

COMMONWEALTH OF MASSACHUSETTS

Berkshire Superior Court

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Deborah S. Capeless, Clerk

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COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT DEPARTMENT
C.A. No.: 1676CV00083

_____)
TENNESSEE GAS PIPELINE COMPANY, L.L.C.)

Plaintiff,)

v.)

SIX ACRES OF LAND, MORE OR LESS, OF PERMANENT)
EASEMENTS IN SANDISFIELD, MASSACHUSETTS;)
FIFTEEN AND A HALF ACRES, MORE OR LESS, OF TEMPORARY)
EASEMENTS IN SANDISFIELD, MASSACHUSETTS;)
COMMONWEALTH OF MASSACHUSETTS; MASSACHUSETTS)
DEPARTMENT OF CONSERVATION AND RECREATION;)
LEO P. ROY, COMMISSIONER OF THE MASSACHUSETTS)
DEPARTMENT OF CONSERVATION AND RECREATION;)
WILLIAM S. BOLT; OFFICE OF THE BOARD OF ASSESSORS)
OF THE TOWN OF SANDISFIELD; NANCY LORING,)
INDIVIDUALLY, AND FRANK H. ROWLEY AND IRENE M.)
ROWLEY, TRUSTEES OF THE FRANK H. ROWLEY TRUST;)
AND UNKNOWN LANDOWNERS)

Defendants.)
_____)

**CONSENT JUDGMENT ISSUING FINAL JUDGMENT ORDER OF TAKING BY
EMINENT DOMAIN**

WHEREAS; on March 11, 2016, Plaintiff Tennessee Gas Pipeline Company, L.L.C. ("Tennessee") received from the Federal Energy Regulatory Commission ("FERC") a Certificate of Public Convenience and Necessity in Docket No. CP14-529-000 (the "FERC Certificate") for the construction, operation, and maintenance of a natural gas pipeline project (the "Project") in accordance with the terms and conditions in the FERC Certificate;

WHEREAS; on March 16, 2016, Tennessee commenced a condemnation action against the Commonwealth of Massachusetts (the "Commonwealth"), Massachusetts Department of Conservation and Recreation ("DCR"), Leo P. Roy, as Commissioner of DCR, William S. Bolt,

the Office of the Board of Assessors of the Town of Sandisfield, Nancy Loring, individually, Frank H. Rowley and Irene M. Rowley, Trustees of the Frank H. Rowley Trust, and unknown landowners, seeking to condemn permanent and temporary easements, as described in paragraphs 25-34 and Exhibits C through F of the Amended Verified Condemnation Complaint (collectively the "Easements"), on property owned by the Commonwealth and managed by DCR (hereinafter, the "Property") for construction and operation of an approximately 1.93-mile section of the Project through the Otis State Forest in Sandisfield, Massachusetts, as authorized by FERC (the "Otis State Forest Pipeline Section");

WHEREAS; on March 16, 2016, Tennessee filed a Motion to Confirm Authority to Condemn Easements and a Motion for Preliminary and Permanent Injunction Authorizing Immediate Entry;

WHEREAS; on May 9, 2016, after extensive briefing and oral argument, this Court, by Memorandum of Decision and Order dated on May 9, 2016 ("May 2016 Decision and Order"), granted Tennessee's Motion to Confirm Authority to Condemn Easements and Motion for Preliminary and Permanent Injunction Authorizing Immediate Entry, which May 2016 Decision and Order stated and ordered on page 21: "[t]hat pursuant to the Natural Gas Act, as the holder of a valid Certificate of Public Convenience and Necessity issued by FERC on March 11, 2016, Tennessee has the substantive right to condemn property rights needed for the Project" and "[t]hat Tennessee shall be awarded preliminary and permanent injunctions permitting it an immediate right of entry upon the Permanent Right of Way as approved and certificated by FERC, and the Temporary Work Space as approved and certificated by FERC, under, upon, across and through land owned by the Defendants";

WHEREAS; in the May 2016 Decision and Order, this Court ordered “[t]hat the parties confer and propose to the Court an appropriate litigation schedule to resolve the compensation issue”;

