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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Newberry County  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-C-36-00120

**RECEIVED**  
OCT 20 2016  
SC Court of Appeals

Appellate Case No. 2016-001037

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

**APPELLANT'S MOTION TO RECONSIDER  
AND MEMORANDUM IN SUPPORT**

Appellant Oien Family Investments, LLC does hereby move for a motion to reconsider the Order of the panel of the South Carolina Court of Appeals dated October 18, 2016, granting respondent's motion to lift the stay. In the alternative, appellant moves to reconsider and hold in abeyance the ruling on this motion until the transcript of trial can be considered. The bases for said motion are set forth hereinbelow.

This Court held a hearing on the motion to lift stay on July 27, 20126. At that hearing, there was no record upon which to base the motion. Counsel argued without benefit of a record and the arguments were in some instances outside the record reflected in the transcript of the trial.

On October 13, 2016, the court reporter furnished to the appellant the entire transcript of record from the trial (consisting of over 500 pages). Appellant's Initial Brief is due on November 13, 2016. Appellant's counsel has recently read the entire transcript and the Initial Brief of Appellant will be filed timely on or before November 13.

Because this Court issued its Order granting the motion to lift the stay without the benefit of a record and heard arguments outside the record, it is requested that this Court reconsider its Order and revisit the issue after reviewing at least the briefs of the parties, and in the alternative, that the Court reconsider the Order and revisit the issue after reviewing the Initial Brief of Appellant. This will involve only a delay of less than one month from the date of this motion.

The position of appellant is that the ruling of the lower court which is the subject of the appeal was contrary to the clear holding of the Supreme Court of South Carolina in the case of Southern Development Corp. v. SC Public Service Authority , 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), aff'd as modified, 311 S.C. 29, 426 S.E.2d 748 (1993). The appellant's position is also based upon the fact that irreparable harm will be caused if the stay is lifted and the condemnation project is allowed to proceed without this Court having the benefit of having reviewed the record in this matter to confirm whether or not it concurs that the lower court order was proscribed by Southern Development and whether irreparable harm will occur if the condemnation project proceeds.

#### **PROCECURAL HISTORY OF CASE**

PMPA served its notice of condemnation on Oien on February 9, 2015. On March 6, 2015, Oien filed an action challenging the condemnation in Newberry County. The action was premised on the ruling of the Supreme Court of South Carolina in Southern Development v. SC Public Service Authority, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), aff'd as modified, 311 S.C. 29, 426 S.E.2d 748 (1993) which case affirmed the lower court's granting an injunction against the condemning authority based on the fact that the condemning authority had failed to consider the cost to acquire land for the three alternate routes involved in that case as it had assumed the land values of the alternate routes were identical. The appellant's challenge to the condemnation was heard by the Honorable R. Lawton McIntosh on March 29 and 29, 2016. On May 2, 2016, Judge McIntosh filed his Order denying the challenge. Oien filed motions to reconsider and on May 17, 2016, Judge McIntosh filed an Amended Order denying Oien's relief from the condemnation and Oien's motions to reconsider.

PMPA indicated to Oien's counsel that it intended to proceed with the condemnation after Judge McIntosh's rulings. On May 18, 2016, appellant moved for enforcement of the statutory automatic stay, injunction and/or supersedes. This motion was based upon the automatic stay provisions of S.C. Code §28-2-470 and/or Rule 241(c), SCACR, and Rule 241 (c)(1), SCACR.

By letter dated May 18, the Clerk of the South Carolina Court of Appeals wrote counsel and advised them that Appellant's Motion for Enforcement of Statutory Automatic Stay, Injunction and/or Supersedes was "granted" by Judge Stephanie P. McDonald for the Court. Thereafter, respondent filed its Motion to Lift Stay or Require Bond dated May 20, 2016. Appellant filed its Return in Opposition to the Motion to Lift Stay or Require Bond on May 31, 2016.

This Court held oral argument on the motion on July 27, 2016, and there was no record available at that time. The transcript of the trial was provided by the court reporter to counsel on October 13, 2016. Appellant's Initial Brief is due on November 13, 2016. It was not until October 13, 2016 that a transcript of the trial was available. By Order dated October 18, 2016 and received by undersigned counsel on October 20, 2016, the Court of Appeals granted respondent's motion to lift the stay.

### **ARGUMENT**

#### **A. The Trial Transcript Demonstrates That The Lower Court Order Did Not Correctly Apply Southern Development v. SC Public Service Authority**

Pursuant to SC Code §28-2-470, all condemnation proceedings are stayed until the disposition of a challenge. It is appellant's position that because this action is on appeal, it has not been disposed of. The effect of the Order lifting the stay would be to allow Respondent PMPA to proceed with its condemnation action. The condemnation action is one in which the transmission line (poles 80' to 100' high) goes through the middle of the Oien property. The testimony at trial was that PMPA did not perform an alternate route study comparing the alternate routes using the factors listed and suggested in the Southern Development case. If the appellant is correct that the judge's Order was violative of Southern Development, the effect of the Order lifting the stay would be to allow the condemnation to proceed even if PMPA ultimately loses the

appeal. The automatic stay provision of §28-2-470 would be violated. The Order of October 18, 2016 would also render the Southern Development case a nullity.

In Southern Development v. SC Public Service Authority, supra, the Supreme Court in a unanimous opinion recognized that proper route selection must be employed based upon an objective comparative analysis of several factors. The appellant's expert testimony was that the PMPA route analysis was arbitrary and capricious, lacking in a factual foundation, and a clear abuse of discretion (Plaintiff's Exhibit 40 attached herewith). In fact, PMPA's alleged analysis involved a verbal consideration by PMPA's outside engineer who had never performed a proper cost analysis.

The recent Order of this Court dated October 18, 2016 granting the motion to lift the stay may have misapprehended or disregarded the effect of the testimony in this case, because there was no record available to it. Because there is now a record available, the motion to reconsider should be granted until a proper review can be conducted of the testimony and whether or not the Order did violate or likely did violate the unanimous holding of the Supreme Court in Southern Development v. SC Public Service Authority, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), aff'd as modified, 311 S.C. 29, 426 S.E.2d 748 (1993).

In Southern Development, the Supreme Court affirmed the findings of Master-in-Equity Breder that the utility's choice of route selection of a transmission line lacked a factual basis. In that case, as in this one, the utility employees, in the route selection process, gave no concrete consideration to land acquisition costs, assuming all land in the general area had the same fair market value and where cost estimates for alternate routes did not include land acquisition costs. Id. at p. 433. The Supreme Court noted that "no notes or memoranda were kept by Santee Cooper employees of their analysis." Id. at 433.

In the instant case, PMPA has no notes or scraps of paper of any analysis. (Transcript, p. 378). PMPA's contract engineer admitted he had no notes, papers, or documents showing any analysis comparing the routes. (Transcript, p. 378).

As for land acquisition costs, PMPA appraised all 15 properties involved in the transmission project using the same per acre value (\$5,000 per acre). PMPA's appraiser admitted he did not compare the cost to acquire any route other than the middle route through the Oien property. (Transcript, p. 328).

