July 9, 2010

Lieutenant Governor Kim Guadagno
Mr. Robert Romano
Ms. Charlene M. Holzbaur
Senator Gerald Cardinale
Senator Robert Smith
Assemblymen Joseph Cyran
Assemblyman Jon M. Bramnick
c/o Robert J. Shaugnessy, Jr., Secretary
State House Commission
State House
Trenton, NJ 08625

Re: Proposed DEP Lease Approval for Tennessee Gas Pipeline Company

Dear Members of the State House Commission:

The environmental community continues to have serious concerns with the lease agreement being negotiated between Tennessee Gas Pipeline Company (Tennessee) and the Department of Environmental Protection (DEP) that will be before the State House Commission again within the next two weeks. The lease negotiation process has excluded the public from providing meaningful input on a project that will adversely impact resources in the public trust and the associated mitigation and reforestation proposals. There are concerns that the mitigation commitments Tennessee has made will not successfully address all the impacts of the project. The appraisal value associated with this lease agreement underscores a continuing policy issue within the DEP, a failure for leases to reflect current market value. Based on these persistent issues we ask that the State House Commission take no action on this lease agreement until these concerns are addressed.

1. **Negotiate a Lease Agreement That Reflects the Real Market Value of the Land**

   The proposed lease agreement will permanently impact 28.96 acres of publicly-owned state parks and preserves in one of the most environmentally sensitive regions of the state. In return, the state is being offered a mere $45,000 for a 24 year lease based on an appraisal submitted to the Green Acres Program. This sum does not reflect the full market rate for the use of these state lands, considering Tennessee is proposing a $2 billion dollar infrastructure project. A new appraisal method must be developed that factors in the value of the "improvements" made to state lands in these cases.

The Office of Legislative Services (OLS), Office of the State Auditor's audit findings pertaining to DEP lease agreements over the past thirteen years have reflected a failure by the DEP to negotiate agreements that reflect the current market value of the lease. The most recent OLS audit, released December 29, 2009, found that more than half of leases sampled, 17 of 28, could not show documentation that fair market rents were being charged. This is a persistent problem in DEP policy and must be addressed as the continued undervaluation of public lands in these lease and diversion agreements encourages corporations to site projects on public lands rather than more expensive and sometimes more difficult to obtain private property.

Before this proposal comes before the State House Commission again the lease agreement must be renegotiated to reflect a fair market value for Tennessee's use of and operation of a pipeline on the land. At a time when New Jersey is struggling to keep state parks open, the DEP should be negotiating a lease agreement that reflects the economic value of the state land as a component of the 300 Loop Project and Tennessee's willingness to pay for access to that land.

2. The Lease Agreement Must Be Extended to 25 Years

A 24 year lease agreement was specifically chosen to avoid provisions for public participation in the lease agreement proposal under the Ogden Rooney Act. This is unacceptable considering the scope of the project, the amount of publicly-owned land involved in this agreement, and that the proposed infrastructure project will remain on state lands for well over 24 years. Tennessee claims that the public was offered an opportunity to comment on this project before including with FERC and the Highlands Council, however those processes did not solicit comments directly related to the lease agreement, the diversion of state park land, or the associated mitigation commitments.

We urge the State House Commission to require a 25 year lease agreement for this project so that the public can participate in this process and the state will have the authority to collect a more just compensation for leasing the land.

3. Continued Concerns with Tennessee's Mitigation Commitments

Tennessee has agreed to mitigate permanent impacts to 28.96 acres of state lands by purchasing additional land for conservation at a 4:1 ratio. However the company has capped expenditures on this additional land acquisition at no more than $7,500 per acre, and will be able to "cash out" after two years at $7,500 per acre if Greens Acres does not identify properties that can be obtained to satisfy the mitigation requirements. $7,500 per acre is not a realistic figure to permanently preserve high ecological value upland forests in the project region that provide similar ecosystem services as those being lost as a result of this lease agreement.

Land values for preservation purposes in the Highlands Preservation Area are well over $7,500 per acre. The New Jersey Water Supply Authority has purchased 20 parcels in the Highlands Preservation Area since the passage of the Highlands Act in 2004. On average NJWSA paid $13,225 per acre. The most expensive of the 20 parcels was $36,000 per acre. Properties preserved by the Green Acres Program and Passaic County since 2004 in the project region were purchased for well over $7,500 per acre. The Lefcovitz parcel was purchased in 2007 for $25,000 per acre and the Facciglia property was preserved in 2008 at $83,000 per acre. The Woggish parcel next to the pipeline and Long Pond Ironworks State Park was purchased for $41,000 per acre in 2009. Considering these land values, Tennessee will not be able to purchase high quality upland forests to mitigate for the impacts of this project at a 4:1 ratio in the Highlands with the $7,500 per acre cap in place.

The $7,500 per-acre cap must be removed and the Green Acres program should be required to identify mitigation parcels for Tennessee to obtain before action is taken by the State House Commission on this lease agreement.

We urge the State House Commission to require that Tennessee establish an escrow account to ensure the company fulfills all their mitigation commitments and provides the DEP with funds to address failed mitigation projects. A gestational habitat for state endangered timber rattlesnake is located within the proposed ROW for this project. Tennessee has not yet proposed mitigation for any impacts that might result yet the establishment of an escrow account would allow the DEP to engage in habitat restoration projects if the snakes failed to return to the site following the construction of the pipeline. Tennessee's mitigation commitments state the company will cease invasive species monitoring after 2015 at which point "invasive management will follow regular maintenance schedule, which includes mowing only." The escrow account would provide funding for the DEP if an invasive species infestation occurs in those revegetation areas after 2015 as a result of the company no longer monitoring the sites.

4. Requirements under the No Net Deforestation Act

In testimony provided on Friday, July 2, 2010, before the State House Commission, a lawyer representing Tennessee Gas Pipeline Company indicated that, pending the approval of the lease by the State House Commission, the company would like to begin construction work next month. Tennessee's mitigation commitments also state work will begin July 2010. The No Net Deforestation Act at N.J.S.A. 13:1L-14.4 provides that whenever land at least an acre in size is owned by a state entity and is scheduled for deforestation, a minimum of one public forum must be held 180 days prior to the deforestation of the area. At that meeting, the company's plan for deforestation and reforestation must be presented to the public. To our knowledge this meeting has not occurred, nor has the DEP currently scheduled the meeting to occur. Tennessee has not yet finalized a reforestation plan with the DEP. We urge the State House Commission to not take any action toward approval of this lease proposal until the various public bodies involved and Tennessee comply with the No Net Deforestation Act by holding the required hearing and giving the public the required amount of time to comment, to ensure this statutory requirement will be achieved.

We urge the State House Commission to table review of this lease agreement until the above concerns are addressed. At this time this lease agreement is not a fair deal for the citizens of New Jersey, who are losing significant natural resources for $45,000 over 24 years and a mitigation plan with no safeguards. Please require a 25 year lease agreement so that those citizens can comment on this project and a more economically sensible and environmentally protective proposal will be before you if the State House Commission considers this project in the future.

Sincerely,

Jeff Tittel, Director
New Jersey Chapter of the Sierra Club

Bill Wolfe, Director
NJ PEER (Public Employees for Environmental Responsibility)

Kate Millsaps, Campaign Coordinator
New Jersey Highlands Coalition

Cc: Governor Christopher Christie
Bob Martin, DEP Commissioner
Assemblyman John McKeon, Chair, Assembly Environment Committee