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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Piedmont Natural Gas Company, Inc.,.....Appellant/Respondent,

v.

Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J. P. Terry, David Brayvelle Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearlie Mae Terry, Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peaks, Albert Anderson, Paul Terry, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, Eric Rogers, Tonya S. Turner, LaTasha D. Terry, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them.....Landowners,

and

The United States of America, acting by and through its agency, the Internal Revenue Service, The United States of America, acting by and through its agency the United States Department of Justice, The South Carolina Department of Revenue, The South Carolina Department of Mental Health, The State of South Carolina, Bullhead Investments, LLC, Arrow Financial Services, LLC, Sharonview Federal Credit Union, Discover Bank, Zachery Arnold, GE Commercial Finance Business Property Corporation, Midland Funding, LLC, and Greenville County.....Other Condemnees,

and

John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 0531010102100 and 0531010102101.....Unknown Claimants,

Of whom Ethel Allen; Shaynise Alston; Harold Anderson; Tommy Anderson; Bridgette Smith Blassingame; Sharai Smith Brock; Carmella Cottom; Alfred Cox; Anthony Cox; Mary Ann Davis; William G. Dawkins; Abigail Dodd; Linda Evans; Michael Evans; Thomas Evans; Chavonte Gilliam; Cindy Gilliam; Derrick Gilliam; Donald E. Gilliam, Jr.; John L. Gilliam; Lakisha Gilliam; Latonya Gilliam; Leunette Gilliam; Mattie M. Gilliam; Nina Gilliam; Raymond T. Gilliam; Rodney Gilliam; Shakima Gilliam; Warren Gilliam; Desiree Golden; Gloria Gore; Lenora Holley; Kasandra Sheppard Jenkins; Terrance Leslie, Sr.; Sandra McDowell; Derrick McGee, Jr.; Brenda Moulhem; Alma Rene Smith Murry; Charlene Peake; Leslie Gilliam Peter; Angela Reid; Orangelee Sheppard; Vernon Lee Sheppard; Charles Terry Sholer; Calvin Smith; Eric Smith; Fred Smith, Jr.; Gene A. Smith; James R. Smith; Joyce A. Smith; Loree Smith; Martha Miller Smith; Patrick Smith; Paul Smith; Reginald Lamont Smith; Tara Smith; Karen Regenia Spates; Rosalyn Annette Steven; Betty Jo Terry; Donald E. Terry; Deloris I. Terry; Gracie Terry; Jamie Terry; Keith Terry; Kelvin F. Terry; Leroy Terry; Mark G. Terry; Paul Terry, Jr.; Theodore Terry, Jr.; Porsha Williams; and Pauline Workman are the .....Respondents/Appellants,

and

Unknown landowners, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, United States of America and the United States of America, acting by and through its agency, the Internal Revenue Service, Midland Funding, LLC, Sharonview Federal Credit Union, SC Department of Revenue, County of Greenville, Arrow Financial Services, LLC, SC Dept. of Mental Health, SC Attorney General, Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carroll, Johnny F. Cox, Wilford Daniels, Angela Gilliam,

Bianca S. Gilliam, Demetrius J. Gilliam, Jerry Gilliam, Kehimonnie S. Gilliam, Terry Gilliam, John Glavin, Jr., John Glavin, Sr., Jeffrey Glavin, Miranda Glavin, Yolanda Glavin, Terrance Leslie, Terrell Leslie, Teaira Leslie, Donnette Gilliam Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlie Mae Terry, and Sheila Terry are the.....Respondents.

Appellate Case No. 2015-001909

The Honorable Charles B. Simmons, Jr.
Greenville County
Trial Court Case No. 2012-CP-23-04064

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FACTS

Appellant/Respondent Piedmont Natural Gas ("PNG") filed this action pursuant to the South Carolina Eminent Domain Procedure Act (S.C. Code § 28-2-10 *et seq.*) (the "Act"). Condemnation Notice p. 3. All parties stipulated at trial that the date of the taking was June 22, 2012. Order, p. 2. Specifically, PNG condemned a fifty-foot right of way, under and across which PNG installed a high pressure natural gas transmission pipeline1. *Id.* The total acreage of the property condemned by PNG amounts to 2.515 acres, as well as a small strip of property totaling 0.747 acre which was severed from the larger parcel by the right of way (the 2.515 acres and the 0.747-acre severed parcel are hereinafter referred to as the "Right of Way" or "ROW"). *Id.*

The larger parcel in question consists of a 73.6-acre tract located in the vicinity of Highway 14 and Interstate 85 in Greenville County, at the end of Rock Road (the 73.6-acre tract is hereinafter referred to as the "Subject Property"). Order p. 1. The gas pipeline installed by PNG crosses the front of the Subject Property at a bridge providing the only means of access to the property. Trial Tr. 54:14-19. Affixed to the bridge accessing the Subject Property was a large yellow sign, reading "CAUTION HIGH PRESSURE NATURAL GAS NO SMOKING NO TRESPASSING," with PNG's logo and phone number. Exh. L-10; Trial Tr. 55:12-14. The sign was installed by PNG contemporaneously with the take on June 22, 2012. Trial Tr. 55: 25, 56:2-4. The sign was removed by PNG on February 17, 2015, three months before trial. Trial Tr. 39: 8.

In addition to the large yellow CAUTION sign on the fence at the entrance, PNG also placed several additional yellow "Caution" signs on the easement, including a yellow

"Caution" marker near the road crossing accessing the Subject Property. Trial Tr. 31: 2-15. Finally, PNG also placed a cathodic protection test station along the easement, which is a large yellow tube placed in the ground containing certain electrical components by means of which PNG periodically tests its pipeline for corrosion. Trial Tr. 29: 17-25, 30: 1-21.

