJDEP ADMINISTRATIVE CONSENT ORDER (ACO), OR A JUDICIAL CONSENT ORDER TO WHICH THE NJDEP IS A PARTY, FROM A STATE OR FEDERAL COURT?**

☒ No ❑ Yes, copy attached

Highlands Applicability and Water Quality Management Plan (WQMP)
Consistency Determination Application Form
(Highlands Applicability Determination)

SECTION III—Highlands Preservation Area Regulatory Requirement Applicability Determination:

This section of the application form is to be used to apply for a Highlands Applicability Determination letter for any of the following:

- All exemptions under N.J.S.A. 13:20-1et seq.
- All other activities not regulated by the Highlands Water Protection and Planning Act under N.J.S.A. 13:20-1 et seq.

NOTE: The person who signs the exemption request as the applicant must be the owner of the site, or a person with sufficient legal authority over the site to carry out all requirements of any authorization issued.

EXEMPTION APPLICATION REQUIREMENTS:

In addition to the requirements of Section I and II above and Section IV below, to be deemed administratively complete, an application for a Highlands Applicability Determination letter of exemption from the requirements of the Highlands Water Protection and Planning Act must include the following information for the type of exemption being requested or the non-regulated activity, as listed below. Check off the box to the left of the exemption number for the type of exemption being requested:

❑ 1. For an exemption for the construction of a single-family dwelling, for an individual's own use or the use of an immediate family member, the following information is required:

- ❑ A copy of a deed, closing or settlement statement, title policy, tax record, mortgage statement or any other official document showing that the lot was legally owned by the applicant on or before August 10, 2004; or
- ❑ If the applicant does not own the property, a copy of the binding contract of sale executed by the seller and the applicant on or before May 17, 2004 for the lot on which the house is to be constructed; and
- ❑ An official document certifying that the single-family dwelling proposed for construction is intended for the applicants own use or the use of an immediate family member of the owner or buyer of the property identified in the certification by name and relationship to the applicant; and
- ❑ A notarized statement, from the property owner, indicating that the property subject to the review has not been subdivided, merged, or in other ways had its lot lines adjusted subsequent to the date of the submitted deed; and
- ❑ A land survey certified by a licensed New Jersey Professional Land Surveyor showing what currently exists on the lot.

❑ 2. For an exemption for the construction of a single-family dwelling on a lot in existence on August 10, 2004, not for use by the owner or an immediate family member, provided that construction does not result in the ultimate disturbance of one or more acres or a cumulative increase in impervious surface by one-quarter acre or more the following information is required:

- ❑ A copy of a recorded deed or plat, closing or settlement statement, title policy, tax record, mortgage statement or any other official document showing that the lot was created on or before August 10, 2004; and

- ❑ A notarized statement, from the property owner, indicating that the property subject to the review has not been subdivided, merged, or in other ways had its lot lines adjusted subsequent to the date of the submitted deed; and
- ❑ A land survey certified by a licensed New Jersey Professional Land Surveyor showing the proposed metes and bounds disturbance area delineation, along with a narrative description of that area; and

  The metes and bounds disturbance area delineation is the total area of the site to be disturbed (which must be limited to less than 1 acre), including the proposed disturbance and the existing disturbance that is to remain. Existing disturbance beyond the allowable metes and bounds area must be demolished/restored and restricted from future disturbance including mowing, unless that area is exempted by virtue of being agriculture.
- ❑ A site plan certified by the appropriate licensed New Jersey Professional showing all existing development (distinguishing between what will be removed and what will remain) and proposed development, including all structures, grading, clearing, impervious surface that doesn't result in 0.25-acre or more, limits of disturbance that do not result in 1 acre or more, and the metes and bounds disturbance area delineation for the project.

  Also include supporting calculated values for proposed impervious surfaces, proposed areas of disturbance, and areas of existing disturbance to be restored (if any).

  (Note: If a conservation restriction is required as a condition of your applicability determination, you will be notified in your determination letter.)

❑ 3. For an exemption for the construction of a <u>major Highlands development that has received certain municipal and state approvals</u> on or before March 29, 2004, the following information is required:

- ❑ A. A copy of a resolution by the local authority, granting one of the following approvals on or before March 29, 2004:
  - Preliminary or final site plan approval;
  - Preliminary or final subdivision approval, as applicable, where no subsequent site plan approval or proof of filing is required;
  - Minor subdivision approval where no subsequent site plan approval is required; or
  - A copy of a final municipal building or construction permit.

- ❑ B. In addition to the information provided above, submit proof that the project has obtained at least one of the following DEP permits, if applicable to the proposed major Highlands development, on or before March 29, 2004:
  - A permit or certification pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;
  - A water extension permit or other approval or authorization pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;
  - A certification or other approval or authorization pursuant to the Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq.; or
  - A treatment works approval pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

- ❑ C. If none of the approvals at "B" above are required for the project or activity, submit proof that at least one of these following DEP permits has been obtained on or before March 29, 2004, if applicable to the proposed major Highlands development:
  - A permit or other approval or authorization issued pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; or

- A permit or other approval or authorization issued pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq..

❑ D. A folded copy of the preliminary site plan or subdivision plat. If the subdivision plat was not filed and the subdivision has expired then a copy of the resolution or a court order extending the subdivision approval prior to the date of its expiration.

❑ E. A copy of a letter from the local governing body, verifying that the use and zoning of the site have not changed since the approval specified in "A" above, and verifying that municipal approval is still valid, or verifying that the use and zoning have changed, but that the change does not do any of the following:

- Require submittal of a new or amended application for the proposed project; or
- Require approval of a new or amended application by local authorities.

❑ F. Any other information necessary to determine if the applicant is eligible for exemption under N.J.S.A. 13:20-1et seq.

❑ 4. For an exemption for <u>reconstruction of any building or structure</u> for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more, the following information is required:

❑ A site plan certified by the appropriate licensed New Jersey Professional showing all existing impervious surfaces, including all structures, grading, clearing, impervious surface and limits of disturbance, existing on the site on August 10, 2004; and all proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading. Also include supporting calculated values for existing and proposed impervious surfaces for the project/activity;

❑ A land survey certified by a licensed New Jersey Professional Land Surveyor showing all existing impervious surface, including all structures, grading, clearing, impervious surface and disturbance limits, existing on the site on August 10, 2004; and

❑ Photographs keyed to the site plan; and

❑ A copy of any official documentation indicating the original date of construction of the building or structure or otherwise establishing the lawfulness of existing impervious surfaces (for example: a construction permit with the approved construction plan issued by a municipal official).

❑ 5. For an exemption for <u>improvement(s) to a legally existing single-family dwelling</u> in existence on August 10, 2004, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system where that improvement shall maintain the use as a single-family dwelling and does not permit use of the structure as a multiple dwelling unit, the following information is required:

❑ A copy of any official documentation proving the single-family dwelling was in existence on August 10, 2004;

❑ A certification from the municipal clerk that the municipality considers the dwelling lawfully constructed and occupied;

❑ A description of the proposed improvement; and

❑ A certification from the applicant that the property and all improvements will continue to be used for single-family dwelling purposes.

❑ 6. For an exemption for any improvement, for non-residential purposes, to a place of worship owned by a non-profit entity, society or association, or association organized primarily for religious purposes, or a public or private school, or a hospital, in existence on August 10, 2004, including but not limited to new structures, an addition to an existing building or structure, a site improvement, or a sanitary facility, the following information is required:

- ❑ A copy of any official documentation indicating that the place of worship, public or private school or hospital was in existence on August 10, 2004;
- ❑ For improvements to a place of worship, documentation showing that the entity, society or association, or association organized primarily for religious purposes has non-profit status;
- ❑ A site plan certified by the appropriate licensed New Jersey Professional showing all existing impervious surfaces, including all structures, grading, clearing, impervious surface and limits of disturbance, existing on the site on August 10, 2004; and all proposed development including all structures, impervious surfaces, clearing limits, and limits of disturbance, including grading; and
- ❑ A certification of occupancy for any existing buildings or structures on the property.

❑ 7. For an exemption for any activity conducted by a landowner in accordance with an approved woodland management plan issued pursuant to the Farmland Assessment Act, N.J.S.A. 54:4-23.3 or for public lands, the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester, the following information is required:

For a private landowner with an approved woodlot management plan:

- ❑ A copy of the applicant's tax bill showing that the site has farmland assessment tax status under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq.;
- ❑ A brief description of the activities for which the exemption is claimed including:
  - The total area of woodlands that is the subject of the approved woodland management plan;
  - The length of time that the area to be managed has been in use for woodland management; and
- ❑ A copy of the approved woodlot management plan; or

For public lands with a forest management plan approved by the State Forester:

- ❑ A brief description of the activities for which the exemption is claimed including:
  - The total area where the normal harvesting of forest products occurs; and
  - The length of time that the area to be managed has been in use for normal harvesting of forest products; and
- ❑ A copy of a forest management plan approved by the State Forester (contact the Department at (609) 292-2531 for information on how to obtain a forest management plan).

❑ 8. For an exemption for the construction or extension of trails with non-impervious surfaces on publicly owned lands or on privately owned lands where a conservation or recreational use easement has been established and filed with the deed for the lots on which the easement exists, the following information is required:

- ❑ A site plan certified by the appropriate licensed New Jersey Professional showing the proposed trail construction with details including the location and width of existing and proposed trails and those off-site trails to which they connect, if any;
- ❑ A written description of the non-impervious materials to be used; and
- ❑ For privately owned property, a copy of a deed for the property, including the language establishing the conservation or recreational use easement on the property.

☐ 9. For an exemption for the routine maintenance and operations, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State entity or local government unit, provided that the activity is consistent with the goals and purposes of the Highlands Water Protection and Planning Act and does not result in the construction of any new through-capacity travel lanes of 2,640 feet or more not including tapers, the following information is required:

- ☐ A site plan certified by the appropriate licensed New Jersey Professional showing the existing and proposed transportation or infrastructure system;
- ☐ A written description of the work to be conducted, the purpose of the activity and how that purpose is consistent with the goals and purposes of Highlands Water Protection and Planning Act; and
- ☐ A brief description of the State entity or local government unit that is sponsoring and overseeing the proposed activities.

☐ 10. For an exemption for the construction of transportation safety projects and bicycle and pedestrian facilities by a State entity or local government unit, provided that the activity does not result in the construction of any new through-capacity travel lanes of 2,640 feet or more not including tapers, the following information is required:

- ☐ A site plan certified by the appropriate licensed New Jersey Professional showing the proposed transportation safety project, bicycle or pedestrian facility;
- ☐ A written description of the specific type of project to be constructed and the purpose of the project; and
- ☐ A brief description of the State entity or local government unit that is sponsoring and overseeing the proposed activities.

☒ 11. For an exemption for the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair or upgrade of public utility lines, rights-of-way, or systems by a public utility, provided that the activity is consistent with the goals of purposes of the Highlands Water Protection and Planning Act, the following information is required:

- ☒ A site plan certified by the appropriate licensed New Jersey Professional showing the existing and proposed public utility lines, rights of way, or systems;
- ☒ A written description of the work to be conducted, the purpose of the activity and how that purpose is consistent with the Highlands Water Protection and Planning Act; and
- ☒ The identity of the public utility that is sponsoring the proposed activities.

☐ 12. For an exemption for the reactivation of rail lines and rail beds existing on August 10, 2004, the following information is required:

- ☐ A site plan certified by the appropriate licensed New Jersey Professional showing the location of the existing rail lines and rail beds; and
- ☐ A brief description of the project for reactivation, including the sponsoring entity, the work to be conducted to accomplish the project, and an estimated schedule for completion.

☐ 13. For an exemption for the construction of a public infrastructure project approved by public referendum prior to January 1, 2005 or a capital project approved by public referendum prior to January 1, 2005, the following information is required:

- ☐ A copy of the public referendum question as it appeared on the official ballot;
- ☐ Documentation showing that the referendum was approved; and
- ☐ A resolution from the municipal or county governing body or certification by an official in the relevant state department, as the case may be, that describes the proposed project and it's

location and affirms that the proposed project is the same as that approved in the referendum.

- ❑ 14. For an exemption for mining, quarrying, or production of ready mix concrete, bituminous concrete, or Class B recycling materials occurring or which are permitted to occur on any mine, mine site, or construction materials facility existing on June 7, 2004, the following information is required:
  - ❑ A site plan certified by the appropriate licensed New Jersey Professional showing the location of existing and proposed activity and development;
  - ❑ Any type of official documentation (tax records, local or state permits, bills of sale, lading etc.) demonstrating that the mine or facility was in existence and operating on June 7, 2004, and included the land on which the proposed activity or development will occur; and
  - ❑ A copy of a Certificate of Registration issued by the Commissioner of Labor pursuant to N.J.S.A. 34:6-98.4.

- ❑ 15. For an exemption for the remediation of any contaminated site pursuant to N.J.S.A. 58:10B-1 et seq., the following information is required:
  - ❑ A copy of a site plan certified by the appropriate licensed New Jersey Professional indicating the area above or below ground where contamination will be removed or remediated;
  - ❑ A brief description of the remediation activity to be conducted including any structures, impervious surfaces, clearing of vegetation or water diversion being proposed;
  - ❑ A copy of a letter, application, order, or any other documentation demonstrating that the remediation activities are required in accordance with N.J.S.A.13:58:10B-1 et seq.; and
  - ❑ The name of the case manager handling or supervising remediation at DEP.

- ❑ 16. For an exemption for activities on lands of a federal military installation existing on August 10, 2004, the following information is required:
  - ❑ A site plan certified by the appropriate licensed New Jersey Professional showing the general location of the proposed activities as being within the borders of a federal military installation and the activity's location with respect to the Highlands Region boundaries; and
  - ❑ A letter briefly describing the proposed activities signed by an official of the installation.

- ❑ 17. For an exemption for a major Highlands development located within an area designated as Planning Area 1 (Metropolitan), or Planning Area 2 (Suburban) pursuant to the State Planning Act, 52:18A-196 et seq., as of March 29, 2004, that on or before March 29, 2004 has been the subject of a settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court, to satisfy the constitutional requirement to provide for the fulfillment of the fair share obligation of the municipality in which the development is located, the following information is required:
  - ❑ A copy of the settlement agreement and stipulation of dismissal filed in the Superior Court, or builder's remedy issued by the Superior Court;
  - ❑ A copy of any site plans certified by the appropriate licensed New Jersey Professional, maps or other documentation clearly indicating the location of the fair share housing to be provided in accordance with the settlement agreement and stipulation of dismissal filed in the Superior Court, or a builder's remedy issued by the Superior Court and the location of all proposed structures, service or access roads, and infrastructure with respect to the boundaries of Planning Area 1 or 2, as the case may be;
  - ❑ A copy of all municipal approvals obtained for the project, or the schedule for applying and obtaining such approvals; and
  - ❑ A proposed schedule for completion of the entire project including township approvals, site preparation, installation of utilities and roads, and construction of all buildings.

