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Via E-Mail

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November 4, 2014

Re: Pilgrim Pipeline: Cease and desist from false claims and misrepresentations

Dear Mr. J. S. Lee Cohen

I am writing on behalf of my client, Sierra Club, to notify you that your letters to Sierra Club members claiming that Pilgrim Pipeline Holdings LLC (Pilgrim) "has the power to condemn private property" is legally wrong. Furthermore, the assertions and actions of Pilgrim's agents are factually wrong including, but not limited to, claims that Governor Christie has already approved the pipeline, declarations that Pilgrim has federal authority to gain access to private property, and unilaterally confirming permission to enter property when permission was never granted.

The goals of these wrongful legal and factual claims are to falsely induce homeowners to sign away their property rights and chill the opposition to the Pilgrim Pipeline. Individual homeowners are frightened because they are led to believe that the pipeline has been approved at the highest levels of government. Others are reluctant to speak out because they might become targets for further harassment. We respectfully request that you and Pilgrim cease and desist from contacting homeowners with such inaccurate legal and factual claims.

Pilgrim is not a "public utility" nor has Pilgrim shown that the property it seeks from our clients is necessary for a "public use." Thus the statute, N.J.S.A. 48:10-1, under which Pilgrim has claimed the power to condemn, cannot be used to take private property. The New Jersey Board of Public Utilities must have a hearing to determine whether any "privilege," which includes the condemnation power is in the public interest prior to granting such power.<sup>1</sup> In addition, a "public use" must

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<sup>1</sup> N.J.S.A. 48:2-14.

provide a public benefit or public advantage.<sup>2</sup> No such benefit or advantage has been stated in your letter or by your agents.

Furthermore, the Pilgrim agent's claim that the Governor has approved the pipeline is wrong. The New Jersey Department of Environmental Protection has had a "pre-application meeting" but we are not aware of any formal application by Pilgrim to the NJDEP or any approval by NJDEP or any other state agency. Nor is there federal authority to gain access to private property as claimed by Pilgrim's agents. The Federal Energy Regulatory Commission (FERC) does not regulate oil pipeline construction or commencement of new services.<sup>3</sup> Finally, at least one Sierra Club member received a thank you letter for permission to conduct survey activities, whereas no such permission was granted.

Sierra Club's membership and other members of the public have a right to remain free from these incorrect assertions. They could constitute fraud and misrepresentation. The false statements and misrepresentations must cease and desist immediately.

We reserve the right to seek legal and/or equitable remedies to prevent these actions from continuing, undo agreements already signed, and/or seek damages. The bases for such remedies are the principles enunciated by Federal and New Jersey Courts regarding fraud and misrepresentation. A claim of common law fraud is "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 610 (1997). Negligent misrepresentation is similar. "Negligent misrepresentation is ... [a]n incorrect statement, negligently made and justifiably relied on, [and] may be the basis for recovery of damages for economic loss ... sustained as a consequence of that reliance." *Kaufman v. i-Stat Corp*, 165 N.J. 94, 109 (2000).

Both EELC and our client are organized as non-profit organizations to give voice to citizen concerns about the preservation of sensitive environmental areas and human health. EELC is a New Jersey-based non-profit public interest environmental law firm. The Sierra Club has retained EELC for advice on addressing their concerns about Pilgrim's efforts to build the pipeline and they are actively opposing Pilgrim. In particular, the Sierra Club concerns include:

1. The Pilgrim Pipeline is proposed to run through the New Jersey Highlands that provides drinking water for half of New Jersey's residents. A major oil spill will prove disastrous. Pipeline construction will destroy wetlands and critical habitats for threatened

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<sup>2</sup> *Twp. of W. Orange v. 769 Associates, L.L.C.*, 172 N.J. 564, 573 (2002).

<sup>3</sup> See Christopher J. Barr, *Growing Pains: FERC's Responses to Challenges to the Development of Oil Pipeline Infrastructure*, 28 Energy L. J. 43, 51 (2007).

and endangered species and degrade the waterways in many ways including from more erosion due to construction.

2. The pipeline would also pass through environmental justice communities that already live with too much air and water pollution from the fossil fuel industry.
3. Especially after Hurricane Sandy, the Sierra Club opposes fuel sources that contribute to climate change. New Jersey's coastal communities are not prepared for the sea level to rise one foot, much less the 3-5 feet predicted in 85 years.
4. The Pilgrim Pipeline diverts investing in alternatives like solar, wind and energy efficiency that do not threaten the environment and our public health. With sensible investments that cap and reduce greenhouse gas emissions and incentivize alternatives, green jobs will be created while improving the environment.

As stated above, Pilgrim must cease and desist from making false claims and misrepresentations to our client's members and other members of the public.

Respectfully,



Aaron Kleinbaum, Esq.

C: Sierra Club