



January 30, 2009

VIA HAND DELIVERY

Highlands Water Protection and Planning Council
100 North Road
Route 513
Chester, NJ 07930-2322

Attn: Christine Ross

Re: PSE&G Susquehanna-Roseland 500kV Transmission Line
Highlands Applicability Determination
Comments to Draft Consistency Determination
NJDEP Activity No. 080079

Dear Ms. Ross:

On behalf of Public Service Electric and Gas Company ("PSE&G"), please accept this letter and enclosures as PSE&G's comments on the Draft Consistency Determination dated December 22, 2008 ("Draft Report") for the Susquehanna-Roseland 500 kV Transmission Line Project (the "Project"), prepared by the Highlands Water Protection and Planning Council Staff ("Staff") under the Highlands Water Protection and Planning Act (the "Act").

The Draft Report imposes a requirement that the Project be consistent with the Regional Master Plan ("RMP") in order to obtain a Highlands Applicability Determination that the Project is not subject to the requirements of the Act. As outlined in detail in the memorandum prepared by Wolff & Samson, P.C., attorneys for PSE&G, Staff's reliance on such a presumption is not supported by the Act. PSE&G is entitled to confirmation from NJDEP that the Project is exempt as a utility line upgrade, which requires only that the activity proposed be consistent with the goals and purposes of the Act. Instead, Staff prepared the Draft Report by analyzing the application in the context of its consistency with the RMP. This analysis is misplaced under the Act. The Act specifically exempts a project from the RMP if it is exempt from the Act, and to the extent the Draft Report requires more, the Draft Report goes beyond the limitations in the Act.

Applying the proper statutory standard of consistency with the goals and purposes of the Act, there can be no question that the Project satisfies this test. The goals and

purposes of the Act are two-fold: (i) to preserve and protect the water resources of the Highlands Region for the benefit of the State as a whole; while (ii) at the same time ensuring that economic growth and development can still proceed in a sound manner. The Project clearly meets both of those goals. First, PSE&G has undertaken an extensive analysis and selection process to confirm that construction of the Project will preserve and protect the water resources of the Highlands Region. PSE&G's alternatives analysis, including its consideration of other factors, is outlined in PSE&G's attached Comments to the Draft Report ("Comments").

Second, the Project ensures that economic growth can proceed in New Jersey in a sound manner. PSE&G is constructing the Project in order to maintain electric reliability in the State of New Jersey and in the eastern region of PJM. As outlined in the attached Comments, PJM Interconnection L.L.C., the independent Regional Transmission Organization that operates the electric power grid in thirteen states, including New Jersey and Pennsylvania, has determined that upgrades to the electric system are necessary in order to maintain reliable service for customers in Northern New Jersey and eastern Pennsylvania. PSE&G is constructing the New Jersey portion of the Project pursuant to PJM's directive. Clearly, the "economic growth and development" of the region is dependent upon a reliable electric grid and, without this Project, the reliability of the regional grid will be jeopardized. Moreover, as explained in the Comments, the issue of whether the project is "needed" is an issue that will be addressed, and on which extensive testimony has already been submitted, in the pending proceeding at the New Jersey Board of Public Utilities.

PSE&G actions to meet the goals and purposes of the Act can be summarized in three words: avoid, minimize and mitigate. PSE&G has designed the Project to attempt to avoid environmental impacts, particularly those that could impact water resources in the Highland Region. To the extent that impacts are unavoidable, PSE&G has attempted to minimize those impacts to provide the greatest protection to those sensitive resources in the Highlands Region. PSE&G is committed to mitigating impacts deriving from the Project wherever technically and practically feasible. It is this last point which is a hallmark of PSE&G's environmental ethic. PSE&G has had a long history of being an environmental leader in the utility industry and, in particular, in the New Jersey business community. PSE&G has partnered with our regulators, the communities we serve, and environmental interest groups to develop successful mitigation projects which benefit New Jersey's environment. PSE&G reiterates this commitment in moving forward with this important reliability project, and looks forward to continuing to work with the Highlands Council.

PSE&G is available to meet with Staff at their convenience to discuss this matter. If you have any questions or need additional information regarding this matter, please do not hesitate to contact me or John G. Valeri, Jr., Associate General Environmental Counsel, at (973) 430-5506.

Very truly yours,

A handwritten signature in cursive script, reading "Donald McCloskey". To the right of the signature is a small, stylized mark that appears to be "jmc".

Donald McCloskey
Director – Environmental Policy & Strategy

Cc: Eileen Swan, Executive Director (via hand deliver, w/encl.)
Thomas Borden, Esq., Deputy Executive Director and Chief Counsel (via hand delivery w/encl.)
Alyssa Wolfe, Esq., Counselor to the Commissioner, New Jersey Department of Environmental Protection (via Federal Express, w/encl.)
Lawrence J. Baier, Director, Watershed Management, New Jersey Department of Environmental Protection (via Federal Express, w/encl.)

Bcc: Rich Crouch (via email, w/encl.)

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Tom O'Neill, Marcus Group (via email, w/encl.)

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Attachment 1

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MARTIN L. WIENER (1942 - 2002)

PLEASE REPLY TO WEST ORANGE

January 30, 2009

Highlands Water Protection and Planning Council
100 North Road
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Chester, NJ 07930-2322

**Re: PSE&G Susquehanna-Roseland 500kV Transmission Line Project
Highlands Applicability Determination
Comments to Draft Consistency Determination
NJDEP Activity No. 080079**

Ladies and Gentlemen:

This office represents PSE&G in connection with the above-referenced matter. Please accept this letter in support of PSE&G's comments to the December 22, 2008 draft RMP Consistency Determination prepared by the staff of the New Jersey Highlands Water Protection and Planning Council (the "Highlands Council") concerning PSE&G's request for a Highlands Applicability Determination ("HAD") that the PSE&G Susquehanna-Roseland 500kV Transmission Line Project (the "Project") is exempt from the provisions of the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (the "Highlands Act"). As outlined below, PSE&G is entitled to obtain an exemption from the Highlands Act because the Project meets the requirements of the statutory exemption for public utility lines. Toward this end, the Staff's

requirement for consistency with the Regional Master Plan ("RMP") is contrary to the Highlands Act.