PROJECTS/ACTIVITIES NOT REGULATED BY THE HIGHLANDS WATER PROTECTION AND PLANNING ACT, N.J.S.A. 13:20-1et seq. APPLICATION REQUIREMENTS:

Major Highlands development" means, except as otherwise provided pursuant to subsection a. of section 30 of this act:
(1) any non-residential development in the preservation area;

(2) any residential development in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more;
(3) any activity undertaken or engaged in the preservation area that is not a development but results in the ultimate disturbance of one quarter acre or more of forested area or that results in a cumulative increase in impervious surface by one-quarter acre or more on a lot; or
(4) any capital or other project of a State entity or local government unit in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.
Major Highlands development shall not mean an agricultural or horticultural development or agricultural or horticultural use in the preservation area"

- ❑ For a farming or horticulture activity under N.J.S.A. 13:20-1et seq., the following information is required:
  - ❑ A copy of the applicant's tax bill showing that the site has farmland assessment tax status under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq.; and
  - ❑ A brief description of the activities for which the exemption is claimed, including:
    - ❑ The types of farming or horticulture that will be pursued;
    - ❑ Best management practices currently employed and/or to be employed;
    - ❑ The length of time that the area to be disturbed has been in use for farming or horticulture; and
  - ❑ The square footage or acreage of the entire site, of the impervious surfaces already existing on the site, and the total amount of impervious surface on the site if the proposed activity is permitted. (Note: If the proposed increase in agriculture or horticulture activity will result in 3% or more of the site being covered by impervious surface, applicants should contact the local soil conservation district for additional assistance.)

- ❑ For a residential project in the preservation area that does not constitute a major Highlands Development at N.J.S.A. 13:20-3.
  - ❑ A land survey certified by a licensed New Jersey Professional Land Surveyor showing the proposed metes and bounds disturbance area delineation, along with a narrative description of that are; and

    The metes and bounds disturbance area delineation is the total area of the site to be disturbed (which must be limited to less than 1 acre), including the proposed disturbance and the existing disturbance that is to remain. Existing disturbance beyond the allowable metes and bounds area must be demolished/restored and restricted from future disturbance including mowing, unless that area is exempted by virtue of being agriculture.

    ❑ A site plan certified by the appropriate licensed New Jersey Professional showing all existing development (distinguishing between what will be removed and what will remain) and proposed development, including all structures, grading, clearing, impervious surface that doesn't result in 0.25-acre or more, limits of disturbance that do not result in 1 acre or more, and the metes and bounds disturbance area delineation for the project.

Also include supporting calculated values for proposed impervious surfaces, proposed areas of disturbance, and areas of existing disturbance to be restored (if any).

(Note: If a conservation restriction is required as a condition of your applicability determination, you will be notified in your determination letter.)

❑ Other (explain why the proposal does not constitute a major Highlands development at N.J.S.A. 13:20-3)

_____
_____
_____
_____
_____
_____
_____
_____

Highlands Applicability and Water Quality Management Plan (WQMP)
Consistency Determination Application Form
(Highlands Applicability Determination)

Section IV. Project or Activity WQMP Consistency Determination

This section of the application form is to be used for the determination of whether a project or activity is consistent with the applicable Areawide Water Quality Management Plan.

1. PROJECTED WASTEWATER FLOW:

☒ No wastewater is generated from this project/activity.

Depending on the type of wastewater treatment and type of development, there are different criteria to use to determine the total projected wastewater flow. Use the attached projected flow criteria under N.J.A.C. 7:14A-23.3 or N.J.A.C. 7:9A-7.4 to determine the **total** amount of wastewater the proposed project will generate. Check the appropriate box to indicate which table was used and complete Table 1 below:

❑ N.J.A.C. 7:9A-7.4, Standards for Individual Subsurface Sewage Disposal Systems
❑ N.J.A.C. 7:14A-23.3, The New Jersey Pollutant Discharge Elimination System (NJPDES) Rules

TYPE of DEVELOPMENT (check and complete all that apply):

❑ Residential
- Type of Dwelling Units _____
- Number of Dwelling Units _____
- Bedrooms Per _____

❑ Commercial/Institutional
- Total Square Footage of Structures _____
- Maximum Building Occupancy _____
- Specify Type of Establishment _____

❑ Industrial
- Total Square Footage of Structures _____
- Maximum Building Occupancy _____
- Specify Type of Establishment _____

❑ Other
- Total Square Footage of Structures _____
- Specify Type of Establishment _____

Table 1. EXISTING wastewater flows (if applicable)

Establishment Type *	Measurement Unit	Number of Units		Gallons per day (gpd)		Projected Flows (gpd)
			X		=	
			X		=	
			X		=	
			X		=	
Total amount of wastewater being generated					=	

Table 2. PROPOSED wastewater flows

Establishment Type *	Measurement Unit	Number of Units		Gallons per day (gpd)		Projected Flows (gpd)
			X		=	
			X		=	
			X		=	
			X		=	
Total amount of wastewater this project will generate					=	

*If the proposal is for a new or expanded industrial facility that will generate industrial process wastewater which is not provided for on the attached projected flow criteria tables, provide a basis for the total projected wastewater discharge from the proposal site. Where other forms of wastewater (such as domestic, stormwater, non-contact cooling water, etc.) will be generated on site and treated by the proposed industrial wastewater treatment facility, include the basis for these flow projections as well.

2. **PROPOSED METHOD OF WASTEWATER TREATMENT** (check as indicated): **Not Applicable**

❑ **A.** Individual Subsurface Sewage Disposal Systems < 2,000 gallons per day

❑ **B.** New Discharge to Ground Water ≥ 2,000 gallons per day

❑ **C.** Conveyance to an existing wastewater treatment facility (DGW or DSW):
Name and Location of Facility: _____

_____

NJPDES Permit #: _____
Permitted Capacity: _____

3. **IF THE METHOD OF WASTEWATER TREATMENT PROPOSED IS "C" ABOVE, APPLICANT MUST ALSO PROVIDE THE FOLLOWING:** **Not Applicable**

❑ A letter from the above facility verifying the existence and extent of wastewater collection infrastructure on August 10, 2004, and that adequate capacity is available, with a written commitment to service the proposed project.

❑ A copy of a site plan or other appropriately scaled map, showing the point of connection to the wastewater collection system as it existed on August 10, 2004.

4. **PROPOSED WATER SUPPLY SOURCE** (checks one of the following and fill in the blanks): **Not Applicable**

❑ Water Purveyor

Name of Purveyor_____

❑ Residential Wells

Number of residential wells_____

❑ Commercial or Industrial Wells

Number of wells_____

❑ Irrigation Wells

Number of wells_____

Projected peak water use in gallons per day_____

CERTIFICATION:

An application shall be signed by the person or persons specified below:

1. For a corporation, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;
3. For a municipality, State, Federal, or other public entity, by either a principal executive officer or ranking elected official; or
4. For an entity not covered at (a) 1 through 3 above, by all individual owners of record.

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE, TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: B W. N DATE: March 6, 2009

PRINT OR TYPE NAME Bryan W. Neskora

TITLE: SVP, Chief Commercial Officer

WHICH OF THE ABOVE CERTIFICATION CATEGORIES IS BEING PROVIDED? 1

Additional information may be required upon review by the Department

SEND COMPLETED APPLICATION FORM AND ATTACHMENTS TO:

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATERSHED MANAGEMENT
ATTN: HIGHLANDS APPLICABILITY DETERMINATION
401 E. STATE ST. PO BOX 418
TRENTON, NJ 08625-0418

NARRATIVE REPORT IN SUPPORT OF HIGHLANDS APPLICABILITY DETERMINATION - HIGHLANDS EXEMPTION REQUEST

for the

300 LINE PROJECT

Submitted to the

New Jersey Department of Environmental Protection

Submitted by

TENNESSEE GAS PIPELINE COMPANY
1001 Louisiana Street
Houston, Texas 77002

March 6, 2009

TABLE OF CONTENTS

1.0 INTRODUCTION

Tennessee Gas Pipeline Company ("Tennessee"), a subsidiary of El Paso Corporation and a major supplier of natural gas to utilities and power generators in the Northeast and Mid-Atlantic regions, plans to upgrade its existing natural gas delivery facilities in the Northeast (which it has operated for over 50 years) by constructing the 300 Line Project ("Project") in northern Pennsylvania and northwestern New Jersey.[1] As detailed below, the portion of the Project to be located in northern New Jersey will consist of approximately 17.26 miles of underground natural gas pipeline. Approximately 15.9 miles will be located in the Highlands Region, with approximately 10.94 miles to be located within the Highlands Preservation Area.[2] Tennessee requests a determination by the New Jersey Department of Environmental Protection ("NJDEP") that the Project is exempt from the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (the "Highlands Act"). The Highlands Act provides that certain activities in the Highlands Region "are exempt from the provisions of this [A]ct, the regional master plan, any rules or regulations adopted by the [NJDEP] pursuant to this [A]ct, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan." N.J.S.A. 13:20-28.a. Among the various exempt activities is "the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this [A]ct." N.J.S.A.13:20-28.a(11).

The Project constitutes "the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility." N.J.S.A. 13:20-28.a(11). Although Tennessee is a natural gas company regulated by the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act authority, for purposes of this exemption request Tennessee should be treated as a public utility as that term is defined under the Highlands Act, N.J.S.A.13:20-3, and NJDEP's regulations adopted pursuant thereto, N.J.A.C. 7:38-1.4.[3]

Furthermore, the Project is consistent with the goals and purposes of the Highlands Act. There is no specific section of the Highlands Act entitled "goals and purposes". However, the prefatory language of the Highlands Act included in the Legislative Findings section, N.J.S.A. 13:20-2, identifies the broad based goals and purposes of the Highlands Act. Therefore, this narrative analyzes the consistency of the Project with the "goals and purposes" of the Highlands Act based

---

[1] For purposes of this narrative, the term "Project" may also be used to refer the portion of the Project that will be located in the Highlands Preservation Area.

[2] A list of the various blocks and lots of the parcels in the Preservation Area where the Project will be located is attached as Attachment A. Tennessee submits Attachment A as privileged and confidential information, as Tennessee is not the owner of the parcels identified on Attachment A. Tennessee is withholding Attachment A from its required distribution of the Project exemption request, and requests that NJDEP treat and maintain Attachment A as privileged and confidential.

[3] As detailed in Section 1.2 below, NJDEP's Highlands Rules adoption document set forth at 38 N.J.R. at 504 (Attachment B of this Narrative) confirms that "infrastructure systems such as natural gas or electric transmission that . . . serve to deliver or provide gas and electricity to public systems" "are considered a public utility and, therefore, eligible for the exemption". Accordingly, Tennessee, which is regulated by FERC as an interstate natural gas pipeline company, constitutes a public utility under the Highlands Act and NJDEP's regulations for purposes of this exemption request.

upon those goals and purposes identified in the Legislative Findings section. This exemption request does not address the provisions or any substantive requirements that may be a part of the Highlands Regional Master Plan ("RMP"), NJDEP regulations, or local master plan amendments or regulations. The Highlands Water Protection and Planning Council ("Council") Staff asserts that the RMP effectuates the goals and purposes of the Highlands Act, and to demonstrate consistency with the goals and purposes of the Highlands Act an applicant for a utility line exemption pursuant to N.J.S.A.13:20-28.a(11) must demonstrate consistency with the RMP. However, nothing in the Highlands Act or the legislative history to the Act supports the Staff's position.

The Highlands Act plainly provides that public utility line maintenance, upgrades and other similar activities are exempt "provided that the activity ***is consistent with the goals and purposes of this [A]ct***." N.J.S.A.13:20-28.a(11) (emphasis added). Significantly absent from the exemption language is any mention of a requirement for consistency with the RMP. The Legislature, which created a distinct section of the Highlands Act entitled "Goals of the regional master plan" (N.J.S.A.13:20-10), undoubtedly could have included language in the exemption provision to create an express requirement for consistency with the RMP, but did not

Moreover, the Exemption Section of the Act confirms that activities which qualify for an exemption are exempt not only from the Highlands Act, but also from "***the regional master plan***, any rules or regulations adopted by the [NJDEP] pursuant to this [A]ct, or ***any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan***." N.J.S.A. 13:20-28.a (emphasis added). The Staff's position that compliance with the provisions of the RMP is necessary to qualify for a public utility line exemption constitutes circular reasoning because the Highlands Act specifically provides that if you qualify for the exemption you are exempt from the RMP. Therefore, given that the public utility exemption language does not expressly require that a project demonstrate compliance with the provisions of the RMP to qualify for the exemption, it would contravene the Highlands Act to require Tennessee to demonstrate compliance with the provisions of the RMP. Imputing such a requirement into the exemption provisions of the Highlands Act would vitiate the very purpose of the exemption sought by Tennessee

Accordingly, the Project is exempt from the Highlands Act as well as from the RMP, NJDEP regulations implementing the Highlands Act, and any local master plan amendments or regulations adopted to conform with the RMP.

Tennessee is an interstate pipeline company that is subject to the FERC's jurisdiction pursuant to the Natural Gas Act, and is also subject to the jurisdiction of the Department of Transportation ("DOT") pursuant to the Natural Gas Pipeline Safety Act of 1968. The FERC, among other things, is responsible for authorizing the siting and construction of interstate natural gas pipelines, and is the lead agency for environmental reviews under the National Environmental Policy Act for the construction of such pipelines. The FERC's authorization process includes an extensive outreach process, including notifications to affected landowners, state and local governmental jurisdictions, federal, state and local governmental agencies, and non-governmental agencies. The DOT's Pipeline and Hazardous Material Safety Administration ("PHMSA"), acting through the Office of Pipeline Safety ("OPS"), administers the DOT's natural gas regulatory program to assure the safe transportation of natural gas by pipeline. OPS is responsible for governing design, construction (integrity of the pipeline structure itself), inspection, testing, operation, and maintenance of interstate pipelines. Both the FERC and the OPS retain jurisdiction over an interstate natural gas pipeline for the entirety of the lifetime of such a pipeline.

