

**DRAFT – FOR CONSIDERATION AT THE JUNE 25, 2009
MEETING OF THE HIGHLANDS COUNCIL**

Public Comments Received on the Highlands Water Protection and Planning Council Staff Draft Consistency Determination for PSE&G Susquehanna-Roseland 500-kV Transmission Line (May 21 – June 12, 2009 Comment Period):

- Public Service Electric and Gas Company (PSE&G)
- NJ Transit
- New York-New Jersey Trail Conference
- New Jersey Highlands Coalition
- Stop the Lines
- New Jersey Conservation Foundation
- New Jersey Sierra Club
- Morris County Chamber of Commerce
- Newark Regional Business Partnership
- International Brotherhood of Electric Workers
- Chemistry Council of New Jersey
- Township of Byram
- Numerous (approximately 90) private citizens

Public Comment Summary

The public comments received included statements of both support for and opposition to the proposed project, and also included comments from the applicant. Some comments included specific comments on the Highlands Council’s Draft Consistency Determination (CD), others were general comments on the project. In summary, the comments address the following issues:

Supportive Comments

- Believes that it is in the public interest to grant this exemption to protect public health and safety from the potential for blackouts and brownouts by 2012.
- Believes that PSE&G has a strong record of environmental stewardship in New Jersey to build this project in a manner that is sensitive to the natural environment. Feels that PSE&G is not only concerned about the environment but “walks the walk” through beneficial programs like Environmental Education Grants for teachers and Support for Sports.
- Is of the opinion that the Comprehensive Mitigation Plan proposed by PSE&G addresses concerns raised by the Highlands Council, the New Jersey Department of Environmental Protection (NJDEP), environmental organizations, and the public. Feels that by using the existing right of way, redesigning parts of the project in response to public input, and mitigating the impact on environmentally sensitive land, that PSE&G has taken great efforts to protect natural resources during the course of this project.
- States that the legislature and governor recognized the need to upgrade power lines in enacting the Highlands law. Feels that denial of this application would render the exemption provision of the law meaningless as no one could ever qualify for an exemption.
- Believes that this project recognizes northern New Jersey’s growing demand for energy usage that stands to outpace the supply within the next two to three years. Feels that the failure of public policy

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makers to prepare this region for the impending shortage of reliable, adequate energy to power our homes and businesses will have a devastating impact on our regional and local economies, including the loss of industry and job opportunities. Further, feels that failure to support this project will, ultimately, diminish the quality of life for our residents through higher energy costs, unreliable energy supply, and a crippled economy.

- Believes that PSEG made the environmentally smart and sensitive call by selecting a route that follows an existing power line and does not require the taking of property for the project. Feels that while a project such as this will have a variety of negative impacts, the long-term benefits gained by the improvement of the electric grid far outweigh this impact. Believes that electric energy distributed well and reliably is key to the Highland's, the State of New Jersey's, and the nation's future.
- States that the right-of-way is less than one mile away from his/her home and views the current lines every day; feels that the proposed upgrade would not be an eyesore. Based on review of pictures of the proposed new towers, feels they would actually be an improvement.
- Believes that this project fits neatly with the Highland Act's vision for economic development. Feels that the project accommodates responsible economic development that follows smart growth principles. Is of the opinion that natural resource preservation and putting people to work in New Jersey by expanding the economy are priorities for our state. Feels that if the project is significantly delayed, it may have a negative effect on future electric reliability, which in turn, may add further imbalance to an already troubled economy.
- States that the entire project will cost \$1.26 billion, create 4,000 jobs for one year and generate close to \$20 million dollars for state and local tax coffers. States that the project will provide a \$400 million boost to the states gross domestic product and that the new jobs represent several hundred million dollars in compensation for New Jersey workers and multi-million dollar contracts for materials and services for our states businesses. Feels that the project is very timely as we work ourselves out of the economic recession we have been in for much of 2008 and 2009.
- Feels that business owners have seen significant increases in the cost of electricity over the last decade driven by global fuel prices and other factors. Costs for the new line will be shared by all of PJM's customers which is a plus for New Jersey electricity consumers. States that projections indicate that consumers could see net annual savings of \$24 million dollars when the upgrade is completed with the potential for additional savings.
- Notes that scientific studies by the World Health Organization and others fail to establish a link between electromagnetic frequency (EMF) and illness or disease.