Among the rights that PNG acquired as part of its easement are the right to access and maintain the pipeline, the right to conduct periodic inspections, and the right to install additional pipelines within the easement area. Trial Tr. 28:5-20. The Landowners are not allowed to build any permanent structures within the easement area, and are even limited as to the type of landscaping they may install. Trial Tr. 28:23-24. Should Landowners desire to develop the Subject Property, which would require the installation of a water line to service the Subject Property, such water line would cross the PNG easement and could only be done with PNG's permission in its sole discretion. Trial Tr. 47: 13-16.

The Landowners and PNG retained appraisers to value and testify regarding just compensation for PNG's taking. All parties agreed that the highest and best use of the Subject Property, which is currently undeveloped, would be residential development. *Id.* Both appraisers valued the Subject Property similarly on a per-acre basis – PNG's appraiser assigned a value of $55,000 per acre [Trial Tr. 99:20-23] and Landowner's appraiser assigned a value of $56,000 per acre [Trial Tr. 69-15-17]. Based on the appraisers' per-acre value, PNG asserted that just compensation for its taking was $172,226, and the Landowners' value was $175,324. Order p. 5.

However, Landowners' appraiser2 also included an additional measure of just

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1 The designation of "transmission" pipeline, as opposed to "distribution" pipeline, means that consumer users along the pipeline cannot tap into it. Trial Tr. 23: 5-22.

2 Landowners' appraiser was stipulated by all parties to be an expert in real estate appraisals. Trial Tr. 66:

compensation based upon substantial damage to the remainder of the Subject Property caused by the reality and the proximity of the PNG transmission pipeline. Trial Tr. 69: 12-14. The total amount of just compensation for the take, according to Landowners' appraiser, was $414,752. Order p. 5; Trial Tr. 74: 9. Thus, the amount of damage to the remainder of the Subject Property was valued at $239,428 (the "Remainder Damage").

Landowners' appraiser testified as to two alternate methodologies used to arrive at the Remainder Damage figure. The first was referred to throughout the trial as the "Buffer Zone" method, by which he established a 100' buffer zone between the pipeline and the remainder of the Subject Property to be developed. Trial Tr. 70: 6-7. The second methodology was a simple overall diminution in value on a percentage basis. Trial Tr. 73: 16-25, 74: 1-2. Under both methodologies, the Remainder Damage was the same. Trial Tr. 74:3-5.

According to Landowners' appraiser, the Remainder Damage stemmed from and was attributable to two distinct factors: (1) the logistical difficulties any developer would face in bringing utility and water lines across the PNG pipeline and easement to the Subject Property [Trial Tr. 70: 14-21]; and (2) a negative public perception as to the Subject Property, based upon fear of the pipeline itself [Trial Tr. 70: 24-25, 71: 1-7].3

Regarding the logistical difficulties created by the existence and placement of the PNG pipeline and easement, Landowners' appraiser cited to his previous career experience as a developer of single family residences, as well as extensive dealings with developers in his current work as an appraiser. Trial Tr. 66: 12-24. Landowners' appraiser further testified

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5-9.

3 PNG lumps both of these factors together in its appellate brief as "Stigma Damages"; however, these are discrete and distinguishable factors which must be addressed and reviewed independently.

that he consulted with a number of local developers in forming his expert opinion as to the Remainder Damage and overall just compensation amount. Trial Tr. 69: 10-12. It was his opinion, as well as the opinion of the developers he consulted, that "a typical developer would worry greatly about how he could get the required utilities in there to develop it when the purse string (so to speak) is being held by Piedmont Natural Gas to tell them whether they can cross the line, and how they can cross it." Trial Tr. 70: 17-21. Such challenges would, therefore, lead a developer to pay less for the Subject Property. Trial Tr. 70: 22-23.

In support of his Buffer Zone methodology and further describing logistical development difficulties created by the PNG pipeline and easement, Landowners' appraiser testified that he had examined and evaluated another subdivision in Greenville County which employed a buffer zone to distance homes from a gas line. Trial Tr. 74: 22-25, 75: 1-5. The developers of the subdivision, known as The Townes at Riverwood, placed a road between the houses and the gas line; in other words, all the houses are built on one side of the road and the other side of the road, where the gas line is located, is empty and undeveloped. Exh. L-13; Trial Tr. 76: 5-14, 126: 10-18. Such a layout is undesirable to developers, because having houses on both sides of the road reduces the overall cost of developing the lots along that street. Trial Tr. 75: 15-23.

In fact, PNG's own appraiser described the road running through The Townes at Riverwood as a "natural buffer…between the right-of-way and the homes." Trial Tr. 113: 5-8. PNG's appraiser further testified that from a development perspective, it is always more desirable to have houses on both sides of the road than on just one side. Trial Tr. 120: 12-14.

The existence and extent of the negative public perception were limned by the testimony of two witnesses. First, Landowners' appraiser testified that "if you go

immediately into the subdivision and cross the bridge and you look to your left and you see the big caution sign, I think that would certainly have a negative impact on the marketability of the property," both as to developer-purchasers and later homebuyers. Trial Tr. 71: 2-7. Additionally, one of the Landowners, Alma Rene Smith Murry ("Murry"), testified at some length regarding her general fear and unease regarding the PNG pipeline, triggered initially by the presence of the large yellow caution signs. Trial Tr. 57: 1-6. Among Murry's concerns were both short-term dangers ("you may hear of something blowing up when you think of gas") [Trial Tr. 57: 25, 58: 1] and long-term issues such as cancer [Trial Tr. 57: 20-21].

ARGUMENTS

This appeal presents the Court with a novel legal question. The Court must determine whether South Carolina will recognize stigma damage as an element of just compensation in a condemnation action. In connection therewith, the Court must also determine what standard of proof will be required in awarding stigma damages in such a context. This issue has been addressed in other states but never squarely in South Carolina.

I. THE TRIAL COURT DID NOT ERR IN AWARDING STIGMA DAMAGES BASED ON ALLEGED FEAR OF THE NATURAL GAS TRANSMISSION PIPELINE.

