March 15, 2010

Re: Freshwater Wetlands Individual Permit Application for the Susquehanna-Roseland Transmission Line Upgrade by Public Service Electric and Gas

Dear Mr. Cattuna,

On February 24, 2010, the DEP noticed that PSE&G’s Freshwater Wetlands Individual Permit application is now administratively complete as the applicant received a Highlands Applicability Determination from the Bureau of Watershed Management. In resubmitting this application, PSE&G noted several changes from the original document submitted in fall 2009. Despite revisions that strived to minimize impacts to wetlands, the project, as currently described, continues to violate Freshwater Wetlands Rules and underestimates the scope of impacts that will result from construction and permanent land use changes along the ROW, access roads, and substations.

The Freshwater Wetlands Rules clearly state that an individual freshwater wetlands permit will not be issued if there is a viable alternative to the project:

N.J.A.C. 7:7A-7.2(b)-The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:
1. Has no practicable alternative which would meet the requirements at (b)i and ii below:

   i. The alternative would have a less adverse impact on the aquatic ecosystem or would not involve a freshwater wetland or State open water; and

   ii. The alternative would not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal;

Alternatives pursued by the applicant continue to be limited in scope and emphasize convenience for the corporation rather than environmental considerations or public health and safety. The applicant only examined four alternatives in its analysis, and none of these studied alternative generation, demand-side management, or energy efficiency and conservation programs. Such alternatives are viable and in line with the New Jersey Energy Master Plan that calls for a 20% reduction in energy consumption and a decrease in peak electricity demand by 5,700 MW by 2020. The plan clearly states that New Jersey’s “2050 greenhouse gas mandates point towards the need to produce carbon-free electricity at a lower price per mega-watt hour than fossil-fueled plants, including greater reliance on renewable energy technologies” (80). Increasing the capability to import coal-fired electricity does not meet these goals. The alternatives of demand-side management and use of localized renewable energy sources (alternative generation) helps meet state clean energy goals while displacing the need for the transmission line upgrade.

The application dismisses the “no-build” alternative as the applicant has been instructed by PJM Interconnection that this line needs to be built. However this analysis is based on 2006 data. The applicant should be required to submit an updated sensitivity analysis using the most recent RTEP data, including the most recent demand-side management auction results and decreased energy demand, to demonstrate that the “no-build” alternative cannot effectively obviate the need for this line.

It should also be noted that PJM is the regional transmission operator (RTO). As such it manages the transmission grid in its region and the corresponding energy markets.
Therefore, if PJM predicts problems or reliability violations, the only solutions it will propose involve building new power lines.

The National Park Service is still considering the “no action” alternative (denying the permits) in their evaluation of the line, and the DEP should not rely solely on the data provided by PJM in favor of the line in deciding if this alternative is viable. The “no-build” alternative would have the least environmental impact and satisfy all provisions of 7:7A-7.2(b) and should be seriously pursued before this permit is issued. At the very least the applicant must submit more information as to why this is “not an acceptable option” than one paragraph in Section 9 of the application, the alternatives analysis.

PJM has also admitted that the company did not conduct any studies to determine whether individual circuits could be upgraded to obviate the need for the line. The construction of a series of new busses and conductors should also be studied as an alternative to the construction of the transmission line. The applicant has not explored these strategies in its alternatives analysis. Considering the limited scope of the alternatives analysis provided by the applicant, PSE&G has not met its burden of proof in regards to this project and the application should be denied.

