

# Township of West Milford

Passaic County, New Jersey

## ~ Resolution 2021 – 296 ~

### A RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC AND STATE OF NEW JERSEY AUTHORIZING AN AGREEMENT WITH TENNESSEE GAS PIPELINE COMPANY

**WHEREAS**, Tennessee Gas Pipeline Company, L.L.C. (hereinafter "Tennessee") is a "natural gas company" under the Natural Gas Act of 1938, 15 U.S.C. §717 *et seq.* ("Natural Gas Act"), and, as such, is regulated by the Federal Energy Regulatory Commission ("FERC") as to facilities, construction, rates, and types of service, and regulated by the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration under the Natural Gas Pipeline Safety Act, 49 U.S.C. §60101, *et seq.* ("Pipeline Safety Act"), as to minimum safety standards; and

**WHEREAS**, as part of Tennessee's proposed East 300 Upgrade Project (the "Project"), Tennessee is proposing to construct Compressor Station 327 on property identified as Block 4601, Lot 17, in the Township ("Property"); and

**WHEREAS**, on June 30, 2020, Tennessee filed an application for a Certificate of Public Convenience and Necessity ("Certificate") with the FERC for authorization to construct, operate, and maintain the Project, with an anticipated in-service date of November 1, 2022; and

**WHEREAS**, without prejudice to its rights and obligations under the Natural Gas Act, the Pipeline Safety Act, and their implementing regulations, Tennessee is interested in working and cooperating with the Township as to the construction of Compressor Station 327; and

**WHEREAS**, the Township acknowledges that Congress, through the Natural Gas Act, has regulated comprehensively the siting, construction and operation of natural gas facilities, state and local regulations pertaining to these same issues are preempted; and

**WHEREAS**, the Township wishes to memorialize its intention to work with Tennessee throughout the course of the Project by entering into an Agreement to address, among other things, ad valorem taxes to be paid as a result of the construction of the compressor station, all as more particularly set forth herein See Agreement Attached as "Exhibit A."

**NOW THEREFORE, BE IT RESOLVED** that the Mayor and Township Council of the Township of West Milford, in the County of Passaic, and State of New Jersey as follows:

1. The Mayor is hereby authorized and directed to execute said Agreement, and take all actions as necessary thereafter to effectuate its terms.
2. This Resolution, along with the Agreement, shall be available for public inspection in the office of the Township Clerk.
3. This Resolution shall take effect immediately.

Adopted: August 11, 2021

Adopted this 11<sup>th</sup> day of August, 2021 and certified as a true copy of an original.

---

William Senande, Township Clerk

## AGREEMENT

THIS AGREEMENT ("Agreement") is made as of August \_\_\_, 2021, by and between **Tennessee Gas Pipeline Company, L.L.C.**, a Delaware limited liability company, having its principal business office at 1001 Louisiana Street, Suite 1000, Houston, Texas 77002 (hereinafter "Tennessee") and the **Township of West Milford**, a body politic of the State of New Jersey, having its office at 1480 Union Valley Road, West Milford, New Jersey 07480 (hereinafter the "Township") hereinafter collectively referred to as "the Parties".

### WITNESSETH:

**WHEREAS**, Tennessee is a "natural gas company" under the Natural Gas Act of 1938, 15 U.S.C. §717 et seq. ("Natural Gas Act"), and, as such, is regulated by the Federal Energy Regulatory Commission ("FERC") as to facilities, construction, rates, and types of service, and regulated by the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration under the Natural Gas Pipeline Safety Act, 49 U.S.C. §60101, et seq. ("Pipeline Safety Act"), as to minimum safety standards; and

**WHEREAS**, as part of Tennessee's proposed East 300 Upgrade Project (the "Project"), Tennessee is proposing to construct Compressor Station 327 on property identified as Block 4601, Lot 17, in the Township ("Property"); and

**WHEREAS**, on June 30, 2020, Tennessee filed an application for a Certificate of Public Convenience and Necessity ("Certificate") with the FERC for authorization to construct, operate, and maintain the Project, with an anticipated in-service date of November 1, 2022; and

**WHEREAS**, without prejudice to its rights and obligations under the Natural Gas Act, the Pipeline Safety Act, and their implementing regulations, Tennessee is interested in working and cooperating with the Township as to the construction of Compressor Station 327; and

**WHEREAS**, the Township acknowledges that Congress, through the Natural Gas Act, has regulated comprehensively the siting, construction and operation of natural gas facilities, state and local regulations pertaining to these same issues are preempted; and

**WHEREAS**, the Township wishes to memorialize its intention to work with Tennessee throughout the course of the Project by entering into this Agreement to address, among other things, ad valorem taxes to be paid as a result of the construction of the compressor station, all as more particularly set forth herein.