A. Standard of Review – Limited *De Novo*

The parties agree that the issue of which factors constitute the elements of just compensation under the Act is a question of law, which triggers a *de novo* standard of review. *Fesmire v. Digh*, 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009). However, a review of the trial court's factual findings in an action at law "will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings." *Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Appellate courts should not disregard the trial court's findings, nor "ignore the fact that the master was in a better position to assess the credibility of the witnesses." *Laughon v. O'Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 111 (Ct. App. 2004).

B. The trial court properly considered stigma damages to be an element of just compensation in determining its award to Landowners.

Because no South Carolina appellate court has determined the issue of stigma

damages as an element of just compensation in a condemnation action, the trial court was free to adopt its own rule and did so properly in this matter. South Carolina courts have made oblique references to "stigma" or "reputation" damages, but have not ruled on the issue in any context, and most importantly not in the context of a condemnation action. It is important for this Court to note that South Carolina has no rule against stigma damages; rather, stigma damages have not yet been recognized by the courts.

One instance of an oblique reference is *Gray v. Southern Facilities, Inc.*, in which the Supreme Court reviewed a negligence claim filed by a homeowner against a nearby petroleum company. *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 183 S.E.2d 438 (1971). The petroleum company in *Gray* had pumped four hundred gallons of gasoline into a creek, which caught on fire and flowed downstream past the plaintiff's house. *Id.* The plaintiff did not allege and could not prove any physical, actual damage to his property, but offered evidence from two local realtors that the resale value of his property had diminished due to the fire and its potential for repetition. *Id.* The *Gray* court considered the reputation damages to be "nominal damages," which the plaintiff was not entitled to recover, having failed to prove any actual damages. *Id.*

The *Gray* court was careful to point out that the plaintiff's claim for damages was based solely on negligence and did not contain a nuisance claim, the distinction being a one-time accident rather than an ongoing or permanent injury. *Id.* Because of the limitations of the plaintiff's claim, the *Gray* court specifically did not decide "whether or not, or under what circumstances, damages might be recovered for injury to the reputation of real property." *Gray* at 570, 183 S.E.2d at 444.

In fact, contrary to PNG's assertion that "[t]here is simply nothing in *Gray* to suggest

that" stigma damages are appropriate, the *Gray* court clearly anticipates and describes such a scenario:

> There is admittedly evidence from expert witnesses to the effect that the market value and sales potential of appellant's property have been reduced and diminished as a result of respondents' delict and the following fire. The evidence, however, reflects considerable dissimilarity in the one experience cited by these experts as the basis of their opinions as to the amount of such diminution. From the evidence it appears that petroleum products were in the creek from time to time on other occasions, but no evidence tending to connect the respondents, rather than other petroleum plants up the stream as a source thereof. The existence of four petroleum plants, including that of respondents, upstream and spillage of petroleum products therefrom into the creek from time to time would have a natural tendency to adversely affect the market value of appellant's property. When these factors are added to the single delict charged to the respondents and the ensuing fire it is readily inferable that appellant's property is less desirable, and consequently less valuable than it would have been had none of these circumstances, adversely affecting it, ever existed or occurred.

Gray, at 570, 183 S.E.2d at 444 (emphasis added).

In other words, had Gray more artfully pled his case, stigma damages would be altogether appropriate.

The second case heavily relied upon by PNG is the very recent decision of *Chestnut v. AVX Corp.*, 413 S.C. 224, 776 S.E.2d 82 (2015). *Chestnut*, like *Gray*, was an environmental spill case; specifically, the plaintiffs brought a class action suit alleging trespass, nuisance, negligence, and strict liability against the defendant based upon chemicals leaching into the groundwater. *Id.* An element of plaintiffs' claims was stigma damages. *Id.* The Supreme Court ruled simply that the trial court's dismissal at the 12(b)(6) stage was inappropriate because stigma damages are a novel question of law. *Id.*

PNG is forced to look to dicta (the dissent in the *Chestnut* decision) for anything to marshal in support of its erroneous claim that South Carolina has a rule against stigma

damages. Chief Justice Toal opined in her dissent that speculative damages, in the absence of actual damages, are insufficient. *Chestnut*, at 232, 776 S.E.2d at 89. PNG uses one of her conclusions out of context as its rallying cry: "I would hereby decline Appellants' request to adopt stigma damages in any form as an appropriate measure of damages in South Carolina." *Id.* However, the context is critical. In fact, Chief Justice Toal's non-binding dissent was limited to cases alleging no actual damages and limited to negligence, strict liability, or nuisance claims. *Id.*

The case at bar is therefore wholly different from the *Gray* and *Chestnut* cases in two fundamental ways. First, it is a condemnation action, which neither *Gray* nor *Chestnut* were. Secondly, because it is a condemnation action, all parties agree that there are actual damages and the purpose of the trial was to determine what amount of money would justly compensate the landowners for their property seized by eminent domain. To compare the instant matter to *Gray* and *Chestnut* is to compare apples to oranges and therefore a fruitless exercise.

Further, stigma damages were not the only measure of diminution in value used by Landowners' expert. As described above and argued more fully hereinbelow, Landowners' expert also attributed diminution in value to the fact that a developer would have increased development costs in bringing necessary utilities to the Subject Property, due to the fact that the PNG easement crosses the single point of entry to the property.

Because *Gray* and *Chestnut* hold no weight in the instant matter, and because Landowners have proven diminution in value based upon multiple theories, this Court should affirm the Trial Court's ruling.

C. South Carolina should adopt the majority rule of allowing stigma

damages in eminent domain actions.

As PNG notes in its appellate brief, there are three approaches to stigma damages. These approaches have typically arisen in the context of fear of power lines causing diminution in value of landowners whose property is condemned by an electric utility; however, the facts are directly analogous to the current situation. *See* Todd D. Brown, *The Power Line Plaintiff & the Inverse Condemnation Alternative*, 19. B.C. Envtl. Aff. L. Rev. 655 (1992).