Opposition Comments

- Is opposed to the project because it directly contravenes the goals and purposes of the Highlands Act in numerous areas, including protection of surface and ground waters, preservation of land in its natural state, and protecting the scenic and other resources of the Highlands Region.
- Believes that the decision made by Highlands Council staff in December 2008 that found the power line project inconsistent on 56 determinations is correct.

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- States that the major difference between the December 2008 and the May 2009 determinations, besides moving the switching station from Jefferson to Hopatcong, is the proposal by PSE&G to give the Highlands Council \$18.6 million. Strongly believes that accepting or soliciting donations when an application is in front of the Highlands Council is wrong. Believes that the purpose of this money is for mitigation; however, feels one cannot mitigate these power lines. Feels that the determination of consistency must be based on the impacts of the proposed power line, not after paying for some offsite land acquisition that is used as mitigation.
- Is of the opinion that the \$18 million mitigation fund cannot be accepted by the Highlands Council under the conditions as proposed. Believes that the dollar amount proposed cannot be deemed acceptable until a full accounting is made of the impacts that the proposed project will have on Highlands environmental, cultural and historic resources, both immediate and over time. Feels that the necessary effort involved in such an accounting cannot be overestimated because a dollar value equivalent must be placed on “absolute mitigation”, i.e., compensation for “no net loss.”
- With respect to the mitigation fund, believes an oversight committee must be established, independent of the Highlands Council (but with Council representation) to disburse such funding. Feels that the funds must be disbursed following a priority allocation: 1) acquisition of land directly impacted by the project within the Highlands; and 2) acquisition of land within Highlands municipalities through which the transmission line passes and any new facilities are located.
- States that buying undeveloped property that is already woodlands and is current open space would not mitigate for the damage of this project, since those lands are already part of a healthy ecosystem. Feels that the destruction cannot be offset just through the purchase of open space that may already be protected under the Highlands Act. Further, states that the Highlands Act does not give the Council authority to buy land.
- States that at a time when budgets are being cut, there are furloughs and potential layoffs, the Highlands Council could use the proposed money intended for land acquisition to instead meet its budget needs and to pay staff salaries.
- Believes that the proposed project will encourage increased pollution from dirty coal-fired power plants. Feels that the increase in carbon emissions will pollute our waterways and add mercury to our streams and reservoirs. States that Pennsylvania’s coal plants are the major source of mercury in our reservoirs and the reason for fish advisories in the Highlands Region.
- Believes that in order to complete the project, hundreds of acres of trees will be cut down to widen the right of way and that miles of access roads will be created to bring in equipment. Feels that the access roads will destroy habitats for threatened and endangered species, impact wetlands, invite the possibility of ATVs, and will lead to more fragmentation of forests, allowing for invasive species.
- Believes that the new towers will present a visual eyesore and ecological disaster to the Highlands Region.
- Believes that there would be a significant health risk imposed by electromagnetic fields created from these even higher voltage transmission lines.
- Does not know anyone living within the vicinity of the right-of-way that supports the proposed project.