The Order of the lower court failed to properly apply Southern Development to the facts presented. The Supreme Court found that failure to properly consider land acquisition costs by Santee Cooper was an abuse of discretion and that Santee Cooper's choice of a route lacked a factual basis. Id. at 433. In the instant case, the cost to acquire the southern route was \$292,700, and the cost to acquire the middle route was \$364,200. (Plaintiff's Exhibit 40). PMPA's choice of the middle route was arbitrary and without factual basis. As in Southern Development, PMPA has no piece of paper or document reflecting any analysis. (Transcript, p. 378). Using Mr. Roger's written route ratings ("1" being best), applying all the Southern Development factors, were that the southern route scored a "9," while the middle route scored a "15" and that the southern route was superior in 5 out of 6 categories. (Plaintiff's Exhibit 40).

At the hearing on July 27, 3016, before this Court on the motion to lift stay, the absence of a trial transcript allowed both counsel to argue "outside the record." For example, PMPA argued at the hearing that the Oiens had refused to allow PMPA on their property. The transcript reflects this comment is not accurate. The Court even noted that the Oiens were congenial people. (Transcript, p. 508).

The trial court disregarded the uncontradicted testimony of appellant's transmission line right of way expert Bill Rogers (with over 30 years' experience with Central Electric Power Cooperative) who identified that PMPA had violated the industry standard followed by other transmission companies in not having any tangible evidence or analysis of the factors in an alternate route study being performed by PMPA in accordance with Southern Development. Rogers testified that there was no factual basis for PMPA's route selection. (Plaintiff's Exhibit 40).

The Court rejected Rogers' testimony and said "I don't believe there is an obligation for condemning authority to meet the gold standard that is established by Mr. Rogers." (Transcript, p. 507). The lower court further seemed to allow PMPA to be exempt from the industry standard when he said: "I don't think they're

required to have it in writing...but since this is their [PMPA's] first time, it could have been done on a much more professional basis..since they're new at it." (Transcript, pp. 507-508). Southern Development does not allow any laxity. It requires a comparable route analysis. In the instant case, Rogers' comparable analysis between the selected middle route and the southern route requested by the Oiens showed that the southern route was the preferred route because, considering all the factors, it was over \$70,000 cheaper than the PMPA middle route; it was far more aesthetic as it would be out of sight of the Oiens' retirement home into which they had spent over \$100,000 for plans, well installation, grading and electric hook up; less impact on the property owners' usage; and better tap access to the Duke transmission line. (Plaintiff's Exhibit 40). The Court disregarded Rogers' uncontradicted opinion that PMPA abused its discretion in that it did not follow industry routing standards. (Plaintiff's Exhibit 40). PMPA produced no expert witness to refute Mr. Rogers. It is true that PMPA is inexperienced in transmission right-of-way acquisition. Its inexperience is not an excuse for it to be exempt from the requirements of Southern Development.

In Southern Development, the Supreme Court also discussed the importance of a landowner's anticipated use of the property and noted the following: There was no public notice give of the proposed transmission line, and no property owners were contacted by Santee Cooper before the route was chosen regarding the anticipated use of their property. Id. at 432. In the instant case, the identical facts are that PMPA gave no public notice of the line nor did it contact the Oiens about their intended, anticipated use of the property. PMPA treated their property as though it was just timber land, identically like all properties on the line.

The post-trial comments by the lower court indicate that the court did not believe the PMPA appraisal expert who testified there was no damage to the remainder caused by the middle route. The Court commented about the condemnation selected by PMPA causing great damage as follows: "I thought that was almost beyond believability in the sense you can build a high-rise transmission line through the middle of somebody's property, especially as pristine this property is and there not be any damages." (Transcript, p. 509). The court went on to explain that he was inclined to deny the injunction because the jury in a

condemnation trial could “very easily find up to the value” [of the damages to install the southern route]. The Court obviously believed that there was significant damage to the Oiens’ property because of the middle route, but felt the appellant’s relief should be a large condemnation award. This ignores the rights of property owners which are recognized in Southern Development.

The effect of the Order of October 18 will create irreparable harm to the Oiens. The testimony and the transcript indicate that the Oiens have a high end tract, that PMPA selected a middle route directly through the center of the Oien property without regard to the damage to the remainder of the Oien tract by going through the middle route, when in fact the southern route (which unlike the middle route was out of view of the Oiens’ retirement home) would cost less than the costs of the middle route which was selected by PMPA without analysis. The record in this case indicates that there is not a single piece of paper showing any analysis by PMPA and that it is impossible to do a complete, thorough analysis as required by Southern Development without proper data supporting it based on the comparable factors listed in that case. Attached herewith are copies of Plaintiff’s Exhibit 40 and several transcript pages referenced herein.

**B. This Motion Is Reasonable In Light Of The Irreparable Harm that May Result Otherwise**

In order to properly and fully consider a motion to lift the stay, which has the effect of allowing the Oien property to be perhaps ruined in value, consideration should be given to the trial transcript. The current motion is a reasonable one: to request the Court to reconsider its Order of October 18, 2016, and hold it in abeyance until such time as the Court has reviewed the record and the briefs of the parties. This process should not take more than 90 days. In the alternative, appellant requests that this Court reconsider and hold in abeyance the ruling until at least appellant has filed its Initial Brief at which time said Initial Brief could be supplied to the Court for its consideration in reconsidering the motion to lift the stay.

**CONCLUSION**

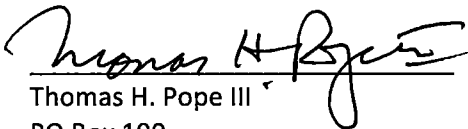
For the reasons set forth above, appellant respectfully requests that this Court reconsider its Order of October 18, 2016, and withdraw said Order until the conclusion of the appeal. In the alternative, appellant requests that this Court reconsider its Order and hold same in abeyance until one of the following events:

- (a) until both parties have submitted their briefs in this appeal and/or
- (b) until at least the appellant has filed its Initial Brief on or before November 13, 2016.

This motion is based upon irreparable damage which will occur unless this Court can at least make its decision on the motion to stay based upon the transcript of record and the briefs to be filed.

Respectfully submitted,

POPE AND HUDGENS, P.A.

By:   
Thomas H. Pope III  
PO Box 190  
Newberry, SC 29108  
P: 803-276-2532; Email: [thpope@popeandhudgens.com](mailto:thpope@popeandhudgens.com)  
Attorneys for Appellant

October 20, 2016

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

**RECEIVED**

OCT 20 2016

SC Court of Appeals

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Appellate Case No. 2016-001037  
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Oien Family Investments, LLC.....Appellant

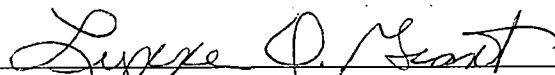
v.