The proposed upgrade of Tennessee's 300 Line will enable the transportation of new diversified natural gas supplies from Appalachia and various other supply basins through Pennsylvania, into New Jersey and the Northeast. The proposed Project will include the construction of approximately 128-miles of 30-inch outside diameter ("OD") underground loop pipeline facilities consisting of six separate pipeline loops in northeastern Pennsylvania totaling approximately 111 miles and one pipeline loop facility in northern New Jersey totaling approximately 17.26 miles.[4] The pipeline loop facilities are proposed to be located within and adjacent to Tennessee's existing 300 Line right-of-way ("ROW") to the extent practicable. Additionally, as part of the Project, Tennessee proposes the construction of two new compressor stations along its existing 300 Line alignment in northwestern Pennsylvania, as well as system upgrades at seven of its existing compressor station facilities in Pennsylvania and New Jersey. Tennessee held a binding open season to solicit shipper participation in the Project and has executed a precedent agreement that provides arrangements for long-term transportation service to Equitable Energy LLC ("Equitable") for all of the firm transportation capacity resulting from this Project.

The specific portion of the Project[5] proposed for construction within northern New Jersey includes upgrading the existing natural gas pipeline system through construction of approximately 17.26 miles of new 30-inch OD underground natural gas pipeline. The proposed pipeline loop in New Jersey is known as "the 325 Loop Segment". Approximately 15.9 miles of the 325 Loop Segment will be located in the Highlands Region, with approximately 10.94 miles to be located within the Preservation Area. The 325 Loop Segment will commence in Wantage Township (MP 0.00) and extend through Vernon and West Milford Townships, terminating in Ringwood Borough (MP 17.26). The portion of the proposed 325 Loop Segment and Compressor Station 325 in Wantage Township is outside of the Highlands area.

The pipeline looping will provide additional natural gas transmission capacity to shippers in downstream high-demand energy markets in the northeast United States including eastern New Jersey and Metro New York. The proposed upgrade facilities will be located within and adjacent to Tennessee's existing 300 Line ROW, to the extent practicable. Tennessee anticipates that, following receipt of all applicable regulatory certificates and permits and the acquisition of appropriate ROW for the Project, certain aspects of construction, including winter tree clearing to avoid Indiana bat breeding periods and installation of horizontal directional drill ("HDD") segments, may begin during the second half of 2010, with a portion of the Project facilities proposed to go in-service by November 2010. The remaining construction activities for the Project are scheduled for 2011, with the remaining Project facilities anticipated to go in-service no later than November 2011.

---

[4] The term "loop" refers to a segment of pipeline installed adjacent to an existing pipeline and connected to it at both ends. A loop allows more gas to be moved through the system.

[5] In this request, the Project facilities are described geographically in a general west-to-east direction and by category, addressing underground pipeline facilities first and aboveground facilities second. Resources and facilities along the proposed pipeline loop segments are identified by Mileposts ("MP") throughout this narrative, and loop segment MP are shown on the drawings provided. MPs will be provided when describing the Project facilities locations in relation to Tennessee's overall existing 300 Line length, as well as MPs for facility locations relative to the individual loop segment's length. The pipeline loop facilities have been assigned separate numbers by Tennessee to allow for easy differentiation and identification of the loop segments.

The proposed Project, as described above, is consistent with the goals and purposes of the Highlands Act. As detailed at length in Section 5.0 of this request, impacts on surface or groundwater resources associated with Project construction activities will be minimized to the maximum extent practicable. The Project involves no wastewater flow and impacts on water resources will also be minimized. The Project will not result in sprawl development and, by primarily utilizing the existing ROW, will advance the goal of encouraging appropriate patterns of compatible development and economic growth in or adjacent to areas already utilized for such purposes. Impacts to environmentally sensitive and agricultural lands will be minimized to the maximum extent practicable through Project design minimization and implementation of appropriate construction Best Management Practices ("BMPs"). As the Project primarily involves the installation of underground facilities, the majority of impacts will be temporary construction related impacts. Permanent easement areas will be restored, revegetated (excluding trees) and maintained in accordance with the FERC-approved Plan and Procedures (defined below in Section 4.0). Temporary workspace areas needed for construction activities will be allowed to return to their pre-existing vegetated state after restoration. The natural beauty of the Highlands will be preserved based on the primarily underground nature of the Project facilities. Moreover, the Project is consistent with and will advance the Highlands Act's goal of ensuring economic vitality, particularly in or adjacent to areas already utilized for such purposes.

For all of these reasons, Tennessee submits that pursuant to N.J.S.A. 13:20-28.a(11) and NJDEP's regulations, N.J.A.C. 7:38-2.3(a)11, the Project qualifies for exemption from the Highlands Act, the RMP, NJDEP regulations implementing the Highlands Act, and any local master plan amendments or regulations adopted to conform with the RMP.

1.1 PURPOSE AND NEED

Tennessee plans to construct the Project to meet increased demand for interstate natural gas transportation services in the northeastern United States by increasing the natural gas delivery capacity in the region by approximately 300,000 dekatherms per day. The proposed 325 Loop Segment in New Jersey is a necessary component of the overall Project to meet this increased demand for natural gas transportation service. Additionally, the Project will also provide access to diversified natural gas supplies from the Gulf Coast, Appalachian, Rockies, and Marcellus Shale supply areas with deliveries to points located across Tennessee's mainline system and various interconnections with other pipelines for further transportation to other markets downstream of the Highlands area in northeastern New Jersey, as well as deliveries into utility-owned distribution facilities located in White Plains, New York serving New York City, New York and Westchester County, New York. As discussed above, Tennessee has executed a binding precedent agreement with Equitable for all of the firm transportation capacity resulting from this Project. If certificated by the FERC, this Project will have been deemed to be in the Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act.

1.2 HIGHLANDS ACT EXEMPT STATUS

Tennessee asserts that construction and operation of the components of the Project within New Jersey's Highlands Region are exempt activities and structures under Highlands Act (N.J.S.A. 13:20-1 et seq.) and its implementing regulations (the "Regulations"; N.J.A.C. 7:38), since upgrades of existing public utility lines, rights-of-way, and systems are exempt from obtaining the Highlands Preservation Area Approval ("HPAA"), provided the activity is consistent with the goals and purposes of the Highlands Act. See Section 5.0 below for a detailed discussion of the Project's consistency with the goals and purposes of the Highlands Act.

While Tennessee is ultimately regulated by the FERC as an interstate natural gas pipeline transmission company (see Section 1.0), for the purpose of this request, Tennessee should be considered a public utility as defined in N.J.S.A. 48:2-13, the New Jersey Public Utility Act. Under the Public Utility Act, "'public utility' shall include" every entity that "may own, operate, manage or control within this State any . . . pipeline . . . under privileges granted or hereafter to be granted by this State or any political subdivision hereof". N.J.A.C. 7:38-1.4. In its response to Tennessee's comments regarding the Highlands Rules (see Attachment B to this Narrative), set forth at 38 N.J.R. at 5054, Response to Comment 296 (Dec. 4, 2006), NJDEP clarified that "infrastructure systems such as natural gas or electric transmission that . . . serves to deliver or provide gas and electricity to public systems" "are considered a public utility and, therefore, eligible for the exemption." Accordingly, Tennessee, which operates natural gas infrastructure systems for supply to utilities and power generators, constitutes a public utility under NJDEP's Highland's regulations.

2.0 EXISTING CONDITIONS

Tennessee's existing 300 Line is a 24-inch OD underground natural gas pipeline system that currently traverses the Highlands for a length of approximately 26.6 miles. The existing maintained ROW for the 300 Line is typically 50 feet in width in the New Jersey segment and has been operated by Tennessee for more than 50 years. A portion of that ROW was acquired through easements containing provisions which granted Tennessee the right to lay additional lines within those easements.

The proposed 325 Loop Segment upgrade facilities will consist of approximately 17.26 miles of 30-inch OD looping pipeline lying within or adjacent to Tennessee's existing 300 Line pipeline ROW unless existing conditions require deviation. Approximately 15.9 miles of the 325 Loop Segment will be located in the Highlands Region, with approximately 10.94 miles to be located in the Preservation Area. This loop segment will begin at MP 0.0 and continue through Wantage Township (1.25-miles) and Vernon Township (8.73-miles). The portion of the loop within Wantage Township and a majority of Vernon Township is outside of the Highlands Preservation Area jurisdictional boundary. The proposed loop segment will then enter Passaic County and travel through West Milford Township (6.72-miles) into Ringwood Borough (0.56-miles), ending at MP 17.26, where it will reconnect to the existing 300 Line pipeline as an existing system. See Table 1 for supplemental loop data.

The proposed 325 Loop Segment will lie within the Valley and Ridge and Highlands Physiographic Provinces of the Appalachian Highlands (Dalton 2003). In New Jersey, the Valley and Ridge Physiographic Province occupies major portions of Sussex and Warren Counties. The province is characterized by steep sided, linear ridges and broad valleys underlain by folded and faulted Paleozoic sedimentary rocks and a minor amount of igneous rocks. The rugged topography of the Highlands Province consists of a series of discontinuous rounded ridges separated by deep narrow valleys (Dalton 2003). Elevations along the proposed 325 Loop Segment range from approximately 360 feet to 1,440 feet. Surficial geology within the proposed 325 Loop Segment alignment primarily consists of sandy ground moraine deposits of Netong Till. Late Wisconsinan glacial lake bottom and glacial delta deposits and alluvium underlie portions of the proposed 325 Loop Segment associated with stream valleys and waterbodies.

The proposed 325 Loop Segment will lie within two major river basins, the Hudson River Basin and the Passaic River Basin. Within the Hudson River Basin, the 325 Loop Segment will lie within the Wallkill River watershed. The watershed is about 208 square miles in area and flows approximately 27 miles through Sussex County, New Jersey, and into New York. Significant

lakes within the watershed and 325 Loop Segment area include Upper Greenwood Lake, Lake Wawayanda, and Highland Lake.

The proposed 325 Loop Segment will enter into the Passaic River Basin at approximate MP 12.0 in West Milford Township. The Passaic River flows approximately 90 miles from Morris County, New Jersey to Newark Bay, flowing through seven counties and 45 municipalities along its route (Barnett 2001). The proposed 325 Loop Segment will lie within the upper reaches of this Basin, in the Pequannock and Wanaque River watersheds. The Pequannock River watershed encompasses 98 square miles in northwest New Jersey and includes three counties (Passaic, Morris, and Sussex) and 11 municipalities. The proposed 325 Loop Segment will cross Belcher Creek, an outlet of Greenwood Lake at approximate MP 14.0.

The general cover types crossed by the proposed 325 Loop Segment include deciduous forested uplands, forested wetlands, emergent wetlands, pastures/agricultural land, and residential land.

3.0 PROPOSED ACTIVITIES

The proposed pipeline and other aboveground facilities associated with the Project's 325 Loop Segment are detailed in Table 1 below. A summary of land requirements for the proposed 325 Loop Segment is provided in Table 3 below. Although based on the best information available at the time of this submission, factors beyond Tennessee's control may influence actual facility design and locations and, therefore, all proposed facility design and locations are preliminary and are subject to final design and FERC approval. In the event that the facility design and location changes are necessitated by FERC approval and/or other factors beyond Tennessee's control, Tennessee will notify NJDEP accordingly.

TABLE 1
PROPOSED PIPELINE AND OTHER ABOVEGROUND FACILITIES
FOR THE 325 LOOP SEGMENT
WITHIN THE HIGHLANDS PRESERVATION AREA

Facility	Pipeline Diameter and Type	Approximate Length (miles) / Operational area	Milepost	Municipality	County
Pipeline	30-inch natural gas	3.66	MP6.32- MP 9.98	Vernon	Sussex
		6.72	MP 9.98- MP 16.71	West Milford	Passaic
		0.56	MP 16.71 – MP 17.26	Ringwood	Passaic
Pig Receiver	Not Applicable/ New Installation	Approximately 0.30 acres	MP 17.10	Ringwood	Passaic
MLV327-2	Not Applicable/ New Installation	Approximately 0.03 acres	MP 11.40	West Milford	Passaic
MLV327-2A	Not Applicable/ New Installation	Approximately 0.03 acres	MP 14.70	West Milford	Passaic

3.1 PIPELINE FACILITIES

The proposed 325 Loop Segment will be located at a maximum 25-foot offset from the existing 300 Line pipeline within the existing ROW where feasible. Some additional new permanent ROW will be required along with temporary workspace and additional temporary workspace to facilitate construction of the pipeline. The routing for the proposed 325 Loop Segment was selected to parallel the existing 24-inch line, which will in turn avoid new areas of residential development, minimize the number of newly affected landowners, and minimize environmental impacts.

3.2 EXISTING AND PROPOSED PERMANENT RIGHT-OF-WAY

The existing 300 Line pipeline is situated within a 50-foot (typical) permanent ROW. Tennessee plans to maintain a maximum 25-foot separation between the existing pipeline and the proposed 325 Loop Segment where feasible. By siting the Project in this manner, Tennessee will minimize the amount of new disturbance associated with the installation of the pipeline looping. Upon completion of construction, Tennessee will maintain an additional 25 feet of new permanent ROW. This will result in a 75-foot wide (typical) permanent easement that will include both the existing 24-inch 300 Line pipeline as well as the new 30-inch 325 Loop Segment pipeline to facilitate operation.

3.3 TEMPORARY CONSTRUCTION WORKSPACE

Tennessee is proposing a typical construction ROW width for the Project of 100 feet, which will generally consist of 25 feet of the existing permanently maintained ROW (25 feet will not be used in most cases to avoid working over the existing 24-inch line that will remain in-service during construction), 25 feet of new permanently maintained ROW, and 50 feet of temporary construction workspace. The construction ROW width will be reduced in wetland areas and in some residential areas to reduce impacts and may be extended to 125 feet in agricultural areas to facilitate topsoil segregation.

In addition to the typical 100-foot wide construction ROW, additional temporary workspace areas will be required to facilitate construction of wetlands, steep slopes, bedrock outcrops, and road, railroad, and utility crossings. These areas will also be required to support specialized construction techniques such as drilling or boring. Typical additional temporary workspace width will range from 25 and 100 feet, depending upon existing land use, geological and topographic conditions. In accordance with the FERC-approved Plan and Procedures (defined below in Section 4.0), disturbed areas will be restored upon completion of construction activities.

3.4 ACCESS ROADS

Access roads are required for construction so the contractor may move personnel, equipment, and material to the pipeline ROW. Tennessee is proposing to use existing public roadways and existing private access roads where practicable. The majority of the access roads would require minimal modification. A total of 2 private access roads have been preliminarily identified for use during construction of the 325 Loop Segment that are within the Highlands Preservation Area (See Table 2). All other roadways are public roadways and there are no improvements anticipated.