The alternatives analysis also discusses engineering alternatives along the proposed route. The company states that wetlands cannot be altogether avoided because a shift of one tower structure would result in other towers being moved into wetland areas. The tower locations were not initially selected with environmental considerations as a top priority. The Alternatives Analysis states, “For each proposed structure location, concept site plans and profiles were developed in order to establish representative structure orientation, configuration, and spacing; wire clearance from ground and obstructions; and temporary access roads including on ROW and off ROW access roads. Once each structure location was set based on engineering design criteria, each structure was reviewed to determine if the structure could be shifted out of existing wetlands and wetland transition areas” (12). Avoiding wetlands and other environmentally sensitive areas altogether was not the basis for design and structure location. An analysis needs to be conducted to see if changing the alignment all together in consideration of such
environmentally sensitive features or if adding more towers along the ROW would allow for the avoidance of these areas. The applicant states that it has done such alternative concept plans for tower locations and these find the selected locations are the best for the project. The alternative concept plans must be provided in full to the Department for detailed analysis rather than a summary provided by the applicant that values convenience over environmental protection in its study. As stated in the New Jersey Highlands Coalition’s previous comments on Flood Hazard Areas, the applicant plans to site towers in fragile wetland ecosystems, “despite the applicant’s claims that the taller towers required for the upgrade to a 500 kV line will need fewer towers and offer opportunities to locate new towers outside of environmentally sensitive areas. In consideration of the applicant’s claim of increased flexibility in tower location provided by the increased tower height, towers should always be located in low impact areas, avoiding areas that provide water quality benefits and areas that are susceptible to erosion (in this case wetland areas) except when it can be shown this cannot be avoided. Avoidance should not be deemed impossible if it requires the relocation of several towers in the line as long as those new locations are not in environmentally sensitive areas” (3-4).

Also access roads should not be permitted through any wetlands areas as the applicant has already stated that helicopters can be used for construction in environmentally sensitive areas. “Access via helicopter was also analyzed for locations within areas of steep slopes and/or wetlands that prohibited ground access. These analyses are still ongoing and may be incorporated into the proposed Project construction approach at a later date” (Alternatives Analysis, 15). Access by helicopter is a viable alternative to expanding hiking trails for construction access which would have devastating effects on wildlife habitat, soil compaction, groundwater recharge capabilities, and increase stormwater runoff. The use of helicopters would obviate the need for marsh matting and restoration of the wetlands soil profile after construction activities. Access road activities have a practicable alternative that would avoid adverse impact on wetlands ecosystems, as required under N.J.A.C. 7:7A-7.2(b), in the use of helicopters and therefore access roads should not be permitted to cross through wetland areas. This application should be
denied until the company provides more information on how they will utilize this alternative to completely avoid wetlands on access roads as required under the Freshwater Wetlands Rules.

The Freshwater Wetlands Rules provide no definition for “excavation” but does define dredging as “removal of wetlands or State open water soils or sediments through use of mechanical, hydraulic, or pneumatic tools or other means.” (emphasis added) at 7:7A-1.4. The applicant states they will not be “dredging” in Section 20 of the application but goes on to describe the process of tower foundation construction: “However, in a few locations, where wetlands could not be avoided due to steep slopes or other environmental or design constraints, the construction of the proposed monopoles or lattice structures will require the excavation of soil for the construction of foundations for supporting the new transmission structures. In addition, excavations for monopoles or lattice towers will occur within transition areas for similar design constrained reasons.

Mechanical or hydraulic construction equipment will be used to excavate the foundations” (Section 20, emphasis added). The activities described by the applicant meet the definition of dredging and therefore the applicant must meet the requirements of the Freshwater Wetlands Rules for Individual Permits at N.J.A.C. 7:7A-7.2(b)13 for dredge material or apply for appropriate waivers with justification. Section 20 as provided by the applicant does not satisfy this provision currently as dredge material is ignored and no information is provided on the fill material including what will be used and where it will come from except “All fill material for the construction of the electric transmission towers will consist of clean, suitable material free of any contaminants” (Section 20). No facts or information is provided to substantiate this statement and therefore the application continues to not comply with N.J.A.C. 7:7A-7.2(b)13.

The project as proposed does not comply with the requirements for a Freshwater Wetlands Individual Permit as multiple provisions under N.J.A.C. 7A:7.2 have not been met in addition to the lack of alternatives studied. Section 11 of the application details these requirements and how the applicant believes the provisions have been met, however there are major flaws, lack of information and scope, and the applicant often suggests
mitigation will bring the application into compliance with N.J.A.C. 7A:7.2. However the Freshwater Wetlands Rules clearly state at N.J.A.C. 7A:7.1(b): The Department shall not consider a mitigation proposal in determining whether an individual permit will be issued for a project. The applicant often cites how the Comprehensive Mitigation Plan they propose will bring this project in line with the requirements of the rules but the Department must evaluate this project and determine if it is consistent with the provisions of N.J.A.C. 7A:7.2 without consideration of the CMP.