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- Believes that critical information and electronic project files have not been available to public agencies and the public, thus hampering evaluation of the project. States that it is impossible to evaluate the location, length or impact of the currently proposed construction access routes – a key element of the amended proposal – without the GIS shape file data.
- Requests that the public comment period be extended at least 15 days beyond the date that maps of the project’s proposed changes become available.
- States that since PSE&G has not amended its application before the New Jersey Board of Public Utilities, there has not been any expert testimony about the Hopatcong site available anywhere.
- States that the May 21, 2009 Updated Public Notice did not include any notification regarding the availability of site maps at the Highlands Council offices. Notes that if the information was available for public inspection, the public was not adequately noticed of this fact.
- Feels that the proposed Jefferson/Hopatcong switching station should be rejected from consideration as part of the HAD application for Exemption 11, and instead treated as an application for a major Highlands development, which is what it is. Believes that the proposed switching station is a new facility, not a rehabilitation, reconstruction, repair or upgrade of a facility, and it is not part of the existing ROW. Furthermore, believes that it is a permanent, non-residential development, greater than one acre in size, which disturbs one quarter acre or more of forest and results in an increase in impervious surface by one-quarter acre or more: it meets all the criteria for a “major Highlands development.”
- States that the applicant indicates that use of existing roads for the construction access routes is a major element in minimizing environmental impacts. However, feels that the HAD application made available to the public does not provide adequate verification of this point. Indicates that it cannot be determined if there are route changes to the access roads without the new GIS shape file data.
- States that the construction of access routes will require extensive clearing and straightening, as well as grading and removal of rocks and adjacent vegetation, resulting in substantial soil compaction and local habitat destruction adjacent to the roadway itself. Feels that this would result in more significant impact than the HAD application indicates. Feels that the accuracy of the amended HAD application may be questionable. Believes that the Highlands Council should obtain from PSE&G detailed information regarding the construction access routes.
- Believes that the large vehicles and equipment required for construction will likely necessitate removal of tree canopy to accommodate them, thus causing extensive forest fragmentation in interior forest areas as well as nearby direct impacts. Feels that the acreages of forest fragmentation impacts from the construction access routes need to be calculated into any mitigation plan.
- Believes that the proposed Comprehensive Mitigation Plan (CMP) is severely flawed. Feels that the CMP does not fully address the Region’s natural and cultural resources, nor does it provide meaningful guidance for mitigation in the Highlands. Feels that the CMP lacks detail and is sketchy. Believes that the CMP lacks a dependable implementation mechanism and is therefore unlikely to be effectively implemented. Is of the opinion that its acceptance appears to have been based on verbal assurances, and questions how verbal assurances be enforced.

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- Is of the opinion that the Avian Management Protection Plan element of the CMP lacks any relevance to New Jersey Highlands avian issues. States that the proposed Avian Management Protection Plan draws extensively and almost exclusively on a document that addresses the daytime electrocution of large raptors, “*Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996.*” That document does not address the significant Highlands avian issues associated with rare nocturnal migrant birds. Avian electrocution is not the issue with small birds.
- Believes that there should be a substantial performance bond posted to ensure the proper implementation of the CMP, and questions who will administer such a bond and ensure implementation. Believes that no regulatory agency has the staff to do so, particularly given the size of the project in the Highlands Region.
- Believes that the premise of the proposed Critical Habitat/Endangered Species Mitigation Plan element of the CMP is flawed. States that the first sentence of PSE&G’s plan reads as “achieve no net loss of habitat value” and to maximize habitat value “through improvement of habitat on existing preserved lands.” Believes that the proper objective is “no net loss of habitat,” not “habitat *value.*” Further, believes that the use of public lands as mitigation sites for private development projects is objectionable. Feels that preserved lands must not be utilized as free mitigation sites for development projects and that the developers of such projects must themselves purchase the lands on which they propose to do mitigation.
- Notes that the Critical Habitat/Endangered Species Mitigation Plan includes a field survey of all proposed access roads, etc. that includes an investigation of rare, threatened, and endangered plants. But feels that it is not clear whether the rare plant species populations on the proposed roads sites will be avoided. Questions how this will be monitored and how impacts minimization will be accomplished.
- Notes that the Forest Management Plan element of the CMP states that “where appropriate, replanting the restored temporary access areas using native deer resistant species of shrubs, sub-canopy trees and canopy trees.” Is of the opinion that there is no such thing as “native deer resistant species” and that all such plantings must be fenced to ensure their survival. Believes that mitigation for forest fragmentation cannot occur on existing public land, but must happen on newly purchased lands. Feels that PSE&G’s submittal must state the forest mitigation to impact ratios. Concerned about monitoring and follow-up of any forest restoration. Questions what happens if native seedlings fail and invasive species take over and spread into new areas.
- Maintains that the amended HAD application and the Comprehensive Mitigation Plan do not address impacts on scenic and recreational resources. The comments call for the Highlands Council to require that these be addressed prior to a decision on consistency. Furthermore, in the absence of an adequate impact assessment, the comments declare that the PSE&G transmission line project is inconsistent with the goals of the Highlands Act as they relate to scenic resource protection and recreational values.
- Describes the historic trails systems that cross the Highlands and point out that scenic viewpoints are an important part of the recreational experience in northern New Jersey, and impacts from the doubled height of the proposed new towers will be severe. The comments state that the scenic and recreational impacts will have long-term effects on eco-tourism, agri-tourism, heritage tourism, and public recreation. The Highlands Trail has been identified as one trail which will be affected;

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specifically the property proposed for the Hopatcong switching station is also the location of part of the Trail. The comments indicate that PSE&G was party to the agreement for use of the trail.