TABLE 2
SUMMARY OF PRIVATELY OWNED ACCESS ROADS FOR THE PROPOSED 325 LOOP SEGMENT WITHIN THE HIGHLANDS PRESERVATION AREA

ACCESS ROAD	MILEPOST AT ENTRY OF ROW	MUNICIPALITY/COUNTY
Unnamed Private Road	13.91	West Milford/Passaic County
Unnamed Private Road	15.07	West Milford/Passaic County

3.5 PIPE AND EQUIPMENT STORAGE YARD

Tennessee and its contractors will utilize one area, approximately 35 acres in size, for pipe storage and contractor staging areas during construction. Two possible locations have been identified (Area A and Area B). The proposed pipeyard and staging area A is located off Burnt Meadow Road in Hewitt and is associated with a previously disturbed quarry. The proposed pipeyard and staging area B is located off Greenwood Lake Turnpike in West Milford Township and is also located within a previously disturbed area. Upon completion of construction activities, the pipeyard will be restored to pre-construction conditions.

3.6 ABOVEGROUND FACILITIES

3.6.1 Pig Receiver[6]

Tennessee proposes to construct a pig receiver at MP 17.26 at Tennessee's Valve Segment 328 in Ringwood Borough, Passaic County, New Jersey. The pig receiver facilities are proposed to be located in previously disturbed areas and will require a temporary workspace area of approximately 0.60 acres. Following construction, the pig receiver will lie within the permanent ROW easement.

3.6.2 Main Line Valves

Tennessee will install tie-in valve assemblies at each end of the pipeline loop segment to integrate the loop sections into the existing system. The looping pipeline will have crossover valves at the beginning and ending sections of the pipeline that will be operated for isolation purposes as well as three additional main line valves ("MLV"). Emergency isolation of the looping sections will be accomplished via isolation and/or evacuation of the loop segment through the MLVs without affecting the MLVs on the existing 300 Line pipeline immediately upstream and downstream of the looping facilities. Periodically, the loop segment will be isolated from the existing mainline for inspection or maintenance purposes.

---

[6] The term "pig receiver" refers to a pipeline component used for removing an inline inspection tool, cleaning pig, or other device from a pressurized pipeline. The device is inserted into the pipeline via a launcher.

TABLE 3
SUMMARY OF ESTIMATED LAND REQUIREMENTS FOR THE PROPOSED 325 LOOP SEGMENT AND OTHER ABOVEGROUND FACILITIES WITHIN THE HIGHLANDS PRESERVATION AREA

Facility	Land Affected During Construction* (acres)	Land Utilized During Operation* (acres)
Pipeline	78.60	31.25
Aboveground Facilities	0.80*	0.36*
Access Roads	1.94**	0.00
Staging Areas/ Pipe Yards	35.00	0.00
Total	**116.34**	**31.61**

* - The impact calculations shown here are not included within the overall total land impacts because the are already reflected in the pipeline construction and operational impact area.

** - The impact calculations shown here represent improvements to existing roads as well as minor improvements outside the existing roadway in limited areas needed for equipment turn-around areas.

4.0 CONSTRUCTION PROCESS

Tennessee will construct the Project in accordance with an Upland Erosion Control, Revegetation, and Maintenance Plan ("Plan") and Wetlands and Waterbodies Construction and Mitigation Procedures ("Procedures") approved by FERC, as well as Tennessee's Construction Best Management Practices ("BMPs"), which includes a Spill Prevention Countermeasure and Control Plan ("SPCC"), Waste Management Plan, Unanticipated Discovery Plan, and Pipe Coating Management Plan. Tennessee will use at least one qualified Environmental Inspector ("EI") per construction spread. EI's will be onsite during construction activities to ensure compliance with the FERC-approved Plan and Procedures and Tennessee's BMPs, as well as requirements of all applicable federal, state and local environmental permits and approvals. Tennessee may also employ HDD technology during construction of the 325 Loop Segment to avoid sensitive resource areas and areas that present difficulties for conventional construction methodologies. As detailed at length in Section 5.0 below, construction of the Project in accordance with the FERC-approved Plans and Procedures and Tennessee's BMPs, and use of HDD technology where typical construction techniques are not feasible, will minimize impacts associated with the Project construction activities to the maximum extent practicable in furtherance of the goals and purposes of the Highlands Act.

5.0 CONSISTENCY WITH GOALS AND PURPOSES OF THE HIGHLANDS ACT

The Project is consistent with the goals and purposes of the Highlands Act, which are stated in the Legislative Findings Section of the Highlands Act. N.J.S.A. 13:20-2. As discussed in detail below, the Project involves the installation of underground facilities adjacent to areas already used for this purpose which is expected to minimize impacts to the environment, particularly water resources, as well as minimize visual impacts to the natural beauty of the region. Design and appropriate construction methods will minimize other impacts in sensitive areas. The Project will not result in sprawl or scattered or inappropriate development. Additionally, the Project will enhance the economic vitality of the region and the state.

5.1 PROTECTION OF WATER RESOURCES

The overall primary goal of the Highlands Act is the preservation of drinking water resources and water quality in the Highlands Region "through creation of a comprehensive approach to the protection of the water . . . of the New Jersey Highlands." N.J.S.A.13:20-2. Construction activities associated with the Project will have minimal impacts on surface and groundwater resources. The Project involves no wastewater flow and impacts on water resources associated with construction activities will be minimized to the maximum extent practicable. The limited ROW enlargement as detailed in Section 3.3 of this narrative represents the only permanent impact associated with construction of the Project, as the 325 Loop Segment will be an underground facility. All other construction related impacts will be temporary.

Tennessee intends to incorporate the use of HDD technology where typical construction techniques are not feasible. This process will minimize impacts on water resources (and other environmental media). While the trenchless process requires a larger equipment staging area, these impacts will be temporary and equipment staging areas will be allowed to revegetate following restoration.

With respect to groundwater, Tennessee proposes to implement construction practices designed to reduce and/or mitigate potential impacts on groundwater during construction as detailed within the FERC-approved Plans and Procedures and Tennessee's Construction BMPs. Tennessee and its contractors will adhere to these practices related to groundwater protection including specifications for trench breakers and dewatering as well as restrictions on refueling and storage of hazardous substances.

All equipment used in construction of the pipeline looping will be refueled and lubricated within the limits of the ROW at a minimum distance of 100 feet from all wetlands, waterbodies, and identified wells. Auxiliary fuel tanks will be used to reduce the frequency of refueling operations, and refueling will not take place within 400 feet of identified municipal or community water supplies, including groundwater and surface water as per state requirements. The impact minimization measures will prevent the discharge of hydraulic fluids or fuels from leaving the ROW and/or leaching into the groundwater.

With respect to source and surface water areas, Tennessee will implement the waterbody construction procedures identified within the FERC-approved Plan and Procedures and Tennessee's Construction BMPs, as well as installing the specified erosion controls at all drainage channels prior to the commencement of crossing activities. If necessary, the pipe used

for stream crossings and in floodplains will be weighted to prevent flotation. The pipe will be welded together in the staging areas and then carried or floated along the ROW into place. If the streambed is composed of unconsolidated material, the pipe will be pulled into place. In rock-bottomed streams, the pipe will be floated or lifted across and then lowered into place. After the pipe is lowered into the trench, previously excavated material will be returned to the trench line for backfill. Stream flow will be maintained at all waterbody crossings, and no alteration of the stream capacity will result from pipeline construction. At small streams encountered along the ROW, a backhoe, or similar equipment will be used for trench excavation. As a rule, the completion of all construction activities at minor (10 feet in width or smaller) and intermediate (10 to 100 feet in width) stream crossings will not exceed 24 and 48 hours respectively per crossing. No major (greater than 100 feet in width) stream crossings lie within the proposed route.

The proposed construction procedures will ensure that potential impacts at all stream crossings are minimized. To limit the time required for construction of a stream crossing, the ROW will be prepared on either side of the stream prior to the actual crossing. Stream crossings will be perpendicular to the flow to the extent practical. Temporary erosion control measures will be implemented as necessary to prevent downstream impacts. After the completion of construction, streambeds will be restored to their pre-construction elevations and grades. Spoil, debris, piling, cofferdams, construction materials, and any other obstructions resulting from or used during construction of the pipeline will be removed to prevent interference with normal stream flow. Any excavated material not used as backfill will be removed and disposed of in accordance with local, state, and federal requirements. Following grading, all stream banks will be restored to pre-construction conditions and in accordance with permit requirements.

For all of these reasons, the Project will have minimal if any impacts on surface and groundwater resources.

5.2 ECONOMIC VITALITY

The Highlands Act provides that "it is important to ensure the economic viability of communities throughout the New Jersey Highlands and that . . . economic growth in certain appropriate areas of the New Jersey Highlands is also in the best interests of the citizens of the State." Furthermore, there is a preference for economic growth activities "in or adjacent to areas already utilized for such purposes." N.J.S.A. 13:20-2. The Project is consistent with and will advance the Highlands Act's goal of ensuring economic vitality, while minimizing impacts associated with economic growth, as the upgrade activities are proposed adjacent to the existing 300 Line ROW. The proposed Project will generate several hundred temporary construction-related jobs. A number of those construction-related jobs are expected to be filled from the skilled New Jersey workforce. There will be opportunities for local contractors/personnel to provide their services to the Project. The construction crews are likely to make financial expenditures during the construction period for food, lodging, shopping, entertainment, fuel, and other similar services and products In addition to those expenditures assisting local businesses, they will also generate sales tax revenue for the state. The Project will also generate a substantial increase in tax dollars for the host municipalities, estimated to be in an aggregate range of $1,500,000 to $2,000,000 per year based upon comparison to taxes generated in connection with the existing 300 Line. The Project will promote enhanced energy supply through diversified natural gas supplies and improved reliability in the State and region providing more cost effective energy supply for the region. Accordingly, the proposed Project will advance the goal of promoting appropriate economic benefits in the Highlands Region.

5.3 PRESERVATION OF AGRICULTURAL LANDS

The Highlands Act provides that agricultural lands are "important natural resources of the State that should be preserved." N.J.S.A. 13:20-2. Tennessee's proposal will minimize impacts to agricultural lands to the greatest extent practicable. The Project will not result in sprawl development. While some agricultural land will be impacted, the impacts to these areas will be minimized through implementation of the FERC-approved Plan and Procedures and Tennessee's BMPs for temporary construction impacts primarily associated with equipment staging and through utilization of the existing 300 Line ROW to limit the area of additional required permanent ROW to 25 feet where feasible. Additionally, where appropriate, the temporary construction ROW width will be extended from 100 feet to 125 feet to facilitate topsoil segregation in agricultural areas.

5.4 AVOIDANCE OF FRAGMENTED, UNPLANNED, SPRAWL DEVELOPMENT, DISCOURAGE PIECEMEAL, SCATTERED OR INAPPROPRIATE DEVELOPMENT

The Legislature found that "sprawl and the pace of development in the [Highlands] has dramatically increased" and the Highlands "is at serious risk of being fragmented and consumed by unplanned development." Furthermore, "a regional approach to land use planning in the preservation area should be established to replace the existing uncoordinated system" and the Highlands Act is intended to "discourage piecemeal, scattered and inappropriate development." N.J.S.A. 13:20-2.

The Project will not result in sprawl or piecemeal development. By upgrading existing facilities and utilizing the existing permanent ROW to limit the additional permanent ROW associated with the upgrades to a maximum of 25 feet where feasible, the Project utilizes existing development to minimize impacts to resources within the Region consistent with the goal of avoiding fragmented, unplanned, and inappropriate development.

5.5 PROTECTION OF ENVIRONMENTALLY SENSITIVE LANDS

The Highlands Act provides that the "Highlands contain other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora." N.J.S.A. 13:20-2. The Project has been designed and construction activities will be implemented to minimize impacts to environmentally sensitive areas such as wetlands, critical habitat areas, forest areas, steep slopes, surface water bodies, land areas associated with rare species, riparian areas and conservation priority areas to the maximum extent practicable. As detailed in Section 3.0 above, the Project will minimize additional permanent ROW impacts by utilizing the existing 300 Line ROW to the maximum extent practicable.

Tennessee will implement wetland construction procedures described within the FERC-approved Plan and Procedures and Tennessee's Construction BMP's to minimize potential impacts to wetlands. The width of the temporary construction ROW will be reduced to 75 feet in wetlands areas to reduce potential temporary construction impacts. Tennessee will expedite construction in and around wetlands to minimize potential adverse impacts by restoring wetlands to original configuration and contour, segregating topsoil during excavation, permanently stabilizing upland areas near wetlands as soon as possible after backfilling, conducting scheduled ROW inspections during and after construction, and repairing any erosion control or restoration features until permanent revegetation is successful. Tennessee will comply with applicable permit conditions issued by federal, state and local permitting agencies.

With respect to forested areas, the alignment of the pipeline looping along a previously disturbed and maintained pipeline corridor reduces impacts to forested areas during construction and minimizes the potential for habitat fragmentation. Where impacts are unavoidable, standard erosion control/cover species will be planted after construction is completed. Temporary workspace that was identified as forest during the field surveys will be allowed to revert to forest. Areas that are already vegetated with grasses or early successional species will be restored after the conclusion of construction activities.

With respect to steep slopes, where no reasonably feasible alternative for development outside of steep slopes exist, the potential for slope failure due to earthflow along the proposed ROW will be minimized through specialized construction techniques and the use of erosion control procedures outlined in the FERC-approved Plan and Procedures and Tennessee's Construction BMPs.

With respect to land associated with rare species, habitat assessments were conducted for all proposed impact areas. Consultations were initiated with NJDEP as well as the United States Fish and Wildlife Service to identify any federal or state listed species that may be present within the Project area. Additional surveys will be conducted during the 2009 field season to determine presence or absence of listed species. Impact avoidance and/or mitigation measures will be determined based on the result of field surveys and additional consultations with applicable regulatory agencies.

Upon completion of pipe installation, disturbed areas and drainage patterns will be restored to pre-construction contours and elevations. Revegetation of the ROW in accordance with the FERC approved Plan will ensure that the disturbed areas are stabilized to prevent erosion. Construction and restoration activities will be monitored throughout the process to ensure compliance. Operation and maintenance activities will include routine revegetation monitoring as a standard operational procedure.

Therefore, the Project minimizes impacts to and protects environmentally sensitive lands to the maximum extent practicable.

