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December 5, 2008

Via E-Mail and Certified Mail/RRR

Ms. Terry Pilawski, Bureau Chief
Bureau of Watershed Management
New Jersey Department of Environmental Protection
P.O. Box 418
401 East State Street
Trenton, New Jersey 08625-0418

Re: Highlands Applicability Determination (HAD) Application for PSE&G's
Proposed Susquehanna-Roseland Expansion Project

Dear Ms. Pilawski:

I am an Attorney and Professional Planner and I am the Municipal Attorney for the Township of Byram, Sussex County. I am writing on behalf of Byram Township to object to the request of PSE&G for an exemption under the Highlands Act for the above proposed project.

The Township of Byram, by letter of its Township Manager dated November 14, 2008, has written to the Department objecting to the proposal of PSE&G. The Manager's letter of objection is attached hereto and incorporated herein by reference and it sets forth various facts which should be considered by the Department in reviewing the HAD application and in determining whether the project is exempt from the Highlands Act.

In my opinion, the project is not exempt from the Highlands Act and is a non-residential development involving a disturbance of more than an acre and an impervious surface of more than one quarter of an acre. This opinion is based upon the plain meaning of the Highlands Act exemptions and in particular N.J.S.A. 13:20-28. The utility exemption upon which PSE&G seeks to rely does not justify a finding of an exemption in this particular case. N.J.S.A. 13:20-28a(11) states that the following activities are exempt:

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

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This is one of only two exemptions that require a finding of consistency with the goals and purposes of the Act. The facts of this extensive construction and disturbance project and the plain meaning of the Act and exemption only support a finding that this project is not consistent with the goals and purposes of the Act. The facts available based upon the plans submitted by PSE&G and the magnitude of the project demonstrate overwhelmingly that the project is not consistent with the goals and purposes of the Highlands Act. Some of these goals and purposes are set forth in N.J.S.A. 13:20-2 including, but are not limited to, the following:

“...The national Highlands Region has been recognized as a landscape of special significance by the United States Forest Service... “and that the New Jersey Highland Region is designated as a special resource area in the State Development and Redevelopment Plan”...”the New Jersey Highlands is an essential source of drinking water, providing clean and plentiful drinking water for one half of the State’s population including communities beyond the New Jersey Highlands...the New Jersey Highlands contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, habitat for fauna and flora, includes many sites of historical significance, and provides abundant recreational opportunities for the citizens of the State.”...

“...The Legislature further finds and declares that in the New Jersey Highlands there is a mountain range running southwest from Hamburg Mountain, Sussex County that separates the eastern and western New Jersey Highlands; that much of the State’s drinking water supplies originate in the eastern New Jersey Highlands; and that the planning for the region and the environmental standards and regulations to protect those water supplies should be developed with regard to the differences in the topography of the Highlands Region and how the topography affects the quality of the water supplies.”

“The Legislature therefore determines... because of the imminent peril that the ongoing rush of development poses to the New Jersey Highlands, immediate, interim standards should be imposed on the date of enactment of this Act on major development in the Preservation Area of the New Jersey Highlands, followed subsequently by adoption of appropriate rules and regulations...and that all such measures should be guided, in heart, mind and spirit, by an abiding and generously given commitment to protecting the incomparable water resources and natural beauty of the New Jersey Highland so as to preserve them intact...” (Emphasis Added)

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The above list of purposes and goals is a short list of the many goals and purposes of the Highlands Act that would be violated by the PSE&G project. The project as proposed through Byram Township is entirely within the Preservation Area of the Highlands Region and should be carefully reviewed by both the New Jersey Department of Environmental Protection (NJDEP) and the Highlands Council prior to any activity. The Highlands Council Regional Master Plan (RMP) is now adopted and PSE&G should comply with the RMP.

For the above reasons, we respectfully request, that the New Jersey Department of Environmental Protection NJDEP deny the request of PSE&G for an exemption for the Susquehanna-Roseland Expansion Project and require PSE&G to file all necessary applications to the NJDEP and Highland Council for review and action on the applications.