I. LEGAL ANALYSIS.

The starting point in considering an application for a HAD is the exemption language of the Highlands Act set forth at N.J.S.A. 13:20-28. N.J.S.A. 13:20-28(a) states that, *inter alia*:

The following are exempt from the provisions of this act, the regional master plan, any rules or regulations adopted by the Department of Environmental Protection pursuant to this act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan:

- (11) the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act.

Pursuant to N.J.S.A. 13:20-28(a)(11), the Project is exempt from the requirements of the RMP, the New Jersey Department of Environmental Protection ("NJDEP") Highlands Act regulations and any development regulations or ordinances intended to implement the RMP, because it is: (1) an upgrade to an existing public utility line and system; and (2) consistent with the goals and purposes of the Highlands Act.

There can be no question that the Project represents an "upgrade" as it is a reliability-based transmission system upgrade identified by PJM Interconnection, L.L.C. ("PJM"), the FERC-approved independent entity that operates the regional transmission grid, as needed to maintain reliability in northern New Jersey and eastern Pennsylvania. In fact, PJM has identified 23 reliability problems that will begin occurring in this region as early as 2012 if this upgrade, including the interconnection in Jefferson, is not placed into service, and has determined that the Project represents the best solution to address these numerous reliability problems. Thus, this Project clearly constitutes an "upgrade" as defined and contemplated by N.J.S.A. 13:20-28(a)(11).

A. The Exemption Only Requires That the Project be Consistent with the Goals and Purposes of the Highlands Act, Not the Goals, Policies and Objectives of the RMP.

The statute requires that, in order to qualify for an exemption, a project, if it is an upgrade to an existing public utility line and system, must then be consistent with the goals and purposes

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of the Highlands Act. As documented in its application and in this response, the "activities" proposed by PSE&G are clearly consistent with the goals and purposes of the Act. The goals and purposes of the Act are not the same as the goals of the RMP. In drafting the Highlands Act, the New Jersey Legislature specifically referenced the goals and purposes of the Act as separate and distinct from the goals of the RMP. The goals of the RMP are enumerated separately and specifically in the Act at N.J.S.A. 13:20-10 for projects that are subject to the Act. By contrast, the goals and purposes of the Act are broader -- to protect the water quality in the Highlands, while "providing every conceivable opportunity for appropriate economic growth and development to advance the quality of life for residents of the region and the entire State." N.J.S.A. 13:20-2.

Inasmuch as the RMP goals are separate and distinct from the goals and purposes of the Highlands Act, N.J.S.A. 13:20-28(a)(11) does not require that the activities proposed by the Project be consistent with each and every goal, policy and objective set forth in the RMP. To the contrary, because exempt activities are not subject to the RMP pursuant to the clear language of the Act, requiring consistency with each and every RMP goal, policy and objective vitiates the purposes for the exemption in the first place. Had the Legislature intended that exemptions be expressly conditioned upon consistency with each and every RMP goal, policy and objective (as opposed to intending that the goals and purposes of the Highlands Act be construed broadly), it would have expressly required the same.

By way of example, N.J.S.A. 13:20-28(a)(9), in addition to requiring consistency with the goals and purposes of the Highlands Act, provides that the reconstruction or repair of transportation infrastructure systems by a governmental entity may qualify for an exemption provided that such projects do not include construction of new through capacity travel lanes. If the Legislature had intended the RMP to be the guide for judging compliance with the Act's goals and purposes, it would have had no need to add the limitation on new travel lanes as the increased impervious coverage from such lanes would clearly be inconsistent with the RMP.

By contrast, the utility exemption at issue in this matter contains no such express limitation. The Legislature therefore intended that public utilities be allowed to upgrade existing systems crossing the Highlands Region, even in recognition of the fact that some impacts to the Region are inevitable from such activities. If the Legislature had desired to limit the scope of such impacts, it would have done so as it did with the transportation exemption.

Since the Legislature clearly intended that exempt projects not be held to the RMP standards, it could not have meant that the Council and NJDEP were to require consistency with the RMP goals, policies and objectives as the basis for determining if the Project is consistent with the goals and purposes of the Highlands Act. If that had been the legislative purpose, the Legislature would not have provided the exemption in the first place. See, e.g., *Township of Pemberton v. Berardi*, 378 N.J. Super. 430, 437-438 (App. Div. 2005) (noting that the words and language of a statute must be given its plain and ordinary meaning, but "in interpreting a

statutory provision, the court must consider the statute's wording, its context, its relationship to 'other statutory provisions and the nature of the subject matter.'").

B. RMP Objective 7F1f Directly Contravenes the Language of the Highlands Act.

In light of the express language of N.J.S.A. 13:20-28(a), it is entirely inconsistent for the Council and the NJDEP to apply RMP Objective 7F1f as the standard for granting an exemption pursuant to N.J.S.A. 13:20-28(a). Again, N.J.S.A. 13:20-28(a) clearly states that activities such as the Project are to be exempt from:

- (1) the RMP;
- (2) any rules or regulations adopted by the NJDEP pursuant to the Highlands Act; and
- (3) any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform with the RMP.

As such, RMP Objective 7F1f directly contradicts N.J.S.A. 13:20-28(a) by conditioning an exemption upon the requirement that the activity in question be consistent with:

- (1) the goals, policies and objectives of the RMP;
- (2) any rules or regulations adopted by the NJDEP pursuant to the Highlands Act; and
- (3) any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform with the RMP.