Piedmont Municipal Power Agency.....Respondent

**PROOF OF SERVICE**

The undersigned employee of Pope & Hudgens, P.A. does hereby certify that she has this date served one (1) copy of the Appellant's Motion for Reconsideration dated October 20, 2016 in the above-captioned case upon the following counsel of record by causing said copy to be deposited with the United States Postal Service, first class postage prepaid, affixed thereto, and addressed as follows:

O.W. Bannister, Esquire  
Bannister, Wyatt & Stalvey  
P.O. Box 10007  
Greenville, SC 29603

  
\_\_\_\_\_  
Lynne O. Grant, Secretary to Thomas H. Pope III  
Pope & Hudgens, P.A.  
PO Box 190  
Newberry, SC 29108

October 20, 2016  
Newberry, SC

THOMAS H. POPE III  
W. CHAD JENKINS  
KYLE B. PARKER

**DOPE  
&  
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ATTORNEYS, P.A.

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JOSEPH W. HUDGENS  
*Of Counsel*  
THOMAS H. POPE  
(1913-1999)

October 20, 2016

**HAND-DELIVERED**

The Honorable V. Claire Allen  
Deputy Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Oien Family Investments, LLC v. Piedmont Municipal Power Agency  
Appellate Case No.: 2016-001037

Dear Ms. Allen:

We enclose herewith the original and six copies of the appellant's motion to reconsider the Order granting the lifting of the stay in this matter and, in the alternative, holding said Order in abeyance until briefing is completed so that the record can be considered. Also enclosed is our Proof of Service and firm check in the amount of \$25.

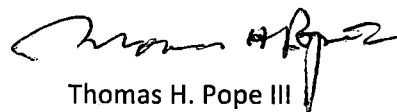
By copy of this letter, we are providing a copy of this motion to opposing counsel.

Please let us know if you need anything further.

With best regards.

Sincerely,

POPE AND HUDGENS, P.A.

  
Thomas H. Pope III

THP III/lg

Enclosures

cc: O. W. "Bill" Bannister, Jr., Esquire, w/encls.

**RECEIVED**

OCT 20 2016

SC Court of Appeals



**ALTERNATE ROUTE STUDY  
OIN PROPERTY, NEWBERRY COUNTY, SC  
PMPA 115 kV TRANSMISSION LINE PROJECT  
FEBRUARY 29, 2016**

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**WILLIAM J. ROGERS, JR- SRWA**

**WILLIAM ROGERS COMPANY, LLC**

## **SUBJECT PROPERTY**

The Oien property is comprised of 116.7 acres located Newberry County, SC and designated by the county assessor's office as TMS 340-00-03-020 and TMS 340-00-03-059. It is a beautiful generally wooded tract with gently rolling physical features and an open field. It also has a 4 acre +/- pond located in its southwestern corner of the tract. The Oiens purchased the property to build a future home and in fact have spent \$75,000 or more in developing plans and preparing for their home site.

The tract is accessed by a dirt road within easy access of I-26. There is a Duke Energy right of way traversing the property's eastern boundary. This is the power source PMPA would use as its tap point or beginning point of its proposed transmission line.

Three alternatives were reviewed for this report-Northern Route; Middle Route and Southern Route.

### **Northern Route**

This route would run along the northern boundary of the Oien tract. This route would contain approximately 4.52 +/- acres of right of way being approximately 2,620' +/- in length. This route presents damages to three distinct areas of the property. Damage Area A consists of 1.21 +/- acres, triangular in shape and would be located on the north side of the proposed power line and the northern property line and Duke Energy right of way; Area B would consist of 11.70 +/- acres and located on the north side of the proposed power line and the property's northern boundary line and Area C would consist of .88 +/- acres and located to the west of the proposed power line and the property's western boundary line. This route would have accessibility issues as well as possible tap issues. As far as safety it would be equal to the other routes being evaluated. The accessibility would cause possible reliability issues. As far as aesthetics, it rank second among the routes being considered. This route would require two angle structures.

The estimated right of way costs is calculated as follows:

Right of way area:	4.52 acres @ \$5,200 per acre (Major Report)	\$23,504
Damage areas :	A) 1.21 acres @ \$5,200 per acre @ 90% damages	5,663
	B) 11.70 acres @ \$5,200 per acre @ 50% damages	30,420
	C) .88 acres @ \$5,200 per acre @ 90% acres	4,118
Duke Area :	.08 acres @ \$5200 per acre	<u>416</u>

**TOTAL RIGHT OF WAY ACQUISITION COSTS ESTIMATED (rounded) \$ 64,120**

**WILLIAM ROGERS COMPANY, LLC**

Page Two

**MIDDLE ROUTE**

This route practically cuts the 116 acre tract into two separate parcels. It taps the Duke Energy line and runs in a westerly direction to the western boundary line of the property. This route contains 3.95 +/- acres of right of way and is 2,200' +/- in length. This route, however, presents damages to the remaining 112 acres at 15% and damages to the proposed residential development of \$75,000 (information from Major Report). From aesthetics point, this route would be rated the worst of the three routes being evaluated. It would be close to the proposed residential development site. From a safety and reliability point of view it would be close to the southern route but superior to the northern route.

The estimated right of way costs for this route is:

Right of way area of 3.95 +/- acres @ \$5,200 per acre	\$ 20,540
Damages to remainder of 112 +/- acres @\$5,200 per acre @ 15 %	87,000
Residential Damages	75,000
Duke Area .08 acres @ \$5200 per acre	<u>416</u>
<b>TOTAL ESTIMATED RIGHT OF WAY COSTS</b>	<b>\$182,960</b>

**SOUTHERN ROUTE**

The southern route taps the existing Duke Energy line just off the current access road into the property and is near the southern boundary. It would proceed in a westerly direction making a turn at the pond and proceed along the pond to a point near the western boundary line of the property. It would then turn north to intersect the proposed middle route before existing the western boundary of the property. This route contains approximately 5.51 acres and is 3,200' +/- in length. As this route is located adjacent to the boundary lines, there are no damages assigned to it. Its access is superior to the other routes so safety and reliability factors are superior to the other routes under review. Aesthetically it is also superior to the other routes as it is located the farthest from the residential site.

**WILLIAM ROGERS COMPANY, LLC**

Page Three

The estimated cost to acquire this right of way would be:

Right of way area of 5.51+/- acres @ \$5,200 per acre	\$28,650
Duke Area of .08 acres @ \$5200 per acre	<u>416</u>
Total estimated right of way cost (rounded)	\$29,100

**SUMMARY OF RW COSTS**

The acreages and distances were scaled according to the attached Exhibit. The value numbers were derived from the appraisal report by Paul Major. The evaluations as to aesthetics, safety and reliability are based on my 46 years of experience in the right of way acquisition field. Damage estimates are based on my courtroom experience and litigation experience while conducting these types of acquisitions.

The attached tables and report represent the details of my findings.

**WILLIAM ROGERS COMPANY, LLC**

**MEMORANDUM**

**To:** Thomas Pope, Esquire  
**From:** William J. Rogers, Jr; SRWA  
**Date:** 29-Feb-16  
**RE:** Estimation of Right-of-way Acquisition Costs for  
Corridors "North", "Middle", "Southern"  
Oien Family Property  
Newberry County, South Carolina

As per your request for an "estimation of right-of-way acquisition costs" for the above referenced project, please find listed below a summary of my findings.