The majority view across the country is the most liberal and long-standing of the three approaches. It holds that a condemning utility must compensate landowners for the impact on the market value of their property caused by stigma or fear, even if the landowners do not prove the reasonableness of the fear.4 The intermediate view holds that stigma damages are only compensable in condemnation actions if the fear or stigma is reasonably grounded in scientific experience or observation.5 The minority view is the strictest of the three, denying any stigma damages whatsoever.6

South Carolina has long respected individual rights and property rights and placed them on a near-equal footing with governmental rights. A banner reading "constitutional powers can never transcend constitutional rights," could fly in the Supreme Court chambers. *James v. City of Greenville*, 227 S.C. 565, 579, 88 S.E.2d 661 (1955). As Justice Harwell wrote in his eloquent dissent to *Lucas v. S.C. Coastal Council*, "The Constitution of the

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4 See, e.g., *San Diego Gas & Electric Co. v. Daley*, 205 Cal. App. 3d 1334, 1344-49 (1988); *United States v. Easement & Right of Way*, 405 F.2d 304, 309 (6th Cir. 1968); *Hicks v. United States*, 266 F.2d 515, 521 (6th Cir. 1959); *Southern Ind. Gas & Elec. Co. v. Gerhardt*, 241 Ind. 389, 393-94, 172 N.E.2d 204, 206 (Ind. 1961).

5 See, e.g., *Willsey v. Kansas City Power & Light Co.*, 631 P.2d 268, 278 (Kan. 1981); John Weiss, Note, *The Power Line Controversy: Legal Responses to Potential Electromagnetic Field Health Hazards*, 15 Colum. J. Envtl. L. 359, 366 (1990).

6 Vitauts M. Gulbis, Annotation, *Fear of Powerline, Gas or Oil Pipeline, or Related Structures as Element*

United States and of South Carolina provided a just compensation clause for the protection of citizens; surely the framers of these constitutions never intended for this protection to be distinguished away in order to allow States to avoid compensating an individual required to bear a burden which in fairness should be borne by all." *Lucas v. S.C. Coastal Council*, 304 S.C. 376, 395, 404 S.E.2d 895 (1991).

Rights to recompense have changed and grown over the years as new theories of "taking" have developed. From zoning to beach erosion management to nuisance in the form of low-flying airplanes, South Carolina and courts around the country have recognized that the word "taking" deserves a broad construction. As the South Carolina Supreme Court held in *Henderson v. City of Greenwood*, "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements of property to that extent destroys the property itself." *Henderson v. City of Greenwood*, 172 S.C. 16, 172 S.E. 689. As shown at the trial in this matter and argued throughout this brief, PNG's transmission pipeline and easement have restricted the use, enjoyment, and disposal of the Subject Property, and Landowners are entitled to be compensated fully for this restriction.

Based upon this proud history, this Court should take this opportunity to recognize stigma damages in eminent domain actions and adopt the majority rule therefor.

D. Public policy and general principles of equity support a rule to allow stigma damages in condemnation actions.

The power of eminent domain and the concomitant rights of landowners to be paid just compensation for such taking are fundamental issues in western law. The United States

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of Damages in Easement Condemnation Proceedings, 23 A.L.R. 631, 625 (4th ed. 1983)

of America secured protection for landowners in the Fifth Amendment, and courts have never wavered in that protection. As technologies have changed, courts have expanded their definitions of "taking," and some states have added clauses to their constitutions that allow property owners to be paid just compensation when a condemnor takes or damages their property.7 The United States Supreme Court has expanded its definition of "taking" to include certain statutory regulations, physical invasions, and even nuisances.8

Rather than establishing a strict definition of "taking," the U.S. Supreme Court has opted for a case-by-case factual analysis, with specific emphasis on two broad factors: (1) the character of the condemnor's action; and (2) the extent to which that action interferes with the property owner's "reasonable investment-backed expectations." *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 825, 831-32 (1978).

Within that framework, courts across the country have begun to look at fear as a component of just compensation and have generally fallen into one of the three camps described above in Section 1(C). South Carolina should adopt the majority, liberal approach, and recognize that the fear involved with living immediately beside a high-pressure, high-volume natural gas transmission line is in itself an interference with the property owners' use and enjoyment of their property. Further, South Carolina should recognize the reality that even unreasonable fears may depress market value and should therefore admit evidence of such fear in the marketplace without requiring proof of the reasonableness of such fear. See, e.g., *Ryan v. Kansas Power & Light Co.*, 815 P.2d 528 (Kan. 1991) (evidence of fear in the marketplace is admissible with respect to the value of property taken without proof of reasonableness); *San Diego Gas & Elec. Co. v. Daley*, 205 Cal. App. 3d 1334, 253 Cal. Rptr.

7 See, e.g., *Wash. Const. art I, § 16.*

144, 152 (Cal. Ct. App. 1998) (the only question is the fear of the danger, not the truth or lack of truth in the danger itself); *Florida Power & Light Co. v. Jennings*, 518 So.2d 895 (1987) (the public fear factor may serve as a basis for an expert's opinion regardless whether the fear is objectively reasonable); *Western Farmers Elec. Co-op. v. Enis*, 993 P.2d 787, 1999 Ok. Civ. App. 111 (1999); *Criscuola v. Power Authority of the State of New York*, 81 N.Y.2d 649, 621 N.E.2d 1195 (1993); *United States v. 87.98 Acres*, 530 F.3d 899 (9th Cir. Ct. App. 2008).