5.6 IMPLEMENT REGIONAL APPROACH TO LAND USE PLANNING

The Legislature found that "a regional approach to land use planning in the preservation area should be established to replace the existing uncoordinated system." N.J.S.A. 13:20-2. The proposed Project will have no impact on the regional planning goals of the Highlands Act. As detailed above, the Project involves a proposed upgrade of existing energy supply facilities for transportation through the region to downstream markets. The Project will not result in sprawl development and is consistent with the resource protection goals and provisions of the Highlands Act. The proposed Project will not promote development that is inconsistent with the regional land use planning approach of the Highlands Act.

5.7 STATE ACQUISITION OF EXCEPTIONAL NATURAL RESOURCE VALUE LANDS

The Act provides that "a strong and significant commitment by the State to fund the acquisition of exceptional natural resource value lands" should be implemented as soon as possible. N.J.S.A. 13:20-2. The Project will have minimal, if any, impact on the State's efforts to acquire exceptional natural resource value lands in the Highlands region. The Project will result where feasible in only 25 feet of new permanent ROW for the upgrade facilities which will connect to the existing 50 foot permanent ROW of the existing 300 Line. By utilizing the existing facilities and ROW for the

proposed upgrade activities, impacts on any efforts of the State to acquire exceptional natural resource value lands will be minimized to the maximum extent practicable.

5.8 ENCOURAGE APPROPRIATE PATTERNS OF COMPATIBLE RESIDENTIAL, COMMERCIAL AND INDUSTRIAL DEVELOPMENT, REDEVELOPMENT AND ECONOMIC GROWTH, IN OR ADJACENT TO AREAS ALREADY UTILIZED FOR SUCH PURPOSES

The Legislature found that "it is appropriate to encourage in certain areas of the New Jersey Highlands, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial and industrial development, redevelopment and economic growth, in or adjacent to areas already utilized for such purposes." N.J.S.A. 13:20-2. The Project involves planned upgrades to the existing 300 Line. The Project will result where feasible in only 25 feet of new permanent ROW for the upgrade facilities which will connect to the existing 50 foot permanent ROW of the existing 300 Line. By utilizing existing facilities and ROW for the proposed upgrade activities, the Project will advance the goal of encouraging appropriate patterns of compatible development in and adjacent to areas already utilized for such purposes.

5.9 PRESERVATION OF THE NATURAL BEAUTY OF THE HIGHLANDS REGION

The Act recognizes the importance of protecting the "natural beauty of the New Jersey Highlands." N.J.S.A. 13:20-2. The proposed Project primarily involves the installation of underground facilities. Moreover, additional disturbance associated with the upgrade activities will be minimized to the maximum extent practicable by utilizing the previously disturbed area associated with the existing facilities and ROW. The only permanent above-ground impacts on natural beauty or visual impacts will be associated with the modest ROW enlargement and installation of MLVs. The MLV sites for the proposed 325 Loop Segment, as described in Table 1, will be connected to the existing MLV sites on the 300 Line to negate the need for the creation of multiple new sites. The pig receiver will have a site located at the end of the loop in Ringwood Borough. Accordingly, the Project will have minimal visual or other impacts on natural beauty of the Highlands region.

5.10 ADVANCEMENT OF QUALITY OF LIFE OF THE RESIDENTS OF THE REGION AND THE ENTIRE STATE

The Legislature found that it is in the public's interest to provide "every conceivable opportunity for appropriate economic growth and development to advance the quality of life of the residents of the region and the entire State." N.J.S.A. 13:20-2. The Project will provide temporary employment opportunities during construction and restoration activities and will promote enhancement of energy supply through diversified natural gas supplies and enhanced energy reliability in the State and region, while minimizing associated impacts through implementation of appropriate construction BMPs and utilization of existing facilities and disturbed areas to the maximum extent practicable. This Project is consistent with New Jersey's Energy Master Plan and its reliance on clean, natural gas. Additionally, it is projected that the Project and operation of the upgraded facilities will generate a significant increase in tax revenues estimated to be in an aggregate range of $1,500,000 to $2,000,000 on an annual basis to the municipalities where Tennessee's pipeline system, including the proposed 325 Loop Segment is located. That tax

increase in turn is anticipated to have a positive impact on quality of life to the Highlands area through increased financial resources for affected municipalities.

6.0 LITERATURE CITED

Barnett, Peter. 2001. The Passaic River. Com. About the Passaic [Online WWW]. Available URL: http://www.passaicriver.com. [Accessed August 11, 2008]

Dalton, Richard. 2003. Physiographic Provinces of New Jersey. New Jersey Geological Survey Information Circular [Online WWW]. Available URL: www.state.nj.us/dep/njgs/enviroed/infocirc/provinces.pdf. [Accessed September 8, 2008].

New Jersey Department of Environmental Protection. 2006. Highlands Water Protection and Planning Highlands Act Rules.

New Jersey Department of Environmental Protection. 2008. DEP Guidance for Highlands Water Protection and Planning Highlands Act [Online WWW]. Available URL http://www.state.nj.us/dep/highlands/faq_info.htm [Accessed October 28, 2008]

New Jersey Highlands Water Protection and Planning Council. 2007. Technical Report Addenda, in Support of the Highlands Regional Master Plan.

New Jersey Highlands Water Protection and Planning Council. 2008. Ecosystem Management Technical Report, in Support of the Highlands Regional Master Plan.

NARRATIVE REPORT IN SUPPORT OF

HIGHLANDS APPLICABILITY DETERMINATION

HIGHLANDS EXEMPTION REQUEST

For the

300 LINE PROJECT

Attachment A

Tax Map Ownership List

Removed – contains Privileged and Confidential Information

NARRATIVE REPORT IN SUPPORT OF

HIGHLANDS APPLICABILITY DETERMINATION

HIGHLANDS EXEMPTION REQUEST

For the

300 LINE PROJECT

Attachment B

New Jersey Department of Environmental Protection

Highlands Water Protection and Planning Act Rules Readoption with Amendments: N.J.A.C. 7:38

omitted from the notice of adoption published January 5, 1998 (see 30 N.J.R. 129(a), 162) and the Administrative Code. A fragment of the paragraph appeared after subparagraph (a)1i, with the balance at the end of the fourth sentence in paragraph (a). Through a notice of administrative correction published October 19, 1998 at 30 N.J.R. 3785(b), the text of paragraph (a)1 was added to the Code and the fragment after subparagraph (a)1i deleted; however, the deletion of that portion of the paragraph that appeared at the end of the fourth sentence in paragraph (a) was inadvertently overlooked. Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, that oversight is remedied.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

5:23-6.18 Basic requirements — Use Group E

(a) Exits: Two exits shall be required for stories with less than 500 occupants. Three exits shall be required for stories with 501 to 1,000 occupants. Four exits shall be required for stories with more than 1,000 occupants. Two means of egress are also required from all mezzanines with an occupant load greater than 50 and with exit travel distance greater than 75 feet[, permitted in the story at the level of exit discharge when the occupant load of the story does not exceed 50 and the exit access travel distance does not exceed 75 feet].

1. (No change.)

(b)-(o) (No change.)

ENVIRONMENTAL PROTECTION

(a)

LAND USE MANAGEMENT
LAND USE REGULATION
Highlands Water Protection and Planning Act Rules Readoption with Amendments: N.J.A.C. 7:38

Proposed: December 19, 2005 at 37 N.J.R. 4767(a).
Adopted: November 1, 2006 by Lisa P. Jackson, Commissioner, Department of Environmental Protection.
Filed: November 2, 2006 as R.2006 d.420, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).
Authority: N.J.S.A. 13:20-1 et seq., 13:1D-1 et seq., 13:1B-15.128 et seq., 13:9B-1 et seq., 23:2A-1 et seq., 58:1A-1 et seq., 58:10A-1 et seq., 58:11-23 et seq., 58:11A-1 et seq., 58:12A-1 et seq. and 58:16A-50 et seq.
DEP Docket Number: 39-05-11/578.
Effective Date: November 2, 2006, Readoption;
December 4, 2006, Amendments.
Expiration Date: November 2, 2011.

The Department of Environmental Protection is readopting with amendments the Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38. The proposal was published on December 19, 2005. The comment period closed on February 17, 2006.

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on the proposal on January 25, 2006, at 4:00 P.M., at the Highlands Council offices in Chester, New Jersey. Susan Lockwood and Mark Mauriello were the hearing officers. Thirty-three people attended and 28 gave testimony. The hearing officers recommended that the proposal be adopted as proposed with the changes described below in the Summary of Public Comments and Agency Reponses. The Department accepts the recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs
Attn: DEP Docket No. 39-05-11/578
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey, 08625-0402.

Summary of Public Comments and Agency Responses

The Department accepted comments on the proposal through February 17, 2006. One-hundred fifteen people provided individual written and/or oral comments. Four-hundred sixty-five people submitted form letters. The following individuals provided individual comments:

1. Anderson, Joanne
2. Anderson, John W.
3. Anderson, Wayne
4. Baker, Michael J.
5. Bartel, Constance
6. Best, Robert, E.
7. Best, Ruth M.
8. Bowman, Cynthia M.
9. Broadhurst, Ellen
10. Broadhurst, Hope
11. Broadhurst, Jeff
12. Broadhurst, Tom
13. Buck, Susan
14. Canright, Mark
15. Christensen, Nancy
16. Collins, Jr., Thomas F. Vogel, Chait, Collins, and Schneider
17. Constantine, Diane M.; Sprint Spectrum and Nextel Corporation
18. Costa, Rosalind Pio
19. Davenport, Robert
20. Dilodovico, Anthony; Schoor Depalma
21. Donaldson, Lewis A.
22. Drysdale, Andrew
23. Drysdale, Lois
24. Dunn, Thomas W. Beattie Padovano representing Borough of Ringwood Planning Board
25. Farber, Joy; Association of New Jersey Environmental Commissions
26. Feller, Caroline E.
27. Filippone, Ella F.; Passaic River Coalition
28. Finke, Jean M.
29. Finke, Michael
30. Finke, Robert
31. Finke, Robert A.
32. Frey, Gertrude
33. Frey, Robert
34. Frey, Robert J.
35. Frey, Wilma; New Jersey Conservation Foundation
36. Gagne, Ed
37. Gagne, Penny
38. Gerish, Jay
39. Goger, Nicole
40. Gracie, Heather; Gracie & Harrigan Consulting Foresters, Inc.
41. Harrigan, Christina; Gracie & Harrigan Consulting Foresters, Inc.
42. Kallesser, Steven; Gracie & Harrigan Consulting Foresters, Inc.
43. Kelsey, James;. Planning Board, Independence Township
44. Kern, Jerry and Sandi
45. Kessler, James C.
46. Kessler, James E.
47. Klumpp, Hank
48. Kraham, Susan J.; NJ Audubon Society
49. Kruger, Anne L.; Passaic River Coalition
50. Kushner, Ross. Pequannock River Coalition
51. LaHue, Michael P.
52. LaHue, Robin; The Freedom Group, L.P.
53. Leavens, III, William B.
54. Lee, Art
55. Longo, Richard A.
56. Mackey, Devlen
57. Mackey, Holly
58. Mackey, Robert
59. Maidens, Melinda B.; Jeffer, Hopkinson and Vogel
60. McGroarty, Chuck; Planning consultant for Mount Olive Township

or repair of transportation or infrastructure systems by a State entity or local government unit is exempt, presumably because such projects have a public purpose, are undertaken with public money and provide benefits to the public at large. Therefore, it is appropriate to facilitate such projects by providing an exemption.

293. COMMENT: At N.J.A.C. 7:38-2.3(a)10, private transportation safety projects and bicycle and pedestrian facilities should be exempt like public facilities. (9-12)

RESPONSE: As explained in previous responses, the Highlands Act prescribed the developments and activities that are exempt from regulation under these rules. The Highlands Act specifies that the construction of transportation safety projects and bicycle and pedestrian facility by a State entity or local government unit is exempt, presumably because such projects have a public purpose, are undertaken with public money and provide benefits to the public at large. Therefore, it is appropriate to facilitate such projects by providing an exemption.

294. COMMENT: At N.J.A.C. 7:38-2.3(a)11, private utility lines should be exempt like public facilities. (9-12)

RESPONSE: As explained in previous responses, the Highlands Act prescribed the developments and activities that are exempt from regulation under these rules. The Highlands Act specifies that routine maintenance and operations, rehabilitation, preservation, reconstruction, repair or upgrade of public utility lines, rights-of-way, or systems, by a public utility is exempt presumably because such projects have a public purpose and provide benefits to the public at large. Therefore, it is appropriate to facilitate such projects by providing an exemption.

295. COMMENT: The commenter's right-of-way traverses across the New Jersey Highlands in the towns of Mahwah, Ringwood, West Milford and Vernon. In maintaining its pipeline in compliance with the Federal Natural Gas Pipeline Safety Act, 49 CFR Part 192, the commenter occasionally undertakes necessary public safety projects, "regulated activities" within the Highlands. These activities are undertaken in full compliance with both the Federal and State environmental regulations, including wetlands, endangered species, and historic preservation. Currently, N.J.A.C. 7:38-2.3(a)11 recognizes an exemption for routine maintenance for public utility lines. However, a contradiction in N.J.A.C. 7:38-2.4(b) requires any project in the preservation area to obtain a Highland applicability determination. This determination process takes valuable time away from required annual maintenance schedules that must be adhered to per Federal law and to fully protect the pipeline, public safety and the environment. The regulation as presently written causes a significant delay for emergent public safety maintenance tasks. We request that the proposed N.J.A.C. 7:38-2.4(b)4 be explicitly applied to the maintenance of existing natural gas distribution and transmission systems. (64)

RESPONSE: The commenter is advised to apply for a Highlands applicability determination (HAD) to cover the full spectrum of maintenance, rehabilitation, reconstruction, repair or upgrade activities that it intends to conduct in the preservation area to confirm that the activities are exempt from the Highlands Act and, therefore, from regulation under these rules in accordance with N.J.A.C. 7:38-2.3(a)11. Once this HAD is obtained, the applicant can submit it with any future applications for an environmental land use or water permit from the Department. The Department will not require a new HAD for every occasion of maintenance so long as the activities to be conducted are consistent with those found to be exempt in the applicability determination.

The commenter is invited to describe to the Department the full range and scope of activities that may be undertaken as part of maintenance of existing natural gas transmission and distribution lines. If some or all of the activities lend themselves to clear description and are easily and quickly discernable in an application, the Department will consider adding such activities to the provisions at N.J.A.C. 7:38-2.4(b).