**NOW THEREFORE**, for and in exchange of valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually intending to be legally bound hereby agree as follows:

1. Recitals. Each of the foregoing recitals is incorporated herein at length as if fully set forth herein.

2. Tennessee's Obligations:

a. Ad Valorem Taxes. Tennessee hereby agrees that the Project ad valorem tax will be based upon a cost of \$17,510,500 (\$6,333,500 land; \$11,177,000 buildings). Accordingly, based upon such computation and cost, the complete Project fair market value within the Township is no more than \$17,510,500. The fair market value is to be adjusted by the applicable equalization ratio (ratio of assessment), as determined by the West Milford Township Assessor or by the West Milford governing body, to arrive at the assessed (taxable) value. This would be the basis for the assessed value in the Township of West Milford and would not be subject to a tax appeal unless this formula was in error. The value would not be challenged by Tennessee for a period of five (5) years from the date of this Agreement. Nothing herein shall prevent the Township from assessing the Project fair market value at an amount higher than \$17,510,500; provided, however, that any such higher assessment may be appealed by Tennessee.

b. Safety.

1. Tennessee, which currently operates pipeline facilities in West Milford, will provide free initial training to the Township's Office of Emergency Management and Township fire companies prior to the new Compressor Station 327 being placed in-service, as well as follow-up training on an annual basis if requested by the Township.

2. The initial and follow-up training will consist of the following:

- i. Overview of compressor station facilities and operations
- ii. Tour of facilities
- iii. Properties of natural gas
- iv. Information on responding to a pipeline or compressor station emergency
- v. Communication during an emergency (Incident Command Structure or ICS)

3. Though state and local laws that impose safety standards for interstate pipeline facilities are expressly preempted by the Pipeline Safety Act, 49 U.S.C.A. § 60104(c), Tennessee agrees that, in support of ensuring adequate safety measures for the public, and in connection with Compressor Station 327, Tennessee shall provide its written Emergency Procedures Plan prepared in accordance with 49 C.F.R. § 192.615 (hereinafter "the Plan") to the Township of West Milford Fire Marshall and the Director of the Office of Emergency Management. In the event

the Plan is updated, Tennessee shall provide the updated Plan to the Fire Marshall and the Director of the Office of Emergency Management.

4. Compressor Station 327 will generally be staffed during regular business hours and will be monitored remotely twenty-four hours per day, seven days per week, by Tennessee personnel through its gas control center in Houston, Texas. The Township can reach a Tennessee employee twenty-four hours per day, seven days per week at the following number: (800) 231-2800.
5. Tennessee shall also fund, up to a total cost of twenty thousand dollars (\$20,000), the purchase of gas detection equipment for the Township of West Milford Fire Department.
6. During the construction of Compressor Station 327, Tennessee may request the assignment by the Township of off-duty police officers for construction traffic control. If the Township declines in whole or in part to make such assignments requested by Tennessee, then Tennessee shall have the right to use other qualified security personnel for such purpose.

c. Performance Bond.

1. Prior to the commencement of construction of Compressor Station 327, Tennessee shall post a performance bond ("Bond") in the amount of one hundred thousand dollars (\$100,000.00) to ensure that any damage to Township property (i.e. roads) during construction of the compressor station is repaired. The Bond shall be released to Tennessee six (6) months after the Project is placed in-service, which is currently anticipated on or around November 2022.
2. The Township shall promptly provide written notice to Tennessee of any damage to Township property in order to allow Tennessee the opportunity to assess and repair any damage before the Bond is called.

d. Payment. Tennessee agrees to pay the Township the total sum amount of two hundred thousand dollars (\$200,000.00) to be used at the Township's sole discretion for expenses incurred in connection with such actions as the Township's review of the Project, and the purchase and maintenance of safety equipment. Payment shall be made by Tennessee to the Township as follows:

1. Twenty thousand dollars (\$20,000.00) within sixty (60) days of execution of this Agreement; and
2. One hundred eighty thousand dollars (\$180,000.00) upon the authorization from FERC to place Compressor Station 327 in service.