WHEREAS; DCR contends that Tennessee still needs a Construction and Access Permit to proceed with the Project and Tennessee contends that, as a result of the May 9, 2016 Decision and Order, Tennessee does not require any additional authorizations or permits from DCR, including, without limitations, a DCR Construction and Access Permit;

WHEREAS; DCR and Tennessee wish to resolve the dispute about whether a DCR Construction and Access Permit is required without either side conceding the correctness of their position;

WHEREAS; in order to resolve the aforementioned dispute, and avoid litigation or future motion practice, DCR has agreed to the inclusion of the below Paragraph 4 and Tennessee has agreed to the inclusion of the below Paragraphs 6(a) through (w);

WHEREAS; Tennessee, and the Commonwealth, DCR and Leo P. Roy, as Commissioner of DCR (collectively, the “Commonwealth Defendants”) have agreed on the amount of compensation Tennessee should pay for the condemnation of (1) the perpetual and permanent easement and right of entry upon the permanent right-of-way as authorized by the FERC Certificate, and as more fully set forth in the below Paragraph 5 and in Exhibits C and E to the Amended Verified Condemnation Complaint (the “Permanent Easement”) over the permanent easement and permanent access road area described in Paragraphs 25-28 and 33-34 of the Amended Verified Complaint and the area identified and depicted as the proposed permanent easement and proposed permanent access road areas in Exhibits C and E to the Amended Verified Condemnation Complaint (the “Permanent Easement Area”), and (2) the temporary

workspace and temporary access route as authorized by the FERC Certificate, and as more fully set forth in the below Paragraph 6 and in Exhibits C and E to the Amended Verified Condemnation Complaint (collectively, the "Temporary Easements") over the temporary access road and temporary workspace easement area described in Paragraphs 29-34 of the Amended Verified Complaint and the area identified and depicted as the proposed temporary workspace easement and proposed temporary workspace access road areas in Exhibits C and E to the Amended Verified Condemnation Complaint (the "Temporary Easement Area"). Exhibits C and E to the Amended Verified Complaint set forth the boundaries and square footage of the Permanent Easement Area and Temporary Easement Area and are attached hereto as Exhibit I;

WHEREAS, this matter came before the Court on the joint motion of the parties for entry of this Consent Judgment Issuing Final Judgment Order of Taking by Eminent Domain (the "Consent Judgment"), and after due consideration thereof,

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED, as follows:

1. The Court's May 9, 2016 Decision and Order is incorporated herein by reference.
2. Tennessee shall pay DCR a total of \$580,030.00, as follows:
 - a. Upon execution of this Consent Judgment and before filing of the parties' joint motion for entry of this Consent Judgment:
 - i. \$40,750.00, as compensation for the value of the Permanent Easement (which is the difference in value of the affected property before the taking and its value after the taking) and for the value of the Temporary Easements (which is the one year and seven months rental value of the affected property);
 - ii. \$300,000.00 (as set forth at pages 5 and 6 of the June 5, 2015 Massachusetts Environmental Policy Act ("MEPA") Certificate for the Project), as a contribution to the Conservation Trust to be used in DCR's sole discretion for the acquisition of land within the Project vicinity that has high conservation value and provides ecological functions equivalent

to those that will be impacted by the Otis State Forest Pipeline Section, including wetland resource areas, vernal pools and habitat; and

iii. \$239,280.00 (as set forth at pages 5 and 6 of the June 5, 2015 MEPA Certificate for the Project), to address impacts associated with the Permanent Easement Area and Temporary Workspace Area.

b. The payment due under paragraph 2(a)(i) shall be made by bank certified or attorney's escrow check payable to the "Commonwealth of Massachusetts." All payments due under paragraphs 2(a)(ii) and (a)(iii) shall be made by bank certified or attorney's escrow check payable to the "Commonwealth of Massachusetts, DCR Conservation Trust." All payments due under paragraph 2(a)(i)-(iii) shall be delivered to the Office of the Attorney General, Environmental Protection Division, One Ashburton Place, Boston, Massachusetts 02108, Attention: Matthew Ireland, Assistant Attorney General. The Commonwealth will not present the check(s) for the payments required by paragraph 2(a)(i) and (iii) until this Consent Judgment has been entered by the Court. The Commonwealth will not present the check for the payment required by paragraph 2(a)(ii) until Tennessee commences tree clearing for the Project.