296. COMMENT: When the Act was originally written, it appears that the authors did not consider all the existing infrastructure aside from public utilities which are normally thought of as water lines, sewer lines, etc. Under the rules, under N.J.A.C. 7:38-2.3(a)11, the existing exemption provides for routine maintenance for public utility lines, rights-of-way or systems. To be exempt, the activity must be conducted by a public utility. We would suggest that this language be modified to include other infrastructure systems such as natural gas or electric transmission that may be not considered a public utility, but serves to deliver or provide gas and electricity to public systems. Maintenance activities for such entities take place within the limits of existing rights-of-way or footprints of disturbance. Therefore, such an exemption should apply to all infrastructure systems, not just so it's considered the "public utilities." (115)

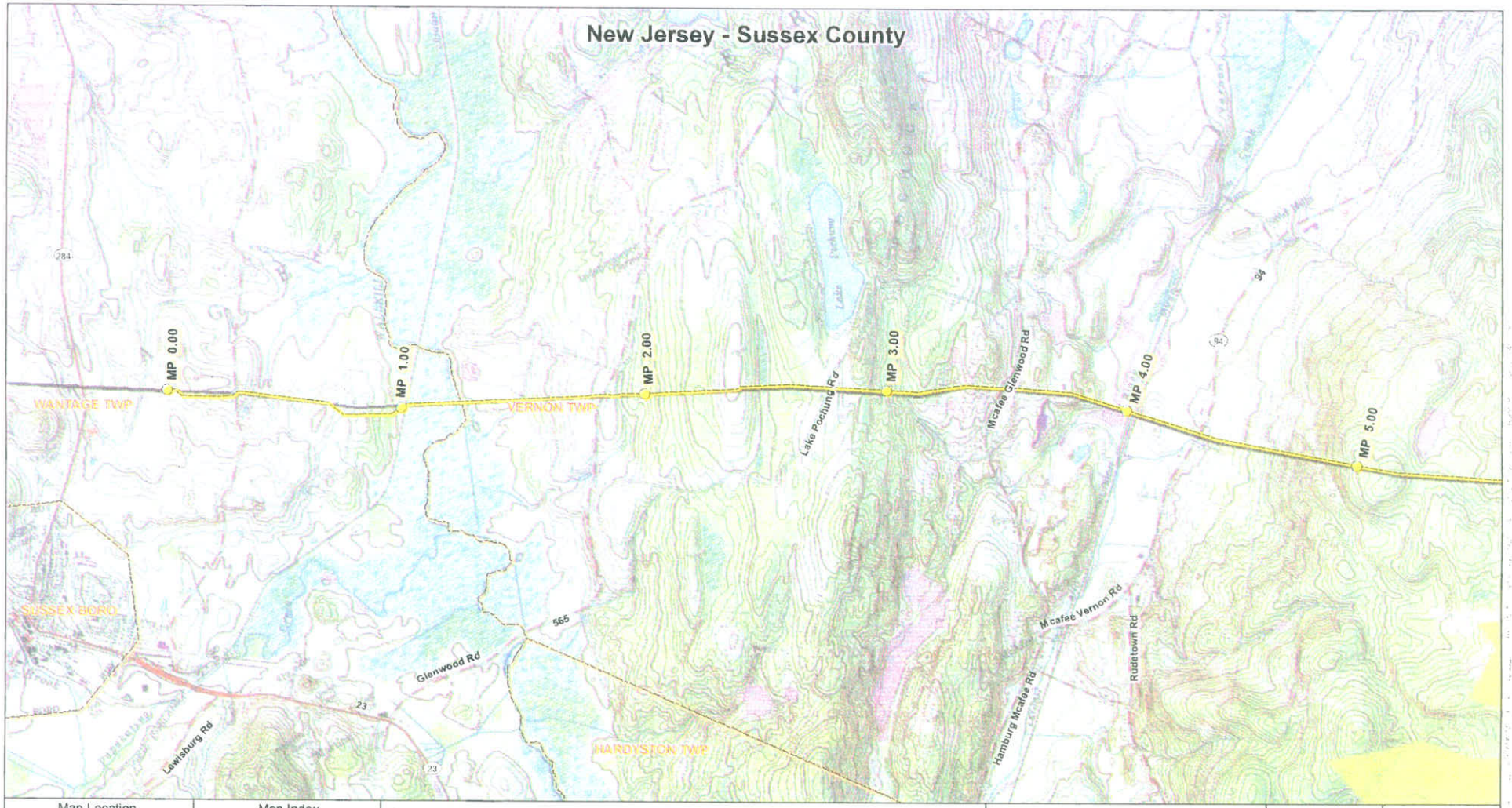
RESPONSE: The Act and these rules define public utility as it appears in the Department of Public Utilities Act (N.J.S.A. 48:2-13). The definition provides that public utility includes individuals, copartnerships, associations, corporation or joint stock companies, that own, operate, manage or control within New Jersey any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted by the State or by any political subdivision of the State. Thus, the pipelines and infrastructure that the commenter describes are considered a public utility and, therefore, eligible for the exemption.

297. COMMENT: N.J.A.C. 7:38-2.3(a)11 states that telecommunications equipment can be sited on existing utility structures. However, the regulations require that you must have a 10-by-20 concrete pad underneath the existing structure. Utility companies, for the most part, will not allow anything to be sited under their structures. They need that space for safety and for access for their own maintenance. Nine out of 10 times they will make the site adjacent to the structure available. Whether directly underneath or next to the structure, the impervious coverage is the same. The fact that the rule restricted the equipment to a 10-by-20 foot pad is also not a very good idea only because many carriers will put installations on concrete piers which in fact are less impervious coverage than the 10-by-20 foot pad. So if the idea was to limit the impervious coverage to 10-by-20 feet, we would ask that the regulations say that you cannot create more than a 10-by-20 foot area of impervious coverage. (17)

298. COMMENT: For the purposes of the exemption at N.J.A.C. 7:38-2.3(a)11i, installation of cellular equipment on a legally existing overhead utility tower and the construction of the attendant 10-foot by 20-foot pad, when located within the four footings of such tower within a right-of-way owned or controlled by a public utility, constructed with the consent of the public utility is consistent with the goals and purposes of the Highlands Act. This exemption should be modified to state: "For the purposes of this exemption, the installation of cellular equipment on a legally existing overhead utility tower and the attendant equipment shelter or cabinets to be installed near the base of the tower either on concrete piers or on a 10x20 foot pad, located within a right-of-way owned or controlled by a public utility is consistent with the goals and purposes of the Highlands Act." (17)

RESPONSE TO COMMENTS 297 AND 298: The 10-foot by 20-foot pad size was established based on the Department's experience reviewing applications for cell towers under the Highlands Act to date. For the purposes of this exemption, the Department requires that these structures be located within the four posts of the utility pole because it is recognized this area is already substantially disturbed by the presence of the tower and maintenance activities, and because applicants to date have offered this location as viable. Allowing disturbance outside of the four posts of the utility pole in areas without previous disturbance, whether on a pad or piers, may result in disturbances of Highlands resource areas that the Act clearly intended to regulate.

299. COMMENT: The goal of the Highlands Act and the regulations to protect the watershed of the affected areas is very important. I think everyone would agree that the watershed should be protected. However, our concerns are how the Act and the regulations will affect the wireless telecommunication provider and in turn those people in need to make a call especially in emergency type situations. Telecommunication's provider are governed by two Federal statutes. The first statute is the 1996 Telecommunications Act. The second is the Wireless Public Safety Act of 1999. These Federal statutes are in place to ensure the provisions of wireless telecommunications throughout the state and to promote safety for those people whether they are residents, commuters, hikers, or people in emergency type situations, including fire, police and First Aid. The Highlands Act and its regulations may well be in conflict with these



Map Location

Map Index

Legend

- Proposed 30-inch diameter natural gas pipeline loop segment
- Existing 24-inch Diameter 300 Line Pipeline
- MP - Milepost
- Highlands Preservation Area
- County Boundary
- Town Boundary

Data Source: El Paso 2008, USGS 24K Topo
Map Projection: NAD 1983 UTM Zone 18N Foot US
USGS Quad: Hamburg

0 1,000 2,000 4,000 Feet

Scale: 1:24,000 (1in = 2000 ft)

300 Line Project

Loop 325

New Jersey
Highlands Preservation Area
Topographic Quad Mapping

Confidential

Tennessee Gas Pipeline

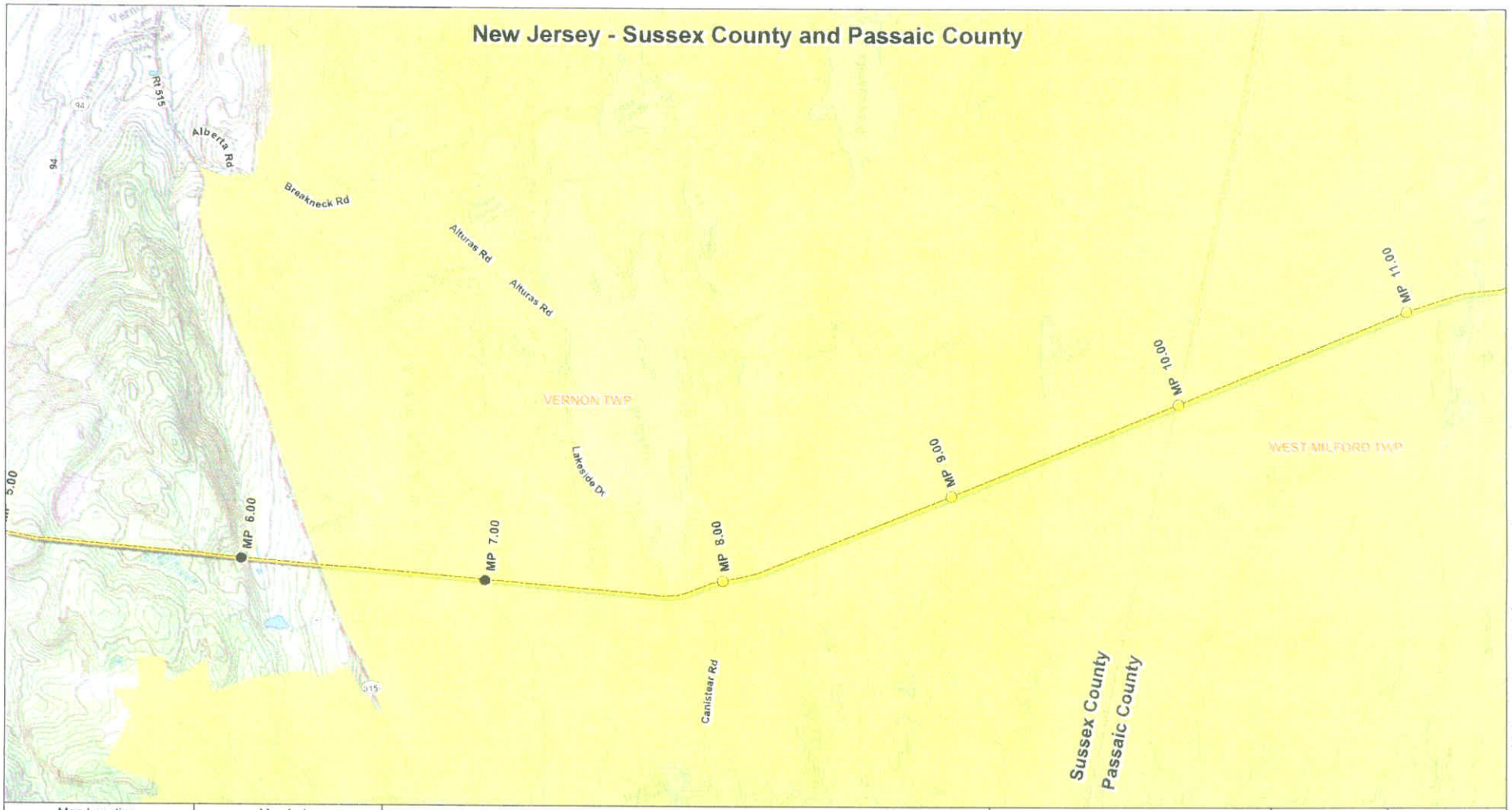
ENSR

Figure 1a

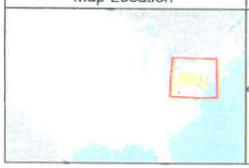
Date: March 2009

Mapsheet 1 of 3

New Jersey - Sussex County and Passaic County



Map Location



Map Index

Legend

- Proposed 30-inch diameter natural gas pipeline loop segment
- Existing 24-inch Diameter 300 Line Pipeline
- MP - Milepost
- Highlands Preservation Area
- County Boundary
- Town Boundary

Data Source: El Paso 2008, USGS 24K Topo
Map Projection: NAD 1983 UTM Zone 18N Foot US
USGS Quad: Hamburg, Wawayanda

0 1,000 2,000 4,000 Feet

Scale: 1:24,000 (1in = 2000 ft)