- e. Insurance. Throughout construction and after Compressor Station 327 is in service, Tennessee will, at its expense, maintain insurance with reliable insurance companies or through self-insurance as follows:
  - i. General liability insurance, including contractual liability, with limits of ten million dollars (\$10,000,000.00) combined single limit per occurrence bodily injury and property damage with a ten million dollar (\$10,000,000.00) annual aggregate.
  - ii. Umbrella or excess liability insurance in the amount of ten million dollar (\$10,000,000.00) per occurrence with a ten million dollar (\$10,000,000.00) annual aggregate.
  - iii. Prior to the commencement of construction, Tennessee will provide to the Township certificate(s) of insurance evidencing the insurance set forth above.
- f. Status Reports. Tennessee will provide copies of the status reports to the Township (through the Business Administrator by electronic mail) that are filed with the FERC in connection with the construction of the Project.
- g. Timing of Performance. Tennessee's obligations are conditioned and contingent upon receipt of authorization from FERC to place Station 327 in service.

3. The Township's Obligations:

- a. The Township will cooperate with Tennessee throughout the course of the Project. Specifically, the Township will cooperate with Tennessee, its contractors, and the electric provider with respect to, among other things, the timely issuance of any Township demolition permits, construction permits, certificates of occupancy, or any other permits or authorizations that may be deemed necessary for the Project. It is agreed that any construction permits for Tennessee's facilities may be processed and/or released immediately by the Township's Construction Department without the need for a zoning/planning approval or authorization from the Township's Planning Board and/or Zoning Officer. In the event that the Township ceases to cooperate, Tennessee shall not be required to fulfill the obligations set forth in paragraph 2 herein.
- b. The Township agrees not to reassess the Compressor Station 327 Property for tax assessment purposes until Tennessee owns the Property, which is anticipated to be in 2022.
- c. At the Township's request, Tennessee held two public information sessions for the Project on March 22, and on May 13, 2021. No further public information

sessions, presentations, meetings or hearings (or the like) will be required by the Township.

- d. Tennessee anticipates that construction activities will typically occur from 7:00 am to 7:00 pm Monday through Saturday. Prior to 7:00 am, Tennessee's personnel shall be permitted to gather at the Property and inspect the work area and equipment, as well as perform environmental monitoring activities as required by the FERC, NJDEP or other relevant agencies. However, no noise-producing construction shall occur until 7:00 am. Notwithstanding the foregoing, in the event that weather or site conditions, emergencies or other unusual circumstances would require work beyond these construction hours/days, which may include nighttime and/or Sunday hours, Tennessee shall provide notification to the Township (through the Business Administrator by electronic mail) of the expected duration of this work and the type of activities to be conducted (either before this work or as soon as possible thereafter).
  - e. The Parties acknowledge that the covenant of good faith and fair dealing is contained in all contracts, including this Agreement. Accordingly, the Township will not consider or pass any resolution opposing the Project.
  - f. The Township agrees to promptly seek a resolution by the Council to approve this Agreement and authorize its execution by the Mayor.
4. Remedies. Each party shall have the right to enforce the terms of this Agreement in any state or federal court with jurisdiction and shall have all remedies available to it as exist in law or in equity including, but not limited to, the right to injunctive relief. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey, without regard to its choice of law principles.
5. Miscellaneous.
- a. This Agreement constitutes the entire agreement between the Parties. All prior agreements, discussions, representations, warranties and covenants are merged herein. There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this Agreement. Any amendments or modifications of this Agreement shall be in writing and executed by the Parties.
  - b. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement. The use of the plural shall include the singular and use of the singular shall include the plural.
  - c. All work undertaken by Tennessee on the Compressor Station 327 site will be in accordance with applicable requirements of any applicable federal, state, or local regulatory agencies with jurisdiction.

- d. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

Remainder of this page intentionally left blank

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date hereinbefore first indicated.

Attest:

William Semande

**TOWNSHIP OF WEST MILFORD**

By: Michele Dale  
Michele Dale, Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

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

By: \_\_\_\_\_

Date: \_\_\_\_\_