Condemnees are allowed only one opportunity to seek compensation for all foreseeable damage to their property, to include any improvements that may be constructed in the future. Severance, or residual damages, such as fear and stigma damages, should therefore not be limited to direct and specific damages, but should also include indirect factors such as a decline in the market value. *Daley*, at 1345, 253 Cal. Rptr. 155. As was held in the much-cited case of *Willsey v. Kansas City Power & Light Co.*, "Logic and fairness...dictate that any loss of market value proven with a reasonable degree of probability should be compensable, regardless of its source. If no one will buy a residential lot because it has a high voltage line across it, the lot is a total loss even though the owner has the legal right to build a house on it. If buyers can be found, but only at half the value it had before the line was installed, the owner has suffered a 50% loss. If this kind of lost market value is proven to the satisfaction of the jury we see no reason why the landowner should bear the loss rather than the customers for whose benefit the loss is inflicted." *Willsey v. Kansas City Power & Light Co.*, 6 Kan. App. 2d 599, 611, 631 P.2d 268 (Kan. App. 1981).

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8 See, e.g., *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415-16 (1922).

At least twelve states9 follow the majority rule, as well as the Sixth Circuit Court of Appeals, which has extraordinary experience in federal condemnation cases related to Tennessee Valley Authority matters. An additional nine states10 follow the intermediate rule, allowing evidence of fear where the fear has a reasonable basis. Thus, the vast majority of states who have decided the issue fall on the side of protecting the condemnee.

From a public policy standpoint, the wholesale rejection of stigma damages in a situation in which the condemnor is a private utility company and the pipeline in question is not for public use is a particularly bitter pill to swallow. PNG is a private utility11 which operates several related businesses, both regulated and unregulated, and is traded on the New York Stock Exchange under the symbol "PNY." Further, PNG has recently been acquired by Duke Energy for $4.9 billion.12 The pipeline installed across Landowners' matter in the case at bar is not for public use; it is not a distribution pipeline, but rather a transmission pipeline, eventually going to a General Electric facility. Trial Tr. 34: 9-14.

As stated in *Willsey*, public policy, equity, logic, and fairness dictate that the Landowners in this matter should not bear the loss represented by proven stigma damages; rather that expense should be shifted to PNG and its customers for whose benefit the property was condemned and the pipeline installed.

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9 Arkansas, California, Indiana, Iowa, Kansas, Louisiana, North Carolina, Ohio, Oklahoma, South Dakota, Virginia, and Washington. See *Willsey*, at 606.

10 Connecticut, Georgia, Kentucky, Missouri, Nebraska, New Jersey, Tennessee, Texas, and Utah. See *Willsey*, at 606-7.

11 PNG's fact witness, Adam Long, testified incorrectly that PNG is a public utility. Trial Tr. 20: 24-5. The information regarding PNG's corporate status was obtained from Bloomberg Business and Reuters, via the following websites, respectively: http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=296799 and http://www.reuters.com/finance/stocks/companyProfile?symbol=PNY.

12 See News Release, Duke Energy, 10/26/15, found at http://www.duke-energy.com/news/releases/2015102601.asp

II. THE TRIAL COURT PROPERLY ADMITTED AND ALLOWED THE TESTIMONY OF LANDOWNERS' EXPERT WITNESS.

A. Standard of Review – Abuse of Discretion

The qualification of expert witnesses, as well as the admissibility of such experts' testimony, are matters within the trial court's sound discretion and may not be reversed on appeal absent an abuse of discretion. *State v. Douglas*, 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2006); *Prince v. Associated Petroleum Carriers*, 262 S.C. 358, 204 S.E.2d 575 (1974). An abuse of discretion occurs when the court's ruling is based on either an error of law or an unsupported factual conclusion. *Douglas*, at 508, 626 S.E.2d at 69. To warrant reversal based upon the admission or exclusion of expert witness testimony, a party must prove not only the error behind the alleged abuse of discretion, but also the prejudice resulting therefrom. *Id.*

As shown below, PNG has failed to prove any abuse of discretion nor any resulting prejudice; therefore, this Court should uphold the Trial Court's rulings regarding the qualifications of Landowners' expert witness and the admissibility of his testimony.

B. The Trial Court properly denied PNG's request to exclude the testimony of Landowners' expert witness.

PNG in its brief claims that the Trial Court improperly admitted the testimony of Landowners' expert witness and that such omission rises to the level of an abuse of discretion based on certain factors cited in the case of *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010). However, *Watson* is only applicable in a jury-trial setting. The instant matter was a bench trial; therefore, *Watson* has no applicability, and PNG has failed to prove an abuse of discretion.

In fact, the very first prong of the *Watson* test, as heralded by PNG, is that the subject matter of the expert witness's testimony must be "beyond the ordinary knowledge of the jury" and must require an expert to explain the matter to the jury. *Watson*, at 446, 699 S.E.2d at 175. When, as here, no jury is involved, the court's "gatekeeping duties" fall by the wayside, and the court can properly use its own discretion as to what weight to give the expert witness's testimony. Landowners would submit that the Hon. Charles B. Simmons, Jr., as Greenville County's longstanding Master-in-Equity, has heard sufficient testimony from expert real estate appraisers during his time on the bench to sort the wheat from the chaff.

Further, as established above in the Facts of the Case, both parties stipulated that Landowners' expert witness was qualified as an expert real estate appraiser. The Trial Court, in accepting the testimony of Landowners' expert over PNG's objections, held specifically as follows:

> I'm going to overrule the objection on the damage to what he calls the buffer zone. First, I think he has the experience, and it's within his area of expertise. Secondly, I think it is a novel issue apparently in the State of South Carolina, and I want the record to be built for appeal purposes. And third, I think his testimony would be more viewed as to the weight the Court is inclined to give it as opposed to initial admissibility.

Trial Tr. 72: 18-25.

Thus, it is clear that the Trial Court went through the proper analysis in determining whether to accept the testimony of Landowners' expert and PNG can show no abuse of discretion. Further, PNG in its brief mischaracterizes its own cross-examination of Landowners' expert witness as *voir dire*, when in fact, PNG stipulated to the qualification of Landowners' witness as an expert. This is an important distinction, because it goes to the

second element necessary for an appellate court to overturn a trial court's ruling in an abuse of discretion setting – prejudice. PNG can show no prejudice from the Trial Court's rightful admission of Landowners' expert's testimony because PNG was given a full and fair opportunity to cross-examine him and to offer contrary testimony from its own expert witness. The Trial Court considered Landowners' expert testimony to be the more compelling of the two experts. This does not prejudice make.