	<u>Route "N"</u>	<u>Route "M"</u>	<u>Route "S"</u>
<b>Estimated Costs:</b>	\$64,120	182,960	29,100
<b>Distance (feet):</b>	2620	2200	3200
<b>R/W Acres:</b>	4.52	3.95	5.51
<b>Total Tracts:</b>	1	1	1
<b><u>Property Types:</u></b>	<b><u>Acres/%</u></b>	<b><u>Acres/%</u></b>	<b><u>Acres/%</u></b>
<b>RURAL RESIDENTIAL</b>	4.52 100%	3.95 100%	5.51 100%

**WILLIAM ROGERS COMPANY, LLC**

**Summary**  
**Route "N"**  
**Project Name/Account #**  
**Some County**

<u>Land Use</u>	<u>Tracts</u>	<u>Distance</u>	<u>R/W Acres</u>	<u>% Total</u>	<u>Cost Estimate</u>
RURAL RESIDENTIAL	1	2620	4.52	100	23,504
<b>TOTALS:</b>	1	2620	4.52	100	23,504

**Estimated cost to acquire right-of-way:**

1) Right-of-way = 4.52 ACS. @ \$5200	23,504
2) DAMAGES TO REMAINDER	
AREA A: 1.21 @ 90%	5,663
AREA B: 11.70 @ 50%	30,420
AREA C: .88 @ 90%	4,118
3) Duke Area .08 @ 5200	416

**TOTAL ESTIMATED RW COSTS**

**\$64,120**

**WILLIAM ROGERS COMPANY, LLC**

**Summary**  
**Route "M"**  
**Project Name/Account #**  
**Some County**

<u>Land Use</u>	<u>Tracts</u>	<u>Distance</u>	<u>R/W Acres</u>	<u>% Total</u>	<u>Cost Estimate</u>
RURAL RESIDENTIAL	1	2200	3.95	100	20,540
<b>TOTALS:</b>	1	2200	3.95	100	20,540

**Estimated cost to acquire right-of-way:**

1) Right-of-way = 3.95 ACS. @ \$5200	20,540
2) DAMAGES TO REMAINDER	
112 acs. +/- @ 15%	87,000
House Site	75,000
3) DUKE AREA; .08 acs @ 5000	416

**TOTAL ESTIMATED RW COSTS** **\$182,960**

**WILLIAM ROGERS COMPANY, LLC**

**Summary**  
**Route "S"**  
**OIEN PROPERTY**  
**NEWBERRY COUNTY, SC**

<u>Land Use</u>	<u>Tracts</u>	<u>Distance</u>	<u>R/W Acres</u>	<u>% Total</u>	<u>Cost Estimate</u>
RURAL RESIDENTIAL	1	3200	5.51	100	28,650
<b>TOTALS:</b>	1	3200	5.51	100	28,650

**Estimated cost to acquire right-of-way:**

1) Right-of-way = 5.51 ACS. @ \$5200	28,650
2) DAMAGES TO REMAINDER	0
3) DUKE AREA; .08 acs @ 5200	416
<b>TOTAL ESTIMATED RW COSTS</b>	<b>\$29,100</b>

**WILLIAM ROGERS COMPANY, LLC**

## ESTIMATED TOTAL COSTS

ROUTE	CONSTRUCTION	ENGINEERING	RIGHT OF WAY	TOTAL
N-NORTH	\$161,261	45,826	64,120	\$271,200 (RD)
M-MIDDLE	\$135,410	45,826	182,960	\$364,200 (RD)
S-SOUTH	\$196,960	66,656	29,100	\$292,700 (RD)

Construction and engineering costs are based on a recent line the writer of this report was involved with in Newberry County. It was a single pole 115 kV Transmission Line constructed by Central Electric in 2015 near Prosperity, SC.

Construction Costs Actual were \$325,000 per mile or \$61.55 per foot.

Engineering Costs Actual were \$110,000 per mile or \$20.83 per foot.

Right of Way Costs were based on Alternate Route Cost Study contained within this report.

The PMPA report of February 28, 2013 estimated construction costs at \$378,570 per mile.

The Central overall actual was \$435,000 per mile.

The Central numbers were used in this report as they are actual and represent angle turns, etc.

**WILLIAM ROGERS COMPANY, LLC**

## ROUTE RATINGS

ROUTE	COST	TAP	ACCESS	AESTHETICS	WETLANDS	STRUCTURES	ENVIRONM	RK
N- NORTH	1	3	3	2	1	2	EQUAL	12
M- MIDDL	3	2	2	3	2	3	EQUAL	15
S- SOUTH	2	1	1	1	3	1	EQUAL	9

SCALE: 1= BEST

2= BETTER

3= WORST

**WILLIAM ROGERS COMPANY, LLC**

## **CONCLUSIONS**

The three routes that were evaluated in this report could all serve PMPA's needs for the electrical system upgrade. The easiest choice would be to select the middle route as it is a straight shot to the objective.

However, prudent route selection methodology and industry standards requires the siting authority to consider more than just taking the path of least resistance. One must consider the various impacts on the environment (human and natural), aesthetics, safety, reliability, land use and cost.

In this case, it does not appear PMPA conducted such a study to objectively review the alternatives. Prudent right of way practices begin with an objective in depth study of alternatives. Most right of way acquisitions do impact property and some more than others. Those impacts need to be included in the study.

The review of the alternatives across the Oien property does in fact evaluate or estimate those possible impacts. The result of that review would clearly favor the southern route. Even if self-supporting poles were used at a cost of \$35,000- \$50,000 were used on the southern route, it would be lower than or equal to the middle route. It would just as reliable and safe. The aesthetics of the southern route far exceeds the other routes under consideration.

Since this is an "after the fact study" where the landowner has been contacted and negotiations commenced, it has certainly proved that the southern route would be more favorable to the landowner and less expensive for PMPA.

In summary, the study of these alternatives as they pertain to the Oien property, clearly demonstrates that the southern route should be selected as the preferred route.

My review of the PMPA file provided to me, along with a review of the depositions, interviews with Mr. Oien and Mr. Major and personal site visits lead me offer the following opinions:

- 1) PMPA abused its discretion in that it did not follow industry routing standards
- 2) PMPA's process of route selection was arbitrary and capricious in that they ignored the effect of the project on landowner's property
- 3) PMPA did not follow the Santee Cooper case establishing route selection processes
- 4) PMPA deviated from acceptable right of way practices with regard to eminent domain

**WILLIAM ROGERS COMPANY, LLC**

- 5) The Southern Route would have resolved the matter with the Oiens in that has much less impact on the property at a lower overall cost
- 6) PMPA failed to give proper notice to the Oiens once a selected route decision was made
- 7) The selection of the route is arbitrary as no detailed study was made comparing it to other route alternatives
- 8) PMPA did not review the Oien's property with enough study as it simply viewed the tract as a rural timberland property and not as a private retirement retreat without consideration of the Oien's future use of the property

All opinions expressed herein are to a reasonable degree of certainty in the field of route studies in condemnation matters.

Respectfully submitted,



William J. Rogers, Jr., SRWA

**WILLIAM ROGERS COMPANY, LLC**

1 services for Central Electric?

2 A We did. Our first role in the process, we pretty  
3 much had a process down pat where we would be working with  
4 our engineering portion of the staff on routing or siting  
5 of transmission lines and that's where we looked at the  
6 alternate route studies.

7 Q And what prompted you to be sensitive about alternate  
8 route studies?

9 A Well, like I said, I came to work for Central in 1990  
10 as a contract right-of-way agent to do individual tract  
11 appraisals and those are appraisals to acquire easements  
12 for their transmission projects. In 1991, corporate  
13 counsel advised me to write up a procedure or a policy to  
14 conduct alternate route cost studies that they were going  
15 to use to implement where their alternate route studies in  
16 the site selection process.

