

GIORDANO, HALLERAN & CIESLA

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CLIENT/MATTER NO.

16452-0001

September 10, 2009

Eileen Swan, Executive Director
Highlands Council
100 North Road (Route 513)
Chester, NJ 07930

**RE: Highlands Exemption Request
Tennessee Gas Pipeline – 300 Line Project – Planning Area
Blocks and Lots - Various
Vernon Township
Sussex County**

Dear Ms. Swan:

We submit this letter on behalf of Tennessee Gas Pipeline Company (“Tennessee”), a subsidiary of El Paso Corporation, for a determination by the Highlands Council that the proposed upgrade of Tennessee’s existing natural gas delivery facilities in Northern New Jersey (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 Regional Master Plan (“RMP”) and all associated regulations. Consistent with our prior discussion with you, this exemption request application is being submitted September 10, 2009 for placement of the application on the October 15, 2009 Highlands Council meeting agenda.

The Project will consist of approximately 17.27 miles of 30-inch outside diameter underground natural gas pipeline, with approximately 16.02 miles to be located within the Highlands Region. Of the Highlands portion of the Project, approximately 10.95 miles will be located in the Preservation Area and approximately 5.07 miles will be located in the Planning Area. Information regarding the Project including copies of environmental reports and other materials can be found at <http://www.elpaso.com/tgp300lineproject/default.shtm>.

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This exemption request is specifically limited to that portion of the Project located in the Planning Area of the Highlands Region ("Planning Area Application"). The Planning Area Application includes all Project activities within the Planning Area as described in the enclosed application materials listed below, including, but not limited to Tennessee's 300 Line repair and maintenance program activities. It also extends to the post construction routine Repair and Maintenance ("Repair and Maintenance Application") of Tennessee's pipeline system as discussed with and requested by Staff. Tennessee makes this request as part of its request for exemption of the Project pursuant to Exemption No. 11 of the Act regarding public utilities (N.J.S.A. 13:20-28.a(11)) notwithstanding the fact that underground natural gas pipelines and their related equipment are regulated by a pervasive federal statutory and regulatory scheme. In extending the exemption request to Repair and Maintenance of the pipeline, Tennessee does so without recognition of any delegation of federal authority to either the state of New Jersey or the Highlands Council, and without prejudice and under a reservation of rights with respect to Tennessee's position that maintenance and repair of its pipeline system in the Highlands Region is the subject of federal preemption.

Tennessee previously submitted a Highlands Applicability - Exemption Request application to the New Jersey Department of Environmental Protection ("NJDEP") for the Preservation Area portion of the Project ("Preservation Area Application"). The Preservation Area Application is assigned Program Interest Nos. 435442 and 4343459 and Activity Nos. CSD090016 and CSD090002 and is currently pending before NJDEP. Tennessee requests that the Highlands Council also place the pending Preservation Area Application on the Council's October 15, 2009 meeting agenda for a final Consistency Review Determination by the Council recommending that the Project as described in the Preservation Area Application be found consistent with the goals and purposes of the Act and that NJDEP issue an exemption for the Preservation Area portion of the Project.

Tennessee is taking the approach of submitting the enclosed Planning Area Application as a separate application from the Preservation Area Application after consultation with and at the request of the Highlands Council staff. The Preservation Area Application pending before NJDEP excluded the Planning Area portion of the Project as NJDEP's jurisdiction under the Highlands Act is limited to the Preservation Area. The Highlands Council, in connection with its consistency review of the Preservation Area Application requested that Tennessee submit this application for the Planning Area portion of the Project notwithstanding Tennessee's position that a Planning Area exemption is not required for the Project as the Planning Area municipality where the Project is located has not adopted the RMP. Based on the foregoing, Tennessee submits this application under a reservation of rights.