As described above, Landowners' expert testified as to two different methodologies he applied in arriving at the ultimate "just compensation" amount he assigned to PNG's taking. Both methodologies were supported by the same research and fall squarely within Landowners' expert's specialized knowledge, experience, and skill. Included in the factors comprising Landowners' expert's opinion are the following:

(1) Review and assessment of a large number of plats, photographs, engineering sketches, and PNG's own appraisal of the Subject Property (all of which were made Exhibits at trial, and all of which are hereby referenced without specific enumeration). Trial Tr. 68: 7-23.

(2) Site visits to the Subject Property on multiple occasions. Trial Tr. 67: 12-13, 78: 4-10.

(3) Review, assessment, and site visits to four additional properties burdened by PNG easements for purposes of comparison. Trial Tr. 78: 4-25, 79: 1-10.

(4) Review, assessment, and site visits to two subdivisions located in Greenville County for purposes of comparison. Trial Tr. 74: 22-25, 75: 1-5, 76: 5-14, 123: 23-25, 124: 1-10.

(5) Supporting testimony offered by Landowner Alma Rene Murry. Trial Tr. 57: 1-25, 58: 1-2, 59: 19-25, 60: 1-18.

(6) His own substantial experience as a real estate appraiser and developer. Trial Tr. 66: 13-25, 67: 1-8.

(7) Discussions with local property developers. Trial Tr. 69: 8-12, 80: 1-3, 88: 18-22, 92: 24-25, 94: 5-9, 18-22.

(8) Online research13 into 21st century pipeline accidents. Trial Tr. 93: 23-25.

When questioned by PNG regarding various other methods used by appraisers, Landowners' expert testified that (in determining the "after" value of the Subject Property) he could not have used a comparable sales analysis, sales comparison approach, or paired sales analysis because, in his own words, "There's really nothing to compare to this piece of property." Trial Tr. 89: 18-19, 90: 25, 95: 14-25, 96: 1-2. Further, Landowners' expert reviewed and rejected PNG's expert's comparable sales analysis between the Subject Property and two subdivisions containing PNG easements. Trial Tr. 123: 14-25, 124: 11-22, 125: 11-25, 126: 1-19. Therefore, Landowners' expert effectively did conduct a comparable sales analysis; he simply disagreed that the "comparable sales" proffered by PNG were in fact comparable.

Further, Rule 703 of the *South Carolina Rules of Evidence* speaks directly to what facts or data may form the basis of an expert witness's opinion. Reliance by an expert upon matters that might be otherwise inadmissible, such as online research materials, newspaper articles, and hearsay evidence is absolutely proper and condoned by Rule 703. As the *Willsey* Court so clearly stated, "It must...be understood that once a witness has qualified as an expert, a court cannot regulate the factors he uses or the mental process by which he arrives at his conclusion. These matters can only be challenged by cross-examination testing the witness' credibility." *Willsey*, at 603, 631 P.2d at 272 (quoting from *City of Bonner Springs v. Coleman*, 206 Kan. 689, 695, 481 P.2d 950 (1971)).

The sole limitation upon facts or data used by an expert witness in forming his or her

opinion is that such information must be "of the type reasonably relied upon in the field to make opinions." *Hundley ex rel. Hundley v. Rite Aid*, 339 S.C. 285, 295, 529 S.E.2d 45 (Ct. App. 2000). In the instant matter, Landowners' expert testified that he based his opinion, at least in part, on visual inspections of the Subject Property and properties designated as "comparable" by PNG's expert, his own experience as an appraiser and real estate developer, conversations with multiple other real estate developers, online research regarding pipeline explosions, and the testimony of one of the Landowners. Not only did PNG have a full and fair opportunity to cross-examine Landowners' expert as to all of these factors, but PNG's own expert based his opinion upon similar but fewer factors. PNG's expert visited the Subject Property [Trial Tr. 9-10], selected comparable properties [Trial Tr. 15-21], and conducted a phone interview with two developers [Trial Tr. 108: 24-25]. PNG's expert offered no testimony regarding any statistical research or research into publicly-disseminated information that could lead to fear or stigma.

Courts in jurisdictions that do recognize stigma damages in eminent domain cases have held that publicly disseminated information could be used to show fear in proving stigma damages. A clear example comes from *Western Farmers Elec. Co-op.*, where the court held that "publicized information that has been generally circulated about a danger, potential hazard or even a suspected harm associated with the use of a power line easement can be considered by an expert in forming an opinion concerning the valuation of property, and ultimately, by the trier of fact." *Western Farmers Elec. Co-op.*, at 791. See also *Arkansas Louisiana Gas Co. v. Cable*, 1978 OK 133, 585 P.2d 1113, 1116 (holding that expert appraiser could rely on newspaper articles regarding pipeline explosions to support his

13 In fact, Landowners' expert attached a 15-page list of 21st century pipeline accidents compiled via

opinion on diminution of value – "the witness was neither testifying that pipelines do explode, nor testifying to accuracy of newspaper reports [but was recounting reasons and information] to show a prevailing local market condition").

PNG and Landowners argued this specific issue in a Motion *in Limine* prior to the trial. PNG, in its Motion14, cited to five cases, none of which are from South Carolina and all of which are either distinguishable or actually contain holdings in support of Landowners' position, as addressed in Landowners' Return to Condemnor's Motion *in Limine15*. During the oral argument on PNG's motion, the Trial Court was persuaded by two of Landowners' arguments: (1) Rule 703's liberal treatment of information comprising an expert's opinion; and (2) jurisdictions which apply the majority rule regarding stigma damages in eminent domain cases also hold that the "fear" or stigma can be based upon public information, without regard to whether such fear is reasonable. Further, such public information can certainly be used as a basis for an expert's opinion in these jurisdictions. Landowners would submit that the Trial Court ruled properly on the Motion *in Limine* in allowing Landowners' expert to testify regarding matters which would otherwise be inadmissible.