N.J.A.C. 7:7A-7.2(b)2 requires that the project: Will result in minimum feasible alteration or impairment of the aquatic ecosystem including existing contours, vegetation, fish and wildlife resources, and aquatic circulation of the freshwater wetland and hydrologic patterns of the HUC 11 in which the activity is located.

As detailed previously in these comments, the applicant has not taken steps to fully minimize adverse impacts to critical wildlife, vegetation, and water resources. There are multiple towers that continue to be located in wetland areas, where fill will be required, and the department only has a “summary” of why these towers must be placed there instead of the detailed analyses conducted by the company. That information must be made available. Again the clearing of access roads and expansion of the ROW has not been minimized with the use of helicopters in sensitive areas. Vegetation removal in these areas will result in increased erosion and sedimentation, edge effects on core forests, and destruction of wildlife habitat. Circulation of water within the freshwater wetland will suffer with increased sedimentation along with fish resources as oxygen availability in the water will be severely reduced. Marsh matting along access roads and in the ROW will disrupt hydrologic patterns. Mitigation cannot be considered in consistency with this provision.

The ROW on which this project will be constructed is home to habitat for a number of threatened, endangered, and rare species. The project traverses four Natural Heritage Priority Sites, the Delaware Water Gap National Recreation Area, and the Weldon Brook, Rockaway River, and Highlands Greenway Wildlife Management Areas. N.J.A.C. 7:7A-7.2(b)3 stipulates the project: Will not destroy, jeopardize or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the
continued existence of a local population of a threatened or endangered species, as defined at N.J.A.C. 7:7A-1.4.

This project proposes a significant amount of vegetative clearing that will not be temporary, but rather long term. Impacts to species habitat extend beyond the ROW and access roads as clearing will have impacts on core forests and allow for edge species and invasive species infestation. The company will be required by NERC standards to maintain the ROW and are authorized to use herbicides in these processes that could potentially devastate threatened and endangered species directly or through bioaccumulation. ROW maintenance activities additionally include the removal of trees and other vegetation which means habitat loss and sedimentation impacts will be permanent.

The Department must carefully evaluate the data provided by the applicant on these species to ensure that all species identified using the Landscape Project have been addressed and that the applicant and field inspections considered habitat, not just the presence or absence of individuals, in its determination. Habitat must not be overlooked in this process.

This project will have permanent, long-term impacts to threatened, endangered, and rare species habitat and individuals. As mitigation cannot be considered for these impacts, this project does not meet the standards of N.J.A.C. 7:7A-7.2(b)3.

N.J.A.C. 7:7A-7.2(b)5 requires that the project: Will not cause or contribute to a violation of any applicable State water quality standard. The project violates water quality standards by contributing to sedimentation of waterways and negatively impacting groundwater recharge capabilities. Construction activities involving heavy machinery will result in soil compaction that will not allow surface water to percolate into groundwater stores. Vegetation removal will increase erosion and cause sedimentation of waterways. Herbicides sprayed along the ROW for maintenance will have serious impacts on water quality especially as the vegetation removal will increase
runoff. Again this project does not meet this requirement and mitigation cannot be considered.

Freshwater Wetlands Rules protect historical properties under provision N.J.A.C. 7:7A-7.2(b)9: *Will not adversely affect a property which is listed or is eligible for listing on the New Jersey or National Register of Historic Places unless the applicant demonstrates to the Department that the proposed activity avoids or minimizes impacts to the maximum extent practicable or the Department determines that any impact to the affected property would not impact the property’s ability to continue to meet the criteria for listing at N.J.A.C. 7:4-2.3 or otherwise negatively impact the integrity of the property or the characteristics of the property that led to the determination of listing or eligibility.*

The State Historic Preservation Office has not yet made a determination on this project in its Review of Section 106 Impacts. Fulfillment of this criterion should be based on the State Historic Preservation Office’s determination and this permit should not be issued until guidance is provided by that Office.