- Points out that the DEP Highlands Rules require consideration of impact on public lands that have been designated scenic and recreational, and that activities should be limited to “minimum practicable degradation” to scenic attributes.
- Determined through a deed research that PSE&G has additional parcels under contract besides the one designated for the proposed Hopatcong switching station site. Is of the opinion that these parcels give PSE&G a wider area of choice for placing the switching station while still taking advantage of the local confluence of transmission lines.
- Believes that there may be an error in the underlying parcel data of the proposed Hopatcong switching site and adjacent parcels. States that when the Highlands Trail was originally planned, the subject segment of the route was planned with PSE&G and Weldon Quarry to run on the western Weldon Quarry border, so they would be able to maximize their quarry area. States that perhaps Weldon acquired part of the parcel planned for the proposed switching station, but through deed research, no evidence was found of a recorded transfer. States that it may also be possible that Weldon leased some of the land targeted for the switching station, or that they are simply quarrying off their land. Urges the Highlands Council to investigate this matter as it may pose an issue with respect to the proposed Hopatcong switching station site.
- Notes that the PSE&G submittal states that “because the proposed project continues to be refined with respect to proposed access roads, tower locations and other elements, the various actual plans listed in the Comprehensive Mitigation Plan have not yet been finalized.” Questions that if these plans are not yet finalized – and it appears that an essential and substantial level of detail and accuracy is currently lacking – how can the Council accurately assess the project's consistency with the Highlands RMP, the Highlands Act and the Highlands rules?

Applicant's Comments

- In order to implement the Comprehensive Mitigation Plan (CMP), PSE&G states that it plans to enter into an agreement with the Highlands Council and NJDEP that will provide, among other things: a) process for submission and review by the Council and NJDEP of specific mitigation plans as they are prepared, and before commencement of construction; b) process for posting of a surety bond or other financial instrument in an amount to be agreed upon with staff to secure implementation of the CMP; c) a schedule for payments in two installments of the monetary portion of the mitigation and for the use of these funds for property acquisition and preservation and not for staff salaries or other expenses; and d) such other terms as may be necessary to implement the CMP.
- PSE&G states that the draft staff Consistency Determination indicates that it should obtain a determination from the Council on Affordable Housing whether the project creates an obligation to make a contribution under the state non-residential development fee statute. PSE&G states that the proposed project is exempt from the provisions of that statute as it is classified under Use Group U-Public Utility. As it has done for other similar projects, PSE&G stated that they will provide a Non-Residential Development Fee Certification/Exemption form to the appropriate agencies to verify the exempt status of the project.

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Comments Regarding Consistency Determination

- States that the Consistency Determination should find the project ‘inconsistent’ with Policy 4B5 and Objectives 4B5a and 4B5c. Policy 4B5 requires “that the impact of proposed human development on the scenic resources of the Highlands Region be addressed during local development review and Highlands Project Review and approval.” Comments maintain that the scenic impacts are not being addressed. Objective 4B5a calls for all development applications to identify any scenic resources that are listed on the Highlands Scenic Resources Inventory and may be affected by the proposed development. The comments state that these resources are not identified. Objective 4B5c states that, “Any proposed action that requires federal permits, involves federal grants, or involves other federal actions that may impact the resource values of the Musconetcong National Scenic and Recreational River and the Lower Delaware National Scenic and Recreational River, pursuant to section 10(a) of the National Wild and Scenic Rivers Act, shall require review by the National Park Service, National Wild and Scenic Rivers Program.” The comments maintain that the resource value of the headwaters of the Musconetcong may be impacted and therefore this objective should not be considered “not applicable.”