In sum, Landowners' expert was properly qualified as an expert and his testimony was properly accepted by the Trial Court. PNG has failed to prove any abuse of discretion nor prejudice flowing therefrom, and this Court should uphold the Trial Court's decisions to qualify Landowners' appraiser as an expert witness and accept his testimony regarding just compensation of the Subject Property.

III. THE TRIAL COURT PROPERLY ADMITTED AND ALLOWED THE

Wikipedia to his appraisal report.
14 Condemnor's Motion *in Limine*, pp. 8-12.
15 Return to Condemnor's Motion *in Limine*, pp. 3-7

TESTIMONY OF ONE OF THE LANDOWNERS REGARDING PROPERTY VALUE AND JUST COMPENSATION.

As discussed above, one of the Landowners, Alma Rene Murry, testified on behalf of the entire family.16 She testified regarding her own personal fear regarding the pipeline [Trial Tr. 57: 1-25, 58: 1-2], as well as her and her family's belief that the pipeline would scare off potential purchasers [Trial Tr. 59: 19-25, 60: 1-10]. She testified that her own fear and the family's concerns regarding decreased property values stemmed from hearing news stories about pipeline explosions. Trial Tr. 60: 9-12.

The Trial Court carefully analyzed PNG's objection regarding the admissibility of Ms. Murry's testimony regarding news stories, and ruled that her testimony was allowed17, "not for the truth of the matter asserted but just for her state of mind and her opinion." Trial Tr. 60: 16-18. As argued hereinabove, the prejudicial-vs-probative argument has no place in a bench trial setting, and PNG is unable to show any abuse of discretion in the Trial Court's decision to admit Ms. Murry's testimony. PNG was given a full and fair opportunity to cross-examine Ms. Murry, and did so. Trial Tr. 61-64.

Finally, although Landowner firmly believes that Ms. Murry's testimony was properly admitted by the Trial Court, if this Court disagrees, such admission must be considered harmless error as it was merely cumulative to other evidence presented by Landowners' expert. See *State v. Johnson*, 298 S.C. 496, 381 S.E.2d 732 (1989).

Therefore, because the Trial Court properly considered and weighted Ms. Murry's

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16 There are, at the time of this filing, one hundred surviving Landowners. A declaratory judgment action is pending in Greenville County to determine ownership interests and distribution requirements for such funds as are ultimately awarded in this action.

17 The trial transcript contains a scrivener's error in this sentence. A reading of the full exchange between PNG's counsel and Judge Simmons indicates that the ruling is "I'm going to allow [the testimony]," rather

testimony, because PNG had a full opportunity to cross examine her, and because her testimony was cumulative with that offered by Landowners' expert, the Trial Court did not err in admitting the testimony and such ruling should not be overturned. PNG can show no abuse of discretion nor any prejudice flowing from the admission of Ms. Murry's testimony.

IV. THE TRIAL COURT DID NOT CONSIDER THE MEDIATION IN THIS MATTER, NOR DID SETTLEMENTS IN OTHER CASES FORM A BASIS OF THE TRIAL COURT'S ORDER.

PNG asserts that the Trial Court somehow considered the court-ordered mediation in this matter, as well as settlements from other cases, in reaching its decision. This is flatly untrue and wholly unsupported in the record. Reference was made to the date of the mediation, due to the fact that PNG removed the giant yellow "CAUTION" sign from the Subject Property only after the mediation at which a photograph of the sign was used in describing Landowners' damages to the mediator. Landowners believe the removal of this sign immediately after mediation and prior to trial was clearly intentional and bespeaks nefarious intent. In so proving, Landowners had to establish the date of the mediation, which was done by asking the Trial Court to take judicial notice of the ADR filing with the Court on February 5. Trial Tr. 38: 17-18, 41: 3-6.

As Landowners successfully argued in their Memorandum in Opposition to PNG's Motion to Reconsider, Alter, or Amend Judgment, Rule 408, *South Carolina Rules of Evidence*, prohibits the admission of evidence of compromises and settlement negotiations to prove liability. However, the Rule specifically allows admission of such evidence for a purpose other than to prove liability, as here, where it was used as a point in a timeline.

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than "I'm not going to allow it," [emphasis added] as the transcript shows.

Additionally, it is important to remember that the evidentiary rules are designed to avoid improperly influencing jurors and that "[I]t is a near insurmountable burden...to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence." *State v. Inman*, 395 S.C. 539, 566, 720 S.E.2d 31 (2011).

In objecting to the admission of "other settlements" in PNG condemnations, PNG is referring to the proffer and admission of certain recorded grants of easements to PNG by other property owners. Trial Tr. 37: 6-13, 40: 16-22, 42: 13-16, 44: 7-18, 45: 1; Landowners' Exhibits L-4 – L-9. As correctly noted by the Trial Court, the easement documents are clearly admissible, as they are simply matters of public record. Trial Tr. 44: 17-18. The documents in questions were used merely for purposes of comparison: on all four of the alternate easements, PNG's large "CAUTION" sign remained. Trial Tr. 78: 14-25, 79: 1-10. It had only been removed on the Subject Property. Landowners believed this to be factually significant.

In short, the Trial Court did not consider the mediation or other settlements in reaching its decision. To the extent either of these things was mentioned, the references were oblique and properly admitted by the Trial Court. There is no basis in the record whatsoever to support PNG's claim that the admission of this evidence was "highly prejudicial" to it.

V. THE TRIAL COURT PROPERLY ORDERED AN AWARD OF ATTORNEYS' FEES TO LANDOWNERS AND SUCH ORDER SHOULD STAND REGARDLESS OF THE ULTIMATE OUTCOME OF PNG'S APPEAL.