Very truly yours,

VOGEL, CHAIT, COLLINS AND SCHNEIDER
A Professional Corporation

THOMAS F. COLLINS JR., ESQ., P.P.
Municipal Attorney for the Township of Byram

TFC/db

cc: Joseph Sabatini, Township Manager
Mayor and Council of Byram Township
Byram Township Land Use Board
Kurt Senesky, Esq.
Chris Hellwig, P.P.
Lou Slaby, Land Use Board Engineer
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COPY

November 14, 2008

NJDEP Division of Watershed Management
Bureau of Watershed Regulation
P.O. Box 418
Trenton, NJ 08625
Attn: Highlands Applicability Determination

Dear Sir:

The Byram Township Environmental Commission submits these comments on the PSE&G "Application for Highlands Applicability and Water Quality Management Consistency Determination" for the Susquehanna-Roseland 500 KV transmission line.

The Township received its copy of this application shortly after September 19, 2008 and submits these comments within the 30-day time period allotted following the publication of the application in the NJDEP Bulletin on November 5.

This project will have serious impacts on the Township of Byram and its residents. The Township submits these comments in the expectation that this project will be very closely and fully examined, including an examination of the data and assumptions used to declare the need for the project and whether these assumptions were or continue to be valid. Presumably the Highlands determination will take into account whether this project is necessary in determining whether it is consistent with the Highlands Act.

This project also seems to contradict Governor Corzine's N.J. energy master plan, which calls for the State to obtain 30% of its power from renewable resources by 2020 and which also emphasizes conservation and efficiency to reduce demand.

In addition to these broader questions, there are several specific issues within this Highlands Applicability application that are of concern to Byram Township:

Errors or missing information about Byram Township:

- In Appendix F, most of the Byram tax maps date from 1961. Byram recently updated its maps as of 2006.
- Appendix A lists "Block and Lot information for Parcels Located Within the Highlands Preservation Area" and includes 57 parcels from Byram Township.

This list submitted to NJDEP is inconsistent with the list of properties submitted to the Byram Township Land Use Board for local applications for development, which have not yet been filed or acted upon.

- In Appendix G, there are no indications as to how Tower #56/4 would be accessed. All other tower locations do indicate access routes.
- There appears to be no information about which of the three types of new structures would be installed at the nine tower sites in Byram Township. The application proposes 38 unipoles and 37 lattice towers within the Highlands region but there appears to be no mention of what types are proposed for Byram, nor a discussion of whether the access road disturbance will be greater for the unipoles, which come in very large sections.

Access roads:

- Access roads will be built to construct the new towers and remove the old. These need to be large enough for equipment to bore foundation holes, to deliver concrete, and for cranes large enough to erect the structures, as well as trucks big enough to bring in the elements that make up the towers. Helicopters may be used in some cases.
- The chart on page III-4 does not define as ‘additional disturbance’ any of the access roads within the PSE&G ROW and defines access roads outside of the ROW as ‘temporary disturbance.’ The chart concludes that only 5.5 total acres of ‘temporary disturbance’ will be required outside of the ROW within the Highlands area.
- Considering the width, grading, and depth of the base required for the heavy equipment using these access roads, these definitions seem illogical.
- Although the ROW currently has been aggressively cleared under the new NJ rules, the proposed access roads would remove all remaining low vegetation as well as considerable topsoil and thus result in much more considerable disturbance than the current clearing.
- Access roads outside of the ROW in areas that are currently mostly forested will result in very substantial and long-lasting disturbance, which will take decades to ameliorate and a very prolonged period to fully repair. To define this as ‘temporary disturbance’ is not credible and appears to be an attempt to circumvent a truthful examination of this issue under the Highlands review.
- Similarly, these access roads are not defined as additional impervious surfaces, based on their proposed construction from “matting, loosely packed gravel aggregates, and/or wooden planks.” Whether or not these construction materials are credible for the heavy equipment using these roads, under the Highlands Act these materials appear to be consistent with or similar to materials that are classified as impervious.
- In upland (forested) areas, these ‘temporary access roads’ are to be excavated to 12” with gravel aggregate over stabilization fabric and to be only 16’ wide.
- In wetland or buffer areas, there is to be no excavation and the roads are to consist of fabric overlain with timber matting or gravel aggregate. Given the often mucky and water-logged nature of soils in wetlands and buffers, this

construction method seems possibly optimistic. Byram has recently had the experience of constructing a bicycle trail across a wetlands and found that many truckloads of rock and gravel were needed to establish a base within these areas for both construction equipment and subsequent trail use. Stabilizing these areas for heavy equipment would probably have required substantial permanent damage to the wetlands.

- Access roads are shown for all towers except the one on Block 335 Lot 2, Tower # 56/4. This is a preserved parcel recently purchased in-fee by the Township using local and State open space funding. This parcel contains mature forest and very steep slopes, with the tower site at the very crest of the parcel on very rugged rocky terrain. There are no existing access roads to this tower site and the PSE&G maps provide no indication of how this might be achieved. An access road from either end of this forested parcel would create extensive damage, ruining the natural features of the parcel that led to its preservation as open space and contravening the purposes of State Green Acres funding program, as well as of Byram Township's open space trust fund. Access from the Andover side of this parcel would be impeded by the existence of homes built since the original 230 KV line was installed.
- While the access roads are proposed for a minimal 16' and the poles or lattice structures call for a maximum of about 90 square feet of new impervious surface for poles and far less for lattice, there seems to be no discussion of how much clearance might be needed in the area of the towers to provide adequate room for the construction activities. Presumably, at each site this would be a substantial area. These acres of disturbance or impervious cover do not seem to be addressed in the application document.

Highlands resources:

- The Highlands Act calls for protecting the "natural, scenic, and other resources" of the Highlands region.
- The PSE&G application fails to address the impact on scenic resources, which will clearly be a major issue throughout the project area but most especially in the Highlands area, including Byram Township.
- The application uses its definition of access roads as 'temporary' impacts to claim only temporary impacts to the contiguous forests of the Highlands and extrapolates from this its claim of negligible scenic impacts.
- Several hundred Byram homeowners will be directly impacted by the distinctly unscenic qualities of towers that will rise more than double the height of existing towers and of the persisting scars to the landscape generated by the 'temporary access roads.' Many more residents of the Township and the region will be impacted by having a view of these much higher towers and by experiencing that view from numerous locations as they travel around the area.
- Setting aside the impacts of health issues, this scenic damage threatens to adversely affect scores of property values within Byram Township.
- In concert with its claim of only temporary impacts to the contiguous forests of the Highlands, the PSE&G application also claims that his project will

impose no impacts on habitats or listed species. However, it seems clear that the damage caused by access roads outside of the ROW and construction activities by definition will disrupt these contiguous forests and thus impact habitats.

- While the application does state that PSE&G's "minimization measures" will include "positioning the path to avoid potentially suitable habitat for species of concern," there are no details about where this might be done and what species might be involved. On pages IV-6 & 7, the application details its investigations of habitats and species and concludes there will be no impact on habitats for listed species.
- The US Dept. of Interior, Fish and Wildlife does see a possible threat to the Indiana bat and/or bog turtle and requires that PSE&G work with them to avoid adverse impacts.
- PSE&G's proposal to mitigate the loss of forested areas by replacement with "forest of equal ecological value and functions" also contains no details of where this replacement forest might be located and how that will mitigate the damage at actual construction/access road sites in Byram. The same is true of the PSE&G wetlands mitigation proposal, although it appears that no wetlands as mapped by PSE&G in Byram would be disturbed.
- The application also states that "construction activities are not expected to permanently impact any steep slope areas," which are defined in the Highlands Act as slopes greater than 20%. Any access roads on Block 335 Lot 2 in Byram (the current open space parcel formerly known as 'Owners Maintenance') will disturb slopes in excess of 20%. Large areas of this parcel are characterized by slopes of in excess of 25% (with most of the rest of the parcel characterized by slopes of 15-25%); and the 25%+ slopes form a more or less continuous barrier for any proposed access from the roads that border this parcel (Whippoorwill Lane and Andover-Mohawk Road). There are also some slope features that would be disturbed if the tower site were to be accessed from the developed neighborhoods in Andover Township.

The Byram Township Environmental Commission looks forward to obtaining a copy of the NJDEP review of this Highlands Applicability application. If further information is needed regarding Byram's comments, please contact Environmental Commission Secretary Margaret McGarrity at 973-347-2500 x. 138.

Very truly yours,



Joseph Sabatini
Byram Township Manager

Cc: George Sous, PSE&G Regional Public Affairs Manager