300 Line Project

Loop 325

New Jersey
Highlands Preservation Area
Topographic Quad Mapping

Confidential

Tennessee Gas Pipeline

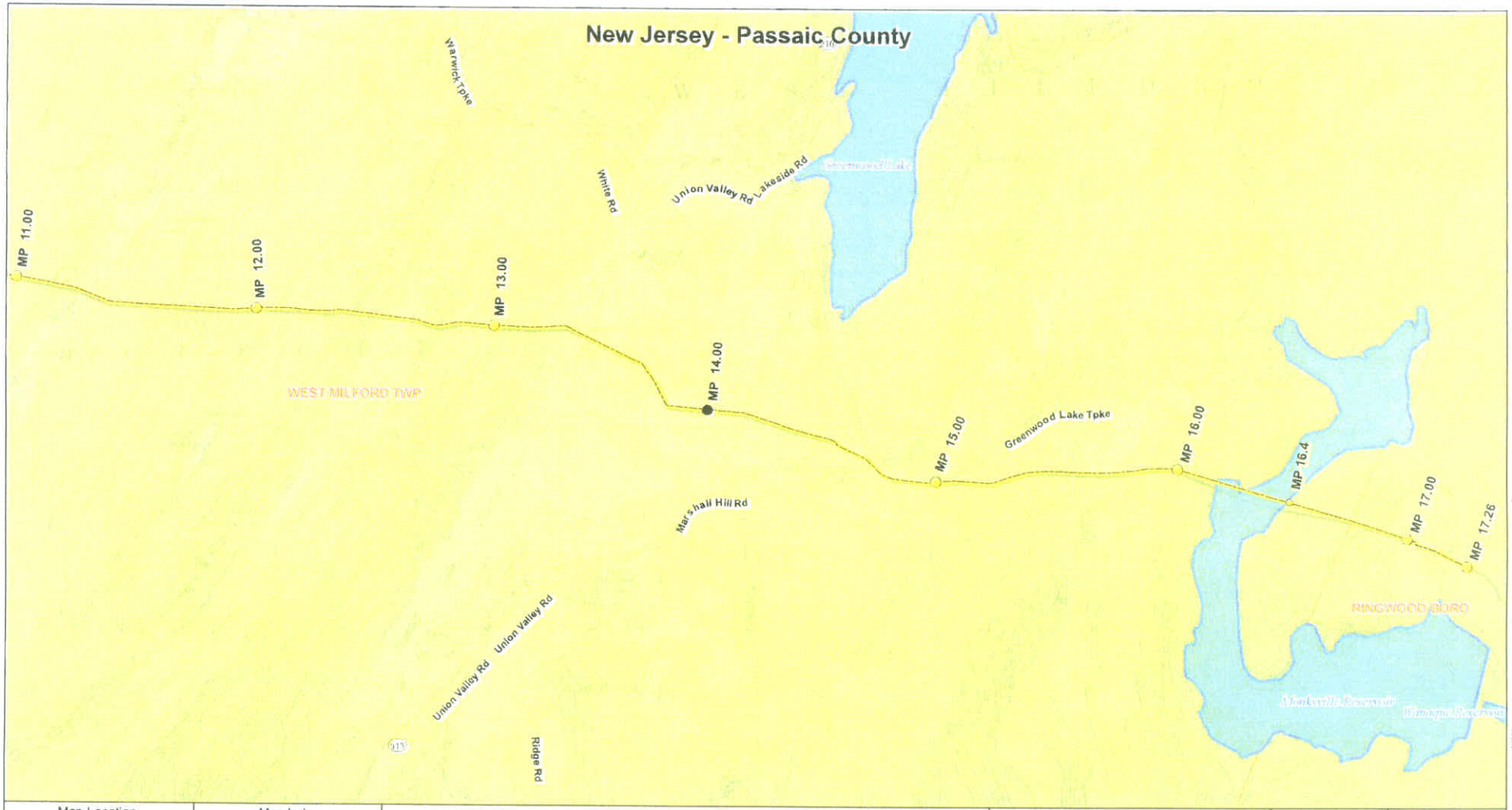
ENSR

Figure 1a

Date: March 2009

Mapsheet 2 of 3

New Jersey - Passaic County



Map Location

Map Index

Legend

- Proposed 30-inch diameter natural gas pipeline loop segment
- Existing 24-inch Diameter 300 Line Pipeline
- MP - Milepost
- Highlands Preservation Area
- County Boundary
- Town Boundary

Data Source: El Paso 2008, USGS 24K Topo
Map Projection: NAD 1983 UTM Zone 18N Feet US
USGS Quad: Wanaque, Greenwood Lake

0 1,000 2,000 4,000 Feet

Scale: 1:24,000 (1in = 2000 ft)

300 Line Project

Loop 325

New Jersey
Highlands Preservation Area
Topographic Quad Mapping

Confidential

Tennessee Gas Pipeline

ENSR

Figure 1a

Date: March 2009

Mapsheet 3 of 3

Tennessee Gas Pipeline
an El Paso company

NEED FOR INCREMENTAL PIPELINE CAPACITY

TENNESSEE GAS PIPELINE COMPANY

300 LINE PROJECT

March 2009

Need for Incremental Pipeline Capacity
Tennessee Gas Pipeline Company[1]
300 Line Project

FERC Determination of Public Convenience and Necessity

Under Section 1(b) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717, the Federal Energy Regulatory Commission ("FERC") was granted jurisdiction over the transportation of natural gas in interstate commerce and the natural gas companies which provide that transportation. The FERC, pursuant to Section 7(c) of the NGA, 15 U.S.C. § 717h, must issue a certificate of public convenience and necessity prior to a natural gas company constructing facilities for transportation for interstate natural gas transportation.[2]

The FERC follows the guidance set forth in its Certification of New Interstate Natural Gas Pipeline Facilities Policy Statement ("Policy Statement")[3] when evaluating proposals for certificating new interstate natural gas pipeline construction. The Policy Statement established criteria for the FERC to use for determining whether there is a need for a proposed pipeline project and whether the proposed project will serve the public interest. As explained in the Policy Statement, in deciding whether to authorize the construction of new pipeline facilities, the FERC balances the public benefits against the potential adverse consequences. The Commission's goal in evaluating new pipeline construction is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain.

The Need for Pipeline Capacity into New Jersey and the Northeast

There are five factors demonstrating the need for incremental pipeline capacity into New Jersey and the Northeast:

- The decline of gas supplies available from Canada for export to the U.S.
- The national priority to reduce reliance on foreign energy imports including oil and liquefied natural gas ("LNG") in favor of domestic production.
- The need to reduce pipeline capacity constraints that currently restrict new domestic natural gas supplies in the western portion of the northeastern U.S. from accessing the high consumption areas along the Atlantic Coast.
- Growth in the major market centers of the Northeast U.S. which have significantly higher natural gas demand growth rates than the western sectors of that region.
- Consistency with the New Jersey State Energy Master Plan which addresses the importance of clean, reliable natural gas supplies to the economic vitality of the State.

---

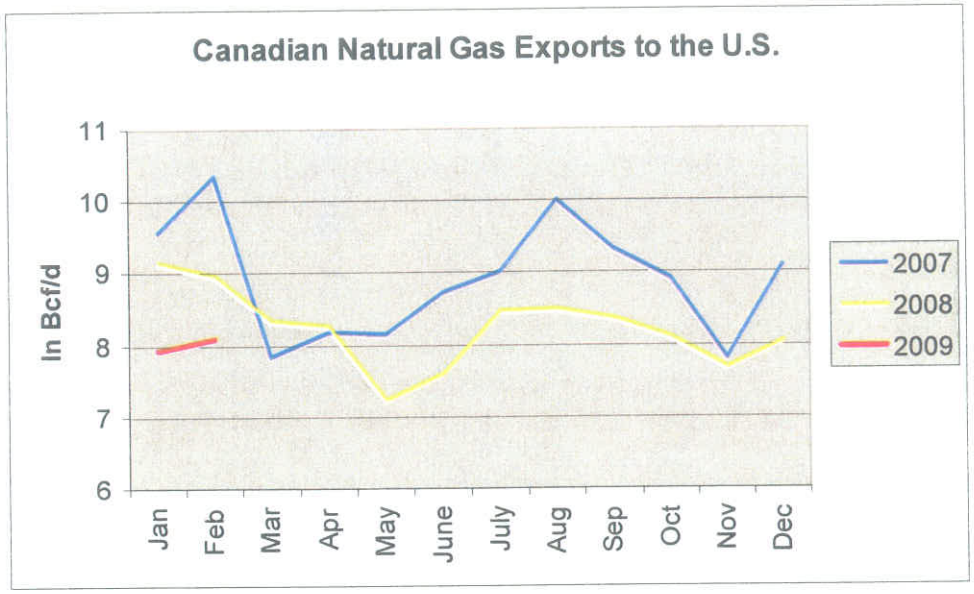
[1] Tennessee Gas Pipeline Company is a wholly owned subsidiary of El Paso Corporation.

[2] As part of its responsibility for regulating the siting and construction of natural gas pipeline facilities, the FERC is the lead agency for environmental reviews under the National Environmental Policy Act, 42 U.S.C. § 4321, for the construction of such pipelines. Also, in its application review, the Commission ensures that the pipeline applicant has certified that it will comply with Department of Transportation safety standards.

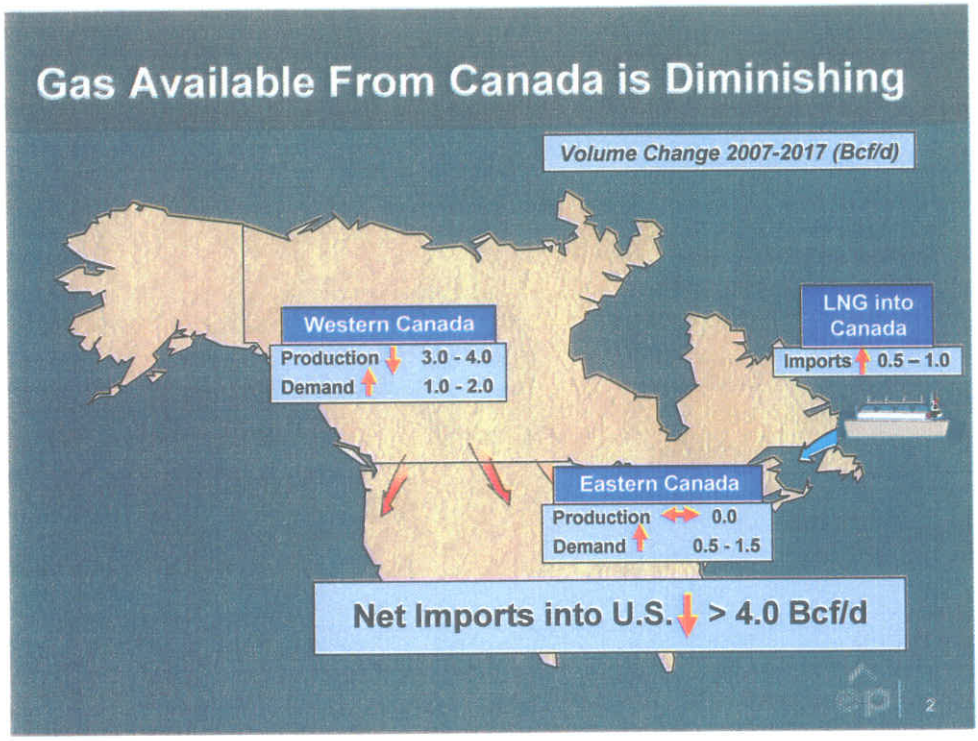
[3] 88 FERC ¶ 61,227 (1999); clarified, 90 FERC ¶ 61,128 (2000); further clarified, 92 FERC ¶ 61,094 (2000).

Canadian Exports

Canadian exports to the U.S. have been declining for the last several years due to reduced production in the Western Canadian Sedimentary Basin and increased local consumption, predominantly in the oil sands producing region of Alberta. The chart below shows that over the past 3 years Canadian exports to the U.S. have been reduced from a peak of just over 10 Bcf/d in 2007 to 8 Bcf/d in 2009, a drop of 20% in two years.

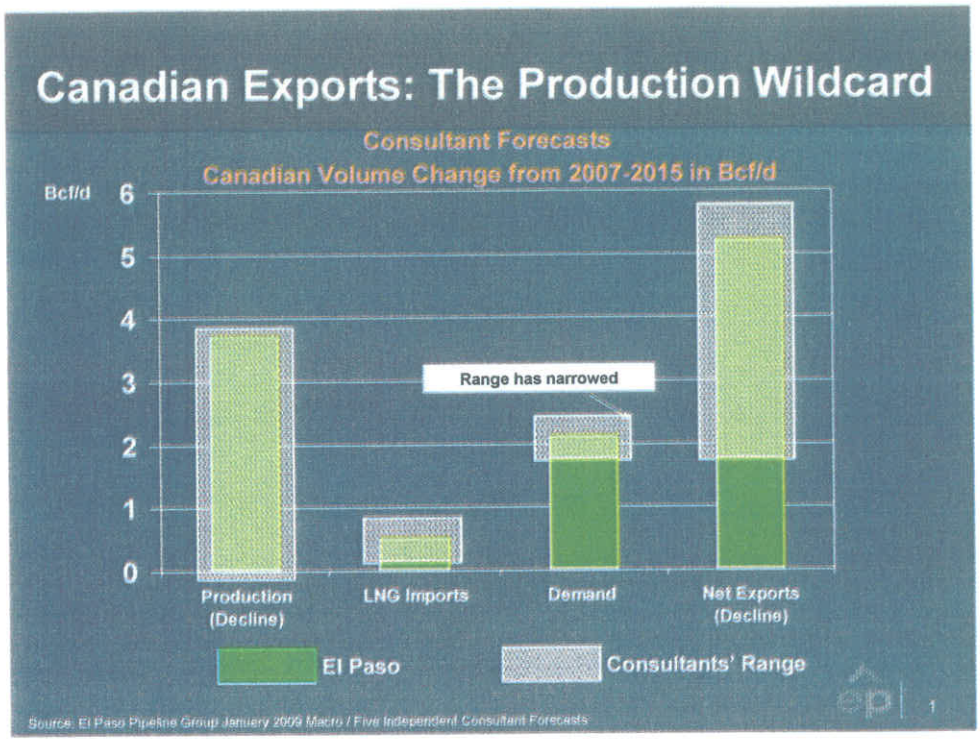


The expectation is that Canadian exports will continue to fall as a result of the two factors cited above as well as the mandated conversion from coal fired power generation to clean burning and environmentally friendly natural gas fired powered generation in Ontario. The following chart shows El Paso Corporation's ("El Paso") expectations for the change in exports with the arrows showing the anticipated reduction from 2007 to 2017 in Bcf/d of more than 4 Billion cubic feet per day ("Bcf/d"). Of this, El Paso estimates the impact on imports in the Northeast U.S. could be as much as 1.9 Bcf/d.



The reduction in Canadian exports to the U.S. is widely agreed upon by analysts and there will thus be a need to re-supply New Jersey and the Northeastern states from other sources. Access to new Appalachian supplies, as well as Gulf Coast area shale supplies and Rockies supply (via Rockies Express Pipeline -Tennessee Gas Pipeline Company ("Tennessee") interconnect in Ohio), of natural gas via Tennessee's 300 Line will help to offset the loss of supply from Canadian exports.