The award of attorneys' fees and costs made by the Trial Court was proper, under the terms of the Act. S.C. Code Ann. §§ 28-2-510 and -520. Based upon Landowners' arguments throughout this brief, this Court should not reverse the decision of the Trial Court

on any point appealed by PNG, and therefore the award of attorneys' fees and costs should stand.

However, this case presents not only a novel issue of law, but also a highly unusual and logistically difficult set of circumstances in that there are a hundred Landowners with whom communication has been necessary during the multi-year pendency of this action. Should this Court reverse the Trial Court's ruling and determine that an appropriate amount of just compensation is equal to PNG's initial proffer, Landowners' counsel would request that this Court take the unusual step of awarding costs and fees regardless. Simply put, Landowners are unable to afford the attorneys' fees and costs necessitated by this action; from a public policy standpoint, the incentive to represent condemnees such as this would be diminished if not destroyed.

VI. ADDITIONAL SUSTAINING GROUNDS EXIST TO SUPPORT THIS COURT'S AFFIRMATION OF THE TRIAL COURT'S DECISION.

In addition to the arguments hereinabove, Landowners would submit that additional sustaining grounds exist in the record which would support an affirmation of the Trial Court's decision, pursuant to Rules 208(b)(2) and 220(c) of the South Carolina Appellate Court Rules.

A. Landowners' expert witness provided multiple bases and theories for arriving at his valuation, all of which were properly considered by the Trial Court.

As described above, Landowners' expert offered testimony regarding diminution in value stemming from multiple theories and based upon dual methodologies. His calculation could be supported by a "buffer zone" analysis or an overall percentage reduction in value. Diminution in value, he testified, could arise from either fear or stigma in the public

perception or from a developer's increased costs in developing and subdividing a property burdened with a utility easement such as the one at issue herein. Landowners' expert offered four alternate theories of valuation, each of which was properly admitted and weighted by the Trial Court based upon Landowners' expert's qualifications.

It is axiomatic that when there exist multiple theories of recovery that are not mutually exclusive, failure to prove one theory does not preclude proving the other. *Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321 (Ct. App. 1995). Similarly, here, even if the Court is not persuaded that Landowners have successfully proven their claim under a buffer zone analysis, the Court can affirm the Trial Court's ruling upon an overall percentage reduction in value, or vice versa. If the Court is not persuaded that an award of stigma damages is appropriate in this setting, the Court can affirm the Trial Court's ruling upon an increased-development-cost argument, or vice versa.

Simply put, Landowners have clearly proven their case at least four ways from Sunday, and this Court should affirm the Trial Court's ruling, even if this Court is unwilling to establish a broader rule regarding stigma damages in other matters.

B. PNG's expert witness's valuation of the Subject Property was based upon a comparison with incomparable properties.

PNG loudly sings the praises of its own expert's use of a comparable sales analysis to determine that the presence of a natural gas pipeline would not devalue the Subject Property. The PNG expert selected one development in Spartanburg County (Mason's Crossing) and one in Greenville County (the Townes at Riverwood Farms) to compare to the Subject Property, both of which developments contain natural gas pipelines and easements. Trial Tr. 110: 14-112:15. Landowners' expert also reviewed the same developments. In describing

the process behind a compared sales analysis such as that conducted by PNG's expert, Landowners' expert testified as follows:

> If you were looking at two houses and one of them had a double garage and the other one didn't, and everything else was the same, and the double garage [house] sold for $2,000 more, then you could assume that the market would pay $2,000 for a garage or that was a contributory value.

Trial Tr. 90: 18-22, emphasis added.

In analyzing Mason's Crossing, Landowners' expert not only reviewed plats and deeds of record, but he also visited the property, which PNG's expert did not do. Trial Tr. 124: 23-25. Mason's Crossing contains 28.5 acres and was sold to a developer for $142,500, or $5,000 per acre. Trial Tr. 124: 7-14, Exhibit L-12. PNG's expert valued the Subject Property at $55,000 per acre [Trial Tr. 104: 2-3] and Landowners' expert valued the Subject Property at $56,000 per acre [Trial Tr. 69: 17]. A subdivision valued at $5,000 per acre cannot be comparable to a property with an estimated value of more than ten times that amount.

The Subject Property contains over 70 acres [Exhibits P-1, P-2, and L-1] and is located just off of Batesville Road in a "very prosperous area" [Trial Tr. 67:20-21]. There is frontage along the Enoree River and along a neighboring creek, and much of the property around the Subject Property has been developed as single-family residential "high-end type developments." Trial Tr. 67: 23-25, 68: 15-16.

Landowners' expert testified that he was unable to find any example of a comparable property:

> Q. [D]id you ever find any example where a developer or property was sold – a pipeline put in and then sold to a developer thereafter?
>
> A. No. There are no comps.

Q. There are no comparable sales?

A. No, sir.

Q. So, to say two houses may have sold under varying circumstances isn't necessarily valid in this case?

A. And not necessarily in trying to value the property beforehand in terms of what a developer would pay or not pay.

Trial Tr. 95:18-96:2.

PNG's expert's comparable sales analysis and market research is thus proven to be meaningless. Landowners' expert's testimony has shown, both through direct analysis and by debunking the PNG appraisal, that there are indeed no comparable properties. Such an assertion, coming from a well-respected MAI appraiser with forty years of appraisal experience, can hardly be characterized as a "hail Mary" attempt to do anything.

This Court should therefore disregard such of PNG's argument as asserts that either (1) Landowners' expert opinion should be discounted because it contains no comparable sales analysis or (2) PNG's expert opinion deserves more weight because it purports to. Landowners submit that the improper use of purported "comparable" properties in PNG's expert opinion is a further sustaining ground upon which this Court should base its decision to uphold the Trial Court's order in this matter.

CONCLUSION

For all the reasons stated herein, the Court should affirm the Trial Court's ruling that Landowners are entitled to just compensation in the amount of $414,750.

Respectfully submitted,

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