In light of this obvious contravention of the language of the Highlands Act, the requirements of RMP Objective 7F1f are unenforceable as a matter of law. See, e.g., *In re Freshwater Wetlands Protection Act Rules*, 180 N.J. 478, 489 (2004)(holding that "despite [the deference given to an agency's implementation of its rules enforcing a statute] a rule will be set aside if it is inconsistent with the statute it purports to interpret..." and "[t]he agency may not under the guise of interpretation . . . give the statute any greater effect than its language allows.") (citations omitted); *N.J. Builders Ass'n v. Fenske*, 249 N.J. Super. 60, 68 (App. Div. 1991)(invalidating regulations promulgated by the NJDEP without specific legislative authorization, and noting that "administrative regulations which are inconsistent with delegated legislative powers must be deemed invalid.").

C. The Project is Consistent with the Goals and Policies of the Highlands Act.

In order to determine whether a proposed public utility system upgrade is consistent with the goals and purposes of the Highlands Act, it is appropriate to give broad consideration to the underlying objectives of the Act itself. As evidenced by the Highlands Task Force Action Plan, which formulated the basis of the legislation and language of the Highlands Act, the goals and purposes of the Act are to:

- (1) protect the water resources of the Highlands Region for the benefit of the State as a whole; while at the same time
- (2) ensuring that economic growth and development could still proceed in a sound manner.

The Project clearly satisfies both of these goals, as it is a transmission system upgrade that will have no effect on water resources and will have no adverse impact upon the State's economic growth and development.

Sound watershed and preservation planning were the chosen tools to protect water resources. In choosing these tools, the Legislature recognized that the economic development goals of the Highlands Act could only be met if existing infrastructure was allowed to be upgraded as necessary.

Recognizing that the foregoing principles are the basis for the public utility and other exemptions, the NJDEP stated in response to comments concerning its Highlands Rules:

"[T]he Highlands Act prescribed the developments and activities that are exempt from regulation under these rules. The Highlands Act specifies that routine maintenance and operations, rehabilitation, preservation, reconstruction, repair or upgrade of public utility lines, rights-of-way, or systems, by a public utility is exempt presumably because such projects have a public purpose and provide benefits to the public at large. Therefore, it is appropriate to facilitate such projects by providing an exemption." (See 38 N.J.R. 5054 (December 4, 2006)).

A number of exemptions in the Act recognize that existing linear infrastructure systems are not intended to be subject to the requirements of the Act. These include public transportation systems, public transportation safety projects, the reactivation of rail lines and the public utility exemption at issue in this matter. See N.J.S.A. 13:20-28(a)(9),(10),(11) & (12). In every instance, these exemptions recognize that the need to cross the Highlands Area with these types of facilities is a necessary component to New Jersey's future economic growth. And, because

the exempted activities provide a public benefit, such activities are exempt from the requirements of the Highlands Act.

The question of whether the Project is consistent with the goals and purposes of the Highlands Act should therefore turn on the public interest at stake. For instance, it could be argued that constructing new public utilities lines in the Highlands Preservation Area to serve new development in the Preservation Area would be inconsistent with the goals and purposes of the Act. By contrast, however, upgrading an existing line that happens to cross the Highlands Region, to serve the economic development goals of the State as a whole is clearly the type of activity the Legislature intended to exempt from the restrictions of the Act.

The fact that the public utility exemption applies to rehabilitation, reconstruction, repair or upgrade activities further supports this interpretation. The "activity" here is construction of a transmission system upgrade to maintain the reliability of the regional electrical power grid. Because of the essential statewide public welfare component of this activity, or any public utility project that is not undertaken simply to foster growth in the Preservation Area, the Legislature clearly intended that such activities not be subject to Highlands Act requirements.

This interpretation also follows naturally from the documents that led to the adoption of the Act in the first place. In his order creating the Highlands Task Force, Governor McGreevy directed the Task Force to come up with a means to provide for smart growth opportunity in the Highlands Region and throughout the State by encouraging investment in utilities to support smart growth.

The Highlands Task Force followed this requirement by providing that as part of its recommendations that "the State should continue to provide fiscal aid and policy support for existing infrastructure that supports smart growth". (See Highlands Task Force Report at 37). To follow this recommendation, the Legislature decided to exempt from the Act upgrades to existing utility systems because the maintenance of existing infrastructure is a critical component to smart growth in urban areas and other parts of the Planning Areas 1 and 2. *A fortiori*, if infrastructure upgrades support smart growth on a statewide basis, they meet this goal and purpose of the Act. In fact, because the Project is being designed and constructed to fit within an existing 230 kV Right of Way, PSE&G will be required to implement innovative – i.e. "smart" engineering and line configurations. Thus, for the reasons discussed above, the Project is consistent with the goals and purposes of the Act because it is a reliability-based transmission system upgrade designed to ensure the reliability of the regional electrical power grid and therefore is: (1) essential to protect the statewide infrastructure; and (2) necessary for smart growth to continue throughout the State.

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II. CONCLUSION.

In light of the foregoing, the Highlands Council and the NJDEP may not condition an exemption for the Project pursuant to N.J.S.A. 13:20-28(a)(11) based upon the rationale set forth in the December 22, 2008 Highlands RMP Consistency Determination. Rather, the Highlands Council and NJDEP should grant the requested exemption because the Project meets the goals and purposes of the Highlands Act.

Respectfully submitted,



DENNIS M. TOFT

DMT/jc

cc: Public Service Electric & Gas Company

Attachment 2



**COMMENTS TO DRAFT CONSISTENCY
DETERMINATION DATED DECEMBER 22, 2008**

In support of

**SUSQUEHANNA - ROSELAND
500 kV Overhead Electric Transmission Line Project**

Submitted to the

New Jersey Highlands Water Protection and Planning Council

Submitted by

**PSEG Services Corporation
80 Park Plaza, T17H
Newark, New Jersey 07102**

January 30, 2009

1.0 PROJECT NEED

In response to a request from the Highlands Water Protection and Planning Council (“Highlands Council”) that Public Service Electric and Gas Company (“PSE&G”) further explain the need for the Susquehanna-Roseland 500 kV Transmission Line Project (the “Project”) in connection with its pending HAD request, PSE&G offers the following explanation of project “need.” It should be noted as a preliminary matter that the issue of “need” will be fully considered within the context of the pending construction authorization proceeding at the New Jersey Board of Public Utilities (“BPU”), and that PSE&G has submitted extensive testimony on the issue of “need” in that proceeding, specifically the testimony of PSE&G witness Esam Khadr and the testimony of PJM Interconnection, L.L.C. (“PJM”) witnesses Steven Herling and Paul McGlynn. The Highlands Council has received copies of that testimony. In the context of the subject comments, however, PSE&G will take this opportunity to summarize and re-emphasize the salient points concerning project “need.”

