July 6, 2010

Kimberly M. Guadagno, Lt. Governor/Secretary of State
State House Commission
State House
Trenton, NJ 08625

Re: State House Commission
Proposed DEP Lease - Tennessee Gas Pipeline Company

Dear Lt. Governor Guadagno:

I am writing on behalf of NJ Public Employees for Environmental Responsibility (PEER) concerning the State House Commission's (Commission) review of a proposed lease between the Department of Environmental Protection (DEP) and Tennessee Gas Pipeline Company (Tennessee), as heard by the Commission on July 2, 2010.

I testified to the Commission on this matter and hereby seek to supplement that testimony. I also would like to clarify the hearing record with respect to DEP testimony regarding the findings of a December 29, 2009 audit of the Department of Environmental Protection's (DEP) Natural Resource Management by the Office of Legislative Services (OLS) Office of the State Auditor.
(http://www.njleg.state.nj.us/legislativepub/Auditor/42029_2009.pdf)

I request that the Commission table this matter until the Tennessee lease is renegotiated to address several major concerns that arose during the Commission review, some of which are further documented in the above referenced OLS audit. I also request that this lease not be approved until:

1) Necessary environmental and financial safeguards are put in place to assure public trust resources are protected and that the lease is demonstrated to be in the public interest,
2) The longstanding DEP financial management deficiencies identified in the 2009 OLS audit findings are remedied, and
3) The renegotiated Tennessee lease and all supporting documents are made available for meaningful public review and comment.

I) OLS Audit and DEP testimony
I testified regarding negative findings of 2003, 1999, and 1997 OLS audits. I focused on DEP **failures to assure that leases reflect current market value**. However, I was unaware of the more recent December 29, 2010 follow-up audit. Therefore, I would like to supplement my testimony by providing via this letter some relevant findings of the more recent subject OLS audit.

The OLS audit found "***certain internal control weaknesses and matters with compliance with procedures and regulations meriting management's attention***" including:

1) 112 of 236 leases sampled were expired;
2) 22 of 28 lease files sampled did not contain current certificates of liability insurance;
3) 17 of 28 leases sampled did not contain documentation **to ensure that current market value has been charged**. These 17 leases are part of a much larger backlog that DEP has failed to update (Although DEP is working with the Attorney General's Office on this matter); and
4) Weaknesses identified increase the risk of lost revenue because outstanding rents are not measurable, **payment amounts do not reflect current market conditions**, and liability exposures may not be insured.

Each of these negative audit findings are directly relevant and applicable to the proposed Tennessee lease. That lease must not go forward until there is demonstrated assurance that these serious flaws have been remedied and adequate safeguards are incorporated in the lease.

I also would like to clarify DEP's testimony regarding the subject audit. DEP Assistant Commissioner Cradic testified, I believe in error, that the OLS audit's deficiencies had been corrected. There is no evidence that this is accurate, and considerable reason to believe that the deficiencies have not been corrected and remain outstanding ongoing problems.

Given the chronic pattern of DEP's deficiencies, the serious nature of these deficiencies, and their direct relevance to the concerns raised by the Commission with respect to the Tennessee lease, I request that the Commission contact OLS directly and ask for a meeting of the parties to resolve **both** the individual Tennessee lease problems as well as the broader DEP programmatic financial management deficiencies identified by the OLS audit.

II) Compensation

The Commission must assure that all approvals of leases of State Parks, especially environmentally sensitive public trust protected state lands, are in the public interest and fair to the taxpayers of New Jersey. **This is particularly the case now, given multi-billion dollar structural State budget deficits and Governor Christie's declared financial emergency.**

Members of the Commission raised concerns that the proposed $45,000 compensation by Tennessee was not adequate. When asked to justify that value, DEP could not produce the land appraisal upon which this compensation value was allegedly based.

I also testified regarding likely flaws in the underlying land appraisal value and methodology for determining fair market value of a lease.

According to DEP comments in the July 3, 2010 *Star Ledger*, the land appraisal was low because the land is located in the Preservation Area of the Highlands and was based on development restrictions of the Highlands Act. However, the Tennessee project was granted an exemption from the Highlands Management Plan.

Furthermore, the land appraisal value should be based upon the economic value of the allowable use of the land, which in this case is an intensive and highly environmentally destructive land use for a significant revenue producing and profitable commercial use as a gas pipeline. Tennessee can't have it both ways: severe land use restrictions for purposes of land appraisal, while they are granted an exemption from those same land use restrictions.

Last, the economic value of the lease should consider additional economic factors that are broader in scope than the land appraisal. Compensation to the public should be based on these broader economic considerations.

For conceptual illustration, current DEP enforcement regulations allow DEP to consider the economic benefits a corporation receives while violating regulations as the basis for an enforcement penalty. As this concept is applied to this case, in addition to the underlying land appraisal, the Commission should consider the economic value of the lease and operating pipeline to Tennessee as a basis for compensation **(irrespective of DEP mandated mitigation and other regulatory mitigation requirements**).

III) Environmental Review, Mitigation, Demonstration of Need, Alternative Routes, and Competing Pipelines to Serve Demand

Environmental groups raised valid criticism of the lack of a meaningful public review process for this lease; criticized the adequacy of DEP environmental review; and noted the lack of alternatives analysis or statewide energy infrastructure planning process.

Testimony highlighted a series of deficiencies in the outline of the “300 project mitigation commitments” – which consisted of a single page informal document distributed by DEP to the public at the July 2 hearing (and less than 24 hours before the hearing to one environmental group scientist).

Conditions of the proposed Commission approval include compliance with all applicable environmental permit requirements. However, DEP testified that the “mitigation commitments” include requirements that go beyond current regulatory requirements. DEP testified that they used their power as landowner to extract additional requirements that beyond regulatory requirements. This fact illustrates that current DEP regulatory requirements are not adequate to protect the most sensitive natural resources of the State.

Testimony suggested that regional demand has not been demonstrated for this pipeline, that there may be less environmentally damaging pipeline routes, and that other commercial pipelines may be preferable to the Tennessee proposal. These are serious issues that warrant full public consideration.

Given the "go/no go" nature of the Commission's review and approval of this proposed lease deal, and the un-remedied significant financial and environmental deficiencies brought forth in testimony to the Commission (as outlined above), PEER strongly urges the Commission to table review of this lease until adequate site specific and programmatic safeguards are developed and applied to this lease and the environmental review of this project.

We appreciate you timely and favorable consideration. I am available at 609-397-4861 to discuss these issues with your staff.

Sincerely,

Bill Wolfe, Director
NJ PEER

c: Assemblyman Cryan, Commission member
Assemblyman Bramnick, Commission member
Stephen M. Eells, Assistant State Auditor
Bob Martin, DEP Commissioner
Senator Bob Smith, Chair, Senate Environment Committee
Assemblyman John McKeon, Chair, Assembly Environment Committee

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