17 Q And that was based on what legal development?

18 A It came from the Southern Development case vs. South  
19 Carolina Public Service Authority.

20 Q All right. And what did you make sure, that you  
21 taught your right-of-way agents at Central Electric?

22 A Well, Central Electric and most all other utilities  
23 that I've worked with in South Carolina and in Georgia, in  
24 fact all of them, take the right of imminent domain very  
25 seriously. And also with that is the acquisition of

1 easements through condemnation extremely serious, and a  
2 paper-trail, proper documentation being open to the public  
3 about what you're doing, why you're doing it and how  
4 you're going about doing it was essential to our business  
5 model.

6 Q Did you base your procedures after 1991 on what was  
7 directed in the Southern Development?

8 A Right. It was, we had already, we were already doing  
9 alternate route studies, as I think a lot of other  
10 utilities were. But the Southern Development case  
11 according to attorneys as it's explained to me dealt with  
12 more about right-of-way costs exact, and that was pretty  
13 much was developing estimates as to what it would cost to  
14 acquire the right-of-way. And that was to be based on  
15 land use and how the project would cross the proposed  
16 landowner's property.

17 Q And you said you were taught at Central Electric that  
18 imminent domain was a very serious right?

19 A It is a serious right.

20 Q Well, explain for some of the practical applications  
21 of understanding what is a sensitive route in dealing with  
22 landowners?

23 A Well, once you go through the siting process and you  
24 go through the alternate route studies and a selected  
25 route is chosen, it's based on those studies and those are

1 basically empirical studies. They're not just looking at  
2 maps and looking at general concepts or saying so much.  
3 We look at the wetlands, the threat to endangered species,  
4 the cultural resources, the cost to build the line, of  
5 course, is important, the engineering costs to buy it and  
6 also the estimated cost to buy the, for the right-of-way.  
7 All those things go into play and a route is chosen  
8 through a committee, a selected route. And so what our  
9 process is, immediately once a selected route is chosen,  
10 we would, and other companies that I've worked for, the  
11 first task would be to notify all property owners along  
12 the line that you have a project. And give them, usually,  
13 a letter is sent out, a letter of notification where each  
14 property owner is given notice of this and, basically,  
15 stating who you are, what you're trying to do and what the  
16 project is about, general ideas about the project and  
17 advising them that you would have representatives in the  
18 area to meet with them on an individual basis. And,  
19 basically, that's sort of evolved and gotten a little  
20 better in the last decade or so. The fact that we put in  
21 800 numbers and given emails so that property owners can  
22 contact us. The first visit to a property owner is the  
23 most important, because you're trying to find out from  
24 that property owner what his issues are. Ninety percent  
25 of right-of-way that you can buy, let's put it this way.

1 Most of the problems with right-of-way has to do with  
2 something besides money. It has to do with the way folks  
3 have been treated in the past. It has to do with  
4 possible, in this particular case, homesite development  
5 and you get that information from the property owner and  
6 by meeting with that property owner and getting that  
7 feedback from them. And you can find out quickly what the  
8 crux of the problem is and try to resolve that problem.  
9 If you can get it situated on a person's land where you  
10 can live with and that person can live with it, you got a  
11 doggone good chance of buying that right-of-way without  
12 having to go through the process of condemnation.

13 Q And as far as the starting point, no, excuse me. Let  
14 me ask you. What have you reviewed in this particular  
15 case? Have you reviewed the PMPA documents 1 through 486?

16 A I reviewed all the discovery information that you had  
17 supplied me.

18 Q Did you read the deposition of Mr. Cobb and Mr.  
19 Regier and Mr. Frazer and Mr. Guy?

20 A I did.

21 Q And Mr. Oien?

22 A I did.

23 Q And you've sat here today all day listening?

24 A I did.

25 Q And based on all that information, you have come here

1 today to render opinions, is that right?

2 A Right. And the opinion that I have--

3 MR. BANNISTER: Judge.

4 Q No, I'm sorry. We'll ask you that in a minute.

5 MR. POPE: I'm going to tender Mr. Bill Rogers--

6 THE COURT: Right-of-way acquisition.

7 MR. POPE: Mr. Bill Rogers as an expert in

8 right-of-way acquisition.

9 THE COURT: Any voir dire or do you stipulate?

10 MR. BANNISTER: I'm not sure I understand exactly  
11 what he's, what he intends to offer, so I may ask him some  
12 questions if that's okay.

13 MR. POPE: Proper procedures for right-of-way  
14 acquisition.

15 THE COURT: Does that satisfy?

16 MR. BANNISTER: For procedures for land acquisition.

17 THE COURT: Proper procedures.

18 MR. BANNISTER: He's an expert in proper procedures  
19 for land acquisition?

20 MR. POPE: And condemnation.

21 THE COURT: Right, and condemnation.

22 MR. BANNISTER: And condemnation.

23 THE COURT: Proper procedures for right-of-way  
24 acquisition in condemnation cases.

25 MR. BANNISTER: Good.

1 THE COURT: Okay. So stipulated.

2 Q And you've come to render opinions about that topic  
3 as your area of expertise, is that right?

4 A Right. Besides working for Central, I have done work  
5 with Progress Energy, done work with SCE&G, formerly  
6 Carolina Power & Light which became Progress Energy, which  
7 became Duke. And through my association, International  
8 Right-of-Way Association, have become very familiar with  
9 the alternate route studies that different companies do.  
10 Because we're always trying to get better and each of our  
11 attorneys as they've succeeded themselves through the  
12 years from the 1990's to the current corporate attorney,  
13 the first thing they want to know do you have a written  
14 procedure to do alternate route studies and do you have a  
15 written procedure to do the alternate route cost studies.  
16 The cost studies pretty much fell totally on my end of the  
17 stick and we did have that, and I've reviewed this, the  
18 discovery information and where it appeared, there were  
19 some routes drawn on maps. That's just the start of the  
20 process. I did not see a single report or alternate route  
21 study.

22 Q So now you listened today when we talked about that  
23 in February, late February of 2013, Mr. Cobb submitted a  
24 plan to go forward with a route from the Duke Power  
25 transmission line to the substation; you saw that?

1 A I did.

2 Q And was there any alternate route study accompanying  
3 that?

4 A There was no study that I saw.

5 Q All right. Now, it was testified earlier today that  
6 that route was based on a Google Earth and a GIS map,  
7 meaning nobody had ever been on the property and no  
8 landowner had been talked to, is that right?

9 A Yes.

10 Q All right. And there's nothing wrong with starting  
11 that way is, just to draw a line, and then we'll go talk  
12 and find out?

13 A And that's exactly how you start.

14 Q Right, but was there any finishing to it? You saw  
15 they started, but did they ever talk to the landowners and  
16 ascertain those desires, and then do an alternate route  
17 study for each landowner?