PJM, the independent Regional Transmission Organization (“RTO”) that has been approved by the Federal Energy Regulatory Commission (“FERC”) and that operates the electric power grid in 13 states, including New Jersey and Pennsylvania, has determined that upgrades to the existing electric system are necessary to maintain safe and reliable electric service for customers in eastern Pennsylvania and Northern New Jersey, including customers of (“PSE&G”), Jersey Central Power & Light Company, Sussex Rural Electric Company and PPL Electric Utilities Corporation (“PPL”). PSE&G and PPL have been directed by PJM to construct a new 500 kilovolt (kV) transmission line between the Susquehanna switching station near Berwick, Pennsylvania and PSE&G’s existing East Hanover/Roseland Switching Station in Roseland Borough, Essex County, New Jersey, by the summer of 2012. The Project represents the best solution to address all of the PJM-identified reliability problems in Northern New Jersey and Pennsylvania within the PJM planning period. PJM has determined, as part of its planning analysis, that there are no lower voltage alternatives that will address all of these reliability concerns due to the nature and scope of the problems presented.

The Project was identified by PJM in 2007 as part of its Regional Transmission Expansion Planning (“RTEP”) process, which analyzes and identifies reliability concerns facing the regional transmission grid as part of both a 5-year and a 15-year planning process and then comes up with solutions to address these concerns. As part of this planning process, PJM forecasts conditions on the grid and takes into account, among other things, generation that is both on-line and expected to come on-line, system demand for electricity and measurable, verifiable demand response programs. Using these planning tools, PJM determined in 2007, and then confirmed in 2008, that Project was needed to address the fact that 23 transmission circuits in Northern New Jersey and eastern Pennsylvania would become overloaded (i.e. the capacity of the line would be exceeded) within the 15-year planning study period, some as early as 2012, if the Project were not placed into service. Failure of PJM to implement a planning solution to address the potential for overloaded circuits would place

PJM in violation of FERC-approved North American Electric Reliability Corporation (“NERC”) Reliability Standards, which have been adopted by NERC and FERC to ensure grid reliability and compliance with which is mandatory. Moreover, from an operational perspective, failure to implement a solution to address these overloaded circuits would raise the real risk of regional, and perhaps widespread, brownouts and blackouts since, in the absence of this Project, PJM would be required to implement emergency “stop-gap” measures such as load shedding to prevent actual overloading conditions.

Thus, there is a real and significant need for this Project to maintain reliability in northern New Jersey and eastern Pennsylvania. This is not even a close call given the number of reliability problems identified by PJM that could occur as early as 2012. PJM has clearly identified the need for the Project in its capacity as independent operator and planner of the regional transmission grid, and PSE&G has been directed by PJM to construct the Project.

2.0 ALTERNATIVES ANALYSIS

PSE&G’s multi-disciplinary Routing Team participated in a comprehensive alternative route identification process to establish a Preferred Route for the Project in New Jersey. An initial step in this process included the identification of a study area that would include all reasonable potential routes to connect the existing Susquehanna Switching Station in Pennsylvania with the existing East Hanover/Roseland Switching Station in New Jersey. The study area was established in collaboration with PPL.

The Routing Team identified constraints to minimize impacts to the natural and human environment, as well as routing opportunities to facilitate route placement with minimal incremental impact on the environment. Environmental and engineering data from a variety of sources was gathered and assembled into a Geographic Information Systems (GIS) database superimposed on aerial photography. Potential routes were identified by the Routing Team to avoid constraints and take advantage of available routing opportunities. Potential routes were field checked from publicly accessible locations to validate the aerial imagery and to assess the viability of the potential routes based on conditions observed on the ground. Adjustments were made to the potential routes based on the information gathered in the field.

Route Selection Criteria

The Routing Team developed basic route selection criteria that were used to select and analyze potential routes and specific alternative routes. The criteria included the following:

- Maximize the use of, or paralleling of, existing ROW;
- Minimize impacts to the natural and human environment;
- Minimize route length, circuitry and cost;
- Minimize the removal of existing residences;
- Minimize the removal of barns, garages or other structures;

- When not following existing rights of way, maximize the separation distances from residences, schools, cemeteries, historical resources, recreation sites and other important cultural sites;
- Minimize crossing designated natural resource lands such as state forests, national and state parks, wildlife management areas, designated game lands and wildlife areas and conservation areas; and
- Avoid new crossings of large lakes.

Route Selection

Based upon the criteria established above, PSE&G considered three alternative routes. After evaluating the advantages and disadvantages of the three alternative routes, the Routing Team selected Alternative B (the Project) as the Preferred Route in New Jersey. This selection was based on the following factors:

- The Project would be constructed entirely within an existing transmission line ROW for its entire length in New Jersey, which would minimize incremental impacts to the natural and human environment. No construction on virgin ROW was required, which represented substantial advantage over Alternative A (where more than 24 miles of new ROW would be needed). Minimal additional clearing was required, representing a substantial advantage over Alternative C (where vegetative clearing would be needed along 19 miles of ROW if the new line was constructed parallel to an existing line).
- The Project had by far the least amount of wooded wetland crossed (0.1 mile), compared to Alternative A (2.4 miles) and Alternative C (1.3 miles). Thus, the Project had the least potential to permanently alter this important type of wetland habitat.
- Aesthetic impacts associated with the Project were substantially less than the virgin ROW portion of Alternative A. Incremental aesthetic impacts associated with the Project were slightly less compared to Alternative C because of the need to clear vegetation along the 19 mile portion of Alternative C that would parallel the existing 230-kV transmission line. Removal of forest in this area would reduce screening, and the wider cleared ROW would be more visually intrusive. Taller structures than currently exist would likely be needed in the 2.6 mile portion of the Project that is within the Delaware Water Gap National Recreation Area in New Jersey, but means to minimize this incremental impact would be explored with the National Park Service (NPS).
- The Project crossed the least amount of forested land (0.3 miles) compared to Alternative A (18.5 miles) and Alternative C (11.4 miles). This resulted in substantially less potential for soil erosion and permanent alteration of forest habitat and no increase in forest fragmentation.