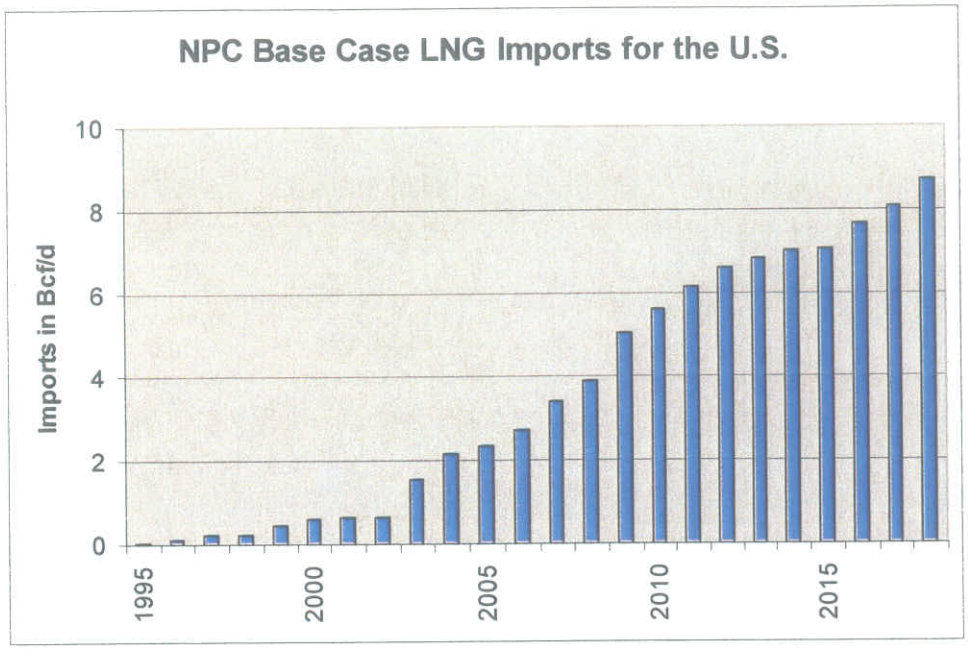
El Paso's views on falling Canadian natural gas exports to the U.S. are mirrored by a number of energy consultants. The chart below shows El Paso's forecasts in the green columns and directly compares those figures with the range of values established by five consultants indicated by the gray rectangles. The highest degree of uncertainty is on the amount of production, where projections range from a small increase to a 3.7 Bcf/d decrease. Still, in every case exports are predicted to decline significantly by 2015.



Additional capacity on Tennessee's 300 Line is an excellent opportunity to prepare for the ongoing loss of Canadian volumes into the Northeast.

Reduction of Foreign Purchases of Liquefied Natural Gas (LNG)

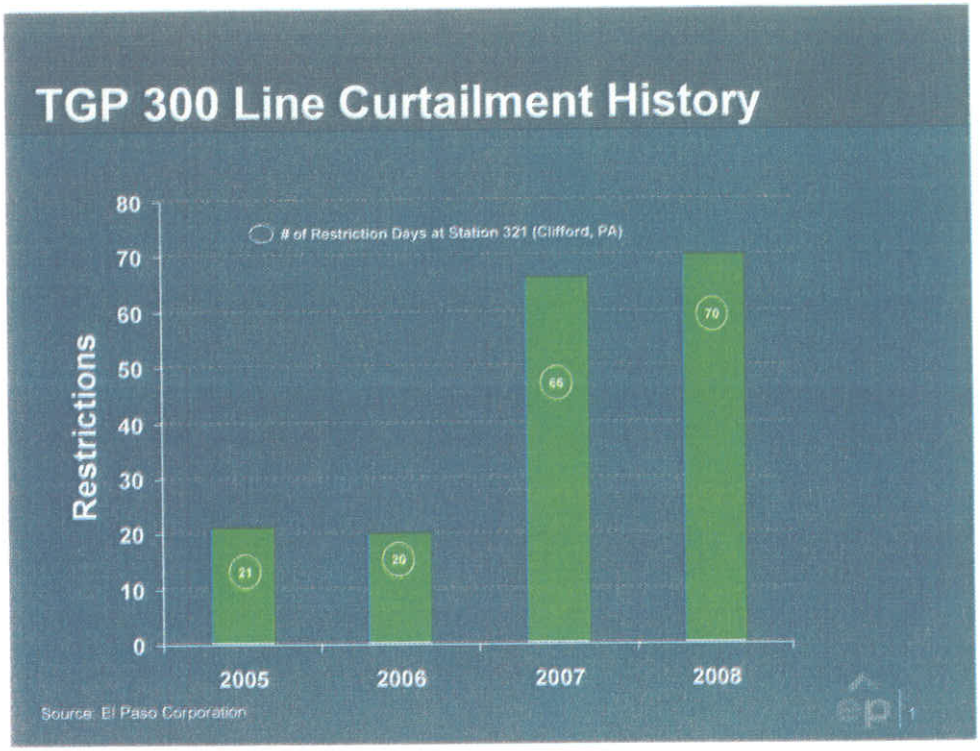
In 2003 the National Petroleum Council ("NPC") predicted that over 8 Bcf/d of LNG would be imported into the United States by 2018 (see graph below). This was repeated in the 2008 Annual Energy Outlook ("AEO") produced by the Energy Information Administration ("EIA") where LNG imports were again stated to reach 8 Bcf/d in 2018. However, the recent increase in domestic production has markedly changed views on the need for these LNG imports. Recent forecasts have U.S. LNG imports shown at much lower volumes. The 2009 AEO, for instance, now predicts only 4.1 Bcf/d of LNG will enter the U.S. in 2018, almost 50% less than the projection made in the prior year. To achieve this benefit of reduced reliance on imported gas, domestic supplies must have a way to reach the demand centers, and incremental pipeline capacity is required to accomplish this transportation of gas supplies. Tennessee's 300 Line Project is consistent with this objective.



The marked reduction in LNG imports will favorably impact the U.S. balance of payments. As an example, the 4 Bcf/d of reduced volumes identified by the EIA at a natural gas price of $6 per million cubic feet would have U.S. consumers spending almost $25,000,000 per day domestically versus sending it to an overseas company.

Reduction of Pipeline Constraints into the Northeast

Currently, there is approximately 7 Bcf/d of pipeline capacity on four interstate pipelines, including Tennessee, to transport gas through Pennsylvania from upstream out of state sources into New Jersey. All four pipelines are currently fully subscribed in this region during the peak heating season. The chart below quantifies the impact of the constrained capacity by plotting the number of days shipper volume restrictions were in place, including volume increase limitations, along the path of where Tennessee proposes to build its 300 Line Project. On those days, natural gas shippers wanted to ship more gas through the 300 Line than there was capacity available to handle it. As the chart shows, over the past 4 years the number of restriction days increased by over 233%.



As more general evidence of constraints in pipeline capacity to the Northeast, Bentek Energy LLC ("Bentek"), a private consulting company, completed Part 1 of the Northeast Study called 'Catch the Wave' in late 2008. This study showed four major constraint barriers or 'waves' as gas proceeded from the western regions of the Northeast to the eastern sections of the Northeast. One of Bentek's conclusions was "the ability to move gas from the constrained area around Lebanon, OH…to higher-value markets to the East will be a valuable asset for capacity holders". Tennessee's 300 Line Project will create new capacity across several of the "constraint waves" identified in the Bentek study to help reduce the capacity constraints.

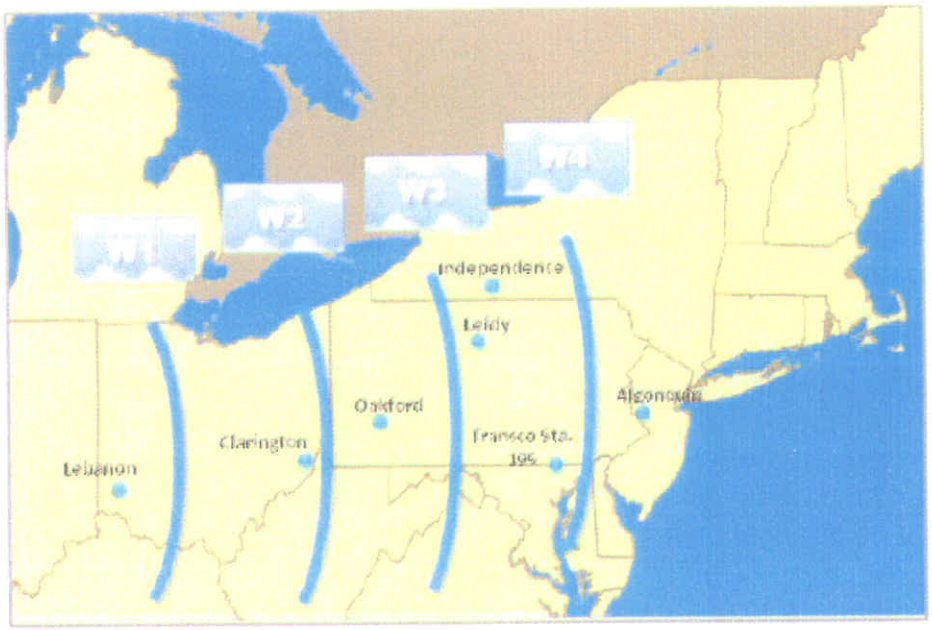
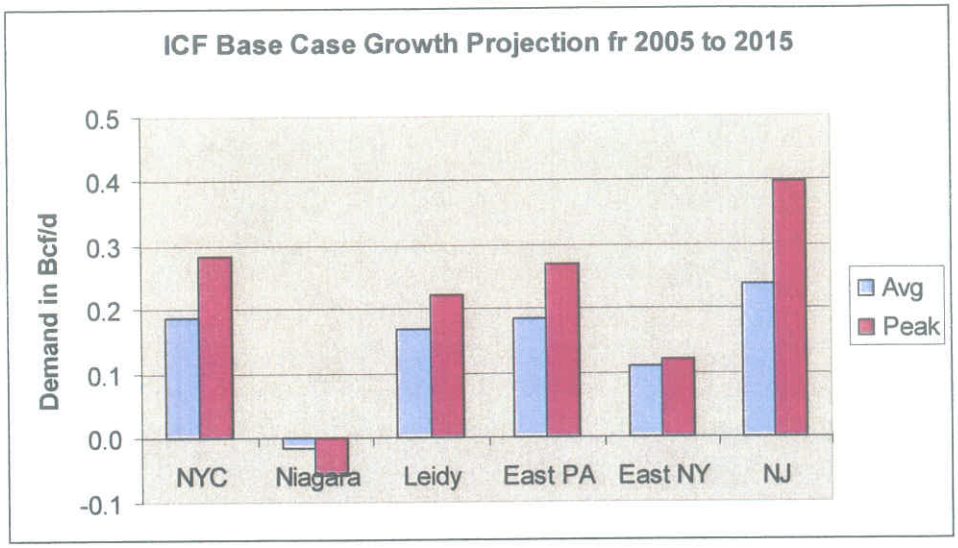


Figure 1 – BENTEK's *Catch the Wave*™ Model

Additionally, in late 2009, the Rockies Express pipeline is scheduled to tie into pipeline systems serving the Northeast with the potential to add 1.8 Bcf/d of new supply from the Rocky Mountain producing areas seeking capacity on the constrained pipelines. The increased regional demand coupled with the current constrained pipeline capacity and the inherent geological conditions in New England, New Jersey and the eastern portions of New York and Pennsylvania preventing underground storage of natural gas volumes locally will only combine to further constrain pipeline capacity in the Northeast. Even when underground storage in northwestern Pennsylvania and New York is used to meet peak day requirements for the Northeast region, pipeline capacity must be used to reach the market, and further development of underground storage fields will also require more pipeline capacity to meet current and projected future demand. Construction of the 300 Line Project will help alleviate this situation by increasing pipeline capacity to these high-demand markets and allow these markets access to gas currently on the other side of the constraints as well as improving the reliability of transportation of the gas supplies.

Market Growth

The New Jersey and East Coast markets are predicted to have substantial increases in average day and peak day natural gas demand that will require additional delivery capacity. The chart below shows results from the most recent base case model from ICF International, an independent consulting company. Their analysis shows an average day growth of 240 MMcf/d or 1.3% per year for New Jersey from 2005 to 2015. This level, which is expected in areas other the New Jersey Highlands area, exceeds that of other major market centers on the East Coast, including New York City. Peak growth for New Jersey, at 400 MMcf/d is also the largest displayed for the eastern markets. Tennessee's 300 Line Project will help provide a means for supplying the growing New Jersey demand.



Upon completion, the Project will increase natural gas delivery capacity to the northeast region of the United States by approximately 300,000 dekatherms per day ("Dth/d") and, with the proposed general system upgrades that are part of the project, also will improve system reliability. Tennessee has executed a binding precedent agreement with one shipper, Equitable Energy LLC, for all of the firm transportation capacity resulting from the Project's facilities, which demonstrates that the additional firm transportation capacity will be immediately utilized, and the need for it is commercially justified. The Project will also assist with the FERC's goal of providing more natural gas to markets. The 300 Line Project provides access to diversified natural gas supplies from other major supply basins accessed by Tennessee with deliveries to points located across Tennessee's mainline system, to various interconnections with other pipelines in Mahwah and River Vale, New Jersey, as well as deliveries into jointly-owned local distribution company facilities at an interconnect located in White Plains, New York. The White Plains delivery point is an existing interconnect with Consolidated Edison of New York and is one of the delivery points selected by Equitable for a small portion of the gas volume covered under the binding precedent agreement for this Project.

Consistency with the New Jersey State Energy Master Plan

The goals of New Jersey's Energy Master Plan ("EMP") require long-term actions, as well as immediate investments "that will help to ease energy costs in the short term, create jobs, grow energy businesses, and establish the clean energy industry as a cornerstone of the State's economy." The EMP focuses on actions that will result in a future of reliable and competitively priced supplies of electricity and heating fuels that also meet the State's environmental needs. Tennessee's 300 Line Project is consistent with the goals and actions directed of the EMP. The Project will provide increased reliability, diversified natural gas supply sources, and increased price competition, which benefits New Jersey's utilities and their consumers. As recognized in the EMP, over 50 percent of existing power plants are 30 years old or older and are like to retire as they continue to age. The EMP noted that those plants tend to be "less reliable, less efficient, more expensive to run, and have greater greenhouse gas emission rates than newer plants." The Project will provide additional natural gas supply in the northeast

region to meet the growing demand for natural-gas fueled power plants predicted to be constructed in response to the effort to lower greenhouse gas emissions, and therefore reducing reliance on coal-based electricity and imports of out-of-state dirty electricity.

Summary

For the reasons described above, Tennessee's 300 Line Project is clearly in the public convenience and necessity. It provides necessary capacity to transport supplies of clean burning natural gas to Northeast markets requiring new supplies to offset declining supplies from Canada, and supporting growth requirements in those markets. Additionally the Project supports the country's objective of reducing reliance on foreign imports by transporting domestic supplies that would displace oil and LNG imports. Utilities and consumers will benefit from increased competition, improved security and reliability as a result of the system upgrades. The Project supports the objectives of the New Jersey State Energy Master Plan which addresses the importance of clean, reliable natural gas supplies to the economic vitality of the State.