18 A Well, the way you do it is and I think that, you  
19 know, you get started by putting various routes on a map  
20 and your engineers work on that, along with the  
21 right-of-way folks. Because you got to bring in the real  
22 estate component into developing these general routes.  
23 Once you have your general routes, they may be four or  
24 five; they may be two or three. It doesn't matter the  
25 length of the line either. The line could be a mile; it

1 could be 25 miles. You do these alternate route studies  
2 to be able to show the public or when you get ready to go  
3 to condemnation that you've done your proper due diligence  
4 and routing; that you haven't been arbitrary; that you've  
5 been objective and fair-minded. And the way you go about  
6 doing it is you take each route and you as far as offering  
7 a route cost study, and you do it for everything else, all  
8 the other variables, too. But alternate route cost  
9 studies, you look at every tract. You've either had an  
10 appraiser give you a general market study of the area.  
11 That's basically a study area that you're looking at  
12 putting, getting from point A to point B and you've got  
13 all these various routes contained in that study area. So  
14 you've got that information, and then from the, actually  
15 you can use, it's very good to use GIS and the county  
16 information, but it's also to go out and look at each  
17 route and you actually go out and inspect properties best  
18 you can without getting on them, because you don't have  
19 the right to get on them. At this point, you're doing a  
20 utility study, basically. So you're going in and you're  
21 estimating the cost to acquire. You're not forming an  
22 opinion of value. That's what appraisers do. You're  
23 giving your committee or your selection group, whoever is  
24 making the selection, the metrics and the information on  
25 which to base decisions about developing the preferred

1 route. So you look at each tract and so you go do, and  
2 you say you got 10 tracts and you'll evaluate each tract.  
3 Some of them may be small single-family residential  
4 properties. Some may be large tracts. Some may be a  
5 tract such as Mr. Oien's, Mr. and Ms. Oien's is on. And  
6 you look at those and you try to figure out what's it  
7 going to cost to acquire. Well, you got it on a map and  
8 you see you're going down the middle of a piece of  
9 property. I've been in the seat of the acquisition agent  
10 for a long time, and I've bought a lot of right-of-way and  
11 been in a plenty of condemnations, and I sat at that table  
12 over there where the verdicts have come down when they're,  
13 you go across the middle of a man's property or a lady's  
14 property. You're going to pay a heck of a lot more for it  
15 than you are if you go along the property lines. You  
16 can't always go down the property lines. And so you try  
17 to evaluate and give your committee an estimate of what  
18 it's going to cost to acquire that particular property.  
19 At the end of the day for each route, you'll have an  
20 analysis of the various components such as the  
21 environmental, the wetlands, number of tracts, the land  
22 use categories are broken down from different kind of  
23 categories, and then you'll have a cost to acquire and in  
24 that cost to acquire, you also estimate the damages. We  
25 just did a line before I retired in Newberry County from

1 the community of Fairview up to the IP plant right there  
2 in Prosperity. It was about a seven-mile line. We looked  
3 at about six or seven different alternative routes and  
4 when we evaluated them in terms of alternate route cost  
5 studies, the engineers took the Google Earth. That's  
6 fine. We went out there on the ground and looked from  
7 roads, and they had a couple of the lines going across  
8 houses or going right by houses. So those had to be  
9 tweaked. Even though they went near houses, we assigned  
10 proximity damages to it. Now, this damage thing has  
11 changed quite a bit in the last few years. Like I said, I  
12 been in court a bunch. Been on a bunch of mediations and  
13 the damages are always present. There have been studies  
14 after studies that come out, so they go anywhere from 10  
15 percent to 35 percent.

16 Q That's for damage to the remainder?

17 A Damage to the remainder. And so when I did this,  
18 what basically I did in this report here is to evaluate  
19 relocation analysis and applied the principals of an  
20 alternate cost studies to relocation or, in other words,  
21 say PMPA had picked out the middle route. Then, there  
22 were a couple of other possibility or alternatives that we  
23 looked at, and I had the luxury of doing it sort of after  
24 the fact and was able to take the expert who formed the  
25 opinion of the value, Mr. Major, use his numbers in there.

1 I also interviewed Mr. Oien, and he was telling me that  
2 the southern route was not going to give him concerns  
3 regarding damages to remainder. The northern route, there  
4 was a couple of severance parcels, but and I think in the  
5 end, it wasn't even being considered by anybody. I think  
6 basically what you have here is you've got a middle route  
7 that has a fixed number that PMPA knows what it's going to  
8 cost to build it and engineer, but it's got another number  
9 that nobody knows what that's going to be and that's the  
10 damage of remainder. And when you try to evaluate it and  
11 in every one of the cases I've been involved with, you try  
12 to provide the best information available. Use the best  
13 practices available, and that's to use studies based on  
14 your experience and so forth giving folks the information  
15 on which to make a decision.

16 Q And the alternate route studies can be done with  
17 checking with the landowner, going on the property and  
18 looking at the usage that the landowner have and the  
19 aesthetics. You can't tell aesthetics from a mountain,  
20 necessarily?

21 A No, you need to be on the property. And also in this  
22 particular case, because it's got to do, you're not  
23 looking at the rest of the line. You're looking as  
24 applies to this landowner and the main thing you got to be  
25 concerned there is, is that the exit point is at the same

1 place that their preferred route was selected, which  
2 that's what we did. The tap points, I've been involved  
3 with tap point acquisitions with Central with plenty of  
4 them with Santee Cooper. Duke does it a little different.  
5 They buy a separate little parcel of land but 99 percent  
6 of the time, these folks want great access to their tap  
7 points and that's to be able to get to that point and  
8 restore power, be able to build it and maintain it from  
9 there, because see that's the key. That's where they are  
10 switching and that's where the power is coming from Duke,  
11 in this case, to PMPA.

12 Q And let's talk about the tract. You've been and  
13 visited the Oien property, have you not?

14 A I have.

15 Q And what were your observations about the property  
16 and the possible middle route or the southern route? Talk  
17 about the property first.

18 A Okay. The property is, it is a pretty piece of  
19 property and you've heard Mr. Major talk about it. You  
20 heard Mr. Oien talk about it. It is beautiful. It's  
21 well-maintained. I would probably, we would probably put  
22 a usage on it as a residential estate, something of that  
23 nature. Something a little bit above a residential--

24 MR. BANNISTER: Your Honor, I'm going to object to  
25 him saying how he would, in his opinion he would use the

1 property. I mean that's, the question is he's an expert  
2 on the procedure about which you acquire right-of-way in a  
3 land condemnation case. What he thinks is the highest and  
4 best use of the property is not in his scope of expertise.

5 MR. POPE: He evaluates aesthetics, Your Honor.

6 THE COURT: Yeah, I think this gentleman testified  
7 that in doing his right-of-way, that he had to look at  
8 alternative costs and look at the costs involved, and I  
9 think it's necessary for that, so I'm going to note your  
10 objection. I'm overruling the objection.

11 A So it is a beautiful piece of property and once you  
12 go on it, you can see that someone has done some  
13 preliminary work in there to do something else with it.  
14 Then, that falls back into your right-of-way acquisition  
15 process. When you go meet with a property owner and say  
16 if I'm representing PMPA, I'm going to explain to the  
17 Oiens what the project is, what our proposed route and  
18 discussing with him his issues, he's going to pull out  
19 those plans. He's going to pull out those pictures. He's  
20 going to, you can, you know, it doesn't take a genius to  
21 walk out there and see that there's underground utilities  
22 and there's well head and there's a extremely nice shed.  
23 So something's getting ready to happen there. It's got  
24 the pond. And so, basically, from there that tips you off  
25 as a right-of-way agent, okay? Our issue here is

1 location. Where can we try to locate this project to work  
2 with Mr. Oien? At the same time, look after the company's  
3 interest. Well, the way you do that is you go through  
4 this process and, you know, he may mention some routing to  
5 you. There may have been some discussed. So you take it  
6 back and you evaluate it and you get your engineer out  
7 there with you, usually, an engineer and a surveyor and  
8 the property owner. You can agree on the ground what will  
9 work for him and what will work for you.