Similarly, the Freshwater Wetlands Rules require that the project not violate the Flood Hazard Area Control Act or its rules under N.J.A.C. 7:7A-7.2(b)10: *Will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or implementing rules at N.J.A.C. 7:13.* The New Jersey Highlands Coalition has provided extensive comments on PSE&G’s application for a Flood Hazard Area Permit and how the project as proposed does not meet the rules at N.J.A.C. 7:13. This requirement for a Freshwater Wetlands Individual Permit cannot be satisfied until the Department issues a Flood Hazard Area Permit for the project and any decision on this permit should be held until that time.

To receive an Individual Permit the project must be in the public interest as stated at N.J.A.C. 7:7A-7.2(b)12:

*Is in the public interest, as determined by the Department in consideration of the following:*
The public interest in preservation of natural resources and the interest of
the property owners in reasonable economic development. In determining
whether a proposed activity is in the public interest the Department shall
consider, as one source of guidance, the goals, strategies, policy
objectives and policies of the New Jersey Development and
Redevelopment Plan, adopted and/or readopted by the State Planning
Commission pursuant to the New Jersey State Planning Act, N.J.A.A.
52:18A-196 et seq., and the State Planning Act rules, N.J.A.C. 17:32

The relative extent of the public and private need for the proposed
regulated activity.

Where there are unresolved conflicts as to resource use, the practicability
of using reasonable alternative locations and methods, to accomplish the
purpose of the proposed regulated activity.

The extent and permanence of the beneficial or detrimental effects which
the proposed regulated activity may have on the public and private uses
for which the property is suited.

The quality and resource value classification pursuant to N.J.A.C. 7:7A-
2.5 of the wetland which may be affected and the amount of the freshwater
wetlands to be disturbed.

The economic value, both public and private, of the proposed regulated
activity to the general area.

The functions and values provided by the freshwater wetlands and
probable individual and cumulative impacts of the regulated activity on
public health and fish and wildlife.

This project does not fulfill several provisions of this requirement and is not in the public
interest, but rather for corporate gain at a cost to rate payers and the water and natural
resources of Northern New Jersey.

N.J.A.C. 7:7A-7.2(b)12.i requires the project is in the public interest in preservation of
natural resources. This project in no way meets that provision, instead devastating and
destroying myriad critical natural resources. The provision also requires this project be in
"the interest of the property owners," however many local property owners have come
out strongly against this project, even forming a grassroots organization to combat the
project. Local landowners have expressed serious concerns including property damage,
destruction of localized natural resources, and safety. These concerns have been
expressed as comments to the DEP, outcry at public meetings, and through the media.
Property owners along the ROW do not want this project that is solely based on PSE&G
earning profits by exporting energy to New York City.
Under this rule the Department must also consult the New Jersey Development and Redevelopment Plan. Within Section 11 of the permit application, the applicant selected policies and objectives from that plan that they believed support the need for this project. However, many of these policies support conservation, local generation, and renewable energy over the importation of coal-fired energy and the pollution that expansion of such an energy source will bring to New Jersey. For example, the applicant cited:

*Ensure adequate energy resources through conservation, facility modernization, renewable energy and cogeneration; to continue economic growth while protecting the environment; and to modify energy consumption patterns to capitalize on renewable, domestic energy supplies rather than virgin extraction and imports.*

This project does not meet this goal of the New Jersey Development and Redevelopment Plan as this project will import the dirty energy that the Plan advises against from Pennsylvania. The goal focuses on making New Jersey a leader in energy conservation, local generation, and renewable energy generation all of which this expansion project would thwart. By increasing coal-fired energy importation this project impedes the work of the Board of Public Utility’s Clean Energy Program, demand side management, and conservation efforts. Energy demand in New Jersey has been decreasing through the implementation of such programs and PSE&G and PJM are using outdated 2006 data to justify this project.