3. Tennessee shall not be required to pay any further sums other than those specified in paragraph 2 above to the Commonwealth Defendants or to any other parties(a) in order to obtain or condemn the Permanent Easement and Temporary Easements on the Property, or (b) in connection with the MEPA Certificate or any sums referenced therein, including, without limitation, the sums referenced in paragraph 2(a)(ii) and (iii) above. Notwithstanding the previous sentence, Tennessee shall comply with the terms and conditions in paragraph 6(q) of this Consent Judgment.

4. Tennessee shall not be required to obtain any permits or authorizations from DCR in connection with the Permanent Easement and the Temporary Easements, including, without limitation, a DCR Construction and Access Permit.

5. Pursuant to Section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), Tennessee, and its successors and assigns, shall have a perpetual and permanent easement and right of entry upon the permanent right-of-way under, upon, across and through the Permanent Easement Area for the purpose of laying, constructing, operating, maintaining, patrolling, altering, repairing,

changing

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the size of, replacing or removing the single pipeline authorized by the FERC Certificate ("Pipeline") and all related equipment and appurtenances associated therewith, which include, but are not limited to, meters, fittings, tie-overs, valves, cathodic protection equipment, power sources (hereinafter collectively the "Pipeline Facilities"), for the transportation of natural gas or other substances, liquids or substances associated with natural gas along routes authorized by the FERC Certificate, together with the right to remove and clear, and keep clear, within the limits of the Permanent Easement Area, all buildings or structures, as well as the right to construct, maintain, inspect, operate, protect, repair, alter, replace, establish, lay, install, test, substitute, renew, reconstruct, restore, abandon and remove communication system(s) and related conduits, cables, wires, splicing boxes, and any other appurtenances thereto, at any time or times for the transmission of data or communications (including, without limitation, pipeline communications data, for and by others) related to operation and maintenance of the Otis State Forest Pipeline Section as authorized in the FERC Certificate. Furthermore, Tennessee, and its successors and assigns, shall have a perpetual and permanent easement and right of entry under, upon and across the Permanent Easement Area to construct a permanent access road, and for the purpose of mowing, and the use of herbicides in compliance with applicable regulations. Except for as permitted in Paragraph 6 below, Tennessee, and its successors and assigns, shall have no right under this Consent Judgment to enter upon any other land of the Commonwealth not subject to the Permanent Easement or the Permanent Easement Area.

6. Pursuant to Section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), Tennessee, and its successors and assigns, shall have the Temporary Easements and the right of entry upon the Temporary Easement Area, under, upon, across and through the Property as authorized in the FERC Certificate, including the right to use the Temporary Easement Area for an access route

and for the storage and location of equipment, fixtures, materials, and supplies during the construction of the Pipeline. The right of entry upon the Temporary Easement Area shall expire upon the earlier of thirty-six (36) months from entry of this Consent Judgment or twelve (12) months-following completion of construction of the Otis State Forest Pipeline Section. The Temporary Easement Area is subject to the following restrictions:

- a. Tennessee will work with DCR to complete the identification, flagging/painting and documentation of large trees and features including rock outcrops and stone walls within the project area to be avoided and protected during construction to the extent practicable;
- b. Tennessee shall provide an ecologist/environmental monitor to oversee construction and restoration activities on behalf of DCR;
- c. Tennessee shall restore/return the Temporary Workspace Area as reasonably practicable to its original or better condition consistent with the approved planting plan;
- d. Upon the expiration of the Temporary Easements, Tennessee shall promptly vacate and surrender the Temporary Workspace Area and remove all of its property from the Temporary Workspace Area and will access the Temporary Workspace Area as needed to monitor compliance with permits;
- e. Tennessee shall not use any DCR utilities or resources without express permission from DCR;
- f. Prior to the commencement of any work involving excavation or disturbance of any soils and or vegetation on the Property, Tennessee shall notify Dig Safe for field mark-out of utilities;