10 Q But when you do it--

11 A Generally, that will work, and then you're talking  
12 about, you're taking damages, the unknown factor of  
13 damages off the table.

14 Q But when you do it all for the route study, you have  
15 engineers working with you as part of what you do as an  
16 expert?

17 A Right. You bring in the engineering, the design  
18 engineers. You bring in your environmental engineers.  
19 You're working with consultants that are biologist that do  
20 the wetlands studies, the cultural resource implications.  
21 You got, a lot of this information you can get easily, but  
22 a lot of it you've got folks that you do business with.  
23 You do so many of these projects and so many of these  
24 lines, you can pick up the telephone and say, okay, I've  
25 got a line in Newberry County and send me some, we're

1 looking at these alternatives. I need to know information  
2 regarding these things. And so when Central took this  
3 process to its committee, you had specifics and you had  
4 metrics for each and every route. That takes us back to  
5 here. So they pick the middle route, and then you find,  
6 then you're in the next step. You're in the acquisition  
7 phase and that's where you're trying to make it work out  
8 with the property owner.

9 Q And so you'll do your own route studies as you get  
10 into the acquisition phase?

11 A Well, you're not, no. You've selected the route  
12 based on your alternate route studies, okay? You've done  
13 your alternate route studies. In fact, when you do your  
14 alternate route studies, you want to be as objective and  
15 fair-minded as possible.

16 Q But in this case do you see any indication in the  
17 testimony or the depositions of PMPA persons or engineers  
18 or in the written record that they did any alternate route  
19 studies to pick a route?

20 A There were no route studies done.

21 Q Okay. All right. Now, and you said then the next  
22 step after you have a route, then you talk to the  
23 landowner, correct?

24 A You talk, you're in the phase we're in we're talking  
25 about right now, acquisition. So you go in and you do a

1 study like I've done here to look at the various specific  
2 routes, and this is a little bit different, because you're  
3 looking specifically from the landowners point of view.  
4 You're looking at things that could be brought up in  
5 court, but you don't know how it's going to end up. I  
6 mean, you may think you know, but I can tell you, juries  
7 may change your mind in a hurry. And so based on all of  
8 that experience is how I look at presenting the damage  
9 factor to the company.

10 Q Okay. And you've done a full report where you  
11 analyze your opinions and the reasons for them, and you've  
12 also provided at the back of the report an alternate route  
13 cost study?

14 A I have.

15 Q Okay. And is that cost study the same kind of study  
16 you would have done if this were your project way before  
17 any condemnation was talked about?

18 A Well, ours will be more detailed up front, okay?  
19 You've got the cost study and you've got the alternate  
20 route studies. You've selected the route, so you're into  
21 the route now, but the landowner's made a relocation  
22 request or he's indicated this is not going to work. So  
23 then you do another study similar to what I have here and  
24 this is what I prepared in this particular case.

25 Q Okay.

1 A And it's a mini-route study that's applicable to that  
2 specific property.

3 Q Okay. And in your experience with Central Electric,  
4 what percent of those relocation-type consideration  
5 requests were granted by Central Electric?

6 A If we got 10, we would probably, we would grant nine;  
7 90 percent usually. Now, there's a strong foundation of  
8 being able to, we always took the approach if you can get  
9 it situated on the person's property where you can live  
10 with and you take that unknown out of the deal, the  
11 unknown being the jury and, you know, you're going to be,  
12 this is an easement in perpetuity. You're going to be a  
13 neighbor to that landowner forever and if you can work  
14 that out and your company can live with it and it doesn't  
15 affect the line or compromise a line, then you try to do  
16 it. In some cases, you just can't do it.

17 Q Exhibit 40 is your bio or resume?

18 A Yes, it is.

19 MR. POPE: I should have offered that earlier. I  
20 offer it as an exhibit.

21 THE COURT: Any objection to his C.V.?

22 MR. BANNISTER: No, Your Honor.

23 THE COURT: Admitted.

24 (Whereupon, Plaintiff's exhibit 40 was admitted into  
25 evidence.)

1 Q And exhibit 40 is your alternate route study that  
2 you, report that you prepared, is that right?

3 A Yes.

4 Q Okay. Now, are you familiar, the route study you had  
5 performed, are you familiar with whether or not other  
6 utility companies such as SCE&G, Duke, Progress Energy,  
7 whether they use almost identical alternate route studies?

8 A They do alternate route studies, yes, and they do  
9 include the costs.

10 Q Are they--

11 A They're similar. Yes, they're similar to the format.  
12 Not exactly. Everybody does things a little different.

13 Q Do they consider the same factors you've considered?

14 A Yes.

15 Q Do they compare alternate routes with one another to  
16 score them?

17 A Some do. Some let the committee choose.

18 Q A committee?

19 A Committee, the selection committee.

20 Q Okay. All right. Now, I want to ask you first to  
21 talk about the estimate total cost. Can you see any  
22 indication, do you think this is required by Southern  
23 Development?

24 A Yes.

25 Q Did you see any indication or any document or any

1 testimony that PMPA did estimated total costs?

2 A No.

3 Q And taking the report that they filed before they  
4 started anything based on their Google Maps, they had the  
5 right-of-way purchase costs of \$100,000.00, which is  
6 \$5,000.00 times 20 acres, is that right?

7 A That's right. This is about a 2.1 mile line  
8 according to this information. They looked at only the  
9 right-of-way itself. They did not look at how it affected  
10 the individual property owners land, and there's about 20  
11 acres in that and it's \$5,000.00 an acre which is in line  
12 with what their appraiser put on it which was \$5,000.00 an  
13 acre.

14 Q But was there any paper anywhere in the file of PMPA  
15 or testimony that indicated they reassessed right-of-way  
16 costs anywhere on any tract?

17 A No.

18 Q On any of the 15 tracts?

19 A No.

20 THE COURT: Let me make sure I understand. The  
21 figures you're citing in your many route studies is based  
22 on what you anticipate a jury would award based on your  
23 experience, is that correct?

24 A Yes, sir.

25 THE COURT: Thank you.

1 the line, the tap, the access, the aesthetics, the  
2 wetlands, the structures and the environmental?

3 A Yes.

4 Q And you compared one route with another?

5 A Yes, sir.

6 Q Do you have any document that shows such information?

7 A No, sir.

8 Q All right. Do you have any notes that reflect any  
9 data about that information? The reason I ask, none have  
10 been produced in this case.