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Consistent with our discussions, we are submitting one *hard* copy of the documents and materials listed below in support of the Planning Area Application, not two (2) copies as called for in the Highlands Applicability Determination application form. We are also submitting an electronic copy of the application materials with the routing maps, tax maps and USGS maps on CD. We are not submitting an application fee as we were advised by Council staff that none is required. For convenience, and consistent with our discussions with Council staff, we have utilized the application forms and documents that were previously submitted to NJDEP for the Preservation Area Application, and have incorporated information regarding the Planning Area portion of the Project into those documents. Therefore, the enclosed forms and documents include information related to both the Planning Area and Preservation Area portions of the Project, however, as explained above the enclosed Planning Area Application is limited to the Planning Area portion of the Project. The following documents are enclosed:

1. Completed Highlands Applicability Determination application form. Please note that consistent with the prior application, the Summary Description section of the form references the included Project Narrative. Also, consistent with the prior application, in Section II.1 and III.11, we have clarified, as explained in paragraph 4 below, that signed and sealed Project Route Maps are being submitted in the place of certified site plans. We have left the address and contact information blank in Section I.3 as the project involves numerous properties. The contact person for Tennessee is listed in Section I.4.
2. "Narrative Report in Support of Highlands Applicability Determination – Highlands Exemption Request for the 300 Line Project" prepared by Tennessee dated March 6, 2009, revised September 10, 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. **Attachment A** of the Narrative Report is a list of the required tax blocks and lots for the Project.
3. U. S. Geological Survey topographic maps at a scale of 1:14,000 delineating the proposed Project route within the Planning Area. Additionally, we have included on the Quad maps the State Plane coordinates for the endpoints of the proposed 300 Line within the Planning Area and additional coordinates at each 1,000 foot interval. U. S. Geological Survey topographic maps at a scale of 1:100,000 delineating the proposed Project route and showing Highlands Resource Areas.
4. Routing maps entitled "300 Line Project Loop 325, Proposed 30" Natural Gas Pipeline", dated July 17, 2009. The routing maps show the location within the Planning Area of Tennessee's existing pipeline, the proposed 30-inch outside

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diameter underground pipeline loop known as the “325 Loop Segment”, existing and proposed right-of-way (easement) areas and work space areas superimposed on aerial photography. The routing maps also include tax block and lot information, profiles and delineation of the proposed work space areas. Per prior agreements with NJDEP, these routing maps are submitted in the place of site plans. Tennessee has not prepared any site plans for the Project as site plans would not adequately depict a linear development as proposed. Additionally, as per prior agreement with NJDEP, the enclosed routing maps have been signed and sealed by a New Jersey licensed professional land surveyor.

5. Municipal tax maps identifying the Planning Area tax blocks and lots through which the Project is proposed. The tax maps are included as part of *Attachment A* of the Narrative Report. The proposed 300 Line/325 Loop Segment Route is a rough approximation as per prior agreements with NJDEP. Furthermore, the location of the proposed 300 Line Project has been depicted on the Quad maps and route maps discussed above, and the tax block and lot information is included on the route maps.
6. Copy of a report entitled “Need for Incremental Pipeline Capacity Tennessee Gas Pipeline Company 300 Line Project” prepared by Tennessee.
7. Report entitled “Comprehensive Mitigation Plan Highlands Region Tennessee Gas Pipeline Company 300 Line Project”, prepared by AECOM, Inc. dated September 2009. The Report includes separate impact tables for the Planning Area and Preservation Area, and an overall combined impact table. A copy of the CMP will be submitted under separate cover to NJDEP as a supplement to the pending exemption application for the Preservation Area portion of the Project.
8. Shipment and Delivery Notification receipts documenting that a copy of the Planning Area Application was provided to the following: (1) municipal clerk for Vernon Township ; and (2) the NJDEP.
9. Shipment and Delivery Notification receipts documenting that a copy of the Planning Area Application notice letter was provided to the following: (1) municipal Environmental Commission for Vernon Township (if any exist); (2) the Planning Board for Vernon Township ; (3) the Construction Official for Vernon Township; (4) the County Planning Board for Sussex County; and (5) the Environmental Commission for Sussex County(if any exist).

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We are simultaneously forwarding a copy of this letter and the above-listed documents to the municipal clerk for Vernon Township and the NJDEP. Based on the materials submitted with this letter, the Project qualifies for the public utility line exemption established under the Highlands Act (N.J.S.A. 13:20-28a(11)), and NJDEP regulations at N.J.A.C. 7:38-2.3(a)11, and is exempted from the Highlands Act, the RMP, NJDEP'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. Therefore, we request that the Highlands Council issue a written determination confirming the exemption.

Very truly yours,



STEVEN M. DALTON

SMD/mea
Enclosures

cc: Robin Kline, Vernon Township Municipal Clerk
Lawrence J. Baier, Director, NJDEP, Division of Watershed Management
Vernon Township, Environmental Commission (w/o enclosure)
Vernon Township Planning Board (w/o enclosure)
Vernon Township, Construction Official (w/o enclosure)
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