General Responses and Highlands Council Consistency Determination Edits

The numerous comments received that stated support or opposition for the proposed project were read carefully by Council staff and are summarized above. As the majority of those opinions do not directly relate to the policies and objectives listed in the Consistency Determination template, they are not reflected in the Consistency Determination. As one general response, the Highlands Council will defer to the Board of Public Utilities regarding a determination as to whether this project is needed for the integrity of New Jersey’s energy system. If the Board of Public determines that the project is not needed, then any Highlands Council actions will be considered moot.

A general theme emerges from those comments that express opposition to the proposed project – that there is a lack of information of sufficient detail by which to evaluate the proposed project and that the Comprehensive Mitigation Plan (CMP) lacks details and does not fully address impacts. By way of a general response, the development of all elements of the proposed project and the CMP (including construction and mitigation elements) will be done in coordination with the Highlands Council. Site plans, mitigation plans, and habitat plans will be reviewed by all pertinent agencies (the Highlands Council, NJDEP, Soil Conservation Districts, and US Fish and Wildlife Service) as appropriate and will be made available to the public. Many of the more detailed opposing comments regarding specific components of the CMP will be addressed through this process. The CMP will require professional scientists and engineers to be on-site during construction and to carefully monitor all construction activities to ensure avoidance and minimization of impacts to resources. The applicant will be required to post a performance bond to ensure no net loss of natural resources value and function through the project and implementation of the CMP. In consideration of each of these elements, the proposed project, as amended and viewed as a whole (with minimization of environmental impacts and the development of the Comprehensive Mitigation Plan), is found to be made consistent with the goals and purposes of the Act.

With respect to comments regarding scenic resources, although the amended HAD application does not identify the specific scenic resources by name, all of the scenic resources listed in the original Consistency Determination have been included in the calculations found in Appendix D “Highlands Council Contribution Methodology: Estimating the Area of Potential Impacts on Existing and Potential Public Resources within

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the Highlands Region from the proposed Susquehanna- Roseland 500 kV Transmission Line.” The methodology refers to lands identified by GIS data layers for 1) Highlands Preserved Lands; 2) Special Environmental Zones; 3) Conservation Priority Areas (high and moderate); and 4) Agriculture Priority Areas (high and moderate). The scenic resource lands are included in the Highlands Preserved Lands category.

The funding available for purchase of additional open space and recreation lands is intended to support the continuance and expansion of eco-tourism, agri-tourism, heritage tourism, and public recreation. The Highlands Council will work diligently to identify appropriate lands for acquisition and stewardship. While the amended PSE&G application and the Consistency Determination recognize that some impacts will be unavoidable, the mitigation plan has been devised to mitigate those impacts and support the tourism and recreation goals of the Highlands Act and the Regional Master Plan in areas affected by the project. The Highlands Council will coordinate with PSE&G on the issue of the Highlands Trail.

The Musconetcong National Wild and Scenic River, as identified in the Musconetcong River Management Plan, encompasses 28.5 miles of river covering waters from Allamuchy and Mount Olive Townships to Pohatcong and Holland Townships. The headwaters are not included in the designation and therefore not subject to Objective 4B5c.

Text was added in the “Description of Project” section of the Consistency Determination that indicates that the applicant will enter into an agreement with the Highlands Council that will provide, among other things: a) process for submission and review of specific mitigation plans as they are prepared, and before commencement of construction; b) process for posting of a surety bond or other financial instrument in an amount to be agreed upon with staff to secure implementation of the CMP; c) a schedule for payments in two installments of the monetary portion of the mitigation and for the use of these funds for property acquisition and preservation and not for staff salaries or other expenses; and d) such other terms as may be necessary to implement the CMP.

A sentence was added to the Consistency Determination that the applicant will be required to design the proposed project in accordance with the *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006* (as was recommended by the US Fish Wildlife Service in their March 17, 2008 correspondence to the applicant). The Consistency Determination was changed to reflect the fact that the proposed project is exempt from the provisions of the Council on Affordable Housing since it is classified under Use Group U-Public Utility. A note was added that the applicant will provide a Non-Residential Development Fee Certification/Exemption form to the appropriate agencies to verify the exempt status of the project.