11 A And not to my knowledge.

12 Q All right. So you did you say a verbal effort to  
13 compare alternate routes, is that right?

14 A More than verbal.

15 Q Well, it's either written or verbal, so which was it?

16 A No, I can mentally compare those, sir.

17 Q Sir?

18 A I can mentally compare those.

19 Q Yes, sir. So there was mental?

20 A Yes.

21 Q All right. There's no document that shows what the  
22 results of the analyses were, is that right?

23 A That's correct.

24 Q Okay.

25 A Other than emails and phone conversations.

1           THE COURT: And then you explain it. We have  
2 testimony that West proposed or considered corridors.  
3 They can do that. It goes east and you have particular  
4 corridors, and then they select a particular route and it  
5 was going to follow up the middle. Once that's done as  
6 opposed to the other particular corridors, is it your  
7 contention that no further analysis has to be done.  
8 Factors under Southern Development, if they did those  
9 factors in determining those routes.

10           MR. BANNISTER: Judge, it's our condition, it's our  
11 contention that they, the final route that's selected,  
12 they have to consider all the factors outlined in Southern  
13 Development.

14           THE COURT: Okay.

15           MR. BANNISTER: The failure to consider all of those  
16 factors in the route that they select would be the abuse  
17 of discretion.

18           THE COURT: Is there a timing requirement at all as  
19 to when those factors are considered?

20           MR. BANNISTER: I believe it's, the way I read it is  
21 when they condemn, they are declaring this is the route--

22           THE COURT: Okay. Do you disagree with that?

23           MR. POPE: I disagree that they have to consider  
24 alternate routes, as well as the final route.

25           THE COURT: Sir?

1 that?

2 MR. POPE: Well, they say they didn't agree at that  
3 meeting.

4 THE COURT: I'm reading it. I read exactly what it  
5 said.

6 MR. POPE: There are other documents in the record  
7 that say they're adamant about the southern route, about  
8 the southern route.

9 THE COURT: I understand that. But they're saying,  
10 because, quite frankly, first and foremost, we don't want  
11 this on our property and I quite understand that. I  
12 wouldn't want it on my property. Then, okay, let's not do  
13 the southern route, let's show up north. No, we don't  
14 want to go up north. Let's go back to the middle. Then,  
15 you know, we really don't want this on our property at all  
16 and we can't agree to anything on our property. And  
17 that's the way it seems like to me, so they're bouncing  
18 around and understandably, because you don't want this on  
19 that beautiful piece of property going through it. I  
20 mean, I quite understand it. But to take the position  
21 that they have said, you know, we've wanted this southern  
22 route since March 2014 I think belies the evidence I can't  
23 put my hands around. So tell me where I'm wrong.

24 MR. POPE: Well, Mr. Regier admitted it.

25 THE COURT: Sir?

1           MR. POPE: Mr. Regier said he thought that was what  
2 their position was. So he understood it that way.

3           THE COURT: Sir?

4           MR. POPE: He understood it that way.

5           THE COURT: All right. Well, okay. I'm not going to  
6 rule today, but I'm going to tell you my preliminary  
7 thoughts on the case. I don't want a war of emails, but  
8 I, if y'all want to respond. But my thoughts are, quite  
9 frankly, I think you raised appropriate factors. I think  
10 that the pleadings can't be read, at least under the rules  
11 of criminal justice to include bad-faith. Fraud, I don't  
12 think you even pled that. But I don't believe that there  
13 is an obligation for condemning authority to meet the gold  
14 standard that's established by Mr. Rogers. Clearly, he's  
15 got the Rolls Royce of the standards of evaluation of  
16 alternate routes and created it. But just because the  
17 condemning authority end did not make this in-writing does  
18 not mean that this, this is the best practices does not  
19 mean they didn't consider the factors. And I think you  
20 are going to be, there's no really way they could have  
21 done that based on the number of properties, based on the  
22 number of different factors. I think they could have done  
23 this, inadequately considered it or they did it at all. I  
24 think you're, which I hear what you are saying. But, you  
25 know, I don't think they're required to have it

1 in-writing, although, quite frankly, I'd probably  
2 understand it, but since this is their first time, it  
3 could have been done on a much more professional basis. I  
4 mean, since they're new at it. Mr. Rogers admitted, and I  
5 seem to be picking on you, Mr. Rogers, the  
6 cross-examination if, in fact, the condemning authority  
7 had considered these factors, regardless of whether or not  
8 it's in-writing, exercise his judgment; i.e., use of  
9 discretion and location of the line. So the question is  
10 did they not, all the evidence that you have heard in this  
11 case, I don't think you met that burden and statutorily,  
12 frankly. There's no way to put this in bad-faith in this  
13 case. In fact, quite frankly, the evidence states that  
14 the condemning authority tried to meet with  
15 representatives or with the Plaintiffs themselves to  
16 locate where the easement was going and to appease their  
17 concerns. I think that from all I can tell that the  
18 Plaintiffs were a lot more congenial to deal with than  
19 this other gentleman was. But, be that as it may, and,  
20 quite frankly, were less than, as far as professionalism  
21 in this case. It doesn't amount to anything that people  
22 are not being professional, somebody using a little bit,  
23 being a little bit more lax in their indications than they  
24 should have. Again, no evidence as far as their conduct.  
25 And there is no evidence at all based on other cases,

1 there's any estoppel issue. You didn't raise estoppel.

2 MR. POPE: We didn't raise estoppel.

3 THE COURT: So I'm not considering it. And,  
4 therefore, my thoughts are in this case and that the  
5 Defendants did, in fact, use their discretion in  
6 determining where this easement was going to go,  
7 therefore, they did not abuse their discretion in the  
8 Southern case and the facts of Southern. And we went over  
9 those factors in the beginning of the case. But I have  
10 written those factors down, availability of alternate  
11 routes and costs, cost of building, cost to acquire,  
12 environmental factors, public authorities, state  
13 considerations, liability and aesthetics. And that has to  
14 be both standard for obtaining the line in the first  
15 place. You know, with that being said, this is kind of a  
16 personal aside, because I'm sure your clients know better  
17 than me, but as you go forward, if I do and I am inclined  
18 to decline your petition in equity to enjoin construction  
19 of this line. My ruling will be of the damages. Contrary  
20 to the authority's expert, who I thought was very credible  
21 that there was no damage to remainder, I thought that was  
22 almost beyond believability in the sense you can build a  
23 high-rise transmission line through the middle of  
24 somebody's property, especially as pristine this property  
25 is and there not be any damages. In my, when you do a

1 jury trial could very easily find up to the value to  
2 correct or install the southern route that you were  
3 proposing. So at the end of the day that those, while  
4 you're correct in, being the end result, you may end up  
5 cutting off your nose to spite your face. I think the  
6 evidence showed that the B routes and the A routes are so  
7 obviously problematic that they didn't need any further  
8 analysis under the Southern case and those are my general  
9 thoughts about what I'm going to do on this case. Now,  
10 again, gentlemen, if you want to correct me, I don't care  
11 about any particular format. Just send it to me and say,  
12 look, this is where you're wrong. This is where your  
13 analysis is wrong and this is what the facts dictate that  
14 you consider something else. Send it to me by email.  
15 What kind of time frame do you need, how much time do you  
16 think you need?

17 MR. POPE: I'd probably need what about till next to  
18 a week or is that too long? A week from Wednesday?

19 THE COURT: Yes, sir. That'd be good. I'll tell you  
20 what, give yourself a week. If you need additional time,  
21 you can have it.

22 MR. POPE: I just got a couple of things coming up  
23 that I'm going to have to deal with this week.

24 THE COURT: Right. And if you want to respond to  
25 him, just try to do it as quickly as possible within 48