- The Project did not involve the same level of substantial engineering and constructability challenges (and associated increased costs) that are associated with Alternative C.
- By building the Project as an upgrade to an existing utility line, the Project is exempt from the requirements of Highlands Act. Clearly, this is the direction preferred by the legislature in establishing the exemption in the first place.

For more detail concerning PSE&G's alternatives analysis, please see the "Alternative Route Identification Report for the Susquehanna to Roseland Project – New Jersey Portion" prepared by The Louis Berger Group, Inc., which can be found online at http://www.pseg.com/companies/pseandg/powerline/overview.jsp?WT.mc_id=susquehanna-roseland.

3.0 DEMONSTRATION THAT PROPOSED ACTIVITY IS CONSISTENT WITH THE GOALS AND PURPOSES OF THE HIGHLANDS ACT

As an initial matter, PSE&G believes that the December 22, 2008 Highlands RMP Consistency Determination is inconsistent with the Act because N.J.S.A. 13:20-28(a)(11) does not require that the Project be consistent with the RMP goals, policies and objectives in order to qualify as exempt. Rather, the exemption requirement set forth under N.J.S.A. 13:20-28(a)(11) requires consistency with the goals and purposes of the Highlands, not the RMP. It is PSE&G's position that: (i) RMP Objective 7F1f directly contravenes the language of the Highlands Act; and (ii) any actions taken by the Highlands Council and NJDEP with respect to the same (including, but not limited to, actions based upon the recommendations set forth in the December 22, 2008 Draft Highlands RMP Consistency Determination) would be inconsistent with the Act. This position is further explained in the legal analysis prepared by Wolff & Samson PC dated January 30, 2009 and submitted with these comments to the Highlands Council.

PSE&G has reviewed the comments set forth in the December 22, 2008 Highlands RMP Consistency Determination and offers the following additional information to substantiate its position that the Project is consistent with the goals and purposes of the Highlands Act.

I. Highlands Forest Resources

The Project is structured as a linear development. The alternatives analysis performed by PSE&G determined that the Project had the fewest impacts on forest resources and will not result in fragmentation of forested areas. The Project would protect forest resources, critical habitat and water quality and quantity, by utilizing the existing ROW and through the use of Low Impact Development ("LID") Best Management Practices (BMPs).

PSE&G proposes to mitigate the loss of forest resources from the Project through the use of land preservation, conservation easements protecting specific resources, community grants for tree planting and reforestation of off-ROW properties. PSE&G will develop a forestry management plan for property surrounding the Jefferson Switching Station site which will focus on maintaining forest integrity and invasive species control. In addition, PSE&G will develop and submit a Forest Management Plan when all ROW and access agreements have been completed. The site specific forest mitigation measures and forestry and endangered species management plans, however, will be forwarded to the appropriate regulatory agency(ies) during the environmental approval process.

II. Highlands Open Waters and Riparian Areas

The New Jersey Department of Environmental Protection (“NJDEP”) Highlands Rules recognize that linear developments are not subject to the same requirements for impacts to Highlands Open Waters and Open Water Buffers. As discussed above, an alternatives analysis was conducted and the Project had the fewest impacts to these resources.

Structures within Highlands Open Waters and Buffers will be removed and new structures installed, outside of the Highlands Open Waters and Buffers when possible. Existing access roads will be improved so as to not impact these resources. New, temporary access roads will be removed at the completion of the Project and the disturbed areas restored resulting in zero net loss of resources.

Within the Existing Community Zone (ECZ), disturbances to these resources are occurring along the existing ROW which has been maintained for more than 80 years. PSE&G is proposing to utilize LID-BMPs to minimize impacts to these resources as well as to minimize impacts to riparian areas.

The nonstructural LID-BMPs that should be incorporated into the site design for the Project include:

- Vegetation and Landscaping;
- Minimizing Site Disturbance; and
- Time of Concentration Modifications.

Some of the structural LID-BMPs that should be incorporated into the site design include:

- Swale Blocks;
- Grass Channels;
- Vegetative Filters;
- Bioretention Systems;

- Infiltration Basins;
- Wet Ponds;
- Constructed Stormwater Wetlands;
- Reverse Soil Compaction; and
- Pervious Paving Systems

Streams throughout the Project area are shown on the preliminary site maps. Upon completion of the design, all riparian areas will be shown on plans submitted to regulatory agencies. It has been determined by the NJDEP that the stream corridors within the ROW are disturbed as a result of maintenance along the ROW for more than 80 years. As part of the NJDEP permitting process for wetlands and flood hazard permits pursuant to N.J.A.C. 7:7A and N.J.A.C. 7:13, PSE&G will prepare the appropriate Stream Corridor Restoration and Protection Plans required by the NJDEP.

There are wetlands, transition areas, waterbodies and watercourses along the ROW. Under the existing NJDEP Freshwater Wetlands General Statewide Permit #1 (Permit No. 0000-02-0031.2 FWW04001), PSE&G conducts vegetative maintenance activities along the ROW to prevent trees from falling onto transmission lines and disrupting electrical service. PSE&G has delineated all wetlands, open waters and riparian corridors within the ROW. Wetlands have not been delineated on off site parcels along many of the proposed access road routes, as PSE&G is still in the process of acquiring permission from the landowners to access the sites. PSE&G plans to restore the buffers and functionality of the buffers wherever feasible and will mitigate as required where not feasible.