At N.J.A.C. 7:7A-7.2(b)12.iii again the importance of alternatives is stressed. There are reasonable alternative methods that would obviate the need for the line such as demand side management programs, local renewable energy generation, and conservation programs. The applicant should be required to provide more information on how existing and future programs in New Jersey, some of which their company administers such as a $46 million dollar energy efficiency program, will affect energy use long term and how the implementation of such programs would affect the need for the expansion project. In the Section 9 Alternatives Analysis PSE&G provides no justification for the destruction of the State’s natural resources other than PJM says it needs to be done. This provision of the Freshwater Wetlands Rules requires them to submit more information on why
alternatives to the project, including a no build alternative, cannot be pursued other than one company projects a need for this expansion, as sensitive wetlands and resources are at stake.

Effects to public land along the ROW must be considered as part of the public interest under N.J.A.C. 7:7A-7.2(b)12.iv. This project will cross federal land, state parks, Natural Heritage Priority Sites, Wildlife Management Acres, and preserved open space that has been purchased through the State’s Green Acres program using tax dollars. In some of these areas, such as Mahlon Dickerson, the proposed access roads are really hiking trails, utilized by the public, that will be widened, graded, and traveled by construction vehicles emitting dangerous diesel fumes. The applicant is applying for Green Acres diversions for a number of publicly owned properties that wherein this project will destroy those preserved resources. These are permanent detrimental effects generated by the proposed activity that do not serve the public interest.

Besides these public lands that would devastated for an unnecessary project, private landowners along the ROW are concerned about adverse impacts from this project and have voiced those opinions in comments to the Department, at public hearings, and through the participation as Citizen Interveners at the proceedings before the BPU. In these proceedings the Citizen Interveners provided testimony on how this project and constructing 200 foot tall towers will impact their ability to secure FHA mortgages and how property values will decline. This project is not in the interest of families adjacent to and along the ROW through these localized impacts.

The Department must consider the economic value in the public interest of the project under N.J.A.C. 7:7A-7.2(b)12.vi. The Rate Counsel, a Division of the Public Advocate Office, expressed serious concerns over this project as an Intervening Party in the BPU proceedings. This project will increase the cost of electricity for New Jersey rate payers to cover construction expenses. PSE&G has been able to provide no information on exactly how much of the cost of this line will be borne by the ratepayers.
The last point to consider in determining if this project is in the public interest is the functions, values, and ecosystem services provided by the freshwater wetlands in the project area and what direct, cumulative, and secondary impacts the project will have on those ecosystems and wildlife and public safety under N.J.A.C. 7:7A-7.2(b)12.vii.

The wetlands that will be impacted by this project are of an exception resource value. These ecosystems are critical in the filtration and conservation of water, especially in the Highlands region, flood control, and providing habitat to a variety of flora and fauna. Wetlands are essential in maintaining biogeochemical cycles such as the carbon and nitrogen cycles. A 1997 study published in *Nature* found that one wetland acre is seven times more valuable than an acre of tropical forest in ecosystem services. This project will result in long term impacts including sedimentation, changes to natural water courses, loss of vegetative cover, soil compaction and loss of groundwater recharge capacity, and fill of wetlands that will adversely affect the ability of wetlands to provide these services. As the Highlands region provides drinking water to 5.4 million residents and the state’s key economic industries, the ecosystem benefit of water filtration must be heavily weighed in the public interest. Wetlands provide this service free of charge and if this resource was lost tax payers would be left to foot the bill for expensive water treatment facilities. Projects such as the one proposed in this application are not in the public interest when they endanger the water supply used by 64% of the state through the destruction of wetlands.

This project presents public health impacts as well. As demonstrated at the scoping hearings, PSE&G’s settlement with the Fredon School District, and the participation of the Montville Board of Education in the BPU proceedings, the public is very concerned about the risks of electro-magnetic fields (EMF). Risks to public health that will result from the upgrade of the power line as more energy moves through it must be examined to determine if this project is truly in the public interest.

Further the Freshwater Wetlands Rules require that this project is consistent with the Stormwater Management rules at N.J.A.C. 7:8 to receive a permit under N.J.A.C. 7:7A-7.2(b)15. The applicant submitted a Stormwater Management Review component as part
of their Flood Hazard Area Permit and has requested waivers from the Stormwater Management Rules. As stated above the New Jersey Highlands Coalition has provided extensive comments on that permit application and feels that the requirements of N.J.A.C. 7:8 were not met. Again this provision cannot be satisfied until the Department issues the Flood Hazard Area Permit and makes a ruling on the waiver requests asked for therein. CMP measures related to stormwater management can not be used in the Department's review for compliance for this component of the application. Please delay issuing this permit until that time.