- g. Within sixty (60) days, after completion of the Project, Tennessee shall submit a Mylar copy and electronic copy of as-built plan(s) for the Project as it relates to the Property to DCR;
- h. Within sixty (60) days, after completion of the Project, Tennessee shall submit two (2) copies of all final environmental reports generated for the Project related to the Property, if applicable;
- i. Tennessee shall keep the Property in a clean and orderly manner at all times;
- j. DCR shall be provided full and unrestricted access to and upon the Property at all times, with reasonable notice and consistent with FERC approved safety protocols, to inspect the Property and to review the operations and inspect Tennessee's equipment;
- k. Tennessee shall properly maintain construction equipment and use mufflers to minimize construction noise;
- l. Tennessee shall use construction BMPs, including erosion and sedimentation controls and dust control practices, to maintain air quality and minimize erosion and movement of sediment, consistent with the plans of record;
- m. Prior to completion of pipeline installation, Tennessee shall submit an OHV/ATV control plan that includes at a minimum: installing gates on access roads, installing boulders or other road blocking devices;
- n. Tennessee shall segregate and stockpile topsoil (up to 12", if present) and replace it on top of subsoils after pipeline installation in all areas disturbed where practicable;

- o. Tennessee shall restore impacted upland conservation lands by segregating topsoil layer for reuse, matching preconstruction topography, and applying native seed mix;
- p. If water is encountered while trenching in upland areas, Tennessee shall institute de-watering BMP's to prevent erosion and sedimentation impacts on areas outside of approved work zones;
- q. Tennessee will pay DCR the sum of \$60,000 for DCR to rehabilitate the Lower Spectacle Pond boat ramp and picnic area parking area, and for other recreational improvements to Otis State Forest in the discretion of DCR. Upon execution of this Consent Judgment and before filing of the parties' joint motion for entry of this Consent Judgment, all payments due under this paragraph shall be made by bank certified or attorney's escrow check payable to the "Commonwealth of Massachusetts, DCR Conservation Trust" and shall be delivered to the Office of the Attorney General, Environmental Protection Division, One Ashburton Place, Boston, Massachusetts 02108, Attention: Matthew Ireland, Assistant Attorney General. The Commonwealth will not present the check for the payment required by this paragraph until Tennessee commences tree clearing for the Project;
- r. Tennessee shall enhance early successional habitat and scenic qualities by mowing the fields one time behind the houses on Cold Spring Road and on the hill adjacent to the picnic area;
- s. Tennessee shall provide DCR with final construction plans that meet the requirements of all applicable permits and the consent judgment;
- t. Tennessee shall carry the following insurance as specified below:

1. **General Liability (\$1,000,00 per occurrence, \$2,000,000 in the aggregate);**
 - i. **Public/Products Liability Insurance (\$2,000,000);**
 - ii. **Sudden and Accidental Pollution Liability Insurance (\$1,000,000 per claim and \$3,000,000 in the aggregate);**
- u. **Tennessee shall use signage indicating its name, and including contact names and telephone numbers on the premises (permitted work site) in plain view or erected during the duration of the Project;**
- v. **Tennessee shall prepare and deliver forest products derived from the right of way and the temporary work space to DCR for its use, sale and management; and**
- w. **If DCR contends that Tennessee has failed to comply with any of the conditions in this Paragraph 6, DCR will provide Tennessee with written notice and thirty (30) days to cure. If DCR continues to assert that Tennessee has failed to comply with any of the conditions of this Paragraph 6, DCR's sole remaining remedy is to seek relief in Berkshire County Superior Court, which relief shall not include revocation of the Permanent Easement or the Temporary Easements, or contempt.**

7. **The Permanent Easement (as set forth, and for the purposes described, in Paragraph 5 above) shall run with the land, and shall be binding upon, inure to the benefit of, and be enforceable by Tennessee and its successors and assigns. The Temporary Easements (as set forth, and for the purposes described, in Paragraph 6 above) shall run with land, and shall be binding upon, and inure to the benefit of, and be enforceable by Tennessee and its successors and assigns.**

8. Tennessee shall record with the applicable Registry of Deeds and/or Registry of District of the Land Court a certified copy of this Consent Judgment and Exhibits C and E to the Amended Verified Complaint.