PSE&G anticipates development of wetland and riparian zone mitigation plans as part of the NJDEP Land Use Regulation Program Applications. From the perspective of water quality, forested wetlands have the highest resource value. While each of the alternatives impact wetlands, the Project is the preferred alternative because it has the fewest impacts to forested wetlands.

Wetland impacts will be limited by utilizing protective measures such as matting or the use of low profile vehicles designed for distributing weight so as not to cause unnecessary soil compaction in wetland areas. These include temporary impacts associated with equipment laydown areas and those wetland areas which will be crossed using marsh mats.

At the Jefferson Switching Station, impacts to wetlands and transition areas have been minimized. The proposed site is located in the existing ROW to the greatest extent possible, which minimizes encroachment in Highlands Open Water buffers. The proposed plan maintains a 150 foot (150') buffer between the wetlands and the Jefferson Switching Station. The plan proposes to improve the existing road to provide site access and reduce cutting additional Highlands forests in order to create a new road. The existing access road passes 50

feet (50') from wetlands. Consequently, a minimum buffer of 50 feet (50') from the existing road is maintained as a compromise to reduce impacts to forested resources.

III. Steep Slopes

The Highlands Rules concerning steep slopes allow for linear development when there are no feasible alternative for the linear development outside of the steep slope areas. As the majority of the Project is along an existing ROW which limits impacts to other Highland Resources, the Project minimizes impacts to steep slopes.

Portions of the Highlands Region along the ROW are dominated by steep slope areas. There are approximately 25 structures which are proposed to be located in areas with mapped steep slopes. In addition, the Jefferson Switching Station site is mapped with slopes ranging from 8 to 15 percent (8-15%). In those areas of steep slopes, typical silt fence will not be adequate. Super silt fence and multiple sediment traps will be utilized to prevent Project-related generated sediment from entering into wetlands and waters.

LID-BMPs seek to reduce and/or prevent adverse runoff impacts, through sound site planning and by the use of both nonstructural and structural techniques that preserve or closely mimic the site's natural or pre-developed hydrologic response to precipitation.

PSE&G anticipates employing the following LID-BMPs to minimize impacts to steep slopes and prevent soils from eroding and impacting Highlands Open Waters:

- (i) Nonstructural LID-BMPs such as minimizing site disturbance, preserving important site features, flattening slopes, utilizing native vegetation, minimizing turf grass lawns and maintaining natural drainage features and characteristics; and

- (ii) Structural LID-BMPs such as basins, filters, surfaces and devices located close to the specific development.

The use of LID-BMPs will be used when ever possible along the ROW and at the Jefferson Switching Station site. These practices will also be used whenever possible along the ROW. It is anticipated that wet and dry swales, bio-swales and vegetation lined channels will be employed down gradient of the proposed structures located in steep slope areas to reduce surface flow of groundwater and prevent soil from being eroded and being transported to streams.

Access roads in steep slope areas will be constructed using clean gravel over a geotextile base. Silt fencing will be placed along the sides of the temporary roadways. In those areas of steep slopes, typical silt fence will not be adequate. Super silt fence and multiple sediment traps will be utilized to prevent sedimentation in Highlands Open Waters.

New temporary access roads which have been compacted during construction activities will, after the stone and geo-textile have been removed, undergo reverse compaction. The road areas will be tilled prior to replacing top soil to reduce the level of compaction. However, tilling will be limited in depth due to prevent damage to the adjacent trees.

IV. Critical Habitat

As a result of the alternatives analysis, PSE&G has determined that the Project would have the least impact on wildlife and associated habitat.

As part of the initial site assessment process, PSE&G has conducted a Threatened and Endangered Species Habitat Assessment and a Vernal Habitat Survey for the Project area. The Threatened and Endangered Species Habitat Assessment examined the approximately 44 miles of ROW and two (2) proposed switching station locations (one (1) switching station within the Highlands and one (1) outside of the Highlands Region). It concluded that the proposed utility upgrade would not impact species such as the long-eared owl (State-endangered), woodland raptors and grassland birds such as the bobolink, grasshopper sparrow and redheaded woodpecker (State-threatened). The ROW consisted largely of successional habitats and not mature woodland habitat or maintained grasslands typically utilized by these species.

The study concluded that consultation with the United States Fish and Wildlife Service (USFWS) and NJDEP Endangered and Non-game Species Program would be necessary to determine the necessary species specific surveys which would need to be conducted. It should be noted that some of the suitable threatened and endangered species habitat along the ROW is outside of the Highlands Region. Further site specific and species specific studies are currently in the planning stages.

The Vernal Habitat study identified 15 wetlands areas along the length of the entire ROW which contained vernal habitats. Wetland numbers 4, 5, 14, 20, 35, 57, 79, 82, 116, 117, 124, 125, 131, 138/138A and 146 were found to contain vernal habitats. The vernal habitat studies were conducted between March and May. Each potential vernal pool was surveyed until it was determined to be vernal or until they dried up. The majority of the vernal pools were found to contain vernal species during the initial site visit. Survey techniques followed the NJDEP protocols for surveying vernal habitats. No vernal pools were found on the proposed Jefferson Switching Station site.

PSE&G has conducted the initial surveys to determine the presence or absence of critical habitat throughout the Project area. Additional studies will be conducted at the appropriate times of the year for the species of concern. PSE&G will prepare a critical habitat avoidance plan which will be prepared in coordination with the USFWS, NJDEP Endangered and Non-game Species Program, NJDEP Land Use Regulation Program and the Highlands Council biological staff to determine the appropriate avoidance and mitigative measures

necessary to insure no impacts to these critical resources. These measures include but are not limited to: timing restrictions, having certified bog turtle specialists on site during construction in the vicinity of bog turtle habitat, silt fence along roads and constructing herpetological access tunnels under the roads at critical areas.

