



To: Preston Township
From: Maya K. van Rossum, the Delaware Riverkeeper
Date: April 27, 2016
Re: Option Agreement for Pipeline Right of Way proposed by Linden Energy Services

Dear Preston Township,

The Township would be foolish to sign the proposed Option Agreement put forth by Linden Services.

Among the many obvious failings of the proposal:

The document does not provide protections to the Township from pipeline construction, operation or maintenance damage that inflicts injury on the environment, on the township owned lands or on neighboring properties that could be impacted.

In fact, the indemnification/hold harmless clause in Section 5 that reads:

“Grantee hereby covenants and agrees to indemnify and hold harmless Grantor from any and all loss, liability, cost, claims, demands, damages, actions, causes of action and suits arising out of liens, damages to Property or personal injury or death caused by exercise by Grantee of Grantee’s rights under this Section 5.”

only applies to the elements of entry granted in Section 5, i.e.

“Grantor agrees that Grantee and its agents, contractors and employees shall have the right during the Option Term to enter upon the Property for the purposes of making inspections, obtaining surveys, performing soil and environmental testing, or for any other purposes as are deemed necessary or appropriate by Grantee to the development of an Easement Plan detailing the pipeline to be constructed.”

The hold harmless/indemnification clause does not, by its terms, apply to property damage, personal injury or death caused during construction, operation or maintenance of the project, nor does it apply to environmental degradation or other harms that are likely to result. And it is not clear that any future easement agreement would include such protective provisions for the Township and its residents. This is an obviously slick effort designed to protect the pipeline company from the harms that will inevitably result from its project in one form or another.

The option leaves open the extent of the easement agreement that could result, leaving that information to a future Easement Plan that the Pipeline Company would prepare. In short, the Township has no idea what it is getting in to with this proposal.

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Of even greater concern, the option anticipates the potential for more than 2 natural gas pipelines on the easement lands. If Linden Services is already considering more than 2 pipelines to cross these municipal lands you can be sure the company is in fact anticipating construction of more than 2 pipelines. Each new pipeline will bring a fresh cut, a fresh threat, and greater community, environmental and climate changing impacts.

In addition, the option is already anticipating the potential for pipelines greater than 20 inches – given that current transmission lines routinely are built that are as much as 42 inches, it is not unlikely that this is already in the pipeline companies' future plans. The larger the new installations the greater the community and ecological footprint, and also the greater potential future hazard.

An agreement that is so open ended regarding number and size of pipelines is unwise for this rural community that would suffer such significant and enduring impacts from the multiple pipelines anticipated.

While currently Linden Services is talking about this pipeline as a transmission line connecting the Tennessee Gas Pipeline with the Millennium Pipeline, the company and pipeline involved are commonly involved taking gas from a gas well that has been developed. While the company states it is not building its pipeline in order to support drilling and fracking in the region due to the current moratorium, the mere placement of this pipeline in your community advances the cause of shale gas extraction, bringing to Preston and neighboring Buckingham all of the water, air, health and economic horrors that drilling and fracking inflict on their host communities.

It is notable that the option is crafted such that if the company builds its projects, inflicting all of the impacts that will come with construction, if the company is unable to get Certification for Use the Township will not get its easement payments, and yet the company will maintain its rights to the continuing, future and growing use of the impacted lands at issue. The lop sided nature of this agreement and provisions like this should be huge red flags for Preston Township officials.

It should be very concerning to the Township that Linden Services has the right to transfer this easement agreement to any other party it desires – such a right leaves the Township wide open to all sorts of unknown impacts and/or users.

What is most ridiculous is that the Township does not need to encumber itself in this way for Linden to undertake all of the work necessary to consider its project. Preston could grant Linden Services permission to access the land and undertake its various reviews for planning purposes and then, once it has designed its project and considered its feasibility, can come back to Preston with full details of its proposal and offer. At that time Preston would be fully aware of the project it was subjecting itself to and could consider any limitations and/or equitable compensation it would deem appropriate for it to consider granting the easement. But at this point, the offer is too lop sided for the company and too vague for Preston and its residents to truly understand what they are signing up for.