The application as presented did not the requirements under N.J.A.C. 7:7A-7.4 for a non-water dependent activity or N.J.A.C. 7:7A-7.5 for a non-water dependent activity in an exceptional resource value wetlands. N.J.A.C. 7:7A-7.4(c)2 requires: *That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed.* Again it is critical that the Department have access to the actual line configuration analyses conducted by the applicant rather than the summary provided by the applicant to determine if a line configuration that completely avoids wetland areas cannot be utilized.

We urge the Department to remember its obligation under N.J.A.C. 7:7A-7.4(b) that “There shall be a rebuttable presumption that there is a practicable alternative to a non water-dependent activity in a freshwater wetland or in a special aquatic site, which alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem”. The Alternatives Analysis provided by the applicant is lacking in scope and depth of examination. This permit should not be granted until the applicant provides more information on why there is not a viable alternative that completely avoids wetlands along the ROW and why selected access roads and switching stations cannot be moved to avoid these sensitive areas other than convenience for the applicant.

The Freshwater Wetlands Rules for non water-dependent activities in an exceptional resource value wetlands at N.J.A.C. 7:7A-7.5 require that the applicant demonstrate a compelling public need or “that denial of the permit would impose an extraordinary
hardship”. The comments provided above argue that this project should not be considered a compelling public need or in the interest of the public as established by the Freshwater Wetlands Rules. Again the need for this project is based on outdated data from 2006 provided by one company, PJM Interconnection, and is based on corporate greed. The rules require that the applicant demonstrate “the need cannot be met by essentially similar projects in the region” and this would include an analysis of the most recent data on New Jersey’s energy use, demand side management programs, renewable energy generation, and energy efficiency and conservation measures.

The applicant has also not demonstrated that denial of the permit would constitute a extraordinary hardship, especially as analyses have been done to reconfigure the towers along the ROW, helicopters can be used instead of access roads to avoid wetlands, and alternate routes A and C have been proposed that could potentially allow for a tower configuration that completely avoids wetlands. All alternatives must be fully exhausted before denial of this permit would be deemed a hardship and the applicant permitted to destroy exceptional resource value wetlands, devastating the Highlands region’s ability to provide clean, plentiful drinking water to 64% of the state.

The DEP should be focused on the environmental consequences of the project and make a decision on this permit based on the environmental destruction it will cause, much of it long-term or permanent, rather than deferring to the BPU’s determination of need. The BPU solely determined that PSE&G did not have to go to local planning boards, but it in no way divested DEP of its obligations or considered environmental factors in its determination. PJM cannot penalize PSE&G for not constructing the line if New Jersey regulators do not approve any portion of the project. The DEP needs to make a decision based on the fact that this application does not meet the requirements of the Freshwater Wetlands Rules and not allow such ill-advised, environmentally destructive projects into a state that has led the nation in clean energy.

In addition, the New Jersey Highlands Coalition has attached the scoping comments submitted by Julia LeMense, Executive Director of the Eastern Environmental Law
Clinic, on behalf of our organization to the National Park Service to be considered in their Environmental Impact Statement on this project. Ms. LeMense’s comments further demonstrate the flawed process that led PSE&G and PJM to propose this transmission expansion project, alternatives that can obviate the need for this project, and expound how this project is not in the interest of the public.

The Susquehanna-Roseland Transmission Line project proposes to destroy wetlands in one of the most sensitive regions of the state, the Highlands. This project has myriad adverse impacts on wetland ecosystems and their services, open spaces preserved using Green Acres funding, New Jersey ratepayers, and property owners along the ROW. This project is not in the public interest and a variety of alternatives exist including local generation, demand side management, and energy conservation. Please deny this application for a project that is based on corporate greed, not the best interests of New Jersey residents or the sensitive environment of this state.

Sincerely,

Julia Somers, Executive Director