Additional studies will be required to fully determine the actual extent of critical habitat at the switching station site and along the length of the ROW. On the Jefferson Switching Station site, the switching station will occupy five percent (5%) of the site. PSE&G intends that the remainder of the site remained in its present state.

It should be noted that the majority of the Project area is previously disturbed ROW. Many of the rare, threatened and endangered species occurring along the ROW would not be present, if not for the ROW habitat. Species requiring grassland, scrub/shrub and emergent wetland habitat would most likely not be present in forested habitat surrounding the ROW.

Through avoidance of critical habitat PSE&G does not anticipate direct impacts to critical habitat. If it is determined, however, that that critical habitat can not be avoided, PSE&G will develop a Habitat Conservation and Management Plan which will identify restoration of critical habitat within the ROW which will be temporarily disturbed during the construction phase of the Project. It is anticipated that conditions reflecting this will be incorporated into Project permits.

V. Land Preservation and Stewardship

Portions of the Project fall within the Sensitive Environmental Zone ("SEZ") of the Preservation Area. It should be noted that within these sensitive areas, while PSE&G would be constructing new structures they would be removing existing structures and restoring previously disturbed areas; this will likely result in zero percent (0%) increase in disturbance with the SEZ.

VI. Carbonate Rock

Along the existing ROW there are three (3) proposed structures located within mapped carbonate rock areas. Prior to conducting any work on any of the structures, an extensive geotechnical boring program already in progress will be completed. The results of these studies will determine the suitability of the area to support structures and determine which methodologies will be used to prevent foundation failure. As the design of the Project progresses, and geotechnical studies are completed, impacts to the Project from carbonate rock will be evaluated, if needed.

The typical foundation for the Project would be a cylindrical reinforced concrete design. For the steel pole structures, the foundations could range from 8 feet to 12 feet (8-12') in diameter. For lattice towers there would be four (4) concrete foundations typically 3

feet (3') in diameter for each of the four (4) legs. When either soft, wet soil conditions or rock conditions exist, custom foundations would be required.

Additionally, care will be taken to control drainage around structures within karst formations. Inadequately controlled drainage could potentially trigger previously dormant karst activity. Good drainage design may include: redirection of natural drainage away from the structures; sealing of all areas around the structure foundations and/or avoidance of subterranean distribution systems.

During the design of the Project, PSE&G will employ all necessary measures to control drainage around structures within karst formations.

VII. Lake Management

The existing ROW has for more than 80 years crossed adjacent to the lake areas. The Project will not change the location of the utility structures; it replaces one structure with another structure. As part of the scenic resources analysis, PSE&G will examine the impacts of the proposed new structures on the Highlands lake management areas.

The Project will not create significant impervious surfaces and does not propose hardscaping along the shore of any lakes. Additionally, the Project does not present the potential to generate pollution which would impact the lake management zones.

PSE&G will prepare and have approved by the Soil Erosion District, Soil Erosion and Sediment Control Plans for the construction phase of the Project to protect water resources. Subsequent to construction, the Project does not present the potential to generate pollution which would impact the lake management zones.

PSE&G is also currently conducting a Visual Resources Modeling Study to determine the potential impacts of the Project on the surrounding areas. Impacts to lake management areas will be included in the Visual Resources Modeling Study. At the completion of the study, PSE&G will examine methods to minimize visual impacts that may be created by the Project.

VIII. Protection of Water Resources Quantity.

The proposed linear Project has demonstrated, through the alternatives analysis that PSE&G has taken steps to avoid natural resources along the Project corridor. The Project is being conducted in a previously disturbed ROW which has been utilized by PSE&G for more than 80 years.

A review of the Highlands Council's mapping of prime groundwater recharge areas shows that the majority of the ROW falls within mapped prime groundwater recharge areas. For the Project, there will be less than 4,300 square feet of new impervious surface (structure

foundations) along the entire ROW. As part of the regulatory review process, PSE&G will assess the area of impact to demonstrate that overall it is significantly less than 15 percent (15%) of the of the prime groundwater recharge areas along the ROW. In addition, in areas along the ROW where access roads are improved, PSE&G is considering the inclusion of grass lined swales and bio-swales to slow stormwater runoff and increase groundwater infiltration.

Construction of the 75 new structures will result in approximately 0.10 acre of additional impervious surface within the ROW associated with the structure foundations. The majority of the access roads will be constructed within the ROW. However, due to the remote nature of the transmission ROW many of the proposed structure locations can not be accessed directly. It will be necessary to construct temporary access roads through forested areas to construct some of the structures. These temporary access roads will be 16 feet (16') wide. It is estimated that the total impacts from access road construction will be 7.65 acres. All off ROW access roads will be restored to pre-construction conditions at the conclusion of construction activities.

Construction of the Jefferson Switching Station will disturb approximately 20.4 acres. There will be approximately 7.7 acres of impervious surface (gravel and concrete foundations and pads) associated with the entire Project, including Jefferson Switching Station. The existing road to access the site will be improved using gravel underlain with a geo-textile, therefore remaining pervious.

In accordance with N.J.A.C. 7:8-5.2(d)2, the construction of an above ground utility is exempt from groundwater recharge, stormwater runoff quality and stormwater runoff quality requirements at N.J.A.C. 7:8-5.4 and N.J.A.C. 7:8-5.5 providing the existing conditions are maintained to the maximum extent possible. The replacement of the existing structures with new structures does not result in a change to existing conditions along the ROW since each structure would result in less than a 0.002 acre increase in impervious surfaces associated with the footing of each structure. It should be noted that the existing structures will be removed. While exempt from the Stormwater Management Rules, PSE&G will employ the LID-BMPs to minimize impacts to surface and groundwater resources.

In preparing a Stormwater Management Plan for the Jefferson Switching Station, PSE&G is examining methods to achieve at least a 125 percent (125%) infiltration for this site. Techniques currently being considered include: grass lined swales and detention/infiltration basins. The swales will be designed to allow stormwater flowing down the channel to infiltrate into the sand base and result in a reduction in stormwater runoff and an increase in stormwater infiltration. An infiltration basin will be combined with an extended detention basin to provide additional runoff storage in situations where both stormwater quality and quantity management are required.

