



October 29, 2015

PennEast Pipeline Company, LLC
c/o Peter J. Fontaine, Esq.
Cozen O'Connor
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**Re: PennEast Pipeline Company, LLC (“PennEast”) – New Jersey Surveys and
Right of Way Access Issues**

Dear Mr. Fontaine,

We understand that PennEast has asserted that it has a right under N.J.S.A. 46:11-1 to use municipal rights-of-way and adjacent lands for surveying for its proposed pipeline project. Please be advised that PennEast does not possess any such right.

First, PennEast does not have the right to use municipal rights-of-way for solely private purposes. Private fee simple owners of the land that is subject to a public right-of-way retain private property rights. A right-of-way acts like a limited-purpose easement over privately-owned lands. In the case of roads, the limited purpose would be for public travel. PennEast’s use of the public right-of-way for a solely private venture involving surveying for the proposed pipeline project is beyond the scope of the easement’s limited purpose. Further, the use of a publicly-owned right-of-way for solely a private purpose unrelated to public travel can improperly interfere with the public’s rights of use.

Second, PennEast does not have the right to access to private lands, including those adjacent to public rights-of-way under the authority it has cited. We understand that PennEast has cited N.J.S.A. 46:11-1 to claim that no one may block proposed surveying for the proposed pipeline project. PennEast apparently claims that this provision of New Jersey law grants blanket access to any surveyor to use public rights-of-way. This is incorrect.

Contrary to PennEast’s assertions, N.J.S.A. 46:11-1, upon which PennEast relies, does not grant broad access to anyone wanting to conduct land surveys. Indeed, that provision is entitled “Right of entry to make surveys in *certain proceedings*” (emphasis added). As this title reflects, the right of entry to make

surveys is limited to certain proceedings, none of which are present in PennEast's attempts to access private land for project surveying. This provision states three specific scenarios in which it applies:

In any proceeding to lay out, alter, vacate or open a public road or street, or to determine which of the proprietors or possessors of the lands adjacent to any highway have narrowed or encroached on the same, *and* in any proceeding under the act entitled "An act to enable the owners of swamp or meadow ground to drain the same, and to repeal a law heretofore made for that purpose," approved November twenty-fourth, one thousand seven hundred and ninety-two, and the several supplements thereto, [repealed] *and* in any other proceeding touching a public improvement, any practical surveyor, with the necessary assistants, employed by any person interested in any of such proceedings, may enter on the lands adjacent to such highways or streets, or the lands to be drained under the provisions of said act, or other lands, for the purpose of making necessary surveys, doing as little damage as possible to the owner or owners of such lands.

N.J.S.A. 46:11-1 (emphasis added).

Thus, PennEast must fall into one of the following categories: 1) be involved in a proceeding involving a street or highway (e.g. to open or vacate a road, to determine who has encroached on a road, etc.); 2) be involved in a proceeding under a statute that appears to have been repealed; or 3) be involved in a proceeding "touching a public improvement." PennEast does not qualify under any of these. PennEast is not involved in a proceeding involving a street or highway; it cannot be involved in a proceeding under a repealed statute; and it is not involved in a matter touching a public improvement. While the term "public improvement" is not defined, when the term is interpreted in accordance with its ordinary meaning, it is clear that it is referring to an improvement (such as a roadway, water or sewer lines, or public commuter rail service) undertaken by a public agency such as a municipality or the State. The PennEast project is a solely private undertaking and therefore is not a "public improvement."

As this discussion makes clear, PennEast does not have the right under N.J.S.A. 46:11-1 to enter into public rights-of-way or adjoining properties for purposes of surveying. Please cease and desist all efforts to assert otherwise.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper