



NEW JERSEY HIGHLANDS COALITION

508 Main St. • Boonton, NJ 07005 • www.njhighlandscoalition.org

January 28, 2009

Ms. Christine M. Ross, Senior Resource Management Specialist
New Jersey Highlands Council
100 North Rd.
Chester, NJ 07930

RE: PSE&G Susquehanna-Roseland Expansion Project RMP Consistency Review

Dear Ms. Ross:

In addition to the comments submitted to the Highlands Council on December 18, 2009 (attached - appendix 2) and the comments submitted to the NJDEP on the applicant's HAD application (attached - appendix 3), the New Jersey Highlands Coalition submits the following comments on the Regional Master Plan (RMP) consistency review. These specific comments are attached as appendix 1.

Incompleteness:

To begin, the New Jersey Highlands Coalition expresses serious concerns for the project as it is currently presented. The project details, engineering and site plans are conspicuously incomplete. For example, the applicant has provided Geographic Information System (GIS) files of the route, access roads and switching stations. Yet, in the HAD application and in documents and testimony provided to the BPU, the applicant has not provided engineering plans for access roads that calculate disturbances based on width and additional clearing beyond the road surface. The applicant has also not submitted stormwater controls or any provisions to demonstrate that impacts will be properly mitigated, how environmental conditions will be avoided, and if necessary, restored. For example, top soil will need to be carefully removed, stored and returned to the access road locations to prevent compaction which can greatly inhibit rehabilitation of a site. It is not stated affirmatively that the applicant will be carefully removing topsoil, storing that soil during the 30 months construction period and returning the soil to the access road areas. The applicant has also not specified what species of plants will be re-introduced following access road disturbance and how those species will be cared for and monitored post-construction. Additionally, the applicant refers to access roads as temporary disturbances, yet on page 10 of the Verified Petition of the BPU filings, the applicant admits that the construction process will be 30 months long. This is inconsistent with the definition of temporary provided in the Freshwater Wetland Protection Act rules, N.J.A.C. 7:7A, which defines temporary as a maximum of a 6 month disturbance. The applicant has either erred, or the applicant has intentionally misled public agencies on the full extent and nature of the real impacts this project will have on our natural environment.

Failure to Minimize Impacts Where Appropriate:

The applicant has not demonstrated a willingness to minimize impacts where possible. There are numerous opportunities to avoid impacts to critically important environmental areas and features, as well as opportunities to minimize impacts, where unavoidable. For example, in the testimony provided for the BPU proceedings by Mr. Rich Jacober of Black & Veatch on the design and engineering of the switching stations, it is stated on page 6 that "The Jefferson 500kV switching station is proposed as an open-air switching station design on a section of property that is large enough to accommodate the

specified design. Environmental and visual impacts on the proposed Jefferson switching station site are minimal and do not warrant the additional cost associated with the implementation of GIS technology.” The Jefferson Switching Station site contains substantial critical environmental features that will be directly impacted by 20.4 acres of disturbance and impervious surface. The applicant has made no attempt to minimize impacts where opportunities are clearly available (using GIS technology minimizes the site footprint and therefore the extent of disturbance). The applicant has also not presented plans to mitigate impacts on the site, especially direct impacts to prime groundwater recharge areas, critical in protecting and maintaining drinking water supplies.

Consistency Review Concerns and Comments:

Many findings of consistency should be changed to inconsistent. The applicant has not submitted any stormwater plans to the NJDEP for their review; therefore the project is currently inconsistent with the Stormwater Management Rules, Flood Hazard Area Rules and Freshwater Wetland Rules. Finding the project consistent with the applicable goals, policies and objectives contradicts previous Consistency Determinations, such as the Hamptons at Pohatcong; goals, policies and objectives were found to be consistent because the applicant had already submitted and had an approved NJDEP stormwater plan. The Highlands Council cannot reach a finding of consistency on a non-existent Stormwater Management Plan. Until such time as PSE&G has a Council approved stormwater plan for the proposed project and the Jefferson Switching Station, the project must be found inconsistent with the following goals, policies and objectives: Objective 1D4c, Objective 1D5f, Objective 1L5a, Objective 2D4g, Policy 2G2, Objective 2G3b, Policy 2G5a, Objective 2G5a, Objective 2G5b, Objective 2H4a and Objective 2H5c.

It will set a bad precedent with far ranging consequences to find a project consistent when it lacks the details required to make a determination. . While the applicant may have the resources to engineer the project to be consistent with goals, policies and objectives of the Regional Master Plan, until such time as those plans are presented and approved, the project must be found inconsistent. A Consistency Determination cannot be made on acts of faith or assumptions and all applicants must be provided the same degree of deference. The Council can only rule on information it is provided. In the case of an incomplete application, the applicant, not the Council should assume the risk. What happens if the Council’s assumptions, based on the applicant’s assurances, are unmet? In this case, the finding of consistency undermines the local development review process because the Highlands Council has already determined that the project is consistent with local development review requirements, when the applicant has not submitted stormwater plans consistent with a Regional Stormwater Management Plan, to the appropriate municipalities, such as Jefferson Township, where local development review requires submission of stormwater plans and maintenance plans. In all areas where the applicant has not yet engineered aspects of the project, the finding of consistent must be changes to inconsistent.

Pro Forma HAD Application:

The applicant has stated at numerous public workshops that the locations of access roads are subject to change. Precedent dictates that if PSE&G were to make any changes to their site plans, access roads and/or the extent of nature of the proposed disturbance, the applicant would be required to reapply for a HAD through the NJDEP and therefore seek another consistency determination from the Highlands Council. In its October 1, 2007 decision on the DOT project to widen Route 206 in Byram Township, the NJDEP ruled, “that the exemption granted to the DOT shall be considered null and void if changes are made to the project that would increase the scope or area disturbed by the project, or result in a change in the use or change the method of wastewater treatment; or if the information

submitted to obtain this determination from the Department is later determined to be inaccurate.” Therefore, in light of this precedent, any changes or alterations to the exact locations of access roads or the scale and scope of proposed disturbances would invalidate permits, exemptions and/or waivers granted under the original site plans submitted for the project. The Consistency Determination should reflect that the applicant’s submission is incomplete and subject to change, therefore any changes or modifications to the project in any shape or form will invalidate the consistency review conducted by the Highlands Council, thereby invalidating any NJDEP permits, exemptions and/or waivers.

The applicant has stated that they are seeking input from the Highlands Council so that they can design mitigation projects to offset impacts, yet opportunities to minimize impacts have been identified by the applicant and as of yet, not pursued (e.g., site design of the Jefferson Switching Station).

Conclusion:

Since the applicant has not submitted numerous required materials to be found consistent with the goals, policies and objectives of the RMP, it is prudent to find the project inconsistent in these areas and these changes must be made. It would be precedent setting to find a project consistent in areas where the required plans have not been submitted or reviewed. The applicant can submit a complete application consistent with all relevant New Jersey Administrative Codes at anytime in the future. Until such time as a consistent and complete HAD application is filed, it must be concluded that the applicant is seeking a Highlands Act exemption and NJDEP permits for a project that does not meet the requirements of many state statutes, has no mitigation plans and has not taken affirmative steps to minimize profound environmental impacts where opportunities are available in the most sensitive area of the Highlands Region (e.g., Jefferson Switching Station).

Thank you for the opportunity to provide comments on this Consistency Determination and we look forward to a final Consistency Determination that accurately reflects the incomplete and inadequate nature of the applicant’s submission.

Sincerely,

Julia M. Somers
Executive Director

CC: Ms. Eileen Swan, Executive Director, New Jersey Highlands Council
CC: Mr. Tom Borden, Chief Counsel, New Jersey Highlands Council
CC: Mr. Mark Mauriello, Commissioner, NJDEP
CC: Mr. Larry Baier, Director, Watershed Management, NJDEP
CC: Ms. Terry Pilawski, Chief, Bureau of Watershed Regulation, NJDEP
CC: Stop the Lines, Dave Slaperud and Tom Hill
CC: Scott Olson, Byram Township Councilmember