Other potential methods to increase groundwater recharge include:

- Pervious paving systems, which are paved areas that produce less stormwater runoff than areas paved with conventional paving.
- Bioretention systems that typically consist of a soil bed planted with native vegetation that is located above an underdrained sand layer. It may be configured either as a basin or a swale.
- Constructed stormwater wetlands that are wetland systems designed to maximize the removal of pollutants from stormwater runoff through settling and both uptake and filtering by vegetation.

PSE&G anticipates utilizing LID-BMPs to conform to the New Jersey Stormwater Management Rules. In addition to preparing a Sediment and Soil Erosion Control Plan for the Jefferson Switching Station, PSE&G anticipates preparing a separate plan for the anticipated upgrades to the access road and for work along the ROW. PSE&G is also preparing a Stormwater Pollution Prevention Plan for the Jefferson Switching Station. The Stormwater Pollution Prevention Plan will discuss BMPs to prevent discharges both during construction activities at the Jefferson Switching Station and while operating the facility. These documents will be forwarded to the appropriate regulatory agency(ies) for review.

IX. Water Quality (Wellhead Protection)

The Project is consistent with the objectives of the Act in that the utility line upgrade has:

- Limited possibility to discharge of persistent organic or toxic chemicals sources to ground water or to the land surface within a designated Tier 2 Wellhead Protection Areas;
- Is not a land use that has a significant potential to result in major discharges of persistent organic or toxic pollutants to groundwater or to the land surface;
- Will have site specific and municipal stormwater management plans to address wellhead protection requirements for the Jefferson Switching Station Site; and
- Will promote development activities consistent with existing land use activities which will include the implementation of best management practices to protect the quality of ground water within Wellhead Protection Areas.

The Project will, as discussed above, utilize green technologies (LID-BMPs) such as grass channels, infiltration basins and bio-swales. PSE&G is preparing Stormwater Management Plans and a Stormwater Pollution Prevention Plan for the

Jefferson Switching Station and Soil Erosion and Sediment Control Plans for construction activities at the Jefferson Switching Station and along the ROW.

X. Historic, Archaeological and Scenic Resources

PSE&G, in coordination with the New Jersey State Historic Preservation Office (SHPO), is in the process of completing a Phase 1A/1B Historic and Archeological Survey for the Project area. In addition, PSE&G is preparing a Visual Modeling Study to determine the potential visual impacts for the Project on surrounding areas. These studies will be forwarded to the appropriate regulatory agencies for review. By keeping the project within the existing ROW, visual impacts will be minimal. Moreover, PSE&G anticipates working with SHPO to further mitigate where appropriate for visual impacts. Ultimately, a number of visual impacts may be unavoidable but are necessary to protect public health and safety board upon electrical line construction standards.

XI. Land Use Capability Zone

Construction of approximately 75 new structures will result in approximately 0.10 acre of additional impervious surface within the existing ROW associated with structure foundations in order to up-grade the existing Roseland-Bushkill 230 kV Transmission Line. Installation of the temporary off ROW access roads will result in approximately 7.65 acres of disturbance due to the need to provide a stable and cleared travel width of 16 feet (16') for construction equipment. Pre-existing site conditions will be re-established at the conclusion of construction, therefore additional impervious surfaces are not expected to occur permanently. Lastly, construction of the Jefferson Switching Station will result in the additional disturbance of approximately 20.4 acres, of which approximately 7.7 acres will consist of impervious surfaces (gravel and concrete pads) associated with the Jefferson Switching Station and the construction for new transmission structures (less than 0.01 acres of impervious surface). Thus, a total of 7.8 acres of new gravel surfaces will be created and an additional 12.7 acres of forest disturbances, as well as 7.65 acres of temporary disturbances.

Using GIS, the Existing Community Zone (ECZ) was identified along the proposed the Susquehanna-Roseland 500 kV Transmission Line. This area only includes work with the ROW. Additional GIS maps were created to identify environmental resources located within this zone.

The following environmental resources are present in the ECZ:

- Prime groundwater recharge areas;
- Streams;

- Wetlands; and
- State endangered, threatened and species of special concern.

The following resources are not present in the ECZ:

- Steep Slopes;
- Carbonate Rock; and
- Vernal Habitat.

To ensure that the prime groundwater recharge areas will not be adversely affected, the Project will incorporate LID measures to minimize impacts to wetlands, streams and State endangered, threatened and species of special concern.

XII. Regional Guidance for Development and Redevelopment

The Project will protect, restore and/or enhance sensitive environmental resources including forests, critical habitats; Highlands Open Waters and their buffers, steep slopes, prime groundwater recharge areas, wellhead protection areas and Agricultural Resource Areas (ARAs).

XIII. Smart Growth

Construction of the 75 new structures will result in approximately 0.10 acre of additional impervious surface within the ROW associated with the structure foundations. Proposed impervious surface at the Jefferson Switching Station site is less than five percent (5%) of the site. The Project limits the amount of new impervious cover thereby protecting stormwater infiltration and reducing stormwater runoff. PSE&G will as necessary conduct hydrologic studies documenting velocity, volume and pattern of water flow through the Jefferson Switching Station site. The Project will also incorporate LID-BMPs. Overall, the Project supports smart growth. By maintaining the reliability of the electric transmission system, the Project will allow for growth in urban areas and other parts of the Planning Areas 1 and 2. It is a smart growth project in every sense.

XIV. Landowner Equity

For the reasons set forth above, it is PSE&G's position that RMP Objective 7F1f directly contravenes the language of the Highlands Act.

XV. Air Quality

The Project does not include any new statutory emission sources in the Highlands region.

Summary

There is a clear need for this Project for the economic well being of the State. Without the project, the reliability of the grid may be jeopardized. The Legislature established that such utility upgrades, when conducted in existing right-of-way, are exempt from the Highlands Act. This needed Project meets the goals and purposes of the Highlands Act.