9. Tennessee's title to the Permanent Easement and Temporary Easements disclosed herein shall vest fully and finally immediately upon entry of this Consent Judgment, and shall not be subject to any restrictions, limitations or conditions, except as expressly set forth here.

10. The Commonwealth, DCR and, to the extent authorized by DCR or any applicable law, the public shall have the full right of access to and use of the Permanent Easement Area, including, without limitation, for passive recreational use, to the extent that such access and use does not interfere with Tennessee's use of the Permanent Easement or create safety concerns as authorized by the FERC Certificate.

11. The parties herewith waive all rights of appeal.

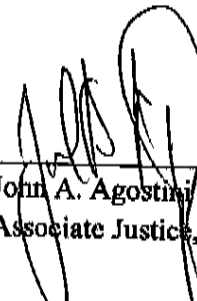
12. This Consent Judgment shall constitute a binding agreement between the parties and the parties consent to its entry as a final judgment by the Court.

13. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

14. The Court shall retain jurisdiction over this case to effectuate and enforce compliance with the terms and requirements of this Consent Judgment, subject to the provisions of Paragraph 6.

IT IS SO ORDERED.

2/10/17
Date




John A. Agostini
Associate Justice, Superior Court

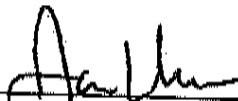
CONSENTED TO:

TENNESSEE GAS PIPELINE COMPANY, L.L.C.

By its attorneys,



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Dated: 1/22/16

Dated: 12/27/16

COMMONWEALTH OF MASSACHUSETTS,
MASSACHUSETTS DEPARTMENT OF
CONSERVATION AND RECREATION, AND LEO
P. ROY, COMMISSIONER OF THE
MASSACHUSETTS DEPARTMENT OF
CONSERVATION AND RECREATION

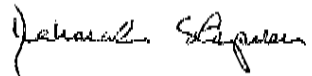
MAURA HEALEY, ATTORNEY GENERAL

By:



Matthew Ireland (BBO #554868)
Assistant Attorney General
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100 Cambridge Street
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617-727-2200 (x 2434)

Dated:

COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE S.C. SUPERIOR COURT
FILED FEB 10 2017 FILED


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COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

**SUPERIOR COURT DEPT.
OF THE TRIAL COURT
C.A. No. 1676CV083**

**TENNESSEE GAS PIPELINE COMPANY, L.L.C.,
Plaintiff**

v.

**SIX ACRES OF LAND, MORE OR LESS, OF PERMANENT
EASEMENTS IN SANDISFIELD, MASSACHUSETTS;
FIFTEEN AND A HALF ACRES, MORE OR LESS, OF TEMPORARY
EASEMENTS IN SANDISFIELD, MASSACHUSETTS;
COMMONWEALTH OF MASSACHUSETTS; MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION;
LEO P. ROY, COMMISSIONER OF THE MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION;
WILLIAM S. BOLT; OFFICE OF THE BOARD OF ASSESSORS
OF THE TOWN OF SANDISFIELD; NANCY LORING,
INDIVIDUALLY, AND FRANK H. ROWLEY AND IRENE M.
ROWLEY, TRUSTEES OF THE FRANK H. ROWLEY TRUST;
AND UNKNOWN LANDOWNERS**

Defendants

FINAL JUDGMENT

This action came on before the court (Agostini, J.) Presiding, and all claims now having been disposed of, it is hereby ORDERED and ADJUDGED as follows:

The Consent Judgment issuing final judgment order of taking by eminent domain entered on February 10, 2017 is incorporated herein and is entered as a Final Judgment.

Dated at Pittsfield, Massachusetts this 14th day of February, 2017.

FORM OF JUDGMENT APPROVED:

[Handwritten signature]
Justice of the Superior Court

[Handwritten signature]
Clerk

THE COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE S.S. SUPERIOR COURT

FEB 14 2017

[Handwritten signature]